



Preamble & Ways to deal with Corruption Phenomena



Corruption **CORRUPTUS** & **CORRUMPERE**

- has always existed
- is one of the oldest crime & neglected for long time
- it affects all level of the society
- it is not an advantage as in the long run who had temporary benefit will have to pay back with the interest!!!
- affects negatively the overall national economy

Ways to deal with Corruption!

Corruption Criminal investigations tends to be large, complex and very expensive

CRIMINAL procedure that leads to:

evidence for criminal prosecutions will have to meet higher standards of reliability and probative value

REMEDIAL ACTIONS aiming at reducing or eliminate opportunities for corruption

Retraining of individuals & Restructuring of operations

DISCIPLINARY actions leading to:

Dismissal, demotion, transfer, etc.

CIVIL proceedings in which those directly affected seek to:

Recover the proceeds of corruption
Ask for Civil Damages;

80% of the cases is the STATE

ADMINISTRATIVE PROCEDURES, leading to possible

Fines, punishment, restitutions, orders & other

- Imprisonment
- Fines
- Restrictions
- Restrictions to exercise an activity for a nr. of years
- Orders
- Other punishment
- Confiscation of proceeds of crime



The conduct might simply NOT be a crime

The burden of proof in criminal prosecutions demands high standards because of the penal consequences involved. Therefore, there may NOT be sufficient evidence to support a criminal prosecution

Available evidence may not support prosecution.

Prosecution may not be in the public interest

In some cases, the conduct under examination may amount to a crime but the public interest is better served by some other course of action.

Criminal prosecutions may be either not possible or undesirable! – e.g.:



Corruption in general terms

Corruption is a general concept describing any organized, interdependent system *in which part of the system* is either not performing duties that was originally intended to, or performing them in an improper way, to the detriment of the system's original purpose.

Simply I do refer to *"the misuse of a public or private position for direct or indirect personal gain"*.



Corruption in simple terms

- in simple term it is an **agreement** between the public officials and a private citizen
- the agreement for the **Public Officials** consists in getting whatever form of payment from the private citizen
- the agreement for the **Private Citizen** consists in getting from the PO whatever functional activity of the PA in order to omit or delay, or to do something against the Public officer duties

Advantages

For the PO = Illicit economic income

For the PC = award a contract (public procurement) by cheating the public competition, delay in paying taxes, etc



"Grand" & "Petty" corruption



- **Distinction:**
 - Grand .. pervades the highest levels of national Governments;
 - Petty .. can involve:
 - the exchange of small amount of money;
 - the granting of minor favors by those seeking preferential treatment;
 - the employment of friends and relatives in minor positions (nepotism, cronyism, patronage, etc).
- **Difference:**
 - Grand .. Involves the corruption or distortion of the central functions of Government;
 - Petty .. develops and exist within the context of established governance and social frameworks



"Active" & "Passive" corruption



- **Basic Distinction:**
 - Active .. refers to the one *offering* or *paying* the bribes;
 - Passive .. refers to the one *receiving* the bribes;
- **Distinction in Criminal Law Terminology:**
 - Active .. includes the conduct where *payment and acceptance of bribes had taken place*;
 - Passive .. includes conducts where *bribes were offered but not taken or solicited but not paid*;



Favourable conditions for corruption



- **information deficits**
 - Lack of transparency and structure to monitor the phenomenon
 - Lack of freedom in speech and press
 - Lack of **proper vigilance** and effective countermeasures
- **Lack of government control over the accountability**
 - Absence of democracy or if present is dysfunctional
 - Lack of civic society and non-governmental organizations which monitor the government
 - Weak rule of law, regardless of the international legal tools
 - Weak judicial independence
 - Lacking protection of whistleblowers
- **opportunities and incentives**
 - Large, unsupervised public investments, combined with complex or arbitrary regulations and a lack of oversight
 - Sale of state property and privatization
 - *Poorly-paid government officials*
 - Lack of rotation in PA
- **social conditions**
 - Self-interested in social structure, with a tradition of nepotism and cronyism
 - Lack of Integrity rate & trust in Government
 - Lack of education among population

ETC.....ETC.....ETC



Lack of proper vigilance and effective countermeasures



respondeat superior & respondeat politicae

A form of ***respondeat politicae*** may reduce the incentives to collect bribes for use in the political process.

