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**CORRUPTION IN
EU CANDIDATE COUNTRIES**

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Miss Kainberger is European Editor of the *Salzburger Nachrichten*, and is the first Alfred Geiringer/APA Fellow.

Corruption is the cancer of modern societies and economies – a disease eating further and further into the organism and infecting what was still healthy.

Günter Verheugen,
Member of the European Commission, responsible for Enlargement
Strasbourg, European Parliament, October 3, 2000

CONTENTS

Introduction

Corruption and EU enlargement
Definition and typologies

Assessment

Impacts

Damage to democracy
Economic inefficiency

Reasons

Transition
Heritage of communism

Countermeasures

Anti-corruption policies
Controlling the state: democracy and rule of law
Freedom of media
Strengthening the state
Economic reforms

Role of EU and international organisations

World-wide institutions (United Nations, World Bank, OECD)
Council of Europe
European Union

Conclusions

Literature

Annexes

Acknowledgements

„No, money is not the most important thing in the world. But if I have to cry, I prefer to sit in my Jaguar than in the tube.” No, Oxford is nothing to cry about. But this quote of a rich woman, whose name got lost in my memory, makes clear that material things do matter. Therefore in the first place, I thank those who enabled me to come to Oxford with their generous financial contribution: the Austrian Press Agency APA for granting the fellowship; and my employer, Salzburger Nachrichten, above all *Ramon Torra*, who had the idea of nominating me for the competition and encouraged me to take part, the publisher *Max Dasch* and the editor-in-chief *Ronald Barazon*. In addition, I thank the Reuters Foundation for having established the programme for mid-career journalists and for allowing me to take part. I am grateful to Green College for the warm welcome to their Common Room and to Oxford University for the access to overwhelming lectures and splendid libraries.

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“The question is how it happens that a new idea occurs to a man”, asks Karl Popper in his article “A scientific method”. Many of the ideas for this paper were aroused in conversations during my stay in Oxford. I am grateful to my adviser, *Heather Grabbe* from the Centre for European Research (CER) in London, for being candidly criticising. I am grateful to the Reuters fellows of Hilary Term 2003 for spicy discussions and encouragement. I want to thank *Caroline and Henry Mayr-Harting* for their generous and warm welcome and the sophisticated talks at their house at Christ Church College. Besides inspiration, one certainly needs theories. This paper could not have been written without the research and analyses on corruption in candidate countries by many scientists, as *Susan Rose-Ackerman*, and by several non-governmental organisations, especially Freedom House, Open Society Institute, and Transparency International.

“Practical experience was teaching him that judgement and character could be a good deal more important than mere intelligence.” Michael Ignatieff wrote this in his biography about Isaiah Berlin, that I was only able to read after I had handed in the final draft of this paper. (By the way, probably I would not have understood half of this book about Isaiah Berlin before having come to Oxford; for instance, what it means to be an “All Souls Fellow” or to be “homesick for the complex and mysterious social mazes of Oxbridge”). There are several people, experienced in purveying information and intelligence, though with outstanding character and wisdom, to whom I am most grateful: to *Wolfgang Vyslozil* of the APA, who –

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Introduction

Corruption and EU enlargement

The widespread corruption in candidate countries “requires special attention and gives me great cause for concern”, said the European Commissioner responsible for Enlargement, Guenter Verheugen during a debate on enlargement in the European Parliament.¹ Corruption is an extremely serious problem “which, apart from a few exceptions, infects many of these countries”, stated the President of the European Commission, Romano Prodi, at the European Parliament.² These are only two quotes out of many speeches by high-ranking representatives of the European Commission who mention corruption as a severe shortcoming in the candidates’ preparation for entering the EU.

The European Commission has been criticising the corruption in candidate countries year by year since the opening of the accession negotiations. Already in the first progress report of November 1998 it stated that “the fight against corruption needs to be strengthened further” and that “there is a certain lack of determination to confront the issue and to root out corruption in most of the candidate countries”.³ In October 2002, in the last report before concluding the negotiations, the European Commission confirmed that corruption, fraud and economic crime remain “a source of concern”, although it is conceded that progress has been made in the fight against corruption, fraud and economic crime, that “anti-corruption strategies are now in place in most countries” and that “further progress has been made in terms of legislation” and “significant efforts have been made in terms of awareness raising”.⁴

These written and oral allegations have been repeated, but neither the European Commission in its progress reports, nor Commissioner Guenter Verheugen, nor President Romano Prodi have provided any proof, any method of assessment or any in-depth analyses of corruption in candidate countries. They don’t explain what sort of corruption could be harmful to the European Union and the Single Market and why corruption in candidate countries is to be criticised outspokenly, whereas the Single Market has been built up and European integration has been deepened in spite of remarkable cases of corruption in present member states.

With these questions in mind I shall try to analyse the problem of corruption and its possible impact on European integration after enlargement. After defining and describing the phenomenon I will provide assessments of the corruption in candidate countries. I will outline possible impacts on democracy and economy as well as specific reasons for corruption in former communist states. I will analyse possible countermeasures, and assess the role of the European Union and other international organisations in the fight against corruption in candidate countries. Finally, I will try to explain possible perspectives for the enlarged EU.

¹ Guenter VERHEUGEN, “Enlargement is irreversible”, Speech during the debate on Enlargement in the European Parliament, Strasbourg, 3 October 2000 (SPEECH/00/351)

² Romano PRODI, “Enlargement – the final lap”, Speech at the European Parliament, Brussels, 9 October 2002 (SPEECH/02/463)

³ European Commission, Composite Paper, Reports on progress towards accession by each of the candidate countries, 4 November 1998, http://europa.eu.int/comm/enlargement/report_11_98/pdf/en/composite_en.pdf, p. 4

⁴ European Commission, Towards The Enlarged Union, Strategy Paper and Report on the progress towards accession by each of the candidate countries, 9 October 2002, COM (2002) 700, p.13

I will focus on the eight Eastern European countries that are supposed to join the European Union in May 2004, i.e. the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia. In addition, I will also tackle Bulgaria, Rumania and Croatia that might join the EU in a second round in 2007. I will, however, leave out Malta and Cyprus, as the geography and the history of these two countries are entirely different, and the impact of their accession to the EU concerning both size of population and economy can be regarded as minor. And I leave out the other Balkan countries as their prospect for entering the EU is yet unclear.

All Southern and Eastern European candidate countries have been developing their individual political systems based on their diversified histories and traditions. To throw them all into one pot gets as difficult as it is already for the Western European states. Nevertheless, I'll do this in the context of corruption out of two reasons: First, for nearly half a century all the present candidate countries that have negotiated or have been negotiating about EU accession – except Malta and Cyprus – had communist regimes; all but Slovenia and Croatia were strongly linked to the Soviet Union. Second, and since the end of the 1980s – i.e. the breakdown of the Soviet Union and of Yugoslavia – all these countries have been shaping their legal and political systems with the same objective, namely to accede to both NATO and the European Union.

Definition and typology

To grasp the reasons and impacts of corruption it is helpful, though insufficient, to provide a short definition, as for instance the one by the World Bank and Transparency International: corruption is “the abuse of public office for private gain”⁵; or the one by Robert Klitgaard, Professor of International Development and Security at the RAND Graduate School in Santa Monica, California: corruption is “monopoly plus discretion minus accountability”⁶; or the one suggested by the United Nations: “Corruption shall mean engaging in or inducing acts that constitute improper performance of duty (or abuse of a position of authority), including acts of omission, in expectation of an advantage or to obtain an advantage, directly or indirectly promised, offered or requested, or following acceptance of an advantage directly given, whether for oneself or on behalf of another.”⁷

To understand the phenomenon, especially in the view of societies in transition, it is necessary to indulge at least for a few paragraphs in sociology, especially in Max Weber's Ideal type and his concepts of Economic Action and Bureaucracy⁸ upon which models of behaviour can be built. In view of corruption, Jens Christopher Andvig, economist at the Norwegian Institute of International Affairs (NUPI) in Oslo, suggests to distinguish four spheres of norms: first, family and friendship, where the motivation for action is supposed to be altruistic; second, bureaucracies, both public as administration and private as enterprises, where behaviour is

⁵ World Bank, Corruption in Poland, Review of priority areas and proposals for action, 11 October 1999/Transparency International, Corruption Perceptions Index 2002, press release 28 August 2003, p.6, <http://www.transparency.org>

⁶ Robert KLITGAARD, Controlling Corruption, University of California Press, Berkeley, 1988

⁷ United Nations, Revised draft United Nations Convention against Corruption, March 2002, V.02-52865 (E), Article 2, lit. (m)

⁸ Max WEBER, The Theory of Social and Economic Organization, Oxford University Press, New York, 1947, pp. 139ff, 158ff/Max WEBER, Economy and Society, An Outline of Interpretative Sociology, edited by Guenther Roth and Claus Wittich, Bedminister Press, New York, 1968, Volume 1, pp. 63ff, 356ff, Volume 3, pp 956ff/Anthony GIDDENS, Sociology, Forth Edition, Polity Press, Cambridge 2001

determined by obedience in a hierarchical structure; third, markets, where the motivation is maximising one's economic interest and where transactions are based on action and counter-action with equal value and the counter-action being usually in form of money; and fourth, the realm of politics, where public support and voting determine the behaviour.⁹

In principal, the norms of these spheres must not be intermingled. For instance, a person that applies the rules of the market sphere to the family or in relation to friends is regarded as behaving wrongly. A similar discontent, usually followed by failure or bankruptcy is raised when a private enterprise is managed strictly according to friendship rules. Or, one who wants to get milk or bread behaves and communicates entirely differently with his or her brother or aunt than with the sales assistant in the supermarket.

Where in this model is the place of corruption? First, it is a breach of norms. Secondly, it occurs when the sphere of bureaucracy is influenced or dominated by market rules, i.e. when a civil servant takes money from an investor for the permit to build a house or found an enterprise; or when market rules intrude on the political sphere, i.e. when politicians decide in favour of a law because the beneficiary of that law had paid either for the politician or for his party. Both the bribed civil servant and the bribed politician act correctly according to the market rule, but they breach the rules of the bureaucratic and the political sphere. A similar sort of violation happens when actions in the bureaucratic or the political sphere are taken according to the family and friendship rule; this misbehaviour is called nepotism or cronyism.

The definition of corruption would be easy if these spheres of norms were clear-cut. In reality, however, the borders are blurred, sometimes because the rules are not exactly defined as there is now specific law or no written code of conduct, and sometimes because the different spheres are naturally intertwined. For example, an employee is supposed to behave like somebody who sells his working power, but at the same time he must follow the orders of those who are superior in hierarchy, and towards his colleagues he has to develop relationships that has more similarities with friendship and bureaucracy than with tough business. A sales manager will be more successful if he treats his clients not as agents from whom he expects only maximum amounts of money, but as sort of companions or even friends. And who will blame a business journalist who accepts an invitation to the dinner where the spokesperson of an enterprise announces and explains a merger or the next dividend? Even in societies that are not judged as corrupt many relationships in politics, in public administration and in private enterprises are both successful and morally impeccable although they are, at least partly, built on rules of friendship and kinship.

It gets even more complicated when one compares two different societies. In one country a journalist's invitation to dinner or Christmas gifts to civil servants may be regarded as bribery, in another country such acts may be common and morally impeccable. Similar difficulties occur when the set of norms of a society – not only the laws but also the moral – is being transformed, like in the candidate countries where after the fall of communism both the political and the economic system were entirely changed. In the communist system political, bureaucratic and the market spheres were one entity; the party decided who was appointed manager of enterprises, the bureaucrats decided with five-year-plans about the level of production. Consequently, behaviour that in the communist system was perfectly in line with laws and norms, in a "Western" system counts as corrupt and illegal or at least immoral. What was normal in the old system may be criminal in the new.

⁹ Jens Christopher ANDVIG, Transition from Socialism – The Corruption Heritage, draft paper, Oslo, 24 November 2002, www.colbud.hu/honesty-trust, Workshop 1, p. 18ff

It is difficult to provide a clear-cut typology of corruption, because reasons and impacts of corruption are complex. Its nature is hidden, as corrupt actors try to keep their deals secret. And corruption typically has links to other criminal acts as fraud, lying or corruption of others.¹⁰

Moreover, a differentiation according to the gravity of corrupt acts is problematic. For instance, if one regards the bribing of judges as an extraordinarily dangerous form of corruption, because with the judicial system the rule of law as a corner stone of democracy is endangered, also the bribing of a traffic cop to get rid of a ticket or bribes for getting a place at a public university should be regarded as equally severe as the very same principle is broken. But usually small bribes in every-day encounters of citizens and officials are regarded as tiny offences. Another example: bribes for a surgeon in a public hospital to expedite an operation will be regarded as a more severe case of corruption than bribing a judge if one estimates health as a more precious than the principles of the rule of law.

A helpful classification is provided by the World Bank describing two types: on the one hand "state capture" with corrupt influence on the formation of laws, regulations and government policies, on the other hand "administrative kickbacks" as administrative corruption that tries to distort the implementation of existing rules, laws and regulation, especially to secure public procurement contracts.¹¹

Following Rasma Karklins, professor of political science at the University of Illinois-Chicago, by intending "to characterize the many faces of the phenomenon", more detailed distinctions can be made:

first, low-level administrative corruption (like bribing of public officials to bend rules, deliberate over-regulation, obfuscation and disorganisation, as well as using licensing and inspection powers for extortion);

second, self-serving asset stripping by officials (like diverting public resources for civil servant spoils, mismanagement and profiteering from public resources, profiteering from privatisation, malpractice in public procurement, nepotism, clientelism and "selling" of jobs);

third, state capture by corrupt networks (de facto takeover of public institutions for private business or criminal activity, forming networks to limit political competition, undermining free election through illicit political party financing, purchase of legislative power, purchase of court decisions, misuse of auditing and investigatory powers, political blackmail and corruption in and of the media)¹²

¹⁰ Rasma KARKKLINS, Typology of Post-Communist Corruption, Problems of Post-Communism, journal edited at the George Washington University, Washington D.C., July-August 2002, pp. 23ff

¹¹ World Bank, Anti-corruption in Transition, A Contribution to the Policy Debate, World Bank, Washington, 2000, p. xv-xii, p. 3, <http://www.worldbank.org/wbi/governance/pdf/contribution.pdf> /Joel S. HELLMAN, Geraint JONES, Daniel KAUFMANN, Far From Home, Do Foreign Investors Import Higher Standards of Governance in Transition Economies ?, draft, World Bank, August 2002, p. 6, www.worldbank.org/wbi/governance/pdf/farfromhome.pdf

¹² Rasma KARKKLINS, Typology of Post-Communist Corruption, Problems of Post-Communism, journal edited at the George Washington University, Washington D.C., July-August 2002, pp. 22ff

Assessment

Since the end of communism, the phenomenon of corruption in Eastern Europe has extensively been dealt with in economic and political research. Some scholars even go as far as to argue “that corruption has replaced repression as the main threat to the rule of law” in post-communist Europe.¹³ And William L. Miller et al., although intending to analyse “how ordinary citizens in post-communist Europe cope with government”, ended up with the title “Corruption Culture”. They found corruption had become “a common experience, and even more common perception, in post-communist Europe”.¹⁴

The European Commission does not provide much more than the statement that there is a problem with corruption. In the recent individual country reports of October 2002 it makes only a slight differentiation by describing corruption as a “serious” problem in Bulgaria, Czech Republic, Poland and Slovakia, and as a “continuing” problem in Hungary, Latvia, Lithuania. Only in the reports on Estonia and Slovenia corruption is mentioned as “limited”.¹⁵

Three NGOs have been trying to assess corruption in more depth. Transparency International (TI) is an international non-governmental organisation (funded by several foreign ministries and national development agencies, the European Union and international enterprises) and has been publishing since 1995 an index that measures the perception of corruption in countries all over the world for which sufficient data are available.¹⁶ The Open Society Institute (OSI), as part of the Soros Foundation network, published in November 2002 in the framework of EUMAP (EU Accession Monitoring Program) a bunch of reports on corruption and anti-corruption policy as well as on the judicial capacity of the Southern and Eastern European candidate states.¹⁷ Freedom House, an U.S. based NGO funded by the U.S. Agency for International Development, the U.S. Information Agency, the Soros Foundation and several other private foundations, published its sixth edition of “Nations in Transit” in 2002, analysing corruption amongst other features of political and economic practice to assess the state of democracy, rule of law and economic transformation in 27 former Soviet countries.¹⁸

Whereas Transparency International quantifies the perceived corruption by attributing ranks and scores to each country, the Open Society Institute provides hundreds of pages with detailed description and analysis. Both institutions conclude that, on average, corruption is more rife in candidate countries than in present EU member states, though the best candidates perform better than the worst EU members. And both describe the level of corruption in candidate countries as alarming. Freedom House, however, brings forward both an analysis

¹³ Richard ROSE, William MISHER, Christian HAERPFER, *Democracy and its Alternatives : Understanding Post-Communist Societies*, Cambridge, UK, Polity Press, 1998, 219 ; quoted in : William L. MILLER, Ase B. GRODELAND, Tatyana Y. KOSHECHKINA, *A Culture of Corruption, Coping with Government in Post-communist Europe*, Central European University Press, Budapest, New York, 2001, 5

¹⁴ William L. MILLER, Ase B. GRODELAND, Tatyana Y. KOSHECHKINA, *A Culture of Corruption, Coping with Government in Post-communist Europe*, Central European University Press, Budapest, New York, 2001, xvii, 1

¹⁵ European Commission, Regular Reports, Brussels, 9 October 2002, for each candidate country, SEC (2002) 1400 and 1402-1411, <http://europa.eu.int/enlargement/report2002>

¹⁶ <http://www.transparency.org>

¹⁷ OSI, “Corruption and Anti-corruption Policy in the then Candidate States of Central and Eastern Europe” http://www.eumap.org/articles/content/91/913/index_html?
http://www.eumap.org/whatsnew/pressinfo/1035499518/index_html?Open Society Institute, Monitoring The EU Accession Process, Judicial Capacity, November 2002, <http://www.eumap.org>

¹⁸ <http://www.freedomhouse.org/research/natransit.htm>

and comparable scores, though its study is focused on the former Soviet states in Central and Eastern Europe and Eurasia and therefore provides no comparison with present EU members.

