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COMMISSION DECISION

**on establishing an EU anti-corruption reporting mechanism for periodical evaluation
("EU Anti-Corruption Report")
IMPACT ASSESSMENT**

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1. INTRODUCTION

Corruption is a crime which affects societies as a whole: it affects competitiveness, it distorts the inner structure of licit economies, it lowers tax revenues, it increases public expenditure, it is associated with excessive and less productive public investments, it increases the costs of doing business. Corruption makes decision making processes less predictable, affects public sector debt and financial sector risk. In combination with fraud, it can jeopardise entire financial systems. Corruption is also one of the main tools used to facilitate the illegal activities of organised criminal groups.

Despite various legal and non-legal anti-corruption measures and existing monitoring mechanisms, evidence at hand proves that corruption in both the public and the private sector remains in a substantial number of EU Member States a serious problem. Several perception measurement indicators, including the Eurobarometer survey on the attitudes of Europeans against corruption show a low level of citizens' confidence in the capacity of the EU and national institutions to deal with corruption and an increasing trend in perceiving corruption as a major problem. In the most recent Global Corruption Barometer of Transparency International¹, 73% of the EU respondents agreed that corruption has increased in the last three years.

Since the adoption in 2003 of the first Communication on a comprehensive policy against corruption², the fight against corruption gained further momentum at national, EU and international level. The Treaty on the Functioning of the European Union (TFEU) mentions corruption as one of the areas of particularly serious crime with a cross-border dimension for which minimum rules on definition of criminal offences and sanctions may be set up. The 2009 Stockholm Programme "An open and secure Europe serving and protecting the citizens" and the subsequent Action Plan³ tasked the European Commission to present in 2011 a "Communication on a comprehensive policy against corruption in Member States, including the establishment of an evaluation mechanism as well as presenting modalities of cooperation with the Council of Europe's Group of States against Corruption (GRECO) for that purpose". The first evaluation of the Member States' anti-corruption policies is envisaged for 2013.

2. PROCEDURAL ISSUES AND CONSULTATION OF INTERESTED PARTIES

2.1. Chronology of the Impact Assessment and results of consultations

The Commission's Work Programme for 2011 includes the adoption of a package on the protection of the licit economy⁴ in the second quarter of 2011. The Communication on a comprehensive EU anti-corruption policy is meant to be an integrated part of this package. This impact assessment serves as a basis for the anti-corruption Communication and the measures it will put forward.

¹ http://www.transparency.org/policy_research/surveys_indices/gcb/2010.

² COM (2003) 317 final.

³ Council document 17024/09, adopted by the European Council on 10/11 December 2009 and COM(2010)171 final.

⁴ The package on the protection of licit economy will also cover the proposals for a new legal framework on asset recovery and an anti-fraud strategy.

An *external study* was commissioned to support the preparation of the Impact Assessment⁵. The study was carried out between February and November 2010. General principles and minimum standards for consultation of interested parties have been met in the preparation of this impact assessment. Consultations with the existing monitoring mechanisms, notably GRECO, OECD and UN Convention against corruption (UNCAC) were carried out in the framework of the study. Also, interviews with some of the national members of the European Anti-Corruption Network representing 14 EU Member States⁶ were conducted.

The identification and finalisation of problems, objectives, policy options and assessment of impacts presented in this report were informed by both the above-mentioned study and by a broad consultation process.

The *internal consultations* in the Commission were mainly carried out through the inter-service group (ISG) on corruption. The DGs and services represented in this ISG are as follows: DG HOME; OLAF; DG RELEX; the Secretariat General, the Legal Service; DG MARKT; DG REGIO; DG BUDG; AIDCO; DG EAC; DG AGRI; DG ELARG; DG HR; DG DEV. Four meetings of the ISG took place in 2010 (i.e. on 18 March, 24 June, 1 October and 9 December). The ISG members were in principle supportive to the outcome of the impact assessment and their comments and suggestions were considered in the drafting of this report.

Wider consultations were carried out with *NGOs* (e.g. Transparency International on 27 May and 21 October 2010), *GRECO* (3 May, 7 June and 26 August 2010), and the *European Anti-Corruption Network* (4 February and 17 November 2010), which revealed considerable support for the development of a comprehensive EU policy against corruption. Public consultations were also conducted via an open internet survey (hosted by DG HOME website) between 8 October and 3 December 2010. 70 written contributions have been received from citizens, public institutions, NGOs and academia, showing a broad support for further EU action in the field of anti-corruption and a general perception that effective results in fighting corruption cannot be achieved by Member States alone (see Annex 1).

2.2. Consultation of Impact Assessment Board

This Impact Assessment Board (IAB) reviewed a preliminary version of this impact assessment and delivered its opinion on 11 February 2011. The recommendations for improvement were accommodated in this revised version of the report. In particular, the following changes were made: the adverse cross-border effects of corruption were further elaborated and the assessment of the EU value added test was provided for each policy option; the intervention logic was further clarified to better explain the impact of international pressure and transparency on national anti-corruption activities on national anti-corruption activities; the assessment of the preferred option was aligned with the assessment of all other options; further explanations were given for the analytical conclusions.

3. Problem definition

Note: Agreeing on a definition of corruption, be it in the narrow criminal law sense or in a broader socio-economic sense, is a very challenging process, given the complexity, broadness and dynamism of this phenomenon. The definitions included in most of the EU and

⁵ Framework Service Contract No JLS/2009/A1/001, *Impact Assessment for Strengthening the Fight against Corruption at EU level with focus on periodical evaluation*.

⁶ Austria, Bulgaria, Cyprus, Finland, France, Greece, Ireland, Italy, Luxembourg, Poland, Romania, Slovakia, Sweden, UK.

international instruments are not encompassing all constituent elements of corruption, while merely referring to its consequences for the rule of law, fair functioning of the market and effects on human rights or on the whole of society. Consequently, the definition of corruption considered for the purposes of this impact assessment is a very broad one, as it was used in the 2003 Commission Communication on a comprehensive EU policy against corruption: i.e. the definition of the Global Programme against Corruption run by the United Nations: “abuse of power for private gain”, covering thereby both the public and private sectors.⁷

The impact assessment identified the following problems associated with corruption:

- § Problem 1: High levels of corruption in some EU Member States and significant harm associated with it;
- § Problem 2: Lack of common approach amongst Member States to implement anti-corruption tools;
- § Problem 3: Low confidence of EU citizens in public institutions and in the fair functioning of the market resulting from corruption.

3.1. Problem 1: High levels of corruption in some EU Member States and significant harm associated with it

High levels of corruption

The measurement of corruption levels is a complex and challenging undertaking, and mainly consists of measuring perceptions of corruption and direct experiences of corruption (e.g. surveys on corruption experienced by the general population, analysis of statistics on prosecutions/indictments/convictions, etc). Available international research on the extent of corruption indicates that the scale of the corruption varies substantially from one Member State to another. Nevertheless, in spite of the striking differences between Member States, there are no corruption-free zones in the EU today. This was also shown by the extent of recent corruption scandals which touched several Member States (e.g. Greece, Latvia, Romania, Slovakia, Germany, Italy, France, Finland).

As regards the measurement of *perceptions*, one should first mention that although surveys have certain limitations, it is nevertheless true that they also offer over time a fairly accurate reflection of the level of corruption in a country. Surveys are by definition confined to the limited scope of the questions answered and depend heavily on the subjectivism and openness of respondents. The results of surveys are also undoubtedly influenced by immediate events occurring at the time of the interviews. A high level of perception might also be the consequence of visible anti-corruption measures which on their turn raise awareness on the existence and extent of the problem. Also, responses may be politically biased, associating the popularity of a certain government with ineffectiveness in implementation of policies. Still, the mere appearance of widespread corruption can be considered in itself an indicator of inefficient policies. Even if at a certain time a survey is prone to offer some conflicting results

⁷The Civil Law Convention on Corruption of the Council of Europe (Strasbourg 4/11/1999; European Treaty Series n°174) defines “corruption” as “requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behaviour required of the recipient of the bribe, the undue advantage or the prospect thereof.”

which may call the accuracy of the findings into question, the dynamics of the perception indicators, as well as the cumulative assessment of various indicators give out a quite clear and truthful picture of the state of play.

