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REPORT

on the communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee - On a Comprehensive EU Policy Against Corruption
(COM(2003) 317 - 2003/2154(INI))

Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

Rapporteur: Francesco Rutelli

PR_INI

CONTENTS

| | Page |
|--|-------------|
| PROCEDURAL PAGE..... | 4 |
| DRAFT EUROPEAN PARLIAMENT RESOLUTION..... | 5 |
| EXPLANATORY STATEMENT..... | 12 |
| OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET | 16 |

PROCEDURAL PAGE

By letter of 28 May 2003 the Commission forwarded to Parliament its communication 'On a Comprehensive EU Policy Against Corruption' (COM(2003) 317), which was forwarded for information to the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs.

At the sitting of 4 September 2003, the President of Parliament announced that the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs had been authorised to draw up an own-initiative report under Rule 163, and that the Committee on Budgetary Control and the Committee on Legal Affairs and the Internal Market had been asked for their opinions.

The committee had appointed Francesco Rutelli rapporteur at its meeting of 10 July 2003.

It considered the draft report at its meeting of 24 October 2003 and 4 November 2003.

At the latter meeting it adopted the draft resolution unanimously.

The following were present for the vote: Jorge Salvador Hernández Mollar (chairman), Robert J.E. Evans (vice-chairman), Johanna L.A. Boogerd-Quaak (vice-chairman), Giacomo Santini (vice-chairman), Francesco Rutelli (rapporteur), Alima Boumediene-Thiery, Giuseppe Brienza, Kathalijne Maria Buitenweg (for Patsy Sörensen), Carmen Cerdeira Morterero, Gérard M.J. Deprez, Giuseppe Di Lello Finuoli, Bárbara Dührkop Dührkop (for Martin Schulz, pursuant to Rule 153(2)), Margot Keßler, Timothy Kirkhope, Eva Klamt, Alain Krivine (for Fodé Sylla), Baroness Ludford, Lucio Manisco (for Ilka Schröder), Hartmut Nassauer, Bill Newton Dunn, Marcelino Oreja Arburúa, Elena Ornella Paciotti, Wilhelm Ernst Piecyk (for Michael Cashman, pursuant to Rule 153(2)), Hubert Pirker, Martine Roure, Heide Rühle, Miet Smet (for Bernd Posselt), Joke Swiebel, Anna Terrón i Cusí, Maurizio Turco and Christian Ulrik von Boetticher.

The opinion of the Committee on Legal Affairs and the Internal Market is attached. The Committee on Budgetary Control decided on 24 September 2003 not to deliver an opinion.

The report was tabled on 4 November 2003.

DRAFT EUROPEAN PARLIAMENT RESOLUTION

on the communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee - On a Comprehensive EU Policy Against Corruption (COM(2003) 317 - 2003/2154(INI))

The European Parliament,

- having regard to the Commission communication - On a Comprehensive EU Policy Against Corruption (COM(2003) 317),
 - having regard to the United Nations Convention against corruption, which will be opened for signature on 9-11 December 2003,
 - having regard to its resolution of 20 November 2002 on the initiative of the Kingdom of Denmark with a view to the adoption of a Council Framework Decision on combating corruption in the private sector¹,
 - having regard to the Council framework decision of 13 June 2002 on the European arrest warrant and the surrender procedures between the Member States (2002/584/GAI),
 - having regard to its resolution of 15 December 1995² on the fight against corruption in Europe and its resolution of 6 October 1998 on a Union policy against corruption³,
 - having regard to the resolution adopted in Strasbourg on 7 November 2000 by the civil service and public administration ministers⁴,
 - having regard to the OECD's 2003 recommendation on guidelines for managing conflict of interest in the public service,
 - having regard to Articles 29, 31 and 34 of the EU Treaty,
 - having regard to Article 47(2) and Rule 163 of its Rules of Procedure,
 - having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the opinions of the Committee on Legal Affairs and the Internal Market (A5-0367/2003),
- A. whereas, thanks partly to the European Union's contribution during the negotiations, the future United Nations Convention will serve as an effective instrument in the fight against corruption world-wide,