The Transparency International (TI) Index is compiled as a poll of polls, taking into account surveys of several organisations that reflect the perceptions of business people and country analysts, both resident and non-resident.¹⁹ The ranks and scores shown by the TI Index cannot be strictly compared year by year because the number of analysed countries and the number and sort of included polls change year by year. Nevertheless, the TI Indices give a rough picture: for the majority of the candidate countries Transparency International has been scoring an index of below 5, which is regarded as threshold under which the level of perceived corruption in government and public administration is to be gauged as high. Only Slovenia, Estonia and sometimes Hungary have shown levels above 5, whereas other candidate countries score well below the alarming threshold: Lithuania, Poland and the Czech Republic usually between 4 and 5, Latvia and Slovakia between 3 and 4. On average, the candidate countries score significantly worse than the present EU members, though there are exceptions: In the index for 2002, the two best candidate countries, Slovenia and Estonia, rank higher than Italy and Greece, and Hungary and Lithuania rank lower than Italy, but higher than Greece, by far the worst present EU member state. (*See Annex I*)

Although the TI Index allows an approximate comparison over the years, its methodology poses difficulties. First, it can only depict the perceived level of corruption. But for actions that are usually performed in secret, the perceived and the actual levels may differ widely. For example, if there is much petty corruption, a high level of corruption will be perceived, even if the interviewees don't have any information about grand corruption. During election campaigns, the perceived level might be high, not because of widespread evidence, but because many people speak about it. Vice versa, if nobody talks about corruption and the grand deals are disguised, the perceived level might be lower than the actual.²⁰

The second weakness of this sort of cross-country comparison is the usage of the term "corruption" as a single phenomenon, though there are many different forms of corruption, with different reasons, different mechanisms, different values of contracts, different impact on political and social life, and therefore different risks for a society, and affording different counter-measures: grand and petty corruption; structural corruption that is deeply entrenched in the political and administrative system with possible links to organised crime and casual, individual corruption; corruption involving politicians, civil servants or managers of private firms; aiming at reducing taxes, soften laws, getting access to information.²¹

The Open Society Institute (OSI) avoids these problems of measuring perception and of undifferentiated use of term "corruption" by providing a complex and not quantifiable assessments resulting in EUMAP-reports of approximately 200 pages for each country. Nevertheless, the main findings as stated in the EUMAP-press release on the occasion of the publication of these reports in November 2002 are no less worrying than those of Transparency International: "Corruption is a serious problem in public administration in almost all candidate states, underpinned inter alia by the absence of effective procedures and

¹⁹ Transparency International, press release, 28 August 2002, <http://www.transparency.org>

²⁰ see Jens Christopher ANDVIG, Transition from Socialism – The Corruption Heritage, draft paper, Oslo, 24 November 2002, www.colbud.hu/honesty-trust, Workshop 1, pp. 13f

²¹ Susan ROSE-ACKERMAN, Corruption and Government, Causes, Consequences, and Reform, Cambridge University Press, Cambridge (UK), 1999, p.4 / Rasma KARKLINS, Anti-Corruption Incentives and Constituencies in the Post-Communist Region, draft paper, Collegium Budapest, September 2002, www.colbud.hu/honesty-trust, Workshop 1, p. 4

widespread conflicts of interest". And: "Corruption in public procurement remains a serious problem in most if not all candidate states: bribes of 10-20 percent of contract value appear to be typical, while collusion between bidders appears to be widespread across countries as different as Slovenia and Bulgaria."²²

On the issue of country ranking, Freedom House brings forward similar, though not identical, results as Transparency International, with Slovenia showing the lowest level of corruption, Estonia, Hungary and Poland in the upper ranks, Czech Republic, Latvia and Bulgaria in lower spheres and Romania in the worst position. (*See Annex II*) Though the scores attributed by Freedom House are not strictly comparable, three observations confirm the worries about the candidate countries: first, the scores for corruption are worse than for other features like civil society, governance and public administration, privatisation or macroeconomic policies. Second, in three of the eight new EU entrants (Czech Republic, Latvia and Lithuania) they are below the middle score of 3.5; as the Freedom House scores range from 1 (optimal) to 7 (most repressive), these countries are nearer to the worst score than to the best. Third, in three of the eight countries (Czech Republic, Latvia, Hungary) corruption has got worse since 1999; in three it remains unchanged (Lithuania, Poland, Slovenia), and only in Estonia and Slovakia has corruption been reduced during the last three or four years.²³

In addition to the three NGOs, a fourth source for the assessment of corruption in candidate countries is the World Bank, whose analyses are based on data out of interviews conducted in 1999 and 2000 with firm managers and owners in 22 countries (for the so-called Business Environment and Enterprise Performance Survey, BEEPS). As with Freedom House, the World Bank only analyses countries in transition, i.e. mostly former Soviet dominated states, and not Western or EU countries. According to these data the average share of annual revenues paid in bribes was in the eight new EU entrants below the average of three per cent. The highest shares were reported for the Czech Republic and Slovakia (each 2.5 per cent) and Lithuania (2.8 per cent), the lowest for Estonia (1.6 per cent), Slovenia and Latvia (1.4 per cent). The World Bank also provides a differentiation between state capture and kickback corruption of administration. The respective findings from interviews in 1999 and 2000 show that the candidate countries (with the exception of Latvia and Lithuania) are more prone to the less dangerous kickback corruption than to state capture. However, kickback corruption reaches record levels in the Czech Republic, Romania, Slovakia and Poland.²⁴ (*See Annex III*)

Although there is a difference between candidate countries concerning levels and types of corruption, and although perceived corruption may differ from de facto corruption, the four above explained assessments allow the conclusion: on average, corruption in candidate countries is more rife than in the present EU member states, and it is less rife in the candidate countries than in other post-communist states. To put it nicely: Though there is a remarkable level of corruption in the EU candidate countries, in many other states the situation is much, much worse. To put it more critical: though the current EU countries are by no means free of corruption themselves, in 2004 eight countries will enter where corruption is significantly more prevalent than in the present EU.

²² <http://www.eumap.org/whatsnew/pressinfo/1035499518/index.html>

²³ Freedom House, Nations in Transit 2002, www.freedomhouse.org/research/nattransit.htm with extensive reports for each country.

²⁴ World Bank, Anti-corruption in Transition, A Contribution to the Policy Debate, World Bank, Washington, 2000, p. xvi-xviii, p. 8, 13 <http://www.worldbank.org/wbi/governance/pdf/contribution.pdf> /Joel S. HELLMAN, Geraint JONES, Daniel KAUFMANN, Far From Home, Do Foreign Investors Import Higher Standards of Governance in Transition Economies?, World Bank, draft, August 2002, p. 7, <http://www.worldbank.org/wbi/governance/pdf/farfromhome.pdf>

Impacts

If corruption is rife the dangers for a society are more serious and more difficult than if burglars are at large in every second village. Burglars can be prosecuted and arrested by the police. But what happens, if the policemen themselves have become burglars? What happens if the state, which should protect its citizens against criminals by enforcing of laws, itself has become criminal?

An entirely criminal state, however, is an extreme scenario which is helpful in describing possible impacts but need not correspond with a less harmful reality in candidate countries. Corruption does not, in any case, put a society on the verge of anarchy or in a Hobbesian "state of nature". As any dispute of opinions is not immediately violent, and as a violent conflict need not result in an all-out war, there are different impacts of corruption, concerning both type (political or economic) and degree. One corrupt policemen will not endanger democracy, and one bribed tax collector will not ruin economic growth. A society or an institution can be partly corrupt, and it can partly be well governed following civic virtues like accountability, transparency and aiming for the common good. Nevertheless, the general principle can be stated as Susan Rose-Ackerman, professor in the Yale Law School and Department of Political Science, puts it: "Corruption is a symptom that something has gone wrong in the management of the state."²⁵

Damage to democracy

Corruption is both a reason for and consequence of bad governance. If politicians do not act according to the will of the citizens who have put them in authority but according to the will of those who pay bribes, democratic principles of freedom and equality are undermined. If corruption in government is widely perceived, distrust of public institutions is widespread. As bad governance tends to centralise power, checks and balances on public institutions become difficult if not impossible. In a country with widespread corruption neither laws that were decided by elected representatives of the citizens nor independent judges determine what is right and what are rights, but those who secretly seek additional, illegitimate income and those who pay bribes. Therefore, corruption saps the rule of law. In such badly governed societies, a majority of the citizens is exploited, perhaps even impoverished and desperate. And violence can be rife, both because ordinary people are ready to protest and because opportunistic elites can mobilise this frustration into violence for their own political ends.²⁶

Economic inefficiency

In addition to the political damage, corruption harms the economy and as a consequence the wealth of the average citizen. As Susan Rose-Ackerman states: "A country is poorer overall if corruption levels are high."²⁷ Decisions of corrupt politicians and civil servants produce inefficiencies: economic resources of capital and labour force are not used to produce a

²⁵ Susan ROSE-ACKERMAN, *Corruption and Government, Causes, Consequences, and Reform*, Cambridge University Press, Cambridge (UK), 1999, p. 9

²⁶ Larry DIAMOND, *Building a System of Comprehensive Accountability to Control Corruption*, January 2003, published on the Internet: <http://www.stanford.edu/~ldiamond/papers.html>, p. 7ff

²⁷ Susan ROSE-ACKERMAN, *Corruption and Government, Causes, Consequences, and Reform*, Cambridge University Press, Cambridge (UK), 1999, p. 3

maximum of products or services but to provide a maximum advantage for the person in power to decide, be it to the detriment of any other individual or of the general public. This leads to worse performance in public services, productivity and economic growth than in non-corrupt societies.²⁸

Take, for instance, investment: corruption in government and administration reduces investment – especially foreign direct investment - on which it acts like a tax. It imposes additional cost, first because of bribes for licences or contracts; secondly because of the additional work-load, as surveys of business people have shown that in highly corrupt countries managers spend many hours dealing with state officials instead of customers; and, thirdly, because of highly uncertain conditions for investment.²⁹ In a corrupt environment, however, excessive public infrastructure investment is encouraged, especially in projects with quick short-term payoffs, i.e. rather in new, one-off and short-run projects than in maintenance and long-term infrastructure, rather in “white elephant” projects than in the basics for economic development.³⁰

Another example can be stated with corruption in banks. If credit is granted and if interest rates are fixed not according to the risk of an investment and to the investor’s creditworthiness but according to the amount of bribes or to political links and personal connections, banks will end up with loads of high-risk debts with no chance of ever being paid back.³¹ Two consequences are possible. Either the banks will lack money for further credit and sooner or later go bust. Or they are provided with fresh money by the state, be it direct subsidies or new money supply via a politically dependent central bank; in both cases the costs of bad loans are passed on the general public, either via taxes or via inflation. In the Czech Republic, for example, a special public institution, the state-owned Konsolidacni Agentura (former Konsolidacni Banka KOB) has been responsible for a “pre-privatisation clean-up of large Czech bank portfolios”. One of the means to achieve this is “the accumulation of non-performing assets”, as explained on the KOB website. “At year-end 2002, the nominal value of assets managed by the financial group represented almost one fifth of the Czech Republic’s gross domestic product.” According to data published by the KOB, by the end of 2002 it had loss making credits of approximately 115 billion Czech crowns, what represents nearly 60 per cent of the total credit.³² On the problem with bad loans, Freedom House commented in its recent report about the Czech Republic: “Massive bank losses in the early stage of privatization have largely been swept under the carpet and are being paid for by taxpayers.”³³

A third example for inefficiency as consequence of corruption is the mismanagement of public procurement and privatisation. Both bear the same consequence, i.e. depriving the general public of wealth (income or assets), though from different directions. In corrupt deals of public procurement more money is spent than necessary, or the received goods or services

²⁸ *ibid*, p. 2f

²⁹ *ibid*, p. 3 and 15f and 32f/Shang-Jin WEI, How Taxing is Corruption on International Investors, Harvard University, February 1997, quoted in Transparency International, Press Release on the 1997 Corruption Perception Index, Berlin, 31 July 1997, <http://www.transparency.org> / Joel S. HELLMAN, Geraint JONES, Daniel KAUFMANN, Far From Home, Do Foreign Investors Import Higher Standards of Governance in Transition Economies ?, World Bank, draft, August 2002, p.3, <http://www.worldbank.org/wbi/governance/pdf/farfromhome.pdf>

³⁰ Susan ROSE-ACKERMAN, Corruption and Government, Causes, Consequences, and Reform, Cambridge University Press, Cambridge (UK), 1999, p. 3 and 30f

³¹ *ibid*, p. 10f

³² <http://www.kobp.cz/kobphaen.htm>

³³ Freedom House, Nations in Transit 2002, p. 161, <http://www.freedomhouse.org/research/nattransit.htm>

are of less quality than possible. In corrupt deals of privatisation less money is collected than possible, or not all of the receipts are poured into the state's treasury. Both in corrupt public procurement and corrupt privatisation, the financial benefits of the bribers and the corrupt politicians or civil servants are to the detriment of the public, especially of tax payers. For instance, if a contract to build a motorway is not granted to the company that is ready to provide the service at the lowest price or to the highest quality, tax payers' money has to be used to fill the gap between the best and the corrupt bidder: either to pay for the additional price to the bribing firm, or for the additional maintenance costs or for the early rebuilding due to the poor quality; such abuse can even become highly dangerous if health care, nuclear safety, safety of buildings or environmental damage are concerned. If the contract to sell a state-owned production facility is not given to the investor paying the highest price, less money than possible will be available for health care, education and other public services.

Reasons

A state built according to the principles of democracy requires representation. Representatives of the citizens and of the state – i.e. politicians and civil servants – have to be vested with the freedom and power to make decisions. This discretion gives room for responsible behaviour committed to the public good as well as for self-interest, greed and abuse of power. As self-interest and greed are intrinsic in human nature, corruption cannot ever to be entirely excluded from a democratic society. It can only be limited, though not by a single, all-powerful measure, but by creating systematic counter-measures and control mechanisms.

But why is corruption more rife in candidate countries than in other democratic European states? There is no empirical study on the reasons for the relatively high level of corruption in candidate countries. However, it is widely assumed that the roots lie in the transition of their society and economy and in the communist heritage.

Transition

The change from a communist to a liberal political system, from central planning to a market economy, means a change of rules and norms. A sudden switch from an old to a new order, as in 1989, creates loopholes in the laws and procedures or ignorance about new laws and regulations. Jens Christopher Andvig stated for the candidate countries: “Since the same loss of power (i.e. of the Communist Parties) also destroyed many of the formal and informal monitoring mechanisms containing corruption which had had existed under the party rule, it stimulated corruption directly”.³⁴

In addition, new institutions and procedures have been built up that themselves could be exposed to a conflict of interest and, as a consequence, to corruption, like legislation via the parliament, consultations of experts and lobbyists concerning draft laws, administration and judiciary working according to the principles of the rule of law, communication between elected politicians and citizens. During the transition these new resources of democracy and rule of law are typically weak.

This temporary lack of norms and the initial weakness of democratic institutions is accompanied by growth in the tasks of the state. Some of these go hand in hand with establishing a welfare state (like building a healthcare system, social security or infrastructure), others are directly linked to the process of transition, especially privatisation. All these new tasks mean more power for the state, i.e. more discretion for politicians and civil servants, and, consequently, more opportunities for the abuse of this power.

Communist heritage

Corruption was already increasing in the last two decades of the communist era, and in the 1980s several anti-corruption campaigns had been launched.³⁵ But in addition to this direct heritage of the old system, there is also something like an indirect heritage, due to the old,

³⁴ Jens Christopher ANDVIG, Transition from Socialism – The Corruption Heritage, draft paper, Oslo, 24 November 2002, www.colbud.hu/honesty-trust, Workshop 1, p. 4.

³⁵ *ibid*, p. 52, quoting Leslie HOLMES, *The End of Communist Power*, Polity Press, Cambridge, UK, 1993

sometimes not yet changed norms and due to the revolution from communism to democracy and the market economy. Even shortly before the accession to the EU, these differences in the normative system of communism and liberal democracy may be relevant, assuming that a set of moral norms is not changed as quickly as laws.

Some of the occasions for corruption in the present system were equally illegal in the communist system. However, many sorts of behaviour that count as corrupt according to new, liberal standards were legally or ethically acceptable, i.e. "normal", in the old, communist system.

