TRANSPARENCY INTERNATIONAL
the global coalition against corruption

Liaison Office to the EU (Brussels)
Rue Breydel 40,
1040 Brussels, Belgium
Tel: +32-(0)2-235 86 44
Email: jLyle@transparency.org
http://www.transparencyinternational.eu

Research Paper by Justin Lyle

Anti-Corruption Conditions in the EU Accession Process

This research paper was written in the framework of the CIMAP Project - Establishing Comparative Indicator-based Monitoring of Anti-Corruption Progress in EU candidate and potential candidate countries, including Kosovo. CIMAP started in February 2010 and is a regional project, involving Albania, Kosovo, Macedonia and Turkey, financially supported by the European Commission (EuropeAid) under the IPA 2008 Programme – Civil Society Facility, Support to Partnership Actions "Fight against Corruption, Organised crime and Trafficking", Ref.: EuropeAid/128286/C/ACT/MULTI.

CONTENTS

1. Introduction 3

2. Emergence of the Anti-Corruption Enlargement Agenda from 1993 4
- a) Development of Political Criteria
- b) Formal and Informal Anti-Corruption Conditions 5

3. Intensified Conditionality towards 2004 Enlargement 6
- a) Rising Importance of Anti-Corruption through CEE Accession 6
- b) Articulation and Monitoring of Implementation of Conditions 6
- c) Adoption of EC Comprehensive Anti-Corruption Policy (Ten Principles 2003) 7
- d) EC Lessons Learned from 2004 Enlargement round 8

4. Reinforced Conditionality for Bulgaria and Romania in 2007 9
- a) Cooperation and Verification Mechanism and Introduction of Benchmarks 9
- b) Specific Benchmarks applied under Mechanism 10

5. Current Conditions Applied to Candidates and Potential Candidates 11

6. Remaining Areas for Improvement 13

7. Development of a Consolidated List of Anti-Corruption Standards 14

Annex 1: Consolidated List of Conditions 16
Annex 2: List of Anti-Corruption Instruments covering EU Member States 21

1. Introduction

The anti-corruption standards applied to Candidate and Potential Candidate countries in the EU Enlargement Accession process have in recent years gone considerably further than those in place for all previous rounds of Accession for member states of the EU. The Accession process has brought the issues of anti-corruption and good governance reform to the EU agenda, and it has served as a testing ground for instruments and activities unprecedented at the EU level.

The scale of the problem of corruption in the countries of Central and Eastern Europe and the Balkans which have applied for EU membership or opened intensive relations with the EU since the 1990s has forced the EU to tackle corruption seriously in the Accession process, with implications for the existing and new member states.

It was only with the applications of the Central and Eastern European countries for membership that anti-corruption began to play a more prominent role in pre-accession policy and in EU Accession Negotiations. However, even the Accession process for the countries that joined in 2004 did not ensure adequate measures to tackle corruption before accession.

The real shift of attention by the EU towards focusing on anti-corruption took place during the final approach of Bulgaria and Romania to the EU, and with the introduction of the post-accession monitoring mechanism for both countries after their joining in 2007, which marked a further intensification of anti-corruption conditionality.

The lessons of these Enlargement rounds are now being applied by the European Commission in its anti-corruption policy towards the current Candidate and Potential Candidate countries.

If similarly rigorous monitoring of anti-corruption efforts as that applied to Bulgaria and Romania had been ensured during the accession process of the “old” member states, and indeed if consistent anti-corruption post-accession monitoring of such efforts had been achieved within the EU, crises such as the present one in Greece might well have been avoided, or at least reduced in scale. The application of anti-corruption instruments towards the “old” EU member states still falls far below the standards developed through the Accession process.

As corruption is recognised as serious crime in the EU, the EU should at the very least review the implementation and enforcement by EU member states of its existing anti-corruption instruments covering member states (a list is provided in Annex 2). In the short-term, the EU should provide concrete anti-corruption recommendations to, and highlight anti-corruption risks in, every EU member state based on the expertise of existing anti-corruption evaluation and monitoring mechanisms (i.e. GRECO, OECD, UNODC and civil society). In the medium term, the EU should develop a comprehensive EU-wide Anti-Corruption Strategy covering all EU policy areas.

This research paper shows the evolution of anti-corruption standards applied by the EU in the Accession Process over time, examines the approaches to monitoring of them, and identifies the standards being applied to the current Candidate and Potential Candidate countries in the areas of Public Administration, Judiciary, Political Institutions and Anti-Corruption in general.

2. Emergence of Anti-Corruption Enlargement Agenda from 1993

a) Development of Political Criteria

A European Commission document of 1992[1] had specified only European identity, democratic status and respect for human rights, alongside a competitive market economy, as the criteria for EU membership.

The 1993 Copenhagen European Council introduced an explicit focus on political reform in the Accession process, leading to the identification of the so-called Copenhagen Criteria, which remain until now the main basis for anti-corruption and good governance reforms required in the accession process.[2]

These detailed as conditions for EU membership:

1. Stability of institutions guaranteeing democracy, the rule of law, human rights, and protection of minorities (the political criteria);
2. Economic criteria (market economy, competitive ability);
3. Ability to meet the obligations of membership (full implementation of the acquis communautaire).[3]

The political criteria were a condition for opening accession negotiations, whereas the economic criteria and ability to meet the obligations of membership were to be fulfilled before accession itself. In practice, fulfilment of political criteria beyond the minimum level required for the opening of accession negotiations continues alongside the other reforms throughout the accession negotiations, but is not regulated by any specific acquis provisions. Rather than determining precise conditions, this Council meeting in effect put in place a general mandate for the future elaboration of more and more detailed conditions along the lines of the basic Criteria listed above, and in doing so made it clear that Candidates would be required to fulfil more rigorous obligations than those borne by the member states in several policy areas, including anti-corruption.[4] For a comprehensive summary of how the EU Accession process works please see note.[5]

Beyond the adoption of legislation to align with the EU acquis, each of the new member states was additionally expected to ensure effective implementation through administrative and judicial structures; indeed the Madrid European Council of 1995[6] had laid particular emphasis on the need for effectiveness of the judiciary and the civil service of these