¹ OJ L 192E, 31.7.2003, p. 54

² OJ C 17, 22.1.1996, p. 6

³ OJ C 328, 26.10.1998, p. 17

⁴ Not published in the Official Journal

- B. whereas the framework decision on the European arrest warrant refers to corruption as one of the 32 offences which fall within the scope of the warrant and to which double criminal liability will no longer apply,
- C. whereas the entry into force of the framework decision on the European arrest warrant on 1 January 2004 points up the urgent need for a definition at European level of the key elements of the offence of corruption, active and passive, in both public and private sectors and of the penalties to be applied,
- D. whereas the majority of Member States have still to sign and/or ratify the Council of Europe's Civil Law and Criminal Law Conventions on corruption, although virtually all the accession countries have already acceded to and ratified both conventions,
- E. whereas, despite the ratification by all the Member States of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, only a small number of cases of corruption have been investigated under that convention,
- F. whereas judicial cooperation both within the European Union and with third countries is an essential means of reducing corruption;
- G. whereas, in addition to setting up legislative and monitoring instruments, it is important to make the general public in the EU more aware of the harm caused by corruption to the operation of democratic institutions, civil harmony, the competitiveness of businesses and, in general terms, the European economy,
- H. whereas the fight against corruption will only succeed if its essential nature is recognised by all forces in society, especially society's leaders and politicians, who should be the first to abide by the anti-corruption rules whose effective implementation they demand,
- I. whereas corruption among politicians undermines public trust in the entire political class and the credibility of political parties and their leaders, and this has already, in some cases, led to a high degree of alienation of public opinion from politics,
- J. whereas if corruption is to be prevented and fought effectively it must be made clear that the holders of public office must act exclusively in the interest of the common good, that conflict of interest must not be allowed to persist, and that the key objective of the fight against corruption is to create a more transparent relationship between public authorities and the business world,
- K. whereas corruption of the political classes is not only a violation of criminal law, but also a violation of democratic principles and laws on transparency, free trade and impartiality of institutions, which are the foundations of any constitutional state and the principle of equality of citizens before the law,
- L. whereas the funds used for corruption purposes escape legal and tax controls, and whereas the prevention of corruption should therefore include severe measures against falsification of accounts, tax evasion and money laundering,

- M. whereas freedom of information and pluralism in the media are essential preconditions for making public opinion fully aware of the serious threat posed by corruption and ensuring that political corruption can be exposed by journalists in a climate of freedom and independence,
- N. whereas freedom of information and the press should fully respect the rights of persons under investigation for corruption, in particular the right to be considered innocent until a definitive sentence is passed against them,
- O. whereas freedom of information and the media with regard to corruption is one of the twelve guidelines laid down by the first Global Forum on Fighting Corruption, held in Washington from 24 to 26 February 1999; whereas, in its resolution of 20 November 2002¹ on media concentration, the European Parliament specifically called on the Commission to submit to the Convention a proposal for a legal basis for the protection of the principle of media pluralism and freedom, and to prepare a directive on the matter,

Legislative framework at Community and international level

1. Welcomes the completion of the negotiations of the ad hoc committee for negotiation of the United Nations Convention against corruption, and urges the EU Member States and the accession countries to sign and subsequently swiftly ratify this global instrument against corruption;
2. Deplores the fact that criminalisation of passive bribery of international public officials, illegal funding of political parties and effective monitoring of the Convention are not sufficiently covered by the draft UN Convention, and calls therefore on the Member States, the acceding countries and the Commission to make clear statements at the UN signing conference in Mérida (Mexico) from 9-11 December 2003, allowing for the inclusion of these issues to be considered by the future Conference of States Parties to the Convention;
3. Calls on:
 - the Council Presidency to sign the United Nations Convention insofar as it falls within the competence of the European Union (Articles 24 and 38 of the TEU - by analogy with the procedure followed on EU-US agreements) and
 - the Commission to sign the Convention insofar as it falls within the competence of the Community, and calls for the European Parliament to be consulted on both types of competence;
4. Welcomes the Council's adoption on 22 July 2003 of the framework decision on combating corruption in the private sector;
5. Calls on the Member States to transpose the framework decision on the European arrest warrant into national law no later than 1 January 2004;
6. Calls on the Council to adopt without delay the two proposals for framework decisions on