In the communist system, for instance, there was no distinction between market, bureaucracy and politics as it is common in a Western society; the economy was organised by a bureaucracy that itself was dominated by the communist party. Officially, there was no distinction between the state and civil society, or between the state and private affairs; and every economic transaction qualified as a matter of concern to the party and the state.³⁶

The Soviet system in Russia and Eastern Europe was built upon a network of politically reliable people, the so called Nomenklatura.³⁷ Though formally, as Jens Christopher Andvig points out, the direct influence of the communist parties and their successors have dwindled, "structural and ideological leftovers (...) were likely to operate in most of the post-socialist countries"; therefore, "the survival of loose Party-related networks probably may also have eased some corrupt deals in the new environment".³⁸

Freedom House has pointed out that in the Czech Republic approximately 90 per cent of the state prosecutors began their service prior to 1989 "and appear open to improper influence by defence attorneys"; about 70 percent of all cases submitted to investigators for prosecution are set aside by prosecutors. "In particular, cases involving the alleged criminal activities of the post-Communists often fail to appear before a court, not to mention the crimes of communism".³⁹ Into this assessment fits the case of the two former communists Milos Jakes and Jozef Lenart who had been accused of state treason for having co-operated with Soviet functionaries to form a pro-Soviet Czech government in 1968. In September 2002 a court in Prague acquitted them of all charges. Czech intellectuals and people who had been prosecuted by the communist regime reacted with protests and expressions of "shock and anger". The case will be heard by the High Court after the state attorney has appealed against the verdict.⁴⁰ The Czech Republic, by the way, is the only former Soviet country with a non-reformed communist party; with more than 100.000 members in 2002 it has far the largest of the Czech political parties, and it is the wealthiest⁴¹. At the last elections in June 2002 the communist party, KSCM, won 18.5 per cent of the vote and became the third strongest party in the Czech Republic.⁴²

³⁶ Alena V. LEDENEVA, *Russia's Economy of Favours, Blat, Networking and Informal Exchange*, Cambridge University Press, Cambridge (UK), 1998, p. 77

³⁷ Jens Christopher ANDVIG, *Transition from Socialism – The Corruption Heritage*, draft paper, Oslo, 24 November 2002, www.colbud.hu/honesty-trust, Workshop 1, p. 46ff

³⁸ *ibid.*, p. 60

³⁹ Freedom House, *Nations in Transit 2002*, Report on the Czech Republic, p. 161, <http://www.freedomhouse.org/research/nattransit.htm>

⁴⁰ CTK, Daily News, 17 December 2002/CTK Business News, 24 September 2002/Neue Zürcher Zeitung, Politische Ambivalenz in Tschechien, 4 October 2002/Agence France Presse (AFP), Czech Communist leaders cleared of treason charges, 23 September 2002

⁴¹ Freedom House, *Nations in Transit 2002*, Report on the Czech Republic, p. 156, <http://www.freedomhouse.org/research/nattransit.htm>

⁴² CIA, *The World Factbook 2002*, <http://www.cia.gov/cia/publications/factbook>

In other countries, time and again there are reports about alleged links between leading politicians of the present social-democrat parties and the former communist regime. In Poland, for instance, the "Rywingate" scandal recently renewed suspicions that the country "is ruled by a small political and economic elite, often called the 'sitwa', Polish 'net' or 'web'", the New York Times reported in March 2003. "Many people – particularly those impoverished by the collapse of Communism – believe that privileged cliques used insider connections to grow rich and powerful in the swift transition to capitalism. The scandal in Poland has thus resonated beyond its borders as an example of the suspected cozy and shadowy links between politicians and wealthy business figures." The protagonist of the scandal is Lew Rywin, a Polish film producer who is accused of having offered a bribe of 17.5 million US-Dollar (16.6 million Euro, i.e. five percent of the value of a planned deal) to Adam Michnik, editor-in-chief of the daily newspaper *Gazeta Wyborca*, for "fixing" a media law in favour of the *Gazeta's* parent company, *Agora*. Michnik claims that Prime Minister Leszek Miller of the social-democrat party SLD, the successor party of the former communist Workers Party, was informed about Rywin's proposed deal but did not report it to the responsible authority.⁴³

Besides networks rooted in the old *Nomenklatura*, there is a second origin for today's informal links. This is a phenomenon that in Russian is called "blat", that is "the use of personal networks and informal contacts to obtain goods and services in short supply and to find a way around formal procedures", as Alena Ledeneva, former Research Fellow at New Hall, Cambridge University and now Lecturer in Russian politics at the School of Slavonic and East European Studies in London, describes it in her analyses of the "Russian Economy of Favours".⁴⁴ Although "blat" is a Russian word describing a Russian phenomenon, in Eastern Europe the circumstances – i.e. scarcity of goods within a planned economy – were also prevalent.

"Blat" was a reaction typical of the Soviet system: of the permanent, harmful and painful scarcity of goods, of immense ideological and totalitarian pressure, of distrust of state and government, of an economy that lacked money as a means of steering the distribution of good, of the inflexibility of an economy that was organised by plans that were executed by politically appointed bureaucrats, and of a system that required enterprises to over-fulfil the plan by maximising the output. "Life become impossible unless the rules were broken", explained Ledeneva. Therefore, "blat" both enabled the Soviet society to function and subverted it. "Blat" was used for receiving a better piece of meat from the butcher, for getting clothes, food, medicine or any kind of consumer goods. When somebody was asked, where he got the washing machine from or how he managed to get installed a private telephone line, the answer may have been: "by blat". This was a non-monetary exchange, a barter based on personal relationship. It had an altruistic self-image but in fact it was based on the assumption that one day, be it in the far future, or via the friend of a friend a service in return would follow. This was provided at public expense, as it opened up access to public resources

⁴³ New York Times, *Bribery Scandal Threatens Poland's Government*, 29 March 2003 / New York Times, *Bribery Scandal Threatens Poland's Bid to Join European Union*, 3 April 2003 / German press agency dpa, Austrian press Agency APA, 13 January 2003, 10 January 2003 / *The Economist*, 1 March 2003, p.35/*Sueddeutsche Zeitung*, 6 February 2003 / *Financial Times*, 11 and 23 and 28 January 2003 / *Wall Street Journal Europe*, 22 January 2003

⁴⁴ Alena V. LEDENEVA, *Russia's Economy of Favours, Blat, Networking and Informal Exchange*, Cambridge University Press, Cambridge (UK), 1998, p.1

through private channels. The distinction between "blat" on the one hand and friendship, kinship, bribe, corruption and theft on the other hand were blurred.⁴⁵

"Blat" has many relatives in the West, like the "patronage" in Italy, like "fiddling" or "old-boy-networks" in Britain, like "skimming" or "gypping" in USA, "le piston" in France, like "plug-in" in Spain, or like "vitamin P" in Austria.⁴⁶ But this opaque area was much more developed and entrenched in communist systems.

In the Soviet system there was no strong distinction between private and public property. According to Alena Ledeneva theft of socialist property was almost as widespread as state property itself. It was common to take home goods, be it stuff of little value, such as tools, materials or stationary, or more substantial theft such as of building materials or fuel. Ledeneva reports: "Store personnel, particularly in shops selling clothing and foodstuffs, were traditionally low paid. They would supplement their incomes by putting aside part of the store supplies to be sold from under the counter. (...) Thus, managers and other high-ranking staff of an enterprise might have houses or dachas build by enterprise personnel and from materials belonging to the enterprise."⁴⁷

Both "blat" and the lack of formal rights and of the rule of law fostered double standards. Although life was hardly possible without "blat", "blat" was a breach of the rules, though not sanctioned by the state. "Blat" was a slang-word and never used in public discourses. As Ledeneva puts it, there were "two ethical scales in everyday life: one of official ideology and one of human sets of values which governed relations between people. (...) It was a complicated mixture which was intrinsic to being a Soviet citizen. (...) Somehow being a decent citizen and a Communist was not incompatible with rule-breaking."⁴⁸

⁴⁵ *ibid*, pp. 2-8, 28-51

⁴⁶ *ibid*, p. 52f

⁴⁷ *ibid*, p. 49 and 50

⁴⁸ *ibid*, p. 67

Countermeasures

The most obvious countermeasures are specific criminal and civil anti-corruption laws that prohibit corruption and provide for legal sanctions. Though this is necessary, it is not sufficient. Some measures against corruption coincide with democratic measures to control and contain any public power by the citizens, i.e. free and fair elections, political opposition, rule of law and freedom of media. Others try to enhance and increase the state's capacity by increasing monitoring and supervision, by strengthening the judiciary and administration through better education, greater number of civil servants, better payment and stronger ethics. A third group of counter-measures reduces incentives to pay and receive bribes by depriving the politicians and the civil servants of discretion, be it privatisation of state-owned enterprises or reducing the power to collect money (such as customs) or distribute subsidies.

Those who monitor the fight against corruption face the same sense of unease as the farmer who watches his cat biting its tail instead of catching mice. Most of the institutions and procedures that serve in the fight against corruption are at the same time hotbeds of this misbehaviour. Take the media or the judiciary: on the one hand, the independence and strength of media and judges are essential for blaming and sanctioning unethical and unlawful behaviour; on the other hand, journalists, judges and civil servants are prime targets for corruption. Or privatisation: on the one hand, a fertile ground for corruption is drained once privatisation of state-owned enterprises is concluded; on the other hand, as shown above, the procedure of privatisation itself provides huge scope for corruption.

Anti-corruption policies

All governments in candidate countries have at least once announced anti-corruption strategies, they have adopted special anti-corruption laws or amended their existing laws, and they have launched anti-corruption initiatives in their administrations, for instance by introducing codes of conduct or by appointing members of government as co-ordinators.⁴⁹

However, in many cases promises to combat corruption turned out to be hollow. According to the Open Society Institute, the "lack of political will to tackle corruption" is the overarching theme. In all candidate countries – with the exception of Lithuania – it has been impossible to achieve a cross-party consensus on anti-corruption policy, the executive authorities have been unwilling "to grant sufficient independence to anti-corruption prosecutors"; and there has been a tendency to fulfil only the easier components of national anti-corruption strategies.⁵⁰

Freedom House confirms this for instance for the Czech Republic, where the goals of the "clean hands" initiative, launched by the previous government, "remain largely unfulfilled today."⁵¹ For Latvia, Freedom House states that "corruption is widespread" in all levels of the administration, and it quotes the World Bank's assessment that Latvia suffers from a relatively high level of state capture. Although in July 1998 the Latvian government had

⁴⁹ Transparency International, *Global Corruption Report 2003*, Profile Books Ltd., London 2003, p. 179f / European Commission, *Towards the Enlarged Union, Regular Reports on the Candidate Countries*, Brussels, 9 October 2002, <http://europa.eu.int/comm/enlargement/report2002/index.htm>

⁵⁰ OSI, *Monitoring the EU Accession Process, Corruption and Anti-corruption Policy*, 2002, p. 70, <http://www.eumap.org/reports/2002>

⁵¹ Freedom House, *Nations in Transition 2002, Report on the Czech Republic*, p. 161, <http://www.freedomhouse.org/research/nattransit.htm>

adopted a regulation on “unusual financial transactions”, although Latvia in the same year ratified the European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime and signed the European Criminal Law Convention of Corruption, according to Freedom House “no leading government official has been prosecuted in recent years”.⁵²

In the last decade, all candidate countries have ratified international conventions on corruption and organised crime (see below), amended their criminal laws and regulated other areas prone to corruption.⁵³ However, laws and rules alone are not sufficient to combat a complex problem. Too many rules can even become counterproductive and paralysing. The Open Society Institute warns in its recent report on corruption: “A growing plethora of rules, regulations and sanctions backed by proliferating agencies of surveillance and enforcement can produce a situation in which agencies spend as much time dealing with anti-corruption issues as they do performing their basic functions.”⁵⁴ Therefore, a far-reaching approach is necessary that complies with the insight that corruption is a symptom of bad governance, and, consequently, the entire political and economical system of a country is at stake.

Controlling the state: democracy and the rule of law

By introducing representation and discretion democracy opens more room for corruption. At the same time, it is the democratic framework that can be helpful in limiting misbehaviour in public and political functions.

First, free and fair elections provide all citizens with the opportunity to punish bad governance and are therefore a means to terminate abuse of power. If politicians want to be re-elected, they must have brought forward improvements in public welfare during their term of office, and they must explain and justify their actions and decisions to the voters. As corruption is by definition the abuse of the public good to the detriment of the vast majority of the citizens, the system for which politicians in power are to be taken as responsible at the time of elections, must at least in parts be free from corruption to be able to produce improvements of the public well-being. One important prerequisite for fair elections, that often (especially before and during election campaigns) is spoiled through corruption, are rules for party funding that prohibit the buying of political influence.

A second weapon of democracy that can hurt corruption is political competition based on at least one opposition party that has a realistic chance to win an election. This provides the opportunity for the citizens to change those in power and to oust the bad and corruptible rulers. Therefore, an opposition party has a vested interest in discovering and blaming misbehaviour of those in power.⁵⁵

⁵² Freedom House, Nations in Transition 2002, Report on Latvia, p. 248f, <http://www.freedomhouse.org/research/nattransit.htm>

⁵³ OSI, Monitoring the EU Accession Process, Corruption and Anti-corruption Policy, 2002, p.32, together with detailed analyses in country reports, <http://www.eumap.org/reports/2002>

⁵⁴ OSI, Monitoring the EU Accession Process, Corruption and Anti-corruption Policy, 2002, country reports, <http://www.eumap.org/reports/2002>

⁵⁵ Susan ROSE-ACKERMAN, Corruption and Government, Causes, Consequences, and Reform, Cambridge University Press, Cambridge (UK), 1999, p.127ff / Larry DIAMOND, Building a System of Comprehensive Accountability to Control Corruption, January 2003, published on the Internet: <http://www.stanford.edu/~ldiamond/papers.html>, p. 26f

A third constraint of democracy is the rule of law. Under this, members of a government and civil servants are obliged to act in accordance to the law that has been decided by the majority of the citizens' representatives.

After 1989, democracy did not have to be built entirely from scratch. Unlike Russia, the Eastern European countries had more or less democratic experience in the inter-war period. Poland and Czechoslovakia in particular had a vivid and diverse democracy. Even after the communist takeovers, in some countries – Bulgaria, Czech Republic, Hungary and Poland – a multi-party system remained, though mostly in theory. The overarching coalition of all politically relevant organisations like parties, trade unions or youth organisations, called the “National Front” or the “Popular Front”, were dominated by the communists; and all candidates for parliamentary elections had to be approved by these “National” or “Popular Fronts”. All non-communist parties, included those with Christian, liberal or nationalist roots, had to accept Marxist-Leninist principles. And in the constitutions the “Friendship to the Soviet Union” was a fixture. Parliaments in Eastern European countries convened for only a few days every year mainly to ratify consensus in public, the parliamentary mandate being purely honorific. Outspoken opposition was impossible. But, at least theoretically, the proletariat had not – as in Russia – monopolised political power. So the political system in some Eastern European countries, though in reality a version of dictatorship, remained in theory something in between a Western democracy and a socialist, Soviet-type state. Some rudimentary structures of democracy were retained.⁵⁶ In 1988 a group of Western scholars noted about the multi-party system in Czechoslovakia, Poland, Bulgaria and East Germany: “The institutional framework has several traits in common with the Western prototype and could easily be adapted to Western conditions. The actual parliamentary practices are, however, at quite some distance from the Western model.”⁵⁷ Nevertheless, in Hungary several members of non-communist parties were elected to parliament during the 1980s.⁵⁸

Released from Soviet domination the Eastern European countries quickly reformed their political systems. By 1992 all former communist countries had adopted new constitutions based on democratic ideals, rule of law and the protection of human rights.⁵⁹

Since the mid 1990s the candidate countries have been building or strengthening regional government. The Czech Republic, for instance, established eight self-governing regions and held its first regional elections in 2000.⁶⁰ Poland reorganised and strengthened its voivodships, poviats and gminas; these three levels of regional and local administrations with elected governing bodies have operated since 1999.⁶¹ One motivation for this spreading of power is the necessity to have the corresponding structures for EU regional funds. Moreover, regionalisation means decentralisation of power, and it strengthens the democratic awareness

⁵⁶ Sten BERGLUND, Marian GRZYBOWSKI, Jan Ake DELLENBRANT, Marek BANKOWICZ, *East European Multi-Party-Systems*, *Commentationes Scientiarum Socialium* 37, Finnish Society of Science and Letters, Helsinki 1988, pp. 10, 14-17, 26f

⁵⁷ *ibid.*, p. 26

⁵⁸ R. J. CRAMPTON, *Eastern Europe in the Twentieth Century – and After*, Routledge, London, New York, Second edition, 1997, pp. 32 and 380f

⁵⁹ Sten BERGLUND; Frank H. AAREBROT, Henri VOGT, Georgi KARASIMEONOV, *Challenges to Democracy, Eastern Europe Ten Years after the Collapse of Communism*, Edward Elgar, Cheltenham, UK/Northampton, MA, USA, 2001, p. 17/Freedom House, *Nations in Transit* 2002, www.freedomhouse.org/research/natttransit.htm

⁶⁰ Freedom House, *Nations in Transit* 2002, Report on Czech Republic, p. 159, <http://www.freedomhouse.org/research/natttransit.htm>