Under ***respondeat politicae***, the politician would be legally required to resign from office if any funds used to finance the candidate's campaign resulted from bribery or corruption.

(politicians would answer for the corruption of his or her campaign staff even if they were not aware of the irregularity carried out by a designated person).

Both ***respondeat superior*** and ***respondeat politicae*** point to expanding the legal definition of **complicity** in corruption offenses. In many corruption cases, colleagues of the corrupt official either passively participate or at least have *scienter* (guilty knowledge).



International Legislative Tools



- **United Nations instruments**
 - The United Nations Convention against Corruption with a significant expansion into the area of the **recovery of assets** illicitly transferred from one country to another
 - The United Nations Convention against Transnational Organized Crime
- **Organisation for Economic Co-operation and Development (OECD)**
 - OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions
- **Council of Europe**
 - Criminal & Civil Law Conventions on Corruption (1998 & 1999)
- **European Union**
 - Convention of the European Union on the Fight against Corruption involving Officials of the European Community or officials of Member States (1997)
- **Organization of American States (OAS)**
 - Inter-American Convention against Corruption (1996)
- the Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances of 1988 **for tracing, freezing, seizing and confiscating such assets or property**
- **Convention of Strasbourg 1959 - extradition**
- **Mutual assistance in criminal matters - cooperation**



The Anticorruption Commission (ACA)



What should ACA do?

- a) **Assess** the national phenomenon & **proposing** legal reforms;
- b) **Monitor** the implementation of the NAS & AP;
- c) Prevent potential **conflict of interests** by checking requests submitted by public officials holding more than a working positions;
- d) Centralize **asset declaration** so as to crosscheck information reported by those obliged to fill in the Asset Declarations;
- e) Receive notification of received **gifts** presented to whatsoever Public Official or Civil Servant;
- f) Overlook the **financing of political parties** by:
 - keeping records of donations, gifts and other services rendered to political actors
 - checking the annual financial reports of political actors
 - collecting reports on election campaign expenditures (political actors who participated in elections should be obliged to submit reports on costs afforded during the election campaign)
- g) conduct **administrative procedure either** ex officio or upon complaints lodged by citizens;
- h) issue **administrative measures** in cases of violations of the law
- i) assess/control and publicize on internet **donation form** submitted to ACA by political parties and in case of criminal irregularities report to Prosecutor's Office
- j) support all Public Institutions to develop individual **integrity plans**
- k) Support the development of **program to protect whistleblowers & victims** of crime even by refunding the damages in order to stimulate them to report the crime event to the police;
- l) program **civil and ethic lessons** on anticorruption in schools, universities, public administration, etc;
- m) convoy the **message through the media** in order to awaken public opinion to corruption problems;
- n) develop **guidelines** and ad-hoc **training for Public Officials** by emphasizing codes of conducts, ethics and awareness



What power should have the ACA ?



- a) Power to acquire from Political actor all documents and information needed for performing established duties and competencies. **The failure to comply with these obligations should represent an offence;**
- b) Power to acquire from all State Institutions, banks and natural or legal persons financing political actors whatsoever information that might serve the Agency;
- c) Power and independency to report criminal irregularities directly to the Prosecutor's Office;
- d) Power to initiate administrative procedure and inflict sanctions;
- e) Accessibility to national information systems to retrieve data serving to spot out irregularities, crosscheck declaration of Asset, donation and financing to political parties, etc;



How to counteract effectively the increasing corruption phenomenon?



- **Brain Storming** *(by having all key stakeholders involved)*
- **National Survey** (public, judiciary & victims “interviews & review desks”)
- **Statistical Survey** (LEA, JA, Universities & Nat. Bank– “evaluation of case studies”)
- **Analysis of the numerous International Legal Instruments;**
- **Analysis of the problem** *(Why – Where – Who – When)*
 - Good & bad practice of the PA ... **HOW?**Evaluation of the Work Processes to highlight vulnerabilities.
 - Weak points (lack or inefficiency of law, training, transparency, funds, mechanisms, publicity, ADM sanctions, promotion, rotations, code of conducts, procedures, political will; difficulty to collect evidence etc.....)
 - Evaluation of the Work Processes
 - Hypothetical solutions



Before taking actions....



