ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT



PUBLIC SECTOR CORRUPTION

An International Survey of Prevention Measures

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FOREWORD

This publication is an overview of the measures currently employed by 15 OECD countries to protect their domestic public institutions against corruption. The publication consists of the findings and analysis of a recent survey as well as summaries of the country reports.

The fifteen OECD countries which participated in the survey are Belgium, the Czech Republic, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Korea, Mexico, Poland, Spain, Sweden and Switzerland.

This book was prepared by Alexandra Mills (currently a Senior Advisor, Department of Premier & Cabinet (Victoria), Australia) during an in-house consultancy at the OECD Public Management Service. It is published on the responsibility of the Secretary-General of the OECD.

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EXECUTIVE SUMMARY

Corruption in government and public administration is a complex and pervasive phenomenon. In governance terms, corruption threatens democratic public institutions by permitting the influence of improper interests on the use of public resources and power, and by undermining the confidence of citizens in the legitimate activities of state.

Internationally, there is a growing awareness that sound governance plays an important role in effective action against corruption. This survey provides an overview of the measures that 15 OECD Member countries (Belgium, the Czech Republic, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Korea, Mexico, Poland, Spain, Sweden and Switzerland) are currently using to protect their domestic public institutions against corruption, and finding to be effective.

Countries were invited to describe the corruption prevention mechanisms they have in place by responding to a list based on mechanisms reported in the previous study. Underlying an apparent uniformity of measures across the surveyed countries are a variety of institutions and processes, suggesting that while OECD countries concentrate efforts on particular areas, issues or phenomena, they are employing multiple methodologies to do so.

When asked to identify their most effective mechanisms against corruption, most countries advocated the use of more than one type of mechanism. Nevertheless, law enforcement, investigation and control measures with strong sanctions attached were regarded by most countries as essential to preventing corruption. These were followed by preventive and educative approaches such as financial and management controls and training.

Among the new initiatives against corruption reported by countries, moves to increase administrative transparency stood out as the most popular. In particular, obliging public officials to declare financial and other interests incompatible with public duty was most frequently cited.

A new direction is discernible in the interest shown by some countries in streamlining excessive or irrelevant regulation, targeting high-risk areas of government activity, and ensuring more effective financial and banking regulation. This kind of approach – looking beyond individual corrupt transactions to the conditions that allow corruption to develop – represents a major shift in emphasis for many countries.

A complementary change of emphasis is evident in the wider range of policy areas that countries are drawing on to counter corruption. All reporting countries referred to aspects of crime and justice administration in their responses, but other policy areas seen as relevant to corruption prevention included public administration, regulatory management, and finance (for example, competition policy and tax policy).

Since similar issues were covered in reports from nine Member countries (Australia, Finland, Mexico, the Netherlands, New Zealand, Norway, Portugal, the United Kingdom and the United States) for the 1996 study *Ethics in the Public Service: Current Issues and Practice*, the relevant findings from that study are acknowledged in this report and are discussed in relation to this survey in the section on "Developing Issues".

The trends evident from the two studies show that increasing transparency and strengthening sanctions and controls are favoured by a majority of the 23 countries. Among the secondary measures, guidance and enhancing expertise and awareness through specialisation and training were frequently

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Findings and Analysis: Summary of Mechanisms

Suggested mechanisms	BEL	CHE	CZE	DEU	ESP	FRA	GRC	HUN	IRL	ITA	JPN	KOR	MEX	POL	SWE
a) Primary regulation proscribing corruption and establishing sanctions	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√
b) Other anti-corruption regulation	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√
c) Oversight by legislature or parliament	√	√	√	√	√	√	√	√	√	√	√	√	√	√	√
d) Bodies with power to investigate corruption	√	√	√	√	–	√	√	√	√	√	–	√	√	√	√
e) Supreme financial audit authority	√	√	–	√	√	√	√	√	√	√	√	√	√	√	√
f) Ombudsman*	√	–	–	√	√	√	√	√	√	–	–	√	√	√	√
g) Specialised bodies to prosecute corruption	–	–	–	–	√	√	√	–	–	√	–	–	√	–	–
h) Human resources management procedures	–	√	–	+	√	√	√	√	√	√	√	√	√	√	√
i) Financial management controls	√	√	+	+	√	√	√	√	√	√	√	√	√	√	√
j) Organisational management policies, controls	√	√	–	+	√	√	√	√	√	+	√	√	√	√	√
k) Transparency mechanisms	√	√	√	+	√	√	√	√	√	√	–	√	√	√	√
l) Guidance and training for public officials	–	√	–	+	√	√	√	√	√	+	√	√	√	√	√

√ Yes; – No; + proposed or under consideration.

* also called *Médiateur* (BEL, FRA); Parliamentary Committee on Petitions (DEU); Public Grievance Commission (KOR); Citizen's Advocate (GRC); Peoples' Defender (ESP).

This table provides a snapshot of the anti-corruption mechanisms reported by the surveyed countries. Underlying the apparent uniformity are a variety of institutions and systems that countries have identified as relevant to the prevention of public sector corruption according to their own circumstances.

Because the reporting countries were encouraged to apply the suggested categories of mechanisms to their domestic priorities and systems, some explanation is needed to interpret the results of the survey, and the reported mechanisms are described in more detail in the following paragraphs. An example of this is the role of an ombudsman, which exists in most reporting countries, although not all use the same terminology. Differences among legal systems and public administration structures were also influential. In some cases the suggested categories of mechanisms were interpreted more broadly than in others, with the result that some countries have included the effects of general legal provisions and government policy on corruption prevention.

mentioned in both studies. The Table opposite gives a summary of anti-corruption mechanisms reported by the countries in this survey.

Given the combination of uniform trends across so many countries and new policy directions, the information reported here can help policymakers identify future policy options.

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Part 1

BACKGROUND TO THE SURVEY

1.1. Corruption and public management

> *... a violation of the duties of office and a negation of the values that should underlie the democratic political and administrative system founded on the rule of law* (Meny, 1996:311).

Corruption in government and public administration is a complex and pervasive phenomenon. It is a concern of OECD Member countries because, among other things, it is believed to distort the operation of economic activity and weaken political stability. In governance terms, corruption threatens democratic public institutions by permitting the influence of improper interests on the use of public resources and power and by undermining the confidence of citizens in the legitimate activities of state.

In 1997, OECD countries took collective action against corruption by agreeing to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The Convention draws attention to the need for co-operative multilateral action in controlling corruption. However, there is a growing awareness of the role that sound domestic governance plays in effective action against corruption, and OECD Member countries are also taking individual, domestic action against corruption. This survey provides an overview of the measures that countries are currently using and finding to be effective.

The range of actions that might be considered corrupt can range from illegal to unethical, to improper or inappropriate. The survey left precise definitions of the term to the reporting countries, on the assumption that the difference between these behaviours is "quantitative rather than qualitative", and that they all derive from the same attitudes of public officials (Spinellis, 1995:3). Nevertheless, corruption does have defining characteristics, such as "the misuse of public office, roles or resources for private benefit (material or otherwise)" (OECD, 1996:13) deny the traditional injunction on bearers of public office that they execute their functions "in the public interest".

But, the critical path of public duty is not always clear. Conflicts of legitimate public duties are unavoidable (Uhr, 1997: 3, 8) and the "public interest" is an insufficient guide to the day-to-day practice of public management. To compound these difficulties, as the definition of "public office" becomes progressively more diffuse and the possibilities of "private benefit" to public officials more various, distinguishing misuse of public office increasingly requires the application of professional judgement and ethics (Dramer, 1997).

The relationship between corruption prevention and the revived interest in the professional ethics of public administration has been described in terms of "seeking some consensus on what is good behaviour and giving public servants guidance as to how they should act, make decisions and use discretion in their everyday work" (OECD, 1996:13). Practising professional ethics can enhance skills for analysis and decisionmaking according to accepted values and standard criteria and, in itself, is a critical aspect of preventing corruption. The work of the OECD Public Management (PUMA) Committee puts it at the centre of a wider system for maintaining and encouraging desired standards of practice and integrity in public service.

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1.2. Earlier PUMA study

Underlying PUMA's work is a belief that controlling corruption is as complex as the phenomenon of corruption itself, and that a range of integrated mechanisms is necessary for success. Traditionally, increased regulation and stricter law enforcement have been the first responses to misconduct and corruption in the public sector, but OECD countries are increasingly exploring the possibilities of administrative and preventive action against corruption.

In 1996 PUMA published a report, *Ethics in the Public Service: Current Issues and Practice,* based on studies of nine OECD Member countries that were asked to identify factors affecting standards of ethics and conduct in the public service. The countries included in that study were found to be using a range of instruments and processes to regulate against undesirable behaviour and to provide incentives to good conduct. The report distilled these into eight elements:

– commitment of political leaders;

– a legal and law enforcement framework;

– accountability mechanisms;

– statements of values or codes of conduct;

– professional socialisation of public officials;

– public service conditions that support ethical behaviour;

– independent specialist ethics bodies; and

– public involvement and scrutiny.

These were then analysed in terms of the capacity of each to influence public sector integrity by controlling, managing or guiding the behaviour of public officials. Countries were seen to emphasise one or more of these three functions (control, management and guidance) according to their cultural, political and administrative traditions. Despite differences in application, the report suggested that, together, the eight elements form a kind of "infrastructure" that facilitates maintenance of integrity in public life.

An infrastructure perspective can have advantages for developing corruption prevention policy. Most importantly, it encourages policymakers to take a broad view of all the factors that are relevant to the prevention and minimisation of corruption by devising an analytical framework from which to view corruption prevention programmes. This allows aspects of the external environment that might affect the exercise of public official duty – such as the effective operation of the rule of law, the example of political figures, and the scrutiny of citizens – to be considered along with the more organisational issues of systemic management and accountability controls and professional socialisation. Policymakers can address specific needs to find a strategy to fit their own circumstances with potential for assessing how the relevant elements work together.

1.3. Scope and purpose of the survey

Set against this background, this survey is intended to help OECD countries benefit from each other's experiences. It does not attempt to unravel the causes of corruption, nor was it designed to ascertain the extent of corruption in particular countries. The purpose of the survey was simply to produce an overview of the measures being used against corruption in the public sector and to gather some official views on their effectiveness. By building on PUMA's previous work, the survey will complement the 1996 *Ethics* study and contribute to PUMA's work of devising *Principles for Managing Ethics in the Public Service* which countries can use to review programmes in this area.

1.4. Methodology

The participating countries for the survey were Belgium (BEL), the Czech Republic (CZE), France (FRA), Germany (DEU), Greece (GRC), Hungary (HUN), Ireland (IRL), Italy (ITA), Japan (JPN), Korea (KOR), Mexico (MEX), Poland (POL), Spain (ESP), Sweden (SWE) and Switzerland (CHE).

The countries were chosen in an attempt to obtain information from a range of cultural, legal and public sector traditions and experiences within the OECD. The choice was influenced to some extent by the fact that similar information had been provided by the nine member countries who had provided reports for the *Ethics in Public Service: Current Issues and Practice* occasional paper: Australia (AUS), Finland (FIN), Mexico (MEX), Netherlands (NLD), New Zealand (NZL), Norway (NOR), Portugal (PRT), the United Kingdom (GBR) and the United States (USA). The relevant findings from that study are acknowledged in this report and are discussed in relation to this survey in the section on "Developing issues".

Countries were invited to describe the mechanisms they have in place by responding to a list based around mechanisms reported in the previous study, and the three main functions of an "ethics infrastructure" – control, management and guidance.

Control mechanisms are covered in *Question 1 (a), (b), (d), (g)* dealing with regulation and enforcement of standards and sanctions. These measures rely fundamentally on a legal framework that enunciates the minimum standards of behaviour expected of individuals and then enables independent investigation, discipline and, if relevant, prosecution when they are breached. Control also exists in administrative procedures such as mandatory reporting requirements, transparency and scrutiny. Oversight and scrutiny in the form of parliamentary, constitutional and public accountability mechanisms are raised in *Question 1 (c), (e), (f), (k)*.

Management, in this context, refers to all of the organisational and administrative machinery that can minimise opportunities for the corruption of public administration. It includes public service employment conditions that reward employees appropriately, management policies and practices that reflect the basic values of public service – as much in application as in content – and administrative procedures that are transparent and effective. *Question 1 (h), (i), (j)* asks countries about human resources management procedures, organisational and financial management systems and policies that deter or expose corrupt practice.

The idea that those with public responsibilities should adhere to certain expected standards of behaviour implies that the accepted values and standards are expressed and communicated. This kind of guidance can be given in codes of conduct and civil service laws, education and training, independent advisory bodies or the positive example set by political leaders. *Question 1 (l)* asks about the availability of guidance and training for public officials and politicians, giving examples such as codes of conduct and ethics awareness training.

As well as representing three different functional approaches to preventing corruption, the list of mechanisms in Question 1 of the survey also demonstrates that implementation of the mechanisms must occur at more than one level of public administration. While some mechanisms lie within the authority of the general state administrative structure (*e.g.* Ombudsman, supreme audit authority, criminal investigation services), others can be implemented at the organisational level or within agencies (*e.g.* internal financial controls, management systems review, human resource management policy). To emphasise this issue, respondents were asked to include in their answers as many areas of state activity as they considered relevant.

Part 2 of the survey report summarises the information received from reporting countries using tables and brief explanatory notes to help identify trends and common practice. Details of the items summarised in the tables can be found in the full text of the reports provided by countries in Part 3. The survey questionnaire and the explanatory notes for completing it are reproduced in their original form as Annex A.

The survey responses were prepared by the authorities listed in Annex B during the second half of 1997, and the draft report was commented on in 1998.

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Part 2

FINDINGS AND ANALYSIS

2.1. Summary of mechanisms*

Question 1(a) Legislation proscribing corrupt activities and establishing sanctions

A basic condition for corruption control is a viable legal framework and an institutional structure that enforces the law without accusations of political favouritism or arbitrariness. (UNDP, 1997:59).

Three types of legislation are most often used by the surveyed countries to prohibit certain behaviour and impose related penalties:

- **criminal provisions** against specified types of corruption were reported by all countries surveyed;
- most countries reported **civil service legislation** that establishes obligations applying specifically to public officials; and
- some countries also included **general law provisions** which had the effect of corruption prevention.

Prohibitions and restrictions imposed by law	*Countries*
Bribery – however defined	BEL CHE CZE DEU FRA GRC HUN IRL ITA JPN KOR MEX POL SWE
Maladministration; abuse of authority; abuse of public office; abuse of public facilities; abuse of public finances	CHE CZE FRA HUN ITA KOR MEX SWE
Unauthorised use of confidential government information	CHE CZE FRA GRC HUN IRL JPN KOR MEX SWE
Trading in influence; exercising influence in return for inducements	BEL FRA HUN ITA KOR MEX POL
Electoral fraud or interference	CHE CZE HUN IRL KOR MEX SWE
Restrictions on employment of public officials outside the public sector subsequent to, or concurrently with, public employment	CHE DEU ESP FRA IRL ITA JPN KOR POL SWE
Making or giving false statements to mislead officials	CHE IRL MEX
Illicit enrichment	CZE MEX
Interfering with or impeding public procurement or other public process	BEL FRA MEX SWE
Taking reprisals against a person who reports misconduct in the public interest	HUN SWE
Deserting office	JPN KOR
Causing discredit to the public service	JPN

Criminal Codes usually specify an offence of bribery. In this table, the term “bribery” has been used for a range of offences which cover the categories of active, passive, direct, indirect and attempted bribery. Examples include “active ... passive ... and attempted corruption” (Belgium); “accepting or offering

* For an overview of the anti-corruption mechanisms reported by the surveyed countries, see the table on Findings and Analysis in the Executive Summary.

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an inducement or reward for doing or forbearing to do" (Ireland); "offering and accepting, promising, demanding material favours in connection with the performance of a public official's duties" (Poland); "accepting advantages" (Switzerland) "indirect bribery" (Czech Republic).

Recent developments in the German Penal Code represent a discernible trend among reporting countries to strengthen bribery legislation. The Code's bribery provisions refer to "granting" and "acceptance of advantages". New German legislation (the Anti-Corruption Act, 1997) has expanded this to include "attempts to persuade a civil servant into doing or refraining from doing anything in his official capacity for a consideration", and increased the penalties attached to the offence.

While all of the reported provisions apply to public officials of some kind, the scope of their application varies. In some cases the regulation reported applies to "civil servants", while other provisions expressly refer to elected public officials, public officials in the judicial sphere, senior civil servants, military officials, public officials of foreign countries, or persons outside the public service but performing designated public functions. Perhaps the broadest scope is found in French legislation which applies to persons performing public functions (*personnes exerçant une fonction publique*).

In the case of bribery, some provisions go beyond the public sector to include someone who offers an inducement to a public official, however that may be defined. Italy, for example, reported the offence of "corruption of a person holding public office".

As well as laws to prohibit undesirable behaviour, most reporting countries have legislation to establish the duties and obligations of public officials and allow for disciplinary action when they are breached. Often these laws establish related mandatory procedures intended to prevent corruption such as declarations of interests and public procurement regulations.

The requirements identified in the following table are those reported by the surveyed countries, but they do not necessarily apply to all categories of public official. For example, in France (*) the requirements to declare assets and financial interests apply exclusively to public accountants; and in Japan (**), to elected officials only.

Requirements imposed by law	*Countries*
Statements of general duties, obligations and values of public office	CZE DEU FRA HUN IRL ITA JPN KOR MEX POL
Requirements for public officials to declare assets and financial interests	BEL CZE FRA* GRC HUN IRL ITA JPN** KOR POL MEX SWE
Rules and procedures on conflict of interest, including receiving gifts, concurrent office holding, financial and political activity.	BEL CHE CZE DEU ESP FRA HUN IRL ITA KOR MEX POL SWE
Rules and procedures for public procurement	BEL CHE CZE FRA HUN IRL KOR MEX POL SWE

Most of these requirements and obligations appear in the criminal or civil service legislation of the reporting countries. In addition, some countries also included general legal provisions as part of the mechanisms they use against corruption. Such provisions could be regarded as supportive legal measures in the sense that they do not usually proscribe types of behaviour or establish obligations. Rather, they can be used to reinforce the effect of the principal criminal or disciplinary sanctions in different ways.

For example, such provisions can be used to target the consequences of corrupt behaviour, as in the Korean law that allows the profits or proceeds of corrupt activity on the part of public officials to be seized. Ireland, Korea and Germany have provisions for the reduction of the retirement pension of an official convicted of or dismissed for corruption. Germany also reported that a supervisor who allows or induces a subordinate to commit an illegal act in the performance of duties can be penalised to the same extent. In Poland any actions of public officials (including corruption) intended to violate or circumvent

the law will be regarded as void under the Civil Code and, under income tax legislation, expenses related to corrupt earnings cannot be claimed as deductions.

In other cases these secondary provisions attempt to influence the circumstances in which corruption frequently occurs, affecting what the Poland report called the "conditions that encourage corruption". Poland reported legislation to regulate payments made by police and other investigating authorities to informants in the course of official operations. Sweden reported laws requiring sound record-keeping by financial institutions and corporations as a preventive measure against bribery.

Legislation to help expose suspicious financial transactions or money-laundering operations is also reported in this category by Belgium, Ireland, Italy and the Czech Republic. Similar financial and commercial legal provisions reported related to commercialisation and privatisation of state enterprises (Poland) and unfair competition (Poland and the Czech Republic).

Question 1(b) Other anti-corruption regulations or orders

Regulations and other secondary legal provisions were reported by most of the surveyed countries.

In scope and content these kinds of provisions, as reported in the survey, generally elaborate principal codes to suit local conditions or particular circumstances. Their form depends on the administrative structures and legal practice of each country. Those reported included provisions made by ministerial or presidential decree or, as reported by Sweden, by local government bodies having delegated authority. In this category France and Greece – both in the process of ratifying –, Mexico and Sweden also report that they have ratified international instruments that have implications for domestic corruption prevention measures.

Question 1(c) Oversight by the legislature or parliament (direct or through committees)

General oversight of the public sector by parliamentary assemblies was reported by all of the surveyed countries. Most of these bodies are not specifically concerned with inquiring into corruption but have the power to do so if necessary, by way of permanent or ad hoc bodies, committees or commissions.

Permanent parliamentary bodies with an oversight role that included corruption were reported by Germany, Greece, Ireland, Italy, Mexico, Poland, and Sweden. Belgium, Ireland, the Czech Republic, Germany, Hungary, Italy, Korea, and Mexico reported that power exists for an *ad hoc* body to be set up for this purpose at any time. Recent examples of such bodies were provided by Belgium (Senate Commission of Enquiry on Organised Crime), Ireland (Tribunal of Enquiry into payments to politicians) and Italy (Special Commission for the Prevention and Repression of Corruption). Switzerland reported recent government studies to review action on corruption in the legal, military and financial arenas, as well as reports on action related to international bribery.

Within the elected assembly, Sweden reported a permanent Parliamentary oversight committee with responsibility for monitoring the performance of ministers, and, in Japan, deliberative councils exist in both houses of Parliament to establish political ethics and examine whether members have violated them.

Question 1(d) Investigation systems or bodies with powers to investigate corruption

All countries surveyed reported that criminal corruption can be investigated by the police and general judicial services, or by special parliamentary commissions established for the purpose. Some form of internal inspectorates, with investigative powers that include corruption, exist within ministries or agencies in Mexico, Italy, France, Korea and Sweden, and a number of countries also have specialised, permanent facilities.

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Countries	*Specialised corruption investigation services*
BEL	Under the commissariat general of the judicial police, the *Office Central pour la répression de la corruption* (OCRC), the *Office central de lutte contre la délinquance économique et financière organisée* (specialising in financial organised crime), and the *Brigade Nationale* (BNB) specialising in serious crime can enquire into corrupt public sector activities.
CHE	*Le Ministère public de la Confédération* investigates misconduct implicating public officials.
CZE	The Service for Detecting Corruption and Serious Economic Criminality exists within the police. It has an intelligence and international function.
DEU	Audit offices can investigate within their jurisdiction. Some branches have independent bodies to investigate suspicions of corruption.
FRA	*Le Service Central de Prévention de la Corruption*, la *Commission centrale des marchés*, *la Cour des comptes*, la *Mission interministérielle d'enquête sur les marchés*, la *Commission centrale des marchés, Commission des comptes de campagne et des financements politiques, la Commission pour la transparence financière de la vie politique* have independent authority.
GRC	The Body of Inspectors-Controllers of Public Administration oversees the functioning of the administration, local authorities and entities established under public law.
HUN	The Government Control Office controls financial management and waste, and investigates and recommends government action.
IRL	The Public Offices Commission can investigate matters involving public officials and Ministers which may involve corruption.
ITA	Special judicial agencies, the General Finance Inspectorate (Treasury Ministry), the General State Accounting Service, the Public Service Department Inspectorate, and administrative investigation institutions.
KOR	Presidential Secretary for Corruption Inspection; Board of Audit and Inspection; Prime Minister's Administration Co-ordinator for Anti-corruption; the Meeting of Ministers on Anti-corruption; The Individual government agencies conduct internal investigation.
MEX	The Secretariat of Comptrollership can investigate all irregularities involving public officials.
POL	Departments established within the Ministry of Justice for investigating organised crime also investigate public sector corruption in that context.

Question 1(e) Supreme financial audit authority

*The audit shall promote secure, appropriate and efficient government administration (*Sweden report).

The status and roles of supreme national financial audit authorities are similar in all reporting countries. They have constitutional or other legal status that guarantees their independence of the government, and they have the power to inspect, regulate and report on all aspects of the financial management of state assets.

The unique role of these institutions in preventing corruption lies in their independence, the broad scope of their powers, and their expertise in investigating financial transactions and arrangements.

Question 1(f) Ombudsman

It is an independent administrative authority and its mission is ... the protection of the citizen's rights, the overcoming of maladministration and the maintenance of legality (Greece report).

Greece, Hungary, Ireland, Mexico, Poland and Sweden all reported having Ombudsman offices, and Belgium, Germany, France and Korea reported that they have bodies with equivalent roles and powers, even though the role of the Ombudsman does not always include addressing such issues.

As is the case with financial audit authorities, corruption prevention is generally not the primary purpose of the Ombudsman and its equivalents. Rather, corrupt practices are something that can be uncovered in the course of the work of such bodies.

Question 1(g) Bodies to enforce sanctions and prosecute corrupt activity, e.g. specialised prosecutors

The general system of police, state prosecutors and courts is relied upon by almost all of the reporting countries for the prosecution of corrupt activity to which criminal sanctions are attached.

Some countries have specialised units within police and judicial structures (*e.g.* France, Belgium) while in Italy a specialist "anti-Mafia" judiciary has been set up to have a "co-ordinating role in all areas of Mafia concentration and organised crime".

Mexico described a special kind of trial process for serious cases of corruption or treason committed by senior officials (including elected representatives), which is conducted, according to the constitution, by the national parliament (Chamber of Deputies). A similar procedure exists for senior officials at state and local level and is conducted by the local Chamber of Deputies. France also reported that if a member of the government is implicated in a case of corruption a judicial enquiry can be conducted and judgement made by the *Cour de justice de la République*.

Question 1(h) Human resources management controls intended to prevent corruption

> *There is a strong ethos that civil servants should never be seen to derive a benefit from their employment other than the remuneration proper to their positions or to put themselves in a position where they might reasonably be seen to have brought the civil service into disrepute* (Ireland report).

In this category countries reported policies and practices such as standardised criteria for recruitment to the public service and disciplinary processes for breaches of standards that can apply both across the public sector and within individual agencies.

The measures in place in most countries reflect concerns with the vulnerability of officials to conflicts of interest and the quality of supervisory management. As appears in the table below, countries have instituted obligations to declare interests, restrictions on secondary employment, and the regular redeployment of staff in positions identified as especially susceptible to corruption. The question of leadership and supervision, reported by Germany, Italy and Sweden, was being addressed by training and clear allocation of personal responsibility to senior managers.

Human resources management controls	*Country*
Disciplinary action up to and including dismissal	DEU ESP FRA GRC HUN IRL ITA JPN KOR MEX POL SWE
Standardised recruitment and selection of officials	DEU FRA GRC HUN IRL JPN KOR POL
Processes for preventing or detecting conflicts of interest (including declarations of interest and employment restrictions)	BEL CHE CZE DEU ESP FRA HUN IRL ITA JPN KOR MEX POL SWE
Enhancing the responsibility and quality of senior managers	DEU GRC ITA SWE
Regular redeployment of officials in positions susceptible to corruption	DEU GRC ITA JPN

The "employment restrictions" referred to in the table above usually operate to limit the extent to which public officials can undertake employment outside the public sector (France, Germany, Ireland, Italy, Japan, Korea, Poland, Spain, Switzerland). Some of these countries (Italy, Germany, Japan, Korea and Poland) extend these provisions to the period immediately following public employment or have special limitations for particular types of public official or particular kinds of activity. Italy, for example, has special rules for Ministers and for tax officials after they leave public service, and Poland imposes a general limitation on the economic or political activity of public officials.

Another aspect of human resources management was raised by Hungary and Switzerland in response to Questions 2 and 4 later in the Survey. Both countries considered that appropriate levels of remuneration of public officials played a role in preventing corruption.

Question 1(i) Financial management controls intended to prevent or deter corrupt practices

> *An efficient and well-functioning system of internal and external control serves to eliminate corruption and fraud, and is an important and powerful weapon in the fight against these phenomena inside the public administration* (Poland report).

Financial management controls also occur at both the organisational and state-wide levels. A number of countries (Poland, Hungary, Sweden, Belgium, Germany, Italy) reported that their organisational controls operated to supplement external audit controls with internal financial auditing and reporting. Demonstrating this, Switzerland reported a capacity for financial risk analyses of organisations to be carried out by the (central) *Contrôle fédéral des finances*.

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At a more routine level, standardised financial control procedures, such as methods for authorising payments and the division of financial responsibilities, were mentioned by France, Germany, Italy, Sweden and Hungary as an important aspect of corruption control.

Korea reported the existence of additional levels of security for public officials with financial management responsibilities and a law allowing the investigation of public officials' bank accounts.

Question 1(j) Organisational management policies, systems and controls intended to minimise opportunities for corrupt activity

Think systems, not individuals. (Klitgaard, 1996:43)

A number of countries made a connection in their reports between the quality of management systems and corruption prevention. The report from Italy refers to the need for "eliminating administrative dysfunctions and ensuring the basic conditions of sound administration that significantly reduce opportunities for corruption". Countries cited two main types of mechanisms for doing this: powers of inspection and audit; and improved working procedures.

France, Ireland, Germany, Greece, Mexico, Poland, Spain and Sweden all reported some form of internal management audit function intended to detect management irregularities, identify procedural problems and suggest improvements; and Japan reported managers of public service discipline in every ministry.

France, Germany, Italy and Korea identified work practices and control procedures in this category. Germany described these as "working processes designed to rule out corruption", and reported proposals for organisational risk analysis programmes to identify problem areas. Ongoing review and reform was regarded as relevant to improving organisational management. Korea, Mexico and Italy all included the review of unnecessary administrative procedures as a corruption prevention measure.