⁶¹ Freedom House, *Nations in Transit* 2002, Report on Poland, p. 303, <http://www.freedomhouse.org/research/natttransit.htm>

of citizens, as Larry Siedentop, lecturer in Political Thought at the University of Oxford, explains in his book on "Democracy in Europe": "There is a sense in which the dispersal of power, through local autonomy and maximising opportunities for political participation, forces the issue of character. By giving individuals not only basic civil rights, but the experience of exercising political rights (...) a policy which disperses power helps to change the nature of the relationship between the state and the civil society."⁶²

Remarkable, too, is the growing importance of both international and domestic non-governmental organisations, especially in the combat against corruption in most candidate countries.⁶³

There is widespread consensus both among scholars and NGOs that democracy has been embedded in the state structures. Transparency International, for instance, concludes in its Global Corruption Report 2003 for the eight ex-Soviet countries: "The consolidation of democracy, the rule of law and civil society development have made remarkable progress in the past decade."⁶⁴ Freedom House states that they "are likely to withstand any assault on their hard-won freedoms", not only because of international democratic community, but because of "indigenous civil society groups, and independent media outlets".⁶⁵ Even the danger of far-right and populist parties is estimated as limited, as "the dynamic growth of independent media, civic awareness, and organized life makes it unlikely that demagogues can capture power and reverse democratic gains. The level of civic, media, and governmental development suggests that even leaders who occasionally or systematically engage in objectionable populist rhetoric – and in some cases propound authoritarian solutions – would be unlikely to achieve their political agendas."⁶⁶ The Freedom House index on democratisation shows that all eight countries that are supposed to enter the EU in 2004 score near to the optimum: in five countries the state of democracy has improved since 1997, in Poland it remains more or less unchanged, in Czech Republic and Hungary it has worsened, though the scores for all eight countries remain within a narrow band. (*See Annex II*)

In their analysis on post-communist democratisation, John S. Dryzek of the Australian University in Canberra and Leslie T. Holmes of the University of Melbourne conclude for the Czech Republic: "We show that democratic discourse in Czechia is not straightforwardly liberal, but argue that there is in fact little to fear from this. Analysts (...) see consolidated and stable democratic politics in terms of the interaction of parties and other organizations representing the key interests of the population, such as workers, peasants and employers." And: "Our Polish results resemble those of Czechia in that commitments to civic, republican, and democratic values are widely shared – even among those most estranged from the post-communist status-quo."⁶⁷

The entrenchment of democracy and rule of law – as two aspects of the political criteria stipulated by the European Council in Copenhagen in 1993 – have been repeatedly confirmed by the EU at all institutional levels, be it the European Commission, the European Parliament or the Heads of States and Governments. In October 2002, the European Commission stated

⁶² Larry SIEDENTOP, *Democracy in Europe*, Penguin Books, 2001, p.23

⁶³ Transparency International, *Global Corruption Report 2003*, Profile Books Ltd., London 2003, p. 187f

⁶⁴ *ibid*, p. 186

⁶⁵ Adrian KARATNYCKY, *Nations in Transit 2002, A Mixed Picture of Chance*, Freedom House, p. 15ff, <http://www.freedomhouse.org/research/nattransit.htm>

⁶⁶ *ibid*, p. 19, 18

⁶⁷ John S. DRYZEK, Leslie T. HOLMES, *Post-Communist Democratization, Political Discourses across Thirteen Countries*, Cambridge University Press, Cambridge (UK), 2002, p. 243 and 239

in its last assessment before concluding the accession negotiations: "Over the past year, the functioning of the democratic systems of government in the candidate countries was confirmed".⁶⁸ Shortly afterwards, the Heads of States and Governments at their EU summit in Brussels endorsed "the findings and recommendations of the Commission" that the countries supposed to join the EU in 2004 "fulfil the political criteria". And the European Parliament after the summit of Copenhagen declared "that the forces of democracy, freedom and peace in these countries have thus won a decisive victory over the dictatorial ideologies of the last century".⁶⁹

However, two aspects raise concern: party financing as well as abuse of the issue of corruption for power games that rather endanger democratic stability than reduce the problems of bad governance.

In most election campaigns in candidate countries during the last decade, corruption has been a big issue. But, as mentioned above, the promises of the politicians who later came to power were hardly fulfilled. This raises the suspicion that corruption is used as an argument to tease political adversaries without the intention of eradicating the problem from the entire political system.

Sometimes the mere allegation of corruption triggers a political scandal to endanger democratic stability without any significant evidence or without any clear breach of the rules. For instance, in February 2003, the first minister of the social-democrat government in Hungary elected in April 2002 had to resign. Elemer Kiss, Chancellery Minister in the prime minister's office, was accused of having awarded several large contracts to a law firm that he previously had worked for. Kiss gave an assurance on the day of his resignation that he knew nothing about the incriminating contracts and had not been paid by any law firm since taking up his cabinet post. Prime Minister Peter Medgyessy said that he did not question Kiss's honesty and the contracts were legally impeccable, though morally problematic. Medgyessy commented on the resignations: "We need this in order to have a clean and transparent government."⁷⁰

A case like this leaves puzzling questions: is an accusation a sufficient justification for being sacked, even if the accused person has acted according to the law? If it is not enough to act according to the law, who defines the morality and who will judge what is morally right and wrong? The Open Society Institute has warned that sometimes an overly strict application of conflict of interest rules can be dangerous in countries in transition, not only because the problem of conflict of interest may be poorly understood, but also because the pool of talented politicians and experienced civil servants is small.⁷¹

Corruption through financing political parties is "a major problem in most candidate countries", and no candidate country "has put in place an effective system for limiting corruption" of political parties, stated the Open Society Institute in its EUMAP-report on corruption of November 2002. This disturbance of democracy is most rife in Romania, where,

⁶⁸ European Commission, Towards the Enlarged Union, Strategy Paper and Report on the progress toward accession by each of the candidate countries, Brussels, 9 October 2002, COM (2002) 700 final, p. 13

⁶⁹ European Parliament, Resolution on Copenhagen European Council, 19 December 2002, P5 TA-PROV (2002) 0628

⁷⁰ Agence France Presse, AFP, 21 and 24 February 2003/BBC Monitoring Europe, 22 February 2003/Budapester Zeitung, 24 February 2003

⁷¹ OSI, Monitoring the EU Accession Process, Corruption and Anti-corruption Policy, 2002, p. 33, <http://www.eumap.org/reports/2002>

according to the Open Society Institute, "corruption in party financing is systemic"; but also in Bulgaria, Latvia, Poland and Slovakia party financing "has been highly corrupt over the past decade".⁷²

The severest political earthquake triggered by illicit party financing was the fall of the Czech government and the surrender of Vaclav Klaus from the post as prime minister in November 1997. Klaus, who on 28 February 2003 was elected by the Czech parliament to become Vaclav Havel's successor as President of the Republic, had to resign in 1997 after news had been published about an illegal Swiss bank account of his party, the ODS (Civic Democratic Party). The money in this secret account was allegedly from foreign investors in the Czech Republic. In addition, in 1995 the ODS had received a donation of 7,5 million crowns (approximately 200.000 Euro) but illegally kept secret the identity of the donor who turned out to be a Czech manager who gave the money after having won the privatisation tender for Trinecke Zelezarny steelworks. Although Klaus quit his post as prime minister, he repeatedly denied any wrong-doing.⁷³ On the occasion of collapse of the Czech government the Financial Times noted: "The scandal lends weight to persistent allegations that Czech parties are propped up by donations from companies and individuals through a web of intermediaries and that the privatisation process has been at best untransparent."⁷⁴

Freedom of media

Though freedom of media can be regarded as a feature of democracy, in view of corruption it should be explained in more detail and, therefore, in an own section. Free media can provide protection for their sources of information. This lever for disclosing scandals and secret misbehaviour makes them powerful watchdogs of corruption. The recent assessments of freedom and ethically minded behaviour of media in the candidate countries show both alarming and encouraging results.

A "Worldwide Press Freedom Index" evaluated and published by the non-governmental organisation Reporters Without Borders portrays the situation between September 2001 and October 2002. The four candidate countries included in this survey, namely Slovenia, Hungary, Poland and the Czech Republic, on average are in a worse position than the present EU member states. Nevertheless, they rank in the upper half of the 108 countries which were scored. Slovenia and Hungary rank even in the first quarter, and their media are, according to Reporters Without Borders, better off than in Austria, Spain and Italy.⁷⁵ (*See Annex IV*)

In its Press Freedom Survey 2002, Freedom House published similar results covering the year 2001. According to this U.S. non-governmental organisation the media are qualified as "free" in all EU members and all candidate countries. Only seven EU members (namely Belgium, Denmark, Finland, Germany, Luxembourg, Netherlands, and Sweden) reach the best group, whereas the eight Eastern European candidate countries as well as Bulgaria are in the second group together with the other EU members (Austria, France, Greece, Italy, Spain and United Kingdom; Portugal is not mentioned). The situation for free media has improved in seven of

⁷² OSI, Monitoring the EU Accession Process, Corruption and Anti-corruption Policy, 2002, p. 66, <http://www.eumap.org/reports/2002>

⁷³ Austrian Press Agency (APA), German press agency (dpa), Agence France Press (AFP), 30 November 1997 (APA0164 5 AA 0465)/CTK 28 November 1997 quoting a report in the Czech daily Mlada Fronta Dnes

⁷⁴ Financial Times, 29 November 1997

⁷⁵ Reporters Without Borders (Reporters sans frontières), Worldwide Press Freedom Index, www.rsf.org/article.php3?id_article=4116, www.rsf.org/article.php3?id_article=4118,

the eight EU entrants, it worsened only in the Czech Republic (because of conflicts between the former prime minister Milos Zeman and the weekly "Respekt" and because of political influence on public TV).⁷⁶ (See Annex V)

In its reports on Nations in Transition, however, Freedom House's assessments of the independence of media are slightly different. In the short term, comparing scores of the 2002 and the 2001 surveys, shows no change for the seven of the new EU entrants; only for the Czech Republic in 2002 the situation for the media was worse than in 2001. The comparison of the indices from 1997 to 2002, however, shows a significant worsening for Hungary and the Czech Republic, an improvement only in Slovakia and no changes for the other five countries.⁷⁷ (See Annex II)

Transparency International concludes on the eight entrants that "the media are highly sensitive to corruption and are one of the bulwarks in the fight against official dishonesty", though with the caveat that "actions to constrain the freedom of the media still occur".⁷⁸

Over all, two aspects concerning the freedom of media appear especially worrying: systematic political influence on public television, radio and national news agencies as well as the dubious ethics of many journalists.

The political influence on public broadcasting can be shown in two examples. One from the Czech Republic: in January and February 2001 thousands of Czechs filled the Wenceslas Square in Prague to protest against the political bias of the Czech Television (CT) after Jiri Hodac had been appointed as director general, allegedly influenced by Vaclav Klaus, at that time leader of the ODS which supported the minority government of the Social Democrats. Although Hodac resigned after the protests citing health reasons, the affair was regarded as a typical example of how politicians still try to ensure their influence on public broadcasting.⁷⁹

The other example is from Hungary, where in 2001 similar criticism was aroused when a politician of the then governing Fidesz was appointed president of the board of trustees of the Hungarian Television MTV. Allegedly several MTV journalists had been removed for filing critical stories about Fidesz and prime minister Victor Orban.⁸⁰ Because of insufficient regulation of media governing boards the European Commission and EU Member States refrained until summer 2002 from provisionally closing the chapter on audiovisual and cultural policy (being one of 31 chapters of the EU *acquis communautaire* that were tackled during the negotiations). Hungary was the last of the ten negotiating candidates to close this chapter.⁸¹ It was only after the elections in April 2002, as a new coalition government of Social Democrats and Liberals took over from Fidesz, that the necessary amendments to the media law were decided by the Hungarian parliament. Nevertheless, the International Press Institute (IPI) in its 2002 report on Hungary concludes: "This year Hungary switched

⁷⁶ Leonard R. SUSSMAN, Karin DEUTSCH KARLEKAR (edts.), *The Annual Survey of Press Freedom 2002*, Freedom House, <http://www.freedomhouse.org/psf2002/pfs2002.pdf>

⁷⁷ <http://www.freedomhouse.org/research/nattransit.htm>

⁷⁸ Transparency International, *Global Corruption Report 2003*, Profile Books Ltd., London 2003, p. 186

⁷⁹ IPI, 2001 Press Freedom Review on Czech Republic, <http://www.freemedia.at/wpfr/czech.htm>

⁸⁰ IPI, 2001 Press Freedom Review on Hungary, <http://www.freemedia.at/wpfr/hungary.htm>

⁸¹ European Commission, 2002 Regular Report on Hungary's Progress Towards Accession, Brussels, 9 October 2002, SEC (2002) 1404, COM (2002) 700 final, http://europa.eu.int/comm/enlargement/report2002/hu_en.pdf / Interfax Hungary Weekly Business Report, 31 July 2002 and 19 August 2002/International Financial Law Review, 1, October 2002

government, but the relation between government and the state media remained much the same.”⁸²

It has, however, to be stated that public radio and – above all – public television is prone to political influence in present EU member states as well. In the recent annual reports for 2002 of Reporters sans Frontiers, Austria, for instance, is described as “the last country in Europe”, where until 2001, there was still a state monopoly of TV and radio. In spite of reforms the monitoring committee of the public broadcasting station, ORF, which elects the director general, is still appointed by political parties. In Italy the prime minister Silvio Berlusconi controls through his holding company Fininvest the largest private television group and as head of the government has indirect influence on the public-sector audiovisual media. According to Reporter Sans Frontiers this is “an unprecedented situation in a democratic society”.⁸³ The International Press Institute (IPI) confirms in its 2002 Review on Press Freedom in Europe “that even the most advanced western democracies have difficulty keeping public service broadcasting at arm’s length from political institutions”.⁸⁴ With such abuses in present member states it is hard for the EU to demand better behaviour from governments in the candidate countries.

As with public broadcast, though in contrast to the position within the present EU member states, most of the news agencies in candidate countries are still controlled by the state, such as BTA in Bulgaria, CTK in Czech Republic, MTI in Hungary, PAP in Poland, TASR in Slovakia and STA in Slovenia.⁸⁵ For example, in Bulgaria the recent row over the appointment of a new BTA head confirms the political domination of the national news agency. To become head of BTA, one needs support of the party of the prime minister. And the BTA staff who had been on strike to get rid of the former director Sotyn Chesmedjiev sent a letter to Parliament appealing for the candidates to be able to make presentations of their position to parliament.⁸⁶

In contrast to public broadcasters and news agencies, where political influence appears to be systematic, in the privately owned areas – newspapers, magazines as well as private radio and television – there are few disturbing cases. However, some of them are shocking with regard to the severity of the attacks on those who identify high-level corruption. On case in point was the assault on journalists by the former Czech prime minister Milos Zeman, who in 2001 threatened to sue the weekly newspaper “Respekt” seeking damages that would have forced “Respekt” into bankruptcy. Or as Zeman said: “to make sure that ‘Respekt’ finally ceases to exist”. The reason for Zeman’s anger was the magazine’s criticism that the government had failed to deliver on its promises to fight corruption. In the same year the Prague City Court found Zeman guilty of libel after the prime minister had accused a journalist of receiving illegal payments.⁸⁷

⁸² IPI, 2002 Press Freedom Review on Hungary, <http://www.freemedia.at/index1.html>

⁸³ Reporter sans Frontiers, Annual Report 2002 on Austria and Italy, www.rsfr.org

⁸⁴ IPI, 2002 IPI World Press Freedom Review, 19 March 2003, <http://www.freemedia.at/index1.html>

⁸⁵ Johann P. FRITZ, East European News Agencies and the Transition to Democracy, in : APA - Austria Presse Agentur (ed.), The Various Faces of Reality, Values in News (Agency) Journalism, Studien Verlag, Innsbruck, Austria, 2002, p. 97ff / See Freedom House, Nations in Transition 2002, country reports, <http://www.freedomhouse.org/research/nattransit.htm>

⁸⁶ Bulgarian News Digest, 31 March 2003, 18 March 2003/Austrian Press Agency (APA), German press agency (dpa), 14 March 2003

⁸⁷ IPI, 2001 Press Freedom Review on Czech Republic, <http://www.freemedia.at/wpfr/czech.htm>

In Slovenia, in February 2001 a reporter on the daily "Vecer", Miro Petek, was attacked by two men who left him with a fractured skull and broken nose, jaw and cheekbones. At the time of the attack the journalist had been working on articles exposing connections between Slovenian politicians and criminals, but over the following months the police could find no suspects.⁸⁸ The International Press Institute (IPI) criticised in its World Press Freedom Review published in March 2003 that "the case of Miro Peek (...) remained unsolved in 2002. A special Parliamentary Investigative Commission was established to conduct hearings, but so far it has been unable to find the perpetrators."⁸⁹

Print journalists are at the centre of some of the most complex and prominent cases of alleged corruption in candidate countries. In the Czech Republic, for instance, the former general secretary of the Foreign Ministry, Karel Srba, was arrested in July 2002 for allegedly planning the contract killing of a journalist, Sabina Slonkova, who had written articles about corruption in which Srba was evidently involved and about Srba's property that was several times what a civil servant could afford. The scandal was triggered by Karel Rziepel, who had been hired by Srba to kill the investigating journalist and her son. But shortly before the murder was to be committed Rziepel called the police and confessed the plans. Srba was accused of taking bribes (the police found 30 million Czech Crowns in cash, two pistols and three as mini-pistols disguised as pens in his apartment) and of being responsible for letting a hotel in Moscow, owned by the Czech embassy, for an extraordinarily cheap rent and of "virtual contracts" of the Foreign Ministry with private firms to reconstruct embassies, although no building work was ever done.⁹⁰ In February 2003, according to a report in the daily Mlada Fronta Dnes, a Czech anti-corruption unit estimated the financial scale of fraud in the Foreign Ministry at 200 million Czech crowns (approximately 6.3 million Euro or 4 million Pounds).⁹¹