[1] Commission report, Europe and the Challenge of Enlargement (24 June 1992)http://www.ena.lu/commission_report_europe_challenge_enlargement_24_june_1992-2-18323
[2] http://ec.europa.eu/enlargement/the-policy/conditions-for-enlargement/index_en.htm
[3] http://ec.europa.eu/enlargement/the-policy/conditions-for-enlargement/index_en.htm
[4] Szarek-Mason, P. The European Union's Fight Against Corruption:The Evolving Policy Towards Member States and Candidate Countries, Cambridge Studies in European Law and Policy, 2010. p.190
[5] http://ec.europa.eu/enlargement/how-does-it-work/index_en.htm
[6] Conclusions of the Madrid European Council: extract concerning enlargement (15 and 16 December 1995) http://www.ena.lu/conclusions_madrid_european_council_extract_concerning_enlargement_december_1995-2-18433

countries. This requirement from the EU level was both beyond all previous Enlargement requirements and unprecedented in the member states.

b) Formal and Informal Anti-Corruption Conditions

The principal aims of conditionality in the Enlargement process have been to ensure that necessary conditions are in place for the proper functioning of the EU after countries' accession, to reassure member states and public opinion that this indeed will be the case,[7] and to encourage good governance and democratic reform.[8]

The conditions being applied to candidates in the area of anti-corruption and good governance increasingly go beyond the requirements of the rather limited anti-corruption acquis. An important part of the current anti-corruption standards towards accession falls within an additional category of democratic conditionality for membership on the basis of the Copenhagen Criteria, geared towards guiding the countries through their transitions towards EU standards in democracy and the rule of law.

The European Commission's 1997 Opinions[9] on the applications of the Central and Eastern European Countries for membership had introduced for the first time an explicit reference to corruption, within the democracy and rule of law requirements. There was however no explanation of the necessary components of the countries' strategies against corruption or of the extent of corruption that could be tolerated.

When it was defining the scope of the Justice and Home Affairs Acquis in 1998, the Council incorporated international conventions (CoE Criminal and Civil Law Conventions on Corruption; OECD Convention) which had not yet been ratified by all EU member states into the acquis, and subsequently pushed for their implementation by candidates before accession.[10]

This resulted in the creation of an Accession Acquis that went beyond anti-corruption and good governance requirements fulfilled by existing member states.

The failure to implement fully aspects of the acquis into national legislation following accession could result in new member states being taken to the Court of Justice, and thus candidates' alignment of national legislation with this Acquis constituted the formal dimension of Accession conditionality. The more detailed requirements articulated in partnership agreements and annual Regular/Progress Reports, on the other hand, constituted an informal dimension that was at once both more precise and more at the discretion of the EU institutions.

The anti-corruption conditions for membership and the means by which they should be met have never been compiled in a single comprehensive EU document, and are instead subject to continuous elaboration in various EU documents, in agreements signed with each country and in the annual Regular/Progress Reports. The conditions therefore constitute an evolving body of principles rather than a single stable list, and priorities are

[7] Szarek-Mason, p.135
[8] http://ec.europa.eu/enlargement/the-policy/conditions-for-enlargement/index_en.htm
[9] Agenda 2000 of the European Commission (III): Summary and conclusions of the opinions of the Commission concerning the applications for accession (15 July 1997). http://www.ena.lu/agenda_2000_european_commission_summary_conclusions_opinions_concerning_applications_accession_july_1997-2-18535
[10] Grabbe, H. (1999), A Partnership for Accession? The Implications of EU Conditionality for the Central and East European Applicants, EUI Working Paper 99/12, San Domenico di Fiesole (FI): European University Institute, p.7.

continuously adjusted to correspond to the specific circumstances and requirements of the country in question, advancements in the EU acquis and the development of international standards and best practice. The rigour with which this emerging body of conditions is finally applied in practice remains to some extent at the discretion of the institutions of the EU.

3. Intensified Conditionality towards 2004 Enlargement

a) Rising Importance of Anti-Corruption through CEE Accession

The EU recognised for the first time in relation to the Central and Eastern European countries that corruption in the candidates was so widespread a phenomenon as to be a barrier to implementation of the requirements outlined in the Copenhagen Criteria.[11] Potential problem areas included the economic conditions, the ability to implement measures through the administration, and the proper operation of the free market. At the same time, corruption was figuring larger on the international agenda, with the adoption in 1997 of the OECD Convention and the Council of Europe's publication of its Twenty Guiding Principles for tackling corruption, in the same year, and emerging civil society organisations such as Transparency International with national anti-corruption watchdog organisations in Candidate and Potential candidate countries.

b) Articulation and EC Monitoring of Implementation of Conditions

The Pre-Accession Strategy launched for the CEE candidates in 1994[12] had brought EU financial and technical assistance targeted towards accession priority areas, and conditional on the demonstration of political will by candidates. The Strategy had also established the following legal and political instruments to monitor the candidates progress in reforms: the Europe Agreements (1991-6), which provided the legal framework and established the principle of democratic equality in the Accession processes of respective candidates; the Commission's 1997 Opinions on the applications of the CEE countries for membership. These were the first assessment of reforms and were uniform in format for each country,[13] but they fell short of making explicit mention of corruption.

The Accession Partnerships (1998) brought together all of the membership criteria and were subject to annual updates. As Council instruments they additionally included the competence areas of member states, including anti-corruption, and were later (2002) used to articulate reform priorities such as comprehensive anti-corruption strategies, codes of ethics for civil servants, and completion of the legal framework for the fight against corruption. The Candidates were obliged to draw up National Programmes for the Adoption of the Acquis, including timetables and national strategies. Through these Partnerships, the

[11] Interview with European Commission, May 2010.
[12] Conclusions of the Essen European Council: extract on relations with the CEECs (9-10 December 1994).http://www.ena.lu/conclusions_essen_european_council_extract_relations_ceecs_9_10_december_1994-2-18283
[13] Szarek-Mason p.146.

EU became the main external driver of reforms in the candidates, as EU financial assistance was increasingly linked to particular reform priorities.[14]

From 1998 onwards, the candidates' progress was assessed annually in the Commission's Regular/Progress Reports, which were the Commission's main means of articulating membership conditions, and the pace of a Candidate's accession process itself was linked to the findings of the Reports. These annual reports are prepared by desk officers in the Commission on the basis of information gained through assessment missions with the participation of experts from EU member states, as well as using input provided by civil society organisations and other stakeholders.