The most common perception measurement tools in this area are the indexes developed by Transparency International (TI), namely the Corruption Perceptions Index (CPI)⁸; Global Corruption Barometer (GCB)⁹; Bribe Payers Index (BPI)¹⁰, and Transparency in Reporting on Anti-Corruption (TRAC)¹¹. This impact assessment will focus on the two most relevant ones: i.e. CPI and GCB.

Of the TI indicators, CPI is the best known tool for measuring perceptions of public sector corruption. Each country is assigned a score from 0 (most corrupt) to 10 (least corrupt). According to the attributed scores, a general ranking is made (the lower the level of corruption, the higher the rank of the country). Further information is provided in Annex 2.

An analysis of the CPI between 2000 and 2010 shows that the average score for the EU-27 ranged from 6.23 (in 2000) to 6.51 (in 2006 and 2007). The average CPI score steadily increased between 2000 and 2007, after which it constantly declined up to 6.30 in 2010. Denmark is the best performing country in the CPI 2010 list, with a score of 9.3, while Greece is the last of all EU Member States, scoring only 3.5. See also the chart in Annex 2 on the evolution of the CPI scores in the EU-27 between 2008 and 2010.

Another well-known tool for assessing corruption, published by TI annually, is the Global Corruption Barometer (GCB). The GCB presents the main findings of an opinion survey which explores general public attitudes towards corruption and experiences of bribery in countries across the world. In particular, it assesses the extent to which public institutions and services are perceived as corrupt and measures citizens' views on government anti-corruption efforts. The GCB complements the opinions on public sector corruption provided by the CPI.

The data of the 2010 GCB¹² (see Annex 3) allow the drawing of the following conclusions:

- 73% of the EU respondents agreed on a substantial increase in corruption level in the last three years. The perception varies significantly: from 29% in Denmark and Poland to 87% in Romania (this largely corresponds to the findings of the most recent CPI);
- Citizens are also sceptical about their governments' efforts to fight corruption. On average, in the 21 EU Member States participating in the survey, 74% respondents rated their governments' actions against corruption as ineffective;
- Across the EU, there are perceptions of widespread corruption in relation to public institutions. 84% respondents mentioned political parties as being most corrupt (followed by civil servants, Parliament, and police).

As regards the measurement of *experiences with corruption*, the indicators are rather scarce. One of these is the GCB, which also measures the level of active bribery declared by the

⁸ http://www.transparency.org/policy_research/surveys_indices/cpi .

⁹ http://www.transparency.org/policy_research/surveys_indices/gcb

¹⁰ http://www.transparency.org/policy_research/surveys_indices/bpi

¹¹ http://www.transparency.org/policy_research/surveys_indices/trac

¹² http://www.transparency.org/policy_research/surveys_indices/gcb/2010 .

respondents. It is apparent that individual Member States have faced very different developments in terms of growth or decline of experiences of corruption:

- Member States with high levels of reported experiences of corruption where such experiences declined strongly, such as the Czech Republic (from 21% of the respondents admitting they have paid a bribe in 2004 to 14% in 2010);
- Member States with high levels of reported experiences of corruption where the extent has grown further (e.g. Greece and Romania– from 11-25% in 2004 to 18-28% in 2010).
- Member States with low levels of reported experiences of corruption where it has declined further (Denmark, Finland– from 2-3% in 2004 to 0%-2% in 2010), or, in contrast, where the levels have grown significantly (Austria, and Luxembourg– from 1-2% in 2004 to 9-16% in 2010). In several countries (e.g. UK, Netherlands –1-2% of respondents admitting they have paid a bribe) no change was recorded.

Although not comparable in all its details, at least the main findings and tendencies of the CPI for the EU have been confirmed by the *World Bank's worldwide governance indicators*, indicating governments' control over the corruption phenomenon¹³. This outlines the position of individual EU Member States within the ranking of the extent of governments' control over corruption. In the global context, the position of the EU-27 is comparatively good, but clear differences between individual Member States emerge, as follows: 9 Member States in the best performing category¹⁴ (i.e. 9-10: highest ranking/ best anti-corruption performance); 10 Member States which are the worst performers¹⁵ (ranked mostly 5-7.5 of the maximum 10); and the middle category (ranking 7.5-9) is relatively sparsely populated with only 5 EU Member States¹⁶.

Read cumulatively, CPI and GCB show different aspects of corruption perception: CPI offers a general picture of how corrupt the public administration of a country is seen, while GCB also explores the perception of the effectiveness of anti-corruption measures, covers corporate corruption, and breaks down the indicators for various institutions/areas of public administration. This might lead to slight differences in the results of the two indicators. The findings of the GCB survey on the experiences of corruption confirm the CPI findings to a higher extent as regards the extremes and to a less extent as far as medium-ranked countries are concerned. Despite the low experiences with corruption in certain Member States, often respondents consider that anti-corruption efforts are insufficient, which shows that citizens' expectations are still not met.

Overall, although the corruption indicators assessed above may indicate certain trends in terms of evolution of perception or reported experiences with corruption, one cannot draw the final conclusion that the level of corruption as such increased or not. It can certainly be concluded that awareness increased in time, but whether this is also generated by an actual increase in the frequency and extent of corrupt practices is rather difficult to say.

[Significant harm \(i.e. economic, social and political costs\)](#)

¹³ <http://info.worldbank.org/governance/wgi/worldmap.asp>

¹⁴ Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Netherlands, UK.

¹⁵ Czech Republic, Hungary, Poland, Slovakia, Bulgaria, Latvia, Lithuania, Romania, Greece, Italy.

¹⁶ Cyprus, Portugal, Spain, Estonia and Slovenia.

There is a growing empirical literature based on comparative country studies, emphasising that corruption lowers investment, capital productivity, capital inflows and many other *macroeconomic* data that are relevant to public welfare¹⁷. The high level of corruption has a direct impact on the *internal market and public services*. Resources that otherwise could be directed towards production of goods and services are devoted to corruption. Corruption also misallocates resources that could otherwise be used for provision of public services and it negatively affects the levels of both foreign and domestic investments. Investors will ultimately avoid environments where corruption is rampant because it increases the costs of doing business and creates a certain degree of uncertainty. The high level of corruption often distorts competition by putting companies which "play by the rules" at a disadvantage and making the entry barriers more cumbersome for them. This eventually affects consumers who receive lower quality goods and services. Corruption also leads to a loss of competitiveness in the public procurement sector. According to a 2008 research on public procurement and corruption¹⁸, the costs added to a contract due to corrupt practices often reach 20 to 25%, but in some cases can even climb as high as 50% of the total cost of the contract. Also, in a highly corrupt environment, tax evasion is more likely to occur than in a regulated environment with functioning institutions¹⁹.

The exact *economic costs* of corruption cannot be easily calculated, nor is there any common indicator which can show the level of costs across EU-27. However, several overall estimates, as well as specific studies covering certain Member States or certain sectors are available. For example, a 2008 report of the Italian Court of Auditors pointed out that the total costs of corruption amount to 60 billion euro each year (equivalent to approximately 4% of GDP). In addition to this, 100 billion euro is 'lost' to the State Treasury every year due to tax evasion. This had a deep impact on the Italian economy, already affected by the consequences of the economic crisis²⁰. Estimates undertaken by TI in Greece showed costs of petty corruption of 787 million euro in 2009, equivalent to about 0.33% of the GDP (both in the public and private sector), which is an increase of 39 million euro since 2008²¹.