¹ P5_TA(2002)0554

the confiscation of goods and the enforcement of confiscation orders in the European Union, which will require Member States to guarantee mutual recognition of decisions to freeze assets, including the proceeds of corruption activities,;

7. Calls on the Commission to fill any gaps not covered by the sting international conventions on corruption, while bringing forward proposals designed to achieve a measure of legal coordination and consolidation at EU level, so as, in particular, to make manifest the Union's determination to introduce and enforce an anti-corruption culture at all levels of political, public and private life;
8. Urges the Member States to ratify all outstanding international conventions in this field without further delay and encourages the Commission to adopt a policy of 'naming and shaming' of those Member States which have not lived up to their undertakings to ratify;
9. Deplores the fact that some Member States had not yet ratified and notified, as at 1 December 2003, the Second Protocol to the Convention on the Protection of the European Communities' Financial Interests and the Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union as called for in the March 2000 'European Union Strategy for the beginning of a new millennium in the field of prevention and control of organised crime'; calls once more, therefore, on those Member States which have still to do so to ratify and notify the aforementioned texts no later than 1 January 2004;
10. Calls on the Council to adopt without delay the proposal for a directive on the criminal law protection of the Community's financial interests¹, which includes a common definition of active and passive corruption against the Community's financial interests, and on which Parliament expressed its opinion on 29 November 2001;
11. Calls on the ten Member States which have still to sign and/or ratify the Council of Europe's Criminal Law Convention on Corruption, which entered into force on 1 July 2002, to do so no later than 1 January 2004; calls, similarly, on the thirteen Member States which have still to ratify the Council of Europe's Civil Law Convention on Corruption to do so no later than 1 January 2004;
12. Calls on the Commission, should the deadline of 1 January 2004 not be respected, to convert the existing Community conventions on corruption into binding legal instruments under Articles 29, 31(e) and 34 (2)(b) of the EU Treaty;
13. Calls on the Commission to prepare the European Community's accession to the Council of Europe's two Conventions on corruption; calls on the two Member States which have still not done so to join the Council of Europe's GRECO Group (Group of States against Corruption); calls on the Member States and the accession countries to offer their unconditional support in the Council of Europe's Committee of Ministers to the European Community's request for accession;

¹ COM(2001) 272.....

14. Calls on the ten Member States which have still to sign and/or ratify the Council of Europe's Criminal Law Convention on Corruption, which entered into force on 1 July 2002, to do so no later than 1 January 2004; calls, similarly, on the thirteen Member States which have still to ratify the Council of Europe's Civil Law Convention on Corruption to do so no later than 1 January 2004;
15. Calls on the Commission and Council to pave the way for the establishment at a later date of an evaluation system that would be independent of the Council of Europe's system, with a view to monitoring the proper implementation by the Member States of anti-corruption legislative measures in the Union's various spheres of action;
16. Calls on the Commission to require the accession countries and the Member States to make equivalent efforts in the fight against corruption, and calls on the Commission to draw up a set of principles with a view to stepping up the fight against corruption, both in the accession countries and in the Member States, based on the Council of Europe's 20 guidelines, and to submit a report every two years to the Council, the European Parliament and the national parliaments;
17. Reiterates that Eurojust and Europol should be the appropriate bodies to ensure judicial and police cooperation between the national authorities responsible for anti-corruption measures, and calls on both bodies to consider cases of crossborder corruption as priority areas of action at European level;
18. Advocates strengthening the role of Europol and examining harmonised principles with regard to witness protection and whistleblowers, while having proper regard to the rights of the defence and procedural guarantees;
19. Considers that the coordination of investigative activities should be enhanced by strengthening Eurojust;
20. Calls on the Member States and the accession countries to establish bodies specialised in fighting corruption, to improve the investigation mechanisms available to them, and to set up national administrative and judicial networks and contact points for dealing specifically with instances of corruption with a view to facilitating international cooperation in this field;
21. Hopes that the office of the independent European Public Prosecutor will be created as soon as possible, with powers of investigation and prosecution in the criminal sphere and with responsibilities including handling cases of corruption perpetrated against the Communities' financial interests;