Although anti-corruption and good-governance reform appeared on the agenda at this point and the acquis for the candidates in the Justice and Home Affairs area included significant anti-corruption aspects, the policy framework and monitoring mechanisms highlighted above were not intensively enough focused on anti-corruption to ensure strong reform in this area. Subsequent sections explore the establishment of anti-corruption conditions as more robust criteria for membership.

c) Adoption of EC Comprehensive Anti-Corruption Policy

Although the obligatory alignment of the national legislation of the candidate countries with the Accession *acquis* had taken place, and the reform of the judiciary and civil services of the candidates were to some extent advanced as a result of the EU strategy and reporting framework introduced to set priorities and assess progress on a regular basis, implementation in practice of anti-corruption and good governance measures remained limited.

While the 2004 Enlargement was the first in which candidates were obliged to demonstrate the "ability to assume the obligations of membership", including in the area of anti-corruption and good governance, the effective achievement of such reforms was hampered by the fact that there was almost no acquis or models to guide the candidates in designing national programmes to tackle corruption, as these were generally absent in the member states.

Equally, the approach of the EU in formulating and applying the informal conditions to guide reforms was neither comprehensive nor consistent. The EU did not conduct a systematic evaluation of the causes of corruption or the nature of the phenomenon. Although the Regular Reports did, taken together, include a wide-ranging framework for anti-corruption and good governance reforms, the step to its realisation in practice by the candidates was, if not entirely ignored, certainly not adequately guided or supported.

Just a year before the accession took place, in May 2003, the Commission did provide the candidates with "Ten Principles for Improving the Fight Against Corruption in Acceding, Candidate and other Third Countries".[15] This document remains an important point of reference for the Commission's anti-corruption priority setting. It is considered a particularly rigorous text, and strongly reflects the period of its preparation. It is not clear that the same stringent language would be adopted by the Council under present political circumstances.[16] These principles, in abbreviated form, appear below:

---

[14] Grabbe, p.2.

[15] Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee on a Comprehensive EU Policy against Corruption, see p.25. http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2003:0317:FIN:EN:PDF

[16] Interview with European Commission, May 2010.

European Commission's Ten Principles for Comprehensive AC Framework (May, 2003)

1. A clear stance against corruption from leaders and decision-makers; consultative design and implementation of national strategies against corruption including both preventive and repressive measures
2. Full alignment with EU acquis; ratification and implementation of all main international anti-corruption instruments to which they are party (UN, CoE, OECD Conventions)
3. Implementation of anti-corruption laws by competent and visible anti-corruption bodies; development of targeted investigative techniques, statistics and indicators; strengthened role of law enforcement bodies
4. Objective and merit-based recruitment to public office, with adequate salaries and social rights; obligation on civil servants to disclose their assets; sensitive posts subject to rotation
5. Apply quality management tools and auditing and monitoring standards to promote integrity, accountability and transparency in public administration (eg. Common Assessment Framework of EU Heads of Public Administrations and the Strasbourg Resolution)
6. Development and monitoring of codes of conduct in the public sector
7. Establish clear rules on whistle-blowing in both public and private sectors, and reporting
8. Increase public intolerance of corruption through awareness raising campaigns in media and training; engage civil society in preventing and fighting the problem
9. Clear and transparent rules on political party financing and external financial control of parties
10. Develop private sector incentives to refrain from corrupt practices, such as codes of conduct and "white lists" for integer companies.

d) EC Lessons Learned from 2004 Round

There was awareness at the EU that implementation of anti-corruption reforms, beyond the formal alignment of national legislation with provisions of the acquis and international conventions, had been inadequate in the CEE countries. Indeed following the accession of the countries the pace of implementation of reforms slowed considerably.

The approach of the EU had not been comprehensive or systematic enough in providing guidance to the candidates in how to undertake reforms towards accession, or rigorous enough in monitoring implementation of reforms. The articulation of the comprehensive anti-corruption framework (cited above) in 2003, though an extremely positive step in the EU's approach to corruption, arrived simply too late to be included in national anti-

corruption strategies or effectively monitored, and therefore had limited practical impact towards the 2004 accession process.[17]

There was no detailed monitoring for the entrants of 2004 either during the pre-accession process or after accession, and once they became members of the EU the tools available to the EU institutions to monitor anti-corruption efforts were reduced still further to the very limited ones applicable to EU member states, covering only EU Structural and Agricultural funds in a limited way.

Although the Treaty of Accession provided the EU with formal safeguard clauses, which for three years after accession made it possible for new member states to be punitively excluded from certain internal market legislation or refused the benefits of mutual recognition in Justice and Home Affairs, their application was never a realistic political possibility at the time.[18]

In retrospect it is clear that anti-corruption and good governance conditions had been focused too much on the formal compliance of legislation with the Accession Acquis, and that implementation of reform in practice had not been (a) specified and demanded in an adequately detailed way or (b) monitored with adequate rigour.

4. Reinforced Conditionality for Bulgaria and Romania in 2007

Although Bulgaria and Romania had opened negotiations alongside the other CEE countries, due to inadequate reform progress, particularly in anti-corruption, their accession process had been delayed behind the pace of the other candidates for accession.

In response to clear remaining inadequacies in the two countries, the Commission introduced more intensive monitoring for Bulgaria and Romania. The signing in 2005 of a Treaty of Accession with Bulgaria and Romania laid out their accession for 2007, but also provided for:

1. The possibility of postponement in the case of inadequate reform, establishing corruption as a possible obstacle to accession.
2. Introduction of a post-accession monitoring mechanism

In the meantime, the Commission's annual reporting and recommendation-making continued for both countries following the conclusion of their Accession Negotiations in December 2004 right up to accession itself, and Romania in particular was obliged to:

1. Intensify efforts against corruption; particularly high-level corruption
2. Commission an independent audit of the results and impact of AC strategy.

a) Cooperation and Verification Mechanism and Introduction of Benchmarks

While the EU had already in 2005 identified serious shortcomings in Bulgaria and Romania's preparedness, it was in the immediate approach to the accession of these

[17] Interview with European Commission, May 2010.
[18] Interview with European Commission, May 2010.

countries that the scale of the problem with corruption was fully understood.[19] This realisation was a catalyst for a renewed intensification of conditionality and monitoring.

