G. KÖSEKAHYA

ANTI-CORRUPTION POLICY IN THE EUROPEAN UNION AND IMPACT OF THE EU ACCESSION PROCESS ON TURKEY'S ANTI-CORRUPTION STRATEGY

GAMZE KÖSEKAHYA

DECEMBER 2005

METU

ANTI-CORRUPTION POLICY IN THE EUROPEAN UNION AND IMPACT OF THE EU ACCESSION PROCESS ON TURKEY'S ANTI-CORRUPTION STRATEGY

A THESIS SUBMITTED TO

FACULTY OF ECONOMICS AND ADMINISTRATIVE SCIENCES

OF

MIDDLE EAST TECHNICAL UNIVERSITY

BY

GAMZE KÖSEKAHYA

IN PARTIAL FULFILLMENT OF THE REQUIREMENTS

FOR

THE DEGREE OF MASTER OF SCIENCE

IN

EUROPEAN STUDIES

DECEMBER 2005

Approval of the Graduate School of Social Sciences

Prof. Dr. Sencer Ayata
Director

I certify that this thesis satisfies all the requirements as a thesis for the degree of Master of Science.

Assist. Prof. Dr. Galip Yalman
Head of Department

This is to certify that we have read this thesis and that in our opinion it is fully adequate, in scope and quality, as a thesis for the degree of Master of Science.

Assist. Prof. Dr. Gamze Aşçıoğlu Öz
Supervisor

Examining Committee Members

Assist. Prof. Dr. Gamze Aşçıoğlu Öz (METU, ADM) _____

Assist.Prof. Dr. Sevilay Kahraman (METU, IR) _____

Assoc. Prof. Dr. Yılmaz Üstüner (METU, ADM) _____

PLAGIARISM

I hereby declare that all information in this document has been obtained and presented in accordance with academic rules and ethical conduct. I also declare that, as required by these rules and conduct, I have fully cited and referenced all material and results that are not original to this work.

Name, Last Name:

Signature:

ABSTRACT

ANTI-CORRUPTION POLICY IN THE EUROPEAN UNION AND IMPACT OF THE EU ACCESSION PROCESS ON TURKEY'S ANTI-CORRUPTION STRATEGY

Kösekahya, Gamze

MS, European Studies

Supervisor: Assist. Prof. Gamze Aşçıoğlu Öz

December 2005, 69 pages

This thesis analyzes the anti-corruption policy in the European Union. Within this framework corruption as a global phenomenon and actions taken by other international organizations is studied as well. Furthermore, this thesis seeks to answer whether the accession process to the European Union has influenced the anti-corruption strategy in Turkey or not. Finally, it identifies shortcomings in the current reform process in Turkey and tries to develop recommendations accordingly.

Keywords: anti-corruption, EU, accession process, Turkey

ÖZ

AVRUPA BİRLİĞİ'NDE YOLSUZLUKLA MÜCADELE POLİTİKASI VE AB2YE KATILIM SÜRECİNİN TÜRKİYE'NIN YOLSUZLUKLA MÜCADELE STRATEJİSİ ÜZERİNDEKİ ETKİSİ

Kösekahya, Gamze

Yüksek Lisans, Avrupa Çalışmaları

Tez Yöneticisi: Prof. Gamze Aşçıoğlu Öz

Aralık 2005, 69 sayfa

Bu tez Avrupa Birliği'nin yolsuzlukla mücadele politikasını analiz etmektedir. Bu çerçevede, global bir fenomen olarak yolsuzluk ve uluslararası örgütler tarafından alınana önlemler de incelenmektedir. Bundan başka, bu tez Avrupa Birliği'ne katılım sürecinin Türkiye'deki yolsuzlukla mücadele stratejisine etkide bulunup bulunmadığı sorusunun yanıtını aramaktadır. Son olarak tez, Türkiye'deki mevcut reform sürecindeki eksiklikleri tespit etmekte ve buna uygun olarak öneriler geliştirmeye çalışmaktadır.

Anahtar kelimeler: yolsuzlukla mücadele, AB, katılım süreci, Türkiye

DEDICATION

To M. Özgür Şakı

ACKNOWLEDGMENTS

The author wishes to express her sincere appreciation to her thesis advisor, Assist. Prof. Dr. Gamze Aşçıoğlu Öz, for her guidance, criticism and support throughout the course of this thesis effort. The insight and experience was certainly appreciated.

The author would also like to thank Prof. Dr. Ümit Berkman who spent his valuable time to discuss and provide advice on the thesis.

The author is currently working as a Justice, Freedom and Security Sector Manager at the European Commission Delegation in Ankara. The views expressed in this thesis are those of the author and do not reflect the official policy or the position of the European Commission.

ABBREVIATIONS

BPI: Bribery Payers Index

CAP: Common Agriculture Policy

CEECs: The Central and Eastern European Countries

CPI: Corruption Perception Index

EC: European Community

EU: European Union

GIA: Gallup International Association

GMC: Multidisciplinary Group on Corruption

GRECO: Group of States against Corruption

ICAC: Independent Commission against Corruption

IMF: International Monetary Fund

JLS: Justice Freedom and Security

MEP: Member of Parliament

MS: Member States of the European Union

OAS: Organisation of American States

OECD: Organisation for Economic Cooperation and Development

OLAF: European Anti-Fraud Office

PAC: Programme of Action against Corruption

SIGMA: Support for Improvement in Governance and Management

TBMM: Turkish Grand National Assembly

T.C.: Republic of Turkey

TESEV: Turkish Economic and Social Studies Foundation

TEU: Treaty of European Union

TI: Transparency International

UCLAF: Task Force for the Coordination of Fraud Prevention

UN: United Nations

TABLE OF CONTENTS

LIST OF TABLES

LIST OF FIGURES

CHAPTER I

INTRODUCTION

Corruption has existed and will continue to exist in all countries, to a larger or lesser extent. Despite some effective measures taken in recent years, the problem can never be fully eliminated. Corruption is caused by different conditions including the political, economic, social, cultural and religious environment. It happens behind closed doors thus it is not possible to detect each and every corrupt activity. Apart from that, it takes different forms and may change over time. Finally, there are no reliable tools to measure the actual scope of the problem.

Regardless of the difficulties in defining and tackling the problem, attempts to diminish the levels of corruption have been intensified both at national and international level, particularly after the 1990s. The risks posed by the globalization process put the phenomenon on the agenda of international organizations. Corruption does not only take place in a single country's borders but can move from one country to another.

Corruption in the European Union (EU) became increasingly intolerable in parallel to the accomplishment of the Single Market, the development of new policy areas and enlargement. The free movement of persons, services, goods and capital made the Union more vulnerable to cross-border crime and corruption. After the political integration process started, corruption was not only seen as a threat to economic interests but also to fundamental values on which the Union was founded. Apart from that, enlargement introduced new risks to the Union and put corruption high on the agenda of accession negotiations with candidate countries.

Due to the sovereignty concerns of the Member States (MSs) it has been difficult to develop common rules in the area of corruption. Corruption falls under the Justice, Freedom and Security (JLS) part of the *acquis,* which to a large extent includes non-binding rules for the MSs. However, new risk areas and particularly the failure of the Santer Commission, forced the Union to get more active in this area. Corruption was no more a threat to national interests but also to the supranational

institutions of the Union. Therefore, despite the intergovernmental feature of the problem, the Commission has started to develop a good governance framework in that area.

Since the early 1990s the EU has adopted several anti-corruption instruments, and in particular conventions on the protection of the financial interests of the Community and on the fight against corruption. These efforts were first limited to malpractices that affected only the budgetary interests of the EU. With time, however, the Union started to address all forms of corrupt activities including the private sector.

The Commission has also raised its concerns on high levels of corruption in the candidate countries. The scope of the problem and possible measures that could be taken has been a constant focus in the Regular Reports of the Commission. Despite the fact that there are no binding benchmarks for the candidate countries, the Commission has developed guidelines in the area and has followed up similar topics in relation to anti-corruption. The existence of the Copenhagen Criteria has enabled the Commission to exert much greater influence on areas that might harm the achievement of political and economic conditions.

In this respect, corruption will constitute one of the main areas in the accession negotiations with Turkey as well. Since the 1999 Helsinki European Council decision that granted Turkey the status of EU candidate state, areas of common concern have increased significantly. Within this context, major reforms took place in recent years to achieve full membership to the Union. One of the areas that have been affected from these efforts is the anti-corruption strategy of Turkey. Besides domestic conditions, the accession process has been a major motivator for introducing new measures and reforms in the area.

The main aim of the thesis is to provide a thorough analysis on the anti-corruption policy in the EU. In order to give a background, corruption will be examined as a unique and global phenomenon and actions taken by other international organizations will be studied as well. The thesis mainly argues that there are no binding benchmarks determined for monitoring the progress of candidate countries in the fight against, and prevention of, corruption. However, Regular Reports and guidelines prepared on the subject show the requirements for an effective anti-

corruption strategy. The EU requires MSs to comply with other international standards including the Council of Europe, the Organization for Economic Cooperation and Development (OECD) and the United Nations (UN) and relies on the monitoring mechanisms established by these organizations. Finally, the EU conducts its assessments based mainly on findings of international surveys such as Transparency International (TI).

After examining the policy of the EU, the thesis will try to identify whether the accession process has affected Turkey's anti-corruption process or not. It will argue that the requirements for full membership have pushed and formed the shape of anti-corruption reforms in Turkey. Apart from that, it will examine whether there are some areas on which the accession process could have no effect. Within this framework, areas that need further focus will be enlightened and recommendations will be made.

To start with, corruption itself will be discussed in the first Chapter. Within this context, the definition problem and causes and effects of the phenomenon will be analyzed. Moreover, actions taken at international level will be scrutinized. In Chapter II, the EU anti-corruption framework will be studied, beginning with the origins and reasons of action at Union level. In addition to that, the good governance framework that is further being developed and the *acquis* in the area will be examined as well. Finally, the specific approach of the Union towards candidate countries will be explained. In the last chapter, the circumstances in Turkey that caused high levels of corruption will be discussed. This entails the historical, political, economic, social and cultural conditions of the country. Finally, areas will be identified on which the EU approach showed a certain impact. In this respect, the Commission recommendations and steps taken by Turkey in parallel will be studied. Despite the large number of areas influenced by the accession process, the institutional set-up will be exemplified as an area where the EU could not be particularly effective. All in all, the thesis will try to develop some recommendations based on its findings.

CHAPTER II

CORRUPTION AS AN INTERNATIONAL PHENOMENON

1. Definition problem

Corruption has been defined in many different ways, each lacking in some aspect. The most popular and simplest definition of corruption is that it is the abuse of public power for private benefit[1]. However, academicians still discuss on the meanings of "abuse" and "private benefit". (Johnston, 2001: 324) There is even no consensus on either adopting a strict legal definition or more a sociological approach. The legal definition offers the advantage of safety and certainty i.e. corruption is what the penal code defines or what professional codes of ethics prohibit. However, this approach entails some limitations and constraints. (Meny, 1996:1-2)

Corruption can be viewed from different directions, for instance as a social issue or from the perspective of political science and economic theory or from the perspective of criminal, civil or administrative law. Every attempt to define this act has resulted with narrowing its actual scope. In fact, the search for a common definition is both a political and academic process.

International organizations, including the EU, have preferred to define the phenomena from a criminal law perspective. (Open Society Institute, 2002: 31) However, it should be dealt from a civil and administrative law aspect as well because it is a multi-dimensional phenomenon. It is not only a criminal offence but also an unethical behaviour distorting values of the public. Furthermore, corruption offence distorts equity and equal opportunities and thus requires a compensation mechanism in force, which involves the civil law as well as the criminal law.

[1] This definition is used by the World Bank and Transparency International, i.e.UN Global Programme against Corruption http://www.unodc.org/pdf/crime/corruption_programme.pdf and TI Source Book 2000Confronting Corruption, The Elements of National Integrity System, 3rd Edition, http://www.transparency.org/publications/index.html#source-book.

Corruption is considered to have occurred when a civil servant, official bureaucrat or politician (anyone elected or appointed to a position of public authority, with power to allocate public resources in the name of the state or the government) is abusing this official position for personal or group advantage. (Amundsen, 2000: 5) Corruption consists of bribery and extortion, which necessarily involve at least two parties, and other types of malfeasance that a public official can carry out alone, including fraud and embezzlement. (Gray and Kaufman, 1998:1)

Corruption can be in a form of “petty (low level) ” or “grand (high level) ” corruption. It can be at international or national level. It can occur both within the bureaucracy and at political level. Besides, it can be in the private sector as well as in the public sector. Especially in large private enterprises, corruption clearly does exist, for example in procurement or even in hiring. (Tanzi, 1998: 564)

Regardless of different approaches and the difficulty in reaching a common definition, the focus of the thesis will be corruption in the public sector, due to the EU focus on state-society relationship; policies defined by the government and concern on a functioning and sound public administration to implement the *acquis*. In addition to that, even in countries in which the state is involved into economic actions at minimum, private sector corruption can be reduced only if there is a well functioning public administration.

As mentioned above, the EU instruments define corruption purely from a criminal law perspective criminalizing a conduct, including both active and passive bribery.[2] But this does not mean that accession to the EU only requires sanctioning these acts under the penal code. On the contrary, the accession process entails the candidate countries to have an efficient public administration that is accountable and transparent. This entails, legislative framework, institutionalization and most importantly enforcement. In this context the definition of corruption within this thesis will comprise good governance as a principle of public administration and is not only limited to a criminal law aspect.

[2] Articles 2 and 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, Articles 2 and 3 of the Joint Action in the private sector.

2. Causes and Effects of Corruption

The causes of corruption are always contextual, rooted in a country's policies, bureaucratic traditions, political development, and social history. Still, corruption tends to flourish when institutions are weak and government policies generate economic rents. (World Bank, 1997:16) Where corruption is systemic, the formal rules stay in place, but they are superseded by informal rules. (World Bank, 1997: 17)

The main contributing factors of corruption may be concentration of power, wealth and status, non-democratic regimes, a cumbersome bureaucracy, excessive administrative controls and trade restrictions, monopolies, patronage, poorly organized and underpaid civil service and/or a weak judicial set up. (Council of Europe, 1995: 18)

It can be argued that bureaucracies carry out a potential for bribery and that bribe-giving and bribe-taking are always possibilities in the public administration process. (Berkman, 1992: 1347) Due to the historic and particular circumstances of each country the political and administrative processes and the power of bureaucracy differs. Yet, it is possible to say that bureaucracy in underdeveloped countries enjoys political power and plays a significant role in political life. Although, the same situation is also valid for some developed countries, it should be noted that in these countries the non- bureaucratic power circles are also extremely active in political life and hence the bureaucracy faces many controls and checks. (Berkman,1997 :4)

Existence of corruption requires three elements to co-exist. First someone must have discretionary power. Second, there must be economic rents that must be associated with this power. Finally, the legal/judicial system must offer sufficiently low probability of detection and/or penalty for the wrongdoing. (Jain, 2001:77) Shortly, the opportunity for corruption is a function of the size of the rents under control of a public official, the discretion that official has in allocating those rents and the practical accountability that official faces for his or her decisions. (Bottelier, 1998:3)

The Ottoman-Turkish bureaucracy for instance has been, although in degrees and forms varying in the course of time, an institution, which steered the society and had significant political powers. (Berkman,1997 :4) In Turkey accountability

mechanisms are weak, operations are not transparent and due to the historical strength of the public administration the public is not used to question practices and functioning of the state. Being considered as “devlet baba” (state father) the tolerance and trust is high to the public authorities and activities in Turkey. However, corruption has started to be seen as a barrier to accession thus achievement of European standards. The implications of the accession process on anti-corruption efforts in Turkey will be discussed further in the last Chapter.

As regards the effects of corruption, it not only increases the gap between the rich and poor but also provides the wealthy, with illicit means to protect their positions and interests. That, in turn, can contribute to social conditions that encourage other forms of crime, social and political instability and even terrorism. Corruption distorts allocation of resources and introduces risk and uncertainty into the market, which deter investment. (Goudie and Stavasage, 1997:33)

Corruption can take many forms. When it takes the form of tax evasion or claiming improper tax exemptions, corruption may bring out loss of tax revenue. Whereas allocation of public procurement contracts through a corrupt system may lead to lower quality of infrastructure and public services. Finally it can distort composition of public expenditure due to large opportunities to collect bribes i.e. in infrastructure sector rather than sectors such as education. (Mauro, 1997:6)

Despite the above mentioned negative effects of corruption, some scholars have argued that corruption may not be inconsistent with development and at times may even foster it. A central theme of this “grease-the-wheels” argument is that bribery can be an efficient way of getting around burdensome regulations and ineffective legal systems. (Kaufman, 1997: 2) Possible positive effects of corruption have started to be discussed with the beginning of 1900s and sociologist Robert K. Merton has largely affected these arguments. Merton claimed that in cases where local authorities cannot introduce the right solutions, corruption might become operational in a positive extent. (Berkman, 1988: 60)

There is no agreement on possible positive effects of corruption whereas on negative effects there is no resistance anymore. This thesis also agrees on the point that corruption is harmful to development, economic growth, fair competition as well as to the rule of law and human rights.