In Poland, concerning the already mentioned "Rywingate", the editor-in-chief of the daily Gazeta Wyborca, Adam Michnik, claims to have been approached by the film producer Lew Rywin in July 2002. Rywin is accused of having asked for a 17.5 million US-Dollar bribe in exchange for influencing the planned amendment of the television law in favour of the biggest Polish publishing house, Agora, which owns "Gazeta Wyborca" and could, if Rywin's efforts were successful, expand its business to television.⁹²

And again in Poland, three members of the managing board of Presspublica, the publisher of the daily "Rzeczpospolita", are not allowed to leave their country (their passports have been seized) and are told to report regularly to the police because of allegations that they used transfer pricing in favour of the Norwegian parent holding company which owns 51 per cent of the shares. The other 49 per cent of the Presspublica shares belong to a company that is owned by the Polish government. Based on the charges against the three board members

⁸⁸ IPI, 2001 Press Freedom Review on Slovenia, <http://www.freemedia.at/wpfr/slovenia.htm>/Freedom House, Nations in Transition 2002, Report on Slovenia, p. 365, <http://www.freedomhouse.org/research/nattransit.htm>

⁸⁹ International Press Institute (IPI), 2002 World Press Freedom Review on Slovenia, <http://www.freemedia.at/wpfr/world.html>

⁹⁰ The Observer, 9 February 2003/BBC Monitoring Europe, Czech news agency CTK, 6 February 2003, 8 November 2002, 11 September 2002/Austrian Press Agency APA, 20 January 2003/The Guardian, 12 August 2002/Neue Zuercher Zeitung, 6 August 2002

⁹¹ The Observer, 9 February 2003 / BBC Monitoring Europe, Czech news agency CTK, 6 February 2003, 8 November 2002, 11 September 2002 / Austrian Press Agency APA, 20 January 2003 / The Guardian, 12 August 2002 / Neue Zuercher Zeitung, 6 August 2002

⁹² German press agency dpa, Austrian press Agency APA, 13 January 2003, 10 January 2003 / The Economist, 1 March 2003, p.35/Sueddeutsche Zeitung, 6 February 2003 / Financial Times, 11 and 23 and 28 January 2003 / Wall Street Journal Europe, 22 January 2003

brought by the Public Prosecutor's office in Warsaw, Aidan White, General Secretary of the International Federation of Journalists (IFJ) criticised: "The Rzeczpospolita case reflects widespread concern that the government is trying to exercise undue influence on the media." The International Press Institute (IPI) in a letter to the Polish Prime Minister, Leszek Miller, urged him "to assure us that what is happening at Presspublica has nothing to do with an intention by the government to take over the newspaper Rzeczpospolita, a move which would have serious implications for press freedom". In addition, IPI criticised the seizure of the three board members' passports, as "we refuse to see why this struggle between business partners should infringe upon basic human rights".⁹³

Equally alarming are reports about dubious ethics in journalism. According to a survey by the International Public Relations Association (IPRA) published in June 2002, "cash for editors" and other unethical practices are rife in the print and broadcast media in Southern and Eastern Europe. Nearly two thirds of the public relation and communication experts surveyed in Eastern Europe stated that the acceptance of bribes by journalists in exchange for favourable editorials was routine in their country (for North and Western Europe only 21 percent of the respondents shared this opinion). 48 percent of the respondents in Eastern Europe reported that journalists in full time employment "often" are openly or secretly employed by a company or a public relations agency (28 percent in North and Western Europe). In addition, 52 percent of the respondents in Eastern Europe said that published information in print or on air that has been paid for rarely or seldom is clearly identified as advertising (33 percent in North and Western Europe).⁹⁴ It has, however, to be pointed out that IPRA included in the group of "Eastern European" countries also non-candidates Russia and Ukraine (besides Bulgaria, Croatia, Estonia, Hungary, Lithuania, Poland, Slovenia and Slovakia), and the sample of respondents was quite small (242 all over the world, out of which 19 percent were in Eastern Europe).

As shown by an initiative against hidden advertising material in media by Transparency International in Latvia, the media are reluctant to change their unethical behaviour. Starting in July 2002, TI Latvia exposed the practice of publishing glowing interviews and other favourable stories about political parties and their leaders without clarifying that the material had been bought. The heaviest opposition against this campaign came from the media themselves, by threats of lawsuits, a counter-campaign against the sponsors of the project, the Soros Foundation Latvia, who was accused itself of being corrupt.⁹⁵

But again, even in present EU member states not everything is rosy concerning the ethics of journalism. Two French journalists, Pierre Péan and Philippe Cohen, in their book, published in February 2003, accuse the French daily Le Monde of illicit narrow links to the police, of secret agreements with senior politicians and of covert strategies to overthrow the previous prime minister Lionel Jospin.⁹⁶ Recently the editor of the British tabloid The Sun, Rebekah

⁹³ IPI, Letter to the Prime Minister of Poland, Vienna, 27 February 2002 <http://www.freemedia.at/index1.html/> International Press Institute, 2002 World Press Freedom Review, Poland, March 2003, <http://www.freemedia.at/wpfr/Europe/poland.htm>

⁹⁴ Press release, June 14, 2002; www.ipra.org The International Public Relations Association is an UN recognised non-governmental organisation.

⁹⁵ Rasma KARKLINS, Anti-Corruption Incentives and Constituencies in the Post-Communist Region, unpublished paper, draft, Collegium Budapest, September 2002, www.colbud.hu/honesty-trust, Workshop 1, p. 9f

⁹⁶ Der Tagesanzeiger, Eine Breitseite gegen das Weltblatt, 27 February 2003/New York Times, Le Monde, Pride of French Press, Is Pilloried in Book, 26 February 2003/Financial Times, Book fires broadside at top French newspaper, 25 February 2003

Wade, admitted to a committee of Members of Parliament that journalists were entitled to pay police officers for information if there was a "strong public interest" in the story.⁹⁷

Strengthening the state

The coming enlargement is the first in the history of the EU where the strength of administration and judiciary has become an issue in the preparation for the accession, though there are no appropriate rules in the EU "acquis". It is the first enlargement, for which the EU provides financial assistance for institution building (in the PHARE-programme, see below), and for which not only the transposition of the EU "acquis" into national laws has to be assured, but also its enforcement.

In its last progress report before concluding the accession negotiation, the European Commission describes the deficiencies in the administration and above all in the judiciary as one of the weakest points, though it uses a diplomatic language. If one considers that the progress report of October 2002 should really have stated that all EU entrants are well prepared, it is quite striking that the European Commission concludes for the judicial system in the soon entering candidate countries: "Efforts to further consolidate reforms in this area will need to continue."⁹⁸ And it explicitly states state "the process of building up administrative and judicial capacity will need to continue after enlargement".⁹⁹

The European Commission's assessment of the public administration in general is slightly better than of the judiciary, stating that "a legal framework for the civil service has now been established in all candidates, and training of civil servants has become the norm", though only "several countries" have progressed "with establishing codes of conduct, clear distinctions between political and administrative responsibilities".¹⁰⁰ However, in the last progress report of October 2002 it is pointed out that in the field of justice and home affairs "administrative and judicial capacity needs to be markedly reinforced".¹⁰¹ And for the customs sector, too, a strengthening of the capacities is requested¹⁰² (as the Eastern borders of the future member states will become external borders of the EU, they will become responsible for collecting EU customs that are part of the EU budget).

The Open Society Institute confirms in its report of November 2002 the "widespread perception that corruption is a serious problem in public administration, underpinned, inter alia, by a failure to reform vulnerable areas such as licensing procedures, failure to root out patronage in appointments, the absence of effective procedures for appealing against or investigating administrative decisions, and failure to prevent widespread conflicts of interests".¹⁰³ In its report on the judicial capacity in the candidate countries, the Open Society Institute provides, once more, detailed criticism on the judiciary: "The finding indicate that, notwithstanding the great improvements achieved over the last years, there are clearly defined

⁹⁷ The Guardian, 12 March 2003, p. 2/The Daily Telegraph, 12 March 2003, p.2.

⁹⁸ European Commission, Towards the Enlarged Union, Strategy Paper and Report on the progress towards accession by each of the candidate countries, Brussels, 9 October 2002, COM (2002) 700 final, p. 13, http://europa.eu.int/comm/enlargement/report2002/strategy_en.pdf

⁹⁹ *ibid*, p. 27

¹⁰⁰ *ibid*, p. 13

¹⁰¹ *ibid*, p. 18

¹⁰² *ibid*, p. 19

¹⁰³ OSI, Monitoring the EU Accession Process, Corruption and Anti-corruption Policy, 2002, p. 67, <http://www.eumap.org/reports/2002>

areas in which the candidate States need to achieve further progress".¹⁰⁴ The main weaknesses concern undue influence by the government over the administration of the judiciary and judges, under-funding of courts, non transparent evaluation of the judiciary, lack of training in the judges' technical and managerial skills, and unprofessional management of courts, especially insufficient court support.¹⁰⁵

Economic reforms

The establishment of a market economy is detrimental to corruption, because it reduces the power of administrations and politicians and, therefore, the possibilities to abuse this power for personal, private profit. This can be achieved by opening up the market through the abolition of customs and import and export licences, by privatisation and by regulated liberalisation.

The role of the European Union in initiating, enhancing and speeding up these economic reforms in the candidate countries can hardly be underestimated. It was the aim of being accepted to the EU that strengthened the candidate countries' efforts to take over EU rules for a liberal market economy in which the role of the state is confined to regulating and securing competition as well as providing social security and environmental protection, although these economic reforms are not primarily intended to combat corruption.

Free trade has been established since the early 1990s, as the EU concluded with all applicants so-called Europe Agreements to progressively create a free-trade area, accompanied by provisions for free movement of services, payments and capitals, by political dialogue, by cultural co-operation and by pre-accession financial aid.¹⁰⁶ By 1995 free trade between the EU and the candidate countries was virtually complete, with exceptions for some sectors as agriculture and textiles, but these last restrictions have been steadily reduced in the recent years.¹⁰⁷ Between 1993 and 2001 the trade between the present EU countries and the twelve former Soviet candidate countries that were to start negotiations for EU accession nearly quadrupled. According to the European Commission, exports from the EU to the candidate countries increased from 35.5 million Ecu in 1993 to 136 million Euro in 2001, while imports increased from 27.3 million Ecu to 106.9 million Euro. In 2001, nearly two thirds of the twelve countries' exports went to the EU, while 62 per cent of their imports came from the EU.¹⁰⁸

Moreover, the candidate countries established free trade among themselves by forming the Central European Free Trade Association, CEFTA. This was founded in 1992 by the former Czechoslovakia, Hungary and Poland and was joined by Slovenia in 1996, Romania in 1997 and Bulgaria in 1999. Its aim was to establish by January 2001 a free trade area in conformity to the rules of the World Trade Organisation.¹⁰⁹

¹⁰⁴ OSI, EUMAOP, Press information, Judiciary Report Summary, 6 November 2002, http://www.eumap.org/whatsnew/pressinfo/1038407115/index_html?print=1

¹⁰⁵ OSI, Monitoring The EU Accession Process, Judicial Capacity, November 2002, <http://www.eumap.org/> OSI, EUMAOP, Press information, Judiciary Report Summary, 6 November 2002, http://www.eumap.org/whatsnew/pressinfo/1038407115/index_html?print=1

¹⁰⁶ http://www.europa.eu.int/comm/enlargement/pas/europe_agr.htm

¹⁰⁷ according to information by the European Commission, general directorate for trade <http://europa.eu.int/comm/trade/bilateral/cc/cc.htm>

¹⁰⁸ <http://europa.eu.int/comm/trade/bilateral/cc/cc.htm>

¹⁰⁹ <http://www.cefta.org>

In spite of setbacks and delays, the candidate countries have achieved remarkable success in the privatisation of their economy. For instance Poland: according to the OECD, the private sector's share of gross output has increased between 1995 and 2000 from 61 to 75 per cent. In 2000 83 per cent of services of financial intermediaries and 92 percent of manufactured goods were delivered by private firms. Nevertheless, in 2000 still one quarter of the economy was controlled by the state, especially electricity, gas and water as well as mining. In Hungary between 1995 and 2000 the private sector share in GDP grew from approximately 70 to 80 per cent, in the Czech Republic from 75 to 80 per cent.¹¹⁰ The European Commission states in the last progress report on the preparation of the eight Eastern European candidates: "Privatisation of the economy has made impressive progress since 1997, reaching levels comparable to the EU, but efforts are required to complete the restructuring of a number of sectors."¹¹¹

On liberalisation the countries that enter the EU have to fulfil the respective EU laws that have or will introduce private competition in areas that before – at least in some member states – were state monopolies, e. g. electricity, gas, telecommunication, transport (air and train), and postal service.¹¹²

The overall assessment of economic reforms by the EU and NGOs shows nearly as good evaluations as the one for democracy. Freedom House, for instance, qualifies all eight Eastern European countries that are going to enter the EU in 2004 plus Bulgaria as "consolidated market economies" (Romania and Croatia are still regarded as "transitional economies").¹¹³ The European Commission in October 2002 confirms in its last progress report that the eight Eastern European countries are "functioning market economies". Though the judgement on their ability to cope with competitive pressure and market forces within the Single Market is more cautious: only with "the continuation of their current reform paths" – but not at the time of the report – these countries should achieve the necessary economic strength by the accession date in May 2004. For Bulgaria the European Commission concludes that – unlike the assessment of the previous year – it can be regarded as functioning market economy, though it should be able to withstand competitive pressure of the EU only in the medium term. Romania, however, does not yet fulfil either of the two criteria of market economy and competitive strength.¹¹⁴

¹¹⁰ OECD, Economic Survey, Poland, Volume 2002/12, Paris, 2002, p. 122ff

¹¹¹ European Commission, Towards the Enlarged Union, Strategy Paper and Report on the progress towards accession by each of the candidate countries, Brussels, 9 October 2002, COM (2002) 700 final, p. 15, http://europa.eu.int/comm/enlargement/report2002/strategy_en.pdf

¹¹² European Commission, The Internal Market – Ten Years without Frontiers, p. 26f, January 2003, http://europa.eu.int/comm/internal_market/10years/docs/workingdoc/workingdoc_en.pdf / website of the general directorate of competition in the European Commission : http://europa.eu.int/comm/competition/citizen/citizen_liberalisation.html

¹¹³ Adrian KARATNYCKY, Nations in Transit 2002, A Mixed Picture of Chance, Freedom House, p. 17, <http://www.freedomhouse.org/research/natttransit.htm>

¹¹⁴ European Commission, Towards the Enlarged Union, Strategy Paper and Report on the progress towards accession by each of the candidate countries, Brussels, 9 October 2002, COM (2002) 700 final, p. 15f, http://europa.eu.int/comm/enlargement/report2002/strategy_en.pdf

Role of EU and international organisations

Hand in hand with globalisation, several international institutions intensified their joint efforts to combat organised crime, of which one aspect is corruption (other aspects are money laundering, financing terrorism and human trafficking).¹¹⁵ The resulting political pressure and the consequently created international law became relevant to the former Soviet countries as they were integrated into the Western international organisations. In the meantime, the Eastern European states were preparing for accession to NATO and EU.

The first international anti-corruption and anti-bribe initiatives were triggered by the U.S. Foreign Corrupt Practices Act issued in 1988. It posed domestic legal sanctions on U.S. companies which used bribery overseas.¹¹⁶ So, it has become a vested interest of the U.S. economy that corruption is reduced in destinations of U.S. exports and investment and that competitors of other nations are exposed to similar restrictions. The relevant international platforms are the OECD and the United Nations. At the European level key players are the Council of Europe and the European Union. In addition, several non-governmental organisations were either founded to combat corruption or they focused their activities on anti-corruption strategies. The most significant are Transparency International and the Open Society Institute with initiatives like EUMAP, mentioned above.