Perhaps reflecting their more devolved management structures, Ireland and Sweden also noted that management control and improvement are regarded as an organisational, rather than central government, responsibility.

Question 1(k) Transparency mechanisms **e.g.** *independent or public scrutiny, systems for declaring or reporting potential conflicting interests or corrupt activity.*

Lack of accountability in terms of political process, of accountability for performance and of stewardship of resources enables corruption to flourish. So do dark corners caused by a lack of transparency (Wilmshurst, 1996:70).

The transparency mechanisms reported fall into three principal groups: measures that guarantee the openness of systems and the standardisation of public processes; those that provide access, scrutiny or engagement with public sector processes; and measures that facilitate reporting or exposure of actual or potential corrupt activity.

Transparency mechanisms in place or being considered	*Countries*
Standardisation and transparency in public procurement	BEL CHE CZE DEU FRA GRC HUN IRL ITA KOR MEX POL SWE
Declarations of financial interests of public officials	CZE[1] FRA[2] GRC[3] HUN IRL ITA JPN[4] KOR POL MEX SWE
Procedures for dealing with conflicts of interest	CHE CZE DEU ESP HUN IRL KOR MEX POL SWE
Transparent, open and standardised procedures for recruitment of public officials	BEL FRA GRC HUN IRL KOR POL
Right of access to public information	BEL ESP GRC HUN IRL ITA KOR SWE
Independent body for receiving complaints about corruption	DEU FRA IRL KOR MEX
Disclosure of political party funding	BEL FRA GRC IRL KOR
Provision for public interest disclosures	FRA HUN IRL SWE
Law requiring provision of reasons for administrative decisions	BEL FRA GRC IRL ITA

Note: The declarations of financial interests reported in this table are required in 1) the Czech Republic, only from politicians, ministers and heads of agencies; 2) in France, only from public accountants; 3) in Greece, only from politicians, ministers and public officials who are members of public procurement commissions; and 4) in Japan, from politicians only.

Provisions such as statutory rights of access to public documents or independent complaints bodies are designed to facilitate the opening of government to scrutiny in a general sense. But, there are particular areas of government activity that show a preponderance of new transparency measures. The most common are in public procurement, public sector recruitment and areas affecting the financial interests of officials.

Recent innovations in transparency are monitoring bodies with special responsibility for administering transparency legislation. Such bodies have been established by Greece (a parliamentary committee) and Italy (the office of Guarantor of Legality and Transparency). Representing a growing interest among countries in the financing of political parties, Belgium reported the establishment of a parliamentary commission to oversee transparency of election campaign funding, whereas Ireland reported measures aiming at monitoring election funding.

Question 1(l) Guidance and training for public officials or politicians* e.g. *codes of conduct, ethics awareness training

> *For corruption to be prevented it is now recognised that it is essential for all civil servants and public administration employees to be informed of the values and common principles inspired by the high standards of impartiality, performance and service to the public that characterise the public administration under our Constitutional framework* (Italy report).

Countries reported that guidance for public officials is provided in the form of codes of conduct, training and the provision of advice on ethical issues.

Italy and France both reported an integration of these mechanisms insofar as the underlying principles of the civil service legislation form the basis for the values of decentralised codes of conduct as well as the general training of public officials.

Guidance and training for public officials or politicians in place or under consideration	*Countries*
Codes of conduct or statements of standards or expected behaviour	BEL CHE DEU ESP FRA GRC HUN IRL ITA JPN KOR MEX
Training or other methods of raising awareness of corruption	CHE DEU ESP FRA GRC HUN JPN MEX POL SWE
Other, *e.g.* guidelines, provision of advice	DEU FRA IRL

2.2. Trends in corruption prevention

One purpose of this survey was to discover to what extent the infrastructure image accurately represents the experiences of Member countries. It was intended to find out what happens in practice, which mechanisms are most successful against corruption, and what new developments are occurring. As well as describing the measures they had in place, countries were asked to consider their effectiveness and to describe how they are evaluated.

2.2.1. Evaluating the effectiveness of existing measures

> *It is relatively easy to create new institutions and regulations. It is much more difficult to ensure the competent functioning of the ones that are already in place.* (Letowska, 1997:6)

When asked to identify their most effective mechanisms against corruption, most countries cited more than one type of mechanism as the most effective. Only two countries considered that one type of mechanism should be preferred to all others (the Czech Republic and Korea both regarded law enforcement and investigation as the most effective). Indeed, Ireland responded that "No one mechanism should be singled out as more important than any other". This view was supported by Hungary and Poland, who specifically referred to the importance of employing a range of integrated measures. Japan

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also addressed the strategic aspect, emphasising the importance of measures being applied in a comprehensive and consistent manner.

Most effective mechanisms	*Countries*
Law enforcement and independent investigation techniques	BEL CHE CZE ESP GRC IRL ITA MEX POL
Preventative management methods and financial controls	BEL CHE DEU IRL MEX POL
Transparency mechanisms, *e.g.* declarations of assets, open administration, public exposure	HUN IRL KOR MEX SWE
Raising the awareness and/or skills of officials	BEL DEU ESP IRL ITA
Remuneration of public officials	CHE HUN

When asked how the effectiveness of the mechanisms is evaluated, reporting countries expressed concern about the difficulty of implementing appropriate evaluation techniques. While most countries have no formal evaluation methodology in place, most reported that some form of monitoring or reporting to a central or parliamentary authority occurs.

A few countries specified the actual tools used for evaluation. These included random audit and inspection of performance records (Mexico), analysis of crime statistics (Germany) and a dedicated body to oversee effectiveness of anti-corruption policy (France).

Types of evaluation	*Countries*
Periodic assessment as part of the routine work of a government department, office or a parliamentary body	CHE HUN IRL ITA JPN KOR
Assessment by a dedicated or specialised body	FRA
Decentralised assessment at the local or organisational level through audit or performance management mechanisms	IRL MEX SWE

2.2.2. Areas of most concern

To help put the reported anti-corruption activities into context, the survey asked which areas of public sector activity are currently of most concern. The countries that reported a policy view on the part of government expressed some common areas of concern.

As might be expected, these represented those points in public administration where there is scope for individual judgement in the application of public funds, or the exercise of public power, to private sources. Mexico, Greece and Poland referred to the general interaction of public money and private enterprise. Germany was more specific, citing the awarding of public contracts, allocation of subsidies, licensing and levying fees. Poland added privatisation and cross-border transactions to the list and Greece mentioned collection of tax and customs revenues.

As possible obstacles to the successful control of corruption, France identified complex regulatory and administrative controls, and the multiplication of funding provisions. Italy described similar "rigidities in formal monitoring procedures" that have impeded the prevention of corruption.

The influence of organised crime on public officials was a secondary concern expressed by Poland, Germany, Greece and Italy.

2.2.3. New initiatives

The initiatives reported in this category are those considered new by the reporting countries despite the fact that they may have been introduced over a period of time. The question was intended to draw out current policy views and the latest action being considered and taken by the reporting countries.

Consistent with the areas of concern expressed by the surveyed countries, the new initiatives reported chiefly target opportunities for financial impropriety. By exposing actual, and potential, illegitimate or conflicting interests, countries seem to be relying on the deterrent effect of exposure and hoping to minimise the loss and damage that undetected long-term corruption can cause.

The range of new measures being considered by the reporting countries represents both preventative and reactive elements, but there are two major common initiatives. On the one hand are moves to strengthen penalties and investigative powers, and, on the other, increasing transparency and public exposure of government activities. After these two categories, guidance and training for officials, the introduction of specialist bodies and reviews of the broader environmental conditions influencing corruption are all under consideration.

Another feature of the new initiatives reported is that, increasingly countries seem to be looking at the way systems and circumstances might provide conditions that encourage or restrain the growth of corruption – in other words, examining the way existing policies and mechanisms can contribute to overall strategies that work to counter corruption.

Switzerland, for example, reported plans to improve the effectiveness of existing provisions such as criminal, taxation and competition law. Internal and external administrative controls and complex procedures were also targeted, and Mexico reported proposals to review the effectiveness of relevant regulation and evaluate the quality of public services.

New actions being considered	*Countries*
Enhancing or establishing offences and penalties	BEL CHE CZE DEU GRC HUN JPN KOR POL
Increased transparency and public exposure *e.g.* assets registers, register of corrupt firms, declaration systems, register of political lobbyists	CHE ESP HUN IRL ITA KOR MEX POL
Introduction or enhancement of powers, of specialist bodies	BEL CHE DEU FRA IRL ITA
Increased guidance or training for public officials	CHE DEU ESP IRL MEX
Organisational effectiveness and improved performance	DEU HUN IRL ITA MEX
Review of regulations	CHE ITA KOR MEX
Review of the interaction of domestic and international law	CHE CZE GRC IRL SWE
Reviews of high-risk areas	CHE DEU

Some countries described proposals that were unique or particularly novel. Germany reported one proposal to introduce risk analysis to identify the areas of the public sector most susceptible to corruption, and another to create personal liability of public officials for the damage incurred by their corrupt activity.

Transparent registration systems are being used in several countries. In Belgium, an enterprise or person registered as having been convicted of corruption is prevented from participating in public procurement. In Mexico, public procurement transactions are registered, and an electronic system for recording the bids for public tenders minimises the contact between public officials and private business. Italy also reported a registration system to control political lobbying.

2.3. Developing issues

In 1996, the OECD reported in *Ethics in the Public Service: Current Issues and Practice* that trends and new initiatives in ethics promotion "seem to signal some common directions for ethics management in the public service" (OECD, 1996:53). The most common new initiatives at that time represented:

– attempts to restate public service values and to inculcate these throughout the public service;

– documented values and guidelines for behaviour for public servants (such as codes of conduct);

– human resources-based approaches such as integrating an ethics aspect into performance management;

– initiatives related to "whistleblowing" – typically, the development of procedures for public servants to report wrongdoing or to appeal or seek counsel when asked to do something they feel is inappropriate or unethical;

– provisions for disclosure of financial or other interests; and

– training, particularly for managers.

A comparison of the findings of the 1996 study with the present survey reveals some similarities that may be useful for following developments in this area in future. The following table summarises the new initiatives identified in both studies. Those from the 1996 study appear in bold.

Comparison of new actions implemented or being considered	*Countries*
1. Enhancing or establishing penalties	BEL CHE CZE DEU GR HUN JPN KOR POL **MEX NLD NOR PRT USA**
2. Increased transparency and public exposure, *e.g.* assets registers ; register of corrupt firms ; declaration systems ; register of political lobbyists.	CHE ESP HUN IRL ITA KOR MEX POL **AUS FIN GBR PRT USA**
3. Introduction or enhancement of powers, of specialist bodies	BEL CHE DEU FRA IRL ITA **GBR USA**
4. Increased guidance or training for public officials including codes of conduct	CHE DEU ESP GRC IRL MEX **AUS NLD NOR NZL PRT USA**
5 Organisational effectiveness and improved performance	DEU HUN IRL ITA MEX **AUS PRT**
6. Review of regulations	CHE IRL ITA KOR MEX **NLD**
7. Review of the interaction of domestic and international law	CHE CZE IRL SWE
8. Review of high-risk areas vulnerable to corruption	CHE DEU FRA **NLD**
9. **Regulation of "whistleblowing"**	**AUS NLD**
10. **Restating public sector values**	**AUS GBR NOR NZL PRT USA**
11. **Simplifying administrative systems**	**AUS MEX**
12. **Integrating ethical values into management**	**NOR NZL**

Combining the trends evident from the two studies shows that increasing transparency and strengthening sanctions and controls are favoured by a majority of the countries (table items 1-3). The quality of the control function of the ethics infrastructure is, clearly, still very important.

Among the secondary measures, guidance and enhancing expertise and awareness through specialisation and training (table items 3, 4, 9) were frequently mentioned in both studies, as was the need for the improvement of regulatory and management systems (table items 5, 6, 7, 8, 10, 11, 12).

This would suggest that while OECD countries concentrate efforts on particular areas, issues or phenomena, they are employing multiple methodologies to do so. But, it is not only the methods that are multiplying. The range of policy areas seen as relevant to corruption prevention appears, from this survey, also to be expanding. All reporting countries referred to aspects of crime and justice administration in their responses, but among other policy areas mentioned were public administration (France, Japan, Mexico, Ireland, Sweden, Italy) regulatory management (Italy, Korea, Mexico), and finance, such as competition policy and tax policy (Switzerland, Belgium, Hungary, Italy, Greece, the Czech Republic, Poland).

While a multi-dimensional approach is regarded as desirable, it does raise its own problems. Applying a range of programmes and policies all at one time may increase the risk of duplicated effort and gaps in an overall strategy. Policy coherence and co-ordination is a current concern in public management generally (OECD, 1997: 22-23), and countries reporting in this survey have acknowledged its role in corruption prevention. Hungary, for example, nominated increased "harmonisation and co-ordination" of

strategies as an action against corruption in itself, and Japan's report stressed that "comprehensive measures are indispensable to maintaining a high standard of ethics in the public sector."

Recognition of these risks may explain the interest expressed by several countries (table item 3) in introducing independent oversight or co-ordination bodies. The way that countries achieve the desired co-ordination and complementarity of these policies and mechanisms would be an interesting issue to follow in the future.

Another area that may develop in the future emerged in the answers to the survey question about methods for evaluating anti-corruption measures. While countries generally acknowledged the importance of evaluation, very few had systematic measures in place. Like the problem of policy coherence, the evaluation of public management and policy is a topical issue for OECD countries (OECD, 1995: 36-7) and is sure to show further development.

The influence of environmental and systemic factors on corruption was acknowledged by countries in different ways. Some countries (table item 6) mentioned the effect of excessive or irrelevant regulation, while others reported new measures, such as risk analysis, directed at the sites where corruption most often occurs and most countries reported regulation in the area of general financial crimes and banking. A similar rationale lies behind measures to target the consequences of corrupt behaviour as reported by Ireland, Korea, Germany, and Poland [see answers to 1(b)]. This kind of approach represents a major shift in emphasis for many countries, and the consequences of it remain to be seen.

Finally, the dominant trend to increase transparency and opportunity for public scrutiny should be mentioned. Every country participating in this survey and in the 1996 *Ethics* study reported moves toward in more administrative transparency, most of which were introduced within the last five years.

More interestingly, transparent accountability appears to be accompanied by an interest in overtly facilitating effective public scrutiny, acknowledging that "citizens have a quasi-supervisory role over administrative activity" (Italy report). These methods of actively providing the means for citizens to implement their right of access to state activities and information might be described as "active" transparency, as distinct from "passive" transparency in the form of a stated right or entitlement for citizens to have access to government information. Examples of this include the practice, reported by Poland, of regular government analysis of information and complaints about state services received from citizens. Another way to enhance public scrutiny was the dedicated telephone service, set up in Korea, for any citizen to report corruption.

The possible reasons for such a broad-based trend for governments to introduce mechanisms for consistent public scrutiny and engagement with citizens go to the heart of the problem of corruption in the public sector. It may be attributable to a current concern among OECD countries about the effectiveness of administrative accountability methods in a context of reform and modernisation (OECD, 1997:19-22). In addition to this, it is almost certainly related to a perceived need for both old and new democracies to restore the confidence of their citizens, not only in government but also in the systems of democratic governance.

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Part 3

COUNTRY REPORTS

BELGIUM

1. What anti-corruption mechanisms exist for the public sector in your country?

a) Legislation proscribing corrupt activities and establishing sanctions

Comprehensive legislation in the Penal Code (Articles 246 to 253) governs active, passive and attempted active corruption.

An anti-corruption bill, tabled in the Chamber of Representatives, defines the concept of corruption, extends proscription to attempted passive corruption and to foreign and international public officials, and prescribes heavier sentences (new version of Articles 246-252 of the Penal Code).

The new Article 314 (1 May 1997) of the Penal Code punishes anyone interfering with or impeding the freedom of the public procurement bidding process by gifts, promises or any other fraudulent means.

b) Other anti-corruption regulations or orders

The Law of 7 April 1995 has extended the measures preventing money laundering to cover offences relating to the corruption of public officials.

Financial institutions must now inform the *Cellule de traitement des informations financières (CTIF)*, the financial information processing unit, of any suspicious operations. If their suspicions are confirmed, the *CTIF* reports the facts to the *Procureur du Roi* (Crown prosecutor).

Under the ordinary and special laws of 2 May 1995, there is a legal obligation on all civil servants, ministers (at federal and regional levels) and their political staff, and all parliamentarians to declare their assets and financial interests. These laws are currently under review.

c) Oversight by the legislature or parliament (directly or through scrutiny committees)

- Parliamentary control is possible, via scrutiny committees, and a Senate Commission of Enquiry on Organised Crime is currently completing its enquiry;
- There is still no scrutiny committee specifically on corruption, but it could be established.

d) Investigation systems or bodies with powers to investigate corrupt activity

All police departments have the authority to investigate cases of corruption.

On 1 January 1998 the former *Comité supérieur de contrôle* (higher committee for control) became a special anti-corruption branch of the *Commissariat général de la Police judiciaire* (general criminal police), to be known as the *Office central pour la répression de la corruption*. A prosecuting counsel from the Brussels Court of Appeal is to define the mandate and investigation arrangements. That counsel is to some extent answerable to the Ministry of Justice.

Therefore, the *Commissariat général* of the *police judiciaire* contains not only the OCRC, but also the National Brigade (BNB) specialised in serious crimes, and the *Office central de la lutte contre la délinquance économique et financière organisée* (OCEDEFO) combating organised economic and financial crime.

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e) Supreme financial audit authority

The *Cellule de traitement des informations financières* (CTIF) is an independent body with a legal personality and derives its budgetary resources from controlled financial institutions. Under the joint control of the Ministers of Justice and Finance, it is an autonomous administrative body with judicial authority, run by a magistrate appointed by royal order.

The CTIF records statements relating to suspicions of money laundering. After consideration, cases of money laundering are forwarded to the judicial authorities.

The OCDEFO (*Office central de lutte contre la délinquance économique et financière organisée)*, a central office combating organised economic and financial crime, reports to the *Service général d'appui policier* (general police support service) and, as from 1 January 1998, to the special branch of the *Commissariat général de la police judiciaire*. Its duties include police enquiries, documentation and analysis, and its specialist areas are money laundering, serious fraud, stock-exchange fraud and financial fraud. It also has a department specialising in CTIF investigations. The Office works under the supervision of a national magistrate and heads of police departments.

f) Ombudsman

There are ombudsmen (*médiateurs)* in various government departments. They do not focus particularly on corruption issues since corruption, as a criminal activity, is prosecuted and sanctioned by the judicial authority.

We are not aware that a corruption case has ever been initiated by an ombudsman, nor that ombudsmen have any impact when it comes to combating corruption.

g) Bodies to enforce sanctions and prosecute corrupt activity,* e.g. *specialised prosecutors, investigators, courts, tribunals, etc.

Apart from comments under *Question 1 (d)* on investigators, one or more magistrates are to specialise in "white-collar" crime including corruption, one of them being the future magistrate in charge of the special branches of the *Commissariat général de la police judiciaire.*

h) Human resources management procedures intended to prevent corruption

No.

i) Financial management controls intended to prevent or deter corrupt practices

Yes, see the answer to *Question 1 (b).*

Procedures are developed with the CITF and the OCDEFO, but are part of broader procedures to combat money laundering.

j) Organisational management policies, systems and controls intended to minimise opportunities for corrupt activity

- Reform of the Law on public procurement with a view to improving competition and rendering decisionmaking more transparent;
- Law on political party funding and transparent accounting with the establishment of a parliamentary commission to audit electoral expenditure and political party accounts.

k) Transparency mechanisms,* e.g. *independent or public scrutiny, systems for declaring or reporting potential conflicting interests or corrupt activity

- Law on the need to give reasons for all administrative decisions (29 July 1991);

- Law on public access to the administration (11 April 1994), providing for the consultation of administrative documents, subject to certain conditions and restrictions.

l) Guidance and training for public officials or politicians (e.g. codes of conduct, ethics awareness training)

The Flemish Parliament approved on 22 October 1997 a code of conduct for the Flemish representatives in relation to service to the public. It is their intention that all Flemish politicians, whether at federal, local, European or any other level, subscribe to this code.

m) Other measures intended to control, detect or deter corruption.

No.

2. Which anti-corruption mechanisms are regarded as most effective (in terms of implementation and impact)?

- greater specialisation and professionalisation for those involved in combating corruption on the ground (investigators and magistrates);
- phasing-in of a more appropriate set of legal measures to combat corruption in the modern world.

Given the pressure generated by public opinion (media, Parliament) and recent scandals, political decisions are to be taken. Greater control is to be exercised over electoral campaign funding and political party accounts.

3. Is the effectiveness of these mechanisms formally evaluated? If so, what evaluation methods are used?

No evaluation exists as yet.

Recorded statistics do not make a distinction between corruption and related offences that, in criminal terms, are more serious, such as fraud or forgery.

4. What, if any, new actions against corruption in the public sector is your country currently considering?

The establishment of an *Office central spécialisé*. See also the responses to *Questions 2* and *5*.

5. Is there an official awareness or a policy position on the part of your government about which areas are of most concern in terms of corrupt or questionable activities involving the public sector?

The federal government's current programme includes a paragraph on combating corruption, the aims being:

- to make passive corruption a criminal offence;
- to remove the right to hold certain public posts, duties or offices;
- directly or indirectly to prevent any enterprise convicted of corruption from taking part in public procurement and to withdraw approval from entrepreneurs convicted of corruption.

Preparations for implementing this *ad hoc* programme are now under way, and an in-depth study of government policy in this area is to be conducted by an independent expert.

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CZECH REPUBLIC

1. What anti-corruption mechanisms exist for the public sector in your country?

a) Legislation proscribing corrupt activities and establishing sanctions

The Criminal Code defines several types of criminal corruption offences:

- receiving bribes;
- offering bribes (a stricter punishment is imposed to offenders who have committed these crimes in the position of public official);
- indirect bribery; and
- abuse of powers by public officials.

b) Other anti-corruption regulations or orders

The Labour Code, applicable to the majority of civil servants (public administration employees, judges, etc.). These employees are obliged to:

- act and decide impartially;
- refrain from anything that could damage credibility in their impartial decision;
- refrain from accepting gifts or other benefits during execution of their duties, except for cases specified by law;
- refrain from acts that could cause any conflict of interest (abuse of information acquired in connection with execution of their duties).

The Act on Conflict of Interests was adopted with the intention to prevent any act or omission that could damage credibility in the impartiality of public officials, by abusing their position, or by obtaining an unjustified benefit for themselves or for another person. This Act:

- Is applicable to public officials (Deputies and Senators of the Parliament, members of the Government, heads of central administrative officers;
- Determines the duty of public officials to give a statement of personal benefits, activities, incomes and gifts, immovable property, etc. This statement is open to the public, is filed in the Mandate and Immunity Committees of both the Chambers of the Parliament (Chamber of Deputies, Senate) and can be reviewed with regard to completeness and correctness.

The Act on Illicit Incomes from Criminality gives the framework and creates conditions for investigation and prevention of "money laundering", determines duties for certain institutions, and defines powers of state authorities in this field (for example, duty of financial or custom institutions to identify contract parties in some types of business transactions to report about dubious and unusual transactions, etc.)

The Act on Public Procurement (Compulsory Competitive Tendering) determines the rules of assignment for public commercial procurement and rules regulating cases where such procurement is accepted by public administration authorities and organisations. These institutions are supervised in terms of the legality of their actions by the Czech Office for Protection of Economic Competition (by control and sanctions).

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The Commercial Code contains provisions against unfair competition (including corruption and protective practices).

c) Oversight by the legislature or parliament (directly or through scrutiny committees)

Oversight is realised through scrutiny committees. The Chamber of Deputies is entitled, in serious cases, to establish an "Investigatory Commission" (according to the Constitution of the Czech Republic) for investigation of matters of public interest (such as corruption). Such a commission has relatively extensive powers to inquire into the matters in question.

Pursuant to the Constitution, both Chambers are authorised to establish "commissions and committees". This means that they could establish such institutions also for problems of corruption. At the same time, the "Control Commission" has been established.

d) Investigation systems or bodies with powers to investigate corrupt activity

Generally speaking, the authorities responsible for criminal proceedings have powers to investigate corrupt activity (the Police of the Czech Republic, state attorneys, independent courts). They have to operate according to the Criminal Procedure code.

Moreover, there is a specialised corps, "Service for Detecting of Corruption and Serious Economic Criminality" within the framework of the Police. This Service is equipped with an intelligence centre for analysis, and its branches operate in several of the biggest cities. It deals with problems of corruption and organised crime, its powers are specified by law, and it also ensures training of police persons in this field, in co-operation with foreign police and security corps.

e) Supreme financial audit authority

No.

f) Ombudsman

No.

g) Bodies to enforce sanctions and prosecute corrupt activity,* e.g. *specialised prosecutors, investigators, courts, tribunals, etc.

No.

h) Human resources management procedures intended to prevent corruption

No.

i) Financial management controls intended to prevent or deter corrupt practices

No.

j) Organisational management policies, systems and controls intended to minimise opportunities for corrupt activity

No.

k) Transparency mechanisms* e.g. *independent or public scrutiny, systems for declaring or reporting potential conflicting interests or corrupt activity

The Act on Conflict of Interests is mentioned in the answer to *Question 1(b)*.

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l) Guidance and training for public officials or politicians (e.g. codes of conduct, ethics)

The rules described in the answer to *Question 1(b)* substitute codes of conduct.

m) Other measures intended to control, detect or deter corruption

No.

2. Which anti-corruption mechanisms are regarded as most effective (in terms of implementation and impact)?

Penal anti-corruption mechanisms as described in *Question 1(a)* seem to be most effective.

3. Is the effectiveness of these mechanisms formally evaluated? If so, what evaluation methods are used?

The effectiveness of these mechanisms is not formally evaluated.

4. What, if any, new actions against corruption in the public sector is your country currently considering?

Legislative measures are being prepared, including:

- the Act on Civil Service, which should generally determine the legal position, rights and duties of civil servants;
- new regulations concerning financing of political parties (preventing them from influence by economic pressure groups);
- additions to the Criminal Code to cover financial crimes committed through negligence.

In addition, the Government has decided to establish the institution of Public Defender of Human Rights and Freedoms (Ombudsman). Also under consideration are the establishment of specialised financial police and prosecution and a state information system, and a reform of the tax system.

5. Is there an official awareness or a policy position on the part of your government about which areas are of most concern in terms of corrupt or questionable activities involving the public sector?

The Czech Government stressed (as one of its main priorities) the fight against economic criminality (*e.g.* money laundering, tax and credit fraud, corruption), conducted in ways similar to countries of the European Union (Italian "Clean Hands" campaign). Intelligence services will also be used for this purpose. In addition, the control of questionable privatisation cases is of great importance.

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FRANCE

1. What anti-corruption mechanisms exist for the public sector in your country?

a) Legislation proscribing corrupt activities and establishing sanctions

Criminal legislation on corruption:

- Penal Code (*Code Pénal*): Articles 432.10 to 432.14 (misappropriation of public funds, abuse of authority, passive corruption, insider trading, interfering with the public procurement process); Articles 433-1 and 433-2 (active corruption and trafficking in influence); law of 24 July 1966, articles 437 and 425-4; and, for concealing such offences, article 321-1 of the Penal Code.

Employment Code (*Code du travail*): L. 152-6 Civil legislation on corruption:

- Civil Code (*Code civil*) regulating contractual responsibilities and contract validity.

Other legislation on corruption:

- Law No. 88-227 of 11 March 1988 on financial transparency in political life;
- Law No. 90-55 of 15 January 1990 on limiting electoral spending;
- Law No. 91-3 of 3 June 1991 on transparency and conformity of public procurement procedures and on rules requiring certain contracts to be made public and open to competition;
- Law No. 93-122 of January 1993 on prevention of corruption and transparency in economic life and in public procedures (+ implementation decree no. 93-232 of 22 February 1993).
- Law No. 95-127 of 8 February 1995 on the financing political life;
- Law No. 95-63 of 19 January 1995 on the disclosure of assets and rules on conflict of interest applicable to members of Parliament and of the *Conseil Constitutionnel*.

b) Other anti-corruption regulations or orders

Codes of conduct with disciplinary sanctions proscribing corrupt activity appear in the general civil service regulations, and codes of conduct are drawn up by individual government departments.

c) Oversight by the legislature or parliament (directly or through scrutiny committees)

While there do not really exist any parliamentary control structures as such, Parliament can nominate at any time, depending on events, a select committee to deal with an issue involving corruption.

d) Investigation systems or bodies with powers to investigate corrupt activity

Independent facilities (*i.e.* external to ministries or agencies) with authority can investigate certain public bodies or functions:

- *Cour des comptes* (court of auditors);
- *Chambres régionales des comptes* (regional auditing chambers);
- *Mission interministérielle d'enquête sur les marchés* (interministerial investigation unit on public procurement);
- *Commission centrale des marchés* (central procurement committee); and

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• *Service central de prévention de la corruption* (central anti-corruption service, or SCPC).