3. Anti-Corruption Measures taken at International Level: a need for action at international level, whilst through national implementation

Corruption is a problem faced by all countries existing in both developed and underdeveloped countries, independent from their political regime and economic prosperity. Despite agreement on the existence of corruption and its adverse effects nation states have always considered the issue as an internal problem. However, the limitations of national efforts forced the states to come together through international organizations and decide on common actions and principles. In relation to that, international organizations started to push the nation states in order to promote standards on which they were founded and protect their own interests. For instance while the World Bank took active actions with a concern to make use of its financial assistance as a huge international donor, Council of Europe acted in order to protect European values which constituted the main idea of its foundation.

In spite of the need for global action, still there is no single measure that could address the problem in the most appropriate way. The main reason for no existing common measures and general solutions is that the causes of corruption differ from one country to another, depending on their historical, economic, political and social background. However interactions and discussions at the international level has started to promote best practices in the area. Recently, Hong Kong and Singapore are countries that have shifted-and quickly-from being very corrupt to being very relatively clean. Earlier, Britain needed many decades to improve its relatively corrupt structures. (Kaufmann, 1997:7)

Because of the increasing awareness and recognition of the phenomenon as a global problem, the international community started to take action from the beginning of 1990s onwards through some guidelines, codes of ethics, recommendations, conventions and monitoring mechanisms. Some of these tools are binding in nature however some of them are guiding principles that are non-binding. As an overall view, it can be said that countries have never acted in a rapid and cooperative manner to be a part of these instruments due to their sovereignty concerns in this sensitive and mainly criminal area.

The conventions and treaties address issues like the criminalisation of certain conducts perpetrated by individuals or legal persons, such as bribery, fraud, embezzlement, influence peddling etc. Most conventions also address international

issues such as transnational bribery, international crime, money laundering and extradition. Sometimes they also adopt preventive and transparency measures such as codes of conduct, conflict of interest regulations, effective accounting and financial management standards, procurement rules, civil society participation, and government openness. (Chr. Michelsen Institute, 2002:1)

The international community has for a long time missed one important dimension of the problem, which is called “passive corruption”. As mentioned before, corruption involves two sides in which one side gives or offers and the other accepts or induces the act to be happening. In this respect, passive corruption corresponds to the latter side. However, in time the international organizations started to deal with the issue involving both sides of the phenomenon.

The gradual understanding of both the scope and seriousness of the problem of corruption can be seen in the evaluation of international action against it, which has progressed from general consideration and declarative statements to the formulation of practical advice, and then to the development of binding legal obligations and the emergence of numerous cases in which countries have sought the assistance of one another in the investigation and prosecution of corruption cases and pursuit of proceeds. (United Nations, 2004: 26)

The conventions and treaties specify measures for enhancing cooperation in areas like technical and mutual legal assistance, jurisdiction, extradition, bank secrecy, and asset recovery. Furthermore, declarations and conventions on corruption are also meant to provide a forum in which states and governments can assemble to discuss corruption issues and align concepts, develop further international measures against corruption, build a broad international consensus in support of such measures, and promote adequate anti-corruption measures and legislation nationally. (Chr. Michelsen Institute, 2002:1)

International organisations such as the OECD, Council of Europe, EU, Organisation of American States (OAS) and UN have taken active actions in order to fight against corruption. To start with the OECD initiative, measures have been developed mainly resulting from economic concerns. Corruption not only undermines good governance and damages public trust in the public administrations but it may also seriously distort competition and endanger economic

development when foreign public officials are bribed. In this respect, the OECD has adopted in 1997 the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions-OECD Bribery Convention[3]. The most important weakness of the Convention is that it deals only with "active corruption" so only with the supply side of the phenomenon. The Convention seeks to establish common measures to sanction bribery of foreign public officials by making it a criminal offence under respective national laws.

Apart from the OECD, the Council of Europe is also strongly interested in the fight against corruption because of the threat that corruption poses to the basic principles of the Council of Europe: the rule of law, the stability of democratic institutions, human rights and social and economic progress. The difference of the Council of Europe effort lies in its multidisciplinary approach. The organization deals with corruption from a criminal, civil and administrative point of view. The organization started to implement its anti-corruption activities within the framework of the Programme of Action against Corruption, which was adopted in November 1996. The Twenty Guidelines on Corruption adopted in 1997[4], although not binding in nature, provide a framework for developing anti-corruption strategies in the broadest sense.

Furthermore, in 1999 with the aim of criminalizing corruption offences, the Council of Europe has adopted the Criminal Law Convention[5]. The Convention principally aims at developing common standards concerning certain corruption offences, though it does not provide a uniform definition of corruption. (Council of Europe, 1999b: 6) It contains provisions criminalizing a list of specific forms of corruption, and extending to both active and passive forms of corruption, and to both private and public sector cases. The Convention also deals with a range of transnational cases: bribery of foreign public officials and members of foreign public assemblies is expressly included. (Chr. Michelsen Institute, 2002: 3)

[3] OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, adopted by the Negotiating Conference on 21 November 1997.
[4] Council of Europe Committee of Ministers Resolution 97 (24) on the Twenty Guiding Principles for the Fight Against Corruption, adopted by the Committee of Ministers on 6 November 1997.
[5]Council of Europe, Criminal Law Convention on Corruption, European Treaty Series No.173, 1999a.

Following the adoption of the Criminal Law Convention the Council of Europe adopted in 1999 an international legal instrument -namely the Civil Law Convention[6]- aiming at fighting corruption through civil law remedies This Convention is the first attempt to define common principles and rules at an international level in the field of civil law and corruption. It deals with the definition of corruption, compensation for damages, liability, limitation periods, protection of employees, the acquisition of evidence, interim measures, international cooperation and monitoring. (Council of Europe, 1999d: 1)

Furthermore, the Inter-American Convention against Corruption[7] that is adopted by the OAS in 1996 focuses primarily on bribery and its variations through preventive measures, criminal penalties and mutual legal assistance.

The UN Convention against Corruption[8] that is adopted in December 2003, it differs from the other instruments due to the wide mandate and number of members of the UN that produces a more global, comprehensive and multi-disciplinary approach. The Convention provides model preventive policies, such as the establishment of anticorruption bodies and enhanced transparency in the financing of election campaigns and political parties. It developed a broad inventory of specific forms of corruption, including areas such as trading in official influence, general abuses of power, and various acts of corruption within the private sector which had not been dealt with in many of the earlier international instruments. (United Nations, 2004: 27)

As mentioned before limited actions that can be taken at national level, urged international organizations to develop effective and necessary instruments against this global phenomenon. However, at the end their achievement depends very much on the sound implementation of nation states. Additionally, the scope and effectiveness of monitoring mechanisms will be critical in overcoming the nations' sovereignty concerns and unwillingness in cooperation. For instance Daniel

[6] Council of Europe, Civil Law Convention on Corruption, European Treaty Series No.174, 1999c.
[7] Inter-American Convention against Corruption Adopted at the third plenary session, held on March 29, 1996
[8] United Nations Convention against Corruption, adopted by the General Assembly by resolution 58/4 of 31 October 2003.

Kaufmann puts forward withdrew of financial support from highly corrupt countries in order to push them for more cooperation. (Kaufmann, 1997:11)

The globalization process that increased transactions among states has at the same time put a cross border aspect to the problem. Even in case of appropriate national anti-corruption mechanisms in place, it is not possible to measure the level of impact of the implemented policies on the scope of the problem. The chief problem with all forms of corruption is that it thrives on secrecy and silence. It represents one of the most significant segments of unknown crime or reported crime. (Council of Europe, 1995: 19)

Different from national actions international tools are able to approach the problem from a more multi-dimensional level and can establish cooperation and coordination mechanisms among states. Within this respect, monitoring mechanisms are able to assess the achievement of measures in place. As a result of pressure put by international organizations, countries now consider low levels of corruption as a credibility criterion.

It is correct that without a political commitment at national level and a well-implemented national integrity system no anti-corruption effort will be able to succeed. However without common approaches, principles, cooperation and coordination instruments and enforcement and monitoring mechanisms nation states alone will not be able to tackle global dimensions of the phenomenon. Likewise other international organizations, the EU developed also measures against corruption due to a need of common approach at Union level, which will be discussed further in the coming chapter.

CHAPTER III

EU ANTI-CORRUPTION FRAMEWORK

1. The Origins of EU Action

The completion of the single market, which introduced the free movement of capital, goods, services and persons, resulted at the same time with the flow of crime including corruption between the MSs. In other words, creation of a border-free area created a new opportunity for illegal practices. Therefore the achievement of the free market made it necessary to take measures at the Union level. Since the early 1990s, the EU's budget has been approximately 90 million euros per year. Detected fraud amounts to approximately 2 percent of the budget. (Warner, 2004:257)

Apart from that the reasons for anti-corruption measures can also be explained by the deepening and widening of the Union. The EU has first been established as an economic union but then it has started to extend its areas of competence. In addition to that the EU has started to enlarge. Introduction of new policies and joining of new members posed new threats and risk areas for the Union.

First, enlarging the competence areas of the Union increased at the same time the matters of common interest. Second, enlarging the borders of the Union increased the amount of business transactions between the MSs. Apart from that, the new joining states that were more vulnerable to corruption posed an additional threat to the functioning of the single market and protection of common values. As regards the recent ten new MSs for an example, there appears to be a widespread consensus that corruption in Central and Eastern European countries (CEECs) is a more serious problem than in other countries of the OECD, including former EU MSs. (Open Society Institute, 2002: 43) Also the financial assistance provided to the candidate and acceding countries required to put new auditing mechanisms in place.

The concentration of European Commission efforts can be explained also with the shift to a more supranational Union in which the 3rd Pillar is gradually transferred into a matter of common interest. Corruption within supranational institutions

included the phenomena on the common agenda. Corruption cases within the Union itself put a high public pressure on the Commission, which is the driving force of EU actions. In other words, increase of problems provided the Commission with justification to take more active action in that area.

After the introduction of the new own resources system[9] the EU institutions started to manage their own funds. On the other hand the continuous reliance on taxpayers' money required more transparent and accountable institutions and policies. The decrease in participation to European Parliament elections reflected the loss of public interest into EU policies but not into its expenditures. In this respect, the establishment of the Court of Auditors in 1978 symbolizes the need for a supranational level approach on anti-corruption.

Until the failure of the Santer Commission only very small cases of fraud and corruption were made public. The major risk area was the spending on the Common Agriculture Policy (CAP). Until the late 1980s, agriculture accounted for about two-thirds of the Community spending. Even when CAP reform and increased outlays for other policies caused the share to fall, the CAP remained extremely wasteful and challenged with fraud. In 1993 the Court of Auditors reported that the public cost of storing agricultural stocks had reached an astronomical 4.5 billion ECU. (Peterson, 1997:573)

Based on the findings of the Court of Auditors and very shortly after the completion of the single market, Task Force for the Coordination of Fraud Prevention (UCLAF) has been established in 1987 to coordinate detection and prosecution of Union-wide fraud and corruption. The historical and institutional process, which has led to the setting up of an anti-fraud task force is linked to the institutional development of two key sectors in European construction-the budgetary and financial competences granted to the supranational institutions and the furthering of MSs' integration within a single judicial area (first and third pillar). (Pujas, 2003:779)

9 Own resources can be defined as revenue accruing automatically to the EU in order to finance its budget without the need for any subsequent decision by national authorities. They comprise customs duties, agricultural duties, sugar levies, the VAT-based resource and the GNI-based resource. Own resources finance the bulk of the EU budget, but there is also a small share of other revenue (e.g. tax and other deductions from staff remunerations, bank interest, contributions from non-member countries to certain Community programmes etc.). For further information please see: http://europa.eu.int/comm/budget/financing/index_en.htm

1.1. The Resignation of the Santer Commission

Besides factors such as the introduction of the own resources system and the completion of the single market, the failure of the Santer Commission in 1999 constitutes a turning point in the Union's stance towards corruption. Starting with the end of 1998, the Parliament brought forward two proposals for vote of no confidence with the Commission. The two motions were rejected, but a Committee of Independent Experts has been set up. The Commission submitted its first report in March 1999[10] as a result of which the Santer Commission collectively resigned. Although the Committee's report does not find that any individual Commissioners had benefited from fraudulent dealings involving Community funds, it concludes that there were "instances where Commissioners or the Commission as a whole bear responsibility for instances of fraud, irregularities or mismanagement in their services or areas of special responsibility." (Miller and Ware, 1999:6)

The report was submitted during a period in which the Commission was already under allegation: in the middle of the Kosovo-crisis and the NATO operation against the Republic of Yugoslavia was about to start (24 March 1999). (Topan, 2002:1) Due to the political environment great public interest existed into the actions of the Commission.

Following the failure of the Santer Commission, the Romano Prodi Commission started to work with an agenda focusing on corruption as a priority. In a speech to the Parliament made in April 1999, Romano Prodi promised fundamental reform of EC to avoid a repeat of the debacle that led to his nomination. He promised greater efficiency, absolute transparency, responsibility and full accountability. (Gopal, 1999:2)

1.2. Action by the Commission: a result of competition with the Parliament?

At this point, it must be questioned whether the Commission in the area of anti-corruption has really been more active due to the "deepening and widening" of the Union, or is it simply a result of the competition and tension between the Parliament

[10] Committee of Independent Experts, First report on allegations regarding fraud, mismanagement and nepotism in the European Commission, 15 March 1999.

and the Commission? In other words, the concrete steps taken by the Commission might be an effort to re-establish its reputation and in general restore the confidence of the European citizens into the EU institutions.

The Parliament, symbolizes the supranational character of the Union being elected directly by the MS citizens. However, the turnout for European elections is lower than that for national elections in MSs, and the average has fallen steadily from more than 67 percent in 1979 to just below 59 percent in 1994. In the last elections of June 2004 just over 45 % EU electorate turned out to vote. Among the explanations for this are that European elections are a novelty, few European voters know what the European Parliament does or what issues are at stake, there is no change of government at stake, party groups in the European Parliament are still learning how to coordinate their election campaigns across all the MSs, the media and the national governments still tend to play down the significance of European elections, and Eurosceptic voters may be disinclined to take part. (Dinan, 1999: 104) The Parliament has limited power in the decision-making process but its budgetary control has increased continuously. The control of Community expenditure has allowed it to advertise what it regards as a weakness in the EU, but it has also made it possible for the Parliament to take on a 'moral' image as the guardian of good governance within the European institutions, on behalf of a European public already sensitive to problems of domestic corruption. This has helped to present the Parliament as an institution, which defends European taxpayers. (Pujas, 2003: 788)

The voting of two motions of censure on instances of favouritsm and nepotism by some Commissioners in 1999 shows that the Parliament used its limited control power that first strengthened its role as a initiator of anti-corruption policies and at the end pushed the Commission to take measures at the Union level. Within this framework, the European Anti-Fraud Office (OLAF)[11] represents the effort to renew the credibility, legitimacy and reputation of the Commission again.

As a conclusion, the main reason of more active actions taken by the EU after the 1990s is first the "deepening" which has transformed the economic union into a political one. Corruption was no longer a threat to the functioning of the single

[11] OLAF has succeeded the "Task Force for the Co-ordination of Fraud Prevention" (UCLAF).For further information please see http://europa.eu.int/comm/anti_fraud/index_en.html .

market but also to the fundamental principles of the Union. Besides, the enlargement posed an additional risk that urged the Commission to take common measures. The failure of the Santer Commission, on the other hand, provided the institution with legitimacy to act actively in an area in which the MSs are reluctant to share their national sovereignty.

2. Towards a Good Governance Framework

With the deepening and widening of the Union, studies on integration shifted to studies on governance of the Union. While integration moved forward, discussions on how to improve EU governance increased. For a long time, the major problem of EU governance was seen to lie in its limited decision-making capacity. (Eberlein and Kerwer, 2002:2) However, the decision-making procedure of the Union has been improved mainly after the Nice Treaty in view of Eastern enlargement.

Within the context of governance discussions, new modes of governance have been proposed. In contrast to the 'democratic deficit' or 'transparency', fraud and corruption in EU governance have attracted relatively little academic attention. (Peterson, 1997, 560) MSs have granted their sovereignty in many areas to the EU, however accountability was not assured in parallel.

Corruption included a new element into the discussions on how to improve governance of the Union mainly after the enlargement process speeded up. Not only the corrupt cases within the organization itself but corruption cases in the Western European countries made it necessary to develop a new framework.