Studies undertaken in the healthcare sector in 2009 (between 3% and 11% of GDPs are spent on healthcare in European countries) show that approximately 56 billion euro are lost annually (80 million euro per day) to fraud and corruption within the EU²². A 2005 study conducted by the World Bank for the Romanian Ministry of Health concluded that so-called "informal" payments from citizens to receive medical care amount to 275 million euro annually. When an illness requires hospitalisation, patients typically pay bribes equivalent to three-quarters of a family's monthly income, the study showed²³.

According to Bulgarian Corruption Monitoring System data, Bulgarian companies claim that 27% to 35% of tender procedures in their respective industry were discredited. It is thus

¹⁷ See for instance: Mauro, P. (1995): Corruption and Growth. Quarterly Journal of Economics, 681-712; Mauro, P. (1997): *Why Worry about Corruption?* Economic Issues No. 6, Washington, DC: International Monetary Fund; Lambsdorff, J. Graf (2003): *How Corruption Affects Productivity*. Kyklos, Vol. 56 (4): 459-76; Djankov, S.; La Porta, R., Lopez de Silanes, F.; Shleifer, A. (2002): *The Regulation of Entry*. Quarterly Journal of Economics 117(1), 1-37; Wei, S.-J. (2000): *How Taxing is Corruption on International Investors?* Review of Economics and Statistics, Vol. 82 (1): 1-11.

¹⁸ http://www.nispa.org/files/conferences/2008/papers/200804200047500.Medina_exclusion.pdf.

¹⁹ Anti-corruption Resource Centre <http://www.u4.no/helpdesk/helpdesk/queries/query13.cfm>

²⁰ Alle radici della corruzione, May 2010,

http://www.corriere.it/editoriali/10_maggio_06/radici_corruzione_62563380-58cd-11df-ace4-00144f02aabe.shtml

²¹ National survey Corruption in Greece, 2009, TI Greece, available at <http://www.transparency.gr/Content.aspx?page=42>

²² See http://www.ehfcn.org/media-press/facts-and-figures/#_ftn1

²³ Medical Care in Romania Comes at an Extra Cost, March 8, 2009

http://www.nytimes.com/2009/03/09/world/europe/09bribery.html?pagewanted=1&_r=1

estimated that the cost of organised public procurement corruption in terms of fiscal and public welfare loss ranges between 25 – 30% of the public procurement market. This suggests 0.7 billion euro losses due to public procurement misappropriations in 2007–2008²⁴.

A coalition of specialised institutions and bodies estimated that the annual cost of corruption is equal to more than 5% of global GDP (2.6 trillion USD), with over 1 trillion USD²⁵ paid in bribes each year²⁶. Comprehensive estimates of the costs of corruption in the EU are not available. For the purposes of this impact assessment it has been estimated that the costs of corruption in the EU amount to around 1% of EU GDP. This judgement is informed by the fact that (1) EU countries are perceived to be relatively less corrupt than countries throughout the world on the various comparable indices available, and (2) both national and sectoral studies of the costs of corruption within EU point to orders of magnitude of overall costs of at least 1% per annum²⁷. Overall, the estimate of 1% of EU GDP would result in an annual cost of 120 billion euro per annum. According to estimates based on TI's CPI, an improvement in a country's TI corruption score by one point increases productivity by 4% of GDP and increases net annual capital inflows by 0.5% of GDP²⁸. According to the existing literature, the link between corruption perception indicators and the GDP can be either made by quantifying the degree to which countries with a lower GDP have higher perceived levels of corruption (using in this case perception indicators, like the CPI) or by analysing a number of variables influenced by corruption against the GDP (e.g. more corrupt countries have lower levels of investments or lower levels of productivity calculated as a certain percentage of the GDP)²⁹.

The harmful effects of corruption also have an impact at *social and political level*. As shown by the above-mentioned perception indicators, the key institutions in a democratic system lose their legitimacy by being used for private advantage. Accountable *political* leadership cannot develop in a corrupt environment, thus undermining the rule of law. Frustration and apathy among a disillusioned public often results in a weak civil society and this further encourages unscrupulous leaders to turn national assets into personal wealth. At *social level*³⁰, the quality and availability of public sector jobs, as well as the number of private sector opportunities, are lower in corrupt environments, thus affecting the incoming potential of the poor. By limiting spending on public sector services, corruption facilitates inequality and limits access to essential services like health and education. Corruption may also have indirect negative effects on the observance of *fundamental rights*, such as: equality and non-discrimination, right to political participation, right to conduct a business, right to access to services of general economic interest, right to a fair trial.

²⁴ Centre for the Study of Democracy Annual Anti-Corruption Policy Forum, 23.Apr.2007:

http://bulgaria.usaid.gov/237/news_item.html

²⁵ This is a conservative estimate of the World Bank Institute of actual bribes paid worldwide in both developed and developing countries. The estimate includes bribes between firms and public officials or politicians in the industrialized world, and also between multinational corporations from industrial countries bribery to the public sector in emerging economies. It also includes bribery within emerging economies. The estimate does not cover however every form of corruption (such as embezzlement). Furthermore, the \$1 trillion estimate does not include the full extent of 'tainted procurement', but only the bribe fees associated with such procurement. Finally, there is no attempt to include the extent of fraud within the private sector, but only bribery transactions between the private and public sector.

²⁶ International Chamber of Commerce, Transparency International, UN Global Compact, World Economic Forum, Clean Business is Good Business, 2009

²⁷ See also the data on Italy and Greece presented above.

²⁸ Lambsdorff, J Graf (2003): How Corruption Affects Productivity. *Kylos*, Vol. 56 (4): 459-76.

²⁹ The Economic Costs of Corruption: A Survey and a New Evidence, Axel Dreher and Thomas Herzfeld, June 2005, <http://129.3.20.41/eps/pe/papers/0506/0506001.pdf>.

³⁰ See the article "Combating Corruption: Private Sector Perspectives and Solutions", John Sullivan and Aleksandr Shkolnikov, *Economic Reform* issue, Centre for International Private Enterprise, September 2004.

Studies and reports show that corruption is also linked with organised crime and may also have cross-border implications. A specific study on this topic carried out for the European Commission in 2009 concluded that organised crime uses corruption as a tool. The study also depicts, among others, how corruption facilitates the operation of illegal markets (e.g. illegal cigarettes, drugs, prostitution, car-theft, extortion). For example, the study concludes that prostitution and illegal drugs markets exert the most corruptive effect in the EU. These are also the type of illegal activities that most often have a cross-border dimension. The study recommended, among others, the development of an independent corruption monitoring mechanism based on a network of independent (non-government) information sources, improved data collection tools, as well as benchmarks and alternative sources of information. The Europol Organised Crime Threat Assessment Reports (OCTA) for 2007 and 2008 illustrate that the organised criminal groups, their international dimension and the type of crime the groups practice affect the need and potential for the use of corruption. The same reports mention that in the Member States where criminal organisations with cross-border dimension operate, the cross-border activities are carried out from headquarters where corrupt environment is encouraged.

* * *

The main concluding points in relation to this problem are:

- The perceived level of corruption varies significantly among EU Member States. Indicators on perception and experiences with corruption show that there is no corruption-free zone in the EU;
- There are no indicators to measure the actual cost of corruption in the EU. However, estimates have shown that costs of corruption in the EU would amount to roughly 1% of the EU GDP;
- High levels of corruption have considerable economic impact (e.g. lowered investments; reduced competition and efficiency; increased public spending). Harmful effects of corruption at social and political level have also been identified: e.g. unaccountability of political leadership; lowered employment levels; exacerbated poverty and inequality; limited access to essential services like healthcare;
- The high levels of corruption cause considerable harm to citizens, businesses and public institutions alike, irrespective of their nationality.