There are also investigation systems within public sector bodies or ministries such as general inspectorates, ministerial auditors and department inspectorates.

e) Supreme financial audit authority

The relevant bodies are:

• *Cour des comptes*;

• *Chambre régionale des comptes*; and

• *Service central de prévention de la corruption (SCPC)*.

f) Ombudsman

The Ombudsman (*Médiateur*) has no individual responsibilities with regard to the prevention of corruption. His role is to record people's grievances and to give opinions to government.

g) Bodies to enforce sanctions and prosecute corrupt activity, **e.g.** *specialised prosecutors, investigators, courts, tribunals, etc.*

The criminal police have economic and financial investigation sections.

Articles 704 and 705 of the Code of Criminal Procedure provide for specialised public prosecutors.

There are special economic and financial tribunals listed in Decree No. 94-259 of 25 March 1994, which also sets out their jurisdiction.

The relevant minister, acting on advice from the Disciplinary Board, has disciplinary powers.

If a member of government is involved in a case of corruption, the case is investigated and heard by the Court of Justice of the Republic.

h) Human resources management procedures intended to prevent corruption

Access to the public service is only by competitive examination, and recruitment is governed by the general public service regulations.

The recruitment procedure can include a criminal record search and possible vetting by *Renseignements généraux* (the security branch of the police force).

General public service regulations and regulations governing the judiciary allow for disciplinary or removal mechanisms for public servants involved in corrupt activity.

Conflicts of interest provisions include:

• Art. 432-13 Penal Code;

• Decree No. 95-168 of 17 February 1995 on the pursuit of a private activity by public servants who are on leave of absence or have left the public service (implementing circular of 17 February 1995);

• General public service regulations and regulations governing the judiciary that restrict the scope for public servants to hold other posts outside their official duties.

i) Financial management controls intended to prevent or deter corrupt practices

The Procurement Code sets out guidelines for public procurement activities.

Line management financial controls include prior authorisation for financial transactions and flat-rate reimbursement of mission costs, aimed at preventing the abusive use of official staff travel.

j) Organisational management policies, systems and controls intended to minimise opportunities for corrupt activity

Line management controls within ministries include inspectorates and finance courts.

Citizens may lodge complaints aimed at disclosing corrupt activity with the Public Prosecutor. There is also scope to sue for civil damages.

Corruption risk assessment policy is developed by ministerial policy and interministerial policy through the SCPC, which also holds centralised information on preventing and detecting corruption.

*k) Transparency mechanisms (***e.g.** *independent public scrutiny, systems for declaring or reporting potential conflicting interests or corrupt activity)*

There is a general obligation on public institutions and departments to publish regular reports on their work and budgets.

There is provision for conflicts of interest to be disclosed and resolved in the general public service regulations and in the Penal Code. A declaration of assets is required from any person handling public monies.

There is a duty for subordinates who discover corrupt activities to report them to line managers and, under Art. 40 of the Criminal Procedure Code, there is an obligation to inform the Public Prosecutor.

*l) Guidance and training for public officials or politicians (***e.g.** *codes of conduct, ethics awareness training)*

Statements of standards of conduct and public sector values are provided in Rule 1 of the general public service regulations and the specific codes of individual ministries. Rule 1 is also the basis for standardised induction training for public officials. Continuing training, which includes ethics and values awareness, occurs within each administration.

Line managers and the *Service central de prévention de la corruption* (SCPC) are available to advise on problem cases or conflicts of interest.

m) Other measures intended to control, detect or deter corruption

MEASURES	CORRUPT ACTIVITY
Provisions in the Electoral Code: restrictions on expenditure; funding transparency.	Electoral fraud
Transparency of financial mechanisms	Financial fraud
More training provision for public servants	Bribery
Raising awareness among public servants	Secret commission
Prior controls; separation of certifying officers and accountants	Misappropriation of public funds
Commission des opérations de bourse (Stock Exchange Commission); *Commission bancaire* (Banking Commission).	Insider dealing using government information
Publication of decisions; recourse to administrative courts	Bias in official decisionmaking
Obligation to recruit by competitive examination; parity commissions	Bias in staff recruitment or appointment
General public service regulations	Conflicts of interest
Regulations governing the judiciary	Interfering in the legal process

2. Which anti-corruption mechanisms are regarded as most effective (in terms of implementation and impact)?

[No answer provided.]

3. Is the effectiveness of these mechanisms formally evaluated? If so, what evaluation methods are used?

Supervision and evaluation arrangements do exist. They fall mainly within the scope of the *Service central de prévention de la corruption*. This is an innovative experiment viewed with interest abroad (there are plans to work in co-operation with several countries).

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The SCPC plays a supervisory role by virtue of its very nature, its interministerial membership, its multidisciplinary approach. Its administrative evaluation role is undertaken by a Standing Administrative Liaison Committee within the SCPC.

4. What, if any, new actions against corruption in the public sector is your country currently considering?

While there have not really been any new measures as such, recent European Community and international texts in this area have been incorporated in domestic legislation:

- Convention on the protection of the European Communities' financial interests, adopted by the Council on 27 February 1996;
- Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, adopted by the Council on 26 May 1997;
- OECD International Convention on Combating Bribery of Foreign Public Officials.

5. Is there an official awareness or a policy position on the part of your government about which areas are of most concern in terms of corrupt or questionable activities involving the public sector?

The main obstacles to combating corruption in the public sector could include:

- irrelevance of some controls;
- multiplicity of support, funds and subsidies (at local, departmental, regional, national and European level);
- opening-up of the public sector;
- complex legislative and regulatory controls; and
- development of mixed-economy and third-sector structures with less public accountability.

A policy position was stated by the Justice Minister, Elisabeth Guigou, on 8 December 1997 at the opening of the international symposium on corruption in democracies, organised at Interpol headquarters in Lyon.

Mrs. Guigou emphasised the French Government's commitments with regard to combating financial criminality, saying that she intended to implement measures whereby corruption cases would be dealt with by specialised courts able to hear such cases promptly, and also to increase the resources of such courts. She also said that there would be legislation aimed at ensuring more effective supervision and control by the judicial magistrates.

GERMANY

1. What anti-corruption mechanisms exist for the public sector in your country?

a) Legislation proscribing corrupt activities and establishing sanctions

The German Penal Code provides imprisonment or fines for corrupt activities in the context of the offences of "bribery", "receiving a bribe", "granting of advantages" and "acceptance of advantages". On 26 June 1997 the German Parliament adopted the "Anti-corruption Act", which increases penalties, makes attempts to persuade a civil servant to do or refrain from doing anything in his official capacity for a consideration a punishable offence and provides the possibility of issuing judicial orders for extended forfeiture or the imposition of property penalties in order to confiscate illegal proceeds (see Appendix 1).

b) Other anti-corruption regulations or orders

It is forbidden for civil servants as well as for employees and workers in the federal public service to accept rewards or gifts in connection with the execution of their official duties. A violation of this rule constitutes a breach of official duty that can be sanctioned by disciplinary action (see Appendix 2).

c) Oversight by the legislature or parliament (directly or through scrutiny committees)

At any time the parliaments are entitled to satisfy themselves of the lawfulness of an action taken by the administration. They also have the right to appoint committees of inquiry.

Permanent oversight instruments exist in the form of audit offices, which, in addition to checking the lawful use of budget funds, also take care of cases of corruption. The audit offices submit their reports to the parliaments' audit committee.

d) Investigation systems or bodies with powers to investigate corrupt activity

The parliaments' audit committees referred to under item *c)* are charged with the examination of each individual case by the respective parliament, are vested with adequate powers – also to make investigations – and are completely independent of the executive.

In some branches of the administration, bodies that are independent of the administrative organisation to be examined have been established for clarifying any suspicion of corruption.

e) Supreme financial audit authority

Both the Federal Government and the *Länder* have audit offices/courts of auditors for monitoring and ensuring a lawfully and properly managed system of public finance. When carrying out their reviews, they also pay attention to cases of suspected corruption. They are vested with adequate powers, are independent of the executive and accountable to the respective parliament. The members of the audit offices are independent of the judiciary. As a rule, reports of the audit offices are published.

f) Ombudsman

The German Parliament has set up a committee on petitions to which any citizen can address his requests and complaints. Similar bodies exist in the *Länder:* Rhineland-Palatinate, for instance, has a

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"citizens' commissioner", and Mecklenburg-Western-Pomerania a "commissioner for petitions and citizens". Such commissioners have also been appointed in many municipalities.

g) Bodies to enforce sanctions and prosecute corrupt activity,* e.g. *specialised prosecutors, investigators, courts, tribunals, etc.

The prosecution of corrupt activity, just like the prosecution of other criminal offences, is up to the public prosecutors and the criminal police. The prosecution of criminal offences on principle is the responsibility of the *Länder*; if need be, they may set up specialised prosecutor's offices for the investigation of corrupt practices. Public prosecutors and the criminal police are bound by the law, but are subject to the supervision of the respective *Land* Ministry of Justice.

h) Human resources management procedures intended to prevent corruption

See answer to *Question 4*.

i) Financial management controls intended to prevent or deter corrupt practices

See answer to *Question 4*.

j) Organisational management policies, systems and controls intended to minimise opportunities for corrupt activity

See answer to *Question 4*.

k) Transparency mechanisms,* e.g. *independent or public scrutiny, systems for declaring or reporting potential conflicting interests or corrupt activity

See answer to *Question 4*.

l) Guidance and training for public officials or politicians (*e.g. *codes of conduct, ethics awareness training)

See answer to *Question 4*.

m) Other measures intended to control, detect or deter corruption.

See answer to *Question 4*.

2. Which anti-corruption mechanisms are regarded as most effective (in terms of implementation and impact)?

See answer to *Question 4*.

3. Is the effectiveness of these mechanisms formally evaluated? If so, what evaluation methods are used?

The effectiveness of all anti-corruption measures, but also of punishment of corrupt activities, can only be evaluated in the long term. Such evaluation is based on the criminal statistics of the police, which records all cases of corruption, *i.e.* the four types of offences listed in the answer to *Question 1(a)*.

4. What, if any, new actions against corruption in the public sector is your country currently considering?

We think that the most effective action against corruption is raising the awareness of all staff in the public service and increasing the level of control, *e.g.* by having matters that would lend themselves to corruption processed by more than one official, or through increased vigilance on the part of superiors.

Together with these measures of central importance, the Federal Government has presented a comprehensive catalogue of additional measures to prevent corruption:

- Exacting standards should be applied when *selecting* personnel for organisational units particularly exposed to corruption.
- The issue of corruption should be given more emphasis in *basic and further training*. The staff should regularly be provided with relevant information.
- In areas *particularly exposed* to corruption and their supervisory bodies, *personnel rotation* is considered to be an indispensable element of personnel management.
- *Organisational arrangements* with regard to both the structure and procedure of authorities are to ensure working processes designed to rule out corruption.
- Planning, placement and accounting of public orders should on principle be *separate* processes. Experience of the procurement unit of the Federal Ministry of the Interior has shown that it is easier to implement such principles if there is only one central procurement unit.
- With regard to working areas exposed to corruption, *e.g.* with the following characteristics
  - frequent external contacts;
  - large-scale management of budget funds;
  - cost-intensive individual projects;
  - far-reaching authority to grant permissions;

  the authorities should continuously carry out *risk analyses*. Especially in these working areas, it is necessary to lay down working processes and specify responsibilities in detail.
- *A central contact agency* should be available to which both staff members and citizens may turn if they have any corruption-related questions or come across problematic situations.
- Depending on the size and tasks of an administration, an organisational unit should be assigned for carrying out *internal accounting controls and audits*. This unit should, in particular, make random checks on matters currently processed, and on decisions taken on the placement of orders, appropriations or the granting of permissions and licences. In case of complaints, it develops recommendations on how deficiencies can be made up.
- A generally applicable *code of conduct* should be made available to the heads of authorities and other superiors as well as public service personnel that helps them to respond adequately to incidents and practices where the suspicion of corruption exists.
- Particular emphasis should be on a consistent *supervisory control*. Superiors and heads of authorities should undergo training to acquaint them with ways of exercising control and supervisory functions. Concrete guidance on anti-corruption measures should be made available to them so that they can respond in a competent way in an individual case.
- Corruption must be *punished* uncompromisingly. Every staff member found guilty of corrupt practices must be *held liable for the damage incurred*.
- The *legal provisions on the awarding of contracts* have to be complied with strictly. The following practices must be mandatory:
  - public invitation to tender before any awarding of contracts;
  - in the event of other types of awarding of contracts, *e.g.* limited invitation to tender or discretionary award of contracts, substantive reasons should be stated and checks should be carried out on whether inadmissible factors have influenced a decision;
  - a corruption register to prevent firms that are under suspicion for corrupt practices from unhindered participation in the competition for public contracts; the circumstances of the individual case should be taken into account when excluding a firm from competition.

  The federal administration has started to implement these measures. The *Länder* are currently discussing or in different stages of introducing similar action.

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5. Is there an official awareness or a policy position on the part of your government about which areas are of most concern in terms of corrupt or questionable activities involving the public sector?

Against the background of cases of corruption that have alarmed the public, the following areas are of most concern in terms of corrupt or questionable activities:

- the award of contracts by the public administration, especially regarding building projects;
- the granting of licences and permits;
- the fixing and levying of fees;
- the appropriation of public funds and subsidies; and
- supervisory activities.

Regarding the offenders, *i.e.* those who offer unlawful advantages, there is the concern that organised crime could try to gain more influence on the public administration by attempts to persuade civil servants to accept bribes for doing, or refraining from doing, anything in their official capacity. However, only relatively few cases of this kind have so far been uncovered in Germany, so it would premature to assume an imminent danger.

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Appendix 1

Excerpts from the Penal Code

(in the version of the "Anti-Corruption Act")

Section 331:

1. A holder of public office or a person especially engaged in civil service who demands, allows himself to be promised or accepts an advantage in return for the performance of an official act, shall be punished by imprisonment not exceeding 3 years or by a fine.

2. A judge or arbitrator who demands, allows himself to be promised or accepts an advantage in return for a judicial act taken or to be taken in the future, shall be punished by imprisonment not exceeding 3 years or by a fine. The attempt shall be punishable.

3. The act shall not be punishable pursuant to paragraph 1 if the perpetrator allows himself to be promised or accepts an advantage not demanded by him and the competent governmental agency within the framework of its powers, has either previously approved the acceptance or the perpetrator has immediately notified the authority, which then has approved the acceptance.

Section 332:

1. A holder of public office or a person especially engaged in civil service who demands, allows himself to be promised or accepts an advantage in return for an official act performed or for future performance and thereby violates or would violate his official duties, shall be punished by imprisonment from 6 months up to 5 years, in less severe cases by imprisonment not exceeding 3 years or by a fine. The attempt shall be punishable.

2. A judge or arbitrator who demands, allows himself to be promised or accepts an advantage in return for a judicial act taken or to be taken in the future and thereby violates or would violate his judicial duties, shall be punished by imprisonment from 1 year up to 10 years, in less severe cases by imprisonment from 6 months up to 5 years.

3. If the perpetrator demands, allows himself to be promised or accepts the advantage in return for a future performance, paragraphs 1 and 2 shall be applied even if he indicated his readiness to the other

1. to violate his duties by the act or,
2. insofar as the act is in his discretion, to have himself influenced by the advantage in exercising his discretion.

Section 333:

1. Whoever offers, promises or grants an advantage to a holder of public office, to a person especially engaged in civil service or to a soldier of the Federal Armed Forces in return for an official act to be taken in his discretion in the future, shall be punished by imprisonment not exceeding 2 years or by a fine.

2. Whoever offers, promises or grants an advantage to a judge or arbitrator in return for a judicial act to be taken in the future, shall be punished by imprisonment not exceeding 3 years or by a fine.

3. The act shall not be punishable pursuant to paragraph 1 if the competent governmental agency within the framework of its powers either previously approved the acceptance of the advantage by the recipient or approves it upon immediate notification by the recipient.

Section 334:

1. Whoever offers, promises or grants an advantage to a holder of public office, to a person especially engaged in civil service or to a soldier of the Federal Armed Forces in return for an official act taken to be taken in the future and thereby violates or would violate his official duties, shall be punished by imprisonment from 3 months up to 5 years, in less severe cases by imprisonment not exceeding 2 years or by a fine.

2. Whoever offers, promises or grants to a judge or arbitrator an advantage in return for a judicial act

- taken and thereby violated his judicial duties, or
- to be taken in the future and would thereby violate his judicial duties,

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shall be punished in the cases of number 1 by imprisonment from 3 months up to 5 years, in the cases of number 2 by imprisonment from 6 months up to 5 years. The attempt shall be punishable.

3. If the perpetrator offers, promises or grants the advantage in return for a future performance, paragraphs 1 and 2 are to be applied even if he attempts to induce the other

1. to violate his duties by the act, or
2. insofar as the act is in his discretion, to have himself influenced by the advantage in exercising the discretion.

Section 335:

1. In particularly severe cases,
   1. an offence pursuant to
      a) Sect. 332 para 1 sentence 1, also in combination with para 3, and
      b) Sect. 334 para 1 sentence 1 and para 2, both also in combination with para 3 shall be punished by imprisonment from 1 year up to 10 years, and
   2. an offence pursuant to Sect. 332 para 2, also in combination with para 3 shall be punished by imprisonment of a minimum of 2 years.
2. A particularly severe case within the meaning of para 1 is deemed to be a case where
   1. the offence involves an advantage of considerable value,
   2. the perpetrator accepts advantages on a continued basis, which he demands in return for the future performance of an official act, or
   3. the perpetrator acts for gain or as the member of a gang which has formed for the continued commitment of such crimes.

Section 338:

1. In the cases referred to in Sect. 332, also in combination with Sects. 336 and 337, Sect. 73d shall be applicable where the perpetrator acts for gain or as a member of a gang which has formed for the continued commitment of such crimes.

2. In the cases referred to in Sect. 334, also in combination with Sects. 336 and 337, Sects. 43a and 73d shall be applicable where the perpetrator acts as a member of a gang which has formed the continued commitment of such crimes. Sect. 73d shall also be applicable where the perpetrator acts for gain.

Section 357:

1. A superior who induces or undertakes to induce his subordinates to commit an illegal act in the performance of duty or who allows such an illegal act of subordinates to be committed, is subject to punishment provided for the illegal act.

2. The same provision applies to a holder of public office to whom supervision or control of the official functions of another holder of public office has been assigned, insofar as the illegal act committed by the latter holder of public office concerns the functions subject to his supervision or control.

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Appendix 2

Federal Civil Service Act

Section 70

Also after the termination of his employment in the civil service, the civil servant shall not accept any rewards or gifts with regard to his office unless he has the consent of the supreme service authority, or the last superior service authority. The power to give the consent may be delegated to other authorities.

Federal Disciplinary Rules

Section 2

1. Pursuant to this law, the following persons shall be liable to prosecution:
   1. A civil servant for a breach of official duty committed while having the status of a civil servant
   2. a civil servant on retirement
      a) for a breach of official duty while having the status of a civil servant
      b) for an act committed upon retirement which may be deemed to be a breach of official duty (Sect. 77 para 2 of the Federal Civil Service Act).

2. A civil servant or a retired civil servant who at an earlier time was subject to another employment contract under public law as a civil servant, judge, permanent or temporary member of the Armed Forces, or a permanent or temporary member of the civil defence corps shall be liable to prosecution for breaches of official duty or acts deemed to be breaches of official duty which he has committed in the context of his former employment contract under public law or as a person entitled to a public office the acts referred to in Sect. 77 para 2 of the Civil Service Act shall be deemed to be breaches of official duty also with regard to persons retired or dismissed from such employment contract under public law. The assignment to another public employer shall not prevent prosecution pursuant to the disciplinary rules.

Section 3

The competent authority shall determine freely after a due assessment of the circumstances whether measures have to be taken on grounds of a breach of official duty pursuant to this law. In this context, the competent authority shall take into consideration the civil servant's overall conduct both in and away from his duties.

Section *5*

1. Disciplinary measures shall include:
   – a reprimand;
   – a fine;
   – reduction of salary;
   – transfer to a post in the same career structure with a lower final basic salary;
   – removal from office;
   – reduction of retirement pension; and
   – deprivation of retirement pension.
2. In the case of pensioners, only reduction or deprivation of retirement pension are admissible.

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GREECE

1. What anti-corruption mechanisms exist for the public sector in your country?

a) Legislation proscribing corrupt activities and establishing sanctions

- The Penal code prescribes sanctions against active or passive bribery of public servants.
- Anti-corruption sanctions are part of the Public Servants Code as well, which can lead to dismissal;
- Law 2065/1992 with regard to "Reform of Direct Taxation and other Regulations", which aims, *inter alia*, at proscribing phenomena of bribery of public servants in the Ministry of Finance;
- Law 2331/1995 establishes a commission responsible to collect, evaluate and investigate all information related to the validation of illegal incomes.

b) Other anti-corruption regulations or orders

- At the political level, Law 2429/1996, "Financing of Political Parties – Publicity and control of the Finances of Political Parties and of Candidates for Parliament", contains legal procedures and controls of financial transparency. The unauthorised use of confidential information is prohibited under the Public Servants Code.
- Article 24 of Law 2429/96 requires transparency regarding the finances of all public servants who are members of public procurement commissions making purchases of an amount higher than twenty (20) million drachma.
- Article 16 of Law 2576/98 gives the minister responsible for public works the right to review any decision or other action concerning public works taken by any public authorities, following an appeal by the parties concerned.
- Law 2522/98 has established a mechanism ensuring that all firms involved in public works construction have the right to effective legal protection, even before the contract is signed.

c) Oversight by the legislature or parliament (directly or through scrutiny committees)

The following two committees exist in Parliament:

- The Committee of Public Enterprises, Banks and Public Utility Enterprises expresses its opinion with regard to the suitability of candidates for the positions of Chairman of the Executive Board or President General in the most important public utility enterprises and public sector banks.
- The Committee of Institutions and Transparency supervises independent administrative structures and develops measures that contribute to the transparency of the political and public life in the country.

d) Investigation systems or bodies with powers to investigate corrupt activity

- Through Law 2343/1995, "Reorganisation of the Ministry of Finances and Other Regulations", the "Body of Financial Inspectors" was established with powers of conducting direct and indirect controls with reference to the financial activities of the financial structures of the government as

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well as the legal structures of public law, of organisations of local authorities and public utility enterprises.

- Through Law 2477/1997, "Ombudsman and Body of Inspectors-Controllers of Public Administration", the latter body was created to ensure the correct and transparent functioning of the administration of central, regional and local authorities, of public utility enterprises and of legal structures of public law.
- Through Decree 393/1994, a special commission was established for the co-ordination of controls at national and European Union level. This control concerns projects financed by European Union resources and carried out by legal structures of public law, local authorities, public or private enterprises and individuals.

e) Supreme financial audit authority

The supreme financial audit authority, according to the Greek constitution, is with the "Court of Auditors", whose jurisdiction is:

- the control of government expenditure as well as the expenditure of local authorities or other legal entities of public law;
- the report to Parliament with regard to the balancing of the accounts of the State;
- the control of the accounts of public enterprises, legal structures of public law and local authorities.

f) Ombudsman

Through Law 2477/1997, the institution of the Ombudsman (The Citizen's Advocate) was established in Greece. It is an independent administrative authority and its mission is the mediation between Greek citizens and the public administration, the local authorities, the legal structures of public law and the public utility enterprises as well as the protection of citizens' rights, the overcoming of maladministration and the maintenance of legality.

g) Bodies to enforce sanctions and prosecute corrupt activity,* e.g. *specialised prosecutors, investigators, courts, tribunals, etc.

Through Law 2343/1995, "Reorganisation of the Ministry of Finance and other Regulations", the "Financial and Economic Crimes Office (FECO)" was established in the Ministry of Finance. This body is accountable directly to the Minister of Finance, and its mission is the prevention and prosecution of tax evasion, of illegal import of goods, of illegal acts against the financial interests of the state, as well as trade of drugs, arms, etc. It is represented centrally and regionally and has the jurisdiction to lay charges in cases of illegal acts. This body functions within the frame of the constitution.

h) Human resources management procedures intended to prevent corruption

The Public Servants Code includes provisions prohibiting the appointment to the public service of persons who have been convicted or have lost their civil rights. Every newly appointed public servant has to declare his personal property.

According to the new Public Servants code, which will be forwarded to the Parliament shortly, disciplinary procedures will be reinforced and accelerated.

A parliamentary committee is responsible for expressing an opinion regarding the suitability of candidates for senior positions (chairman/chief executive officer) in public enterprises, public sector banks, etc.

i) Financial management controls intended to prevent or deter corrupt practices

A ministerial circular requires the regular rotation of officials performing tasks involving risks of corruption (for example, in the Finance Ministry).

See the answer to *Question 1(e)*.

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j) Organisational management policies, systems and controls intended to minimise opportunities for corrupt activity

The Body of Inspector-Controllers of Public Administration carries out internal monitoring of management with a view to detecting irregularities in management, identifying procedural difficulties and proposing improvements. The Ombudsman has to some extent a similar mission.

k) Transparency mechanisms,* e.g. *independent or public scrutiny, systems for declaring or reporting potential conflicting interests or corrupt activity

Under the Public Servants Code, all public servants are required to declare their financial interests.

Pursuant to the decisions of the State Council, the grounds on which administrative decisions are based must be given.

See answers to *Questions 1(c)* and *1 (h)*.

l) Guidance and training for public officials or politicians (e.g. codes of conduct, ethics awareness training)

Within the framework of the educational and training programs for public servants there are courses which deal with the conscious fulfilment of the public servant's duties and the respect of the citizen's rights.

The Ministry of the Interior, Public Administration and Decentralisation is studying the details of a programme to introduce codes of conduct into ministries, regions, local authorities, etc.

m) Other measures intended to control, detect or deter corruption

The other measures that have been taken in order to deter corruption are the following:

- system of appointment to the public service based on merit and transparency;
- full publicity of the declarations of competition for the purchase of goods and services by the government;
- ratification of contracts by the Parliament;
- right of information and access to administrative documents to every citizen.

2. Which anti-corruption mechanisms are regarded as most effective (in terms of implementation and impact)?

The establishment of independent mechanisms of internal control of State activities is considered to be the most effective way of protecting citizens and the public interest.

3. Is the effectiveness of these mechanisms formally evaluated? If so, what evaluation methods are used?

No.

4. What, if any, new actions against corruption in the public sector is your country currently considering?

The areas of most concern in terms of corrupt activities in the public sector are the following:

- Activities of organised crime.
- The area of managing large amounts of money in order to carry out public works or for purchasing goods and services by the public sector.
- The collection of revenues with regards to taxation and custom duties.
- The government has initiated the procedure for ratifying the 1997 Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and for adopting the

implementing legislation. The Convention was ratified and deposited in February 1999. Measures will also be taken to implement the 1997 revised Recommendation on Combating Bribery in International Business Transactions.

- The new Public Servants Code submitted to Parliament provides for a reinforcement of sanctions against public servants involved in corruption.

5. Is there an official awareness or a policy position on the part of your government about which areas are of most concern in terms of corrupt or questionable activities involving the public sector?

[No answer provided.]

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HUNGARY

1. What anti-corruption mechanisms exist for the public sector in your country?

a) Legislation proscribing corrupt activities and establishing sanctions

The major Act prohibiting corrupt activities and establishing sanctions is Act No. IV of 1978 on the Criminal Code. It prohibits and sets penalties for criminal activities in state administration, administration of justice and in the domain of public life, in particular:

- criminal acts "against the order of elections, referenda and popular initiatives" covers, *inter alia*, the sanctions applicable against those breaching the rules of the nomination procedures, those voting unentitled and those stating false data;
- a person commits the criminal act of "breaching rules on state secrets" who, without authorisation, obtains and uses state secrets or makes such available to unauthorised persons;
- a person commits the criminal act of "breaching rules on service secrets" who, without authorisation, obtains and uses service secrets or makes such available to unauthorised persons;
- the criminal act of "maladministration" is committed by an official person who breaches his or her official duty, acts outside his or her competency or otherwise abuses his or her official position, in order to cause illegitimate disadvantage or to gain illegitimate advantage;
- a more severe punishment is applied if such activities are committed by the official in the course of official procedures conducted by such official.

Of the criminal acts against "fairness and legitimacy in the domain of public life" the following should be highlighted:

- "Corrupt practices" (accepting bribes) are committed by an official who asks for or accepts advantage or a promise thereof in relation to his or her official activities, or makes an agreement with a person asking or offering such advantage. The sanction is more severe where the criminal act is committed by a senior official, or a person authorised to proceed in respect of issues of higher importance, or by any official person acting in respect of a more important issue. Also, more severe sanctions are applied where the person committing such act breaches his or her official duty, exceeds his or her scope of authority or otherwise abuses his or her official position in exchange for the advantage given, or if such criminal activity is committed in a conspiracy or on a habitual basis.
- The criminal act of "trading in influence" is committed by a person who, with reference to his or her influencing an official, asks for or accepts an advantage for him or herself or for another person. The sanction is more severe if the perpetrator claims to have, or gives an impression of having, bribed an official or if he or she tries to pass for an official person.
- The category of "persecution of a person having made a report in the public interest (whistle blower)" is to penalise a person who takes an action adverse to someone who has made the report in the public interest, for having done so.