The first initiative of the Commission is the release of the White Paper on European Governance[12]. The paper is of significant importance in terms of indicating the increasing role of the Commission in the area. However, the paper has been criticized in being narrow and deficient in terms of addressing the necessity to reform the governance framework of the Union. It has been even claimed that the paper was an initiative to enforce the position of the Commission. The main reason for this kind of arguments is that the paper in general seeks for enforcement of decision and legislation making of the Commission, whereas it limits the role of the Council and the Parliament. According to Fritz W. Scharpf the paper reflects a

[12] European Commission, European Governance: A White Paper, Brussels: COM (2001) 428.

vision of that is defined by the institutional self-interest of the Commission and its opposition to MSs and, at the same time, by a remarkable lack of concern about the real challenges confronting the Union and its MSs. (Scharpf, 2001:2) The paper is welcomed as a breakthrough in terms of EU governance, however, it must be developed in due time.

The White Paper on European Governance has been issued on 29 July 2001 with the aim of better involvement, better policies, regulation and delivery, contribution to global governance and finally refocused policies and institutions. The paper acts from the point that the citizens have lost trust and interest into the EU institutions and this was necessary to restore. In the White Paper, governance is defined as rules, processes and behavior that affect the way in which powers are exercised at European level, particularly as regards openness, participation, accountability, effectiveness and coherence. (European Commission, 2001: 8)

The Commission proposed to make open all stages of decision-making to the public and establish a more systematic dialogue with representatives of regional and local governments and civil society through national and European associations at an early stage shaping EU policy. The proposals focus on the institutions that involve the Commission, the Council and the Parliament. The White Paper proposes greater clarity about the overall purposes of "governance" and the role of each institution and each mode of governance in achieving these purposes. (Wincott, 2001:2)

As mentioned above some shortcomings of the White Paper have been criticized. For instance, Les Metcalfe criticizes the approach of the Commission to the five principles of good governance as follows:

> "Granting the importance of the five "principles" of good governance, they have not been crafted into a new model of EU governance and specified in a detailed programme of reform. Individually, they are not precisely formulated. The first two, openness and participation, are not just proposals for change they are also invitations to a wide range of stakeholders to participate in defining the direction of change. The principle of accountability is equated with clearer definition of individual institutional responsibilities and does not really address the difficult problems of designing frameworks of accountability where there are shared responsibilities in multilevel systems of governance. Presenting effectiveness as a principle avoids dealing with the thorny conceptual and practical problems of determining what effectiveness criteria are applicable to governance networks. Moreover, relying on a limited management-by-

> objectives model carries the risk of ignoring important dimensions of effectiveness and creating rigidities that make adaptation to change costly and slow. Finally, the principle of coherence is a watered-down version of the earlier commitment to "radical decentralization." Its vagueness is symptomatic of the lack of a model that explains how new forms of governance based on partnerships and horizontal coordination can manage interdependence in multilevel organizational networks."

I agree on the point that the White Paper is missing in some aspects. The Paper focuses more on the functions of the EU institutions rather than developing specific recommendation and policies to address problematic areas. However, this document alone cannot provide a solution for the governance crisis experienced now for a long time involving the EU institutions, individual MSs and the civil society. Apart from that the paper is approaching governance from the widest aspect: policymaking, decision-making, involvement of the civil society etc. Hence the Transparency International welcomes the Paper as a comprehensive document that covers almost the complete range of areas where the EU has the legal means and the political capacity to act. However, it underlines its limitations in specific areas i.e. freezing, confiscating and repatriating stolen assets. (Transparency International, 2003: 7)

According to the Paper the Commission will report on the progress achieved with regard to governance initiatives by drawing lessons from the public consultations. In this respect the Paper launched a broad public debate. As a conclusion, of these consultations the Commission released a report[13] in which it underlines that the agenda on governance should not be limited to the White Paper.

The White Paper illustrates the need for more involvement of public participation into the Union's policies. The public interest into the Union actions is decreasing due to the 'distant' policies defined by Brussels. However, the more distant the levels of government from the citizen, the more citizens are concerned about its capacity to run 'cleanly'. (Peterson, 1997: 575)

[13] Report from the Commission on European Governance, 2003-2004, Commission staff-working document, SEC (2004) 1153, 2004a.

3. Corruption as an issue of the Third Pillar

The Maastricht Treaty (Treaty on European Union-TEU) signed in 1992 included a further dimension as an area of cooperation: namely justice, freedom and security (JLS). Cooperation in this area foresees further dialogue, mutual assistance, and joint effort between the police, customs, immigration services and justice. This new area of cooperation derived from the need that national efforts could no longer tackle with problems including, corruption, organized crime, money laundering and terrorism as well as other areas.

The European single market granted a number of advantages and liberties to MSs and their citizens. But if these freedoms are to be fully enjoyed, the EU must manage its external borders effectively. Its national judicial authorities and police forces must also work closely together to ensure that people everywhere in the EU are equally protected from crime, have equal access to justice and can fully exercise their rights. (European Commission, 2003a: 1)

Still, cooperation in justice, freedom and security is not implemented in the same way as Community policies such as the CAP or regional policies. For instance for CAP Policy "food safety" is a matter of common interest however for JLS matters most of the issues are related to public order. Therefore the TEU has accorded great weight to the MSs and to the bodies of the EU in which they directly participate. The powers of the European Commission, the European Parliament and the Court of Justice as explained above are very limited in this area.

Corruption is not explicitly listed in the TEU as a matter of common interest[14] but the Treaty calls MSs to combat fraud on an international scale. Combating

[14] Article K. 1 of TEU: For the purposes of achieving the objectives of the Union, in particular the free movement of persons, and without prejudice to the powers of the European Community, Member States shall regard the following areas as matters of common interest:

1. asylum policy;
2. rules governing the crossing by persons of the external borders of the Member States and the exercise of controls thereon;
3. immigration policy and policy regarding nationals of third countries; (a) conditions of entry and movement by nationals of third countries on the territory of Member States; (b) conditions of residence by nationals of third countries on the territory of Member States, including family reunion and access to employment; (c) combatting unauthorized immigration, residence and work by nationals of third countries on the territory of Member States;
4. combating drug addiction in so far as this is not covered by 7 to 9;
5. **combating fraud** on an international scale in so far as this is not covered by 7 to 9;

corruption through criminal law has remained part of the so-called III[rd] Pillar of the TEU legal framework, being considered falling in the area of JLS. Article K.3 of the TEU introduces joint positions, joint actions and conventions, for more supranational actions in this area.

The 3[rd] pillar of the EU that covers many areas under JLS is weak due to its decision-making process. The pillar is to a large extent intergovernmental as decisions are taken mainly by unanimity. During the 1996-1997 Intergovernmental conference new objectives and instruments and improvement of judicial control has been discussed to develop the decision-making procedure.

By the Treaty of Amsterdam signed in 1997 corruption is explicitly included into matters of common interest[15]. Different from the TEU, it explicitly states corruption as a phenomenon to be dealt through approximation of rules and cooperation between competent national authorities.

The Tampere European Council in 1999 was mainly devoted to JLS matters. Priority was given on specific matters by endorsement of a recommendation identifying corruption, in the context of financial crime, as one of the sectors of particular relevance where common definitions, incriminations and sanctions should

---

6. judicial cooperation in civil matters;
7. judicial cooperation in criminal matters;
8. customs cooperation;
9. police cooperation for the purposes of preventing and combating terrorism, unlawful drug trafficking and other serious forms of international crime, including if necessary certain aspects of customs cooperation, in connection with the organization of a Union-wide system for exchanging information within a European Police Office (Europol).

15 Article 29 of TEU: Without prejudice to the powers of the European Community, the Union's objective shall be to provide citizens with a high level of safety within an area of freedom, security and justice by developing common action among the Member States in the fields of police and judicial cooperation in criminal matters and by preventing and combating racism and xenophobia.
That objective shall be achieved by preventing and combating crime, organised or otherwise, in particular terrorism, trafficking in persons and offences against children, illicit drug trafficking and illicit arms trafficking, **corruption and fraud**, through:

- closer cooperation between police forces, customs authorities and other competent authorities in the Member States, both directly and through the European Police Office (Europol), in accordance with the provisions of Articles 30 and 32,
- closer cooperation between judicial and other competent authorities of the Member States including cooperation through the European Judicial Cooperation Unit ("Eurojust"), in accordance with the provisions of Articles 31 and 32,

approximation, where necessary, of rules on criminal matters in the Member States, in accordance with the provisions of Article 31(e).

be agreed. In line with the Tampere Conclusions[16], the so-called Millennium Strategy on the Prevention and Control of Organised Crime of March 2000 reiterated the need for instruments aimed at the approximation of national legislation and developing a more general (i.e. multi-disciplinary) EU policy towards corruption, taking into account as appropriate work being carried out in international organisations.

Article 40 of the Treaty of Nice signed in 2001, envisages enhanced cooperation in order to move more rapidly for an area of freedom, security and justice.

In May 2003, the Commission issued its Communication to the Council, the European Parliament and the European Economic and Social Committee on a Comprehensive EU Policy against Corruption ("Communication")[17]. This Communication identifies what has been achieved at EU level, but also indicates what needs to be improved to give fresh impetus to the fight against corruption. It also seeks to identify possible areas where the EU might be an appropriate actor to take future initiatives in the fight against corruption. (European Commission, 2003: 5)

According to the document, the MSs should, where appropriate at the proposal of the Commission, introduce common standards for collection of evidence, special investigative techniques, protection for whistleblowers, victims and witnesses of corruption and the confiscation of proceeds of corruption with a view to facilitating the detection, investigation, prosecution and adjudication of corruption cases.

Finally, in November 2004, the European Council adopted a new multi-annual programme known as the Hague Programme, defining priority areas and actions to be taken including corruption. (Council of the EU, 2004: 24) In June 2005 an Action Plan to implement the Hague Programme is adopted. The Commission will prepare annual reports on the execution of the Action Plan. According to the Action Plan, an examination of the need for codes of conduct on ethics and integrity for public officials will be completed by 2007, and a proposal introducing obligations on certain categories of officials with regard to reporting bribery as well as the

[16] Presidency Conclusions, Tampere European Council, 15-16 October 1999.
[17]Communication from the Comission to the Council, the European Parliament and the European Social Committee on a Comprehensive EU Policy against Corruption, COM (2003) 317 final, 28.05.2003, Brussels

disclosure of assets and business interests will be prepared by 2009. (Council of the EU, 2005: 16)

The Constitution adopted in December 2004 explicitly states that European framework laws may establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis. Corruption is included into the areas of crime that should be regulated through minimum requirements at the Union level.[18]

4. *Acquis* in the area of Anti-Corruption: arriving at a common approach on corruption

As mentioned above, despite the cooperation intention for the Third Pillar, MSs are not yet willing to share their national competence in the criminal law area. However, the need for a Union wide approach resulted in development of common rules. The EU first started with a limited scope by developing tools to protect its own financial interests. However, in due course a more wide-ranging approach has been adopted, in line with international trends.

The Convention on the Protection of the European Communities' Financial Interests[19] (also known as the 'PIF Convention') was the first instrument adopted with the specific aim to effectively punish forms of fraudulent conduct, which affect European budgetary interest and are often committed by organized criminal networks through national criminal law. It is a result of lengthy discussions having started in 1980s. The length of the discussions shows the difficulties in reaching common rules in this area. Although MSs already have criminal law provisions to protect the Communities' financial interests in many areas, the comparative studies carried out have identified loopholes and incompatibilities, which are prejudicial to the punishment of fraud and to judicial cooperation in criminal matters between MSs. (Council of the EU, 1997a: 3)

[18] Other areas falling under Article III-271 of the Constitution are as follows: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime.

[19] Convention drawn up on the basis of Art. K.3 of the Treaty of the European Union, on the protection of the European Communities' financial interests (O.J. C 316/49 of 27/11/95, p. 0049-0057.

The PIF Convention aims at combating fraud through criminal law measures (i.e. by criminalizing fraud and introducing criminal penalties, enabling heads of businesses to be made criminally liable and adopting rules on jurisdiction). It is a Union wide action to achieve a greater degree of compatibility in the laws, regulations and administrative provisions of the MSs in the effort to combat fraud by which harm is done to the financial interests of the Community. In this respect, the PIF Convention tries to define matters of common interest and calls MSs for cooperation in the area.

The Convention is developed later through two Protocols. The purpose of the First Protocol[20] to the PIF Convention is to combat corruption that damages or is likely to damage European financial interests by public officials or members of the European institutions as well as those of the MSs. The First Protocol provides for a wide definition on "official". "Community official" and "national official (Article 1). However there is no definition on corruption under the first article where specific terms have been defined, the Convention explicitly states the elements of active and passive corruption (Articles 2 and 3). As it will be seen below, the First Protocol goes a step forward from the OECD Bribery Convention in that sense.

The First Protocol applies the assimilation principle by punishability of offences in the same manner for both the national and Community officials. (Article 4) (Council of the EU, 1997b: 5). The First Protocol also defines the role of the Court of Justice in case of any disputes in the implementation of the Convention. (Article 8)

Despite these important provisions, the First Protocol is still limited to offences that actually or potentially damage the Communities' financial interests. This protocol is followed by a second one that specifically pursues the prosecution of legal persons in cases of fraud, money laundering, active and passive corruption.

The importance of implementing the Second Protocol[21] on the PIF Convention is stressed in the Action Plan to Combat Organized Crime which recommends that the

[20] Protocol drawn up on the basis of art. K. 3 of the Treaty of the European Union, on the protection of the European Communities' financial interests (OJ C 313/2 of 23/10/96), p. 0002-0010.

[21] Second Protocol, drawn up on the basis of Article K.3 of the treaty on European Union, to the Convention on the Protection of the European Communities' financial interests- Joint Declaration on Article 13 (2) - Commission Declaration on Article 7. Official Journal C 221, 19/07/1997 p. 0012 – 0022.

MSs widen the scope of the criminalisation of money laundering, further improve and structure co-operation between the Commission and the MSs in the fight against fraud affecting the financial interests of the EC, introduce liability for legal persons involved in organized crime and collect relevant information with respect to legal persons in order to prevent corruption. (Council of the EU, 1999: 1)

The Protocol provides a definition for "legal persons" (Article 1) and establishes their liability for fraud, corruption and money laundering for their benefit (Article 3). It foresees sanctions that must include fines of a criminal or non-criminal nature i.e. exclusion of a legal person from participation in a public tender (Article 4). (Council of the EU, 1999: 4) It also widens the scope of predicate offences of money laundering by including fraud, active and passive corruption.

The Convention on the fight against Corruption involving officials of the European Communities or officials of Member States of the European Union[22] (herewith "Convention on Officials involved into Corruption") that is signed in 1997, for the first times goes beyond the limitations of the Communities' financial interests.

The Convention on Officials Involved into Corruption is a repetition of most of the articles already contained in the PIF Convention and its First Protocol. However it differs from these two tools in a very important aspect. The latter Convention and its Protocol punishes an act or omission 'which damages or is likely to damage the European Communities' financial interests. (Council of the EU, 1998: 2) In this respect the Convention symbolizes the change of the Union approach on anti-corruption.

Finally, the EU has adopted a Joint Action on Corruption in the Private Sector in 1998[23], which requires MSs to establish sanctions and ensure liability of legal persons.

[22] Council Act 97/C 195/01 of 26 May 1997 drawing up, on the basis of Article K.3 (2) (c) of the Treaty on European Union, the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union (OJ C 195 of 25 June 1997)

[23] Joint Action of 22 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on corruption in the private sector, (OJ L 358, 31.12.1998)

In addition to all of these binding legislation includes a number of other international agreements, which once ratified by all MSs, will automatically become part of the *acquis*. These are; the Council of Europe Criminal Law Convention on Corruption, the Council of Europe Civil Law Convention on Corruption, the European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Strazbourg Convention) and the OECD Convention on Combating Bribery of Foreign Public Officials. The MSs are also advised to adopt the UN Fight against Corruption Convention.

The above-mentioned international tools that are also binding once ratified by all MSs are already discussed in the previous Chapter. However, to make a short comparison between the EU an other international tools, the EU was the first European organization, which succeeded in adopting an international treaty criminalizing the corruption of foreign public officials: The Convention on Officials Involved into Corruption. Shortly after, the OECD Bribery Convention is concluded and opened for signature. On the one hand the OECD Bribery Convention is limited as it deals only with active corruption on the other hand it is wider in scope including public officials of any country or international organization. Coming to the Council of Europe tools, as mentioned before, the approach of the organization is wide in terms of approaching the phenomenon from both criminal and civil law aspects. Finally, the UN convention, whose effectiveness will depend on the number and speed of ratification by countries all over world, is extensive both in scope and its global approach.

