

# Organised Crime and Corruption: two sides of the same coin

Transparency International Liaison Office to the EU (Dr. Janina Berg, LL.M)

Organised crime (OC) and corruption often go hand-in-hand. Both present a common and growing threat to the security of European citizens. They affect the functioning of democratic institutions, the private sector and as such the European economy.<sup>1</sup>

**What is corruption?** Transparency International defines corruption as the abuse of entrusted power for private gain.  
([www.transparency.org/about\\_us](http://www.transparency.org/about_us)).

## **I. EU-relevant legislation on organised crime and corruption exists but EU policy development requires more attention**

As a regional organisation, the EU is a State Party to both the UN Convention against Transnational Crime (UNTOC) and the UN Convention against Corruption (UNCAC). While the EU has established its own instruments to tackle corruption,<sup>2</sup> the Council of Europe's Criminal Law Convention on Corruption is open for signature to the EU.<sup>3</sup> On the policy level, the fight against OC has been declared an EU priority until 2014.<sup>4</sup> More recently, the European Commission (EC) has adopted several Communications that may also carry the potential to tackle corruption in the context of OC.<sup>5</sup> An EC proposal to revise the existing EU legal framework on confiscation and asset recovery is currently underway.<sup>6</sup>

## **II. Linking organised crime and corruption**

The link between organised crime and corruption in the EU is a simple one. Corruption is, broadly speaking, beneficial for European criminal networks that operate trans-nationally, as it can serve as an enabler and a perfect vehicle to carry out criminal activity. At the same time, such activities undermine EU citizens' fundamental rights and safety, the capacity and efficacy of the economy and democratic institutions in the EU.

### **1. Politics: organised crime and corruption**

While the collusion between politicians and OC networks could be opportunistic or *ad hoc* (e.g. by embezzling public funds), OC networks may also utilise corruption to

---

<sup>1</sup> This paper builds upon material published by Transparency International UK (Defence and Security Programme).

<sup>2</sup> This includes the Convention on the protection of financial interest (1995) and the Convention against corruption involving officials (1997), both of which make little reference to the link between OC and corruption. For more information, See: [http://ec.europa.eu/home-affairs/doc\\_centre/crime/crime\\_corruption\\_en.htm](http://ec.europa.eu/home-affairs/doc_centre/crime/crime_corruption_en.htm).

<sup>3</sup> <http://conventions.coe.int/treaty/Commun/QueVoulezVous.asp?NT=173&CL=ENG>.

<sup>4</sup> COM(2010) 673 final (EU Internal Security Strategy).

<sup>5</sup> See, for instance, COM(2011) 293 final (on the protection of the EU's financial interests by criminal law and administrative investigation); COM(2011) 573 final (towards an EU Criminal Policy); COM(2011) 308 final ('Fighting Corruption in the EU').

<sup>6</sup> The proposal will allow more third party confiscation and extended confiscation, and that courts are able to effectively enforce confiscation orders in the EU, confiscate criminal and criminally tainted assets and fully recover the corresponding value.

infiltrate the political system directly and systemically. Such risks, of course, do not inevitably translate into corrupt practices, but lapses or gaps in integrity systems can allow this to happen. For example, the absence of robust, well-enforced campaign financing regulations severely increases the likelihood of state capture of the political process by OC networks.<sup>7</sup> Political parties depend to a large degree on external funding sources, which introduces corruption risks into the system. As a result, campaign funds may be provided by criminal groups, to be “reciprocated” through the awarding of contracts, extension of patronage, or alteration and/or passage of legislation.

Criminal organisations may also be well-placed to “secure” votes from the population, exchanging it for political favours or protection. This dynamic could be directly observed in Sicily during the 1990s.<sup>8</sup> It is estimated that between 40 and 75 percent of the Christian Democrat deputies between 1950 and 1992 were overtly supported by the Cosa Nostra, one of the principal OC networks operating in Italy. More recently, in 2007, investigations were launched against eighteen of the fifty regional councilors of Calabria following allegations of “barter votes” and involvement in mafia associations. A further nine councilors were under investigation for other crimes.<sup>9</sup> Perhaps most strikingly, former Italian PM Andreotti allegedly transformed his administration into a “permanent agency providing services to Cosa Nostra” in exchange for substantial electoral support.<sup>10</sup>

## **2. Private sector: organised crime and corruption**

Corruption and OC also intersect within the private sector and what appears to be legitimate business, typically in order to produce, procure, traffic, or distribute illegal goods and services.<sup>11</sup> For instance, managers of cigarette, clothing, or pharmaceutical factories may be bribed in order to orchestrate “second shift production” of goods destined for the illicit market. Similarly, security staff at sea ports and airports, typically employed by private companies, may be persuaded to facilitate the transport of illegal goods, while corrupt gas station managers or employees may facilitate the distribution of smuggled oil. Consequently, transportation, private security, and construction industries are particularly popular bridges between corruption and OC.<sup>12</sup> Money-laundering operations provide another such link. When businesses or banks are used for these purposes, corruption often prevents employees to report those illicit activities.