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b) Other anti-corruption regulations or orders

Other anti-corruption regulations and decrees, have, both, direct and, indirect effects on combating corruption. These include some governmental decrees and some governmental decision-level regulations.

c) Oversight by the legislature or parliament (directly or through scrutiny committees)

In respect of legislation or parliamentary supervision, the practice that has become most frequently applied in combating corruption is setting up *ad hoc* parliamentary investigation committees. The Parliament may delegate an investigating committee for the exploration of any issue and may also set up an *ad hoc* committee to manage the case defined in the decision setting up the investigating committee. The establishment of *ad hoc* investigation committees is governed by the Parliamentary Decision No. 46/1994 (IX.30) on the Procedures of Parliament.

d) Investigation systems or bodies with powers to investigate corrupt activity

The investigation of corrupt practices is primarily the role of the Police of the Republic of Hungary and the Supreme Prosecutor's Office. These bodies are granted statutory functions, jurisdiction, competencies, and independence from other organisations and appropriate systems. The anti-corruption activities of the Central Law Enforcement Directorate set up in recent years within the organisation structure of the Police should also be mentioned. The activities of the Protective Service of the Organisations for the Protection of Law and Order are also significant in this area.

e) Supreme financial audit authority

The role of the state court of audit is performed by the State Audit Office. The functions, jurisdiction, competency and degree of independence of this public institution are defined by the Constitution of the Republic of Hungary as well as Act No. XXXVIII of 1989 on the State Audit Office. The effect of these provisions is to make the State Audit Office the financial and economic supervisory organ of the Parliament, reporting exclusively to Parliament and governed exclusively by the relevant Acts of law.

According to its legal status it is an organisation with a scope of tasks, authority and competency defined by law. It is the supreme organisation of state control and its organisational structure, staffing and annual budget are approved by the Parliament. Among its general tasks, it controls the financial management of the public finance system, examines, among other things, the soundness of the budget proposals and the legitimacy of expenditures; controls the management of state assets; and monitors compliance with the state accounting regime.

f) Ombudsman

The legal institution of the Ombudsman is one of three parliamentary commissioners and is known as the Commissioner of citizens' rights. It is regulated by the Constitution and Act No. LIX of 1993 on the commissioner's legal status, while that of the commissioner of national and ethnic minorities is regulated by Act No. LXVII of 1993 and that of the commissioner for data protection by Act No. LXIII of 1992.

The responsibilities of the parliamentary commissioners include investigation of irregularities, problems of procedures – not only state administration procedures – affecting constitutional rights, and taking of general or individual action to provide legal remedies. Publicity is an important element of their activities, and they report to Parliament on an annual basis. The parliamentary commissioners are elected by Parliament with a two-thirds majority of votes and the costs of their activities are specified in a separate chapter of the central budget.

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g) Bodies to enforce sanctions and prosecute corrupt activity,* e.g. *specialised prosecutors, investigators, courts, tribunals, etc.

In general, anti-corruption activities are included in the scope of responsibilities, authority and competency of a number of state organisations. Within the organisational structure of state administration special mention should be made in (indirect) connection with this issue of the role of the Governmental Control Office set up by the government, operating on the basis of Government Decree No. 138/1994 (X.28). The major responsibility of this organ of public administration is control of the operation of the general governmental budget (the central budget) including:

- the financial transactions from that budget;
- the governmental expenditures effected from the central budget, including the permitted subsidies and preferences;
- the budgetary chapters and the financial management of the central organs belonging to such chapters,

as well as the operation of separated state funds.

The Office's controlling activities are aimed at monitoring compliance and appropriateness. The Office serves written notice to government of any finding that requires government action. This notice can also propose the termination of improper practices even without government action. In the course of its examinations, the Office must request prompt decisions to prevent damage if it finds that funds have been used in a way considered as improper or wasteful or where a controlled organisation causes damage through gravely violating the rules governing the management of the funds made available to it.

h) Human resources management procedures intended to prevent corruption

The re-regulation of public sector employment relations in 1992 brought about a substantial step forward in the area of combating corruption. Legislative guarantees, for those employed in the organisations of the central public administration, are contained in Act No. XXIII of 1992 on the Legal Status of Civil Servants, while for those employed in the wider budgetary sphere (public and higher education, administration of public collections, health and social services system) are set out in Act No. XXXIII of 1992 on the Legal Status of Public Servants.

In respect of civil servants, the following are significant in this context:

- a regulation concerning employment in the civil service, which provides that only people without criminal records may be appointed civil servants;
- the possibility of competitive bidding which confirms the democratic and public nature of employment in the civil service;
- legislative regulation of conflict of interests, which establishes stricter rules concerning personal relationships;
- legislative rules on disciplinary and financial liability, which also contain mechanisms to penalise maladministration and illegitimate actions.

In respect of those working in the wider budgetary sphere (public servants), the above Act on the Legal Status of Public Servants contains guarantee mechanisms similar to those applicable to civil servants.

At local government level, the detailed rules on mayors and vice-mayors have been laid down in Act No. LXV of 1990 as well as in Act No. LXIV of 1994 on Certain Issues of the Performance of the Mayors' Duties and the Remuneration of Local Governmental Officials.

i) Financial management controls intended to prevent or deter corrupt practices

The area of financial management is regulated by the relevant sections of Act No. II of 1979 on State Finances and the Council of Ministers' Decree No. 23/1979 (VI.28) on the implementation of the Act. These statutory instruments provide for a unit, or person, operating under direct supervision of the head (or

deputy head) of governmental agencies in ministries and organisations with national authority, to be designated solely for the purpose of budgetary and financial control.

On the basis of the findings of such controls, the head (or deputy) of the controlling organisation or, in justified cases of delegated competencies, the official with the appropriate authorisation for taking action, shall initiate and/or order the required actions or measures. The head of the controlling organisation must take the required actions and serve written notice of them to the head of the budgetary controlling organisation.

Ministers, and heads of organisations with national authority, perform budgetary and financial controlling activities of a supervisory nature in the separate budgetary institutions belonging to their respective areas of responsibility, with the aim of evaluating the efficiency and orderliness of the management of assets made available to such organisations, and their compliance with the provisions of their respective deeds of foundation. In general, the establishment of the internal control system, its regulation and efficient operation belong to the sphere of responsibility of the head of the relevant budgetary or public administrative organ. The internal control system covers the control obligations of the executives, the controls built into the work processes and the tasks of the independent internal auditors.

j) Organisational management policies, systems and controls intended to minimise opportunities for corrupt activity

In respect of this area it is primarily the statutory instruments of various legislative levels (Acts of law, statutory instruments of governmental and ministerial decree levels) governing the legal status of the organisations of public administration that are important.

The establishment, disestablishment and fusion of organisations of public administration is generally effected by means of a statutory instrument establishing a framework for legitimate operations, and covers:

- legal status and legal relations of those employed by such organisations;
- mechanisms of hierarchy;
- rights of appointment and direction; and
- system of the controlling of the activities (reporting).

A separate government decree governs the details of supervisory competencies of organisations of public administration supervised by the respective ministers.

k) Transparency mechanisms, **e.g.** *independent or public scrutiny, systems for declaring or reporting potential conflicting interests or corrupt activity*

The aims of Act No. XL of 1995 on Public Procurement, and of the organisation set up by it, are:

- to rationalise the expenditures of the public finance system;
- to create transparency and the possibility for comprehensive public inspection of the expenditure of public moneys;
- to provide for fairness of competition in the course of public procurement transactions; and
- to promote domestic production of commodities and employment of domestic labour.

It is essential that, to ensure transparency, the reports containing the results of the audits, inspections and analyses performed by the State Audit Office be presented to Parliament.

*l) Guidance and training for public officials or politicians (***e.g.** *codes of conduct, ethics awareness training)*

It is relevant to mention the systems of training for public administration and senior executives' training developed according to the authorisation provided in the Act No. XXIII of 1992 on the Legal Status of Civil Servants. These programmes focus primarily on the legitimate activities of civil servants that can be improved by training, minimising the potential of illegitimate administrative activities.

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These efforts are specifically intended to promote the efficiency of the application of laws. Also of fundamental importance is the Civil Servants' Code of Ethics, which is being prepared on the basis of an authorisation by law. This is an undertaking in which representatives of scientific fields, trade and industry, representing organisations and alliances, also take part, providing expert and professional input.

m) Other measures intended to control, detect or deter corruption

Over recent years specific actions have been taken with the aim of controlling, detecting and deterring corrupt practices. Among these are provisions to increase harmonisation and co-ordination of the activities of the organisations of customs administration, law enforcement, consumer protection, etc. and to improve the efficiency of their actions.

2. Which anti-corruption mechanisms are regarded as most effective (in terms of implementation and impact)?

In the public sector the existence of rules and regulations on conflicts of interests, attaching priority to the role of the media and of publicity, as well as the earnings position of those working in the public sector are of outstanding importance.

3. Is the effectiveness of these mechanisms formally evaluated? If so, what evaluation methods are used?

At regular intervals the government reviews and evaluates the efficiency of the practical implementation of the governmental measures and actions taken in this area and, on the basis of the reports submitted by the ministries and the organisations of national competencies, it takes or initiates corrective actions, where necessary.

4. What, if any, new actions against corruption in the public sector is your country currently considering?

In this area it is of outstanding importance that in connection with the amendment to the Act on the Legal Status of Civil Servants aimed at reducing corruption in civil service, the rules on conflict of interest have been tightened, and ongoing corrections are being implemented to improve the earnings positions and, at the same time, the financial rewarding, in general, of those employed in civil service.

5. Is there an official awareness or a policy position on the part of your government about which areas are of most concern in terms of corrupt or questionable activities involving the public sector?

[No answer provided.]

IRELAND

1. What anti-corruption mechanisms exist for the public sector in your country?

a) Legislation proscribing corrupt activities and establishing sanctions

The body of legislation proscribing corrupt and establishing sanctions is as follows:

- Public Bodies Corrupt Practices Act, 1889;
- Prevention of Corruption Act, 1906;
- Prevention of Corruption Act, 1916;
- Prevention of Corruption Acts, 1889 to 1916, Adaptation Order, 1928;
- Ethics in Public Office Act, 1995.

The legal definition of corruption in Irish law is contained in the Prevention of Corruption Acts 1889 to 1916 as adapted by Adaptation Order No. 37 of 1928 and amended by the Ethics in Public Office Act, 1995. The first of these acts – the Public Bodies Corrupt Practices Act, 1889 – applied only to local authorities and created an offence of corruptly giving or receiving any consideration as an inducement or reward for exercising official authority in a particular manner. Simply stated, this Act made it an offence for members or servants of such bodies to accept or seek bribes.

The second of these Acts – the Prevention of Corruption Act, 1906 – redefined the offences and extended the provisions to all agents whether in the private or public sector. The 1928 Order made it an offence for anyone employed by or acting for another, or anyone holding an office remunerated out of the Central Fund or out of moneys provided by the *Oireachtas* (legislature) to accept or request bribes. The Act also made it an offence for anyone to bribe or attempt to bribe such persons.

The third Act – the Prevention of Corruption Act, 1916 – provided that, where it is proved that any consideration was given, directly or indirectly, to an official, or received, directly or indirectly, by an official from a person holding or seeking to obtain a contract from the public authority concerned, the consideration is presumed to have been given and received corruptly as an inducement or reward unless the contrary is proved. This Act was designed to strengthen the previous two Acts in relation to the holding or seeking of contracts with ministers or certain public bodies. A far more serious penalty was provided for than in the case of any other offences under the Acts.

The Acts were adapted in 1928 so as to have full force and effect in the state. However, having regard to the passage of time, the development and growth of the public sector in the interim and the archaic language of the Acts, the opportunity was taken in the Ethics in Public Office Act, 1995 to ensure the effectiveness of the legislation through amendments to all three Acts. Section 38 of the Ethics in Public Office Act, 1995 extends the application of the Acts to special advisers personally appointed by the office holders (inisters), directors and persons employed in public bodies.

Offences

The effect of the 1995 Act amendments is to provide that an office holder, special adviser, director and persons employed in public bodies shall be guilty of a misdemeanour punishable by imprisonment or fine or both, if he or she:

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- corruptly accepts or obtains, or agrees to accept or attempts to obtain, from any person, for himself or for any other person, any gift or consideration as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to the affairs or business of his department, or for showing or forbearing to show favour or disfavour to any person in relation to such affairs or business;
- corruptly gives or agrees to give or offers any gift or consideration to an official as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any act in relation to the affairs or business of state or for showing or forbearing to show favour or disfavour to any person in relation to the affairs of the state;
- knowingly gives to an official or (if he is an official) knowingly uses with intent to deceive the head of his department, any receipt, account or other document in which the department is interested, and which contains any statement which is false or erroneous or defective in any material particular and which, to his knowledge, is intended to mislead the head of his department.

Penalties

The penalty on summary conviction is a fine not exceeding £1 000 and/or imprisonment up to 12 months. On conviction on indictment, the penalty is a fine not exceeding £50 000 and/or imprisonment up to 7 years.

Ethics in Public Office Act, 1995

The main purpose of the Ethics in Public Office Act, 1995 is to provide for disclosure of interests by the holders of designated positions of employment in the public service and the directors of designated public bodies. It establishes the Public Offices Commission to provide guidelines and advice, and to undertake investigations and report on possible contravention. The Act also established Select Committees in both houses of the *Oireachtas* that publish guidelines, provide assistance and advice to members in relation to compliance and are empowered to investigate and report on possible contraventions of the Act.

The key provisions of the Act are:

- requirements that annual written statements be made by certain persons holding public employment in respect of certain personal interests (and those interests of a spouse, child or step-child of which they are aware) which could materially influence them in the performance of their official duties. These interests include: gifts from one source exceeding £500 in value, salaried positions, large shareholdings in a company (above £10 000 value), directorships, ownership of land (valued at £10 000 or more) other than personal dwellings, and public service contracts.
- requirements that *ad hoc* declarations be made where a potential conflict of interest could directly arise in the performance of official duties between the public interest and the interests of the individual concerned or those of connected persons, *e.g.* close relatives or business partners.

The positions and directorships in the civil and broader public service that have been designated for the purposes of the Act are contained in the Ethics in Public Office (Designated Positions in Public Bodies) Regulations, 1996 [Statutory Instrument (SI) No. 57 of 1996] and the Ethics in Public Office (Prescribed Public Body, Designated Directorships and Designated Positions in Public Bodies) Regulations 1997 [SI No. 32 of 1997].

The secretary general of a department is the relevant authority to whom annual statements of interests, as well as ad hoc statements, are furnished by every established civil servant, occupying a designated position below secretary general level. The Secretary General, Public Service Management and Development, in the Department of Finance is the relevant authority to whom secretaries general furnish their statements of interests. Senior special advisers furnish their statements of interest to the minister who appointed them, as well as to the Public Offices Commission.

Penalties

A person found guilty of an offence under the Act would be liable, on summary conviction, to a fine of up to £1 000 and/or imprisonment for up to 6 months and, on indictment, to a fine of up to £20 000 and/or imprisonment for up to 3 years.

b) Other anti-corruption regulations or orders

The anti-corruption regulations are the Ethics in Public Office (Designated Positions in Public Bodies) Regulations, 1996 [SI No. 57 of 1996], and the Ethics in Public Office (Prescribed Public Body, Designated Directorships and Designated Positions in Public Bodies) Regulations, 1997 [SI No. 32 of 1997].

Statutory Instrument (SI) No. 57 of 1996 applied the provisions of the Ethics Act to civil servants at the level of principal officer and above, and also applied it to holders of posts in lower grades which were deemed to be sensitive (such as posts having authorisation to purchase supplies and/or enter into contracts). SI No. 32 of 1997 applied the Act to holders of similar executive positions in non-civil service public sector bodies and state-owned commercial companies, as well as to political appointees to the boards of these bodies.

c) Oversight by the legislature or parliament (directly or through scrutiny committees)

The *Oireachtas* Committee of Public Accounts oversees all public expenditure.

d) Investigation systems or bodies with powers to investigate corrupt activity

The Public Offices Commission, established under section 21 of the Ethics in Public Office, has the right to investigate allegations of corrupt activity. It is independent of government, and is composed of the Comptroller and Auditor General, the Ombudsman, the Chair of the lower house of Parliament and senior parliamentary civil servants.

e) Supreme financial audit authority

The Comptroller and Auditor General. Article 33 of the Constitution sets out the two basic functions of the Comptroller and Auditor General as:

- to ensure that no money is issued from the Central Fund except for purposes approved by the *Oireachtas*; and
- to audit government accounts for accuracy and regularity.

This role was extended over the years, on a non-statutory basis, to encompass identifying and reporting to the *Dáil* (lower house of Parliament) on instances where it appears that there has been loss, waste or uneconomic expenditure by government departments. This role was given statutory basis in the Comptroller and Auditor General, (Amendment) Act, 1993, which empowers the Comptroller and Auditor General at his or her discretion, to carry out examinations of economy, efficiency and management effectiveness. The Comptroller and Auditor General is given full access to all official papers in carrying out his duties. Where the Comptroller and Auditor General is dissatisfied with the manner in which expenditure has been incurred by a Department, a query is raised on the annual appropriation account for that department. This device can be used to query the manner in which a contract has been placed where the Comptroller and Auditor General considers that proper procedures have not been followed. Depending on the response to an audit query, the Comptroller and Auditor General may qualify the certificate on the appropriation account and report the matter to the *Dáil*.

The appropriation accounts are examined by the *Oireachtas* Committee of Public Accounts, which meets in public and at which the Comptroller and Auditor General attends. The Committee questions each accounting officer about matters arising in the appropriation account, value for money reports, of that department and pays particular attention to any query which has been raised by the Comptroller and Auditor General.

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f) Ombudsman

The Office of the Ombudsman was established under the Ombudsman Act 1980. He or she investigates complaints about administrative actions or delays in public service bodies. The office is independent of government.

g) Bodies to enforce sanctions and prosecute corrupt activity, **e.g.** *specialised prosecutors, investigators, courts, tribunals, etc.*

Tribunals of enquiry, which are invested with the status of the High Court and have the power to compel evidence, can investigate corrupt activity, but the standard court system is used to prosecute.

h) Human resources management procedures intended to prevent corruption

In addition to the statutory provisions in the Prevention of Corruption Acts, there is the prohibition in the staff regulations on the use of official information for personal gain (Department of Finance Circular 15 of 1979, "Official Secrecy and Integrity").

In Ireland, recruitment to the civil service is undertaken by the Civil Service Commission. This is an independent body that selects personnel for appointment to a wide range of clerical, executive, administrative, professional and technical posts in the civil service. The commissioners are committed to the principles of selection on merit, fair and open procedures and equality of opportunity. Their independence is enshrined in legislation, which has ensured that selection to civil service posts is free from patronage and political interference.

Under the laws governing superannuation of civil servants, there are provisions for the reduction of an official's superannuation entitlements in cases of corruption involving financial loss to the state.

i) Financial management controls intended to prevent or deter corrupt practices

In regard to contracts with, purchase from or sales to government departments the following regulations apply:

- no government contract may be let to a civil servant, to any partnership of which a civil servant is a member or to any company of which a civil servant is a director (except as a nominee of the minister);
- no purchase may be made from and no sale may be made to a civil servant, any partnership of which a civil servant is a member or any company of which a civil servant is a director unless *a)* the transaction is such as occurs in the ordinary course of business (*e.g.* the purchase of government publications) or *b)* sanction has been obtained from the department in which the transactions arises following consultation with the department in which the civil servant is serving;
- a civil servant who enters into any undertaking, holds any outside interests or participates in any outside business affecting, or likely to affect, a state contract for the purchase or sale of state property should immediately disclose the nature and extent of his or her interest to the head of the department;
- a civil servant should not accept a directorship of any company holding a government contract (except as a nominee of the minister);
- civil servants should not negotiate or arbitrate in any matter affecting a government contract or the purchase form or sale to of goods to the state where, in their private capacities, they are interested either as principals or as shareholders in a company being one of the principals in the matter under consideration.

In relation to bankruptcy and insolvency the following regulations apply:

- a civil servant who becomes bankrupt or insolvent must immediately report the matter to the head of the department;

- the official concerned must submit a complete statement of the facts of the case to the head of the department;
- under no circumstances should the official concerned be allowed to remain on duties involving the handling of public money or property.

j) Organisational management policies, systems and controls intended to minimise opportunities for corrupt activity

In relation to conflicts of interest generally, the following regulations apply:

- civil servants may not at any time engage in or be connected with any outside business or activity that would in any way conflict with the interests of their departments, be inconsistent with their official positions or tend to impair their usefulness as public servants;
- any doubt concerning the propriety of engaging in any outside business or activity must be referred by the official concerned to the head of the department.

There is a strong ethos that civil servants should never be seen to derive a benefit from their employment other than the remuneration proper to their positions or to put themselves in a position where they might reasonably be seen to be compromised in the discharge of their duties. Officers who contravene this ethos are considered to have brought the civil service into disrepute; sanctions up to and including dismissal are applied in such cases.

k) Transparency mechanisms,* e.g. *independent or public scrutiny, systems for declaring or reporting potential conflicting interests or corrupt activity.

The application of the Ethics in Public Office Act to all high-level posts, and any commercially sensitive posts at a lower level, ensures systematic reporting of potentially conflicting interests to the head of department.

The Freedom of Information Act, 1997 came into operation on 21 April 1998. The key feature of this legislation is the creation of a legal right of access by the public to information held by public bodies, to be exercised both as an individual right and as an effective means of scrutinising and evaluating decisions by public bodies. The FOI Act, 1997 provides for public interest disclosures of official records. It also confers the right on members of the public to seek reasons for decisions. This right can be exercised by a person who is affected by an act of a public body and who has a material interest in the matter.

The Public Service Management Act, 1997 introduces a statutory basis for the creation of a new management structure for the civil service. Its purpose is to enhance the management, effectiveness and transparency of operations of departments and offices and to put in place mechanisms for increased accountability of civil servants.

The committees of the houses of the *Oireachtas* (Compellability, Privileges and Immunity of Witnesses) Act, 1997 confers powers on *Oireachtas* committees to send for papers and persons, to require witnesses to attend meetings and to respond to questioning when they attend on matters relevant to the investigating Committee's terms of reference.

The Electoral Acts provide, *inter alia*, for the payment of state funds to political parties and reimbursement of expenses of candidates at elections; the disclosure of substantial donations received by political parties, members of both houses of Parliament and the European Parliament and candidates at elections; and limits on election expenditure by candidates and by political parties on behalf of candidates. The Public Offices Commission established under the Ethics in Public Office Act, 1995 also has responsibility in respect of these matters. These Acts also prohibit electoral fraud or interference.

A significant body of legislation has been enacted in Ireland in recent years aimed, *inter alia*, at combating illegal financial transactions, money laundering, etc. For example, the Criminal Justice Act, 1994 creates specific offences in relation to money laundering. These provisions are wide ranging and relate to both persons laundering their own proceeds of crime and to those who assist them to do so. A number of Acts (Criminal Justice Act, 1994; Finance Act, 1995; Investment Intermediaries Act, 1995; Disclosure of

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Certain Information for Taxation and other Purposes Act, 1996) place disclosure and reporting obligations on professionals, financial institutions, investment intermediaries, etc., in relation to transactions, including where there is a suspicion that offences are being committed.

l) Guidance and training for public officials or politicians (e.g. codes of conduct, ethics awareness training)

There are Department of Finance circulars setting out appropriate behaviour for civil servants, and a comprehensive Code of Conduct is under active consideration. Internal audit is an independent appraisal within a department of the effectiveness of internal control systems. It is the responsibility of each department to establish appropriate internal audit arrangements and the Department of Finance has issued guidelines setting out the standards that should apply in all cases. Responsibility for the adequacy of control systems remains with line management, as does responsibility for correcting any deficiencies that may arise. The purpose of the internal audit unit is to supply an independent source of expertise for the review of systems and procedures and the identification of improvements.

The internal audit function undoubtedly plays a role in guarding against irregularity and impropriety, although more particularly in relation to fraud than corruption. Its function relates more to prevention of corruption than detection. The Department of Finance guidelines provide that an internal auditor who discovers evidence of, or suspects, malpractice should report firm evidence, or reasonable suspicions, to the appropriate level of management. It is a management responsibility to determine what further action to take.

m) Other measures intended to control, detect or deter corruption

[No answer provided.]

2. Which anti-corruption mechanisms are regarded as most effective (in terms of implementation and impact)?

No one mechanism should be singled out as more important than any other, but the evolving Ethics in Public Office legislation may emerge as the most powerful investigative tool available.

3. Is the effectiveness of these mechanisms formally evaluated'? If so, what evaluation methods are used?

The effectiveness of the administrative mechanisms are monitored continuously by the Department of Finance, and new circulars are issued to amend practice or introduce innovations if and when it is thought necessary.

4. What, if any, new actions against corruption in the public sector is your country currently considering?

Following a report of a Tribunal of Enquiry into payments to politicians by a major company, amendments to the Ethics in Public Office Act are being considered that may reconstitute the Public Offices Commission and give it additional investigative powers. Also under consideration is the creation of offences for certain contraventions of the Ethics in Public Office Act, 1995 and a legal requirement for the provision of tax clearance certificates and a related statutory declaration by those elected to either house of the *Oireachtas*.

An integrated programme of change known as "Delivering Better Government" (DBG) was launched in May 1996. DBG is an outgrowth of, and is situated within, the Strategic Management Initiative (SMI), a programme for improving the management of the civil service that was introduced in 1994. Key features of DBG are:

- delivery of quality services;
- regulatory reform;
- open and transparent service delivery;

- effective management of cross-cutting issues;
- devolving authority and accountability;
- new approaches to human resources management;
- more effective financial management; and
- more effective use of IT to meet business and organisational needs.

5. Is there an official awareness or a policy position on the part of your government about which areas are of most concern in terms of corrupt or questionable activities involving the public sector?

Significant legislation, as indicated in replies above, has been enacted in recent years, and its effects remain to be assessed. Separately, the government has appointed a number of quasi-judicial tribunals to address matters of public concern.

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ITALY

1. What anti-corruption mechanisms exist for the public sector in your country?

a) Legislation proscribing corrupt activities and establishing sanctions

The main corpus of criminal sanctions in the public sector are contained in the Penal Code (approved under Royal Decree No. 1398 of 19 October 1930; amended by Law No. 86 of 26 April 1990; and partly amended subsequently by Law No. 181 of 7 February 1992).

This last legislation substantially amended Book II, Title II, Chapter I of the Penal Code, Articles 314-335, which contain regulations covering offences committed by public officials against the Public Administration. Articles 336-360 of Chapter II deal with offences committed by private individuals against the Public Administration.

The relevant provisions of the Penal Code refer to:

- embezzlement;
- misappropriation at the expense of private individuals;
- gaining advantages from other people's errors;
- extortion and corruption (in the various senses of the word) in performing an official duty;
- corruption through an act contrary to the duties of public office; and
- corruption of a person holding public office.

There are also penalties for:

- instigating corruption;
- abuse of office in circumstances not specifically provided for in the law;
- putting one's personal interests first in the performance of a public duty; and
- the failure or refusal to fulfil an official duty.

b) Other anti-corruption regulations or orders

At a general level, reference should also be made to Article 97 of the Constitution, which, although only indirectly linked to anti-corruption law, identifies a high level of performance *(buon andamento)* and impartiality as organisational standards of public administration.

Other legal provisions specifically designed to halt corruption are contained in:

- anti-Mafia legislation (Law of 19 March 1990 No. 55, Legislative Decree No. 490/1994, Law No. 47 of 17 January 1994 and a Minister of the Interior Circular);
- legislation on financial and money-laundering issues;
- legislation concerning the involvement and transparency of administrative procedure (Law No. 241/1990);
- legislation referring to the monitoring of competition and the market (Law No. 287/1990);
- legislation covering administrative simplification (Article 6 (2) of Law No. 127/1997);

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- regulations ensuring that legislation complies with EC directives on public sector contracts, transport and telecommunications; and
- legislation dealing with local autonomy (particularly provisions setting out the principle of the distinction between the political structure and the real administrative management of a public body: Law No. 142/1990).

In local (regional, provincial or *Comune*) bodies, arrangements are made under this last law for allocating to officials the somewhat sensitive functions that had previously been a kind of privilege reserved for the nominees of political groups. Despite training from their respective political parties, these individuals did not always make the most appropriate use of their appointments. The posts range from the chairmanship of commissions overseeing competitions for public service posts to responsibility for the awarding of contracts and the drawing up of contracts.