5. Union Policy Towards Candidate Countries:

Corruption has always been on top of the EU agenda with candidate countries even though it is not explicitly stated in the Copenhagen Criteria. In his speech before the release of the 2002 Regular Reports on all candidates' readiness for succession, Commission President Romano Prodi labeled corruption as an 'extremely serious' problem which needs to be remedied before accession. (Reed, 2002:1)

While the entry of ten new MSs has been one of the most significant achievements of the Union, it has also raised concerns for further corrupt practices that would seriously affect the functioning of the single market and reliability of the fundamental principles. Even in the new ten MSs, although 'immense' progress has

been made, and most of these countries have adopted national strategies for combating corruption; corruption and other cases of economic crime are still very widespread. Moreover overlapping jurisdictions and defective coordination endangers these achievements. (Hetzer, 2004: 306)

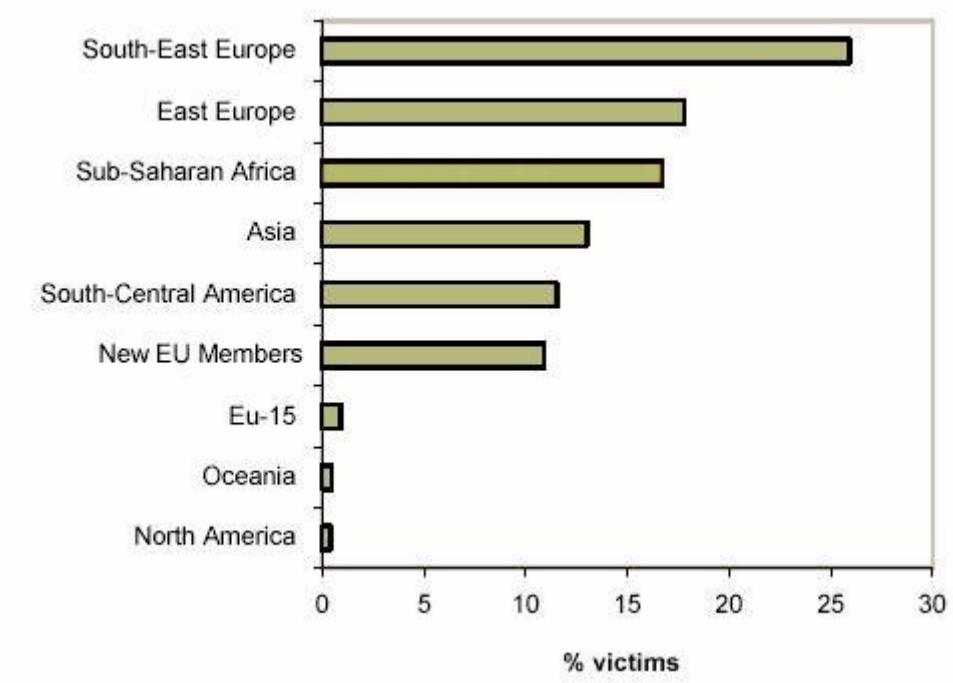

Figure 2.1: Survey respondents who suffered from corruption

Source: International Crime Victim Survey 2000
(United Nations Office on Drugs and Crime, 2005: 50)

The figure above shows differences between victimization rates as concerns corruption between countries. The results clearly illustrate that citizens in the new MSs had to ask public officials to bribe more often then citizens in the former EU MSs. The same concerns are now valid for Bulgaria and Romania that are waiting just in front of the door and it is also the case for Turkey and Croatia who have to convince the Union in many crucial areas.

Concerning Bulgaria all Chapters are provisionally closed. The JLS Chapter was closed with Romania subject to a special clause, which allows Romania's accession, in 2007, on the condition that certain requirements including anti-corruption measures are met. This decision shows the importance adhered to corruption during accession negotiations.

The Commission raises its concerns on corruption since the adoption of the "Agenda 2000" report. The Commission in its 1998 Report on progress towards accession by candidate countries states that,

> The fight against corruption needs to be strengthened further. The efforts undertaken by the candidate countries are not always commensurate with the gravity of the problem. Although a number of countries are putting in place new programs on control and prevention, it is too early to assess the effectiveness of such measures. There is a certain lack of determination to confront the issue and to root out corruption in most of the candidate countries. (European Commission, 1998: 6)

The unwillingness of the MSs in ratifying for instance the PIF Convention shows how difficult it is to reach a common approach on corruption. Besides, the reluctance of the MSs in defining common rules undermines the legitimacy and position of the Commission in accession negotiations with candidate countries. In addition to the above, the Commission's authority on anti-corruption reforms will decline once candidate and acceding countries become members.

In fact national legislations of MSs vary in a large extent and still there is not a widely agreed definition and common approach on corruption. The globalization of the phenomenon urged the MSs to act together with the Commission. Nevertheless, the issue is still widely dealt in national contexts and the intergovernmental approach is still powerful at Union level. The penalties applied vary from one MS to another. On the other hand, there are different approaches on how to tackle active corruption and passive corruption. For example, in certain MSs penalties apply exclusively to bribery of public officials and not to the private sector. Also there is sometimes a distinction between those elected to public office for a limited mandate on the one hand and permanent or temporary civil servants on the other. (European Parliament, 1998: 3)

There are no formally adopted benchmarks due to the different approach on the definitions of corruption and changing conditions and causes of the problem from country to country. However, a comparison of Regular Reports issued for different candidate countries makes it clear that the Commission follows a common approach though differing slightly due to different national conditions. Apart from that, the Commission has adopted Ten Principles for improving the fight against Corruption in Acceding, Candidate and other Third Countries ("Ten Principles for

Candidate Countries). In addition to a comparison of the Regular Reports for candidate countries, these principles also lay down the benchmarks for fulfilling requirements with respect to accession.

The principles lay down benchmarks both for actions to be taken with regard to both private and public sectors. The principles call the acceding, candidate and third countries to establish a political commitment that should follow sound anti-corruption strategies. It calls for a sound public administration functioning with an adequate civil service. Besides, it emphasizes significance of alignment with the *acquis* and a functioning institutional framework. It also underlines the importance for a code of conduct, protection of whistle blowers and transparency in party financing. Finally, it stresses on the need for raising public awareness and increasing involvement of the civil society. Despite being a very short document attached to the Commission' Communication on a Comprehensive EU Policy against Corruption it has started to serve as a guideline thereafter.

As mentioned above, a comparison of all Regular Reports that are published for both the new ten MSs and current acceding and candidate countries, figures out a list of issues to which the Commission attaches utmost importance. However, it must be noted that the importance and scope of these benchmarks differ from country to country depending on their socio-economic and political conditions.

The anti-corruption policy measures that the Commission has tended to recommend to candidate countries have been generally oriented towards a control paradigm, with a strong emphasis on ensuring that criminal anti-corruption law is optimal and fully enforced. Such policies may also include the establishment or strengthening of strict conflict of interest provisions, comprehensive asset-monitoring provisions (the violation of which may itself be made a criminal offence), or various agencies engaged in monitoring, supervision and auditing of public administration. Likewise, at least until recently the recommendations of international institutions have tended to focus on reforming civil and criminal law and public administration reforms designed to increase the effectiveness of control mechanisms and accountability of public officials. (Open Society Institute, 2002: 31)

The Commission during its assessments concentrates more on anti-corruption than on the corruption phenomenon itself due to the lack of clarity in the scope of the

term and difficulties in measuring its extent. In Regular Report assessments the Commission very much relies on Transparency International and international organizations' findings such as the World Bank. Similar to other countries facing high-level corruption, there are no reliable nation wide sources, statistics and studies carried out in the candidate countries.

According to the findings of the Open Society Institute report, the Commission follows a "checklist" of six criteria for monitoring corruption (Open Society Institute, 2002:52)

1. the existence and implementation of anti-corruption policy,
2. institutional arrangements for implementation and division of tasks among institutions,
3. codes of conduct for public officials,
4. training programs for public officials,
5. cases of corruption in government and public administration, and how the authorities reacted to these cases,
6. ratification and implementation of the relevant conventions.

This checklist in a way reflects the benchmarks laid down in the Ten Principles for Candidate Countries. However, depending on the shortcomings specific for each country the focus of the Commission changes in each of the Regular Reports. It can be summarized that first the Commission monitors the alignment to the *acquis* and adoption of international tools. As a next and final step enforcement through functioning institutional mechanisms is followed up.

CHAPTER IV

IMPACT OF EU ACCESSION ON TURKEY'S ANTI-CORRUPTION STRATEGY

1. Causes of Corruption in Turkey: A Deep-Rooted Phenomenon

Corruption flourishes in every country in different forms and extent determined by specific political, economic, social and cultural conditions. However, in developed countries where the rule of law is respected and the public administration is well functioning corruption is seen to a less extent. In underdeveloped or developing countries, on the other hand, the economic and political environment is more vulnerable to corruption. The transition period to market economy increases the interaction between business circles and public administration as well as politicians.

Underdeveloped countries are not homogenous and therefore, general conditions that seemingly increase the probability of corruption gain different weights and corruption exhibits itself differently in each country. In this regard, for instance, recently in the process of privatization, in some of the developing countries, allegations of corruption and bribery, for example, in the form of selling public enterprises below their market value is common. (Berkman, 1997 :14)

In countries where the state is interfering less into economic activities corruption is seen in lower degrees. The TI surveys show that developed countries are facing lower levels of corruption: 18 of the first 20 clean countries have open economies. (Özsemerci, 2002:79) Hence, corruption occurs mostly in countries where the rule of law and institutions are weak or non-existent, where independent professional media and civil society agencies are absent and where there is no independent judiciary or legal oversight. (Öğütçü, 2001: 1.) However, it should be reminded that corruption is a unique phenomenon, which makes it difficult to reach common arguments and draw certain conclusions that could be applied to every study on a particular country.

In Turkey, surveys and reports conducted on the extent and causes of corruption are insufficient and statistics are weak and limited in scope.

The study carried out by the Turkish Economic and Social Studies Foundation (TESEV) concluded that the public perceives corruption as the third most serious problem in Turkey. Within this respect, traffic police, tax offices and customs officials are considered as the most corrupted institutions. In relation to that, the level of trust to public institutions and the level of satisfaction from public services are very low. (Adaman, Çarkoğlu, Şenatalar, 2003a: 134) According to another survey conducted by TESEV, businessmen believe that corruption is the main barrier for more foreign investment in Turkey. (Adaman, Çarkoğlu, Şenatalar, 2003b: 138) Finally, the study on the public's perception of corruption in local and central government shows that a need of reform in central administration is considered more urgent than at local level. (Adaman, Çarkoğlu, Şenatalar, 2004: 50)

Apart from national surveys, TI publishes every year an International Corruption Perception Index (CPI) ranking countries by perceived levels of corruption among public officials. The CPI score, ranges between 10 (highly clean) and 0 (highly corrupt).

Table 3.1: CPI Comparison for years 2003, 2004 and 2005

Countries	CPI Score 2003	CPI Score 2004	CPI Score 2005
Romania	2.8	2.9	3.0
Turkey	3.1	3.2	3.5
Bulgaria	3.9	4.1	4.0
Lithuania	4.7	4.6	4.8
Slovenia	5.9	6.0	6.1

Source: Transparency International

According to the 2005 CPI Turkey ranks 65 out of 159 countries, which indicates a slight progress compared to the previous year. However the comparison provided in the table above shows that Turkey is closer to the acceding countries Romania and Bulgaria where the Commission considers corruption as a serious problem.

The CPI is influential in terms of affecting a country's credibility at the international level. It is not an objective indicator but a perception. Nevertheless it contributes to public debates and promotes research in the area. However it has an irregular coverage of countries subject to the survey and represents more the views of the business circle rather than the public in general.

To understand the roots of corruption in Turkey, the causes stemming from the Ottoman Empire must be analyzed. As corruption is - almost by definition- something clandestine, in many cases it may not have found its way into the documents of the Ottoman state archives. There are some exceptions, notably when investigations against officials were opened. However, very often these investigations did not lead to tangible results, especially when they were directed against high-ranking officials. (Herzog, 2003: 38)

Starting with the 16th Century the Ottoman Empire lost its authority, which produced a "suitable" setting for corrupt activities. Before, the Empire had strong control all over the large territory. Due to lack of democracy the society was not aware on their citizen rights and the state was playing the role of a "father". (Özsemerci, 2002: 39) In spite of the fact that people were coming from different cultures and religions the big prosperity and freedom provided by the strength of the state maintained liability and loyalty. However, despite the economic prosperity, non-Muslim groups were discriminated in terms of political and social aspects. Therefore these groups had to choose illegal ways in order to reach political and social influence. (Bayar: 1979: 46) Protection of justice was depending on the power of the ruler, which was the "Sultan". Once the position of the "Sultan" weakened corruption started to spread all over the territory.

First in 1839, the Tanzimat Declaration introduced a reform package addressing weaknesses in the public administration and corruption as well. (Özsemerci, 2002: 46) Similar to the EU accession process, the reform package has partly been a result of the criticisms coming from the European countries that were considering the state as a "sick man". The campaign against bribery played an important role in the Tanzimat, even if it seems to be a complete failure. (Herzog, 2003: 37) One of the reasons in failure of modernization of the Empire was corruption that already reached high levels a century ago. For instance the "Tulip Era" (Lale Devri between 1717-1730) is known as a period in which statesmen enjoyed and spent public funds without any control. There were no transparency and accountability mechanisms for monitoring the functioning of the public administration.

Bribery in the public administration that started to become endemic in the Ottoman Empire with the end of 16th century is transferred to the Republic of Turkey. (Bayar: 1979, 47) All in all, corruption in Turkey is tied to its history as a rent-seeking and

rent-providing state. (Baran, 2000: 130) There are even cases in which public officials having worked for the Ottoman Empire have been brought before the court after the establishment of the Republic and were sentenced for corrupt acts.

After the foundation of the Republic, it has been argued that corrupt activities have increased since 1980s. The main reason for that is the transition to the open economy in which privatization and investment supports have been shadowed by corruption allegations. In January 1980, a new program of economic deregulation, inspired by the International Monetary Fund (IMF) requirements, was launched to end state subsidies, free the foreign currency market, ease trade controls and move the economy toward liberalization. Although the new policy was essential, an unintended consequence was that it opened a new chapter in Turkey's history of corruption, introducing more sophisticated methods of fictitious exports, money laundering, real estate and land speculation and public contract pay-backs. (Baran, 2000: 133)

Besides economic reasons, weak political figures have politicized the bureaucracy that is lacking efficiency, transparency and accountability. Budgetary limitations and inflation rates has created financial problems for the public officials. (Bayar: 1979, 50) The inadequacy of public sector salaries contributes greatly to corrupt activities at the level of need, of "petty corruption". Ensuring living wages is crucial to public sector efficiency and effectiveness. Singapore has been conspicuously successful in this endeavor. (Langseth, Stapenhurst, Pope, 1997: 11) Excessive bureaucratic procedures, lack of control mechanisms and discretionary powers granted to public officials without accountability mechanisms in place combined with low salaries corrupted the administration as a whole.

In addition to that social and cultural reasons complemented these historical, political and economic causes triggering widespread corruption in Turkey. Strong family and friendship ties nepotism and cronyism has hampered the well functioning of the public administration. Besides, citizens have tried to avoid time-consuming bureaucratic procedures by means of "hemşehri" (citizens coming from the same province name each other as "hemşehri") ties. Finally, unfair income distribution combined with growth of population directed employees or unemployed people to illegal activities including corruption. Corruption has largely been tolerated until the public started to blame corruption for high inflation and inequality.

We can see a shift to election of conservative political parties after mid 1990s due to the frustration of the citizens with corruption. The economic liberalization period had suffered under corrupt activities primarily in the area of government procurement. The say of a former Prime Minister "my bureaucrats know their business" gave the impression to the public that public officials tended to balance their low salaries with corrupt activities to which the state and citizens could close an eye to. The political figures, on the other hand, could take no concrete and consistent steps either. As a result, economic liberalization continued on the expense of corrupt activities.

The car crash that happened in 1996 in Susurluk represents a turning point in terms of raising the public sensitivity. The accident clearly showed underground relations between a Member of the Parliament (MEP), former police chief and a mafia leader being accused of serious crimes. Despite several investigation and trials, the facts lying behind are still not known.[24] Parallel to its continuing concerns with separatist terrorism and fundamentalism, the military was reportedly in September 2000 as having identified corruption as a "primary threat" in its national security assessment. (Alirıza, 2000: 2)

The increasing scope of corruption paved the way for the current government with an electoral dedication to fight corruption that existed under former governments. The strong expectation from the public combined with EU accession requirements has pushed the government to put reforms in place. However, actions taken in the area have obviously slowed down after the positive opinion given by the Commission in the 2004 Regular Report.