In December 2006 the Commission for the first time set the more specific "Benchmarks" to be monitored in the post-accession Cooperation and Verification Mechanism, covering reforms in the areas of the judiciary, corruption and organised crime in the two countries. The introduction of these benchmarks reflected a more deliberate and explicit focus on particular aspects of reform, and revealed a concerted effort by the Commission to demonstrate detailed and rigorous monitoring of particular reforms; an element that had been absent in the monitoring framework of the 2004 Enlargement.

An additional feature of the monitoring approach applied towards Bulgaria and Romania was the introduction for the first time of so-called "Case-based Monitoring". This involves monitoring the progress of particular high-level corruption cases that have appeared in the media. Particular cases are traced through the responsible institutions by experts from the EU member states during their assessment missions. This approach attempts to reduce the exclusive reliance on paper-based assessment methods, and can help to identify bottlenecks halting the proper investigation and prosecution of cases.

When Bulgaria and Romania joined the EU in January 2007, the EU decided for the first time to link post-accession monitoring with concrete sanctions. The EU identified three areas where safeguard measures can be invoked under Bulgaria and Romania's EU Accession Treaties: economic, internal market and judicial reforms. The safeguard clause can be invoked up to three years (this was extended later) after accession and could result for example in food export bans or cuts to EU funds in areas such as agriculture and "structural" policies. With anti-corruption reform faltering since EU accession in January 2007, the European Union decided in June 2008 to invoke these "safeguard clauses" against Bulgaria, which resulted in the freeze and ultimately loss of hundreds of millions of EU funds. For the first time the weak performance of anti-corruption and judicial reform in combination with ongoing corruption scandals led to a concrete penalty[20] with the loss of EU funds.

The introduction of the more specific benchmarks in the Cooperation and Verification Mechanism set a precedent of more rigorous monitoring standards which has been taken forward by the Commission in its current dealings with candidate and potential candidate countries.

b) Specific Benchmarks applied under Mechanism

The benchmarks set for Bulgaria[21] were:

1. Adopt constitutional amendments removing any ambiguity regarding the independence and accountability of the judicial system.
2. Ensure a more transparent and efficient judicial process by adopting and implementing a new judicial system act and the new civil procedure code. Report on

[19] Interview with European Commission, May 2010.
[20] TI- EU Office press release: http://www.transparency.org/news_room/latest_news/press_releases/2009/2009_02_12_bulgaria_romania_anti_corruption
[21] http://ec.europa.eu/enlargement/pdf/bulgaria/bg_accompanying_measures_1206_en.pdf

the impact of these new laws and of the penal and administrative procedure code, notably on the pre-trial phase.

3. Continue the reform of the judiciary in order to enhance professionalism, accountability and efficiency. Evaluate the impact of this reform and publish the results annually.
4. Conduct and report on professional, non-partisan investigations into allegations of high-level corruption. Report internal inspections of public institutions and on the publication of assets of high-level officials.
5. Take further measures to prevent and fight corruption, in particular at the borders and within local government.
6. Implement a strategy to fight organised crime, focussing on serious crime, money laundering as well as on the systematic confiscation of assets of criminals. Report on new and ongoing investigations, indictments and convictions in these areas.

The benchmarks set for Romania[22] were:

1. Ensure a more transparent, and efficient judicial process notably by enhancing the capacity and accountability of the Superior Council of Magistracy. Report and monitor the impact of the new civil and penal procedures codes.
2. Establish, as foreseen, an integrity agency with responsibilities for verifying assets, incompatibilities and potential conflicts of interest, and for issuing mandatory decisions on the basis of which dissuasive sanctions can be taken.
3. Building on progress already made, continue to conduct professional, non-partisan investigations into allegations of high-level corruption.
4. Take further measures to prevent and fight against corruption, in particular within the local government.

5. Current Conditions Applied to Candidates and Potential Candidates

Corruption is no less a problem in the current candidate and potential candidate countries than it was in many of the countries that joined the EU in 2004 and 2007, and equally as it is to a certain extent in some of the "old" member states. The EU instruments currently in place reflect the ongoing efforts on the part of the European Commission to take onboard the lessons learned from the shortcomings of reforms in previous Enlargements.

The key Lessons Learned by the European Commission were above all (a) that anti-corruption reforms need to be initiated earlier in the process towards the EU, including before the opening of Accession negotiations, and (b) that for effective implementation of reforms more precise conditions need to be specified and their implementation and enforcement needs to be monitored in a more rigorous way.[23]

[22] http://ec.europa.eu/enlargement/pdf/romania/ro_accompanying_measures_1206_en.pdf
[23] Interview with European Commission, May 2010.

In particular, it is clear that Benchmarking of particular requirements that are assessed in the annual Progress Reports, is in place for the current candidates and potential candidates.

As in the previous Accession negotiations, the acquis to be fulfilled by Candidates for Accession is divided into chapters (e.g. Chapter 23 Judiciary and Fundamental Rights; Chapter 24 Justice Freedom and Security), as they appear in the annual Progress Reports. In current accession negotiations particular requirements within these Chapters of the acquis are now specified to the national authorities in benchmarks. These benchmarks are not, however, as a rule made publicly available.

Fulfilment by the candidates of certain preliminary benchmarks is required for the formal opening of a particular chapter for negotiation; while on the other hand no chapter is "closed" until each of the benchmarks within it has been met. Similarly, no single chapter can be finally closed until every chapter, including the one which includes anti-corruption, can be closed.

A similar benchmarking structure has been applied in the anti-corruption conditionality of the EU Visa Liberalisation Dialogues with the Potential Candidate countries of the Western Balkans.

In response to a sense that the conditions applied to Bulgaria and Romania through post-accession monitoring were more severe than those applied to the 2004 joiners, the European Commission Directorate General Enlargement is now making a particular effort to ensure fair and equal treatment of all candidate and potential candidate countries. Conditions are still necessarily tailor-made to meet the requirements of each country, however, and it must in any case be expected that political factors at the EU level will continue to play some role in influencing the relative stringency of measures applied.