In ministries, senior public officials now perform all activities that link the administration with other organisations. This implements what is historically the third organisational formula of relations between ministers and senior public officials.

In 1993, Legislative Decree No. 29 (as amended) and Law No. 537 introduced additional important provisions relating to a number of issues, including the fight against corruption, and drew a sharper distinction between administrative management and direct influence on political power in connection with organisational procedures and public sector work. Similarly, in 1994, Law No. 109 (Framework Law on Public Sector Work), as subsequently amended, provided for the following in relations between public administrations and contractors:

- the setting up of the Observatory for Monitoring Public Sector Work and the related Authority (*Osservatorio per la vigilanza sui lavori publici e la relativa Autorità*), which was assigned specific "obligations to report" (*obblighi di denuncia*) (Article 4, Law No. 109/1994);
- a sole official to be responsible for the programming, planning, allocation and performance of the work;
- a division between planning and the awarding of contracts and concessions;
- measures to limit unlawful behaviour, reduce the instances of collusion and corruption, and make them more easily verified.

Three laws in 1997 (Nos. 59, 94 and 127) outline a general framework of administrative reform including decentralisation, the reorganisation of the state administration, completion of the privatisation of the public sector, the simplification of laws and procedures, the speeding up of controls, and a radical alteration of the state budget. Like Law No. 15/1968 on administrative simplification, these important laws may not have the immediate objective of fighting corruption, but they do reinforce administrative impartiality, foster a high level of performance, and develop a new and direct approach to service and responsibility on the part of the administration towards citizens. Under the terms of the laws already mentioned on the right of access, citizens have a quasi-supervisory role over administrative activity.

c) Oversight by the legislature or parliament (directly or through scrutiny committees)

Parliament as a whole, and individual members, monitor the work of the public service closely. Any member can raise specific matters, using the parliamentary power of inspection (*sindacato parlamentare ispettivo*). They may put official questions, orally or in writing, to the government or individual ministers on any aspect of government activity, including public sector corruption. Questions must be answered within short time limits set by the rules of procedure.

Either or both houses may set up special commissions of enquiry, consisting of members of Parliament, on matters of public interest, including corruption in public life. The commissions can obtain evidence from any authority, department or individual, using the same powers as criminal investigators (as in the Commission of Enquiry into the P2 lodge).

In particularly serious cases, Parliament has established standing parliamentary commissions to secure information, make enquiries or monitor developments. One such is the Parliamentary Commission

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on the Mafia, covering all aspects of this organisation including material corruption, both active and passive, at all levels of the public sector, and corruption of public officials.

d) Investigation systems or bodies with powers to investigate corrupt activity

Except when statements are examined under Law No. 241/1982, there is normally no body, department or commission permanently charged with conducting general anti-corruption enquiries or controls. The only (albeit theoretical) controls carried out on a permanent basis are linked to the normal intelligence-gathering and investigative activities of the police. They operate in areas where they have authority or in accordance with criminal law, but at all times they take appropriate care with a view to protecting the position of members of the Italian Parliament.

Extraordinary commissions of enquiry into public administrations may be appointed by the government to look into the public administration as a whole, or by leaders of individual administrations, in which case their authority is restricted to their sector of competence. Unlike commissions appointed by Parliament, the latter only have administrative powers. The enquiries carried out by the appropriate administrative commissions usually seek to ascertain the nature and extent of corruption taking place in some or all sectors of the administration where it has been identified. (It is worth recalling that the *Guardia di Finanza*, which has been beset by examples of particularly serious corruption, has recently set up its own internal commission of enquiry.)

The powers of administrative commissions of enquiry are set out in their founding rules. They are purely administrative and relate to disciplinary and administrative matters seen as appropriate to a relationship which is both hierarchical and linked to self-management. Special powers of extra-hierarchical scrutiny exist (*e.g.* in the case of government-appointed commissions), and there are also intelligence-gathering and investigative powers relating to the posts of criminal police officers that commission members themselves occupy.

These commissions are sufficiently independent because, although they normally answer directly to the senior administrative or political person responsible for establishing them, either as civil servants – and particularly so where this is the case – or as criminal police officers, they each have an individual "duty to report" all facts related to suspicions of criminal practice to the criminal authority. Article 20 of DPR (*Decreto del Presidente della Repubblica* – Decree of the President of the Republic) No. 3/1957 states that the director-general or departmental head is bound by a duty to report. The minister is similarly bound if these officials are under suspicion. Article 32 of Law No. 335/1976 later introduced a new element into the identification of officials covered by this duty when it also referred to administrators and heads of regional offices and, if the administrator is under suspicion, to the "related" collegiate body.

An express duty to report also applies to officials with remits to carry out investigations. The relevant legislation is Article 20 of DPR No. 3/1957, Article 12 of DPR No. 748/1972, Articles 86 and 91 of Legislative Decree No. 77/1995, and Article 5 of Law No. 1291/1962. The last compels the State Budget Officer (*Ragioniere Generale dello Stato*) to notify the State Audit Court (*Corte dei Conti*) of instances of malpractice that have been uncovered in the course of administrative and accounting investigations carried out by senior officers of the Finance Inspection Services (S*ervizi Ispettivi di Finanza*).

At a purely administrative level, then, as an expression of the power of self-management that the public administration enjoys, the Inspectorates of Internal Administration (*Ispettorati di amministrazione interna*) inside each ministry – and in the various "branches" inside each hierarchical structure – have the authority to carry out administrative investigations. Where suspicions are confirmed, these investigations will lead to the implementation of disciplinary procedures and disciplinary action, which may result in a determination of criminal fault and appropriate penalties.

The degree of autonomy enjoyed by administrative inspectorates is generally very high since, as has already been stated, the duty to report and the criminal responsibility associated with it covers both auditing issues and assets.

e) Supreme financial audit authority

[See answers to *Question 1 (d)* and *(i)*.]

f) Ombudsman

No.

g) Bodies to enforce sanctions and prosecute corrupt activity,* e.g. *specialised prosecutors, investigators, courts, tribunals, etc.

The law provides that the authority to apply sanctions and conduct investigations into corruption lies with the Legal Authority (*Autorità Giudiziaria*) as well as the commissions of enquiry mentioned earlier. The latter are bodies that enjoy "exceptional" status (*organi di carattere straordinario*).

Whereas the work of the judiciary (*Magistrature*) is carried out under a guarantee of complete independence that the law assigns to the judicial power (*Potere giudiziario*), administrative work enjoys less autonomy insofar as the activities of inspectorates belonging to a given administration are always bureaucratic. On operational matters, therefore, these bodies answer more or less directly to the minister, the secretary general or the director-general in whose department the inspectorate is based. As has already been pointed out, the fact that there is criminal or auditing responsibility ensures that, solely from the point of view of administrative operation, the Inspector is directly and personally obliged to notify the competent criminal or accounting auditor (*procura*) of any grounds for suspicion of unlawful action or which might lead to a tax offence (Articles 361 *et seqq*).

In summary, the investigative bodies that enjoy exceptional status are the Commissions of Enquiry appointed by Parliament to look into specific matters that may affect the public sector or have wider implications.

h) Human resources management procedures intended to prevent corruption

Human resources management procedures employed in the prevention of corruption are fashioned in various ways so as to reflect the features that characterise the work of individual sectors of the administration. Prior assessment by the administration that takes account of a job applicant's previous record or behaviour, or of the moral standards of his or her background, is no longer a factor that determines selection for a post in the public sector.

Most emphasis is placed on repressing corruption, and on the duty that Article 17(22) of Law No. 127/1997 imposes on senior officials to declare their assets. As to whether a legal sanction is a deterrent against embezzlement and/or corruption, not everyone agrees that it is enough to prevent employees succumbing to maladministration.

Parliament is examining new legislation that will establish a more automatic link between disciplinary measures and the outcome of criminal proceedings. However, by introducing the possibility of assessing not so much the performance as the quality and the result achieved, the new system of managing public affairs, which is developing through the implementation of public administration reform under recently adopted legislation (*i.e.* Legislative Decree No. 29/1993 and Laws Nos. 59 and 127), may provide an effective method of promoting efficiency and productivity in relation to specific economic benefits. Economic issues are not ignored: the public administration must now keep staff salaries under control as a result of budgetary restrictions.

A law containing measures relating to the inculcation of moral standards in the public administration and combating corruption in general is the Consolidation Act on Civilian Employees in the State (approved by DPR No. 3 of 1957), which sets down in general terms standards in relation to incompatibility in employment. Legislative Decree No. 29/1993 applies similar rules to public officials under privatised employment contracts. Law No. 662/1996 in Article 1 (56 & 65) complements these provisions by introducing stricter standards in relation to incompatibility in employment and part-time jobs and establishing any breach of these standards as a "just cause for dismissal".

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The general incompatibility rules may be relaxed or tightened in particular circumstances. For instance, some absolute incompatibility rules are confined to administrative classes of officials and cases where the administration, under specific rules, has identified conflicts of interest with the official's particular activity. In other cases the rules on incompatibility on grounds of interest are tightened, extending the provisions to periods following termination of employment. This is the case with regulations to bar improper use of work-related procedures and knowledge acquired during employment. The rules bar tax officials from working as tax consultants for a period of five years following termination of employment with the administration, for retirement or on other grounds. There is also legislation which prevents former ministers from taking up government appointed posts until at least one year has elapsed from termination of their ministerial office.

i) Financial management controls intended to prevent or deter corrupt practices

A key lever of financial control, which is also used as a deterrent to counter embezzlement and corruption in public life, is the state budget. Recent examples of the broad scope for compromise between politics, the public sector structure and private operators have clearly shown how mechanisms for budget drafting and implementation, which go back to the Curti Law of 1964, have made it possible to identify public action programmes and administrative management guidelines. But, they have also contributed to a fragmentation of public policies and made it more difficult both to monitor the allocation of expenditure on specific purposes and check on responsibility for monitoring. This can easily lead to maladministration and corruption.

Following an attempt in Law No. 468 of 1978 to make the state budget more objective and transparent – it also introduced a duty to publish an annual budget in the form of a once-yearly Finance Act – a new structure for the state budget is now laid down in Law No. 94 of 1997. The new Law identifies a basic criterion to be a cross-over point between, on the one hand, a classification of state spending on "key functions" (*funzioni obiettivo*) – linked to the drafting of public sectoral policies, and possibly even measuring the product of administrative activities in terms of services to the public – and, on the other, a division into budget heads and "centres of administrative responsibility" headed by a civil servant who will administer the expenditure and be directly and personally responsible for it.

In this way, a close link is established between political direction, financial planning and management, and administrative action. The identification of "key functions" and the associated predetermination of effectiveness and efficiency indicators to be used in evaluating the outcomes of administrative action (highlighting the policies, interventions and services that public administrations are attempting to introduce) are also revealing indicators of managerial anomalies that may conceal suspicions of corruption or private interests. The sub-division into cost-centres clearly identifies the civil servant responsible and the relevant procedure. This makes it possible to implement laws on rights and on the responsibility of senior officials for technical and administrative management.

In the tax sector, an area particularly exposed to various forms of corruption, the relevant body is the SeCIT (*Servizio Centrale degli Ispettori Tributari* – Central Tax Inspectors' Service). This Service, which was set up in the Finance Administration (*Amministrazione Finanziaria*) to combat corruption, is charged with carrying out financial controls to ensure that citizens pay their taxes correctly. It also has the task of monitoring the behaviour of state departments and their senior officials in respect of their official procedures and their private behaviour and contacts with users. It was established by Law No. 146/1980. Article 9 states:

"The Central Tax Inspectors' Service:

a) monitors investigations that departments carry out by employing departmental inspectors with national authority; it also monitors inspections conducted by the *Guardia de Finanza*;

b) may, in exceptional circumstances, and to ensure that the enquiries referred to in *a)* above are properly conducted, also carry out inspections and controls and take part in inspections already being carried out by departments and the *Guardia di Finanza*;

c) in exceptional circumstances, carries out inspections and audits in relation to taxpayers about whom there are serious grounds for suspicion of large-scale tax evasion;

d) provides the Minister of Finance with proposals for the planning and implementation of investigative programmes.

The central Tax Inspectors' Service supplies competent tax offices with information and data that have been collected, together with the results of the inspections. In tax investigations, departments must take all items of information that they discover into account."

This Service, which the law identifies as a "staff unit" within the Ministry of Finance, is "atypical" compared with traditional hierarchical structures. It has links with other central bodies by means of senior officials of ministerial departments being members of a co-ordinating committee, where they pool key outcomes and proposals arising out of relations between inspectors. As the above legislation states, these outcomes are at three levels:

- proposals to the ministers relating to the planning of investigative programmes;
- communications from the competent finance offices (*Uffici Finanziari*) based on earlier inspections;
- proposals to the minister concerning action to be taken on any criminal or administrative irregularities that have been uncovered.

j) Organisational management policies, systems and controls intended to minimise opportunities for corrupt activity

The system of controls has also been improved by shifting the focus from prevention to effectiveness. Of particular importance in this has been Article 17 of Law No. 127/1997, which represents the high point in the reform of administrative controls that can be carried out without amendments to the Constitution. This legislation deals specifically with state controls over administrative action in the regions, and limits state control to the legitimacy of the managerial statement of accounts. Accordingly it has given commissions and individual regional administrators full and autonomous responsibility for all other activities. Similarly, as far as other local bodies are concerned, the law has greatly reduced the number of actions that come under the control of appropriate regional monitoring committees. Instead, the latter have been given the task of meeting requests for evaluation tools relating to the adoption of actions or measures of exceptional complexity or rarity (sub-sections 31-45).

The combined effect of Legislative Decree No. 29/1993 and Law No. 94/1997 is to re-organise the various types of control and shift the focus decisively towards control over outcomes. This is achieved by broadening and reinforcing the system of internal controls, expanding a central inspectorate body, and using outside experts. Control has been transformed from being an instrument for observing formal legitimacy into an agile "detector" capable of preventing illegal practices that had escaped the old system of administrative controls for decades.

The new system of controls is based on the work of the internal audit services set up under Article 20 of Legislative Decree No. 29/1993, and of *Procure regionali* (Regional Monitoring Units) in the *Corte dei Conti* (State Audit Court – a body that carries out checks on public sector expenditure) (Laws Nos. 19 and 20 of 1994). Through internal controls, and the external control provided by the State Audit Court, the law provides for the use of inspectorate controls not only for the purposes of regular auditing, but also in investigations associated with organisational analysis, assessment of the effect of results, and taxpayer satisfaction.

In addition to the internal inspectorates, the law provides for two inspectorates with general authority. These are the General Inspectorate of Finance (*Ispettorato Generale di Finanza*), which was set up under Law No. 1037/1939 within the Ministry of the Treasury (State Budget Office), and the Public Sector Inspectorate (*Ispettorato della Funzione Pubblica*). The latter was located within the Presidency of the Council of Ministers (Public Sector Department) under Law No. 93/1983 as amended by Legislative Decree No. 29/1993. These inspectorates have extra-hierarchical competencies and powers, and are usually engaged in "horizontal" investigations involving comparative calculations and evaluations of comparable sectors, and focus on functions and centres of responsibility.

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k) Transparency mechanisms,* e.g. *independent or public scrutiny, systems for declaring or reporting potential conflicting interests or corrupt activity

Law No. 241 of 7 August 1990 may be seen as the basis of the legal mechanism which aims to achieve transparency in administrative activity and identify any conflicts of interest by making all administrative documentation public, or at least more accessible. The law contains general rules on the work of the public administration, and it is also a "law of principle" applicable to every administration of the state and of local bodies.

Some of these principles are expressly referred to in Chapter I. They are:

- the cost, efficiency and the "publicness" of administrative action;
- a ban on overloading the procedure except in the case of exceptional, justifiable requirements that occur by the course of the investigation;
- a duty to perform a service following an express undertaking to do so;
- the prior determination and publication of how long it will take for each type of procedure to be completed; and
- the duty to justify all administrative investigations except normative investigations and those of a general nature.

Other principles may be implicitly inferred from the legislation. The most important is certainty as to when a procedure will be completed. The implications of this principle are the uniqueness of completing the entire procedure and its *a priori* determination.

To translate these principles into practice, Law No. 241/1990 contains a number of provisions that need to be implemented at a later date and that require secondary legislation from individual administrations or the government. For example, each administration must fix times by which procedures have to be completed, appoint appropriately authorised officials responsible for procedures, draw up criteria for allocating economic benefits, and adopt organisational measures capable of ensuring the right of access and enforcement of the law on self-certification. For its part the government must establish, through its own legislation, which of the current controls on private sector activity shall be eliminated and regulate how a right of access is to be exercised.

Full, wide-ranging implementation of Law No. 241/1990 was slow, laborious and frequently erratic, but it has received a decisive boost through the adoption of Law No. 127 of 15 May 1997. By introducing new rules relating to procedures and administrative simplification and by finally implementing Law No. 15 of 4 January 1968 on self-certification, this new legislation has amended Law No. 241/1990 on procedure and right of access to administrative documents. It achieved this by speeding up the "basket of services" (*conferenza di servizi*) procedure and eliminating other hidden recesses of formal bureaucratic resistance in which embezzlement or corruption could still be concealed (Article 14).

In monitoring elected officials and members of Parliament Law No. 441 of 5 July 1982 is of fundamental importance to the prevention of corruption. This requires an annual statement of income and outgoings from:

- members of the Republic of the Senate, the Chamber of Deputies, the President of the Council of Ministers;
- ministers;
- under-secretaries of state;
- regional councillors; provincial councillors;
- councillors on councils of provincial capitals or towns and cities with a population of over 50 000; and
- presidents, vice-presidents, managing directors and directors-general of public institutes, public bodies and even publicly-owned companies whose appointment, proposal, nomination or approval of appointment is placed before the President of the Council of Ministers, the Council of Ministers or individual ministers.

The law also extends the duty to make declarations to the *anagrafe patrimoniale* as follows:

- to presidents, vice-presidents, elected administrators and directors-general of companies in which the state and public bodies have a holding where they have a stake or holding exceeding 20%;
- to presidents, vice-presidents, elected administrators, and directors-general of companies and private institutes that the state is involved in administering and public bodies where the holding comes to more than 50% of all operating costs published in their budgets, and where these costs exceed L 500m annually;
- to directors-general of autonomous state companies; and
- to directors-general of special companies covered by Royal Decree No. 2578 of 15 October 1925, and of councils of provincial capitals and of towns and cities with a population of over 100 000.

*l) Guidance and training for public officials or politicians (***e.g.** *codes of conduct, ethics awareness training)*

Guidance and training for politicians, a matter on which public opinion frequently expresses its views, is the subject of wide-ranging debate in relevant parliamentary settings such as the Bicameral Commission (*Commissione Bicamerale*).

In the ethical training of public servants it follows that the employee's natural disposition plays a key role. As far as training is concerned, the administration runs courses at various levels. These mostly focus on professional aspects of a department's work, but they also include all factors that might directly or indirectly help employees develop a well-grounded ethical consciousness of what the job involves.

The development of an understanding of ethical issues is dealt with in great detail at training and refresher training schools run by the police (*i.e.* the Carabinieri, the *Guardia di Finanza* and the State Police [*Polizia dello Stato*]). Here, much emphasis is placed on *esprit de corps* and on the maximum development of "internal motivation" (close identification with the objectives of the institution and a more deeply felt and profound sense of moral responsibility towards it) as distinct from "external motivation", which is achieved by focusing on extraneous aspects of the job such as career, social status, pay and employee benefits.

Beyond this, it is important to bear in mind that many instances of corruption could be prevented by paying attention to each employee's personal situation and background. By moving as speedily as possible to resolve problems which might, at first glance, appear to have nothing to do with the police service (*e.g.* tax and housing issues), the risk of employees' "vulnerability" is greatly reduced.

For corruption to be prevented, it is now recognised that it is essential for all civil servants and public administration employees to be informed of the values and common principles inspired by the high standards of impartiality, high level of performance and service to the public that characterise the public administration under our constitutional framework.

Article 58-bis of Legislative Decree No. 29/1993, which was brought into force by Legislative Decree No. 546/1993, provided that, after the views of the main representative trade union confederations had been heard, the President of the Council (Public Sector Department) should draw up a Code of Behaviour for employees of public administrations. The Council was also to deal with any organisational measures required to ensure the quality of services that these bodies give to the public. Article 58-bis also states that a copy of the Code shall be handed to employees when they start work, and that the President of the Council hands the "regulations" (*direttivi*) to ARAN (*Agenzia per la Rappresentanza Negoziale delle Pubbliche Amministrazioni* – Agency for Business Representation in Public Administrations) so that the Code is included in agreements affecting all civil service categories.

In accordance with Article 58-bis, the Code of Behaviour of Employees of Public Administrations was published in a DPCM (*Decreto del Presidente del Consiglio dei Ministri* – Presidential Decree) of 31 March 1994. It was intended to form a basic corpus of rules of behaviour conforming with the above principles of impartiality, high level of performance and public service. The Code also provides that regulations (*direttivi*) issued by the President of the Council to ARAN should also be amended "to co-ordinate the principles

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[set out in the regulations] with the issue of disciplinary responsibility" (now a condition of the employment contract), and that General Affairs and Staffing Offices (*Uffizi affari generali e personale*) of individual administrations should ensure that the Code is complied with, and that employees are given counselling where necessary. Finally, the Code states that it must be reviewed every four years on the basis of information and suggestions arising from practical experience.

The Code was subsequently included in agreements in the course of state and para-state negotiations covering the various categories of the civil service. As civil service agreements had not previously had the task of co-ordinating the Code's principles with the matter of disciplinary responsibility, the Code itself had continued to be no more than a code of ethics, adherence to which was not supported by effective controls and sanctions.

To deal with this anomaly, Article 11(i) of the recently adopted Law No. 59/1997 gives the government legislative authority "to draw up, on behalf of the President of the Council of Ministers (Public Sector Department), a Code of Behaviour for Employees of Public Administrations, to determine ways of linking it to contractual rules covering disciplinary action, to adopt codes of behaviour on behalf of individual administrations", and "to set up, on behalf of individual Administrations, bodies for monitoring and advising on the application of the Code and ways of linking these bodies to the public sector department."

Article 17(22) of the aforementioned Law No. 127/1997 states that senior public servants are also covered by the provisions of Article 12 of Law No. 441/1982 relating to a duty already binding on holders of elected positions and managerial posts in certain public bodies to make declarations to the *anagrafe patrimoniale* (register of personal assets). It has thus created an instrument for controlling corruption by introducing a powerful dissuasive element in dealings both with senior public servants and with citizens.

m) Other measures intended to control, detect or deter corruption

The fight against corruption is also actively pursued through a series of wide-ranging interventions and through inter-ministerial action coordinated by the Public Sector Minister. In this context, wide-ranging investigations have recently been carried out, including one into the regularity of direct recruitment of disabled civilians by public administrations.

There have also been activities aimed at introducing an ethical attitude to the use of public assets. These have included an investigation into telephones in the public sector, and the subsequent publication of a general regulation on the use of telephones and telematic technology in public administrations, and rules designed to regulate and restrict the use of vehicles owned by the public administration (Finance Law No. 662/1996).

2. Which anti-corruption mechanisms are regarded as most effective (in terms of implementation and impact)?

In simple terms, it may be said that the mechanism that has produced the most immediate, self-evident and wide-ranging results in the fight against corruption was set up by the specialist structures of the criminal judiciary (*Magistratura penale*). We refer here to the results obtained by the Milan Auditor (*Procura*) and, even more extensively, by the specialist anti-Mafia judiciary in its coordinating role in all areas of Mafia concentration and organised crime.

3. Is the effectiveness of these mechanisms formally evaluated? If so what methods are used?

The effectiveness of mechanisms for combating corruption is one of the issues most frequently debated in political and institutional circles and by members of the public generally. Evidence for this is to be found in the work of two bodies:

- the Study Committee (*Comitato di studio*), which was set up on the orders of the President of the Chamber of Deputies on 27 September 1996 and concluded its work with a report presented to the President of the Chamber of Deputies on 23 October 1996; and

- the Study Commission (*Commissione di studio*), which was set up under a Decree issued jointly by the Public Sector Minister and the Minister of the Treasury on 7 November 1996 and officially presented its final deliberations on 24 October 1997.

This Study Commission was charged with carrying out an examination of, and formulating proposals to deal with, instances of malpractice and illegality uncovered in the public administration and in companies with state holdings. The aim was to improve the quality of administrative action and prevent illegal activities and conduct. In concrete terms, the Commission has said that, apart from specific new interventions in particular sectors, the main problem appears to be how to ensure that measures – some of which have been existence for many years – are put into practice.

The Commission has also made it clear that corruption in the public administration will not be rooted out by introducing additional legislation or increasing the severity of penalties. It has also stressed how excessive decline in the influence of political parties over all types of public decision has often contributed decisively to the decline of the public administration. This was why there was a need to reinforce the independence of senior civil servants from political pressures, and to encourage geographical mobility among public sector employees so as to prevent "the upright and impartial exercise of their functions from being undermined by local links".

4. What, if any, new action against corruption in the public sector is your country currently considering?

The Special Commission for the Prevention and Repression of Corruption, which was appointed by the Chamber of Deputies, has completed its work. On 6 March 1997 it presented a report on a series of laws brought together in a single Act which is currently before the Senate.

This draft legislation, which was approved unanimously by the Special Commission, expressly proposes two "principles of law" – a high level of performance and impartiality in administrative organisation – which are ratified by Article 97 of the Constitution. The remaining 29 articles contain tough measures designed to prevent or repress corruption in the public administration. These include four new provisions:

- The introduction of a "Guarantor of Legality and Transparency in Public Administration work".
- Transparency in political and administrative activity through the publication of the income and assets of everyone holding a political or administrative post.
- The registration and control of associations and companies that do lobbying work.
- The publication of an "Official Bulletin of Contract Work in the Public Administration". This has been designed as a special series of the *Gazzetta Ufficiale della Repubblica* (an official publication containing all new legislation), and it will publish all announcements of competitions, and all jobs and consultancies carried out by public employees.

The measures drawn up the Parliamentary Commission aim to combat corruption by means of external devices designed to divert public servants from any unlawful temptation in their professional work.

The draft legislation also provides for the introduction into our legal system of regulations covering lobbying firms. That is to say, groups of private individuals who, through proposals, suggestions and financial outlay, lawfully influence and guide the legislative and administrative activity work of their political "masters" and promote the interests of groups, categories and companies. Lobbying has become institutionalised through the introduction of public registers of lobbying firms into the offices of the President of the Senate, the Chamber of Deputies and the Guarantor of administrative transparency. These registers list all the operations, funding and activities relating to every lobbying firm.

A well-focused political debate on the potential of general anti-corruption legislation is currently taking place. It includes the establishment of the Guarantor of legality and transparency in public administration. This body completely ignores interventions relating to malpractice in different sectors, and instead concentrates almost exclusively on monitoring civil servants, and ascribes every successful

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outcome to an asset-monitoring exercise carried out by the Guarantor overseeing politicians, public administrators and, above all, administrative public servants.

5. Is there an official awareness or a policy position on the part of the government about which areas are of most concern in terms of corrupt or questionable activities involving the public sector?

The government-appointed Study Commission has more specifically focused on controlling instances of "objective corruption". Its recently completed work has employed a series of checks and analyses to highlight the existence of considerable malpractice in key sectors of the public administration.

Until now the government has primarily tried to solve these problems through legislative reform, the pace of which has significantly increased since the beginning of the 1990s. Numerous problems still remain, however, such as the precarious and shifting balance between policy direction and administrative action, difficulties in establishing clear and transparent decision-making procedures, and the problems involved in changing over from an unclear and complex state budget to the orderly financial planning of public policies.

There are also rigidities in formal monitoring procedures that have failed to improve performance, such as:

- sound procedures but inadequate management structures for the awarding of government procurement contracts;
- substantial privatisation of publicly owned companies that is far from complete and threatens to leave privatised companies with many of the attributes of the public sector; and
- the tendency of government to interfere excessively in the management of private or public shareholding interests.

The fact that these shortcomings and administrative dysfunctions continue to be found in so many different fields weakens the entire system and fosters corruption. The unlawful behaviour of civil servants that has been observed, although no greater than that found among politicians and businessmen, is not the cause but rather the symptom of this process of disintegration. This means that solutions to these problems must be found for each individual sector, as we have attempted to show. This will not only require legislation, but, more importantly, provisions to enforce such legislation and concrete administrative action.