2. Anti-Corruption Framework in Turkey: Shortcomings and the Commission Approach

The importance of elements forming a good governance framework and national integrity system may differ in relation to a country's economic and political conditions. A national integrity system comprises public awareness, public anti-corruption strategies, public participation, "watchdog" agencies, the judiciary, the

[24] The government of Mesut Yılmaz that took office short after the incident promising to shed light on the scandal has been voted out of office in 1998 due to corruption allegations ranging from energy sector to banking and the media. The 1999 earthquake is another incident that illustrated another area of corrupt activities: construction.

media, the private sector and international cooperation. (Langseth, Stapenhurst, Pope, 1997: 1). This list of components obviously includes sub-components and additional elements such as strong political commitment that is a must for smooth implementation of a nation-wide government strategy.

In the Accession Partnerships[25] and National Programmes[26] that respectively stand for the EU expectations and Turkey's commitments, corruption is clearly identified as an area of priority that has to be seriously addressed during the accession process. Similarly, the Commission in its yearly assessments in the Regular Reports focuses both under the political criteria and JLS Chapters on anti-corruption measures taken by Turkey within the respective reporting period. Under the political criteria the Commission focuses more on political issues such as corruption allegations of politicians whereas under the JLS Chapter it focuses more on alignment with the *acquis* and matters related to the institutional capacity.

Following the Cardiff European Council held in June 1998, the Commission prepared its first Regular Report on Turkey. (European Commission, 1998, p.12) It was noted in the report that the Turkish administration was functioning to a satisfactory standard. There were, however, many cases of corruption, favouritism and influence. Turkish legislation did not contain general legislation on anti-corruption measures. The report made an analysis on the reasons of the problem in Turkey. According to the Commission, one of the causes of corruption among officials was low public-sector pay caused by a lack of state budget funds. In the case of elected officials, corruption was partly caused by the absence of public funding for political parties.

Starting from 1998, the Commission continuously expressed its dissatisfaction on many areas in relation to anti-corruption but legislative steps taken have always been appreciated. These steps have been taken in parallel to specific criticisms in

[25] Council Decision of 8 March 2001 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with the Republic of Turkey,(2001/235/EC) OJ L 85/13, 24.3.2001.
Council Decision of 19 May 2003 on the principles, intermediate objectives and conditions contained in the Accession Partnership with Turkey, OJ L 145/40, (2003/398/EC), 12.6.2003.
[26] Turkish National Programme for the Adoption of the Acquis, Official Gazette 24 March 2001 No.24352.
Turkish National Programme for the Adoption of the Acquis, Official Gazette 24 July 2003, 25178.

the Reports that shows the effectiveness of the accession process on reforms. An exception of the accession impact on reforms is the discussions on an anti-corruption body, which will be discussed below.The great interest and follow up of the public, media and civil society on the Regular Reports and EU accession related developments created another impetus on the government. However, positive opinions given by the Commission led in due time to a slow down in implementing the reforms.

The 2001 economic collapse (and subsequent devaluation) has-among other things- been attributed to corruption, and the results of 2002 elections have been interpreted as an expression of the desire of the population for political reform and firm action against corruption. (European Commission, 2004b: 3) Above all, the decision of the Helsinki European Council in 1999 that granted Turkey a candidate status was a turning point in pushing and justifying the reforms in the area.

As mentioned in the previous chapter, The Commission follows a kind of checklist that focuses mainly on implementation of an anti-corruption policy, a sound legislative framework including ratification of major international conventions in the area, a functioning public administration and appropriate institutionalization of anti-corruption efforts. Besides, it focuses on complementary issues such as the immunities of the elected and public officials, training of public officials, codes of conduct, cases of corruption brought before the court etc. The emphasis given on a certain area changes in relation to the problems of the country concerned. Nevertheless, a comparison of Regular Reports for different countries shows the main areas of consideration.

Within this framework issues that are common areas of concern for the Commission will be discussed. However, due to the lack of binding benchmarks the study will prioritize issues that are specific for Turkey. As an overall view, the Commission has until now welcomed strategies adopted, conventions ratified and legislation amended however it has always stressed on the need for sound implementation of the reforms in place. The Commission focused on anti-corruption and prevention measures and relied more on the surveys of other international organizations (i.e. OECD) and did not go into deep to the corruption as a problem itself. Turkey on the other hand emphasized more on anti-corruption and did not develop sufficient preventive measures and did not study the causes and extent of the problem.

As mentioned before, anti-corruption reforms have slowed down since the positive opinion given by the Commission in the 2004 Regular Report. The Commission currently criticizes the shortcomings in the implementation of the strategies and legislation adopted and in this respect expects institutionalization of these efforts. Thus, the most critical issue for further cooperation in the area is the reluctance of the Turkish side to create an anti-corruption body.

2.1. The existence and implementation of anti-corruption policy

According to the Ten Principles for Candidate Countries, Turkey has to draw up and implement a national anti-corruption programme covering both preventive and repressive measures. Even before the adoption of these principles the Commission always considered a functioning anti-corruption programme as an essential and initial element for accession to the EU.

With the aim of increasing transparency and developing an efficient public management in Turkey, a Circular was issued in 2001[27] to define potential corrupt areas and benefit from public institutions' opinions and experiences. Apart from that, a workshop has been organized with the participation of public officials and World Bank experts that produced inputs for a formulation of a strategy. (TBMM, 2003: 82) Finally, a Steering Committee composed of the representatives of the Prime Ministry Inspection Board, the Undersecretariat of Treasury, Ministry of Justice, Ministry of Interior and the Financial Crimes Investigation Board of the Ministry of Finance and a Working Group to assist the former have been established to study on a strategy.

In consequence of these efforts, the Action Plan for Enhancing Transparency and Good Governance in Turkey's Public Sector[28] ("Anti-corruption Action Plan) is adopted that defined priority areas and objectives to fight against corruption. The plan, identified the following objectives:

- Minimizing the problems faced during the provision of public services through effective management and setting objective criteria for the discretionary powers of the civil servants by; determining the terns and standards of the public services, and identifying the civil servants responsible for them on the basis of agencies and institutions, starting

[27] Prime Ministry Circular No. 2001/38, 09.07.2001
[28] Council of Ministers Decree, 12.01.2002

from the most important public services which are subject to highest number of complaints and during the provisions of which citizens frequently experience unfair treatment (such as property development, investment incentives and company registration processes)

- Eliminating the consideration for seeking some intermediaries and making payments in order to raise a just demand to be met.
- Ensuring effectiveness in the enforcement of the preventive disciplinary and penal sanctions against the civil servants meeting unjust demands for bribery and other interests.
- Transition to a modern public administration system, which audits the administration both internally in a hierarchic manner in accordance with the established objective rules and externally from the perspective of taxpayers.
- Reducing the burden of administrative formalities on the investments and private enterprise, since excessive regulatory formalities also contribute to corruption. Coordinating the procedures concerning the capital investments in accordance with the aforementioned terms and standards of service and ensuring that the formalities are conducted from a single center, if possible.
- Enhancing the trust in the public sector and the political system.

The Plan concentrates primarily on public administration and more specifically on the civil service. Besides it defines priority areas including also the judiciary, health care system, audit system and local administrations.

Following this Action Plan the 58th Government has adopted an Emergency Action Plan in January 2003 that contains a section on corruption (T.C. Hükümeti, 2003: 37) with important additional elements to the Action Plan adopted in January 2002. These elements are the acceleration of the ratification process of the Criminal Law and Civil Law Conventions on corruption of the Council of Europe, increased sanctions for corruption offences in criminal law, increased sanctions for corruption offences in criminal law, increased transparency in the financing of political parties, enhanced access to information by reviewing secrecy provisions and enhanced dialogue between government, public administration and civil society.

The Commission has welcomed the adoption of the first Action Plan in its 2002 Regular Report particularly appreciating the preventive aspect that aimed at increasing transparency in the public sector. (European Commission, 2002a: 23) Starting with the 2003 Regular Report the Commission has criticized the lack of institutions in place to monitor the implementation of the Strategy and Action Plan. (European Commission, 2003: 23

Romania, which is one of the countries that has been seriously criticized by the EU due to its weakness in the fight against corruption, has very recently reviewed its anticorruption strategy specifically for the period 2005-2007.[29] The document is a follow-up of the National Anti-Corruption Strategy 2001-2004. Romania defined also methods of assessment for fulfillment of objectives of the strategy, which will be conducted annually.

As mentioned before an adoption and implementation of a national anti-corruption strategy is a common expectation of the Commission from all candidate countries. In this respect the drafting of a strategy is not considered as sufficient, the document should be updated regularly and followed up in terms of implementation. In conclusion, Turkey has addressed the Commission expectation by adopting strategies covering both preventive and repressive measures, however, implementation still remains weak. The adoption of strategies showed the political commitment however could not retain in terms of enforcement.

2.2 Institutional arrangements for implementation and division of tasks among institutions: a need for an anti-corruption body

The EU gives high importance to ratification of major conventions and alignment to the *acquis*. However, as it can be seen from the Regular Reports, once legislative steps were taken the EU started focusing on the implementation of the existing framework. This required sound implementation by strengthening the administrative capacity and establishing a functioning public administration.

Within this respect, the lack of coordination and cooperation between existing structures, weak follow-up of the anti-corruption strategies in Turkey is the greatest concern for the EU. Discussions for a need to establish an independent and permanent anti-corruption body is an example where the accession process may create resistance in terms of changing existing structures. Thus, whereas the accession process pushed many anti-corruption reforms it could not lead to an effective change in the institutional framework.

[29] The National Anti-Corruption Strategy 2005-2007, adopted by the Romanian Government on 30 March 2005.

Another area that needs further improvement in this context is the functioning of the public administration. According to the Emergency Action Plan, administrative problems include a fragmented structure of public administration, different institutions subject to different laws, unclear delineation of duties and responsibilities, insufficient civil service education, insufficient coordination and communication between public institutions, lengthy processing times for administrative procedures. (European Commission, 2004: 7)

According to the Ten Principles for Corruption in Candidate Countries, countries are required to implement anti-corruption laws by competent and visible anti-corruption bodies (i.e. well trained and specialized services such as anti-corruption bodies). Similarly, Article 20 of the Council of Europe Criminal Law Convention requires countries to ensure that persons or entities are specialized in the fight against corruption, and that they have the necessary independence, training and finance. Likewise, the Twenty Principles for the fight against corruption underline similar requirements. Common focus is given particularly on independence, appropriate and specialized staffing and financial sources.

Neither the EU nor the Council of Europe imposes strict rules to which countries are obliged to comply with. Therefore, institutional mechanisms should address specific conditions and requirements of the country in question. Due to the weaknesses of institutions, lack of cooperation and coordination in the candidate countries the EU has proposed to create independent and permanent anti-corruption bodies that should be able to address these shortcomings.

In case of Turkey the main concern is the limited functioning of the inter-ministerial commission and steering committee set up to monitor the Anti-corruption Action Plan that was complemented by the Emergency Action Plan. The EU does not impose a certain structure but identifies the areas that need to be addressed by an institution. Complexity poses a serious obstacle to execute action against corruption in Turkey. There are a large number of agencies, which directly or indirectly address cooperation. Yet, it is not simply the number of agencies – but also weak cooperation between them – leading to administrative duplication (such as the right to inspect being held by both the Prime Minister's Inspection Board and the Ministry of Finance Inspection Board) and simultaneously under-provision of government inspection. (European Union, 2004b:8)

International experience shows that while the implementation of individual components of an action plan is important, the impact of such plans is considerably enhanced if these components are implemented in a coordinated and inter-related manner. In Turkey, such co-ordination is particularly important given that for many institutions responsibilities and lines of authority are not clear. While such problems affect the entire civil service, coordinating anti-corruption measures will pose special problems due to the need for a wide range of actors to become involved (European Union, 2004b: 7)

The Commission has explicitly stated the need for an anti-corruption body due to the shortcomings identified above. According to the 2004 Regular Report, the efficiency and effectiveness of various governmental, parliamentary and other bodies established to combat corruption remain a matter of concern. The consistency and the degree of coordination and cooperation are considered as weak. Finally, Turkey is encouraged to set up an independent anti-corruption body. (European Commission, 2004c: 29)

The report of the Parliamentary Anti-Corruption Commission, proposed to set up an anti-corruption body that should directly involve into anti-corruption efforts. It stated that there were many institutions having audit functions however there was no special institution dedicated to fight against and prevent corruption. (TBMM, 2002: 121)

The 2005 Progress Report considers the efficiency and effectiveness of governmental, parliamentary and other bodies established to combat corruption as a matter of concern. Further emphasis is made on weakness in cooperation and coordination. It is suggested to strengthen the institutional set up. Finally, the necessity for an effective leadership and coordination function is underlined as well. (European Commission, 2005: 18) The last Report different from the previous one, does not clearly mention a need for an “independent and permanent body” due to the resistance faced from Turkey for a long time. The Commission has changed its approach and has only mentioned existing problems that need to be addressed through an institutional review. The leadership can be given either to an independent new body or to one of the existing institutions. The main idea is to fill in the existing gaps through an institutional reform.

A prime challenge in many countries is to mobilize the necessary political will to establish anti-corruption agencies. The World Bank, the IMF and bilateral aid agencies may call upon governments to establish anti-corruption agencies as components of good governance programmes and may even make loans conditional on the establishment of such agencies. But these agencies are not likely to succeed unless they are strong enough and politically independent enough to win the public's respect. (Pope and Vogl, 2000: 2)

Similarly within the framework of the 2003 programming package, an anti-corruption project to be financed through EU funds was planned for Turkey. The pre-condition for the project was to establish a permanent and independent anti-corruption unit within the Prime Ministry. The Project aimed at implementation of the two Action Plans and other anti-corruption measures, reduce risks of corruption in the public administration, strengthening the criminal justice system, and finally ensuring involvement of the civil society and business community. As mentioned before, Turkey did not take any steps in creating an anti-corruption body and did not provide an alternative solution either. Due to the resistance coming from the Turkish side, the EU changed its wording in the last Regular Report by stating the need for a reform but leaving the appropriate solution to Turkey.

Despite several projects financed in various areas by the EU there is no project in the area of corruption due to the reluctance on establishing an anti-corruption body. The lack of coordination among various bodies, overlapping functions and no follow up of implementation of the Action Plans will be subject to intensive discussions during the accession negotiations.

The primary questions that need to be answered are the need for such body, its functions, mandate and financial and human resources. If an anti-corruption body will be established then complementary institutions should be strengthened as well. Another critical point is that the body should not duplicate any functions of other institutions. Otherwise it will create further competition and resistance. This will not only hamper cooperation but also will add some more complexity to the existing situation.

2.3. Ratification and implementation of the relevant conventions

Another standard defined by the Commission is the ratification and adoption of all main international anti-corruption instruments. As explained in Chapter II, MSs have to adopt the Council of Europe Criminal Law Convention on Corruption, the Council of Europe Civil Law Convention on Corruption, the European Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime (Strazbourg Convention), the OECD Convention on Combating Bribery of Foreign Public Officials and UN Convention against Corruption.

Turkey has ratified all instruments that are mentioned above and has signed the UN Convention. As in the case of signing the UN Convention, Turkey has sometimes been one of the first countries showing intention to comply with international standards. The first Regular Reports continuously renewed the need for ratification of international instruments. Following the rapid ratification focus of the Commission shifted towards the enforcement of the existing tools.

According to Article 90 of the 1982 Constitution, international treaties, entered into force according to the required legal procedures have the force of domestic laws and the Constitutional Court has no jurisdiction for a constitutional review on international treaties. This means that international treaties once ratified will have the same legal effect with a law. The package of constitutional amendments adopted in May 2004 revised Article 90 of the Constitution[30]. According to the amendment, where there is conflict between international agreements concerning human rights and national legislation, the Turkish courts will have to apply the international agreements.

As mentioned before, the Commission has no specific monitoring mechanism that could evaluate the implementation of the international conventions and standards adopted by Turkey and other candidate countries. There are already existing monitoring mechanisms put in place by the OECD and Council of Europe Conventions. In order to avoid duplications of efforts in this area, the Commission relies on the reports provided by these evaluations.

[30] RG: 22/05/2004-25468

Turkey has automatically accepted the evaluation of GRECO by being a part of the Council of Europe Conventions. In addition to that, Turkey notified the OECD Working Group on Bribery in International Transactions that she was ready to receive OECD examiners.[31] According to the first report adopted by the OECD Working Group the Turkish legislation conformed to the standards under the Convention. (OECD, 2004:2) In this respect, the second phase will evaluate the implementation capacity of Turkey, which is provisionally scheduled for 2007.

2.4. Alignment with the *acquis*

The Ten Principles for improving the fight against Corruption in Candidate Countries requires current and future MSs to fully comply with the *acquis*. Before the strengthening of relations between Turkey and the EU, there was the Law on prevention of benefit-oriented criminal organizations (Law No. 4422)[32], the Law on Declaration of Assets, the Fight against Bribery and Corruption (Law No. 3628)[33], and the Law on Prosecution Procedure for Public Servants[34] (No. 4483) that fall under the area of anti-corruption.