Political commitment and awareness-raising

22. Calls on the Commission to prepare proposals for the introduction of rules and codes of conduct aimed at preventing and avoiding conflict of interest for public authorities whose activities are susceptible to private-sector interests (in such areas as media ownership, award of public concessions, etc), and to draw up guidelines on conflict of interest, on the lines of those set out by the OECD in its recommendation of June 2003 on guidelines for managing conflict of interest in the public service;

23. Considers that pluralism in the media and freedom of information are essential factors in an effective anti-corruption strategy, both at national and at European level, and therefore urges the Commission to ensure that these principles, which are included in the Charter of Fundamental Rights of the European Union and the draft European Constitution, are fully respected by the Member States;
24. Invites the Commission, therefore, pursuant to Parliament's call in its resolution of 20 November 2002, to submit a directive on the protection of media pluralism, as a necessary condition if the media are to play an active and independent role in ensuring that the public is properly informed regarding measures to prevent and counter corruption in the Member States;
25. Considers that, although much has been achieved in the financial sector, more still needs to be done in order to ensure that there is a level playing field and that the sector is permeated by a uniform anti-corruption culture throughout the EU; efforts should also be made to ensure that financial journalism, in particular, is untainted by any suggestion of corruption;
26. Endorses the Commission's view on the need to ensure maximum transparency in the area of party political funding and election expenditure; calls on the Commission to draw up proposals for rules and best practice with a view to achieving transparency in the field of party political funding and election expenditure and averting conflicts of interest, as promised in the communication;
27. Believes strongly that politics should be made more transparent, with a public register of financial and other interests for all political office-holders at EU, national, regional and local levels; this should also extend to members of the judiciary and office-holders in quasi-governmental organisations;
28. Calls on the Commission and the Member States to introduce common rules on the taking of evidence, the establishment of specific investigative techniques, the protection of suspects, victims and witnesses of acts of corruption, and the confiscation of the proceeds of corruption, with a view to facilitating investigative and judicial activities and the proper prosecution of corruption offences;

Prevention of corruption

29. Calls on the Member States to step up prevention of corruption by adopting stringent measures to punish the falsification of accounts, tax evasion and money laundering;
30. Considers that corruption can be prevented by ensuring proper transparency in decision-making procedures and efficient, effective and economically sound administration;
31. Welcomes the fact that the new directives on calls for tenders include the obligation to exclude from such procedures any bidder who has been sentenced by a judgment which has the force of *res judicata* for acts of corruption, fraud or participation in organised crime, and calls on the Commission to monitor the effectiveness of the new legislation, including in funding agreements with third countries;
32. Takes the view that the Commission should encourage programmes designed to inculcate

an anti-corruption culture throughout society, starting with civic education in schools and the adoption of codes of conduct and professional ethics; to this end, successful prosecutions should be more widely publicised as a dissuasive measure and so as to raise public awareness;

33. Believes that simple and clear law decreases the power of a bureaucracy and is a proper way to limit the scope for corruption; believes that the Commission should review the current rules with a view to reducing and simplifying EU law, especially concerning the internal market;
34. Endorses the Commission's request that signatories to the Charter of European Professional Associations further strengthen their self-regulation systems with a view to supporting the fight against crime and corruption, and that they be attentive to the proper implementation of codes of conduct;
35. Endorses the Commission's views on the importance of the independence of statutory auditors; calls on the Commission, therefore, to make the existing recommendations on this subject binding, prohibiting auditors from carrying out audits if they have any relationship with the client that might compromise their independence; also calls on the Commission to submit a proposal for a directive laying down harmonised rules on the auditor's profession;
36. Agrees with the Commission that the Member States should promote the liability of legal persons, as provided for in the conventions of the Council of Europe, the UN and the EU on action against corruption;
37. Calls on the Commission to renew its efforts to continue the negotiations in the WTO, on the basis of the Doha agenda and despite the failure of the Cancún summit, with a view, notably, to concluding the agreements on transparency in customs procedures and in the rules on public contracts, as an instrument in the fight against corruption in international trade;
38. Instructs its President to forward this resolution to the UN Secretary-General, the Council, the Commission, the national parliaments and the accession countries.

EXPLANATORY STATEMENT

The international and Community legislative framework

In a world in which economic globalisation has created multiple new opportunities for fraud and corruption, the international institutions have now given a central role to the fight against corruption as part of the political agenda of recent years.