Repressive measures against individuals cannot be expected to solve all problems. The possible action that could be taken to correct the problems of "objective corruption" found in the various sectors of the administration may be summarised as follows:

- to reinforce responsible decision-making by senior civil servants by ensuring that they are as independent from political pressure and influence as possible;
- to encourage the geographical mobility of civil servants;
- to upgrade the skills of technical staff in the public administration, starting with the staff of the Ministry of Public Works and the Ministry of National Patrimony;
- to overhaul rules of ethics for staff by linking closely codes of conduct and disciplinary sanctions;
- to increase administrative transparency by computerising procedures and strengthening the Commission for Access to Administrative Documentation;
- to introduce the use of formal public enquiries in regional and urban planning procedures and major infrastructure projects;
- to simplify administrative procedures, starting with those involving "concessions" in various sectors (radio and TV broadcasting, telecommunications, transport networks and automated information services);
- to step up efforts to streamline and simplify administrative procedures;

- to establish a direct link between administrative reform and the reform of the state budget by promoting training in budgetary techniques;
- to extend the internal monitoring services of each administration and strengthen the General Inspectorate of Finance;
- to set up "contract offices" in all administrations;
- to reinforce the technical offices responsible for planning public works;
- to rationalise procurement of goods and services by administrations by granting planning autonomy to cost-centres;
- to ensure complete transparency in the privatisation of publicly owned companies;
- to increase the staff of the services of the General Directorate of the Treasury as required by the privatisation of publicly owned companies;
- to ensure more formal decision-making processes by the Treasury when it exercises its rights as majority shareholder of publicly owned companies;
- to create a special agency at the disposal of the government responsible for preparing and implementing the necessary anti-corruption measures.

In conclusion, with regard to ethical standards in the public administration, the Commission sets out the following public strategy to be pursued through a broad range of tools adapted to the type of action required to introduce new measures.

a) Administrative activity

Purely administrative tools can also be used to develop a wide range of programmes, at differing levels, to train staff in the use of computer applications for administrative, budgetary and accounting procedures, for example, and techniques for measuring, evaluating and constructing effectiveness and efficiency indicators.

b) Collective bargaining

Collective bargaining can also be used to introduce measures concerning technical staff, staff mobility, job rotation and the linkage between codes of conduct and disciplinary sanctions.

c) Governmental and administrative directives

These directives can be used to establish criteria for government procurement of goods and services and the co-ordination of associated contracts, and to provide guidelines and instructions regarding the extent to which the government may exercise its powers as a shareholder in joint stock companies being privatised and any "special powers" in privatised companies.

d) Regulations

Government regulations may be used in lieu of legislation to create and set up contract offices and planning offices within ministries, to reorganise offices that co-operate directly with ministries and to eliminate, replace or simplify administrative procedures. The statutory regulations governing the organisation of local bodies may be used to lay down criteria concerning the limits and conditions applicable to the political appointment of senior officials.

e) Legislative decrees

As provided for under Laws Nos. 59 and 94 of 1997, legislative decrees may be issued to ensure that central internal monitoring services, linked to statistical offices, are established within ministries to reorganise monitoring systems and especially the network of central budget offices; to lay down criteria for staff mobility following the decentralisation of functions from the central to the local level; to address

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organisational and structural aspects of training; and to establish cost monitoring mechanisms, in particular with regard to contracts.

f) New legislation

New legislation may also be necessary to encourage staff mobility, set new rules for the privatisation of publicly owned companies, enact annual provisions converting legislative measures into regulations and simplifying administrative procedures, reinforce the Commission for Access to Administrative Documentation, establish an automatic link between disciplinary sanctions and certain penal sanctions applied to civil servants and to introduce regulations requiring that public enquiries be made a mandatory component of complex planning procedures.

One should have no illusions that reform can be achieved "at zero cost", for the fact is that corruption in the public administration cannot be fought without a major investment of resources. As the work of the Parliamentary Commission mentioned earlier clearly showed, the action required to eliminate the situations that foster "subjective corruption" in the public sector must be aimed at eliminating administrative dysfunction and ensuring the basic conditions of sound administration that significantly reduce opportunities for corruption. It is now agreed that, to prepare and implement these measures, the government must create a special operational agency that will systematically deal with these issues over a period of at least five years.

The successful implementation of legislation on administrative reform as wide-ranging as that enacted in 1997 and the need to eliminate the conditions that foster objective corruption in major sectors of the Italian administrative system make the use of such instruments, which have long been used in countries that are models of sound administration, a necessity.

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JAPAN

1. What anti-corruption mechanisms exist for the public sector in your country?

a) Legislation proscribing corrupt activities and establishing sanctions

The National Public Service Law provides legislation relating to the discipline of national public employees in the regular service. It includes the prohibition of any act which may cause discredit to the public service. The violation of this legislation is punishable under the disciplinary punishment rules provided by the National Public Service Law.

b) Other anti-corruption regulations or orders

The Public Service Officials Ethics Codes of conduct: They are established by every ministry and agency and applied to its public service officials. They prescribe prohibited matters about contacts with concerned businessmen.

c) Oversight by the legislature or parliament (directly or through scrutiny committees)

Based on the Constitutional right of the Diet to investigations in relation to government, the standing committees and the special committees of the House of Representatives and the House of Councillors may, for the purpose of administrative supervision, request the presence of state ministers or government officials for explanation or interpellation on matters within their jurisdiction, and demand the presence and testimony of sworn or unworn witnesses and request the Cabinet, government and public entities' offices and others to produce reports and documents, etc. The joint examination committees set up by the standing committees of both the Houses of Representatives and House of Councillors have similar authorities as stated above.

No committee has been set up specifically for the purpose of preventing corruption of national public officials within either of the two Houses, although the Cabinet Committees of both Houses handle matters related to public officials. Other standing committees and special committees also take up corruption cases in the ministries and agencies of their jurisdiction for investigation.

At present, the Committee on Audit of the House of Representatives plays the role of administrative supervision by examining the audit of the national accounts, but a plan is being considered to restructure it and establish a committee on audit and administrative supervision with supervisory and advisory authorities.

The deliberative councils on political ethics of each House may, for the purpose of establishing political ethics, examine whether members of the respective Houses have considerably violated the laws, rules or regulations designated by the Speaker of the House of Representatives (or the President of the House of Councillors) for the purpose of establishing political ethics. When members of the respective House are deemed responsible politically and ethically, the deliberative councils may recommend the Members, etc., in question against whom the action has been brought for the examination proceedings to refrain from attending Diet sessions for a specified period of time.

Members of the Diet must abide by the principles of political ethics to be established by a decision of each House in carrying out political activities with the conscience and the responsibility as politicians.

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In addition, members of the Diet are obliged to submit reports on their financial assets based on the law on Disclosure of Financial Assets of the members of the Diet for the Establishment of Political Ethics.

d) Investigation systems or bodies with powers to investigate corrupt activity

No.

e) Supreme financial audit authority

As a Supreme Audit Institution, the Board of Audit audits public sector agencies according to provisions of the Board of Audit Law. Established by Article 90 of the Constitution of Japan, the Board of Audit is independent of the Executive, Legislature and Judiciary.

The Board's audit viewpoints comprise accuracy, regularity, economy/efficiency and effectiveness of public sector operation. Although the primary purpose of the Board's audit is not crime prevention/investigation, the Board can check and prevent accounting crimes and other illegalities, particularly by checking accuracy and regularity. For these purposes, the Board co-operates with internal audit departments of auditee agencies.

The Board of Audit Law provides the Board with other relevant authorities such as:

- adjudicating liability of accounting officials;
- demanding accounting officials to take disciplinary action;
- notifying accounting crimes to the Public Prosecutor's Office;
- settling claims for government accounting.

f) Ombudsman

No.

g) Bodies to enforce sanctions and prosecute corrupt activity,* e.g. *specialised prosecutors, investigators, courts, tribunals, etc.

No.

h) Human resources management procedures intended to prevent corruption

There is a policy, based on a cabinet decision, that due consideration should be given in the appointment of national public employees so that an individual officer shall not occupy a post responsible for budget implementation or licenses for a long period of time. In addition, various kinds of training for ethics awareness are provided.

i) Financial management controls intended to prevent or deter corrupt practices

Yes. The Board of Audit makes external audit controls of public organisations' financial management, co-operating with internal audit departments.

j) Organisational management policies, systems and controls intended to minimise opportunities for corrupt activity

Every ministry and agency has managers of the public service discipline and a general manager of the public service discipline.

k) Transparency mechanisms,* e.g. *independent or public scrutiny, systems for declaring or reporting potential conflicting interests or corrupt activity

No. Such a system does not exist for national public employees in the regular service.

l) Guidance and training for public officials or politicians (e.g. codes of conduct, ethics)

The National Public Service Law provides legislation relating to the discipline of national public employees in the regular service. Based on an agreement reached by administrative vice-ministers meeting in 1996, each ministry and agency has since established the code of conduct.

With regard to training of public officials, in order to maintain high standard of ethics, lectures on and discussions of pertinent ethical issues are included in inter-departmental training courses conducted by the National Personnel Authority and in ethics training programmes conducted by each departmental office for its own personnel.

m) Other measures intended to control, detect or deter corruption.

No.

2. Which anti-corruption mechanisms are regarded as most effective (in terms of implementation and impact)?

Comprehensive measures are indispensable to maintain a high standard of ethics in the public sector.

3. Is the effectiveness of these mechanisms formally evaluated? If so, what evaluation methods are used?

Those are evaluated as a part of evaluation of activities of the executive branch of the government.

4. What, if any, new actions against corruption in the public sector is your country currently considering?

As one of the measures to enhance the high level of ethical standards in the national public service, the National Personnel Authority is currently reviewing the disciplinary punishment system.

5. Is there an official awareness or a policy position on the part of your government about which areas are of most concern in terms of corrupt or questionable activities involving the public sector?

[No answer provided.]

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KOREA

1. What anti-corruption mechanisms exist for the public sector in your country?

a) Legislation proscribing corrupt activities and establishing sanctions

The Criminal Code proscribes as crimes abandonment of duties, abuse of authority and divulgence of official secrets committed by all public officials in central and local levels of governments. This code can also be applied to people directly or indirectly working for governments, *e.g.* civilian members of various kinds of committees within governments, as well as to employees in quasi-public organisations.

The Act for Extra Penalties on Specific Crimes prohibits public officials from taking a bribe, causing loss of the treasury, peddling influence, and disclosing official secrets. Based on this law, extra penalties over those prescribed by the Criminal Code can be imposed on corrupt government officials. This law aims to maintain a clean and sound order within society by rooting out corruption practised by civil servants in all levels of governments.

The Special Act for Confiscation of Graft, enacted in 1995, has provisions to seize illegal profits that public officials gain through bribe-taking and other corrupt activities. The Act covers all government officials.

The National Civil Service Act prescribes general duties and prohibitions of all public officials. The duties are:

- fidelity, kindness and impartiality, integrity, keeping secrets, obedience and maintaining dignity.

The prohibitions are:

- deserting from office, engaging in lucrative business and holding concurrent jobs while in office, and political campaigning.

The National Civil Service Act also has direct provisions against corruption on the part of public officials. The law prevents public officials from receiving or giving directly or indirectly any reward, donation, or entertainment in connection with their duties. Under the law, no public official shall give any donation to his or her superior officer, or receive any donation from his or her subordinates, regardless of any connection with his or her duties. Without permission of the President, public officials also are prohibited from receiving any honour or donation from a foreign government.

The Act is applied to all national public officials working at each government agency. For government officials working on local levels of government, the Local Civil Service Act describes the same prohibition.

Under the National Civil Service Act, public officials (except those prescribed by Presidential Decree, for example, the President, the Prime Minister, and ministers, etc.) are prohibited from participating in an organisation of, or joining in, any political party or other political organisation and are not permitted to commit the following acts:

- soliciting any person to cast or not cast a vote;
- attempting, superintending, or soliciting a signature-collecting campaign;
- promising other officials any advantage as a reward or threatening a disadvantage as a retaliation for a political act.

The criminal code and the National Civil Service Act in Korea also proscribe the divulgence of confidential secrets committed by all public officials.

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b) Other anti-corruption regulations or orders

Report and Disclosure of Public Officials' Property

The Act on Ethics in Public Service aims to secure fairness in public service by preventing public officials from accumulating unlawful property. The Act institutionalises the registration and disclosure of the reported property of both public officials and candidates for elected public office. The Act covers high-level officers in public service-related organisations as well as all public officials in the executive agencies, the legislature and the judicial bodies. Under the law, national and local public officials higher than Grade 4 (director or equivalent level in the central government) as well as office holders of selected positions in public service-related organisations have to report their property to the registration agency and renew their report annually. The registered property of public officials higher than Grade 1 (deputy minister or equivalent level in the central government) shall be made public through the official Gazette or public bulletins.

Restriction on Employment of Retired Public Officials

The Act on Ethics in Public Service also restricts re-employment of any retired public official within two years after retirement. According to the law, no public official or officer or employee of a public service-related organisation may be employed in a profit-making private enterprise connected closely with affairs which he or she took charge of within two years before he or she was retired.

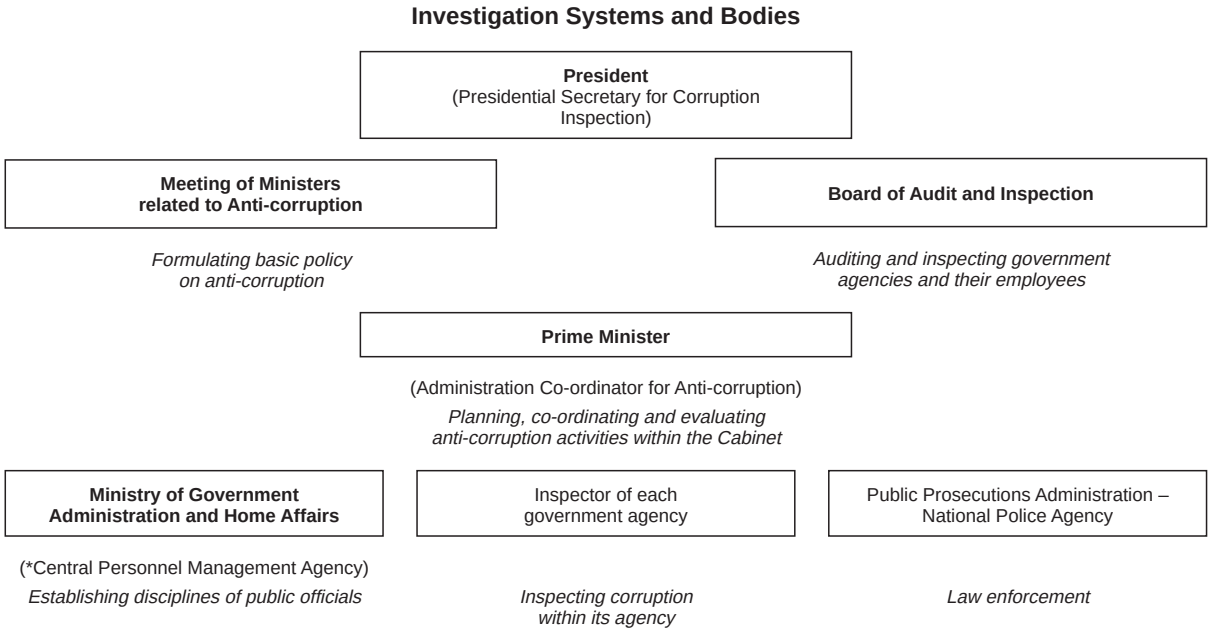
Pension Reduction on Corrupt Public Officials

The Public Service Pension Law reduces the pension by half of public officials who received penalty, impeachment or disciplinary dismissal on grounds of corruption.

c) Oversight by the legislature or parliament (directly or through scrutiny committees)

Under the Act on the Inspection and Investigation of the State Administration by the National Assembly, the National Assembly can oversee the state administration through both inspection and investigation. Investigation can be carried out on specific matters if over a third of members of the National Assembly call for it.

d) Investigation systems or bodies with powers to investigate corrupt activity



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e) Supreme financial audit authority

The Board of Audit and Inspection founded on the Constitution has the right to audit the settlement of accounts of revenues and expenditures of the state and constantly audit any other accounts prescribed in both the Board of Audit and Inspection Act and other laws in order to ensure their correctness. Accordingly, the Board can cover accounts of central and local governments, the central bank, and government-funded organisations. If the Board has found an illegal fact or a corrupt public official in the process of its inspection, it can request the pertinent minister or the head of the organisations concerned to correct it or take disciplinary action against him or her. Although the Board is established under the President, its independence from the President in regard to its duties is fully guaranteed by the Constitution.

f) Ombudsman

The Public Grievances Commission, the Korean version of ombudsman, investigates complaints raised by citizens and endeavours to settle all conflicts between citizens and government agencies in a fast and fair way. The Commission also plays an important role in promoting legal and administrative reforms by recommending that government agencies improve their laws, systems and policies. All complaints against illegal or improper administrative dispositions filed by citizens fall within the sphere of the Commission. The decision of the Commission does not directly bind the administrative agencies, but they have to make reports to the Commission upon its recommendations. Although the Commission is established under the Prime Minister, its independence in regard to its duties is fully guaranteed by the law.

g) Bodies to enforce sanctions and prosecute corrupt activity, **e.g.** *specialised prosecutors, investigators, courts, tribunals, etc.*

The Public Prosecutions Administration, a central government agency, is given the authority to enforce sanctions prescribed in the laws and prosecute corrupt activity. When it comes to enforcement of sanctions and prosecution, no other bodies, such as specialised prosecutors, exist.

h) Human resources management procedures intended to prevent corruption

Restriction on Reemployment of Corrupt Public Officials

Under the National Civil Service Act, a person who has been dismissed from his office by a disciplinary action on account of corrupt activities is excluded from re-employment for three to five years.

Restriction on employment of retired public officials

Under the Act on Ethics in Public Service, as mentioned above, no public official or officer or employee of a public service-related organisation can be employed in a profit-making private enterprise connected closely with affairs of which he or she took charge within two years before he or she was retired.

Ban on engaging in lucrative business or holding profit-making jobs

Under the National Civil Service Act, no public official shall be engaged in any business aiming at profit-making other than public service, and hold concurrently other profit-making jobs. Furthermore, the public official is prohibited from investing money in an enterprise connected closely with affairs of which he/she takes charge while in office.

i) Financial management controls intended to prevent or deter corrupt practices

When it comes to financial management controls, the Korean government has the Accounting Responsibility Act, which prescribes the responsibility of a public official who takes charge of accounting. In accordance with the provisions of the Law, any accounting official doing damage to the state is liable for compensation.

By the Special Act for the Confiscation of Graft, as stated above, public officials' illegal profits through bribe-taking and other corrupt activities are to be seized.

The "Real Name Financial Transaction System", introduced in 1993, indirectly helps reduce possibilities of corruption in the public sector. This system requires that Korean citizens hold financial accounts under their true names. The past practice of holding under false names had been said to be a main cause of the "underground economy" lying at the root of corrupt activities in the public sector. The Act on Ethics in Public Service enables the Public Official Ethics Committee to investigate bank accounts of public officials in connection with their property registrations, and to take disciplinary action.

j) Organisational management policies, systems and controls intended to minimise opportunities for corrupt activities

In an effort to fundamentally minimise possibilities of a public officials being involved in corrupt activities while processing administrative dispositions, such as issuing a permit, each government agency endeavours to cut down administrative procedures and to eliminate unreasonable administrative requirements.

In addition to this, the Korean government recently made strong efforts to reduce the scope of intervention of the government through overall deregulation and to enhance the freedom of the private sector. In this regard, the activities of the Presidential Committee for Administrative Reform, established in 1993, have been fruitful.

k) Transparency mechanisms, e.g. *independent or public scrutiny, systems for declaring or reporting potential conflicting interests or corrupt activity*

Activities of the Commission for the Prevention of Corruption

In an effort to listen to the public about anti-corruption activities of the government, the Commission for the Prevention of Corruption, an advisory commission, was established under the Board of Audit and Inspection in 1995. The members of the Commission are mainly prominent scholars and civil activists. The major responsibility of the Commission is to identify structural problems of corruption in the public sector and to suggest measures against it to the head of the Board.

The Act on Public Procurement prescribes rules and procedures of public procurement aiming to increase the transparency and efficiency in public procurement.

In an effort to strengthen openness and fairness in the recruitment of public officials, public officials can be appointed principally through an open competitive examination by the National Civil Service Act.

The Government Information Disclosure Act, enacted in December 1996, guarantees people's freedom of access to administrative information on public documents, films, tapes, drawings, etc., held by the government at local or central level as well as state-owned business and facilities.

The Act on Political Funding requires political parties to disclose the state of incomes and expenditures of their political funds.

*l) Guidance and training for public officials or politicians (*e.g. *codes of conduct, ethics awareness training)*

As duties of public officials, The National Civil Service Act prescribes fidelity and integrity, maintaining dignity, prohibition of lucrative business and political campaigning while in office. These duties are concretised in the Public Service Ethics Charter, one of the codes of conduct.

Each government agency continuously makes efforts to keep its public officials aware of these codes of conduct through various training programs.

m) Other measures intended to control, detect or deter corruption

Among Korean citizens, the telephone number 188 is well known. By dialling 188, any citizen can report corrupt actions of public officials to the Board of Audit and Inspection.

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2. Which anti-corruption mechanisms are regarded as most effective (in terms of implementation and impact)?

Although many anti-corruption mechanisms as mentioned above are used in the Korean government, administrative and preventive actions against corruption are blamed for not being as effective as expected. Traditional methods against corruption, *e.g.*, punishment through prosecution or law enforcement are said to be still most effective in Korea. Also, activities of the Board of Audit and Inspection appear to have a significant impact on preventing corrupt activities.

3. Is the effectiveness of these mechanisms formally evaluated? If so, what evaluation methods are used?

Although there is no formal method of evaluation on the effectiveness of anti-corruption mechanisms within the Korean government, both the Board of Audit and Inspection and the Prime Minister's Office periodically analyse and evaluate the problems of the anti-corruption mechanisms as one of their ordinary functions.

4. What, if any, new actions against corruption in the public sector is your country currently considering?

Enactment of the Anti-corruption Act is currently under active discussion within the government and the National Assembly as one of the enhanced efforts to root out corruption in the public service. In addition to this, proposals for the revision of the Act on Ethics in Public Service, which aims to strengthen the authority of reviewing the registered property of public officials, are being drafted.

The Korean government recently has taken drastic steps toward deregulation. The Framework Act on Administrative Regulation was enacted last August to establish the constant regulatory reform structure within government. The Act aims to cut down anti-competitive administrative regulations, thereby anticipating fundamentally to minimise possibilities of public officials' being involved in corrupt activities.

5. Is there an official awareness or a policy position on the part of your government about which areas are of most concern in terms of corrupt or questionable activities involving the public sector?

The Korean government regards anti-corruption as one of the most important tasks that it has to resolve for successful administrative reform and national development in the coming 21st century.

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MEXICO

1. What anti-corruption mechanisms exist for the public sector in your country?

a) Legislation proscribing corrupt activities and establishing sanctions

- the Constitution;
- the Federal and Local Criminal Codes;
- Law of Acquisitions and Public Works; and
- the Federal Law of Responsibilities of Public Servants.

Besides the foregoing, the Federal Penal Code clearly defines the crimes that may be committed by public servants such as:

- undue use of attributions and faculties;
- extortion;
- intimidation;
- abusive exercise of functions;
- traffic of influence;
- bribery;
- embezzlement; and
- illicit enrichment.

In these cases, a normal criminal procedure is in order.

The Federal Law of Responsibilities of Public Servants also establishes: administrative responsibilities in cases where the public servant does not fulfil his or her obligation to guarantee legality, honesty, loyalty, impartiality and efficiency during his or her term of employment or commission; a full range of specific obligations relating to private conduct *vis-à-vis* superiors, subordinates and peers and requiring him or her to refrain from participating in matters in which he or she may have a personal interest; and a series of other obligations. Administrative responsibility may entail suspension or loss of employment, public or private admonition, economic sanction or temporary incapacity.

b) Other anti-corruption regulations or orders

The Interamerican Convention Against Corruption, which, having being ratified by Mexico, is already part of its legal system. The Modernisation Programme for Public Administration, 1995-2000, which establishes plans for the dignification, professionalisation and ethics of Publics Servants. The Law of State Secretariats, which establishes the competence of the Secretariat of Comptrollership to inspect all public expenditure; to audit, organise and co-ordinate the administrative activities of all entities of the Public Administration for the purpose of detecting and sanctioning illegal acts; and, when necessary, to place responsibility on public servants.

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c) Oversight by the legislature or parliament (directly or through scrutiny committees)

Article 74 of the Mexican Constitution establishes as an exclusive function of the Chamber of Deputies the examination, discussion and yearly approval of the Federal Budget, as well as the revision of the previous yearly public account. The Contaduria Mayor de Hacienda, an organ of the Chamber of Deputies, is in charge of examining public expenditure whenever there is no justification or exactness in expenses.

The Chamber of Deputies may become a jury to deal with serious violations committed by high public servants against the Constitution or in detriment of the public interest and good management. This so-called "political trial" is applicable to all public servants whether elected or nominated, (including the President of the Republic, for treason or serious offences against common law), but only in such cases as established by the Constitution and the Federal Law of the Responsibilities of Public Servants, *i.e.* where there have been offences of a serious nature against the Federation, a state or to society in general, as well as grave omissions or systematic serious violations to the plans, programmes and budget of the Federal Public Administration and the laws which rule the management of federal financial resources. Declarations and resolutions of the chamber of deputies and senators are unassailable.

The same procedure applies to governors of the states, local deputies, magistrates of the Superior Tribunal of Justice of the State and members of the councils of the local judiciary corps, but the resolution is handled over to the local chamber of deputies to proceed.

Under the procedure any citizen, under his responsibility, may denounce a public servant before the Chamber of Deputies for transgressions, with sufficient probatory elements to either establish the existence of the crime or to presume the culpability of the suspect and may be assisted by a special commission appointed for the purpose, when such evidence is in the hands of an authority.

The said chamber decides upon the merits of the case. If the accusation is sustained, the matter is transferred to the chamber of senators which becomes a tribunal for the case, the procedure in full detail being fixed by the Federal law of Responsibilities of Public Servants. Both chambers enjoy full independence from the executive power.

d) Investigation systems or bodies with powers to investigate corrupt activity

The functions of the Secretary of Comptrollership (equivalent to a ministry in other countries) are basically preventive and are aimed at detecting irregularities in the federal public administration, at fixing norms, policies and specifications regarding the process of tendering for the purchase of goods, rendering of services and participating in public works for the administration. The Secretariat is also in charge of establishing and applying the rules and procedure so that public petitions may be attended in time and with efficiency.

See also the answer to *Question 1(c)*.

e) Supreme financial audit authority

See the answer to *Question 1(c)* and *(d)*.

f) Ombudsman

Only in regard to the protection of human rights. Against corruption the functions of an ombudsman are within the scope of the Secretariat of Comptrollership and Administrative Development.

g) Bodies to enforce sanctions and prosecute corrupt activity,* e.g. *specialised prosecutors, investigators, courts, tribunals, etc.

See the answer to *Question 1(c)*.

h) Human resources management procedures intended to prevent corruption

See the answer to *Question 1(d)*.

i) Financial management controls intended to prevent or deter corrupt practices

See the answer to *Question 1(d)*.

j) Organisational management policies, systems and controls intended to minimise opportunities for corrupt activity

See the answer to *Question 1(d)*.

k) Transparency mechanisms,* e.g. *independent or public scrutiny, systems for declaring or reporting potential conflicting interests or corrupt activity

As regards transparency mechanisms, the means and ways for public scrutiny and detecting potential conflicting interests or corrupt activities have already been explained. With regard to transparency in the tendering process for the government procurement of goods, services and public works, a system of public notice, named COMPRANET, through which bidding by personal, mail or electronic means is available, plus the so-called "resource of unconformity", when a bidder considers and demonstrates that his/her interests have been affected by the resolution and therefore is being given the chance to redress the decision.

In addition to the above-mentioned procurement system, other systems in operation related to transparency of public actions are:

- The Federal Procedures Register System, which provides information to citizens related to all the existing federal procedures, such as requirements, costs, office hours, legal frameworks and addresses and telephones of the public servants responsible for the services.
- The Automated Evaluation System. In this system it is possible to consult the curricula and grades obtained in the specialised courses offered to all public servants of every internal comptrollership office at the federal level.
- The Disqualified Public Servants Register System, through which all public servants with responsibilities related to human resources and/or comptrollership can verify whether any particular public servant is disqualified to work for the federal government due to a sanction imposed by the Comptrollership Secretariat or by a state comptroller.

See also the answer to *Question 2*.

l) Guidance and training for public officials or politicians (*e.g. *codes of conduct, ethics awareness training)

The Federal Law of Responsibilities of Public Servants establishes 24 rulings in regard to all public servants, whether nominated or elected. Regular training courses are being given to public officials not only to capacitate them in their field, but to instil in them their obligations as such.

m) Other measures intended to control, detect or deter corruption

See the answer to *Questions 4* and *5*.

2. Which anti-corruption mechanisms are regarded as most effective (in terms of implementation and impact)?

The yearly declaration of properties and assets, which is compulsory for all public servants, is considered an effective mechanism against corruption. Through it, the detection of illicit enrichment, which is considered a crime by the Mexican penal system, is very possible.

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Another mechanism of proven efficiency are the internal comptrollerships placed in every federal government entity, once appointed and held responsible by the Secretariat of Comptrollership and Administrative Development.