The competent National Authorities need to:

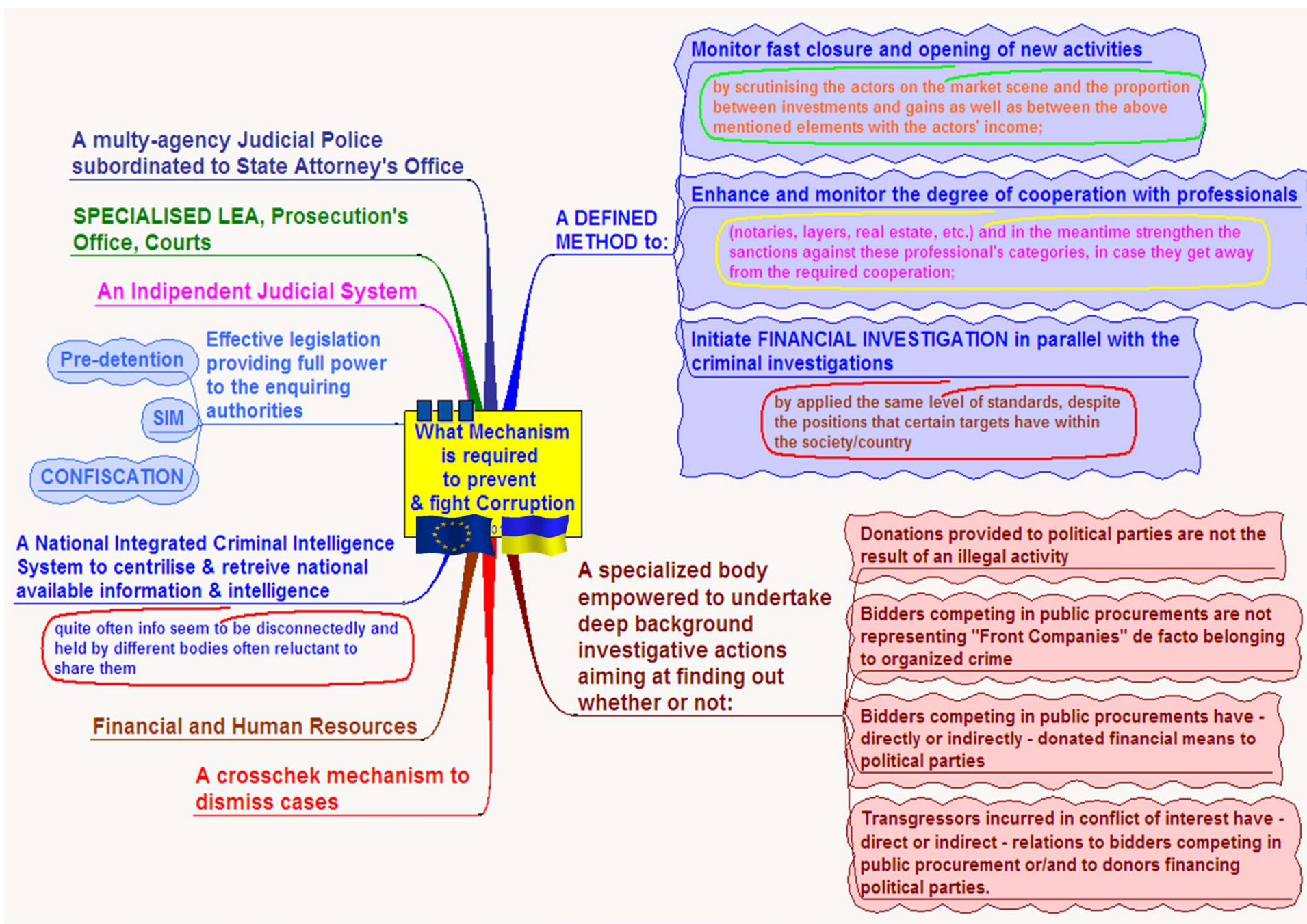
- have a clear overview of the corruption phenomenon and to which extend it affects negatively the country..... by figuring out the reasons.... & why some geographical areas or public institutions are representing the major threat **No legislation or no translation of the legislation in practical procedures!!!**
- know on who to relay on for undertaking effective measures (Governmental Institution, civil society, NGO, other countries support, experts and international organizations such as EU, UN, etc.)
- **OVERALL RESULT:** Meticulous, accurate and deep national and local **Assessment** for implementing strategies to be **fact-based**



What are the actions to be taken?