Regrettably, there is a recent trend of backtracking on the achievements won through raising the profile of anti-corruption and the effective anti-corruption monitoring in the Enlargement process. In March 2010 Commissioner for Enlargement, Stefan Füle, stated that Croatia had made excellent progress in recent months and that there would be no need for post-accession monitoring in Croatia. [24] It appears that the focus is shifting away from having an effective and streamlined anti-corruption post-accession monitoring mechanism (i.e. similar to the CVM for Bulgaria and Romania with concrete benchmarks) towards an anti-corruption approach attempting to achieve full implementation of requirements before accession, on the basis of the same "benchmark" system, for the closing of particular negotiating chapters. It is not realistic to expect full implementation in the likely short time period before the country's accession, and without the possibility of applying sanctions after accession there will be no way to prevent backtracking or stagnation in the continued implementation and enforcement of anti-corruption reforms after accession. There is a risk in this approach that the standard will fall back below that achieved during and after the enlargement round in 2007, particularly in terms of lasting implementation.

Please see section 7 and Annex 1 for details of the consolidated list of anti-corruption standards.

[24] http://www.euractiv.com/en/print/enlargement/enlargement-commissioner-i-will-make-sure-croatia-joins-without-monitoring-news-395250

6. Remaining areas for Improvement

- The elaboration of anti-corruption and good governance standards to be applied to candidates and potential candidates is an ongoing, living process. The establishment of a more detailed and measurable indicator framework for anti-corruption reforms would be an important step towards ensuring more effective implementation. Effective, irreversible implementation of reforms in practice, beyond mere legal alignment, remains the key area for improvement.
- The focus of EU anti-corruption policy towards candidates has been too narrowly focused on formal legal compliance with the Accession acquis; not enough attention has been paid to the development of the broader institutional and socio-economic conditions required for sustainable anti-corruption reforms.
- While the benchmarking system and EU accession documents such as Accession Partnerships and Progress Reports have demonstrated some attention to the preventive aspects of anti-corruption, the heavy criminal law emphasis of the acquis-focused conditionality, reflected again in the prioritisation of investigation and prosecution of high-level political corruption in the Bulgaria and Romania benchmarks, has continued to obscure attention from more deeply-rooted reform initiatives.
- The benchmarks constitute instructions for reform actions, but incorporate no measurable indicator mechanism for assessing their practical impact on the fight against corruption and development of good governance.
- Insufficient stakeholder consultation in both the design of reforms and the process of reform implementation and monitoring have undermined their impact. More intensive discussion involving civil society, private-sector, media and other local stakeholders would strengthen the deep-rooted local ownership needed for sustainable reform. Anti-corruption policy is too sensitive an issue to be left to national governmental or inter-governmental scrutiny alone.
- The EU Delegations in the respective countries should play a vital role in advancing local stakeholder participation in setting funding programme priorities, as well as in facilitating the watchdog and monitoring role of local civil society organisations for genuine implementation of reforms.
- The large gap between standards applied during the Accession process and those applicable to EU member states needs to be addressed; both to ensure the credibility of the EU as a standard setter, and to achieve sustainability of the reforms undertaken in the Accession process. If similarly rigorous monitoring of anti-corruption efforts had been ensured during the accession process of the "Old" member states, and indeed if consistent anti-corruption monitoring of such efforts had been achieved within the EU, crises such as the present one in Greece might well have been avoided, or at least reduced in scale. The application of anti-corruption instruments towards the "Old" EU member states still falls far below the standards developed through the Accession process.
- As corruption is recognised as serious crime in the EU, the EU should at least review the implementation and enforcement by EU member states of its existing EU anti-corruption instruments (a list is provided in Annex 2). In the short-term, the EU should provide concrete anti-corruption recommendations to and highlight anti-corruption risks in every EU member state based on the expertise of existing anti-corruption evaluation and monitoring mechanisms (i.e. GRECO, OECD, UNODC

and civil society). In the medium term, the EU should develop a comprehensive EU-wide Anti-Corruption Strategy covering all EU policy areas.

7. Transparency International Approach: Development of a Consolidated List of Anti-Corruption Standards

Since 2001 Transparency International has, at the request of the European Commission, provided advice on progress made in the fight against corruption in the different candidate countries, in the form of an input[25] into the Commission's annual civil society consultations on the state of preparedness of acceding countries. The TI-EU liaison office feeds expertise and in-depth knowledge from the field work of TI national chapters in all Candidate and Potential Candidate countries on specific questions into the Enlargement policy debate, as well as engaging a wide variety of Brussels-based stakeholders to raise important anti-corruption issues to the EU policy agenda and to advocate for better targeted use of EU funds in programmes in this area.

While the European Commission certainly draws on the same set of standards in setting the anti-corruption priorities for each of the countries on the path towards EU membership,[26] until now no such list has been collected and provided for public consumption. The list of anti-corruption and good governance standards covering Public Administration, the Judiciary, Political Institutions and Anti-Corruption in General, located in Annex 1 of this report, is intended to serve as a basis for the preparation by Transparency International of an indicator framework covering reforms in these areas. The list has been assembled by the researcher on the basis of both (a) a detailed review of the documentation regulating the reforms to be undertaken by Candidate and Potential Candidate Countries towards EU membership (listed below) and (b) several informal interviews with Commission Officials in DG Enlargement and DG JLS.

The documents reviewed were:

1. The sections of the Screening Report (Croatia) detailing the content of requirements in the respective chapters of the EU acquis communautaire relevant to anti-corruption, particularly in relation to the sectors of public administration, judiciary, and political institutions.[27]
2. The Accession Partnerships concluded with Macedonia and Croatia in February 2008 and the current revised Partnership with Turkey, of January 2006. These establish the framework of reforms to be undertaken by the candidate countries towards accession.
3. The European Partnerships, concluded with the current Potential Candidates in February 2008. These establish the basic framework of reforms to be undertaken by the potential candidates.
4. The European Commission's annual Progress Reports for all of the Candidates and Potential Candidates (2007-2009).

[25] http://transparency.org/regional_pages/europe_central_asia/brussels_office/eu_enlargement
[26] Interview with European Commission, May 2010.
[27] The screening reports identify the state of preparedness of a Candidate at the formal opening of Accession Negotiations. For present purposes, the sections detaling the content of the acquis itself, rather than information referring specifically to Croatia's preparedness, have been reviewed.