3.2. Problem 2: Lack of common approach amongst Member States to the implementation of anti-corruption tools

In the absence of a common EU strategy against corruption the EU Member States have developed different approaches with regard to the implementation of anti-corruption tools and subsequently do not engage in the same way in the fight against corruption. This has led to wide variations at the institutional and legislative level and to considerable discrepancies in the results of anti-corruption measures, thus creating a too broad range of standards followed at EU level. The lack of such common EU approach generates inequality among citizens and businesses and affects the effectiveness of measures at EU level (e.g. fight against corruption in private sector; fight against organised crime with a cross-border dimension, etc).

The lack of common approach at EU level can be considered from three perspectives: first, the transposition of the EU anti-corruption legislation; second, the enforcement of national legislative and institutional frameworks and third, the implementation of the existing international monitoring mechanisms.

As regards the *EU anti-corruption legislation*, a relevant example is given by the Framework Decision 2003/568/JAI on combating corruption in the private sector, which aimed at criminalizing both active and passive bribery, setting up more detailed rules on the liability of legal persons and ensuring an effective penalty system. The first implementation report³¹ issued in 2007 showed that many Member States did little to apply it. For example, in relation to the transposition of the provisions on criminalization of active and passive bribery, including all elements of the offence, often Member States criminalize active/passive bribery without transposing the more detailed provisions. Another problem is related to the provisions on the liability of legal persons (independent of criminal liability of natural persons involved in the offence). This is often not foreseen in national law or is accompanied by many limitations. Such variations in the criminalisation of corporate corruption offences create advantages to offenders who are able to use a more favourable law while putting at disadvantage companies that have to follow stricter rules. A second implementation report is currently undergoing preparations (to be issued in June 2011). A preliminary analysis of the data gathered shows that several Member States still did not transpose the most detailed provisions on criminalization of all elements of active and passive bribery. Also, the transposition of the rules on criminal liability of legal persons continues to be regulated in an unsatisfactory manner at national level.

The Second Report on the implementation of the Convention on the Protection of European Communities' Financial Interests and its protocols identified deficiencies in the incrimination of corruption among Member States³². Other examples on the monitoring of the relevant EU anti-corruption tools and their application can be found in Annex 4.

As far as *the national legal and institutional framework of the EU-27* is concerned, there are considerable differences among the national substantive criminal laws of the Member States, from the very definition of corruption to the penalty system. This allows criminals and offences to go unpunished (i.e. encouragement of the so-called "corruption shopping"). Furthermore, the level of enforcement of the existing national legal frameworks varies significantly among the EU-27. Moreover, the statistics on corruption gathered by the Member States are not comparable across the EU, which renders it even more difficult to measure the actual extent of corruption against the perception indicators and the effectiveness of the measures taken. This has led to the situation that, in contrast to other policy areas, little is known about the actual extent of corruption in the EU-27.

The monitoring of the EU Member States' overall actions against corruption is carried out solely through *international monitoring mechanisms* which go beyond the EU level and cover each a different scope. The most relevant are the following (see Annex 5):

- GRECO, which monitors the compliance with the Council of Europe anti-corruption standards on the basis of the 20 Guiding Principles for the Fight against Corruption and the Civil and Criminal Law Conventions on Corruption;

³¹ COM(2007) 328 final.

³² Second Implementation Report on the PIF Convention 2008 (COM(2008)77).

- The Working Group on Bribery in International Business Transactions which carries out systematic country monitoring of the implementation of the OECD Anti-Bribery Convention;
- The Conference of the State Parties to UNCAC;

The first problem that arises concerns the uneven ratification of these instruments (see Annex 6). If we are to consider the two Conventions based on which GRECO carries out its evaluations (i.e. Criminal Law Convention on Corruption with its additional protocol and Civil Law Convention on Corruption), 3 EU Member States did not ratify the Criminal Law Convention, 12 did not ratify its additional Protocol and 7 did not ratify the Civil Law Convention. However, countries that are members of GRECO (i.e. all EU-27) but have not ratified the relevant Council of Europe instruments can still participate in the GRECO evaluation process.

The UN Convention against Corruption to which the EU acceded in November 2008, has not been ratified by three EU Member States.

The OECD Anti-Bribery Convention has not been ratified by five EU Member States, the last ratification from the EU dating as far as 2004.

The other problem arising on existing anti-corruption mechanisms is the uneven application by the Member States that ratified these instruments. The available GRECO reports for the first three rounds of evaluations conducted since 2000 show a wide variation of recommendations issued for the EU Member States under the topics assessed so far (e.g. institutional framework, immunities and privileges, specialisation of anti-corruption bodies, confiscation and seizure of proceeds of corruption offences, integrity in public administration, money laundering of proceeds from corruption offences, corporate liability for corruption offences, financing of political parties, criminalisation of bribery and trading in influence).

An assessment of progress made since the ratification of the UN Convention against Corruption also indicates slow and uneven application across the EU-27³³.

Background research also shows the existence of shortcomings in the implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions³⁴. The fifth annual Progress Report on Enforcement of the OECD Convention prepared by TI³⁵ showed that enforcement has been extremely uneven. There is active enforcement in only four countries and little or no enforcement in 21 countries. Increased efforts are also needed in countries with moderate enforcement because their level of enforcement is not high enough to provide effective deterrence.

All the above-mentioned show that the existing European and international instruments are largely insufficient to secure common anti-corruption standards and ensure their effective application in the EU-27.

Problems also arise due to the limitations of the existing mechanisms and notably:

³³ Comparative assessment of anti-corruption conventions' review mechanisms, U4 anti-corruption resource centre, <http://www.u4.no/helpdesk/helpdesk/query.cfm?id=163>

³⁴ http://www.oecd.org/document/12/0,3343,en_2649_34859_35692940_1_1_1_1,00.html.

³⁵ http://www.transparency.org/global_priorities/international_conventions

- The scope of the monitoring covers only certain legal instruments (i.e. Council of Europe's 20 Guiding principles against corruption, Criminal and Civil Law Conventions against Corruption; UNCAC; OECD Anti-bribery Convention). This leads to little flexibility in evaluations, leaving out aspects that would deserve special attention and creating difficulties in following the dynamics of the corruption phenomenon;
- Limited grounds for a comparative analysis of best and worst practices across the EU;
- The monitoring is mainly based on official sources and takes less into account the input of civil society;
- The experts appointed to carry out the monitoring are chosen from a pool of experts proposed by the States Parties to the legal instruments mentioned above. This creates certain limitations as to the range of experts who can be selected;
- Often the monitoring focuses more on the legal and institutional framework than on the actual enforcement;
- The evaluation rounds conducted by GRECO and those to be carried out by the UNCAC review mechanism cover periods which can exceed three years and thus lead to outdated findings in the reports;
- GRECO evaluation reports and the UNCAC review reports are as a rule confidential and can be published only with the agreement of the State in question.

* * *

The main concluding points in relation to this problem are:

- Incomplete and uneven transposition of EU anti-corruption tools and lack of a cross-cutting view on the application of all anti-corruption related instruments at EU level;
- Substantial differences in the EU Member States' anti-corruption legal and institutional framework and in the level of enforcement of national rules. This creates inequality in the treatment of citizens, businesses and companies across the EU. The variations in the level of enforcement also leads to significant differences in the level of reliability and accountability of public institutions and law enforcement agencies which may affect the cooperation measures/joint actions taken at EU level;
- Uneven ratification and application of the international legal instruments and existing evaluation mechanisms (GRECO, UNCAC and OECD). This shows that the existing instruments do not have sufficient leverage to generate an effective response from the EU-27;
- Limitations of the existing European and international anti-corruption mechanisms (e.g. limited scope, less involvement of civil society, less flexibility, lack of sound grounds for a comparative analysis of best and worst practices, etc). This further diminishes their capacity to induce intensified anti-corruption efforts in the EU Member States;

- Lack of a coherent comparable statistics system relevant for anti-corruption policies. This renders impossible the measurement of the actual extent of corruption and the effectiveness of the anti-corruption measures in the EU-27.