There have been two major constitutional reforms in 2001 and 2004, and eight legislative packages have been adopted by the Parliament between 2002 and 2004. Most significant Laws that passed on fight against and prevention of corruption are the Law on the Right of Access to Information (October 2003)[35], the Law on Establishment of a Public Servants' Ethics Board (May 2004)[36], and the Law on e-Signature[37]. Apart from that, Turkey implemented the OECD's "Bribery Convention" by passing several new laws, including the Law on the Ratification of the Agreement on Combating Bribery to Foreign Public Officials in International Trade Transactions (2000)[38].

[31] During Phase 1 of the OECD evaluation, the country concerned is examined on whether the necessary laws to implement the Convention have been put in place, and the necessary initial actions are taken towards implementation. Phase 2 studies the structure put in place to enforce these laws and evaluates their application in practice.
[32] RG: 01/08/1999-23773
[33] RG: 04/05/1990-20508
[34] RG: 02/12/1999-23896
[35] RG:24/10/2003- 25269
[36] RG: 08/06/2004-25486
[37] RG: 23/01/2004-25355
[38] RG: 11/01/2003-24990

The new Penal Code[39] that entered into force in June 2005 introduced more strict penalties for corruption and extended the limitation period. However the draft Law on corruption that was in the Parliament has been withdrawn on the ground that that the new Penal Code was covering all necessary arrangements. As mentioned before to approach corruption only from a criminal law point of view will not be sufficient in order to tackle the problem from all aspects. Therefore to overcome the existing complexity and overlaps of different laws a single anti-corruption law comprising all elements is advisable.

Coming to the other laws adopted in specific areas, a Law on the Right of Access to Information is adopted in April 2004. According to the Law those who want to receive information from the public institutions, regarding an issue, which is related to them or their area of activity, will be able to apply to the institution concerned.

A particularly important precondition for enabling citizens to scrutinize public administration, government, political parties and elected politicians is a meaningful right to access information. (Asian Development Bank, 2004: 65) Public access to information will not only ensure public participation into fight against corruption it will also feel the public officials accountable due to their obligation to response to citizens' questions.

The law can be considered as a positive step towards establishing the transparency of the state thus strengthening the fight against corruption. However, the fact that people will only be able to request information regarding issues, which are related to them, will be limiting the concept of the right. Apart from that, information and documents whose disclosure may directly harm the security, foreign relations, national defense and national security of the state and that are considered to be state secrets due to their nature and are classified as such shall remain outside the scope of the law.

The effectiveness of the law will depend on the scope of information that can be provided, the speed of treatment of requests and the awareness of the public to use

[39] RG: 12/10/2004-25611.

this tool in order to contribute to openness and public consultation[40]. The European Commission has welcomed the introduction of the law in its 2004 Regular Report. (European Commission, 2004c: 142) The 2005 Progress Report suggests broadening the Law in scope and to clearly define classified and unclassified public records in order to ensure effective implementation. (European Commission, 2005: 18)

Apart from that a Law on e-Signature was adopted in order to enhance efficiency and decrease bureaucratic procedures. The Law defines electronic signature as follows: “Electronic signature is the signature that belongs exclusively to the owner; that is constructed via means of safe electronic signature builder which is under the auspices of the owner of the signature; that makes possible the recognition of the identity of the owner on the grounds of qualified electronic certificate; that avails to determine whether or not a modification has been performed on the data which had been signed.”

More and more countries make use of information technology to provide certain services to the public. This approach, often referred to as “e-government”, can help reduce opportunities for corruption in several ways: on-line transactions depersonalize and standardize the provision of services and give little room for payment or extortion of bribes; in addition the use of computers requires that rules and procedures be standardized and made explicit and thus reduces abuse of discretion and other opportunities for corruption. (Asian Development Bank, 2004: 27).

Another important Law is on Establishment of a Public Servants’ Ethics Board.

2.5. Codes of Conduct for Public Officials

There are three tendencies to guarantee for ethics in the public administration. The first one, which can be seen as an example in the United States, is an accountability system that defines rules and is sustained by independent auditing of compliance with the rules. The second one that is applied by the Scandinavian

[40]For the decisions taken that set precedence please see: http://www.turkiye.gov.tr/sourcedesign/TURK.asp?sayfa_id=basbakanlik.bilgiedinmedgerlendi&web_id=basbakanlik&pid=basbakanlik.293279&cont=basbakanlik.323110

countries focuses on training of public officials and relies on political commitment. The last one, which is followed by Turkey and other European countries, requires establishment of an Ethics Board that should monitor, prevent and promote ethical standards in the public administration.[41]

Following the recommendations in the 2003 Regular Report (European Commission, 2003: 118) a Law on Establishing a Council on Public Employee Ethics has been adopted in May 2004. In accordance with the Law, an Ethical Council for Public Servants is established functioning under the Prime Ministry to determine ethical standards and enforce them in relation to the professional conduct of public officials. The main criticism for the Law was the responsibility of the Council that would define standards through secondary legislation, which could risk frequent changes and amendments in the future.

The secondary legislation has been adopted in April 2005 and the Council started to function.[42] It is wide in scope by covering principles of continuous improvement, participation, transparency, impartiality, integrity, protection of public interest, accountability, simplicity, subsidiarity and confidence in citizen's statement. The Regulation forbids any kind of abuse of power. Apart from that the Board has the right to examine property declaration if necessary, which is subject to the Commission's concern.

The main limitation of the scope is that it excludes the MEPs, judiciary, academicians and the military. Furthermore, the effective application of the regulation will very much depend on raising awareness and training of the public officials, which is also an area of concern that is mentioned by the Commission in its Regular Reports. (European Commission, 2004c: 29) The effectiveness of the regulation is closely linked to the use of petition right by the citizens and follow-up of complaints. Currently the Council lacks sufficient number of staff and financial resources.

The Commission approach pushed Turkey in adopting a code of ethics for public officials but the 2004 Regular Report called also for a code of ethics for elected

[41] Prof. Mehmet Sağlam, Ethics in the Administration, Panel Discussion organized by Public Ethics Board, 21 October 2005, Ankara.
[42] Regulation on Principles of Ethical Behaviour for Civil Servants and Principles and Procedures for Petitioning, Official Gazette No. 25785, 13.04.2005.

officials (European Commission, 2004c: 29). Despite the positive effect of the Commission, the top-down approach from the government will not change the ethics and culture of the public, which is the most difficult element to address in the fight against corruption.

If citizens behave in an ethical way only because of rules and monitoring mechanisms are in place this will not mean that the moral values and culture of a public has changed. On the contrary this might create the risk that any weaknesses in monitoring the rules may lead to unethical behaviours.[43] Therefore the strength of monitoring mechanisms is decisive as ethics rules cannot be explicitly defined and thus sanctioned like illegal activities.

2.6. Cases of corruption in government and public administration, and how the authorities reacted to these cases,

The Commission reports also the number and results of prosecutions concerning corrupt related offences and follows up the investigations carried out regarding judges on charges of corruption. (European Commission, 2004c: 142) In relation to the cases on corruption, the Regular Report published in 2004 indicated the scope of the Parliamentary immunity as a matter of concern. It is pointed out that extensive discussions took place on the issue however without any consensus or solution reached at the end. (European Commission, 2004c: 28) The 2005 Progress Report renewed its concerns on the scope of the immunities. (European Commission, 2005: 18)

Over the years two separate categories of immunity have emerged (ECPRD, 2001: 5):

_ the principle of non-accountability or non-liability, generally referring to the freedom of speech approach; and

_ the principle of inviolability, generally interpreted as the freedom from arrest.

According to Article 82 of the 1982 Turkish Constitution, MEPs have parliamentary privilege and immunity. They are not liable for their vote's or/and speeches while they are fulfilling their functions in the Parliament. Apart from that MEPs are

[43] Ahmet İnan, Ethics in the Administration Panel Discussion organized by Public Ethics Board, 21 October 2005, Ankara.

inviolable which means that they cannot be detained, arrested or tried while being a parliamentarian or are a candidate for a MEP. However, the Parliament can decide to suspend the inviolability of the MEP in question. Finally, if the MEP is directly caught while committing a serious crime or if he/she threatens the integrity of the state then inviolability is invalid.

In January 2004, the temporary Parliamentary Investigation Committee on Parliamentary Immunity issued a report. According to the report, parliamentary immunity should be maintained in its current form and should be discussed after structural reforms were completed.

Limitations to parliamentary immunities have also been a matter of public concern. The lost trust into politicians that were facing several corruption allegations raised the sensitivity of the public with regard to parliamentary immunity. According to the public opinion and the media, parliamentary immunity was hampering the anti-corruption efforts in Turkey. Following the entering into force of the new Penal Code in June 2005, the main opposition party (the Republican People's Party- CHP) started a campaign to push the ruling party (Justice and Development Party-AKP) to lift parliamentary immunity and enable pending cases to proceed.

There is a general belief amongst the public that parliamentary immunity is abused as a privilege by the politicians to hide behind in order to escape from accusations mainly corruption. In European countries, similar to Turkey, politicians enjoy similar privileges in order to perform their task properly without any pressure or unnecessary allegations. However, the announcement of the ruling party that no immunity would be suspended until the existing parliament fulfills its mandate raised the already existing public sensitivity. Another reason for those opinions was the ongoing investigations for former MEPs while no action was taken for the pending files concerning current MEPs.

The parliamentary investigation commission that was set up in the beginning of 2003 proposed parliamentary inquiries into the dealings of 25 former government ministers, including two former Prime ministers and asked for lifting of parliamentary immunities of those. The report also suggested limiting immunities to corruption and bribery offences. (TBMM, 2003:139) In December 2003 the Parliament adopted proposals to open investigations into corruption allegations against a former Prime

minister and six former ministers. These investigations are still proceeding before the Supreme Court and attract great media interest.

All in all Turkey took a number of steps in line with requirements deriving from the accession process. However, corruption requires sustainable efforts and smooth implementation in long term. Code of ethics for public officials is an example that is a result of Commission recommendations. However the compliance of the public employees must be strictly followed up to change the culture within the administration itself. Furthermore, a similar code should be adopted for the elected officials as well. Besides, training provided for public officials is limited and therefore needs to be improved.

As regards the political sphere, disclosing, restricting and auditing funds of political funds of political parties and electoral campaigns are necessary to avoid corrupt practices. This is an area of concern since the first Regular Report in 1998. In this respect, Turkey is expected to increase accountability and transparency in election campaigns by requesting parties to disclose their sources of financing and setting up limits to contributions.[44] (European Commission, 2002a: 23)

Another area that is of significant importance is raising the public awareness through civil society participation and strengthening the independence of the media. Nongovernmental actors, such as the media, business associations, nongovernmental organizations (NGOs), academics and trade unions, may play a crucial role in generating public discussion about corruption. As final beneficiaries of public service, citizens are also an important source of information on wrongdoing and potential gaps and loopholes in laws, regulations and institutions. (Asian Development Bank: 2004: 14)

[44] Article 69 of the 1982 Constitution forbids political parties to spend their financial sources for purposes that are not falling under their competence. However, auditing of revenues of the political parties in practice and lack of threshold for electoral campaign expenditures is being criticized.

CHAPTER V

RECOMMENDATIONS

Turkey is going through a reform process that is fundamentally changing the legislative and institutional structure. Different from the post-Communist countries Turkey is introducing and implementing reforms since her foundation with the aim of complying with Western European standards. Therefore, both the economic and political situation of the country is quite different from most of the other candidate countries and new MSs. While in the CEECs totally new mechanisms are introduced, in Turkey an existing system is in evolution that has already been functioning for a long time based on open economy and democratic principles and deep traditions.

Nevertheless the EU accession process put Turkey into a rapid transformation process. Full membership requirements pushed many reforms particularly in the legislative framework. Apart from that almost all international conventions have been ratified and new institutions have been established. However still much needs to be done to provide for smooth implementation and sustainability in the fight against corruption.

Outstanding issues are the weakness in the institutional set up, parliamentary immunity, funding of political parties and electoral campaigns and declaration of assets. The main current discussion is continuing on whether an independent and permanent anti-corruption body could address existing problems or not. However it is not correct to put too much expectation on one single body. Anti-corruption strategies may fail in long term if they focus on too narrow objectives. Fight against corruption needs a multi dimensional approach and a long period of time. For instance in Hong Kong the first positive signals have started to be seen after 7 years whereas in Singapore it took more than 10 years.

In order to achieve success in long term a “national integrity system” needs to be established taking into account all elements. The expression of a national integrity system is of recent origin, having emerged from discussions within the TI movement and widely popularized by development agencies. (Pope, 2000: 32)

Even though there is no simple or common solution for countries the main idea of the system is to involve all relevant actors into the process.

An integrity system embodies a comprehensive view of reform, addressing corruption in the public sector through government processes (leadership codes, organizational change) and through civil society participation (the democratic process, private sector, media). Thus reform is initiated and supported not only by politicians and policy makers, but also members of the civil society. (Langseth, Stapenhurst, Pope, 1997:2) Even if corruption is endemic, it tends to be the result of systemic failures. The primary emphasis is on reforming and changing systems, rather than blaming individuals. (Pope, 2000: 34) Similarly in Turkey legislative amendments including the adoption of a new Penal Code will not be enough to suppress corruption. Complementary and preventive steps need to be taken to provide for integrity in the whole system including the public administration, the judiciary, the civil society and all other actors.

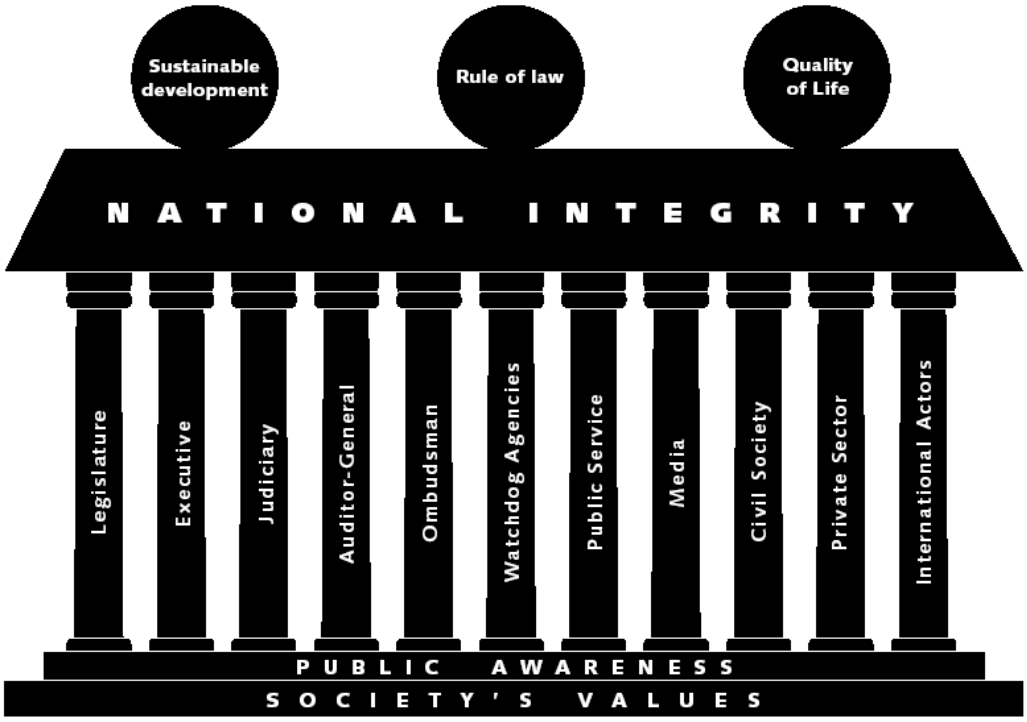

Figure 5.1: Pillars of a National Integrity System

Source: TI Source Book 2000

As seen from the figure above sustainable development, respect of the rule of law and the quality of life will depend on the existence of national integrity that comprises the legislature, executive, judiciary, auditor-general, ombudsman, watchdog agencies (i.e. anti-corruption agency), public service, media, civil society, private sector and international actors.

Establishment of political will is the first precondition for initiating an anti-corruption reform process in a country. Citizens as the beneficiary of reforms should not merely be passive recipients of the outcome of reforms, but should be advocates for reform and guardians of the process throughout. (Pope, 2000: 41).

As mentioned before, traditions, culture and religion is to a large extent determining the public tolerance towards corruption. In Turkey where the role of the state is strong and public awareness is low involvement of the civil society and activeness of the media will be decisive elements of the reform process. In this aspect, the Public Servants' Ethics Board may intensify its public awareness campaigns and visibility actions. Similarly, non-governmental organizations working in the area could contribute through providing advice to the public and private sector and involving the citizens into the process. Within this respect, a code of conduct for the civil society ensuring transparency and accountability is advisable.