Based on a review of all of these documents and on interviews with the European Commission, the listed common standards for reforms relate to (a) Public Administration (b) Judiciary (c) Political Institutions and (d) Anti-Corruption in general.

The information relevant to these areas in the documents is spread across various sections and sub-sections, including the core sections "Political Criteria" and "Ability to Fulfil the Obligations of Membership" (alignment with the Acquis), on the one hand, and across the subsections dedicated to "Democracy", "Public Administration", "Judiciary", "Public Procurement", "Financial Control", and "Anti-Corruption", on the other.

Conditions relating to Political Institutions in particular are covered only in a limited way in the documents, as this area falls within the Political Criteria rather than the formal acquis, and requirements are therefore articulated in a less systematic and more limited way. The dedicated Judiciary and Fundamental Rights Chapter (23) of the acquis incorporates some aspects of political institution reform. The consolidated list also includes an "Anti-Corruption" section, which comprises material of cross-cutting relevance. These standards are not listed comprehensively in any of the documents reviewed; instead each document covers particular reform standards in relation to the specific context of the country in question. As a result, the standards that appear in the consolidated list represent an amalgamation of the various aspects of a particular reform priority covered by the respective country documents (Accession Partnerships; European Partnerships, etc.). As a result of this fragmentary nature of the information in each document, the standards drawn from the documents are referenced to the relevant set of documents, rather than to a single document referring to a particular country. There is in some areas necessarily considerable overlap across sections, as well as across the various documents considered; indeed the majority of standards appear in some (generally fragmentary) form in each of the texts reviewed. Please find the consolidated list in annex 1.

From a civil society perspective, it is regrettable that the negotiations towards EU membership remain formally an intergovernmental matter, meaning that important accession process documents, including specific benchmarks applied in particular assessment missions, and government responses to acquis questionnaires (in which Candidates detail reforms undertaken) are confidential documents and are not generally made available for public scrutiny.[28] This leaves issues such as the stringency of final application of conditions at the confidential discretion of the EU institutions. The list of standards below should thus be regarded as comprehensive guidance on the areas that are assessed in varying degrees of intensity by the European Commission, but not as a definite or entirely consistently applied framework. Inevitably, the specific aspects of the particular national context in question have an important impact on the application of conditions.

[28] Publication of these confidential, intergovernmental documents is at the discretion of the particular country. In some cases countries have chosen to publish these documents, in others not.

Annex 1: Consolidated List of Anti-Corruption and Good Governance Standards Applied to Candidate and Potential Candidate Countries

Public Administration

- Alignment with relevant acquis and principles on public administration (separation from politics; openness and transparency)[29]
- Equipment of ministry or department with adequate resources to coordinate public administration reform[30]
- Reform programme or strategy, complemented with corresponding action plan, covering central and local levels, ensuring coherence of objectives, budget, allocation of responsibilities[31]
- Adequate administrative capacity, at central and local levels[32]
- Adequate administrative capacity to programme and manage IPA funds[33]
- Mechanisms to achieve adoption and implementation of the following legislation:[34]
  - Legislation defining structure of executive, tasks of ministries, decision-making process and relations between executive and public administration;
  - Legislation defining organisation and functioning of central and local administrations and the division of competences between them;
  - Legislation on budgeting, accounting, financial management and control, internal and external audit, public procurement;
  - Legislation on administrative procedures and legal redress, and relations with citizens.
- Regular international exchange of best practice in public administration reform[35]
- Structure with adequate resources and authority for civil service management[36]
- Objective, merit-based selection criteria and career system for civil servants, including bonuses[37]
- Ethics rules and codes of conduct for civil servants; effective implementation[38]
- Development and implementation of general strategy on training for civil servants[39]
- Financial management, internal control and internal audit systems at central and local levels[40]
- Effective implementation of legislation on declaration of assets[41]
- Effective implementation of legislation on protection of whistleblowers.[42]
- Effective implementation of legislation on access to information[43]

---

[29] Public Administration is not covered by a particular chapter of the EU acquis, (excepting Public Procurement aspects, below). For more information on EU principles of Public Administration see: http://www.sigmaweb.org/dataoecd/26/30/36972467.pdf
[30] Accession Partnerships of Croatia, Macedonia, Turkey (links below)
[31] Accession Partnerships of Croatia, Macedonia, Turkey (links below)
[32] Accession Partnerships of Croatia, Macedonia, Turkey (links below)
[33] Accession Partnerships of Croatia, Macedonia, Turkey (links below)
[34] Interview with European Commission, May 2010.
[35] Interview with European Commission, May 2010.
[36] Interview with European Commission, May 2010.
[37] Accession Partnerships of Croatia, Macedonia, Turkey (links below)
[38] Accession Partnerships of Croatia, Macedonia, Turkey (links below)
[39] Accession Partnerships of Croatia, Macedonia, Turkey (links below)
[40] Interview with European Commission, May 2010.
[41] Interview with European Commission, May 2010.
[42] Interview with European Commission, May 2010.

- Promotion of active civil society participation[44]
- E-government initiatives[45]
- Implementation of acquis Chapter 5 concerning Public Procurement[46] (award of public contracts, and remedies).[47]
- Public Procurement legislation and strategy, with adequate monitoring by an efficient independent public procurement oversight body, with sufficient follow-up to irregularities, sufficient financial control and parliamentary oversight; as well as sufficient enforcement mechanisms.[48]
- Adequate investigation and criminal prosecution of procurement-related offences.[49]

Judiciary

Implementation of the acquis concerning principles for the judiciary,[50] including the following:

- Independent and Impartial Judiciary
- Courts established by Law
- No discrimination in appointment procedure of judges
- Decision-making of Judiciary Free of Influence from Executive or Legislature
- Judges must act impartially and appear to do so
- Conditions of tenure of judges must be established by law
- Grounds for disciplinary action against of judges limited and defined in law
- Judiciary must have sufficient means to operate effectively
- High ethical standards to be respected by judges
- Council of Europe (CoE) Committee of Ministers Recommendation no. R (94) 12 on Independence, Efficiency and the Role of Judges