3.3. Problem 3: Low confidence of EU citizens in public institutions and in the fair functioning of the market due to corruption

Corruption undermines the confidence of EU citizens in public institutions. The low confidence in the integrity and capacity of the democratic institutions to deal with corruption also affects the trust in the fair operation of the market (see also section 3.1. above). This was reconfirmed by the 2009 Eurobarometer³⁶ on the attitude of Europeans towards corruption, which indicates that Europe-wide, 78% of citizens consider corruption as a major problem in their own country. Furthermore, eight out of ten respondents agree that there is corruption in their local (81%), regional (81%) and national (83%) institutions. Europeans are more likely to agree now than in 2007 that there is corruption in each of these institutions³⁷. The majority of the respondents also agreed that there is corruption within the EU institutions (with the lowest agreement levels in Poland and Romania – 58% – and the highest in Greece, Slovenia and Sweden – 85%). More than half of Europeans are of the opinion that bribery and corruption are widespread amongst national politicians (57%), and amongst officials awarding public tenders (52%) and building permits (51%). Politicians at regional and local level are the next most distrusted, whilst those in public health (32%) and public education (19%) are the least likely to be considered involved in widespread corruption. The close links between business and politics is the most common cause Europeans give for corruption, followed by insufficient action by governments to prevent corruption. In fact, most Europeans agree that tougher penalties and more successful prosecutions are needed to combat corruption. Almost one third of Europeans agree that the EU helps to reduce corruption in their country. In 24 of the 27 Member States surveyed, an outright majority of respondents considered that their national governments' efforts to combat corruption are ineffective.

TI's 2009 CPI report confirmed a wide-spread public and media perception that corruption within the financial system was partly to blame for the global economic crisis.

The 2008 European Commission's public consultation on the question "Freedom, Security and Justice: What will be the future?" shows that the fight against corruption is a top priority. 88% of respondents considered that the EU should do more about corruption.

* * *

The main concluding points in relation to this problem are:

- Corruption undermines the confidence of EU citizens in public institutions. This is confirmed by recent public opinion surveys, indicating that the majority of EU citizens considers corruption a major national problem within the EU;
- More EU action is requested by the citizens, the majority of which finds their governments' efforts to tackle corruption largely inefficient.

³⁶ http://ec.europa.eu/public_opinion/archives/ebs/ebs_325_en.pdf

³⁷ http://ec.europa.eu/public_opinion/archives/ebs/ebs_291_en.pdf

3.4. How would the problem evolve, all things being equal?

The *baseline scenario* or status quo indicates how the identified problems are likely to evolve without additional public intervention, taking account of existing and forthcoming interventions.

The status quo policy option would include the following developments:

At EU level:

- There will be no downsizing of the perceived corruption level by the EU citizens. As shown by the indicators analysed under section 3.1., in the recent years an increasing trend of perceived corruption was noticed as is likely to maintain;
- The estimated costs of corruption in the EU of 1% of the EU GDP would remain the same;
- The level of transposition of the relevant EU anti-corruption tools is likely to remain unsatisfactory, considering that so far one of the few anti-corruption legal instruments at EU level (i.e. Framework Decision 2003/568/JAI on combating corruption in the private sector) has been unevenly transposed and the situation has not improved to a significant extent in the last three years. The TFEU now offers some additional instruments to ensure transposition of EU acquis in the area of Freedom, Security and Justice (e.g. infringement procedures). However, even if these instruments may serve as an incentive for the Member States to act, their benefits cannot be seen in a short-term;
- Implementation of exceptional measures such as the Cooperation and Verification Mechanism (CVM) for Bulgaria and Romania will continue. While the CVM may be further used in supporting new accession States in developing effective administrative and judicial systems, it largely remains an exceptional instrument. When the two Member States joined the EU in January 2007, the European Commission set up a CVM³⁸ to help the two countries address their shortcomings in the areas of judicial reform, corruption and organised crime. The mechanism monitors the countries' progress through periodical reports. Progress is assessed against a set of country-specific criteria or 'benchmarks' which were defined by the European Commission in December 2006.

At national level:

- In the framework of the study which served as a basis for the impact assessment it was concluded that six out of fourteen Member States interviewed have put in place anti-corruption strategies. Four others have not yet implemented a national anti-corruption strategy. However, working groups at national level are set up in some Member States to discuss and assess anti-corruption measures. Recent legislative developments in some Member States have also been identified as being part of the status quo: e.g. in UK, since 2006 the government started developing annual anti-corruption action plans (one of the most notable legislative measures adopted is a new Bribery Act which sets very strict provisions, in particular on commercial bribery); in Italy, following a GRECO recommendation, a specific anti-corruption law was drafted and is under Parliamentary debates; in Ireland, a specific legislation on anti-corruption is under discussion. However,

³⁸ http://ec.europa.eu/dgs/secretariat_general/cvm/index_en.htm

even if such new legislation and strategies are adopted at national level, the problem of uneven engagement in the fight against corruption across the EU-27 will remain.

At international level

- The EU Member States will continue to be monitored solely through the existing evaluation mechanisms, notably those of GRECO (fourth evaluation round to be launched at the end of 2011), UNCAC and OECD. The problems associated with the uneven ratification of all existing instruments by the EU-27 and most importantly with these instruments' limitations will remain;
- The EU may participate in the UNCAC review mechanism³⁹. However, the review mechanism presents several limitations (e.g. pure inter-governmental instrument; cross-evaluation system likely to lower standards; outcome of first evaluation round likely to be available no sooner than five years and only by 2020 will all Member States have been evaluated) and does not have enough capacity to generate measures which would lower the costs associated with corruption in the EU-27;
- The statistics to measure the actual extent of corruption will remain unreliable, rendering any comparison of best and worst practices difficult.

3.5. Subsidiarity test

EU's right to take action in this field. The TFEU (Article 67) stipulates the Union's obligation to ensure a high level of security, including through prevention and combating of crime and approximation of criminal laws. Moreover, Article 83 TFEU lists corruption among the particularly serious crimes with a cross-border dimension for which minimum rules on the definition of criminal offences and sanctions may be established. Therefore, the EU has a general right to act in the field of anti-corruption policies within the limits established by these articles of the Treaty.

The political mandate of the Stockholm Programme builds on the legal mandate in the Treaty, recognising corruption among other crimes considered trans-national threats that continue to challenge the internal security of the EU and require a clear and comprehensive response. EU's right and need to act in this field is also confirmed by its accession to the United Nations Convention against Corruption (UNCAC), one of the most comprehensive international instruments against corruption to which most EU Member States have also acceded.

The need for action at EU level. Member States are not always equipped to effectively fight corruption, because, as also stated in the TFEU, it is a particularly serious crime with a cross-border dimension resulting from the nature or impact of the offence. The cross-border implications can be seen even for forms of corruption which might seem less of trans-national interest, but in fact may affect competition, capital flows and investments across the EU (e.g. facilitation payments which support the survival or advantageous position on the market of some companies, corruption in the judiciary, which may affect competition and investments). Given the alleged role of corruption in the recent financial crisis, a sustainable recovery of the EU economy as a whole also requires more effective anti-corruption measures across the EU.