The boundaries of the parliamentary immunity should be re-defined, as it is a source of great sensitivity within the public. Apart from that more transparent procedures and monitoring mechanisms should be adopted for funding of political parties and electoral campaigns. Another area of concern is the independency of the judiciary that is continuously raised by the Commission as well. In this aspect the recruitment procedure, performance appraisal, training system and accountability mechanisms for judges and prosecutors need to be reviewed. As concerns the functioning of the public administration there is a need for civil service reform in order to improve recruitment and promotion procedures and the inequity of salaries between public officials. Another area that needs to be addressed is the excessive bureaucratic procedures that must be simplified to avoid corrupt practices. The adoption of the Law on Access to Information is a positive move forward that will promote transparency in the activities of the public administration.

Finally, the establishment of an anti-corruption body is still under debate. Neither the structure nor the functions and duties of the body are clear. As mentioned before the EU started to follow a more flexible approach by leaving the best possible solution to Turkey. However, it continues to underline weaknesses that can apparently be solved only through an institutional reform.

There are three types of anti-corruption bodies throughout Europe. The first one is an investigative body that requires sharp forensic skills and needs to be distant from the government, to be clear that politics plays no part in its decisions. Second, the preventive, policy-making role needs lateral thinking and political support, so can be close to government. There is also a third possible role: that of overseeing the results of policies. (Stephenson, 2004:4) Examples of investigative/law enforcement bodies can be seen in Belgium, Norway, Hungary, Italy, United Kingdom and Romania. Models for preventive bodies are established in France, Macedonia and Slovenia. Finally, Albania, Bulgaria, Serbia and Georgia have examples of implementation oversight bodies. In addition to these three types some of the countries have collected all functions in one single body. Examples for these bodies are found in Croatia, Germany, Latvia and Lithuania.

The structure and legal mandate of independent regulatory authorities are still under discussion both in Turkey and in Europe. One reason for these criticisms is that these structures are considered as a result of imposition of organizations such as the IMF and World Bank. (Tan, 2002: 12) Apart from that the distinction made by the EU between the “operator” that provides goods and service and the “regulator” that audits the implementation has increased the number of this kind of authorities. (Kestane, 2002: 37) The 1980s and 1990 saw the establishment of a new framework for regulation in European countries in which powers were delegated to international regulatory authorities. (Thatcher, 2002:968) Similarly after the 1990s the number of these authorities have started to increase in Turkey: the Capital Markets Board, Public Procurement Authority, Banking Regulation and Supervision Agency etc.

Due to different opinions on whether this kind of institutions in Turkey is well functioning or not intensive discussions are going on an anti-corruption body proposed as a possible remedy for Turkey. Apart from its necessity the functions and mandate of such body is also subject to discussions. According to my opinion

an anti-corruption body in Turkey may overcome some of the existing deficiencies on the condition that an appropriate legal and institutional environment is provided including adequate resources and committed political support.

If we analyze the shortcomings of Turkey's anti-corruption framework the anti-corruption body will be able to define its functions by itself. Bearing in mind the difficulties as concerns the coordination and cooperation among high number of institutions involved and lack of leadership both at the national and international level the body should be established as a focal point providing for day-to-day management of anti-corruption activities. In this aspect it will replace no function of existing other institutions, on the contrary it will bring them together to cooperate on a regular basis. In close relation to that, it could monitor the existing anti-corruption strategies thus address one of the criticism of the EU.

Another gap that could be addressed by the anti-corruption body is the lack of information, surveys and statistics on corruption in Turkey. It could collect and analyze corruption and propose remedies and develop policies accordingly. Apart from that the anti-corruption body could support public awareness activities in close cooperation with the Public Servants' Ethics Board, the media and the civil society. All in all the anti-corruption body should be empowered with a mixture of prevention and policy follow up tasks. It should not conduct investigative functions due to the already high number of inspection boards involved into anti-corruption in the public sector at different levels: inspection boards under all ministries including the Prime Ministry and also municipalities and state economic enterprises. But it could be supportive in terms of providing for coordination and cooperation between these institutions.

There is no universal model for an anti-corruption body. Every country has to develop its own model taking into account its own priorities and conditions. Each of the above-mentioned types of institutions has both negative and positive aspects. While narrow functions may limit the effectiveness of the body, multi-purpose services do not necessarily form best practices. Difficulties of these bodies are that they limit involvement of other institutions, create dependence on one service, focus on quick results and produce high expectations. (Seger, 2004:10)

The Independent Commission against Corruption (ICAC) in Hong Kong is shown as one of the best examples for an anti-corruption body. The ICAC adopts a three-pronged approach in fighting corruption, namely investigation, prevention and education through the Operations, Corruption Prevention and Community Relations Department. (Wong, 2003:1) This model, different from the one proposed for Turkey is collecting all types of functions into one single body.

The Operations Department is the investigative arm of ICAC and the largest Department. The Operations Department has developed, over recent years, a strategy to employ proactive investigation techniques to identify and prosecute instances of corruption, which might otherwise go unreported. The strategy includes the use of undercover operations and broader and more effective use of intelligence and information technologies. (Wong, 2003:1)

The main tasks of the Corruption Prevention Department are to reduce opportunities for corruption in government departments and public bodies, and to advise private sector organizations on corruption prevention. The Department conducts detailed studies of practices and procedures of public sector organizations and assists them in the effective implementation of corruption prevention recommendations. The Department also provides expeditious consultation services to public sector organizations when new procedures or policies are being formulated or when quick corruption prevention advice is called for. (Wong, 2003:2). Similar to this model, an anti-corruption body in Turkey could develop new policies and monitor existing strategies. As mentioned before Turkey has adopted two Action Plans however these documents should be updated regularly in line with national and global developments.

Finally, the Community Relations Department educates the public against corruption. Community education is conducted through mass media programmes and a network of regional offices. In 2004 there was an increase in the number of organizations from both the public and private sector seeking corruption prevention service from ICAC for advice to improve tendering, procurement, management systems and other corruption-prone areas. (ICAC, 2004: 9) Similar to this Department, regional offices could also be established throughout Turkey that could decentralize the work of the anti-corruption body and support increasing of public awareness and training activities.

According to a public survey in 1999; 99 % of the people surveyed have confidence in the effectiveness of ICAC. Another encouraging sign is that more than 90 % of the corruption reports that ICAC[45] received come directly from the public and two thirds of the complainants are willing to identify themselves. (Yeung, 2000: 6)

As regards European Countries, since early 1990s, Lithuania has put in place most of the important elements of an anticorruption legislative framework, including comprehensive bribery legislation, conflict of interest and asset declaration provisions. Since 1997 in particular, there has been intensive progress on the anti-corruption front, especially through the creation of the Special Investigation Service (SIS) in 1997 (the only truly independent anti-corruption agency in candidate countries), and the approval of a comprehensive National Anticorruption Strategy in January 2002. (Open Society Institute, 2002: 348)

The SIS has been designed as the main Lithuanian anti-corruption body to coordinate National Anti Corruption Programmes, to detect and prevent corruption offences and to ensure coordination of the anti corruption bodies measures between State bodies as well as externally with various professional groups, non-governmental organizations, the media and the society at large. (GRECO, 2002: 8) The SIS, which does not have "monopoly" with regard to the fight against corruption, has extensive cooperation with other law enforcement bodies such as the Police and, in particular, with the State Security Department. Following criticism concerning a lack of coordination of corruption cases, agreements between the SIS and other law enforcement bodies has been established under the supervision of the Prosecutor's Office. (GRECO, 2002:9)

According to the 2002 Regular Report of the Commission administrative capacity of SIS improved markedly and its relations with the civil society was developing. (European Commission, 2002b: 25) SIS has established a "hot line" (telephone service and an electronic mail system available to anyone who wishes to submit information to the Agency. Moreover, regular meetings are being organized with local authorities and non-governmental organizations. (GRECO, 2002: 9) This kind of information collection and communication channels could also be established for the anti-corruption body in Turkey. The relationship with the public is also important

[45] For more information on ICAC please see http://www.icac.org.hk

for laying down the foundation for the prevention function of an anti-corruption agency. The framework must provide for the involvement of a wide range of people and interests in the formulation of prevention policies and their execution. (Pope, 1999: 3)

International experience proves that only if good governance is guaranteed a single anti-corruption body can achieve its objectives. The main reasons for failures of anti-corruption bodies are lack of political will and resources, unrealistic expectations, inadequate laws and insufficient accountability. An anti-corruption body can only succeed if all other pillars of the integrity system are strengthened as well. Priorities may change from one country to another. But if one element is overlooked then another one might be overloaded with more expectations. For example creation of an Ombudsman could promote citizens' awareness as concerns their rights thus support the prevention tasks of the anti-corruption body. Similarly, an independent, impartial and well-informed judiciary will play a central role in the realization of an anti-corruption strategy. All in all, establishment of an anti-corruption body in Turkey will not succeed unless the judiciary, public service, media, civil society and all other actors are strengthened as well.

CHAPTER VI

CONCLUSION

The main aim of this thesis was to analyze the origins and scope of the anti-corruption policy in the EU. In relation to that, it was aimed at verifying whether this policy during the accession process has an impact on Turkey's anti-corruption strategy or not. In this context, first corruption has been examined as a unique phenomenon. Despite no common definition reached on corruption the thesis agrees on its universally accepted adverse effects. While causes of corruption may change from one country to another its costs are always the same: it harms economic development and growth and undermines equity and the rule of law.

Due to the globalization process corruption is no more a subject of national concern but also a primary interest for international organizations. More vulnerable business circles and more active civil society and public in general have pushed these organizations to take action. The study of this thesis that concentrated on the actions of the EU, OECD and Council of Europe has illustrated that the international community has for a long time excluded "passive corruption" and corruption in the private sector. However, in time rules and guidelines have covered all specific types of corrupt acts including passive corruption and illegal conducts in the private sector as well. The most important achievement of international action was to promote cooperation and coordination among the countries and follow-up compliance through monitoring mechanisms. However, the ultimate success of international efforts will depend on political commitment of nation states and appropriate enforcement mechanisms in place.

The EU has started to develop effective measures only after the economic Maastricht Treaty has initiated political integration through the adoption of new two pillars. The completion of the Single Market has created at the same time a border-free market for criminals. In addition to that, the "deepening and widening" of the Union forced the EU to define a common approach on corruption. Corruption was not only hampering the functioning of the Single Market but also the democratic principles on which the political integration was founded on. Furthermore

enlargement of the Union posed new risks mainly because of the weak institutional set up and vulnerable economies in the candidate countries.

The supranational feature of the Union action and different national legislations in this area made it difficult to produce and enforce binding rules. MSs were reluctant in sharing their national sovereignty in the area of corruption, which is considered as an area subject to national criminal laws. However, the failure of the Santer Commission, forced the next Commissions to take concrete steps with the aim of restoring its reputation. On the other hand the unpredicted rise of the Parliament as an initiator of anti-corruption measures pushed the Commission for a more active role in the area. The EU first has produced legal tools that were limited to budgetary concerns but then it has adopted a wider approach that now involves all kinds of corrupt acts independent from its effects to the budget. However, corruption is still tackled mainly from a criminal law perspective rather than setting it into a wider concept such as the Council of Europe.

The thesis attempted to make a comparison of actions taken at international level with those of the EU. In this respect the EU has been criticized due to its focus on criminal law, narrow approach at the beginning and lack of monitoring mechanism. However the study on the Union's anti-corruption policy being a part of the third pillar showed that the subject is still dealt as an intergovernmental issue. This means that in this area MSs are not ready to transfer their sovereignty to the Union. Therefore it cannot be expected from the EU to approach the problem from a civil law perspective as well, which is an issue of national interest. The narrow approach has tried to be broadened in parallel to the deepening of the Union. Finally no monitoring mechanism has been established to avoid any duplication particularly with the Council of Europe and OECD.

The thesis has looked into the Union's policy with a specific focus on its approach towards candidate countries. As mentioned before, financial and political risks posed by enlargement put corruption high on the agenda of the Commission. Although not explicitly stated in the Copenhagen Criteria, the adoption and implementation of the *acquis* requires a functioning and corruption-free public administration supported by strong political commitment. The comparative difference between levels of corruption between the EU former MSs and new MSs justifies the need for developing a specific approach.

Even though there are no formally adopted benchmarks due to different conditions and priorities in candidate countries a comparison of Regular Reports issued for each of the candidate countries figures out a “check-list” followed by the Commission. In addition to that, the Commission has published guidelines defining the elements necessary for an effective anti-corruption strategy in acceding, candidate and third countries. The Commission failed in terms of analyzing the causes and effects of corruption in candidate countries and therefore relied on national surveys or studies carried out by international organizations such as the TI and OECD. While the Commission is one of the best organizations in knowledge transfer to other countries it has to develop knowledge creation as well.

Based on the findings as concerns the specific approach towards candidate countries the thesis tried to identify areas where the Union policy proved effect on Turkey’s strategy. As an overall view, the accession process has created a major impact on legal and institutional frameworks in candidate countries. Especially, in the CEECs that are economies in transition have experienced a rapid transformation through external support particularly provided by the EU. In these countries totally new institutional mechanisms are put in place.

In countries like Turkey where political and economic institutions are functioning based on deep historical traditions and where the state is very powerful external pressure might not be influential. However, despite the strength of the state and deep-rooted traditions, the past shows that reforms on the functioning of the Turkish bureaucracy has always gained momentum once they were pushed by international organizations and Western countries. Since Turkey’s application for full membership in 1963, accession to the EU has always been one of the priorities in the government programmes.

The shift towards an open economy generated new opportunities for corrupt practices. The transition period accompanied with weak political figures and public institutions produced an environment vulnerable to corruption. Similar to other countries additional social and cultural causes have speeded up the growth of the problem. Public tolerance remained high until corruption started to be blamed as a cause of unemployment and high inflation particularly after the 2001 economic crisis. The timing of the economic collapse was very close to the strengthening of relations between the EU and Turkey. These two factors together put accession to

the EU and economic and political improvements on the electoral agenda of the political parties.

Thus the results of the last elections were largely determined by the annoyance of the public on corruption that was evident in almost all areas including the banking, media, construction, health and energy sectors. In addition to that, the accession to the EU was requiring a political and economic reform hence was directly meeting the expectations of the public in general and the business community. The requirements deriving from EU candidacy accompanied with existing economic and political shortcomings forced the government to put reforms in place.

The Copenhagen European Council in December 2002 decided that accession negotiations could be opened if Turkey met Copenhagen political criteria based on a decision to be taken in December 2004. This decision has pushed significant reforms in critical areas including anti-corruption. Constitutional reforms legislative packages adopted between 2001-2004 shows the motivation provided by the objective of EU membership. However, the positive opinion given by the Commission in its 2004 Regular Report slowed down the pace of actions.

At the beginning of the reform process political commitment was expressed through the adoption of the Action Plan for Enhancing Transparency and Good Governance in Turkey's Public Sector that was complemented by an Emergency Action Plan. Following the recommendations in the Regular Reports of the Commission, Turkey rapidly has adopted major international conventions in the area. In this respect, Turkey has sometimes been one of the first countries in signing international conventions.

Despite an extensive legislative anti-corruption framework the EU has constantly criticized weak enforcement. Within this respect, Turkey has been recommended to establish an anti-corruption body that should coordinate the day-to-day management of anti-corruption work. The thesis identified the discussions on an anti-corruption body as an area where the EU approach created resistance instead of change or improvement.

Corruption is a problem that cannot be tackled through single solutions. Therefore imposing ordinary measures and putting pressure on an institutional framework

might create contrary effects. Accordingly the Commission changed its wording in its last Regular Report and underlined the institutional weakness instead of urging for a certain solution. It is obvious that one single body cannot fight corruption by its own but needs to be supported through complementary actions. Continuous discussions on this subject may create the risk of overlooking other areas that need to be addressed as well. If a system will be shaped entirely dependent on a single "pillar" it will be vulnerable to collapse. Therefore anti-corruption strategies should adopt the widest approach by building a "national integrity system".

The establishment of an independent and permanent anti-corruption body cannot be a "magic bullet" for Turkey. Nevertheless it can address some shortcomings on the condition that an appropriate environment is guaranteed for the body. First political commitment needs to be ensured at the highest level. Second its mandate and functions need to be clarified. The purpose of creating such body will identify its tasks. Finally the body must be adequately resourced. Otherwise it may create further complexity, resistance and competition among other institution. Thus it should not replace investigative bodies or duplicate existing functions of other institutions.