Standards articulated in the other Accession process documents

- Effective Strategy for the judiciary, covering national, regional and local levels, and supported by an action plan detailing resources and timeframe.[51]
- Objective, merit-based appointment and career development of judges and prosecutors, guaranteed by an independent appointing body which is independent of government and parliament.[52]
- Objective and transparent criteria for entry to relevant judicial academies.[53]
- Transparent assessment procedures for vetting and re-appointments.[54]

---

[43] European Partnerships of Potential Candidates (links below)
[44] Interview with European Commission, May 2010.
[45] Interview with European Commission, May 2010.
[46] Contents of Acquis, Chapter 5 Public Procurement, Screening Report on Croatia: http://ec.europa.eu/enlargement/pdf/croatia/screening_reports/screening_report_05_hr_internet_en.pdf
[47] For comprehensive list of Directives relating to Public Procurement, see: http://ec.europa.eu/internal_market/publicprocurement/legislation_en.htm).
[48] Accession Partnerships of Croatia, Macedonia, Turkey (links below)
[49] European Partnerships (potential candidate countries, links below)
[50] Contents of Acquis, Chapter 23 Judiciary and Fundamental Rights, Screeing Report on Croatia: http://ec.europa.eu/enlargement/pdf/croatia/screening_reports/screening_report_23_hr_internet_en.pdf
[51] Interview with European Commission, May 2010.
[52] Accession Partnerships of Croatia, Macedonia, Turkey (links below)
[53] Interview with European Commission, May 2010.
[54] Interview with European Commission, May 2010.

- Disciplining and dismissal of judges and prosecutors overseen by an independent judicial body, without political interference.[55]
- Clear definition of behaviour constituting misconduct, existence of an appeal procedure for dismissed officials.[56]
- Sufficient independence of judges from political influence, perhaps with independent judicial council responsible for appointments, elected in transparent fashion.[57]
- Independence of courts from higher court institutions, such as Supreme Court.[58]
- Independence of prosecutors from external influence and internal influence within judiciary.[59]
- Clear definition of roles of different institutions of the judicial system.[60]
- Independent regulatory and supervisory agency[61]
- Allocation of cases on basis of objective criteria, perhaps by random assignment.[62]
- Adequate guaranteed salary, structured career progression in the judiciary.[63]
- Systematic training provided through independent body[64]
- Adequate cooperation between judiciary and police[65]
- Engagement of relevant stakeholders[66]
- Adequate human resources to support judges and prosecutors in menial functions.[67]
- Citizens' awareness raising of access to justice, through information campaigns.[68]
- Introduction of modern information technology systems[69]
- Adequate legislation and resources in place for witness protection, adequate enforcement[70]

Political Institutions

- Free and fair elections; central electoral commission providing adequate oversight and redress[71]
- Electoral code in line with Venice Commission recommendations[72]
- Effective implementation of laws on political party financing and election campaign financing, providing for declarations of funding and assets; assessed by independent body with due competence.[73]

---

[55] Current EU Accession Partnerships of Croatia, Macedonia, Turkey (links below)
[56] Interview with European Commission, May 2010.
[57] Interview with European Commission, May 2010.
[58] Interview with European Commission, May 2010.
[59] Interview with European Commission, May 2010.
[60] Interview with European Commission, May 2010.
[61] Accession Partnerships of Croatia, Macedonia, Turkey (links below)
[62] Accession Partnerships of Croatia, Macedonia, Turkey (links below)
[63] European Partnerships of Potential Candidates (links below)
[64] Accession Partnerships of Croatia, Macedonia, Turkey (links below)
[65] European Partnerships of Potential Candidates (links below)
[66] Interview with European Commission, May 2010.
[67] Accession Partnerships of Croatia, Macedonia, Turkey (links below)
[68] Interview with European Commission, May 2010.
[69] Accession Partnerships of Croatia, Macedonia, Turkey (links below)
[70] European Partnerships (potential candidate countries, links below)
[71] Interview with European Commission, May 2010.
[72] European Partnerships (potential candidate countries, links below); see Venice Commission documents on elections etc. at: http://www.venice.coe.int/site/main/Elections_referendums_E.asp).

- Absence of excessive immunities for MPs and other officials[74]
- Commitment of government, parliament and public administration to fight corruption[75]
- Provision of adequate resources to parliament to function effectively[76]
- Legal framework in line with CoE, UN and OECD Conventions[77]
- Investigation and Prosecution of high-level corruption cases free of political influence; cooperation between police and prosecution services; sufficient information sharing between bodies; sufficient equipment and staff[78]
- Ethics rules and codes of conduct for politicians[79]
- Effective implementation of a law on Conflict of Interest, ensuring officials make asset declarations; assessment of asset declarations by an independent body; follow up on suspicious declarations.[80]

Anti-Corruption in General

Implementation of acquis specifically relevant to corruption,[81] including:

- 1995 Convention on Protection of EC Financial Interests[82]
- 1997 Convention on the Fight against Corruption involving officials of EC or member states
- Council Framework Decision on Combating Corruption in the Private Sector[83]
- Strong High-level political commitment to tackling corruption
- Develop and improve investigative tools
- Allocated specialised staff to the fight against corruption
- Pursue training and specialisation of anti-corruption staff
- Implement strategies and legislation effectively
- Full alignment with relevant international instruments

Standards articulated in the other Accession process documents:

- Implementation and enforcement of legal framework for tackling corruption, including through use of adequate statistics[84]

[73] European Partnerships (potential candidate countries, links below)
[74] Interview with European Commission, May 2010.
[75] Interview with European Commission, May 2010.
[76] Accession Partnerships of Croatia, Macedonia, Turkey (links below)
[77] Accession Partnerships of Croatia, Macedonia, Turkey (links below)
[78] Accession Partnerships of Croatia, Macedonia, Turkey (links below)
[79] Accession Partnerships of Croatia, Macedonia, Turkey (links below)
[80] Accession Partnerships of Croatia, Macedonia, Turkey (links below)
[81] Contents of Acquis, Chapter 23 Judiciary and Fundamental Rights, Screeing Report on Croatia: http://ec.europa.eu/enlargement/pdf/croatia/screening_reports/screening_report_23_hr_internet_en.pdf
[82] See for additional information on legislation and explanations:
http://ec.europa.eu/justice_home/doc_centre/crime/economic/doc_crime_economic_en.htm
http://ec.europa.eu/dgs/olaf/legal/index_en.html
http://europa.eu/legislation_summaries/fight_against_fraud/protecting_european_communitys_financial_interests/l33019_en.htm
[83] See for explanation:
http://europa.eu/legislation_summaries/fight_against_fraud/fight_against_corruption/l33308_en.htm
[84] Accession Partnerships of Croatia, Macedonia, Turkey (links below)