The fight against corruption has to be carried out on several levels, and, if it is to be effective, it requires a global approach on more than one front.

The Council of Europe was the first organisation to act on the matter, with the Criminal Law Convention against Corruption of 27 January 1999, which came into force on 1 July 2002, and the Civil Law Convention against Corruption of 4 November 1999, which became operative on 1 November 2003. On 1 May 1999, it set up the group known as GRECO ('Groupe d'Etats contre la corruption' or 'Group of countries against corruption'), with the remit of evaluating compliance with the commitments entered into in the framework of the anti-corruption conventions.

The OECD adopted a convention, which came into force on 15 February 1999, on Combating Bribery of Foreign Public Officials in International Business Transactions. It sets out common rules on the penalties applicable to companies and individuals found guilty of corruption in third countries. Additionally to that convention and to its recommendation of 1988 on 'improving ethical conduct in the public service'¹, the OECD adopted, in June 2003, a recommendation containing 'guidelines for managing conflict of interest in the public service'. This OECD recommendation is the first international instrument entirely dedicated to conflicts of interest to provide a definition, put forward criteria for dealing with existing cases, and propose preventive measures to ensure that such conflicts do not arise and do not lead to corruption.

The recommendation calls on member states to develop a comprehensive strategy for promoting ethical conduct in the public service and identifying present and potential cases of conflict of interest. It also calls for active monitoring with a view to ensuring that penalties are effective and appropriate and include provisions on incompatibility which would disqualify those found guilty from continuing in the public service.

OECD recommendations are not binding, but this important international standard is nonetheless a significant point of reference for the creation of legislative instruments to combat conflicts of interest and for the adaptation and reform of the existing instruments.

The OECD is also working on a series of practical measures aimed at helping governments and institutions implement the guidelines. 2006 will see the first report on implementation of the recommendations.

¹ C(98)70/FINAL

The UN, in 2003, obtained two significant results in the fight against corruption. The first event was the entry into force of the Palermo Convention against Transnational Organised Crime, on 29 September 2003; the second was the conclusions of the preparatory work for the new UN Convention against Corruption, which will be signed on 9/10 December 2003 in Mexico.

The EU too has taken action in the fight against corruption, starting with something common to all the Member States, namely the Community budget. In 1995, it had adopted the Convention on the Protection of the Communities' Financial Interests, with its two protocols: that of 1996² concerning 'acts of corruption that involve national and Community officials'; and that of 1997³ concerning 'the liability of legal persons, confiscation, money laundering and the cooperation between the Member States and the Commission for the purpose of protecting the European Communities' financial interests and protecting personal data related thereto'. In addition, in 1997 the Member States signed the Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union.

On 22 July 2003, the Council adopted a decision on the fight against corruption in the private sector, which replaces the joint action of 1998.

Among the other international organisations engaged in anti-corruption action, one may cite the NGO Transparency International, which is recognised the world over as a beacon in the fight against corruption, and also the World Business Organisation, which has set up a special anti-corruption commission responsible for monitoring the implementation of the international conventions and the definition of codes of conduct.

Your rapporteur's position

The existing international instruments are certainly numerous. Nonetheless, certain problems arise: the fact that not every Member State has ratified the international instruments or transposed them into national law, the non-binding character of some of the recommendations, and the coordination of the various levels of intervention.

The Council of Europe conventions have not been ratified by all the Member States. As at 14 October 2003, the Criminal Law Convention had still to be ratified by: Austria, Belgium, France, Germany, Greece, Italy, Luxembourg, Spain, Sweden and the UK. The Civil Law Convention was, at that date, still awaiting ratification by: Austria, Belgium, Denmark, France, Germany, Ireland, Italy, Luxembourg, the Netherlands, Portugal, Spain, Sweden and the UK. By contrast, almost all the future Member States (Latvia is the exception) have ratified.

At Community level, the Second Protocol to the Convention on the Protection of the Communities' Financial Interests, concerning the liability of legal persons, confiscation and money laundering, has not yet entered into force, for reasons of non-ratification. The same

² Council act of 27 September 1996 establishing a protocol to the Convention on the Protection of the Communities' Financial Interests - OJ No C 313, 23.10.1996, p. 1.