World-wide institutions

In May 1999 the United Nations, or more precise: the Centre for International Crime Prevention (CICP) that is part of the UN Office for Drug Control and Crime Prevention (ODCCP), both based in Vienna, launched the "Global Programme against Corruption". This which aims at assessment, international co-operation as well as evaluation of and support for national and international strategies to combat corruption. It provides best practice reports, support for pilot projects, an anti-corruption tool-kit explaining some 30 anti-corruption measures, information, links and bibliography on corruption via the internet as well as workshops and expert group meetings.¹¹⁷

Following the General Assembly's two resolutions of January 2001, the UN should put forward "a global and comprehensive legal instrument against corruption".¹¹⁸ The drafting of an UN Convention against Corruption that shall apply "to the prevention, investigation and prosecution of corruption and criminal acts related specifically to corruption, irrespectively of whether they involve public officials or have been committed in the course of business activity" started in the same year. It includes wide ranging instructions about national anti-

¹¹⁵ For instance, in 1989 the G-7-summit in Paris laid the foundations for the Financial Action Task Force on Money Laundering (FATF) that now acts within the OECD (see <http://www.fatf.gafi.org>), or in 1999 the United Nations issued the International Convention for the Suppression of the Financing of Terrorism (<http://untreaty.un.org/English/Terrorism/Conv12.pdf>) /The European Union intensified police cooperation for combating international crime by founding Europol (<http://www.europol.eu.int>)

¹¹⁶ see <http://www.usdoj.gov/criminal/fraud/fcpa/> / Susan ROSE-ACKERMAN, Corruption and Government, Causes, Consequences, and Reform, Cambridge University Press, Cambridge (UK), 1999, p. 21

¹¹⁷ <http://www.odccp.org/odccp/corruption.html> / United Nations Manual On Anti-Corruption Policy, Draft, Vienna, June 2001 p. 21ff

¹¹⁸ United Nations, General Assembly, A/RES/55/61 on "An effective international legal instrument against corruption" of 22 January 2001 and A/RES/55/181 on "Preventing and combating corrupt practices and illegal transfer of funds and repatriation of such funds to the countries of origin" of 25 January 2001/United Nations Manual On Anti-Corruption Policy, Draft, Vienna, June 2001, p. 74

corruption policies and bodies, codes of conduct for public officials, public procurement and public financial management, funding of political parties, accounting and auditing standards for companies, strengthening civil society, combating money-laundering as well as principles for the criminal law and law enforcement.¹¹⁹

Another, already adopted UN Convention is of relevance, though not focused on corruption: the one against Transnational Organized Crime, adopted by the General Assembly on 15 November 2000, that envisages, for instance, that corrupt acts by public officials have to be prosecuted as criminal acts.¹²⁰

The second pillar in the international framework to combat corruption is the World Bank that – according to the information on its web-site – “has identified corruption as the single greatest obstacle to economic and social development”.¹²¹ Since the publication of its report on “Helping Countries Combat Corruption: The role of the World Bank” in September 1997, its Public Sector Group has been providing via the internet a myriad of reports, surveys, data, suggestions for strategies and for anti-corruption policies.

An outstanding example of the World Bank’s influence was seen in Poland. In October 1999 the Warsaw Office of the World Bank in response to a request of the Polish Government published a report on corruption. This stated that “high level corruption and corruption in public services are serious and getting worse”, that “standards of ethical behavior within Parliament and the administration were reportedly better at the beginning of the 1990s than they are now”, that high level corruption was “the most serious corruption problem that Poland faces”, and “considered that it was growing”.¹²² Consequently, the Polish Parliament passed new laws that obliging deputies and senators to declare their assets. That improved public access to information, aiming to increase transparency and accountability in public procurement and state spending.¹²³

The OECD as the third international intergovernmental organisation dealing with corruption has been using two instruments: Its Convention on Combating Bribery of Foreign Public Officials in International Business Transactions was signed on 17 December 1997, became effective on 5 February 1999, and by October 2002 was ratified by 35 states, amongst them all present EU members and half of the candidate countries, namely Bulgaria, Czech Republic, Hungary, Poland, Slovakia, and Slovenia. In addition to the convention, the OECD has published Recommendations on Bribery in International Business Transactions, first in 1994 and, subsequently, revised in 1997.¹²⁴ Neither instrument is powerful, but at least they urge the countries to see to proper legislation and expose them to regular monitoring. In addition, the OECD provides know-how, contacts and conferences, for instance by hosting

¹¹⁹ United Nations, Revised draft UN Convention against Corruption, March 2002, V.02-52865 (E)

¹²⁰ United Nations Manual On Anti-Corruption Policy, Draft, Vienna, June 2001, p. 63f

¹²¹ <http://www1.worldbank.org/publicsector/anticorrupt/>

¹²² World Bank, Warsaw Office, Corruption in Poland, Review of Priority Areas and Proposals for Action, 11 October 1999, p. 4 and 6, www1.worldbank.org/publicsector/anticorrupt/PolandREPORT.pdf

¹²³ Janusz DURLIK, Freedom House, Report on Poland, <http://www.freedomhouse.org/research/natransit.htm>

¹²⁴ OECD-homepage with details on corruption, Conventions and reports <http://www.oecd.org/OECD>, Directorate for Financial, Fiscal and Enterprise Affairs, Report about Implementation of the Convention on Combating Bribery of foreign Public Officials and the 1997 Recommendations, presented at the OECD Ministerial Council in Paris on 15 and 16 May 2002/United Nations Manual On Anti-Corruption Policy, Draft, Vienna, June 2001, p. 72f

and – together with the U.S. Agency for International Development – financing the Anti-Corruption Network.¹²⁵

Council of Europe

The Council of Europe, which was joined by the eight Eastern European candidate countries between 1990 (Hungary) and 1995 (Latvia), has elaborated two Conventions concerning corruption. The Criminal Law Convention on Corruption, which was adopted in November 1998, urges members to ensure in their criminal codes that bribery of domestic and foreign public officials, judges or parliamentarians as well as in the private sector and in international organisations are qualified as criminal offences and punished effectively and proportionately. By March 2003, the ratification of Austria, Belgium, France, Germany, Greece, Ireland, Italy, Luxembourg, Spain, Sweden was still outstanding, whereas all eight Eastern European candidates, as well as Bulgaria, Croatia, and Romania have ratified it, though many with reservations.¹²⁶

The Civil Law Convention on Corruption requires each member state to provide in its domestic law for effective remedies for persons who have suffered damage as a result of corruption, for the right to commence a civil action in corruption cases, and for the possibility for all parties to a contract whose consent has been undermined by an act of corruption to apply to the court for the contract to be declared void. The Civil Law Convention was adopted in September 1999 and has been open for signature since 4 November 1999. In March 2003 it was still not in force, as the prerequisite of ratification by at least 14 states was not fulfilled. Finland and Greece are the only EU members which ratified; Bulgaria, Estonia Lithuania, Poland and Romania are the only candidate countries.¹²⁷

In May 2000 the Committee of Ministers of the Council of Europe adopted recommendations and a Model Code of Conduct for Public Officials. It addresses aspects like conflicts of interest, incompatible outside activities, appropriate reactions on offers of undue advantages, especially gifts, or use of official information and public resources for private purposes.¹²⁸ In November 1997 the Committee of Ministers adopted a resolution with Twenty Guiding Principles for the Fight against Corruption.¹²⁹

In addition to these legal instruments, the Council of Europe has established the “Group of States against Corruption” (GRECO) in May 1999. By March 2003, all EU members except Austria and Italy have joined, and all eight Eastern European candidates, as well as Bulgaria, Croatia and Romania are represented. GRECO is responsible for monitoring the combat against corruption and the implementation of the international legal instruments in all its member states, especially the above mentioned European Council Conventions and the Code of Conduct for Public Officials. The First Round of evaluation, in which each country was visited by delegation of experts of three other GRECO-countries and a member of the GRECO-secretariat, was terminated at the end of 2002. By then 27 Evaluation Reports had been adopted. The Second Round of evaluation started in 2003 and should last until 1 July

¹²⁵ <http://www.anticorruptionnet.org>

¹²⁶ STE No. 173/<http://conventions.coe.int/treaty/EN/WhatYouWant.asp?NT=173&CM=8&DF=/United> Nationals Manual On Anti-Corruption Policy, Draft, Vienna, June 2001, p. 64f

¹²⁷ STE No. 174/<http://conventions.coe.int/treaty/EN/searchsig.asp?NT=174&CM=8&DF=/United> Nationals Manual On Anti-Corruption Policy, Draft, Vienna, June 2001, p. 65f

¹²⁸ Council of Europe, Recommendation No. R(2000)10, <http://cm.coe.int/ta/rec/2000/2000r10.htm>

¹²⁹ Council of Europe, Resolution (97) 24, <http://cm.coe.int/ta/res/1997/97x24.htm>

2005.¹³⁰ One example of GRECO's influence is the Office for the Prevention of Corruption in Slovenia that was established by the Slovenian government in July 2001 in response to the GRECO report. Its task is to define corruption and to devise an anti-corruption strategy.¹³¹

In June 1996 the Council of Europe and the European Commission launched the programme named "Octopus" against corruption and organised crime. After the second phase which ended in 2000 with reports and recommendations for each Eastern and Southern European country, Octopus turned into the sole responsibility of the Council of Europe. The activities comprise seminars, training, and establishing a network of professionals. In 2002 due to limited funds and the increasing activities of GRECO, the "Octopus" was focused only on non-EU candidates as Armenia, Azerbaijan, Georgia, Russia and Ukraine.¹³²

European Union

While the Council of Europe focuses on soft measures like monitoring, evaluating and enhancing good practice, the European Union uses both its greater political and legal power over the future member states.

The issue of corruption can be seen as example of the dilemma which the European Union has with the enlargement. Corruption undermines most of the values on which the European Union is based. As stated in Article 6 of the Treaty of the European Union, "the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law".

In addition, corruption can, as explained above, severely harm the economy, what itself could have impacts on the Single Market, one of the core projects and the most developed field of European integration. Therefore, one could acknowledge both a legal right and a political duty of EU institutions to tackle corruption in view of enlargement, which was put into practice during the accession negotiations. Nevertheless, the European Union, especially the European Commission, is even criticised – e.g. by the Open Society Institute – for not acting firmly and swiftly enough to sort out the problem of corruption, for lacking a clear and strong strategy on corruption as well as specific legal instruments as part of the "acquis communautaire" that has to be taken over by the candidate countries on the day of their accession at the latest. So, why does the European Commission not take the lead on an EU-wide anti-corruption strategy after having repeatedly pointed out the problem of corruption in the candidate countries?

The answer lies in the present EU and in the present member states' concept of the Union they have been shaping since the 1950s. The fifteen present member states don't want the EU institutions, especially the European Commission, to become too powerful. Time and again many of them have protested against interference in areas that they regard as national competence, whether it is competition law or fundamental rights or judicial co-operation. This fear of over-mighty power in Brussels was part of the rationale behind the Convention on the Future of Europe which since February 2002 has been drafting a new treaty, or even a "constitutional treaty", for the European Union. The decision to set up a Convention to

¹³⁰ <http://www.greco.coe.int/GRECO>, Programme of Activities for 2003, Strasbourg, 13 December 2002, GRECO (2002) 34E

¹³¹ Brian J POZUN, Freedom House, Report on Slovenia, <http://www.freedomhouse.org/research/nattransit.htm>

¹³² http://www.coe.int/T/E/Legal_affairs/Legal_co-operation_Combating_economic_crime/Programme_OCTOPUS/

prepare the next amendments of the EU Treaty and the EG Treaty was taken by the European Council of Laeken, where a "Declaration on the Future of the European Union" was adopted. Therein, one of the reasons to change the treaties is explained: "The citizens (...) sometimes have the impression that the Union takes on too much in areas where its involvement is not always essential. Thus the important thing is to clarify, simplify and adjust the division of competence between the Union and the Member States in the light of the new challenges facing the Union."¹³³

Above all, in the area of judicial co-operation, which would be important to combat corruption, the present EU member states have been reluctant to establish powerful common laws and institutions. For example, on 23 May 2001 the European Commission proposed a directive to protect the EU's financial interests that should replace the respective convention (*see below*), because a directive is more powerful than an intergovernmental convention. But so far the proposed directive has been blocked in the Council of Ministers, as the member states insist on keeping this competence on their own and don't want to move it from the third to the first "pillar" of EU procedures whereby the area of fraud and corruption affecting EU's finance – such as customs or subsidies for farmers – would become subject to enforcement by the European Commission and to the judgement of the European Court of Justice. Or, though corruption is listed as one of the tasks for the European Police Office in Den Haag (Europol), this EU institution has no power to prosecute criminals (only to enhance co-operation between national police forces). Up to now Europol has focused its resources on crimes like counterfeiting the Euro, drug trafficking, human trafficking, money laundering, terrorism, and car theft.¹³⁴

Nevertheless, no other international institution has more legal and political power over its members than the European Union. Even if one agrees that more could be done and stronger instruments could be used, it has to be recognised that the European Union already has wide ranging measures in place that directly or indirectly enhance the fight against corruption.

There are the informal measures, like the repeated criticism of corruption in speeches of Commissioner Guenter Verheugen and President Romano Prodi as well as in all the progress reports about the preparation of the candidates for accession. In addition, there is the EU Charter of Fundamental Rights, which counts, until now, as an informal measure, as it was only proclaimed by the Presidents of the European Parliament, the Council and the Commission at the EU summit in Nice in December 2000.¹³⁵ It has to be seen, whether it will enter into force together with the next amendments to the treaties that are being prepared by the Convention on the Future of Europe.¹³⁶ The Charter does not explicitly mention corruption but it tackles several relevant issues, like freedom of media or rule of law. It states in Article 11 the freedom of expression and "to receive and impart information and ideas without interference by public authority" as well as "freedom and pluralism of the media". Article 20 guarantees equality before the law. Article 21 prohibits discrimination based on any ground such as "political or any other opinion". Article 41 states the "right to good administration", this means that every person "has the right to have his or her affairs handled

¹³³ Presidency Conclusions, European Council Meeting in Laeken, 14 and 15 December 2001, SN 300/1/01 REV1, p. 21

¹³⁴ Article 2 and 3 of the Europol Convention describing objective and tasks, and Annex 1 referred to Article 2 of the Europol Convention, <http://www.europol.eu.int>

¹³⁵ Information by the European Parliament on the Charta of Fundamental Rights : http://www.europarl.eu.int/charter/default_en.htm

¹³⁶ The European Convention, Praesidium, Preliminary draft Constitutional Treaty, Brussels, 28 October 2002, CONV 369/02/web-page of the European Convention: <http://european-convention.eu.int>

impartially, fairly and within a reasonable time” (though this right is confined to the institutions and bodies of the EU).¹³⁷

And there is a vast range of formal – especially legal – measures at the EU level that directly or indirectly support the combat against corruption. One bunch of these measures relates to the area of Justice and Home Affairs, another is included in the Single Market legislation, the third area comprises rules about the management of EU funds.

First, there are several legal acts in the area of Justice and Home Affairs. The Convention on the Protection of the European Communities’ Financial Interests was signed on 26 July 1995 and entered into force in October 2002, after Italy as the last of the fifteen EU members had ratified it. It defines fraud affecting the EU’s finances and requires member states to make this sort of fraud a specific criminal offence. The First Protocol, signed in September 1996, defines active and passive corruption. The Second Protocol of June 1997 requires the member states to make laundering the proceeds of fraud against the EU’s finances a criminal offence. By October 2002 the Second Protocol was still not ratified by Germany, Finland, Italy, Luxembourg and Austria.¹³⁸

The Convention on fight against corruption involving officials of the European Communities or officials of the Member States of the European Union was adopted by the Council of Ministers on 26 May 1997.¹³⁹ By March 2003 it was ratified by all member states but Italy, Ireland, Luxembourg and Germany. Prior to that Convention, criminal law in most member states did not apply to officials of other member states, even where the offences in question took place in their own territory or at the instigation of one of their own nationals.¹⁴⁰ This loophole became intolerable when the first huge financial scandal in the European Commission was discovered after 1989 with fraud and corruption in its tourism unit.¹⁴¹

In June 2002 Denmark proposed a Framework Decision on combating corruption in the private sector to replace the Joint Action on the same subject adopted in December 1998. So far, the Council of Ministers has reached a “general approach” on this framework decision; the adoption is expected soon. Based on this EU law, which is similar to a directive, the member states will have to ensure that both active and passive corruption in the private sector is a criminal offence, that legal persons may also be held responsible for such offences and that the offences incur effective, proportionate and dissuasive penalties. In addition, the EU members become obliged to ratify both the EU Convention and the Council of Europe Criminal Law Convention on corruption.¹⁴²

¹³⁷ Official Journal of the European Communities, 18 December 2000, C 364/1

¹³⁸ European Commission, Press Release, 18 October 2002, IP/02/1515

¹³⁹ Official Journal of the European Communities, C 195, 26 June 1997, p.2ff/Explanatory Report on the Convention to fight against corruption, Official Journal of the European Communities, C 391, 15 December 1998, p.1ff

¹⁴⁰ United Nations Manual On Anti-Corruption Policy, Draft, Vienna, June 2001, p. 69

¹⁴¹ A Belgian public prosecutor, for instance, could not prosecute the responsible director general, the responsible director of the tourism and his assistant as they were protected by immunity. See: European Parliament, Resolution on the Commission’s conduct in respect of alleged fraud and irregularities in the tourism sector, 17 February 1998, A4-0049/1998 (rapporteur : Rosemarie WEMHEUER)

¹⁴² Danish proposal : Official Journal of the European Communities, C 184, 2 August 2002, p. 5ff / A Framework Decision is a legal instrument in the third pillar ; its impact is similar to a directive, that has to be transposed into the legal order of all member states ; different to the directive, the implementation of a Framework Decision can not be sued at the European Court of Justice / Joint Action : Official Journal of the European Communities, L 358, 31 December 1998, p.2ff / Negotiations in the Council: Conclusions of 2477th

Besides this specific legislation on fraud and corruption, a general strengthening of the judicial co-operation to build an "area of freedom, security and justice" was to be witnessed in recent years, following the Amsterdam Treaty that entered into force on 1 May 1999 and the Tampere European Council on 15 and 16 October 1999. The efforts to fulfil these action programmes were enhanced after the terrorist attacks in New York and Washington on 11 September 2001. The coming enlargement will be the first in EU history where the new member states have to take over EU laws in Justice and Home Affairs. All these new structures and legal acts will apply unrestrictedly to the new members. It includes the installation of a co-operation office for prosecutors of all member states (Eurojust in The Hague), and several framework decisions on crime law, especially the decision on the international arrest warrant. In addition, as of January 2002, the role of the EU police office, Europol in The Hague, which commenced its full activity on 1 July 1999, was reinforced by extending its powers to all forms of international crimes. Europol has already signed co-operation agreements with several candidate countries, e.g. Czech Republic, Hungary, Poland, Slovenia and Estonia, which provide for the possibility of exchanging liaison officers.¹⁴³

Though it is legitimate to criticise, as the Open Society Institute has done repeatedly, the EU anti-corruption framework for being "diffuse and largely non-binding"¹⁴⁴, it has to be remembered that the issue of corruption is not worse off than any other field of judicial co-operation or EU criminal law. On the contrary, the first results concerning the campaign against corruption are quite remarkable if one takes into account three aspects: first, that the common policy on justice and home affairs is being built up only since the Treaty of Amsterdam; second, that the EU is based on democracy and compromise and is, therefore, a huge but sluggish engine; and, third, that the EU in principle derives its competence of cross-border-issues, so purely domestic crime (like shoplifting or embezzlement of income tax) or corruption (like Jacques Chirac's, Helmut Kohl's or Tony Blair's troubles with party financing¹⁴⁵) or purely domestic economic policy (like problems of competition because of regionally powerful enterprises or opening hours of shops) still belong to the realm of member states. The "area of freedom, security and justice" as foreseen by the Amsterdam Treaty is now perhaps as developed as the Single Market was in the 1960s. It remains to be seen whether the member states want to fill this concept with as much life – i.e. power for the EU institutions (not only the European Commission, but also the European Parliament, the Court of Justice, Europol and Eurojust) – as the Single Market.