## **3. Law enforcement/ judiciary: organised crime and corruption**

According to Europol’s 2009 Organised Crime Threat Assessment<sup>13</sup>, OC actors use corruptive means to obstruct law enforcement and judicial processes. Whether by exerting influence at the middle and lower levels of law enforcement structures or by corrupting prosecutors and judges, the goal remains the same: to prevent the detection and investigation of, and ultimately court action over transnational OC. This

---

<sup>7</sup> For more information on political party financing, see: [http://www.transparency.org/global\\_priorities/corruption\\_politics/political\\_finance](http://www.transparency.org/global_priorities/corruption_politics/political_finance) and <http://www.u4.no/helpdesk/helpdesk/query.cfm?id=8>

<sup>8</sup> Center for the Study of Democracy/ Philip Gounev and Tihomir Bezlov, Examining the links between organised crime and corruption (2010), p. 39 (*hereinafter*: CSD (2010)).

<sup>9</sup> Transparency International-UK, Organised crime, corruption, and the vulnerability of defence and security forces (2011), p. 7 (*hereinafter*: TI-UK (2011)).

<sup>10</sup> J.L. Briquet, Organised crime, politics and the judiciary on post-war Europe, in: F. Allum/R. Siebert (eds.), Organised crime and the challenge to democracy (2003).

<sup>11</sup> TI-UK (2011), p. 7.

<sup>12</sup> TI-UK (2011), p. 8.

<sup>13</sup> Europol, EU OCTA (2009).

was, for example, the situation in Italy during the 1980s and 1990s, when members of the judiciary shielded politicians involved in corrupt exchanges with the mafia.<sup>14</sup> In Germany and Spain, there have been strong allegations of judges having links to human trafficking and other criminal network, which are used to prevent or stall investigations.<sup>15</sup>

In Central and Eastern Europe, by contrast, OC elements exert a more direct influence over the judiciary via corruption. For example, according to public opinion surveys, the judiciary is the most corruption institution in Bulgaria and Croatia.<sup>16</sup> In Lithuania, where between 1999 and 2001 only 4% of investigated smuggling cases reached trial, it was revealed in 2003 that three senior level judges were involved in a cigarette smuggling network headed by a retired police officer. Involvement of six more junior judges was also discovered, and thirteen criminal cases are currently in progress.<sup>17</sup> This is a stark demonstration of the nature and gravity of OC links to corruption.

#### **4. Particular criminal markets: organised crime and corruption**

Contraband cigarettes constitute one of the largest illegal markets in the EU. Customs agencies and checkpoints are bribed by criminals in order to circumvent import controls and excise taxes. In jurisdictions where the police are tasked with targeting illegal smuggling, the corruption locus shifts accordingly. Similarly, corruption secures the cooperation of transport industry employees, such as drivers and port authorities, to facilitate trafficking and distribution. Corrupt politicians may also be relied upon to shield and facilitate these corrupt activities.

Public administration corruption is also used to “grease the wheels” of the human trafficking process and prostitution ring operations. Especially in countries with legalised and regulated prostitution, administrators are often bribed to provide unlawful zoning requirements allowing brothel operation in prohibited areas, issue work permits and visas to victims of human trafficking for sexual exploitation, and conceal the true purpose of real estate functioning as a brothel. The latter is often observed in the Netherlands, where prostitution is legal.

Furthermore, research findings reveal that throughout the prostitution network in the EU, police corruption plays a key facilitating role.<sup>18</sup> The interaction between OC and police corruption tends to occur at lower levels of the organisations’ hierarchy, which has direct exposure to the prostitution network. There have been cases of direct police involvement in prostitution in Western Europe, where police officers were involved in establishing and operating brothels with prostitutes from Eastern Europe. In Greece, police officers have been arrested for involvement in human trafficking networks.

Also heroin transit routes through the Balkans into the rest of Europe depend on corruption. Where illegal transactions and shipments can be legalized with paperwork, corruption is the means to achieve it, explaining why large-scale arms trafficking is built upon corruption.

---

<sup>14</sup> TI-UK (2011), p. 6.