³ Council act of 19 June 1997 establishing the second protocol to the Convention on the Protection of the Communities' Financial Interests - OJ No C 221, 19.7.1997, p. 11.

applies to the Convention on the Fight against Corruption involving Officials of the European Communities or Officials of Member States of the European Union.

It follows that conventions as such appear obsolete as an instrument. The Treaty of Amsterdam has endowed the EU with instruments of a more binding character in the area of criminal law cooperation. Your rapporteur therefore calls on the Commission to convert the existing anti-corruption conventions at Community level into binding legislative instruments pursuant to Articles 29, 31(e) and 34 (2)(b) of the Treaty on European Union.

The entry into force of the European arrest warrant on 1 January 2004 further points up the urgent need for a clear definition of both active and passive corruption that will apply to both private and public sectors.

The definition of clear, EU-wide standards must be followed by an assessment of the implementation of the legislation in the Member States. If we are to fight corruption successfully, the penalties must be applied so that they bite: they must be perceived as a real and not a marginal risk

Here, your rapporteur agrees with the Commission that, as a first step, the Community should accede to the Council of Europe's GRECO group. The second step should be for the Commission to set up an independent evaluation system to assess the application of Community law.

Other instruments linked to the fight against corruption exist, such as the proposals for decisions on the confiscation of property and the execution of confiscation orders in the EU. Parliament has already expressed its opinion on these, and the ball is now in the Council's court.

Both Eurojust and Europol have an important role to play in the fight against corruption. Eurojust is responsible for coordinating the national penal authorities, cooperating in investigations into organised crime (especially Europol initiatives), and working with the European judicial network, inter alia with a view to simplifying the execution of letters rogatory.

Your rapporteur hopes that it will soon be possible to convert Eurojust into a European public prosecutor's office, with full powers to undertake investigations and initiate criminal proceedings. The procedure under the draft Constitution prepared by the Convention (Article III-175) would make it more difficult to set up the public prosecutor's office, since unanimity would be needed in Council and certain Member States are clearly hostile to the idea.

In addition to the legislation and the law enforcement mechanisms, it is essential to take a preventive approach and to involve civil society. It will not suffice simply to punish the corrupters and the corrupted. Beyond this, there is a need for action at the ethical level, via the definition of codes of conduct, awareness-raising campaigns targeted on civil servants, and education and information campaigns aimed at public opinion as a whole.

It is also necessary to adopt preventive measures with a view to reducing corruption, especially at the highest levels of government in the Member States. On this matter, your rapporteur believes there is a need for binding rules at EU level on conflict of interest. A basis

for such EU-wide binding rules could be the OECD guidelines of June 2003 on managing conflict of interest in the public service. In this OECD text, it is stated that 'inadequately managed conflicts of interest on the part of public officials have the potential to weaken citizens' trust in public institutions', and that 'an unresolved conflict of interest may result in abuse of public office'. 'Conflict of interest' is defined as 'a conflict between the public duty and private interests of a public official, in which the public official has private-capacity interests which could improperly influence the performance of their official duties and responsibilities'. It is considered that 'conflict of interest', thus defined, 'has the same meaning as 'actual conflict of interest'', and can thus 'be current, or (...) have existed at some time in the past'. One of the most important elements of these guidelines for the fight against corruption is contained in the following words: 'Where a private interest has in fact compromised the proper performance of a public official's duties, that specific situation is better regarded as an instance of misconduct or 'abuse of office', or even an instance of corruption, rather than as a 'conflict of interest''. As a possible solution, the OECD proposes the following: 'Public officials should dispose of, or restrict the operation of, private interests that could compromise official decisions in which they participate. Where this is not feasible, a public official should abstain from involvement in official decisions which could be compromised by their private-capacity interests and affiliations'.

Your rapporteur has also made use of a considerable number of the Commission's recommendations on prevention in the context of the single market.

Other factors too are seen by the international organisation as fostering the fight against corruption. These include media pluralism and independence, an independent judiciary, and transparency in the financing of political parties and election spending. The Commission is called on to examine these areas and make proposals.