Secondly, there are many regulations and directives, i.e. EU laws, most of them in the area of Single Market legislation, that are useful to reduce corruption, though not primarily intended to do so. Most important is the directive against money laundering¹⁴⁶ and the EU laws on public procurement. Other EU rules that could obstruct misbehaviour like corruption are those

Council meeting, Brussels, 19 December 2002, 15691/02 (Presse 404), 2455th Council meeting, Luxembourg, 14, 15 October 2002, 12894/02 (Presse 308)

¹⁴³European Commission, Biannual update of the scoreboard to review progress on the creation of an area of "Freedom, Security and Justice" in the European Union, Brussels, 30 May 2002, COM (2002) 261 final, http://europa.eu.int/comm/justice_home/common/content/scoreboard_en.pdf / Europol Convention, Article 2 (Objective) and Annex referred to Article 2, see www.europol.eu.int / Europol, Press release, 5 March 2002, <http://www.europol.eu.int/index.asp?page=news&news=pr020305.htm>

¹⁴⁴OSI, Monitoring the EU Accession Process, Corruption and Anti-corruption Policy, 2002, p. 34f and 71f

¹⁴⁵Newsweek International/Europe's Dirty Secret ; Across the Continent, corruption is a way of life, 29 April 2002 / The Economist, Bad news for the president, Corruption scandals hurt France's president, 9 February 2002 / Reuters, Kohl retires from parliament after stormy career, 13 September 2003

¹⁴⁶adopted in 1991, amended in December 2001, Official Journal of the European Communities, L 344, 28.12.01

on competition, liberalisation of markets for telecommunications, transport, postal services, gas and electricity markets as well as accounting and auditing rules for companies.¹⁴⁷

In view of party financing, a recent EU initiative is remarkable. Based on one of the few breakthroughs of the EU-summit of Nice, namely the decision on rules of procedures to define regulations for political parties, on 19 February 2003 the European Commission renewed a proposal for a Regulation on the statute and financing of European political parties. Though these rules, once adopted, will not be relevant for national parties, they could at least clarify standards for managing and financing parties at the European level, especially for parties that run for the elections to the European Parliament.¹⁴⁸ One has to bear in mind, that approximately one fifth of the future 732 members of the European Parliament will come from the Eastern European countries which are to enter the EU in 2004.¹⁴⁹

Thirdly, the candidate countries are and will be subject to the EU rules on financial management. In the decentralised system of collecting EU revenues (especially customs) and spending EU subsidies (especially regional funds and subsidies for agriculture) the member states and their administrations become subject to EU rules¹⁵⁰ and the control of the European Anti-Fraud Office (OLAF)¹⁵¹ and the European Court of Auditors¹⁵². Until now, in most cases of misappropriated EU-funds it was the administration in member states that made the mistakes. According to OLAF, more than half of the cases of abuse of EU-money between July 2001 and June 2002 related to structural funds, that have to be spent by the member states (the European Commission is responsible for general programming and supervision).¹⁵³ And according to EU rules, monies from the EU budget which have not been spent properly have to be paid back by the member states. For instance, in February 2003 the European Commission decided to claim back 93 million Euro of misspent agriculture expenditure, as for these payments the member states were held responsible for inadequate control procedures or non-compliance with EU rules.¹⁵⁴

The European Commission is strongly motivated to put pressure on the future member states to guarantee sound management of EU funding at all levels of public administration, because according to Article 274 of the EC Treaty it formally bears the ultimate responsibility for the EU budget vis-a-vis the European Parliament, but also because it was the alleged abuse of financial resources and administrative failures that triggered one of the greatest scandals in the history of the European Union, when the President of the European Commission and all Commissioners were forced to step down in March 1999.¹⁵⁵ Consequently, it has been one of

¹⁴⁷ European Commission, general directorate for Internal Market, http://europa.eu.int/comm/internal_market/en/index.htm

¹⁴⁸ European Commission, Press Release, 19 February 2003, IP/03/260

¹⁴⁹ Council of the European Union, Presidency Report on Enlargement, Brussels, 7 December 2002 (15174/02, ELARG 408), pp. 133-136

¹⁵⁰ for instance Financial Regulation of 21 December 1997 applicable to the general budget of the European Communities, 1977X1231, Official Journal of the European Communities, 1 January 2000/001.002

¹⁵¹ http://europa.eu.int/comm/dgs/olaf/index_en.htm

¹⁵² <http://www.eca.eu.int>

¹⁵³ OLAF, Third Activity report for the year ending June 2002, p.12,

http://europa.eu.int/comm/anti_fraud/reports/olaf/2002.pdf / European commission, Report on Protection of the Financial Interests of the communities and Fight against Fraud, Annual Report 2001, Brussels 6 August 2002, COM (2002) 348 final/3, http://europa.eu.int/comm/anti-fraud/reports/commission/2001/rep_comm_2001_en.pdf

¹⁵⁴ European commission, press release 14 February 2003, IP/03/235

¹⁵⁵ see <http://europa.eu.int/abc/history/1999/1999.htm>

the highest priorities of the present body of 20 Commissioners, especially its Vice-President Neil Kinnock, to tighten the administrative rules and strengthen rules for whistle-blowing.¹⁵⁶

How strict and relentless the European Commission will be with the future member states was to be witnessed with the establishment of the agencies which were to pay out pre-accession aid for agriculture, i.e. money out of the programme named SAPARD (Special Pre-accession Programme for Agriculture and Rural Development). It was only in November 2002 that Hungary as the last of the soon entering candidate countries got accreditation for its SAPARD agency, though from 2000 onwards 40.6 million Euro per year were promised, decided and foreseen in the EU budget for SAPARD in Hungary. But until the accreditation of the agency, that is the assurance that the responsible Hungarian authorities would comply with EU rules for financial management and auditing, this money was frozen on the accounts of the European Commission in Brussels.

For Poland the SAPARD-money (171.6 million Euro per year) was blocked until June 2002, for the Czech Republic (22.4 million Euro per year) in April 2002.¹⁵⁷ Already the first incidents are reported: in Poland, four senior SAPARD officials had to step down in autumn 2002 after the EU Commissioner for Agriculture, Franz Fischler, had questioned their appointments, following claims that they were unqualified and had been given the job because of their links to government parties.¹⁵⁸ In Romania, where the agency was accredited by the European Commission in July 2002, in October of the same year the director of the SAPARD agency was dismissed for mismanagement and conflict of interest. The chief of the anti-fraud unit was fired for trading on favours.¹⁵⁹ Overall, it may be more dangerous that the future member states would lose their EU funds which they have desperately pursued during the end-spurt of the accession negotiations than that huge sums of EU money will be lost in dubious channels.

In addition to imposing rules, the EU has provided assistance in strengthening the administration – so called institution building – in the candidate countries. Strong institutions are necessary, not only to ensure that EU moneys are properly spent, but also that the EU principle of the rule of law is put into practice. The programme called PHARE – besides SAPARD (for agriculture) and ISPA (for public infrastructure), the third pre-accession aid programme of the EU – provides assistance for compliance with the EU “acquis” by the date of accession (e.g. in areas like nuclear safety, transport safety, consumer information) and for strengthening the public administration in the candidate countries. According to information from the European Commission, approximately 30 per cent of the PHARE-budget (of 1.6 billion Euro in 2000) is spent on this institution building that “means designing management systems and training and equipping a wide range of civil servants, public officials, professionals and relevant private sector actors: from judges and financial controllers to environmental inspectors and statisticians, to name but a few”. One of the measures for institution building is “Twinning”, that is the temporary exchange of civil servants between

¹⁵⁶ European Commission, White paper on Reform, 1 March 2000, COM (2000) 200/European Commission, Communication, Progress Review of Reform, 7 February 2003, COM (2003) 40 final/2 / http://europa.eu.int/comm/reform/index_en.htm

¹⁵⁷ European Commission, press releases 26 November 2002, IP/02/1737 / 28 June 2002, IP/02/961 / 16 April 2002, IP/02/2002

¹⁵⁸ European Voice, Alleged cronyism costs Polish four their jobs, 5 December 2002 / Agence France Presse, AFP, EU farm chief still worried about management of Polish accession aid, 12 September 2002 / Financial Times, Brussels concerned at claims of Polish cronyism, 12 September 2002

¹⁵⁹ European Commission, Press Release, 31 July 2002, IP/02/1182 / Euractiv, Romania fires SAPARD director for mismanagement, 30 October 2002, <http://www.euractiv.com>

candidate and member states.¹⁶⁰ The European Commission has even proposed to continue this programmes for the first three years after the accession, i.e. until 2006.¹⁶¹

However, in spite of EU assistance for institution building before and after the accession, entry into the EU can also have weakening effects on the public administration of the future member countries. It could produce a brain-drain, as immediately after accession the recruitment of civil servants for EU institutions will be mostly restricted to applicants of the new members to allow a new balance of nationalities that roughly goes with the demography of the enlarged EU. The European Commission alone is going to employ in the first seven years after enlargement approximately 3,500 civil servants from the ten new member states, e.g. 1,340 from Poland or nearly 500 each from the Czech Republic and Hungary.¹⁶² As salaries in EU institutions are significantly, if not several times, higher than in the candidate countries, the incentives for well-qualified civil servants to move to Brussels will be high.

¹⁶⁰ European Commission, Phare's Principal Focus, <http://europa.eu.int/comm/enlargement/pas/phare/focus.htm> / European Commission, General Report on Pre-Accession Assistance in 2000, COM (2002) 781 final, http://europa.eu.int/comm/enlargement/pas/phare/pdf/report_pre_acc_en.pdf

¹⁶¹ European Commission, Towards the Enlarged Union, Strategy Paper and Report on the progress towards accession by each of the candidate countries, Brussels, 9 October 2002, COM (2002) 700 final, p. 27 and 87 (Annex 2), http://europa.eu.int/comm/enlargement/report2002/strategy_en.pdf

¹⁶² Neil KINNOCK, Recruitment of officials from the new Member States following enlargement, Speech in a press conference, Brussels, 19 February 2003 (SPEECH/03/86)/Press release of the European Commission, Brussels, 19 February 2003 (IP/03/2003)

Conclusions

Will corruption spread from East to West once the European Union is enlarged? Will corruption become more dangerous in the enlarged EU? Answers to such questions are as complex as the assessment of corruption and of its causes and consequences.

One could argue that it won't have such negative impact. Corruption in the new member states will not be harmful for the enlarged European Union because the EU has survived well for half a century with remarkable corruption, malfunctioning of public institutions and unstable governments in its member states. There is the founding member Belgium, where leading politicians of the Social Democrats poured 3.2 million US-Dollars into their party coffers in exchange for contracts on military equipment for the Belgian army (so called Agusta scandal)¹⁶³, and where Marc Dutroux, arrested in 1996 because of allegedly having kidnapped and killed four girls, is still awaiting the start of his trial.¹⁶⁴ There is the founding member Italy, where 58 governments have come and gone since 1945; Berlusconi's is the 59th.¹⁶⁵ There is the biggest member, Germany, where high-level party financing scandals have been embarrassing both conservatives and social democrats.¹⁶⁶

But there are counter-arguments, which explain that letting the Eastern European countries into the Union could be dangerous. Corruption in Eastern Europe is on average more rife than in Western Europe. And some of the reasons and forms of corruption to be witnessed in the Eastern European candidate countries are worrying. Indeed, they may be even more severe than the malpractice in the present member states, like the widespread weaknesses in the capacity to enforce laws, especially among the judiciary, like disturbing cases infringing the freedom of the media or like covert payments in the course of public procurement and privatisation.

However, one could say that all these problems are well contained in the respective country. Why should a citizen in southern France bother if a citizen in eastern Poland has to wait thirteen years for a court sentence? Why should an English citizen bother when a German investor has to bribe to get a licence to open a business in southern Hungary? And, anyway, criminality had started to break through national borders long before the EU enlargement was decided.

Again, there are counter-arguments to this view. With growing trade, swelling investment and increasing tourism – fostered by the single currency – more and more British, French, Swedish, Danish and German companies and their employees will be affected by costs and insecurities induced by corruption. Moreover, one major reason of Eastern European candidates in applying for EU entry is based upon the desire for economic growth and increasing wealth, and one major fear is the extinction of farmers. The EU does provide assistance for both: structural funds to foster investments, and subsidies for agriculture, though both need a strong administration in the relevant member state to be planned, distributed and monitored. What could happen if the promise of blessings is not fulfilled, because EU money disappears into obscure channels? Is it conceivable, that together with the

¹⁶³ International Herald Tribune, Ex-Head of NATO Sentenced in Belgian Bribery Scandal, 24 December 1998

¹⁶⁴ Agence France Presse (AFP), Belgian court postpones decision on Dutroux trial, 2 April 2003

¹⁶⁵ Dow Jones International News, Italy's Berlusconi Sworn In, 11 June 2001

¹⁶⁶ Newsweek International, Europe's Dirty Secret, Across the Continent, corruption is a way of life, 29 April 2002

hopes for a better future, the will to remain in the EU could diminish? This would be entirely new for the EU: that a disappointed member could lose the will to stay in.

One could say, however, that all these real and possible difficulties are already recognised. The World Bank is publishing studies, United Nations and OECD are providing legal frameworks, the Council of Europe has taken the responsibility for monitoring and reporting, the European Union has put corruption on its enlargement agenda, several NGOs have been releasing warning shots. Indeed, international organisations have been offering assistance in abundance in the form of reports, conventions and codes of conduct. In view of all these initiatives, there is no excuse to say: "We did not know what happened" or "We did not know what to do".

Nevertheless, it is not enough to know. It is not enough for scholars, observers and advisers to realise what could and should be reformed. Who are the powerful players? In the first instance one thinks of governments and politicians. Then one might think of the European Union as the overarching construction. Isn't it the European Union that takes in the new members and should, therefore, be the one to take care?

The EU cannot do more than all member states unanimously agree upon. And until now, the Union has been functioning with strong member states. Many of them have been rejecting the idea of a federal state or have been criticising those who seek to increase EU competences of building an "European super-state". It is hard to imagine that any of the present member states would accept powerful EU measures to combat corruption that would have to be applied to new and old members equally. An "anti-corruption directive", a "directive on freedom of media" or a directive that sets norms for the funding of domestic political parties (the above mentioned proposal of the European Commission refers only to European parties) would heavily interfere from above in core competences and building principles of a democratic state that up to now have been strictly in the realm of the member states. Indeed, does it make sense to seek the solution for any problem in centralised legislation?

If the prime responsibility for anti-corruption policies remains with the member states, what will happen if the candidate countries will not cope with their corruption problems? Under EU law two measures are already foreseen. First, those members who cannot make sure that the billions of Euro of EU subsidies are spent properly, will lose this money, at least in part. Second, if corruption in a future member state becomes so severe that the principles stated in Article 6 of the EU Treaty, such as democracy and rule of law, are endangered, the EU could impose sanctions as foreseen in Article 7, namely a formal recommendation to the incriminated member and, even further, partial exclusion from its rights and entitlements as EU member.

The system, which we Europeans have been heading for in our home countries, within our EU partner countries, and at the EU level, is based on the classical ideals of "democratia" and a "res publica". National governments should not be able to do more than the citizens authorise them to do. However, the problems with corruption show that there is nothing like a last resort in "the state". On the contrary, the institutions of a state will only remain useful to the common good, if they are strong by being not only entrusted, but also controlled and monitored. Above all, it remains to the civil society to combat the malfunctioning of a state.