<sup>15</sup> CSD (2010), pp. 108 and 136. See also for more information: [http://www.transparency.org/news\\_room/in\\_focus/2011/breaking\\_the\\_chain\\_corruption\\_and\\_human\\_trafficking](http://www.transparency.org/news_room/in_focus/2011/breaking_the_chain_corruption_and_human_trafficking) (incl. TI Working Paper, Corruption and Human Trafficking 03/2011).

<sup>16</sup> See: TI, Global Corruption Barometer (2010). <http://www.transparency.org/content/download/57399/918005>.

<sup>17</sup> CSD (2010), p. 38.

<sup>18</sup> CSD (2010), p. 134.

Thus, organised crime and corruption are two sides of the same coin, feeding and enabling each other. Money laundering and transnational trafficking - whether of drugs, people, or illegal arms - rely on smuggling and on avoiding investigation, and it is corruption that directly facilitates both.

### **III. Obstacles in detecting, investigating and prosecuting transnational crime**

Since corruption can help criminals to prevent investigation and escape prosecution, TI has carried out research in EU member states on the protection levels of whistle blowers (WB) and on statutes-of-limitations (SoL).

Despite the critical importance of whistle blowing to the detection of corruption (and OC) in the private and the public sector, one of the findings of TI's research in 10 EU member states was that whistle blowing legislation is generally fragmented and weakly enforced across the EU.<sup>19</sup>

**What is whistle blowing?** The disclosure of information about perceived wrongdoing in an organisation, or the risk thereof, to individuals or entities believed to be able to effect action.

Similarly, SoL for corruption crimes vary significantly in the different EU member states, carrying the risk that complex, cross-border cases, involving OC crimes, may not be prosecuted on time. TI's research illustrates that in most EU member states it is lengthy proceedings, sometimes combined with high levels of bureaucracy and excessive requirements of proof, which constitute serious obstacles to successfully prosecuting cases and enforcing anti-corruption law.<sup>20</sup>

**What are statutes-of-limitations?** Statutory rules that set the maximum period within which a criminal action can be brought against an alleged offender.

### **IV. Conclusions & recommendations**

The multi-country and cross-border dynamics described above indicate that there is a need for a strategic and comprehensive approach at the regional level, with involvement and commitment from all EU institutions and agencies. It is imperative for the EU to consider OC and corruption jointly, and to address the inter-related problems inclusively.

A consistent response to OC and corruption could be achieved by considering the adoption of specific measures under art. 83(1) Treaty on the Functioning of the European Union (TFEU) that lists corruption as one of the ten "Euro crimes". The

---

<sup>19</sup> With the exception of one country (Romania), whose law is limited to the public sector, there is no single, comprehensive legislative framework in place. Only in two other EU member states (Hungary and Lithuania) legislation was under consideration at the time the study was undertaken. More information can be found on the TI website:

[http://www.transparency.org/global\\_priorities/other\\_thematic\\_issues/towards\\_greater\\_protection\\_of\\_w\\_histleblowers/enhancing\\_whistleblower\\_protection\\_in\\_the\\_european\\_union](http://www.transparency.org/global_priorities/other_thematic_issues/towards_greater_protection_of_w_histleblowers/enhancing_whistleblower_protection_in_the_european_union).

<sup>20</sup> Transparency International, Timed Out: Statutes of limitations and prosecuting corruption in EU countries (Nov. 2010) as well as the 10 country reports of the TI-national chapters are available online: [http://www.transparency.org/regional\\_pages/europe\\_central\\_asia/projects\\_and\\_activities/statutes\\_limitations](http://www.transparency.org/regional_pages/europe_central_asia/projects_and_activities/statutes_limitations)

new powers under art. 83(2) TFEU also allow the EU to establish minimum rules with regard to the definition of corruption offences and sanctions to approximate the scattered EU member states laws. Further, a robust mandate for the European Public Prosecutor including serious crime and corruption, (as laid down in the Lisbon Treaty (art. 86) and the Stockholm Programme) would help overcoming the outlined obstacles in detecting, investigating and prosecuting complex, transnational corruption and organised crime.

While specialised agencies such as Europol could, for instance, devote a separate chapter on corruption in the next OCTA report, EU policy-makers and analysts should take account of research data on OC and corruption to devise EU-wide policies. In addition, more in-depth research from independent sources into the intrinsic nexus of OC and corruption seems necessary to corroborate already existing data.

Finally, the EU can enhance information exchange by fostering inter-agency collaboration among member state authorities, including OC law enforcement agencies and anti-corruption bodies. Due to the transnational nature of OC, border agencies, interior and justice ministries, as well as law, tax, and trade bodies at the member state level need to be included in the EU's efforts to reduce the threat of today's organised crime. TI also calls for a new form of coalition to effectively combat this threat – one between OC law enforcement agencies, anti-corruption bodies and civil society.