³⁹ See main outcome of the third session of the UNCAC Conference of the States Parties which took place in November 2009: http://www.unodc.org/documents/treaties/UNCAC/COSP/session3/Doha_resolutions_unofficial.pdf

In the internal market, EU Member States have a mutual interest in reducing corruption throughout the Union. Recent major corruption scandals in the private sector may also give a fair example of the cross-border implications and adverse effects on competition. Such cases⁴⁰ affect not only the national markets of the Member States in question, but also have spill over effects on the internal market and competition in the EU. Corruption in the area of public procurement for instance is a constraint on the competition in the internal market, operators in a less corrupt Member State being more reluctant to offer their services in a more corrupt Member State, as this would increase their transaction costs and reduce the likelihood of making business. The EU would have better leverage in this regard to pressure the Member States to intensify the anti-corruption efforts and reinforce mutual trust.

Moreover, studies⁴¹ have shown that corruption is one of the inherent tools used by the organised criminal groups to cover their illegal activities. As mentioned in section 3.1., Europol assessed that organised criminal groups' structures and their international dimension are related to the potential use of corruption.

There are high expectations of the EU citizens towards action at EU level (e.g. 88% of the European public thinks that the Union should take more action in the fight against corruption⁴²). Therefore, peer pressure and using EU's unique political leverage are seen as effective tools to generate concrete results in the fight against corruption all throughout the EU-27.

The EU is well-placed to lead and to act as a catalyst for boosting the anti-corruption policy of the EU and Member States in various policy areas. Enhancing the fight against corruption is also relevant for policy areas in which the EU directly manages large amounts of public resources and where corruption can severely reduce the benefits of these resources. Some corruption in the EU occurs in the implementation of EU interventions such as the structural funds. The 2009 Commission Report on the protection of the EU's financial interests has shown that 43 cases on structural funds were under active investigation by OLAF in December 2009, with a financial impact of 658.19 million euro. The enlargement process is also an area where prominence was given to the fight against corruption, and where post-accession actions are necessary to sustain the improvements achieved.

While these aspects of subsidiarity are valid for all the policy options analysed in this report, the specific aspects of the EU added value compared to action at national level are analysed for each of the assessed policy options (except the status quo).

4. POLICY OBJECTIVES

The overall long-term objective is the substantial reduction of corruption within the EU-27. This goes in line with the Stockholm Programme calling for a clearer overview on the anti-corruption efforts of the EU Member States and a comprehensive policy at EU level. The following general objectives have been identified:

- § To reduce corruption opportunities across the EU;
- § To reduce the harmful economic, social and political effects of corruption, particularly in relation to EU and cross-border activities;

⁴⁰ See also section 6.3. on Siemens and DePuy Johnson and Johnson cases.

⁴¹ See also reference no. 27.

⁴² Public consultation in preparation of the Stockholm Programme, available at http://www.acceptance.ec.europa.eu/home-affairs/news/consulting_public/consulting_0001_en.htm.

- § To improve the effectiveness of the EU and international legal frameworks;
- § To increase the application of successful approaches to reducing corruption (and to reduce the application of unsuccessful approaches) with particular emphasis on transnational learning within the EU;
- § To increase confidence of EU citizens in public institutions and in the fair functioning of the internal market.

The overview of the general, specific and operational objectives and their link with the identified problems are set out hereafter:

Problems identified	General objectives	Specific objectives	Operational objectives
Problem 1: <i>High levels of corruption in some EU Member States and the significant harm associated with it;</i>	a) To reduce corruption opportunities across the EU b) To reduce the harmful economic, social and political effects of corruption, particularly in relation to EU and cross-border activities;	To reduce instances of corruption across the EU To increase the effectiveness of anti-corruption measures by fostering political will for action against corruption To reduce the effects of corruption on competition and the fair functioning of the internal market To reduce the proportion of citizens indicating that they have paid 'bribes' for public services	To provide and disseminate valid and reliable periodical data on levels of corruption in EU Member States To produce and disseminate at EU level valid and reliable information on the performance of anti-corruption measures. To provide improved surveys on the payment of bribes for public services
Problem 2: <i>The lack of a common approach amongst Member States to the implementation of anti-corruption tools</i>	c) To improve the effectiveness of the EU and international legal frameworks d) To increase the application of successful approaches to reducing corruption (and to reduce the application of unsuccessful approaches) with particular emphasis on transnational learning within the EU	To improve the implementation of the EU acquis and international instruments in the area of the fight against corruption To promote the identified best practices To increase the resources deployed on implementation of anti-corruption measures.	To provide more extensive and timely information on the transposition and implementation of EU and international anti-corruption legislation To support international cooperation and exchanges of know how in the prevention of and fight against corruption. To increase the number of peer learning activities in the EU concerning anti-corruption.
Problem 3: <i>Low confidence of EU citizens in public institutions and in the fair functioning of the market</i>	e) To increase confidence of EU citizens in public institutions and in the fair functioning of the internal market	To increase awareness of EU citizens of EU anti-corruption efforts To increase perceived credibility of anti-corruption policies in the EU.	To publicise and make accessible the findings of periodical reviews of corruption in the EU.

5. POLICY OPTIONS

Four policy options including the status quo have been assessed.

5.1. Policy option 1 – The status quo

This policy option would involve no new initiatives and no new EU action. However, the policy option would include existing activities, and those that are anticipated that may address the underlying problems. The possible developments of this policy option at EU, national and international levels are mentioned in section 3.4.

5.2. Policy option 2 – EU accession to GRECO

This policy option foresees accession to GRECO with the following additional three elements: a) a comparative report compiled on the basis of existing country reports; b) the follow-up of a selection of recommendations going beyond current procedure of compliance reports; and c) tailor-made evaluations for the EU-27. See Annex 7 for information on the organisation and functioning of GRECO.

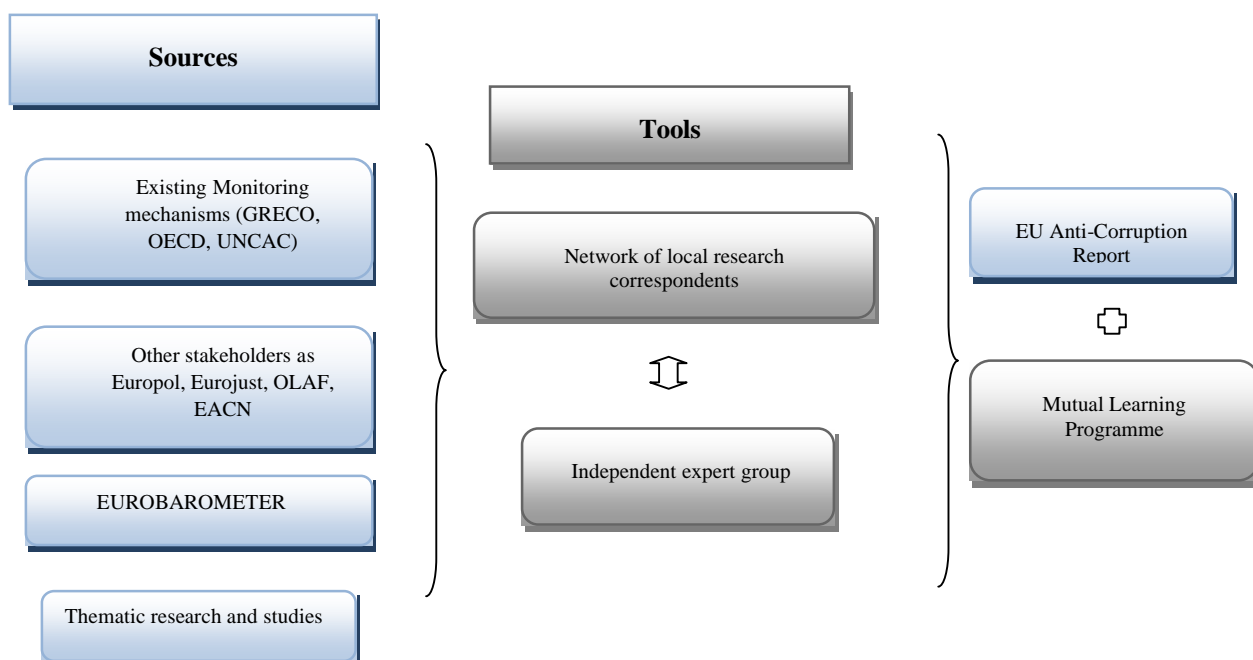
The *comparative report* (a) would make comparisons among Member States and where possible draw out general lessons based upon the small number of recent country reports available. GRECO would also be responsible for drafting comparative reports once the evaluation rounds are completed.