- Risk Assessments
- National Anticorruption Programme, including
 - Priorities & reference to grand corruption
 - The achievement of realistic goals & sequences with time lines
 - Measurements & performance indicators
 - Possibilities of adjusting strategies and the means to be used to achieve the final goals
 - Adoption of **Preventive & Repressive** measures
 - Who is responsible of doing what;
- PID, Action & Project Plans for each institution and measures to be taken
- Establishment of a National Authority **overlooking & monitoring** the implementation of the Programme with continuous **coordination** and legislative **proposal** powers





What would be the main Prevention Measures?



- Implementation of new or Amendment of legislations, including ADM Sanction;
- Publicity campagne related to the new measures;
- Training on how to apply effectively the legislation (*LEA & JA*);
- Disclosures of assets and liabilities by public officials & registration of gifts & external employment activities;
- Establishment of:
 - Transparency;
 - the Authority to monitor public sector contracts;
 - griping mechanisms for procurement process;
 - Integrity pacts (*contracts including sanctions and remedies*) ;
 - Result-Based-Management (RBM) mechanisms;
 - procedures to incentive & improve culture & motivations;
 - public complaints mechanisms and a Social Control Mechanisms
- Increasing **Public Access to Information** as a powerful mechanism of **accountability**, enabling the civil society to **oversees the State**;
- Mobilize civil society through public education and awareness-raising;
- Training of the media in order to arise integrity, independency and credibility;
- **etc. etc.**



Repression Measures



Corruption investigations tends to be large, complex and expensive, thus there must be an efficient use of **recourses** (*qualified HR, modern equipments & budget*).

- key elements for the investigations are:
 - **integrity, credibility** and **transparency**, which often relies on the good relationship with media who publicise it. **WHY....** It assures that **witness** will be encouraged to report.
 - **Security** of investigations and investigators to **prevent leakages of information and safeguard physical evidence**
 - **Discretion** is also a critical issue
 - **Professionalism** particularly with regard to international **financial investigations** & international cooperation
 - **Capability** of using special electronic surveillance tools
 - **International cooperation...** knowledge of international legislative tools & organizations that can help.



What would be the main repression measures?



- ❑ Implement the existing legal international instrument
- ❑ Involve the political bodies, if necessary with the media, in order to persuade them to support investigation even with resources
- ❑ Improve the procedural codes by giving full investigation authority to the LEA (*undercover, interception including internet and fax, GPS, video means, bank documentations, etc*)
- ❑ Organise and deliver practical training in order to fill up lack of expertise in fighting corruption particularly in seeking out illegal funds
- ❑ Benefit of the civil society that might be vital to the success of police operations
- ❑ Protect, involve & remunerate VICTIMS willing to cooperate with LEA
- ❑ Involve confidential sources to gather valuable data to fight corruption



Investigation & Prosecution



- ❑ **Initiate an investigation (LEA)**
 - gather of primary data (indicators of corruption, such as living beyond one's means)
 - involvement of the JA at the beginning of the case
 - gather further data to be transformed in evidence with special investigations methods
 - trace the asset by running **financial investigations**
 - request to the JA coercive measures

- ❑ **Initiate the Prosecution (JA)**
 - interview the arrested suspected individuals
 - order further investigation to gather clear evidence
 - cross match the information
 - interact with other countries to possibly **trace & recover the illicit asset diverted abroad**
 - prosecute the suspects for reaching the conviction



Special Investigation



- ❑ Immediate, long term & wide range wire tapping
- ❑ Use of specialised investigation **officers** experienced at collecting evidence and using devices such as: wall contact or direction microphone, video camera, local & vehicles tapping instruments, internet monitoring, GPS, Key Lockers, acquire IP addresses and passwords through magnetic readers, etc.
- ❑ Full competence for **financial investigations** aiming at tracing, freezing, seizing & confiscating the assets or property deriving from corruption (*link with Money Laundering*)
- ❑ Full **digital access** for consulting local, provincial, regional & national registers showing the assets of the suspects being investigated (*land, properties, tax declaration, etc.*)



Special investigation Tools

- GPS – KL - Panic Alarm ...
- Surveillance & Observation
- Undercover Officers
- Control delivery
- Wire Tapping
- Financial trace and analysis
- Bitmap decoding
- Confidence Buy(s)
- And other available investigative techniques



Thank you



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