In the context of shared values and the need to ensure the creation of the area of freedom, security and justice, it is essential to lay the bases that will permit the flowering of mutual trust between Member States. Here, the definition of minimum standards in the areas discussed above has a crucial part to play.

OPINION OF THE COMMITTEE ON LEGAL AFFAIRS AND THE INTERNAL MARKET

of the Committee on Legal Affairs and the Internal Market

for the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs

on the Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee on a comprehensive EU policy against corruption (COM(2003) 317 – 2003/2154(INI))

Draftsman: Bill Miller

PROCEDURE

The Committee on Legal Affairs and the Internal Market appointed Bill Miller draftsman at its meeting of 7 July 2003.

It considered the draft opinion at its meetings of 6 and 20 October 2003.

At the latter meeting it adopted the following suggestions by 16 votes to 11.

The following were present for the vote: Giuseppe Gargani (chairman), Willi Rothley (vice-chairman), Ioannis Koukiadis (vice-chairman), Bill Miller (vice-chairman and rapporteur), Ulla Maija Aaltonen, Paolo Bartolozzi, Ward Beysen, Brian Crowley, Bert Doorn, Giovanni Claudio Fava, Janelly Fourtou, Marie-Françoise Garaud, Evelyne Gebhardt, Fiorella Ghilardotti, José María Gil-Robles Gil-Delgado, Malcolm Harbour, Lord Inglewood, Kurt Lechner, Klaus-Heiner Lehne, Peter Liese, Toine Manders, Arlene McCarthy, Manuel Medina Ortega, Elena Ornella Paciotti (for Maria Berger), Bernd Posselt (for Rainer Wieland, pursuant to Rule 153(2)), Anne-Marie Schaffner, Astrid Thors, Marianne L.P. Thyssen, Diana Wallis, Phillip Whitehead, Joachim Wuermeling and Stefano Zappalà.

SUGGESTIONS

The Committee on Legal Affairs and the Internal Market calls on the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Calls on the Commission to fill any gaps not covered by the existing international conventions on corruption, while bringing forward proposals designed to achieve a measure of coordination and consolidation at EU level, so as, in particular, to make manifest the Union's determination to introduce and enforce an anti-corruption culture at all levels of political, public and private life;
2. Urges the Member States to ratify all outstanding international conventions in this field without further delay, and encourages the Commission to adopt a policy of 'naming and shaming' of those Member States which have not lived up to their undertakings to ratify;
3. Endorses the Commission's proposal that the Community should accede to the Council of Europe Conventions on Corruption and to the Group of States against Corruption (GRECO);
4. Asks the Commission to come up with at least a working definition of corruption as a basis for discussion of a harmonised legal definition; any definition should take account of the fact that corruption occurs in the public sector, at national and Community level, and in the private and non-governmental sectors and the fact that private gain is not the only motive for corrupt activity. A possible starting point could be that 'corruption is the receipt, by a person exercising executive or non-executive functions of any kind in a public-sector or private-sector body, of an undue payment or other advantage, for himself or for a third party, or the acceptance of a promise of such a payment or advantage, in return for acting, or having acted, in accordance with, or in breach of, his duties';
5. Asks the Commission to consider, also, a working definition of incitement to corruption as 'offering or promising an undue payment or other advantage to induce a person exercising executive or non-executive functions of any kind in a public-sector or private-sector body to act or to refrain from acting and delay acting in accordance with his duties, or act in breach of his duties';
6. Considers that although much has been achieved in the financial sector, more still needs to be done in order to ensure that there is a level playing field and that the sector is permeated by a uniform anti-corruption culture throughout the EU; efforts should also be made to ensure that financial journalism, in particular, is untainted by any suggestion of corruption;
7. Calls on the Commission to adopt a code of conduct prohibiting the award of Community funds to bodies or companies of which Members of the Commission have been, in the five years preceding their taking office, or still are, directly or through an intermediary, administrators, directors or consultants, or of which Members of the

Commission have become administrators, directors or consultants, in person or through an intermediary, at the end of their term of office;