It is envisaged that the additional *follow-up procedures* (b) would focus on areas of corruption that are of particular importance at EU level and where little progress was made in response to previous recommendations and/or where recommendations have been taken on board but there has been little or no apparent effect on levels of corruption.

With the third element (c) the EU would ask GRECO to undertake additional *specific 'evaluation rounds' for the EU-27* to allow tailor-made evaluations to be carried out. The approach adopted for each country evaluation would be similar in scope to the current GRECO national reports, but would also take account of EU priorities.

5.3. Policy option 3 – Periodical EU Anti-corruption Report

Periodical EU Anti-Corruption Report: core elements and reinforcing measures



This option would mainly include a periodical reporting on anti-corruption efforts across the EU, as well as inputs from an independent expert group. The EU Anti-Corruption Report, which would be issued by the Commission and published every second year, would consist of an introductory section followed by three distinguished parts:

- (1) **A thematic section**, highlighting a specific aspect of the fight against corruption in the EU based on research and including thematic case studies, examples of best practices and tailor-made recommendations.
- (2) **Country fiches**, including a small number of tailor-made recommendations directed to individual Member States, based on the results of existing monitoring mechanisms and reviews of available evidence from relevant sources. This section might be complemented with recommendations for appropriate action at EU level, if need be. If the collected data allow, it may lead to establishing clear indicators and benchmarks.
- (3) **Trends at EU level**, mainly based on the results of a two yearly Eurobarometer survey, measuring the perception of corruption in various areas among EU citizens.

The Commission would use for the periodical report inputs from a variety of sources, including other organisations that have established monitoring mechanisms (GRECO, OECD, UNCAC), independent experts/research, relevant data from various Commission DGs, Member States, other stakeholders as Europol, Eurojust, OLAF, EACN (European Anti-Corruption Network), the Eurobarometer and the civil society. The periodical reports could focus on the areas more affected by corruption.

An independent expert group would be established by the Commission to offer assistance in: (1) assessing Member State performances, (2) making recommendations, (3) identifying best practices, (4) identifying EU trends, (5) proposing where relevant EU appropriate measures and (6) establishing benchmarks and indicators. To ensure the integrity of the expert representatives, a code of conduct could be developed with expert selection undertaken publicly and transparently. The Commission would, in a similar manner to what has been done for human trafficking⁴³, draft a Decision to specify the mandate of the expert group as well as its composition and procedures for the appointment of its members.

A network of local research correspondents would also be established to brief the Commission on the state of play in the field of fight against corruption in each of the 27 Member States. The input of the network correspondents would include systematic review of evidence that would allow constant comparative analysis. The network would complement the work of the independent experts who will carry out periodic evaluations as it would offer a constant overview on the state of play in each Member State.

A mutual learning programme would be established to assist Member States, local NGOs or other stakeholders to identify best practices and shortcomings, raising awareness or providing training on anti-corruption. The programme would secure a system of research and exchange of expertise which would allow the detection of a range of areas where information on successful approaches or on particular situations to be avoided can be shared at practical level. The results of these exchanges would not necessarily be made public, enabling more critical findings to be expressed bi-laterally or on an agreed multi-lateral basis. The costs would be born by the EU budget, and the administrative burden on the technical experts involved in the learning programme would be kept to a minimum level. The estimations on the costs of the programme are mentioned in section 6.3 below and further elaborated in Annex 8. The programme would be developed gradually, thus the aggregate costs would be lower.

⁴³ Commission Decision, of 17 October 2007, setting up the Group of Experts on Trafficking in Human Beings, (2007/675/EC)

This policy option would involve the *development of indicators at EU level* to assess corruption trends and the achievement of efforts in the fight against corruption. The indicators concern: perceptions of corruption; respondents' behaviour linked to corrupt activities; criminal justice statistics, including on seizures and confiscations; reporting and media attention; potential corruption in public procurement; and composite measures of corruption. There is evidently a good deal of information currently available. However, the quality of this information could be improved and there is scope for the further development of indicators using existing administrative data such as that recorded in the public procurement field. Given that almost all forms of corruption may have cross-border implications, the EU Report would avoid limiting the targeted objectives to an exhaustive list of priority areas, contrary to what is usually done by existing international mechanisms. The Report would select at each evaluation round a number of cross-cutting elements relevant at EU level at a given moment, as well as aspects specific to each Member State. The areas to be covered by the EU Anti-Corruption Report may therefore change in time, depending on the findings, the dynamics of various indicators and the emergence of new situations that could not have been predicted at the time of setting up the Report.

The setting up of a periodical EU Anti-corruption Report would be a non-legislative measure that will take the form of a Commission Decision.

5.4. Policy option 4 – The use of EU legislation

The policy option would comprise two elements:

- (1) The *approximation of legislation relating to prevention, prosecution and punishment of corruption offences* in the Member States. The legislation would include the establishment of a common narrow criminal law definition of corruption; the collection of evidence; the coordination of prosecutions between Member States; and aspects of judicial cooperation in criminal matters under the mutual recognition instruments. This would be complemented by approximation of legislation in other fields highly relevant for fight against corruption like asset recovery and public procurement.

The approximation would be furthered by a Directive based on Articles 83 (1) and art. 82(2) TFEU. This would introduce common provisions to strengthen the prevention of corruption and establish rules concerning the definition of criminal offences and approximation of sanctions in the area of corruption. This Directive would replace the existing range of instruments, comprising Recommendations, Conventions and protocols under the Maastricht Treaty and the Framework Decision under the Amsterdam Treaty.

- (2) Legislation on the *definition and measurement of corruption and production of statistics* (either a general instrument or several specific instruments are envisaged).

EU Member States collect different statistics concerning instances of corruption and corruption levels in their countries⁴⁴. Currently, there is no clear picture of variations in the levels of corruption and trends across the EU.

⁴⁴ Indicated by GRECO evaluation reports: http://www.coe.int/t/dghl/monitoring/greco/evaluations/index_en.asp.

This policy option foresees the adoption of an instrument(s) on the definition and measurement of corruption. This legal instrument would require the harmonisation of the definitions and the setting up of standards for statistical data collection in the Member States. It would indicate which data Member States are required to provide to Eurostat, as well as the sources of such statistics (for example, records of administrative and judicial actions, sample surveys, etc.). Member States would be required to provide information on the incidences and perceptions of corruption. The Statistical Programme Committee (SPC), which operates alongside Eurostat and comprises the heads of the National Statistical Institutes of the Member States, could support the Commission in drafting the requirements for gathering statistics on corruption. The measure would be analogous to the Regulation on Community statistics on migration and international protection⁴⁵, which was designed to improve statistics in the field.

The measure could comprise one general instrument or several specific instruments covering particular aspects/domains of corruption within which corruption would be defined and measured. Examples of critical domains that could assume priority are: public procurement; health; law enforcement; tax administration; funding of political parties, and financial control.