But it is not enough for ordinary citizens exercise to take their responsibility by not re-electing corrupt politicians and, if necessary, by protesting. Classical mechanisms of voting and

marching in the streets are too weak to cope with a problem like entrenched corruption and, therefore, to ensure that those in power cannot get too powerful. On the one hand, the privately owned and independent media have been narrowing this gap by uncovering scandals. On the other hand, during the last decade the non-governmental organisations have been performing an extraordinary and important task to secure the role of the civil society and, ultimately, the freedom of the citizens. Problems with corruption make clear: to build a state according to principles of democracy and rule of law, Montesquieu's three pillars of legislation, executive and judiciary are not strong enough to eliminate arbitrary excesses of power. Media and NGOs as fourth and fifth pillars are indispensable.

... politics need not be the domain solely of people for whom it is primarily about single-mindedly manoeuvring in the sphere of power, and for whom power itself means to loot and to apportion. There is also room in politics for people who are open, willing to listen to others, those who understand and prove the forgotten truth that public administration is about the public.

And this gives us new hope.

Vaclav Havel
Former President of the Czech Republic,
1 January 2003

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Annexes

Annex I

Transparency International Corruption Perception Index 1995-2002 Selected data for candidate countries

Maximum score (i.e. entirely clean of corruption) is 10. No single country has reached this level. For the 2002 Index countries with a score higher than 9 – i.e. with very low levels of perceived corruption – were Finland, Denmark, New Zealand, Iceland, Singapore and Sweden. Ex æquo ranking is possible. The order in the table follows the 2002 Index.

	2002		2001		2000		1999		1998		1997		1996		1995	
	rank	score	rank	score	rank	score	rank	score	rank	score	rank	score	rank	score	rank	score
Finland	1	9.7	1	9.9	1	10	2	9.8	2	9.6	2	9.5	4	9.1	4	9.1
Denmark	2	9.5	2	9.5	2	9.8	1	10	1	10	1	9.9	2	9.3	2	9.3
Sweden	5	9.3	6	9.0	3	9.4	3	9.4	3	9.5	3	9.4	3	9.1	6	8.9
Luxembg.	7	9.0	9	8.7	11	8.6	11	8.8	11	8.7	10	8.6				
Netherlands	7	9.0	8	8.8	9	8.9	8	9.0	8	9.0	6	9.0	9	8.7	9	8.7
U. Kingdom	10	8.7	13	8.3	10	8.7	13	8.6	11	8.7	14	8.2	12	8.4	12	8.6
Austria	15	7.8	15	7.8	15	7.7	17	7.6	17	7.5	17	7.6	16	7.6	16	7.1
Germany	18	7.3	20	7.4	17	7.6	14	8.0	15	7.9	13	8.2	13	8.3	13	8.1
Belgium	20	7.1	24	6.6	25	6.1	29	5.3	28	5.4	26	5.3	20	6.8	19	6.9
Spain	20	7.1	22	7.0	20	7.0	22	6.6	23	6.1	24	5.9	32	4.3	26	4.4
Ireland	23	6.9	18	7.5	19	7.2	15	7.7	14	8.2	12	8.3	11	8.5	11	8.6
France	25	6.3	23	6.7	21	6.7	22	6.6	21	6.7	20	6.7	19	6.7	18	7.0
Portugal	25	6.3	25	6.3	23	6.4	21	6.7	22	6.5	19	7.0	22	6.5	22	5.6
Slovenia	27	6.0	34	5.2	28	5.5	25	6.0								
Estonia	29	5.6	28	5.6	27	5.7	27	5.7	26	5.7						
Italy	31	5.2	29	5.5	39	4.6	38	4.7	39	4.6	30	5.0	34	3.4	33	3.0
Hungary	33	4.9	31	5.3	32	5.2	31	5.2	33	5.0	28	5.2	31	4.9	28	4.1
Lithuania	36	4.8	38	4.8	43	4.1	50	3.8								
Greece	44	4.2	42	4.2	35	4.9	36	4.9	36	4.9	25	5.4	28	5.0	30	4.0
Poland	45	4.0	44	4.1	47	4.1	44	4.2	39	4.6	29	5.1	24	5.6		
Bulgaria	45	4.0	47	3.9	52	3.5	63	3.3	66	2.9						
Croatia	51	3.8	47	3.9	51	3.7	74	2.7								
Czech Rep.	52	3.7	47	3.9	42	4.3	39	4.6	37	4.8	27	5.2	25	5.4		
Latvia	52	3.7	59	3.4	57	3.4	58	3.4	71	2.7						
Slovakia	52	3.7	51	3.7	52	3.5	53	3.7	47	3.9						
Romania	77	2.6	69	2.8	68	3.9	63	3.3	61	3.0	37	3.4				
Out of	102		91		90		99		85		52		54		41	

non bold: EU members

bold and non italic: candidate countries, first round entering 2004

bold and italic: candidate countries, presumably second round

Source: <http://www.transparency.org>, press releases

Transparency International
Corruption Perception Index 2002
(maximum score is 10 points)

1. **Finland** (9.7)
2. **Denmark**, New Zealand (9.5)
4. Iceland (9.4)
5. Singapore, **Sweden** (9.3)
7. Canada, **Luxembourg**, **Netherlands** (9.0)
10. **United Kingdom** (8.7)
11. Australia (8.6)
12. Norway, Switzerland (8.5)
14. Hong Kong (8.2)
15. **Austria** (7.8)
16. USA (7.7)
17. Chile (7.5)
18. **Germany**, Israel (7.3)
20. **Belgium**, Japan, **Spain** (7.1)
23. **Ireland** (6.9)
24. Botswana (6.4)
25. **France**, **Portugal** (6.3)
27. **Slovenia** (6.0)
28. Namibia (5.7)
29. **Estonia**, Taiwan (5.6)
31. **Italy** (5.2)
32. Uruguay (5.1)
33. **Hungary**, Malaysia, Trinidad (4.9)
36. Belarus, **Lithuania**, South Africa, Tunesia (4.8)
40. Coast Rica, Jordan, Mauritius, South Korea (4.5)
44. **Greece** (4.2)
45. Brazil, **Bulgaria**, Jamaica, Peru, **Poland** (4.0)
50. Ghana (3.9)
51. **Croatia** (3.8)
52. **Czech Republic**, Latvia, Morocco, **Slovak Republic**, Sri Lanka (3.7)
57. Colombia, Mexico (3.6)
59. China, Dominican Republic, Ethiopia (3.5)
62. Egypt, El Salvador (3.4)
64. Thailand, **Turkey** (3.2)
66. Senegal (3.1)
67. Panama (3.0)
68. Malawi, Uzbekistan (2.9)
70. Argentina (2.8)
71. Cote d'Ivoire, Honduras, India, Russia, Tanzania, Zimbabwe (2.7)
77. Pakistan, Philippines, **Romania**, Zambia (2.6)
81. Albania, Guatemala, Nicaragua, Venezuela (2.5)
-

Source: <http://www.transparency.org>, press releases

Annex II

Freedom House Nations in Transit 2002 Scores

According to the Reports the scores and ratings for these countries reflect the consensus of Freedom House, its academic advisors, and the different authors of the reports.

The ratings are based on a scale of 1 to 7, with 1 representing the optimal level of political and economic practice, and 7 representing the most repressive level.

The overview and analysis covers the 14-month-long period from 1 November 2000 to 31 December 2001.

Freedom House assesses democracy, rule of law and economic reforms. These three overarching indices are compiled of several sub-indices (the index for rule of law, for instance, out of an index on constitution, legislative and judiciary and of an index on corruption).

CORRUPTION (part of rule-of-law-index)						
	1997	1998	1999/2000	2001	2002	rank
Czech Republic	n. a.	n. a.	3.25	3.75	3.75	6.
Estonia	n. a.	n. a.	3.25	2.75	2.50	3.
Latvia	n. a.	n. a.	3.50	3.50	3.75	6.
Lithuania	n. a.	n. a.	3.75	3.75	3.75	6.
Hungary	n. a.	n. a.	2.50	3.00	3.00	4.
Poland	n. a.	n. a.	2.25	2.25	2.25	2.
Slovakia	n. a.	n. a.	3.75	3.75	3.25	5.
Slovenia	n. a.	n. a.	2.00	2.00	2.00	1.
Bulgaria	n. a.	n. a.	4.75	4.75	4.50	9.
Romania	n. a.	n. a.	4.25	4.50	4.75	10.

The index for rule of law is composed of scores for constitutional, legislative, and judicial framework and corruption.

RULE OF LAW						
	1997	1998	1999/2000	2001	2002	rank
Czech Republic	n. a.	n. a.	2.75	3.13	3.13	8.
Estonia	n. a.	n. a.	2.63	2.38	2.13	3.
Latvia	n. a.	n. a.	2.75	2.75	2.88	6.
Lithuania	n. a.	n. a.	2.88	2.75	2.88	6.
Hungary	n. a.	n. a.	2.13	2.50	2.50	4.
Poland	n. a.	n. a.	1.88	1.88	1.88	1.
Slovakia	n. a.	n. a.	3.13	3.00	2.63	5.
Slovenia	n. a.	n. a.	1.75	1.75	1.88	1.
Bulgaria	n. a.	n. a.	4.13	4.13	4.00	9.
Romania	n. a.	n. a.	4.25	4.38	4.50	10.

INDEPENDENT MEDIA (part of democratisation-index)						
	1997	1998	1999/2000	2001	2002	rank
Czech Republic	1.25	1.25	1.75	2.00	2.50	8.
Estonia	1.75	1.75	1.75	1.75	1.75	2.
Latvia	1.75	1.75	1.75	1.75	1.75	2.
Lithuania	1.75	1.50	1.75	1.75	1.75	2.
Hungary	1.50	1.50	2.00	2.25	2.25	7.
Poland	1.50	1.50	1.50	1.50	1.50	1.
Slovakia	4.25	4.00	2.25	2.00	2.00	6.
Slovenia	1.75	1.75	1.75	1.75	1.75	2.
Bulgaria	3.75	3.50	3.50	3.25	3.25	9.
Romania	4.25	4.00	3.50	3.50	3.50	10.

Index of democratisation is composed of scores for political process, civil society, independent media, as well as governance and public administration.

DEMOCRATISATION						
	1997	1998	1999/2000	2001	2002	rank
Czech Republic	1.50	1.50	1.75	1.81	2.13	8.
Estonia	2.10	2.05	2.06	2.00	1.94	4.
Latvia	2.15	2.15	2.06	1.94	1.94	4.
Lithuania	2.15	1.95	2.00	1.94	1.88	3.
Hungary	1.50	1.50	1.75	1.94	1.94	4.
Poland	1.50	1.45	1.44	1.44	1.50	1.
Slovakia	3.80	3.65	2.50	2.25	1.94	4.
Slovenia	2.00	1.95	1.94	1.94	1.81	2.
Bulgaria	3.90	3.55	3.31	3.06	3.00	9.
Romania	3.95	3.85	3.19	3.31	3.31	10.

The index for economic liberalisation is composed of scores for privatisation, macroeconomic policies and microeconomic policies.

ECONOMIC LIBERALISATION						
	1997	1998	1999/2000	2001	2002	rank
Czech Republic	1.88	2.00	1.92	2.00	2.08	4.
Estonia	2.13	2.00	1.92	1.92	1.92	1.
Latvia	2.50	2.50	2.50	2.50	2.33	6.
Lithuania	2.50	2.58	2.83	2.75	2.88	8.
Hungary	1.63	1.67	1.75	1.92	2.00	3.
Poland	2.00	1.92	1.67	1.67	1.92	1.
Slovakia	3.38	3.58	3.25	3.25	2.33	6.
Slovenia	2.38	2.17	2.08	2.08	2.17	5.
Bulgaria	5.38	4.08	3.75	3.50	3.25	9.
Romania	4.63	4.50	4.17	4.00	3.92	10.

Source: <http://www.freedomhouse.org/research/nattransit.htm>

Annex III

World Bank

Types and Levels of Corruption in Transition Economies

	Shares of * Captor Firms	Shares of ** Kickback Firms	Average share of annual firm revenue paid in bribes ***
Albania	11	51	4.0
Armenia	7	26	4.6
Azerbaijan	24	52	5.7
Belarus	2	5	1.3
Bulgaria	11	13	2.1
Croatia	10	26	1.1
Czech Republic	7	43	2.5
Estonia	5	28	1.6
Georgia	8	18	4.3
Hungary	4	15	1.7
Kazakhstan	6	21	3.1
Kyrgyzstan	7	19	5.3
Latvia	14	22	1.4
Lithuania	14	15	2.8
Moldova	12	9	4.0
Poland	9	32	1.6
Romania	13	39	3.2
Russia	9	22	2.8
Slovakia	12	35	2.5
Slovenia	10	27	1.4
Ukraine	12	33	4.4
Uzbekistan	2	24	4.4
Overall	9.5	26	3.0

* Firms were asked whether state capture in each of the following dimensions (parliamentary legislation, presidential decrees, central bank, criminal courts, commercial courts, political parties) had no impact/minor impact/significant impact or very significant impact on their business. Those firms that reported a significant impact or very significant impact were classified as "affected by state capture" in that dimension.

** Firms that traded with the government were asked: How often do firms like yours nowadays need to make extra unofficial payments to public officials to gain government contracts? Those responding sometimes or more frequently were classified as kickback firms.

*** Firms were asked: What percentage of revenues do firms like yours pay per annum in unofficial payments to public officials?

Source: Joel S. HELLMAN, Geraint JONES, Daniel KAUFMANN, Far From Home, Do Foreign Investors Import Higher Standards of Governance in Transit Economies?, draft, World Bank, August 2002/
<http://www.worldbank.org/wbi/governance/pdf/farfromhome.pdf>

Annex IV

Worldwide Press Freedom Index

According to **Reporters Without Borders** the index measures “the amount of freedom journalists and the media in each country and the efforts made by governments to see that press freedom is respected”. The questionnaire was sent to local journalists, foreign correspondents living in the country, researchers, legal experts, and specialists on a region. The questions concerned attacks on journalists (such as murders, imprisonment, physical assaults and threats) and on the media (like censorship, confiscation, searches and pressures); in addition, the questionnaire recorded the legal environment for the media and the behaviour of states towards the public media and the foreign press. Those countries were included into the survey about which Reporters Without Borders received complete questionnaires from several independent sources.

Rank

1. **Finland**, Iceland, Norway, **Netherlands** (0.5)
5. Canada (0.75)
6. **Ireland** (1.0)
7. **Germany**, Portugal, Sweden (1.5)
10. **Denmark** (3.0)
11. **France** (3.25)
12. Australia, **Belgium** (3.5)
13. **Slovenia** (4.0)
14. Costa Rica, Switzerland (4.25)
17. United States (4.75)
18. Hong Kong (4.83)
19. **Greece** (5.0)
20. Ecuador (5.5)
21. Benin, **United Kingdom**, Uruguay (6.0)
24. Chile, **Hungary** (6.5)
26. South Africa, **Austria**, Japan (7.5)
- 29 **Spain**, **Poland** (7.75)
31. Namibia (8.0)
32. Paraguay (8.5)
33. **Croatia**, El Salvador (8.75)
35. Taiwan (9.0)
36. Mauritius, Peru (9.5)
38. **Bulgaria** (9.75)
39. South Korea (10.5)
40. **Italy** (40)
41. **Czech Republic** (11.5)
42. Argentina (12.0)
43. Bosnia and Herzegovina, Mali (12.5)
45. **Romania** (13.25)
-
107. Ethiopia, Rwanda (37.5)

Source: Reporter Without Borders (Reporters sans frontières), www.rsf.org

Annex V

Freedom House Press Freedom Survey 2002 Rankings 1994-2002

0-30 = free, 31-60 = partly free, 61-100 = not free

	1994	1995	1996	1997	1998	1999	2000	2001	2002	rank
Austria	19	18	12	12	12	12	12	14	24	20.
Belgium	7	7	10	10	10	9	9	9	9	2.
Denmark	11	9	9	9	9	9	9	9	9	2.
Finland	17	15	15	15	15	15	15	14	10	4.
France	19	27	30	26	26	27	24	21	17	10.
Germany	11	18	21	11	11	13	13	13	15	6.
Greece	30	26	29	27	30	30	30	30	30	24.
Ireland	16	15	18	19	21	20	21	18	16	9.
Italy	25	30	30	27	27	28	27	27	27	22.
Luxembourg	12	10	10	1	10	10	10	10	14	5.
Netherlands	14	18	14	14	14	14	14	15	15	6.
Portugal	18	16	17	17	17	17	17	17	15	6.
Spain	14	23	17	19	17	21	18	20	17	10.
Sweden	11	10	10	10	10	10	11	10	8	1.
United Kingdom	24	22	22	22	21	20	20	17	18	12.
Czech Republic	20	21	19	19	19	20	20	24	25	21.
Estonia	28	25	24	22	20	20	20	20	18	12.
Hungary	30	38	34	31	28	28	30	28	23	19.
Latvia	29	29	21	21	21	21	24	24	19	15.
Lithuania	30	29	25	20	17	18	20	20	19	15.
Poland	30	29	21	27	25	25	19	19	18	12.
Slovakia	47	55	41	49	47	30	30	26	22	18.
Slovenia	40	37	27	28	27	27	27	21	20	17.
Bulgaria	43	39	46	44	36	39	30	26	29	23.
Croatia	56	56	58	63	63	63	63	50	33	24.
Romania	55	50	49	47	39	44	44	44	35	26.

Sources: <http://www.freedomhouse.org/pfs.2002/pfs2002.pdf>,
<http://www.freedomhouse.org/research/ratings.XLS>