3. Is the effectiveness of these mechanisms formally evaluated? If so, what evaluation methods are used?

Yes, both mechanisms are formally evaluated. With respect to the first case, the area entrusted with the reception and analysis of the information contained in the declaration of properties and assets is permanently evaluated in terms of the quality of the revisions and resolutions that derive from special or random investigations.

The internal comptrollerships placed in every federal government entity are subject to permanent evaluations by the Secretariat of Comptrollership. New information systems are being tested in order to curtail the information required for the evaluators and facilitate the exchange between the internal comptrollerships and the Secretariat. These systems will allow the Secretariat, through the use of performance indicators, to evaluate group and individual performance in terms of the quality, quantity and time in which revisions and resolutions are carried out.

4. What, if any, new actions against corruption in the public sector is your country currently considering?

Among other actions, the Secretariat of Comptrollership is currently implementing a "shoppers" programme through which it evaluates both the conduct of public servants at public counters and the quality of the services offered. This program has allowed the implementation of changes in procedures and regulations. In some cases legal actions have been carried out against public servants who have misbehaved or acted inefficiently.

The Secretariat is also promoting a deregulatory effort throughout the central government. This process is aimed at cutting back "red tape" and eliminating "bottlenecks", while clarifying the rights and obligations of public servants and citizens in the remaining procedures.

5. Is there an official awareness or a policy position on the part of your government about which areas are of most concern in terms of corrupt or questionable activities involving the public sector?

Two of the main concerns in terms of corruption or misconduct are government procurement and all services in which there is a direct interaction between citizens and public servants:

- In relation to the first one, the Secretariat has launched a nationwide electronic system through the Internet, in which all public purchases can be accessed by potential private contractors. Their bids can be made electronically, thus eliminating displacement of bidders, avoiding direct interactions, providing greater transparency and facilitating audit. A public register of all transactions allows verification of the price and conditions agreed upon between the government and contractors.
- With respect to the latter, actions aimed at providing users with full information on procedures and rights, along with public telephone "hot lines", through which they can verify, for example, the authenticity of sanitary or construction inspections, have been developed and promoted.

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POLAND

1. What anti-corruption mechanisms exist for the public sector in your country?

a) Legislation proscribing corrupt activities and establishing sanctions

The Penal Code (6 June 1997, coming into force on 1 September 1998, articles 228-231)

Scope: A ban on accepting, demanding, and promising favours in connection with the performance of official duties by persons holding public office, and a proper discharge by public officials of their duties.

The Penal Code recognises two forms of passive corruption by persons holding public office (article 228):

- the acceptance by a public official of material favours offered by a client whose business the official is handling; and
- the receipt of material favours by a public official in return for illegal actions.

The Penal Code also recognises two types of active corruption (article 228):

- the receipt or a promise of material favours; and
- demanding or promising material favours by a public official, or making the performance of a public official's duties dependent on the receipt of such favours.

Corruption may also take the form of "paid protection", *i.e.* settling other people's affairs in state or local government institutions by applying one's influence in these institutions, in return for material favours (article 230). Another form of corruption, albeit one that does not directly involve bribery, is when a public official exceeds his authority or fails to discharge his duties in return for material or personal favours, thus causing harm to public or private interest (article 231).

State officials are also culpable if they commit the above offences abroad (article 109).

An offence is committed not only by the person who demands or receives a personal or material favour, but also by a person who offers or gives state officials any type of favour.

Purpose: To protect the proper functioning of state and local government institutions, *i.e.* to maintain their impartiality and to safeguard their proper opinion of citizens on the way in which state officials perform their official duties.

Sanctions: From 3 months to 12 years imprisonment, restriction of liberty or fine.

The Civil Code (article 58)

Scope: Actions by state officials (as defined in article 417) aimed at circumventing or violating the law in order to receive, for instance, various favours, are void.

Purpose: To safeguard an adherence to the law and ensure the rule of law in the work of state institutions.

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b) Other anti-corruption regulations or orders

The Law on state officials (16 September 1982)

Scope: The principles by which state officials perform their duties. The anti-corruption rules include the following:

- spouses or relatives up to the second degree cannot be employed in a state office if such employment would give rise to a supervisor-subordinate relationship (article 9);
- any action that violates the primary duties of state officials or which might arouse the suspicion of bias are forbidden (article 1);
- state officials are obliged to declare their assets (article 17).

Purpose: To guarantee honesty and impartiality in the performance by public officials of their official duties, and avoid conflict of interests.

The Law on the civil service (25 July 1996)

Scope and purpose: similar to that of the law on state officials, except that this law is addressed to employees of the newly formed civil service in Poland, whereby these employees are referred to as "civil servants." The law contains the following anti-corruption measures:

- spouses or relatives up to the second degree cannot be employed in a state office if such employment would give rise to a supervisor-subordinate relationship (article 50);
- any action that violates the primary duties of state officials or which might arouse the suspicion of bias is forbidden (article 51);
- civil servants must restrict their economic activity under the terms of the law on restricted economic activity by public officials (article 52).

The Law on restricted economic activity by public officials (11 September 1997)

Scope: The performance of duties by persons holding state leadership posts. The law:

- bans officials from holding stocks or shares in companies and bans them from participating in the work of legal persons engaged in such activity (article 4);
- places officials under an obligation to reveal the size of their and their spouse's financial assets, real property and business capital, and also reveal any economic activity and holding any offices in bodies of any businesses (article 10); and
- bans officials from employment by or performing any activity for businessmen affected by any settlements on individual cases decided with participation of an individual holding public offices – ban covers period of one year commencing from cessation of holding (article 7).

The above ban does not apply to persons appointed to trade companies in which the State Treasury has a share, or to other state or local government officials who act as representatives of these bodies. A public "registry of benefits" has been established to register any and every property benefits of high-ranking state officials (ministers, deputy ministers, leaders of central offices, *voivodes* and deputy *voivodes*) and their spouses. Submission of an information on participation in bodies of commercial companies, foundations or co-operatives is required, even if it does not involve any financial profit.

Purpose: Avoiding conflict of interests and accumulation of remuneration originating from public funds by an individual as well as eliminating the possibility to use public office for the purpose of particular individual or group interests.

Sanctions: A violation of the provisions of the law is an official offence involving disciplinary measures up to and including demotion or dismissal. In addition, presenting false information in a statement of income carries legal penalties.

The Law on the State Tribunal (26 March 1982)

Scope: The constitutional responsibility of persons in charge of ministries and leaders of central offices. The responsibility applies to violations of the Constitution or other laws committed by these persons during the performance of their duties (article 3), in other words situations where these officials, by means of their decisions, have given rise to conditions that encourage corruption.

Purpose: To control the legality of actions by persons holding the highest state positions.

Sanctions: A ban on holding leadership posts in state body and social organisations; a loss of awards, insignia, and honorary titles; the loss of one's active and passive voting rights. All penalties may be applied for a period of between 2 and 10 years of prison. In addition, in cases which qualify as criminal offences, the State Tribunal may impose penalties foreseen in criminal legislation.

The Law on public procurement (10 June 1994)

Scope: Controls the principles of announcing public orders and selecting tenders. The law lays down that the delivery of most goods and services paid wholly or in part out of public funds must be performed on the basis of public tenders and in a manner strictly laid down in the law. It also introduces mechanisms for handling complaints concerning tenders. In particular, the provisions of the law (articles 20 and 21) forbid any action concerning public orders if there is a close relationship or affinity between the supplier and the customer, or if these persons maintained a business relationship prior to three years before the initiation of the public procurement.

Purpose: To safeguard the openness and impartiality of economic activities that are wholly or in part paid for out of public funds, to preserve fair competition and equal treatment between tenderers in the awarding of public orders, and ensure a proper management of public funds.

Sanctions: Should one of the bidders lodge a protest, the conclusion of a contract with a public institution is suspended until the circumstances behind the complaint have been clarified. Should illegal activity (such as bribery or other forms of corruption) be determined, the entire public order may be rendered void.

The Law on Deputy and Senator mandates (9 May 1996)

Scope: The principles of exercising a parliamentary mandate. The law (article 34):

- bans parliamentarians having an active mandate from holding any function in an administrative, control, or audit body of businesses if the state or local government contains any shares;
- bans parliamentarians from holding more than 10 per cent of the shares in any business in which state or local government contains any shares;
- places parliamentarians under an obligation to forsake all positions or financial securities that exceed the permissible limit.

Purpose: To avoid conflicts of interests and the accumulation of wealth out of public funds, and to eliminate parochial interests of an individual or group.

Sanctions: The legal responsibility of deputies and senators, a loss of their allowances, a loss of their functions three months from the date on which they took their oaths.

The Law on the police (6 April 1990), Article 19
The Law on the Office for the Protection of the State (6 April 1990), Article 10

Scope: Permits the controlled acceptance or granting of financial favours where there are suspicions of a heavy offence involving:

- the receipt or granting of material favours during the performance of one's public office;
- the exploitation of one's public office in order to commit economic offences resulting in considerable economic damage;

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- collaboration or connivance with criminal groups. The receipt or granting of material favours may also occur during operative and investigative activities.

Purpose: To protect state bodies and institutions against wide-scale corruption and prevent criminal elements from infiltrating the state administration.

Other legislation

The following tax legislation can also be considered part of the legal measures designed to limit corruption in the state administration:

- The Law on income tax for physical persons (26 July 1991), article 2;
- The Law on income tax on legal persons (15 July 1992), article 2.

Incomes and expenditures obtained from an activity that cannot be the subject of any legal agreement, including corruption, must not be taken into consideration when calculating tax liability; therefore, in his expenses, a taxpayer cannot officially include corrupt activities.

In addition, legislative work is in progress to create clear and comprehensible procedures for situations where state administrative officials are forced to take strategic decisions on the national economy, which could also become a source of large-scale corrupt practices – *inter alia* draft of the Public Finance Act has been created. The relevant legislation already passed includes the following:

- The Law on guarantees issued by the State Treasury and legal persons (8 May 1997);
- The Law on counteracting monopolist practices (24 February 1990);
- The Law on the commercialisation and privatisation of state enterprises (30 August 1996)

c) Oversight by the legislature or parliament (directly or through scrutiny committees)

The Sejm

The *Sejm* exercises direct control over state finances, *i.e.* it oversees the implementation of the state budget (budget law, article 52). It does this via the permanent *Sejm* Commission for Public Finance, and via the Supreme Chamber of Control.

The Supreme Chamber of Control

The Supreme Chamber of Control is directly answerable to the *Sejm*. It audits the activity of government bodies, the National Bank of Poland, state officials, and other state organisational units in the sphere of state incomes and expenditures.

The Parliamentary Commission for Deputies' Ethics

This Commission has developed "Principles of Deputies' Ethics" (*Sejm* resolution dated 17 February 1998) stating that deputies should follow public interest and should not accept any material favours that could influence deputies' activity (article 3). The Commission also examines deputies' statements of their assets, and reports its findings to the *Sejm* Presidium.

d) Investigation systems or bodies with powers to investigate corrupt activity

In Poland there is no special system of agencies for counteracting corruption, but departments for combating organised crime have been created within the Ministry of Justice and 11 provincial prosecutor's offices. In their activity, criminal gangs often use corrupt public officials, and for this reason, these departments carry out investigations into major cases of corruption.

e) Supreme financial audit authority

The Supreme Chamber of Control (NIK), answerable directly to the *Sejm*, controls the incomes and expenditures of government bodies, the National Bank of Poland, state officials, and other state organisational units. It may also control other economic units if they are performing tasks commissioned by state bodies or undertaking public orders on behalf of the state or local government bodies (article 2). NIK undertakes controls purely on the *Sejm*'s instructions or on its own initiative. The President and Prime Minister can merely draw conclusions from the results of NIK's controls, but whether or not these conclusions are to be taken into consideration depends solely on the NIK leadership (article 6). In its work, NIK employs only the criteria of legality and honesty, and in some cases also the criteria of expediency and efficiency (articles 2 and 5). NIK presents its findings to the *Sejm*, whereas local NIK delegations present their findings to the respective *voivodes* and local parliaments (articles 7 and 9). Where there is justified suspicion of a crime or misdemeanour (including corruption), NIK informs the law enforcement bodies and also informs the head of the body that has been audited or the head of this body's supervising authority (article 63).

Its legal basis for action comes from the Polish Constitution (Chapter 9, Bodies of State Control and Legal Protection articles 202-207), and the law on the Supreme Chamber of Control (23 December 1994).

f) Ombudsman

Whenever a citizen reports that he was forced to pay a bribe, the Ombudsman has the power to investigate the matter. He is also entitled to receive information on investigations into corruption cases by courts, the prosecutor's office, and other law enforcement bodies. He may also appeal against final rulings of such cases. Finally, he may insist on the commencement of investigations by a qualified attorney.

g) Bodies to enforce sanctions and prosecute corrupt activity, **e.g.** *specialised prosecutors, investigators, courts, tribunals, etc.*

Cases of corruption within the meaning of the penal code (see point 1.a) are dealt with by the prosecutor's office, and cases of corruption proper are dealt with by the general courts on the same principles as the main categories of crime.

h) Human resources management procedures intended to prevent corruption

Persons employed in the state administration are obliged to discharge their duties honestly, impartially, and objectively. Public officials are bound by the following rules, intended to stop corruption:

- they may not combine their office with private economic activity;
- they must not belong to a political party;
- they must not engage in political activity;
- they must declare the size of their financial assets, property, and stock capital, and holding of position in bodies of any businesses, and also declare any economic activity;
- spouses or relatives up to the second degree are banned from employment in a state office if such employment would give rise to a supervisor-subordinate relationship with the other partner;
- any action that violates the primary duties of state officials or which might arouse the suspicion of bias is forbidden;
- any action concerning public orders is banned if there is a close relationship or affinity between the supplier and the customer, or if these persons maintained a business relationship prior to three years before the initiation of the public order.

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i) Financial management controls intended to prevent or deter corrupt practices

There is an internal control body inside every government administrative unit. Their task is to detect any irregularity, including corrupt practices, both in the activity of the relevant office or unit as a whole, and in the conduct of individual employees, and to present the results of these controls to the relevant authorities.

Internal controls are also performed by specialised state agencies that are part of the government framework, such as the State Trade Inspectorate, State Inspectorate for the Procurement and Processing of Agricultural Produce, Sanitary Inspectorate, fiscal control agencies, and also control services under the auspices of the governors. The tasks of all these agencies are laid down in legislation, which forms the basis of their functioning.

The Supreme Chamber of Control (NIK) is the highest body entitled to check the financial activity of state administrative bodies and enterprises and other organisational units subordinate to the state administrative bodies. This is a form of external control, and is independent of the internal control bodies already existing within government administrative units. NIK is also entitled to check the activity of other specialised bodies of state control. NIK is situated above these bodies because the latter are obliged to implement NIK's findings and recommendations.

An efficient and well-functioning system of internal and external control serves to eliminate corruption and fraud, and is an important and powerful weapon in the fight against these phenomena within the public administration.

j) Organisational management policies, systems and controls intended to minimise opportunities for corrupt activity

A Department of Control and Supervision has been established within the Ministry of Internal Affairs and Administration, and inspectorates have been established within certain services governed by the Ministry. The purpose of these agencies is to detect dangers and irregularities (including corruption) in the functioning of services, offices, and other units governed by the Ministry of Internal Affairs and Administration all over the country, and to combat all detected irregularities. Inside the police and Frontier Guard, special cells and units have been formed to combat economic crime. The scope of the tasks being performed, encompassing the protection of the state's economic interests, are also aimed at intelligence and disclosure of the phenomena that encourage corruption.

There are also internal control departments within the Chancellery of the Chairman of the Council of Ministers, within ministries and central offices, and in *voivodship* offices. All of these control the activity of institutions and cells, as well as individual employees who are subordinate to the leaders of the state administration.

k) Transparency mechanisms, **e.g.** *independent or public scrutiny, systems for declaring or reporting potential conflicting interests or corrupt activity*

Transparent systems for employees' selection in the administration involve:

- An open system for recruiting employees: job vacancy notices in the press, competitive examinations, and interviews.
- An employee of the public service is required to submit a statement of assets when signing a job contract and whenever asked to do so by his employer – in such a statement, the employee is obliged to declare his cash resources, real property, shares, and the acquisition from the state treasury, another state body or local government body any property that was obtained by tender. The employee must also declare any economic activity and any position that he holds in commercial businesses. The statement must cover any property held jointly with the employee's spouse. The information in the statement is an official secret.

l) Guidance and training for public officials or politicians (e.g. codes of conduct, ethics awareness training)

As part of the training process for new employees in state service, lectures are provided on the pragmatics of being a state official. There is no systematic training on professional ethics.

m) Other measures intended to control, detect or deter corruption

- Publishing the results of controls of the activity of state bodies and the conclusions emerging from these controls serves as a preventive measure because it reveals to the public distortions in the work of the executive, including corruption. The disclosure of the results of controls frequently serves to prevent corrupt practices.
- Permanent analysis of the results of various controls and investigations in administrative bodies and analysis of the information obtained from the public, *i.e.* complaints from individuals, trade unions, and social organisations. This helps pinpoint those bodies where symptoms of illegal activity occurs.
- Introduction in individual state institutions of internal rules that regulate or restrict acceptance of gifts in cash or in kind on benefit of the unit within individual governmental institutions/offices that restricts the specific corruption mechanism in state institutions (*e.g.* Decision No. 46 by the Minister of Internal Affairs, 19 April 1994).

2. Which anti-corruption mechanisms are regarded as most effective (in terms of implementation and impact)?

It is difficult to assess the effectiveness of individual anti-corruption instruments and measures because of the nature of corruption. In this type of crime, it makes no sense to talk of a success rate in solving crimes because parties to corrupt activities only seldom make themselves known, and external controls are only limited in scope. On the other hand, it is very difficult to gauge the exact number of cases of corruption in state offices, so one cannot compare and assess the effectiveness of individual anti-corruption measures. However, there is a fairly broad consensus that the Criminal Code and the work of the judicature are the most effective such measures.

In 1995, a draft law on appointing an extraordinary *Sejm* commission on corruption was tabled in the *Sejm*. Following discussions, it was rejected because the deputies believed that the courts are the proper bodies to deal with corruption, and are most effective in doing so. The possibility of making controlled acquisitions of assets is no doubt a positive feature, but its effectiveness cannot be gauged because of the brief amount of time in which this solution has existed in Poland. The effectiveness of preventive measures is also viewed highly.

3. Is the effectiveness of these mechanisms formally evaluated? If so, what evaluation methods are used?

Efforts are being made to assess the effectiveness of the existing mechanisms (*e.g.* by the Ministry of Finance), but, as has been said above, the possibilities of doing so are severely restricted and there is no unified assessment system or single co-ordinating centre for anti-corruption activities in all state institutions.

4. What, if any, new actions against corruption in the public sector is your country currently considering?

There is currently under consideration in Parliament a governmental draft of the Public Finance Act and a draft of the Law on local government revenues. The Public Finance Act introduces the management system of these finances based on publicness, transparency, expediency, thriftiness and full control of democratically elected bodies over disposal of public resources. The law introduces full uniformity of income and expenditure classification and accounting rules of all units belonging to the public sector

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including the requirement to publish statements on the disposal of funds and the audit of the statements by independent entities.

5. Is there an official awareness or a policy position on the part of your government about which areas are of most concern in terms of corrupt or questionable activities involving the public sector?

The interface between public finances and private business is considered the most susceptible to corruption. The government now believes that the functioning of banks, the process of privatisation, and international trade are particularly threatened by corruption.

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SPAIN

1. What anti-corruption mechanisms exist for the public sector in your country?

a) Legislation proscribing corrupt activities and establishing sanctions

The Penal Code (Articles 404 to 445).

For central government employees, Chapter 8 of the *Ley de Funcionarios Civiles del Estado* (*Government Service Act*), in the 1964 version, sets out the sanctions. The *Ley de Incompatibilidades* (*Incompatibility Act*, No. 53 of 26 December 1984) applies to other public employees.

Separate regulations apply for the autonomous communities.

b) Other anti-corruption regulations or orders

The *Ley de Contratos de las Administraciones Públicas* (Public Contracts Act) and the General Budget Act, for central government, and relevant legislation by the autonomous communities.

c) Oversight by the legislature or parliament (directly or through scrutiny committees)

Parliamentary questions and oversight committees.

d) Investigation systems or bodies with powers to investigate corrupt activity

No.

e) Supreme financial audit authority

For central government, an agency coming under the Economic Affairs and Finance Ministry, the *Intervención General de la Administración del Estado*, monitors all financial dealings of branches of central government. The Board of Audit, which reports to Parliament, is the supreme financial audit authority with powers covering economic management in central government and the public sector.

There are similar bodies in each autonomous community.

f) Ombudsman

No. [See answer to *Question 1 (g)*.]

g) Bodies to enforce sanctions and prosecute corrupt activity, e.g. *specialised prosecutors, investigators, courts, tribunals, etc.*

For central government, the *Inspección General de la Administración del Estado*, a directorate-general in the Public Administration Ministry, is responsible for setting the general criteria for inspection programmes covering individual ministries and performing the duties prescribed in the *Incompatibility Act*. Each ministry has an inspection unit, ranking as a subdirectorate-general, with powers to inspect management and recommend sanctions.

Penalties for offences under the *Penal Code* are imposed by the law courts.

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The Board of Audit has audit jurisdiction for accounts to be rendered by any person collecting, handling, administering, safekeeping or using public funds or property.

The people's defender is a high commissioner appointed by both houses of Parliament to safeguard the rights set out in Title I of the Constitution, and accordingly supervises the activity of the public administration. He deals with complaints by individual citizens, makes recommendations, and gives an annual report to Parliament.

h) Human resources management procedures intended to prevent corruption

The Incompatibility Act (No. 53 of 26 December 1984), covering public employees, defines activities which are incompatible with government service. For top-level posts, separate incompatibility legislation sets stricter conditions.

i) Financial management controls intended to prevent or deter corrupt practices

The General Budget Act provides that all dealings giving rise to financial rights are subject to inspection by the *Intervención General de la Administración del Estado*, either before or after they occur.

j) Organisational management policies, systems and controls intended to minimise opportunities for corrupt activity

The various Incompatibility Acts, the Public Contracts Act and investigations by ministerial inspection units.

k) Transparency mechanisms (e.g. independent public scrutiny, systems for declaring or reporting potential conflicting interests or corrupt activity)

Article 35 of Act No. 30 of 26 November 1992, dealing with the legal regime of the public administration and common administrative procedure, prescribes that citizens are entitled, among other things, to be informed at any time of the status of procedures in which they have an interest, to know the identity of the authorities and public employees responsible for the procedures, and to have access to public administration records as prescribed under the Constitution and Spanish law.

l) Guidance and training for public officials or politicians (e.g. codes of conduct, ethics awareness training)

Ethics courses are being provided for government officials at all levels, covering principles of ethics, ethics and law, occupational ethics, principles of public ethics, the constitutional significance of public service, analysis of public conduct, ethics and efficiency, ethics in public organisations, service to citizens, use of public resources, public interest and private interests, ethics and administrative organisation, ethical values and administrative culture, and the role of training.

m) Other measures intended to control, detect or deter corruption

Concern with ethical training does not start at civil service college; it is present throughout the education system. This is the most effective measure against corruption.

2. Which anti-corruption mechanisms are regarded as most effective (in terms of implementation and impact)?

So far the emphasis has been on stepping up investigative and disciplinary measures to counter corruption. Training and awareness courses have been launched only recently, and their effectiveness has not been evaluated.

3. Is the effectiveness of these mechanisms formally evaluated? If so, what evaluation methods are used?

There are no mechanisms for evaluating the measures put into effect.

4. What, if any, new actions against corruption in the public sector is your country currently considering?

The Public Service Rules and Regulations are currently being redrafted, and the possibility of including a code of ethics is under examination. Legal reforms are also under way to make administration action more transparent, by amendments to the Administrative Procedure Act.

5. Is there an official awareness or a policy position on the part of your government about which areas are of most concern in terms of corrupt or questionable activities involving the public sector?

The present government attaches priority to countering the corrupt activities which have recently stained political life in Spain. This has been illustrated in the initial measures introduced when it took power, to ensure greater control and transparency in the work of the executive.

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SWEDEN

1. What anti-corruption mechanisms exist for the public sector in your country?

a) Legislation proscribing corrupt activities and establishing sanctions

Bribery as well as bribe-taking are criminal offences under the *Swedish Penal Code*. Chapter 20 section 2 defines recipients of bribes to include "any employee" which includes employees not only in the public service but also in the private sector. The word "employee" includes employees at all levels, from the top to the lowest positions. Furthermore, persons performing public functions and services within Swedish central or local governments, but legally not classified as employees under the Labour law or Industrial law, are considered as recipients.

The penal sanctions for bribery and taking a bribe are fines or imprisonment for up to two years. If the offence of taking a bribe is grave, imprisonment for up to six years may be imposed.

The primary purpose of the provisions is to protect public authority against irrelevant and undue influence, and hence to safeguard honesty in society and administrative efficiency. A more general purpose of the penal provisions is, of course, to encourage healthy methods of exerting influence in society in general and to promote open and fair competition in business life.

While bribery is considered a criminal offence, it is also illegal under civil, commercial and administrative laws and regulations. For example, a claim for a debt which is considered to be a bribe would probably not be granted in a civil action.

b) Other anti-corruption regulations or orders

All companies, as well as banks,, are required by law to keep books, *i.e.* to secure adequate recording of all payments. As bribery is considered a criminal offence, the books may be inspected upon suspicion.

A non-profit association, the Swedish Institute Against Bribes, connected with the Swedish Chamber of Commerce, gives advice and provides guidelines for companies to avoid committing bribery.

The Swedish municipalities and county councils, on the basis of local self-government, attend to matters indicated in the Swedish Local Government Act or in special regulations. The Swedish Local Government Act has disqualification rules for its elected representatives and employees. Generally an elected representative or an employee in a municipality or a county council is disqualified to deal with a matter of personal concern to the member himself and his family. One can also be disqualified if there are any other special circumstances calculated to impair confidence in his impartiality in the matter. These disqualification rules are mainly the same as the ones in the Swedish Administrative Procedure Act.

c) Oversight by the legislature or parliament (directly or through scrutiny committees)

The Committee of the Constitution (which is a Parliament committee) has a duty to examine ministers' performance of their duties and the handling of government business. For this purpose the committee is entitled to have access to the records of the decisions made in Cabinet matters and to all documents pertaining to such matters. Any other parliamentary committee and any member of the Parliament is entitled to raise any issue concerning a minister's performance of his duties or the handling of

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cabinet business with the Committee of the Constitution (Chapter 12, Article 1 of the Instrument of Government).

Ministers enjoy a certain degree of immunity as regards criminal responsibility for criminal acts committed in the performance of their official duties, as they may be held accountable for such acts only if they have grossly neglected their duties thereby. Impeachment in such cases is a matter for decision by the Committee on the Constitution (Chapter 12, Article 3 of the Instrument of Government).

The Members of Parliament have two means of directly confronting ministers. First, there is the institute of declaration of no confidence, which requires the concurrence therein of more than one half of the members of Parliament (Chapter 12, Article 4 of the Instrument of Government). Second, any member of Parliament may submit an interpellation or put down a question for a minister in any matter concerning the minister's performance of his duties (Chapter 12, Article 5 of the Instrument of Government).

The Parliament elect auditors to examine the activities of the state (Chapter 12, Article 7 of the Instrument of Government).

d) Investigation systems or bodies with powers to investigate corrupt activity

The enforcement of existing legislation in actual cases is carried out by the police and the prosecutors. Sweden has no judicial authorities specialised in bribery or corruption.

e) Supreme financial audit authority

The Swedish National Audit Office (RRV) is responsible for the external audit of government agencies. The RRV's directives regulate, to a large extent, the external audits of government agencies. However, the RRV audits of certain government-owned companies and foundations are regulated in Swedish law.

The government audit is performed by the RRV. RRV reports to the audited entities and to the government. The audit shall promote secure, appropriate and efficient government administration. The RRV has two operative audit dimensions – financial auditing and performance auditing. These two dimensions collaborate regularly, for example in the annual audit of the government agencies' performance reports and in the framework of different projects. The audit is conducted independently and in accordance with generally accepted auditing standards.

The number of organisations audited has grown in recent years and now totals some 520 organisations. The number of government agencies audited during the last five years has varied from 260 to 277.

Based on the rule of local self-government, the municipality and the county council have their own external audit function. Auditing is regulated in a chapter of the Swedish Local Government Act. The assembly in municipalities and county councils shall elect auditors to inspect activities. The auditors inspect, to the extent demanded by the generally accepted auditing standards, all activity conducted within the committees' spheres of activity. They investigate whether the activities have been conducted in an appropriate and economically satisfactory manner, whether the accounts are true and fair and whether the control undertaken within the committees is sufficient.