The thesis through analyzing the legislative and institutional framework has identified gaps and areas where further improvement is necessary. Within this aspect, it has been concluded that an anti-corruption body in Turkey might overcome lack of cooperation and cooperation among institutions and competition due to the overlaps in distribution of tasks and authorities. It should be a complementary body dealing with implementation oversight and prevention tasks including coordination, policy development, raising of public awareness and training. The ultimate idea lying behind is to fill in the existing gap for a leadership role and provide for follow-up of existing strategies

All in all, the EU accession process accompanied with existing corruption allegations both for politicians and public officials have stimulated anti-corruption efforts in Turkey. The motivation of full membership pushed the government to adopt strategies, ratify international conventions, and introduce legislative amendments. The slow down in reforms after the positive opinion given in November 2004 shows how influential the accession process and the Union policy can be.

Other financial donors such as the IMF and the World Bank have also pushed some reforms in the country. Conditions were set for financial support in case of economic difficulties faced in the country. However relations with the EU are going beyond financial interests. Being a member of the Union will have a meaning of reaching European standards and values apart from economic prosperity. Thus EU motivation is more influential than other organizations' approach and recommendations provided for Turkey.

Corruption will definitely constitute one of the most challenging areas during the accession negotiations. The possible suspension of Romania's membership for one year due to shortcomings identified in Chapter JLS shows how much importance is devoted to corruption and similar matters. The surveys of TI show that Turkey's rank is closer to Bulgaria and Romania in comparison to the ten new MSs where higher control of corruption exists. In this respect Turkey has to institutionalize its anti-corruption efforts to implement the existing tools, involve the civil society and raise public awareness.

All in all, the thesis could prove areas where the EU influenced and motivated changes in Turkey. The lesson learned from the discussions on an anti-corruption body is that conditions put by international organizations might create resistance in a country. Every country has to identify its own remedies and should not concentrate only on one pillar of a strategy.

Although corruption can never be fully eliminated it can be controlled through a combination of ethical principles, legislative improvements and institutional reform. Despite the influence of the EU accession process on reforms the main driving force and initiative for reform has to come from inside. Outside factors can be motivation, encouragement and provide technical and financial support. But sustainable change will depend on the political will of the country and public support provided for the reforms. The activeness of the civil society and the media will keep the subject at the forefront of national attention. The speed of implementation of the already existing strategies will not only bring Turkey closer to the Union but it will also spread its positive effects into the economic, political and social conditions of the country.

REFERENCES

Adaman F., Çarkoğlu A. and Şenatalar, B. (2003b) Business' Perspective of the Causes of Corruption and Prevention.

Adaman F., Çarkoğlu A. and Şenatalar (2003a), B., Household view on the causes of corruption in Turkey and suggested preventive measures.

Adaman F., Çarkoğlu A. and Şenatalar (2004), A., Perception of Corruption in Local and Central Government.

Alirıza, B. (2001), Turkey's Crisis: Corruption at the Core, Turkey Update, CSIS, Washington.

Amundsen, I. (2000), Corruption Definitions and Concepts, Development Studies and Human Rights, Chr. Michelsen Institute, Bergen, Norway.

Asian Development Bank, (2004), Anti-Corruption Policies in Asia and the Pacific, The Legal and Institutional Frameworks for Fighting Corruption in Twenty-one Asian and Pacific Countries, Manila, Philippines.

Baran, Z. (2000), Corruption: the Turkish Challenge, Journal of International Affairs, 54, No.1, New York, pp.127-146.

Bayar, Y. (1979), Türk Kamu Yönetiminde Rüşvet, Amme İdaresi Dergisi, Cilt No. 12, Sayı 3, pp. 39-52.

Berkman, Ü. (1992), Bureaucracy and Bribery: a Conceptual Framework, Int'L. J. of Pub. Admin, (15) 6, pp. 1345-1368, Ankara.

Berkman, Ü. (1997) Corruption in Bureaucracy and Public Administration: are the Underdeveloped Countries more prone to Corruption? Political and Administrative Corruption, Institute of Public Administration for Turkey and the Middle East, Ankara.

Berkman, Ü. (1988), Yolsuzluğun Etkileri ve Sonuçları: Literatürdeki Görüşler ve Tartışmalar, A.Ü. Siyasal Bilgiler Fakültesi Dergisi, Vol. XLIII, No. 3-4, Ankara.

Bottelier, P. (1998), Corruption and Development, Remarks for International Symposium on the Prevention and Control of Financial Fraud, the World Bank Group.

Cardona, F. (2005) Structural Elements for Integrity in Public Governance Systems in EU Member States, Anti-Corruption Seminar organized by TEPAV, Ankara.

Chr. Michelsen Institute (2002), CMI Policy Brief, Development Studies and Human Rights, Vol.1, No.2., Bergen, Norway.

Council of Europe (1995), Programme of Action against Corruption adopted by the Committee of Ministers of the Council of Europe, GMC (96) 95.

Council of Europe (1997), Committee of Ministers Resolution 97 (24) on the Twenty Guiding Principles for the Fight Against Corruption, adopted by the Committee of Ministers.

Council of Europe (1999a), Criminal Law Convention on Corruption, European Treaty Series No.173.

Council of Europe (1999b), Explanatory Report to the Criminal Law Convention on Corruption.

Council of Europe (1999c), Civil Law Convention on Corruption, European Treaty Series No.174.

Council of Europe (1999d), Explanatory Report on the Civil Law Convention on Corruption.

Dinan, Desmond Ever Closer Union: An Introduction to European Integration, Second Edition, 1999, London

Eberlein, B. and Kerwer, D. (2004), New Governance in the European Union: A Theoretical Perspective, JCMS, Vol. 42, No. 1, UK, pp.121-142.

European Centre for Parliamentary Research and Documentation (ECPRD) (2001), Rules on Parliamentary Immunity in the European Parliament and the Member States of the European Union, Brussels.

European Parliament (1998), Measures to Prevent Corruption in EU Member States, Legal Affairs Series, JURI 101 EN, Luxembourg.

Goudie, A. W. and Stasavage, D. (1997) Corruption: the Issues, Technical Papers No. 122, OECD Deveolopment Centre.

Gopal, K. (1999),Out of Commission(ers),Pharmaceutical Executive, Vol.19,Issue 5.

Gray, C. W. and Kaufmann, D. (1998) Corruption and Development, Finance & Development.

GRECO (2002) Evaluation Report on Lithuania, First Evaluation Round, Adopted by GRECO at the 8th Plenary Meeting, 4-8 March 2002, Strasbourg.

Herzog, C. (2003,)Corruption and Limits of the State in the Ottoman Province of Baghdad during the 19th Century, Borderlands of the Ottoman Empire in the 19th and early 20th Centuries, the MIT Electronic Journal of Middle East Studies, Vol.3, pp. 36-43.

Hetzer, W. (2004), Corruption and Integration-Does the Expansion of the European Union Represent a Risk Factor?, European Journal of Crime, Criminal Law and Justice, Vol. 12/4, Netherlands, pp.301-320.

ICAC, 2004 Annual Report, Submitted to the Chief Executive of the Hong Kong Special Administrative Region in accordance with section 17 of the Independent Commission against Ordinance (Cap.204, Hong Kong.

Jain, K. A. (2001), Corruption: A Review, Journal of Economic Surveys, Vol. 15, No. 1, 2001.

Johnston, M. (1996), The search for definitions: the vitality of politics and the issue of corruption, UNESCO, UK.

Joint Action of 22 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on corruption in the private sector, (OJ L 358, 31.12.1998)

Kaufmann, D. (1997) Corruption: the Facts, Foreign Policy, Washington D.C.

Kestane D. (2002), Kamu Kesiminde İdari Kuruluşların Genel Görünümü ve İdari Yapıda Yeni Organizasyonlar olarak Bağımsız İdari Otoriteler (Üst Kurullar), Maliye Dergisi, No.139, pp. 27-50.

Langseth, P., Stapenhurst, R. and Pope J. (1997), the Role of a National Integrity System in Fighting Corruption, EDI Working Papers, World Bank, USA.

Mauro, P. (1997), Why Worry about Corruption?, Economic Issues No. 6., Washington D.C.

Meny, Y. (2001), 'Fin de siecle' corruption: change, crisis and shifting values, UNESCO, UK.

Metcalfe, L. (2001), More Green than Blue: Positioning the Governance White Paper, EUSA Review Forum: the Commission White Paper and European Governance, pp.3-8.

Miller, V. and Ware, R. (1999), the Resignation of the European Commission, Research Paper 99/32, UK.

OAS (1996), Inter-American Convention against Corruption, adopted at the third plenary session.

OECD (1997), OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, adopted by the Negotiating Conference.

OECD (2004), Directorate for Financial and Enterprise Affairs, Turkey: Phase I Review of implementation of the Convention and 1997 Recommendation.

Öğütçü, M. (2001) the Economics and Politics of Corruption: Fighting for a "Clean Government and Business in Turkey", paper presented at the 8th annual meeting of the International Executive Symposium, Poland.

Open Society Institute (2002), Monitoring the EU Accession Process: Corruption and Anti-corruption Policy.

Özsemerci, K. (2002), Türk Kamu Yönetiminde Yolsuzluklar, Nedenleri, Zararları ve Çözüm Önerileri, Ankara.

Peterson, J. (1997), the European Union: Pooled Sovereignty, Divided Accountability, Political Studies XLV, pp.559-578.

Pope J. (1999), the Need for, and Role of, an Independent Anti-Corruption Agency, Working paper prepared for TI.

Pope J. (2000), Confronting Corruption; the Elements of a National Integrity System, TI Source Book.

Pope, J. and Vogl, F. (2000), Making Anticorruption Agencies More Effective, Finance & Development, Vol. 37, No. 2.

Pujas, V. (2003), the European Anti-Fraud Office (OLAF): a European policy to fight against economic and financial fraud?, Journal of European Public Policy, 10:5, UK, pp. 778-797.

Reed, Q. (2002), Corruption and the EU Accession Process: Who is Better Prepared?, Keeping an Eye on Government: Independent Monitoring, Online Journal, EUMAP EU Monitoring and Advocacy Program, November 2002.

Romanian Government (2005), National Anti-Corruption Strategy 2005-2007.

Sağlam, M. (2005) Ethics in the Administration, Panel Discussion organized by Public Ethics Board, Ankara.

Scharpf, F. (2001), W., European Governance: Common Concerns vs. the Challenge of Diversity, MPIfG Working Paper 01/6, Köln, Germany.

Seger, A. (2004) Presentation on Specialized anti-corruption services-good practice in Europe, Anti-Corruption Seminar organized by TEPAV, Ankara

Stephenson, P. (2004), Specialized anti-corruption bodies-European standards and results of GRECO monitoring activities, Workshop organized by the European Commission, Ankara.

Tan, T. (2002), Bağımsız İdari Otoriteler veya Düzenleyici Kurullar, Amme İdaresi Dergisi, Cilt 35, Sayı 2, pp. 11-37.

Tanzi, V. (1998), Corruption around the World, IMF Staff Papers, Vol. 45, No.4.

T.C. Hükümeti (2003),T.C. 58 inci Hükümet Acil Eylem Planı.

T.C. Prime Ministry (2001), Action Plan for Enhancing Transparency and Good Governance in Turkey's Public Sector, adopted by Prime Ministry Circular No.2001/38,09.07.2001.

Thatcher M. (2002), Regulation after delegation: independent regulatory agencies in Europe, Journal of European Public Policy 9:6, pp. 954-972.

Topan, A. (2002), the Resignation of the Santer-Commission: the impact of 'trust' and 'reputation', European Integration online Papers (EioP), Vol. 6, No. 14.

Transparency International (2003), Comments on the European Commission Communication on" A Comprehensive EU Policy against Corruption", Brussels.

Turkish National Programme for the Adoption of the Acquis, Official Gazette 24 March 2001 No.24352.

Turkish National Programme for the Adoption of the Acquis, Official Gazette 24 July 2003, 25178.

Türkiye Büyük Millet Meclisi Başkanlığı (2003) Yolsuzlukların Sebeplerinin, Sosyal ve Ekonomik Boyutlarının Araştırılarak Alınması Gereken Önlemlerin Belirlenmesi Amacıyla Kurulan Meclis Araştırması Raporu.

United Nations (2003), UN Convention against Corruption, adopted by the General Assembly by resolution 58/4, Vienna.

United Nations Office on Drugs and Organised Crime (2004), the Global Programme against Corruption UN Anti-Corruption Tool Kit, 3rd Edition, Vienna.

United Nations Office on Drugs and Organised Crime (2005), Crime and Development in Africa Report.

Warner, M. C. (2003), Creating a Common Market for Fraud in the European Union, the Independent Review, V. VIII, No.2, Arizona, pp. 249-257.

Wincott, D., (2001) The White Paper, the Commission and the "Future of Europe" EUSA Review 14.

Wong, A. H. Y (2003) , Anti-Corruption Strategy of the Hong Kong Special Administrative Region of the People's Republic of China, Background paper to plenary speech 4th regional anti-corruption conference for Asia and the Pacific.

World Bank (1997), Helping Countries Combat Corruption the Role of the World Bank. Washington D.C.

Yeung, J. A. (2000), Fighting Corruption- the Hong Kong Experience, Presentation Paper for the Seminar on International Experiences on Good Governance and Fighting Corruption, Bankgok.

Relevant EU *Acquis*

Convention drawn up on the basis of Art. K.3 of the Treaty of the European Union, on the protection of the European Communities' financial interests (O.J. C 316/49 of 27/11/95, p. 0049-0057.

Council Act 97/C 195/01 of 26 May 1997 drawing up, on the basis of Article K.3 (2) (c) of the Treaty on European Union, the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the EU (OJ.C.195 of 25/06/1997).

Council of the EU (2005), Council and Commission Action Plan implementing the Hague Programme on freedom, security and justice in the European Union, Brussels.

Council of the EU (2001), Council Decision of 8 March 2001 on the principles, priorities, intermediate objectives and conditions contained in the Accession Partnership with the Republic of Turkey,(2001/235/EC) OJ L 85/13.

Council of the EU (2003), Council Decision of 19 May 2003 on the principles, intermediate objectives and conditions contained in the Accession Partnership with Turkey, OJ L 145/40, (2003/398/EC).

Council of the EU (1997a), Explanatory Report on the Convention on the Protection of the European Communities' Financial Interests, 26 May 1997, 97/C 191/01, *Official Journal C 191 , 23/06/1997 P. 0001 – 0010*

Council of the EU (1997b), Explanatory Report, on the Protocol to the Convention on the Protection of the European Communities' financial interests. (approved by the Council on 19 December 1997, 98/C 11/02).

Council of the EU (1999), Explanatory Report on the Second protocol to the Convention on the protection of the European Communities' financial interests, Official Journal C 91, 31.03.1999.

Council of the EU (1998), Explanatory Report on the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, text approved by the Council on 3 December 1998.

Council of the EU (1999), Presidency Conclusions, Tampere European Council.

Council of the EU (2004), Presidency Conclusions, the Hague Programme, Strengthening Freedom, Security and Justice in the European Union, Annex I, Brussels.

European Commission (1997), Communication from the Commission to the Council and the European Parliament on a Union policy against corruption, adopted by the Commission on COM (97) 192 final, Brussels.

European Commission (1998), Regular Report from the Commission on Turkey's Progress towards Accession, Brussels.

European Commission (2001), European Governance: A White Paper, COM (2001) 428. Brussels.

European Commission (2002a), 2002 Regular Report on Turkey's Progress towards Accession, SEC (2002) 1412, Brussels.

European Commission (2002b), 2002 Regular Report on Lithuania's Progress Towards Accession, COM (2002) 700 final, Brussels.

European Commission (2003a), Freedom, Security and Justice for all, Justice and Home Affairs in the European Union, Brussels.

European Commission (2003b), 2003 Regular Report on Turkey's progress towards accession, Brussels.

European Commission (2004a), Report from the Commission on European Governance, 2003-2004, Commission staff working document, SEC (2004) 1153.

European Commission (2004b), Programme against Corruption in Turkey, technical and administrative provisions for implementation, prepared by Council of Europe experts, Ankara.

European Commission (2004c), 2004 Regular Report on Turkey's progress towards accession, SEC (2004) 1201, Brussels.

European Commission (2005), Turkey 2005 Progress Report, COM (2005) 561 final, Brussels.

Protocol drawn up on the basis of art. K. 3 of the Treaty of the European Union, on the protection of the European Communities' financial interests (OJ C 313/2 of 23/10/96), p. 0002-0010.

Second Protocol, drawn up on the basis of Article K.3 of the treaty on European Union, to the Convention on the Protection of the European Communities' financial interests- Joint Declaration on Article 13 (2) - Commission Declaration on Article 7. Official Journal C 221, 19/07/1997 p. 0012 – 0022.

Treaty on European Union (consolidated text), Official Journal C 325 24, December 2002.

Treaty of Nice amending the Treaty on European Union, the Treaties Establishing the European Communities, Official Journal 80, 10 March 2001.

Treaty Establishing a Constitution for Europe, Official Journal C 310, 16 December 2004.