- Comprehensive anti-corruption Strategy and Action Plan detailing resources and timeline for its implementation, as well as coordination between relevant authorities. Efficient monitoring of strategy's implementation[85]
- Demonstration of coordinated and proactive efforts to prevent, detect and prosecute corruption, especially at high-level, but also in relevant law enforcement agencies[86]
- Establishment of an Anti-Corruption agency with sufficient budget and staff, clear responsibilities, and sufficient competence for monitoring activities etc.[87]
- Establishment of supreme audit institution with adequate resources to conduct public external audits, reporting to Parliament, and with its independence established in law[88]
- Implementation of GRECO recommendations and other international standards[89]
- Effective implementation of a law on Conflict of Interest, ensuring officials make asset declarations; assessment of asset declarations by an independent body; follow up on suspicious declarations[90]
- Establishment of Public Prosecutor's Office, with adequate capacities[91]
- Investigators, Inspection boards, use of special investigative measures[92]
- Legal obligation for public officials and civil servants to submit asset declarations, and effective implementation[93]
- Effective implementation of legislation providing for whistleblower protection[94]
- Conducting of public awareness campaigns on corruption[95]
- Regular consultation of civil society[96]
- Enforcement of anti-money laundering legislation in terms of prevention, convictions, confiscations, seizures and freezing assets.[97]

Documents cited in Consolidated List of Anti-Corruption Conditions[98]:

For general contents of Accession Acquis in relevant areas:

Screening Report (Croatia) Chapter 5: Public Procurement

http://ec.europa.eu/enlargement/pdf/croatia/screening_reports/screening_report_05_hr_internet_en.pdf

Screening Report (Croatia) Chapter 23: Judiciary and Fundamental Rights

http://ec.europa.eu/enlargement/pdf/croatia/screening_reports/screening_report_23_hr_internet_en.pdf

---

[85] European Partnerships of Potential Candidates (links below)
[86] Accession Partnerships of Croatia, Macedonia, Turkey (links below)
[87] European Partnerships of Potential Candidates (links below)
[88] Accession Partnerships of Croatia, Macedonia, Turkey (links below)
[89] Accession Partnerships of Croatia, Macedonia, Turkey (links below)
[90] European Partnerships of Potential Candidates (links below)
[91] Interview with European Commission, May 2010.
[92] Interview with European Commission, May 2010.
[93] Accession Partnerships of Croatia, Macedonia, Turkey (links below)
[94] European Partnerships of Potential Candidates (links below)
[95] Accession Partnerships of Croatia, Macedonia, Turkey (links below)
[96] Interview with European Commission, May 2010.
[97] European Partnerships of Potential Candidates (links below)
[98] The Commission's annual Progress Reports, although reviewed, have not been cited, as each of the standards expressed in these is stated more clearly in the Accession and European Partnerships, cited above.

For Accession standards expressed in Partnerships:
Accession Partnerships (Croatia, Former Yugoslav Republic of Macedonia, Turkey):
Croatia:
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:042:0051:01:EN:HTML
Former Yugoslav Republic of Macedonia:
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:080:0032:01:EN:HTML
Turkey:
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:051:0004:01:EN:HTML

European Partnerships (Potential Candidates)
Albania:
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:080:0001:01:EN:HTML
Bosnia and Herzegovina:
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:080:0018:01:EN:HTML
Montenegro:
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2007:020:0016:01:EN:HTML
Serbia and Kosovo:
http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2008:080:0046:01:EN:HTML

Annex 2: List of Anti-Corruption Instruments Covering EU Member States

Scope	Anti-Corruption Instruments	Monitoring Mechanism
Global Convention	UN Convention against Corruption (UNCAC)	Decision about the UNCAC Review Mechanism was taken in 2009
Global Convention	UN Convention against Transnational Organized Crime (UNTOC)	Weak review mechanism based on questionnaires, low response rate
Sectored Convention	OECD: Convention on the Bribery of Foreign Public Officials in International Business Transactions	Strong OECD peer review mechanism as well as civil society monitoring (TI)
Sectored Instrument	OECD: Revised Recommendation on Combating Bribery in International Business Transactions	Strong OECD peer review mechanism as well as civil society monitoring (TI)
Regional Instrument	Council of Europe Criminal Law Convention. (1999) and additional protocol on corruption	Group of States against Corruption (GRECO) peer review mechanism in 44 countries including the EU Member States
Regional Instrument	Council of Europe Civil Law Convention (1999)	GRECO peer review mechanism in 44 countries including the EU Member States, monitoring process has not started yet
Regional Instrument	Council of Europe: Resolution (97) 24: Twenty Guiding Principles for the Fight against Corruption. Recommendation No. R (2003) 4 on common rules against corruption in the funding of political	GRECO peer review mechanism in 44 countries including the EU Member States

	parties and electoral campaigns Recommendation No. R (2000) 10 on codes of conduct for public officials and Model code of conduct for public officials (monitoring process has not started yet)	
EU Instrument	Convention on Protection of the European Communities' Financial Interests, 1995	EC Reports in 2004 and 2008
EU Instrument	Regulation 2988/95/EC on the protection of European Communities financial interests, 1995	No monitoring mechanism
EU Instrument	Protocol to the PIF Convention, adopted on 27 September 1996; Second Protocol to the PIF Convention, 1997;	EC Reports in 2004 and 2008
EU Instrument	Convention on the Fight against Corruption involving officials of the European Communities or officials of MS of the EU, adopted in May 1997	No monitoring mechanism (but partly covered in EC reports in 2004 and 2008)
EU Instrument	Framework Decision 2003/568/JHA on combating corruption in the private sector, adopted by Council in 2003.	EC Review Report in 2007 (private sector corruption)
EU Instrument	Bulgaria: Commission Decision 13/12/2006 Romania: Commission Decision 13/12/2006	Verification Mechanism: EC Monitoring for Bulgaria and Romania