8. Takes the view that the Commission should encourage programmes designed to inculcate an anti-corruption culture throughout society, starting with civic education in schools and the adoption of codes of conduct and professional ethics; to this end, successful prosecutions should be more widely publicised as a dissuasive measure and so as to raise public awareness;
9. Considers that corruption among representatives of the Community institutions destroys citizens' confidence in the process of European integration, particularly when, as in the Eurostat case, such corruption implicates, albeit apparently only through negligence, the highest levels of the Commission;
10. Considers that corruption can be prevented by ensuring proper transparency in decision-making procedures and efficient, effective and economically sound administration;
11. Calls on the Commission to make its own administrative procedures more accessible and transparent in order to avoid instances of corruption of the kind that have emerged in the case of Eurostat;
12. Advocates strengthening the role of Europol and examining harmonised principles with regard to witness protection and whistleblowers, while having proper regard to the rights of the defence and procedural guarantees;
13. Considers that the coordination of investigative activities should be enhanced by strengthening Eurojust, while fully respecting national powers in relation to criminal law and procedure as required by the subsidiarity principle;
14. Strongly believes that politics should be made more transparent, with a public register of financial and other interests for all political office-holders at EU, national, regional and local levels; this should also extend to members of the judiciary and office-holders in quasi-governmental organisations;
15. Believes that simple and clear law decreases the power of a bureaucracy and is a proper way to limit the scope for corruption; believes that the Commission should review current rules with a view to reducing and simplifying EU law, especially concerning the internal market;
16. Maintains that any action plan (including the ten principles set out in the annex to the communication) must be applied to Member States as well as to other countries.

SHORT JUSTIFICATION

Whilst it may be true, as Gibbon said, that corruption is the most infallible symptom of constitutional liberty, it must be fought with the utmost vigour. In public life corruption is an insidious menace which, if left unchecked, can undermine our democratic institutions, the judicial system, the rule of law and human rights. In the private sector corruption can be a disincentive to trade. In both cases, there is no clearly identifiable victim to bring a charge, but corruption is not a victimless crime: the victims are the taxpayer, shareholders, workers and - above all - the poor. Our reputation and the example we give to the rest of the world are also at stake.

The Commission is therefore right to be proposing a comprehensive EU policy against corruption. We have the necessary legal basis in Article 29 of the EU Treaty and it is now necessary to act so as to ensure that all Member States have a common legal framework through the ratification of the relevant conventions of the EU, the OECD and the Council of Europe. Although duplication of what has already been achieved in international organisations might be regarded as unnecessary, the Commission should come up with proposals to fill any gaps and to achieve a measure of coordination and consolidation at EU level so as, in particular, to make manifest the Union's determination to introduce and enforce an anti-corruption culture at all levels of political, public and private life. The rapporteur fully endorses the Commission's determination that the European Community should accede to the Council of Europe Conventions on Corruption and to the Group of States against Corruption. In the meantime, the Commission should adopt a policy of 'naming and shaming' those Member States which have not lived up to their undertakings to ratify the relevant international agreements.

Defining corruption is no easy task, but the Commission should be mandated to come up with at least a working definition as a basis for discussion of a harmonised legal definition. Any definition should take account of the abuse of power and breach of trust, the fact that corruption occurs in the public, private and non-governmental sectors and the fact that private gain is not the only motive for corrupt activity. A possible starting point could be that corruption is an 'abuse of a person's power, influence or position with a view to obtaining private gain or advantage of any kind for that person or for others'.

Whereas much progress has been made in the financial sector, in particular as a result of the fight against money laundering, much remains to be done in order to ensure that there is a level playing field and that the sector is permeated by a uniform anti-corruption culture throughout the EU. Efforts should also be made to ensure that financial journalism is untainted.

It is further necessary to inculcate an anti-corruption culture throughout society, starting with civic education in schools and the adoption of codes of conduct and professional ethics. To this end, successful prosecutions should be more widely publicised so as to raise public awareness.

The Community should also look at strengthening the role of Europol and examining harmonised principles on witness protection and whistleblowers, whilst having proper regard to the rights of the defence and procedural guarantees.

In addition, politics should be made more transparent, with a public register of financial and other interests for all political office-holders at EU, national, regional and local levels. This should also extend to members of the judiciary and office-holders in quasi-governmental organisations.

Lastly, any action plan (including the ten principles set out in the annex to the communication) must be applied not only to acceding, candidate and third countries, but also to the existing Member States.