The auditors shall submit annually to the assembly a report describing the result of the audit of activities for the previous fiscal year. Qualifications may be entered toward committees and the individual elected representatives on such a body. The fiscal report shall include a special statement as to whether or not discharge from liability can be allowed.

f) Ombudsman

The Parliament elects four Ombudsmen to supervise the application of laws and other statutes in public service. An Ombudsman is elected for a term lasting from the time of his election or a subsequent date determined by Parliament until a new election in the fourth year thereafter. At the request of the

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Committee on the Constitution the Parliament may relieve the mandate prior to that time if the Ombudsman has forfeited the confidence of the Parliament.

Matters are brought to the Ombudsmen's attention either on their own initiative or by members of the public. The Ombudsmen may be present at the deliberations of a court or a public authority and have a right of access to all documents and other information of such a court or authority.

An Ombudsman decides matters by declaring whether or not actions by an authority or public official are in accordance with the law or with good administrative practice. An Ombudsman cannot, however, change the decision or judgement of an authority or a court. The Ombudsmen in Sweden have, in international comparison, very far-reaching powers as they may prosecute public officials, including judges, for criminal offences by which they have neglected their professional duty (except crimes against the freedom of the press, which may only be prosecuted by the Justice Chancellor).

Tasks similar to the Parliamentary Ombudsmen are carried out by the Justice Chancellor, who is an "ombudsman" appointed by the government and acting on behalf of the government.

g) Bodies to enforce sanctions and prosecute corrupt activity,* e.g. *specialised prosecutors, investigators, courts, tribunals, etc.

Generally, penal cases of corruption are tried by the general courts as described in the answer to *Question 1(d)*.

In addition, at the local government level, assemblies decide at a meeting held before the end of a year following the year to which an audit refers, whether discharge from liability is to be allowed or refused. If discharge from liability is refused, the assembly may decide to sue for damages. Non-criminal proceedings shall be filed within a year after the decision to refuse discharge from liability. Failing this, the right to file such proceedings shall lapse.

An assembly may revoke the mandate of an elected representative who has been elected by the assembly if the elected representative has been refused discharge from liability, or, who, through a judgement that has acquired force of law, has convicted of a crime punishable by imprisonment for two years or more.

h) Human resources management controls intended to prevent corruption

See the answer to *Question 1(l)*.

i) Financial management controls intended to prevent or deter corrupt practices

External audit

Each year the RRV shall examine, assess and, in the form of an audit report to the government, express an opinion on whether the annual and consolidated accounts of government agencies and other governmental bodies are essentially true and fair and if the management of the organisation has been satisfactory. It thus rests with the annual audit to examine the annual accounts and underlying accounts of the government agencies in accordance with generally accepted auditing standards. The purpose is to assess whether the accounts and the financial information used by management in its administration of the agency are reliable, whether the accounts are true and fair, and whether the accounts and management of the agency have followed requisite regulations and any special decisions made by the government. The audit shall be conducted in an independent manner in relation to both the government and the auditee.

An opinion shall be expressed in an audit report. If the audit gives rise to objections or comments the audit report shall be supplemented with a special audit memorandum. The observations shall be reported each year to the government as well as to ministries and agencies concerned.

If the audit report contains any objections the head of the agency shall, in accordance with Section 15 of the Agencies Ordinance and no later than two months after the submission of the report, report to the

government on the measures the agency has taken or intends to take as a result of the audit report. The audit shall work to ensure that objections and comments are acted on by the agency or the government within a year of the audit.

The responsibility for ensuring that information supplied by the agency to the government is of satisfactory quality and that operations are being conducted securely, appropriately and efficiently always rests entirely with the management of the agency. The task of the audit in the government management and control structure is – as an external and independent party – to assess how the agency's management has discharged this responsibility. It is the responsibility of the audit to make this judgement on the basis of generally accepted auditing standards, and the code of professional ethics for auditors, which is an internationally accepted code for what can be regarded as necessary technical and ethical standards.

Traditionally the main task of the financial audit has been to examine the final accounts and underlying accounts of the government agencies. The figures in the accounts have been checked and have been examined from fiscal, legal and economic perspectives. Observations have been compiled in annual reports which have been handed over to the agency. During the 1990s Parliament and the government made a number of decisions that, in combination, have had the effect that the audit responsibilities and mandate of the RRV have been extended. From the fiscal year 1994/95 the annual audit has also had the task of examining agency management's administration of operations from different perspectives including the extent to which management has followed the rules and special decisions of the government.

Since 1993 the annual accounts have been regulated in the Ordinance on Agencies' Annual Accounts and Requests for Appropriations.

Financial management ordinances

The government's financial management ordinances are often formulated in overall terms. If they are to be applied in an identical way by all agencies, further regulations and recommendations are required that interpret the government's decisions and intentions. These regulations and the general guidelines make it possible for the agencies to ensure that their accounting and administration of funds is true and fair and appropriate for both the agencies and the government.

Most financial management ordinances authorise the National Financial Management Authority (ESV) to provide further regulations when necessary. The ESV is also authorised in its directives to issue regulations on central government accounting and cash management, on the accounting system for credit guarantees, and on the accounts, annual accounts and interim reports of agencies.

The ESV shall assume responsibility for and check the government's current account and associated accounts at the Bank of Sweden and the government payments system. Among other things this means that if agencies wish to open postal giro accounts linked to the government payments system, approval shall first be obtained from the ESV. The agencies shall also continuously submit their reconciliations to be checked by the ESV. If agencies wish to engage for payment purposes other banks than those with which the ESV has concluded agreements, consultations shall first take place with the ESV.

The ESV also exercises a certain amount of control over the fee-financed operations undertaken in the government administration since all agencies that charge fees for their services shall hold consultations on these fees with the Financial Management Department at the ESV. The consultations refer to the calculations used to determine the amount of the fees and to the services and products for which fees shall be charged.

To make it possible for the government to follow up and exercise controls over central government operations, in different respects, it is the duty of the ESV to provide certain information. The National Financial Management Authority is responsible, among other things, for the central government accounts, makes forecasts of the government budget's expenditures and revenues, compiles statistics on central government finances, and is making, on an experimental basis, checks of expenditure against appropriations.

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j) Organisational management policies, systems and controls intended to minimise opportunities for corrupt activity

The responsibilities of the heads of agencies

Under the Agencies Ordinance the head of a government agency is responsible for the operations of the agency and shall ensure that the agency is run efficiently and in accordance with constitutional requirements. The head of the agency shall also regularly follow up and examine the operations of the agency and the consequences of statutes and special decisions which concern operations, and shall take any actions necessary.

The Bookkeeping Ordinance also contains certain stipulations in respect of the heads of agencies. According to this ordinance the head of an agency, as the person ultimately responsible for the accounts, shall ensure that the procedures and routines in respect of the accounts are organised in such a way that reliable accounting is promoted and that the assets administered by the agency are protected.

The head of an agency can delegate these powers to other officers in the agency. Under the Bookkeeping Ordinance the agency shall appoint those officers who may authorise expenditure in respect of the agency's funds. When an officer decides that funds shall be spent he or she has the responsibility to ensure that the expenditure is motivated by, and is within the framework of, the agency's operations. Authorisations to spend an agency's funds shall be governed by special rules or in another appropriate way.

Central government employees have both legal and disciplinary responsibilities. The head of the agency shall be regarded as the employer of the staff of the agency. The members of the board of the agency have no responsibility in this matter.

An employee who intentionally or negligently fails to observe his obligations in the course of his duties risks disciplinary action for dereliction of duty. In cases of minor misdemeanours no disciplinary action is taken. An employee who, for good reason, is suspected of committing a criminal offence in the course of his or her work shall be reported. This report shall be made if there is suspicion of misconduct, corruption, or a breach of professional secrecy. The report shall also be made if there is suspicion of an offence which carries penalties other than a fine.

Internal controls

It is the head of the agency who is responsible for ensuring that the accounting is true and fair and that funds are administered in a secure manner in accordance with Section 20 of the Bookkeeping Ordinance. To achieve this state of affairs it is necessary that requisite controls are built into the organisation, systems and work routines of the agency, so-called internal controls. The quality of the internal controls forms the basis of making operations secure against unintentional or intentional errors.

The agency's assets – for example, cash, stock and fixed assets – shall be kept in a secure way and inventories of the assets shall be made to the extent considered necessary. Furthermore, statements of account or other documents that show cash movements shall be reconciled regularly against the accounts. Officers authorised to spend agency funds shall be appointed by the agency in accordance with special rules or in another appropriate way. The authorisation to spend funds can, for example, be in the form of a specification that defines the officers' powers and responsibilities. The list shall include samples of the signatures of the officers concerned. When an officer decides to spend funds he or she has the responsibility to ensure that the expenditure is motivated and lies within the framework of the agency's operations.

The officer is also responsible to ensure that funds are available for the purpose. Decisions to make payments shall always be in writing and bear the signature of the officer making the decision. When allocating duties and responsibilities the agency should seek to ensure that no one person can handle a transaction alone from beginning to end. All transactions should always be checked by another officer. However, this is difficult when the decision is made by the head of the agency or by others in management positions.

Under the Agencies Ordinance it is the responsibility of the agency to inform the government of the regulations which are needed in respect of the organisation of the agency and the forms of the agency's operations in special rules or special decisions. Matters that do not need a decision of the head of the agency, of the board of directors or of the staff committee may be decided on by another officer. The procedure for this shall be evident from the special rules or special decisions.

The Ordinance (1994:14) on Government Agencies' Payments and Administration of Funds, and associated regulations and guidelines, regulate how agencies shall handle payments and administer funds. Furthermore it also contains the liability of every agency to make external controls of all major payments as well as regular reconciliations of bank accounts with the agency's accounts.

The Bookkeeping Ordinance and the other ordinances provide minimum requirements for the organisation of internal controls. However, the ordinances do not release agency management from the responsibility of organising internal controls on the basis of actual needs in each individual case. It is important to draw attention to the fact that the ordinances do not regulate how the funds should be administered by the head of the agency and other management staff (board).

Shortcomings in special rules or special decisions, in respect of the authorisation of officers to spend funds, can lead to a situation in which issues relating to the responsibility and authorisation of officers to perform certain duties can be unclear. This in turn can create unclear procedures on how decisions shall be made, which can mean that checks are not made or are made incorrectly and that decisions are reached on the wrong grounds or by the wrong officer. Errors can be both intentional and unintentional.

Internal audit

Internal audit is one of the tools available to management to evaluate the efficiency and appropriateness of internal controls and management. The internal audit shall independently examine, verify and assess the agency's internal controls and management and provide recommendations for improvements. It shall also examine how the agency fulfils its accounting obligations.

For some years the RRV has drawn attention in its annual report to the government to shortcomings in internal controls as a general problem among central government agencies. In its reports the RRV has called for measures to improve the situation.

There are several reasons for the shortcomings in agencies' internal controls. The responsibility for the accounts that the agencies were given on 1 July 1989 when the accounting centres were abolished, far-reaching delegation and decentralisation of responsibilities for financial management and duties in agencies, and the extensive changes to government rules and regulations have not been accompanied by a corresponding increase in numbers of qualified staff working at the agencies, and requisite controls have not been created in the organisations, systems and working routines of agencies. Furthermore, the management of agencies has not always given sufficient attention to, or shown an understanding of, these issues.

As a result of the RRV's observations the government approved the Ordinance (1995:686) on Internal Audit at Central Government Agencies and Other Organisations (amendment 1996:829). The ordinance came into force on 1 July 1995 and is applied by the agencies specified in its first section.

The criteria used by the government in reaching its decision on those agencies that should be covered by the ordinance were: the agencies' responsibility for large flows of funds (SEK 1 billion or more) and the degree of delegation in large agencies or between central agencies and regional or local agencies. In total 38 agencies and the social insurance offices are currently specified in the first section of the ordinance. The ordinance shall also be applied by agencies when instructed to do so by the government and by agencies that establish internal audit functions themselves. In the spending authorisations for four agencies and all universities and university colleges, the government decided that they shall be covered by the ordinance on internal audit.

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Local government

The Swedish Local Government Act regulates the organisation, the form for making decisions in the municipalities and county councils and also rules for their elected representatives. There are very few rules regarding the employees. There are, though, some rules about delegation of matters within a committee.

A committee may authorise a select committee, a member, or an alternate of the committee or an employee to decide a particular matter or group of matters on the committee's behalf. These decisions shall be reported to the committee, which decides the procedure to be observed in so doing. If a committee authorises a senior executive official to make decisions, the committee may allow the senior executive official to authorise another employee of the municipality or county council to make decisions in his stead. Decisions of this kind shall be reported to the senior executive official.

The Swedish Local Government Act stipulates that the committees, each within its various field, shall ensure that activities are conducted in accordance with the goals and guidelines resolved by the assembly and with the provisions applying to the activities. They shall also ensure that the activities are conducted in a generally satisfactory manner.

A government commission of inquiry has recently suggested that municipalities and county councils adopt rules for controlling the management of the pensions of their employees. It has also suggested that municipalities and county councils use the same rules for management of cash, bonds, loans, etc. The content of these suggestions is to establish a control system with routines of front and back office and other mechanisms of control. The suggestion is that the municipalities and the county councils themselves have to decide what rules they will have but that they are forced to adopt some rules. The suggestions in the inquiry are rules to help the municipalities and county councils control the management and not rules that aim at preventing corruption.

k) Transparency mechanisms, e.g. *independent or public scrutiny, systems for declaring or reporting potential conflicting interests or corrupt activity*

Sweden has very far-reaching rules on public access to official documents. The public's means of scrutinising the activities of the public authorities through their documents is believed to be of great importance in the fight against corruption. Many of the rules in this area dates back to the first Freedom of the Press Act of 1766.

Another important element as regards openness as means of fighting corruption is the unique Swedish system of protection of informants to the media. Public officials may, according to the rules regulating this in the Freedom of the Press Act and the Fundamental Law on Freedom of Expression, submit information, to representatives of the media, with the intent of it being published or spread in other ways to a broad public. The official has a right to remain anonymous and it may amount to a criminal offence for a representative of an authority to enquire into the name of the source or for a journalist to reveal it. The right to inform includes most, but not all, of the information that is considered secret.

In order to guarantee the objectivity of the administrative authorities and the courts, rules have been laid down regulating situations in which public officials or judges may have conflicts of interests that may cause biased decisions. The rules regarding judges are laid down in the Code of Judicial Procedure and the Code of Administrative Judicial Procedure and rules regarding the administrative authorities are laid down in the Administrative Procedures Act.

To take the latter as an example, a person charged with handling a case shall be deemed biased if:

- the matter concerns him or herself; or
- someone closely related to him or her; or
- the person, or someone closely related to him or her, can expect special advantages, or detriment from the outcome of the case;
- the case has been brought before the agency by a complaint over another authority's decision in which he or she has taken part; or

- some other special circumstance exists that is likely to undermine the confidence in his or her impartiality in the case.

If an issue of bias has been raised and the person in question has not been replaced, the authority shall decide the issue as soon as possible. A decision concerning an issue of bias may be appealed, but only in conjunction with a complaint concerning the decision by which the authority settles the entire case.

As for government ministers, there are rules obliging them to make public their possessions of shares and other securities. They have also agreed not to trade themselves but to leave to a bank or someone else to independently administer their possessions. Ministers have also undertaken to make public certain engagements, such as other employment or practice as a lawyer or consultant. Furthermore, ministers must not take part in government decisions regarding matters where they have a personal interest.

l) Guidance and training for public officials or politicians, e.g. *codes of conduct, ethics awareness training*

National government

During 1996-97 a number of seminars on leadership and ethics were held for all director-generals (heads of government agencies). In general, within the framework of the government's leadership policy with introduction programme, workshops, etc., the heads of agencies are becoming more and more aware of the importance of good ethics and of avoiding risks of corruption.

Local government

Some municipalities and county councils have a kind of ethics committee that discusses, for example, codes or ethical awareness. Some municipalities have also produced a booklet about corruption for the purpose of informing its elected representatives about the legal definitions.

At the beginning of each mandate period there are introductions and education arranged for the elected representatives. They include education about ethical rules and rules about corruption.

Municipalities and county councils are aware of the problems of corruption and other ethical issues, and most of them have discussions going on about these subjects. Many of them have looked through their rules for control and some have revised them.

There are also occupational groups within the field of municipalities and county councils that have discussed or adopted ethical rules.

m) Other measures intended to control, detect or deter corruption

No answer provided.

2. Which anti-corruption mechanisms are regarded as most effective (in terms of implementation and impact)?

Since only a few cases of bribery in international business transactions have been detected, it is difficult to assess the effectiveness of the penal legislation in this area. In our opinion, however, the possibility to impose criminal sanctions as well as the general attitude in Sweden against bribery should work preventively, especially for companies that are vulnerable in their public relations.

Openness and the rights of informants to the media have traditionally been considered very important in the fight against corruption.

3. Is the effectiveness of these mechanisms formally evaluated? If so, what evaluation methods are used?

No.

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4. What, if any, new actions against corruption in the public sector is your country currently considering?

Bribery is not deemed to be a widespread phenomenon in Sweden. Only a few cases are tried every year. This can be partially explained by historical reasons. Another important factor is the tradition of openness in the public administration. Through this, private citizens, the mass media and public regulatory bodies gain insight into the activities of governmental agencies and thereby the opportunity of disclosing the possible existence of corruption. Measures against bribery have therefore not been given priority on the political agenda in Sweden.

However, Sweden has recently signed two instruments against corruption elaborated within the European Union. In the process of ratification of these instruments – where the action in the UN, the OECD and the Council of Europe will also be taken into account – the existing Swedish penal legislation will be slightly amended in accordance with the different undertakings made or to be made.

5. Is there an official awareness or a policy position on the part of your government about which areas are of most concern in terms of corrupt or questionable activities involving the public sector?

No, there is no such official policy position.

SWITZERLAND

1. What anti-corruption mechanisms exist for the public sector in your country?

a) Legislation proscribing corrupt activities and establishing sanctions

Swiss Penal Code, Compendium of federal legislation (*Recueil systématique du droit fédéral)* RS 311.0:

- Art. 281: electoral corruption;
- Art. 282: electoral fraud;
- Art. 288: corruption of authorities and officials;
- Art. 293: publication of secret official debates;
- Art. 312: abuse of authority;
- Art. 314: disloyal management of public interests;
- Art. 315: passive corruption;
- Art. 316: accepting benefits;
- Art. 317: forgery committed in the exercise of public duties.

Public service regulations: (*Règlement des fonctionnaires*) (1)

- Art. 20: ban on accepting donations (RS 172.221.101);

Public service instructions: (*Statut des fonctionnaires*)

- Art. 27: professional secrecy (RS 172.221.10);

Federal Law on unfair competition

- Art. 4: incitement to break or cancel a contract;
- Art. 23: unfair competition (RS 241).

b) Other anti-corruption regulations or orders

- Federal Law on public procurement (RS 172.056.1);
- Public Procurement Order (RS 172.056.11).

c) Oversight by the legislature or parliament (directly or through scrutiny committees)

- Finance Committee and Finance Delegation reporting to the Federal Chambers (parliament);
- Management Committee reporting to the Federal Chambers.

d) Investigation systems or bodies with powers to investigate corrupt activity

Law enforcement authorities operate in each canton and the confederate public prosecutor deals with offences involving federal officials.

Under the Federal Constitution of the Swiss Confederation (Art. 102, ch. 15): the Federal Council oversees the management of all federal officials and government employees within the framework of a disciplinary procedure (RS 101).

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e) Supreme financial audit authority

- Federal Law on public procurement (RS 172.056.1);
- Federal financial control, as specified in the Federal Law of the same name, *i.e.* the financial auditing of all administrative units in the Confederation, based on requirements regarding proper procedure, legality and cost-efficiency (RS 614.0);
- Inspection and review bodies in individual departments and offices.

f) Ombudsman

There is no ombudsman.

g) Bodies to enforce sanctions and prosecute corrupt activity,* e.g. *specialised prosecutors, investigators, courts, tribunals, etc.

- Law enforcement authorities in each canton;
- Confederate Public Prosecutor;
- Federal Council;
- Heads of Department (see the answer to *Question 1 (d)*).

h) Human resources management procedures intended to prevent corruption

- Order on security controls in federal government (RS 172.013);
- Order on security controls for military personnel (RS 510.418);
- At the recruitment stage, some categories of staff are subject to security vetting in compliance with the Order on federal government security controls (RS 172.013).

i) Financial management controls intended to prevent or deter corrupt practices

The Federal financial auditors have to analyse this sort of risk (see answer to *Question 1(e)*).

j) Organisational management policies, systems and controls intended to minimise opportunities for corrupt activity

k) Transparency mechanisms* e.g. i*ndependent or public scrutiny, systems for declaring or reporting potential conflicting interests or corrupt activity

There are sector-specific provisions only, *e.g.* for public procurement and construction contracts in the Confederation, subject to the Federal Law on public procurement (RS 172.056.1).

The public service regulations require authorisation to pursue a secondary activity.

l) Guidance and training for public officials or politicians (e.g. codes of conduct, ethics awareness training)

Awareness-raising among managers and experts is made via the reports and surveys listed in the answers to *Questions 3* and *4*.

m) Other measures intended to control, detect or deter corruption

None.

2. Which anti-corruption mechanisms are regarded as most effective (in terms of implementation and impact)?

- Good salaries for public officials;
- Preventive measures at the organisational level;
- Criminal sanctions.

3. Is the effectiveness of these mechanisms formally evaluated? If so, what evaluation methods are used?

- Report by the Federal Office for foreign economic affairs on corruption in international trade (draft report available only);
- Report, dated 29 January 1997, on "Bribery: refusal of tax deductibility" by the National Council's Economic and Tax Committee;
- Report, dated 27 June 1996, entitled *Grobrisikoabklärung in der Eidgenössischen Finanzverwaltung* (Comprehensive risk evaluation in the Federal Finance Department);
- Report, dated 13 November 1996, by the Delegation of Management Committees reporting to the National Council and the States Council on "Events in the Federal Department of Military Affairs";
- Final report, dated October 1996, by the *Département fédéral de justice et de police* (federal justice and police department, or DFJP) on "Security controls and corruption", including a broad analysis of the situation in Switzerland, identifying policy needs and setting out conceptual proposals;
- Report and draft of June 1998 by the DFJP "Révision du droit pénal suisse de la corruption" (Revision of Swiss criminal legislation on corruption);
- Report by the Administrative Control body of the Federal Council, *Risques de corruption et mesures de sécurité au sein de l'administration fédérale* (Risks of corruption and prevention measures in the federal administration) of 26 March 1998.

4. What, if any, new actions against corruption in the public sector is your country currently considering?

- improving criminal and tax legislation, competition law, internal/external government audits and complex administrative procedures;
- extending the list of offending acts to cover gifts offered to officials; broadening the definition of corruption as an offence, reinforcing the threat of criminal sanctions and extending time limits; making the active corruption of foreign public officials a punishable offence;
- reinforcing financial audits;
- raising awareness about the risks of corruption via management training;
- setting up a monitoring committee;
- giving the Federal Finance Department a mandate to draw up standard arrangements regarding the acceptance of gifts and personal benefits by public officials;
- mandates from the Federal Council of 20 May 1998 given to:
  - the Federal Finance Department to draw up a "Code of conduct" with a view to preventing corruption (according to the OECD *Principles for Managing Ethics in the Public Sector*);
  - Departments to include topics on corruption and ethics in training and development and exchange experiences;
  - Departments to examine, against their inventories, activities which might give rise to corruption, prevention measures, and to undertake necessary improvements.
- see also the answer to *Question 2*.

5. Is there an official awareness or a policy position on the part of your government about which areas are of most concern in terms of corrupt or questionable activities involving the public sector?

On the basis of the recommendations listed in the answer to *Question 4*, two reports were adopted by management commissions of the Swiss Federal Parliament:

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- A report of the parliamentary body for controlling the administration on ethics in the public service, 30 October 1998;
- A report by the Management Commission of the National Council on outside activities of civil servants and on professional activities of forner civil servants, 12 March 1999.

Annex A

Survey Document

Survey of anti-corruption measures in the public sector in OECD countries

Purpose of the survey

Traditionally the problem of corruption in the public sector was left largely to law enforcement officials. More recently, many OECD countries have taken administrative and preventative action against corruption on the part of public officials. The purpose of this study is to complement the work done by PUMA on public sector ethics by developing an outline of the full range of mechanisms currently being applied in OECD countries to combat corruption in the public sector. The survey is not intended to investigate the *extent* of corruption in OECD countries, but rather to review the *actions being taken* against corruption.

The information gathered by this survey will produce an overview of the areas of corrupt or questionable activities that appear to be of most concern to governments, the measures being used to combat corruption in the public sector and the methods, if any, available to evaluate the effectiveness of anti-corruption measures. The survey is intended to provide an indication of the way OECD countries are addressing the universal problem of controlling corruption.

The information gathered by the survey will benefit Member countries in two ways. First, by pooling knowledge, countries will gain information that may be useful in their own contexts. Second, the information will help PUMA to direct any future work in this area to the questions that are most relevant to Member countries.

Scope

The survey does not look for definitions of corruption because each country will have its own priorities and perspectives. Rather, the aim is to create an overview of all the measures (whether proactive or reactive) being used against public sector corruption. In deciding whether a mechanism or activity should be included, the key criterion is whether it was introduced for an anti-corruption purpose as defined in the local context.

Similarly, the survey does not suggest any strict definition of "public sector", as the scope of anti-corruption measures will vary greatly among countries and it is preferred to allow responding countries to define the scope in terms of their own situation. In your answers please try to include as many areas of public activity as are relevant to the questions and specify clearly which areas of activity each of the measures identified relates to [*e.g.* central, state/regional/provincial (where applicable), or local levels of government; different institutional sectors; specific groups of public officials, elected and non-elected].

Output

The information received will be compiled as a short background report for the Symposium on Ethics in the Public Sector, to be held at the OECD on 3-4 November 1997. Participating countries will have an opportunity to comment on the draft report prior to the Symposium. It will also be used in developing an Ethics Checklist for use by OECD countries.

Completing the survey

Please try to answer all of the questions included in the survey. Long discursive answers are not required.

Survey of anti-corruption measures in the public sector in OECD countries

1. What anti-corruption mechanisms exist for the public sector in your country? *Please answer YES or NO against each of the following suggestions. If you answer YES please give a brief description.*

   a) Legislation proscribing corrupt activities and establishing sanctions
   NO/YES (*list and explain scope and purpose*)

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b) Other anti-corruption regulations or orders
NO/YES (*list and* explain scope and purpose)

c) Oversight by the legislature or parliament (directly or through scrutiny committees)
NO/YES

d) Investigation systems or bodies with powers to investigate corrupt activity
NO/YES (Describe functions, jurisdiction, powers and degree of independence.)

e) Supreme financial audit authority
NO/YES (Describe functions, jurisdiction, powers and degree of independence.)

f) Ombudsman
NO/YES(Describe functions, jurisdiction, powers and degree of independence.)

g) Bodies to enforce sanctions and prosecute corrupt activity, *e.g.* specialised prosecutors, investigators, courts, tribunals, etc.
NO/YES(Describe functions, jurisdiction, powers and degree of independence.)

h) Human resources management procedures intended to prevent corruption
NO/YES

i) Financial management controls intended to prevent or deter corrupt practices
NO/YES

j) Organisational management policies, systems and controls intended to minimise opportunities for corrupt activity
NO/YES

k) Transparency mechanisms, *e.g.* independent or public scrutiny, systems for declaring or reporting potential conflicting interests or corrupt activity.
NO/YES

l) Guidance and training for public officials or politicians (*e.g.* codes of conduct, ethics awareness training)
NO/YES (Describe the scope and content of training and the nature of guidance provided)

m) Other measures intended to control, detect or deter corruption.

2. Which anti-corruption mechanisms are regarded as most effective (in terms of implementation and impact)?
3. Is the effectiveness of these mechanisms formally evaluated? If so, what evaluation methods are used?
4. What, if any, new actions against corruption in the public sector is your country currently considering?
5. Is there an official awareness or a policy position on the part of your government about which areas are of most concern in terms of corrupt or questionable activities involving the public sector?

Annex B

ORGANISATIONS RESPONSIBLE FOR PREPARING THE SURVEY RESPONSES

Belgium

Ministère de la Fonction publique (Ministry for the Public Service)

Czech Republic

Ministry of the Interior

France

Ministère de la Fonction publique, de la Réforme de l'État et de la Décentralisation (Ministry for the Public Service, State Reform and Decentralisation)

Germany

Bundesministerium des Innern (Federal Ministry of the Interior)

Greece

Ministry of the Interior, Public Administration and Decentralisation

Hungary

Secretariat of the Government Commissioner for the Modernisation of Public Administration; Ministry of the Interior

Ireland

Department of Finance

Italy

Department of Public Service of the Presidency of the Council of Ministers

Japan

Ministry of Foreign Affairs

Korea

Ministry of Government Administration and Home Affairs

Mexico

Ministry of the Comptroller General and Administrative Development

Poland

Office of Civil Service

Spain

Ministry of Public Administration

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Sweden

Ministry of Finance; National Audit Office

Switzerland

Chancelier de la Confédération Suisse (Swiss Federal Chancellor)

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