6. ANALYSIS OF THE IMPACTS OF THE POLICY OPTIONS

The potential impacts of the policy options have been assessed against the following main criteria: achievement of the general objectives, economic impacts, social impacts, overall assessment of feasibility (i.e. political and practical feasibility, consistency with Stockholm Programme), and value for money. The analysis of the economic implications which is relevant for both the achievement of the objective referring to the reduction of harm associated to corruption and the economic impacts criterion was elaborated more in relation to the latter. The analysis of the criterion of value for money was carried out comparing the financial costs (indicative estimations) against the potential effectiveness of the policy option. The impacts of the status quo are rated as 0 and all other policy options are measured against this baseline scenario.

Given the scarcity of measurable indicators on corruption and the lack of a coherent comparative statistics system across the EU, it is almost impossible to quantify with precision the potential impacts of the policy options against various criteria. This is valid notably for the general objectives (e.g. reduction of corruption opportunities and associated harm; effectiveness of legal framework, etc), economic and the social impacts. Therefore, qualitative assessment complements the analysis when quantification is not possible.

As regards in particular the calculation method of the economic impacts and corresponding ratings, given the estimated economic costs of corruption in the EU (i.e. roughly 120 billion euro per annum), it is reasonable to assume that at best all considered policy options would only affect a small proportion of the corruption that generated these high costs. However, each policy option was assessed to have a certain degree of potential to help Member States ensure more effective anti-corruption measures. The assessment is based on the assumption that EU actions could reduce the economic costs of corruption no more than 5% of the overall 120 billion euro per year. The economic benefits of each policy option are therefore considered against a threshold of maximum 6 billion euro per year. This threshold was set up

⁴⁵ Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection and repealing Council Directive (EEC) No 311/76 on the compilation of statistics on foreign workers.

at this level considering that most impacts that all the assessed policy options may have are rather indirect. The estimates are not based on precise calculations, but on the opinion of experts interviewed in the framework of the external study commissioned to inform this impact assessment. The calculation of the exact costs and potential economic impacts would be a very complex and almost impossible endeavour at this stage, given the shortage of scientific data in this regard. For easier reference and comparative view, this report rates each policy option on a scale from 0 to 10, with 10 being the maximum threshold. The rating is mainly based on the overall estimation of the impact on the objectives, and notably of the impact that a policy option might have on the corruption opportunities and associated harm.

6.1. Option (1) - Status Quo / no new EU action

General objectives

- The *corruption opportunities across the EU* would be reduced to a limited extent, given that hardly any further developments (apart from implementation of the UNCAC review mechanism and the launch of the fourth GRECO evaluation round) are expected. Monitoring of anti-corruption efforts will continue, at least in a short-term perspective, under the CVM and work undertaken in the framework of the enlargement process. However, the impact of these last two developments will be quite narrow at EU level;
- The *harm associated to corruption* would remain the same. From the point of view of social and political costs it is likely that the status quo would lead to further deterioration of the rule of law. The economic costs are analysed below, in the economic impacts section;
- The status quo does not have the potential to improve the *effectiveness of EU and international legal framework*, nor to increase the *application of successful approaches*. The level of transposition of the EU legal framework is unlikely to improve significantly, as shown by the data gathered for the second implementation report of Framework Decision 2003/568/JAI on combating corruption in the private sector (see also section 3.4. above). The developments that can be anticipated in some EU Member States in terms of drafting new strategic documents and legislation cannot solve the problem of the uneven engagement across the EU and therefore would not have the potential to lead to a successful approach at EU level. No EU action would also mean limitation to the existing monitoring and evaluation mechanisms, which themselves present several shortcomings. For example, GRECO undertakes only 12 evaluations per year amongst 47 countries. The process has limited leverage over the responses of Member States. Moreover, different topics are monitored each time and no periodicity is possible. As for UNCAC, not all EU Member States are participating in the review mechanism. Moreover, even for the ones participating, given the limitations of this mechanism (see above section 3.4), it would not provide a complete picture of anti-corruption efforts within the EU;
- The *confidence of the EU citizens* in public institutions would remain low. An analysis of CPI scores shows that since 2008 the perception of corruption has increased. Moreover, the 2009 Eurobarometer survey observed a slight increase since 2007 in the percentage of European citizens considering that corruption is a major problem for their country (i.e. from 75% to 78%). It is therefore reasonable to assume that the perception of corruption is even likely to further increase under the status quo policy option. Moreover, public expectations for more EU action in this field would not be met (e.g. in the consultation responses on the Stockholm Programme 88% of respondents requested more EU action,

making the fight against corruption the most supported policy in the field of Freedom, Security and Justice).

Economic impacts

- The status quo would have no impact on the economic implications of the existing high levels of corruption. The costs of corruption in the EU would continue to amount to about 1% of EU GDP;
- Since it was estimated that an increase by one point in a nation's overall corruption rating, as measured in the CPI, lowers productivity by 4% of the GDP, one can anticipate that given the increase registered in the recent years in the CPI levels across the EU, productivity is likely to further decrease. The status quo would thus have further negative impacts on capital productivity, capital inflows, investments and it would further encourage distortion of competition in the internal market by allowing undue advantages resulted from corrupt practices.

Social impacts

- The additional obstacles created by corruption for the access to essential services like health and education will remain;
- The indirect negative impact on the respect of fundamental rights like equality and non-discrimination, right to political participation, right to access to services of general economic interest, would not be removed.

Overall assessment of feasibility

- There is likely to be some Member State support for this option, as there is some reluctance from some Member States to be involved in additional anti-corruption instruments;
- This option is not consistent with the Stockholm Programme.

Value for money

- Very limited costs would be incurred at EU level. These would relate to the costs of participation in UNCAC (i.e. roughly no more than 300,000 euro annually). However, given the limited impact that this option would have in terms of efficiency, the value for money would be rather low.

Conclusion: In spite of the very limited resources incurred by the status quo, this option would have a considerably limited impact, if any, on the general objectives and would not reduce the harm associated with corruption. Moreover, it goes against the Stockholm Programme and will inevitably lead to a more vulnerable position of Member States and the EU as a whole to deal with corruption, given its transnational nature and its perceived magnitude.

6.2. Option (2) - The EU accession to GRECO

General objectives

- As regards the *reduction of corruption opportunities across the EU*, the impact of this policy option would be medium. On one hand, the intensification of the GRECO evaluation process in the EU should raise the profile of anti-corruption issues. This would mean that the anti-corruption efforts across the EU can improve to a certain extent and hence the instances of corruption may be slightly reduced. However, on the other hand this option would assume reliance on the existing GRECO monitoring system. Given the latter's weaknesses, the effects on the corruption opportunities, albeit greater than with the status quo, would still be insufficient. The scope of the GRECO mandate is limited. The GRECO process is inter-governmental as does not directly engage civil society. In addition, the follow-up mechanism does not involve powers over Member States to ensure that the recommendations are followed once a cycle is closed (i.e. no periodicity). The national experts are appointed in agreement with the Member States and the questions addressed in evaluations are agreed by the participant countries. Hence the independence of experts and the scope of evaluations may be called into question. The evaluation reports have to be agreed by Member States, which may limit the scope of criticism;
- The effects on the *harm associated with corruption* would be small. The additional pressure on Member States to ensure the effective definition and implementation of anti-corruption measures would not be sufficient as to lead to marked reductions in corruption. Some indirect reduced effects may be anticipated on improvements of confidence in legal systems and governance. The economic impacts are assessed below;
- As for the *effectiveness of the EU and international legal frameworks*, the impacts of this policy option would be low. The intensified GRECO evaluation process would probably encourage the ratification of the Council of Europe Conventions by the EU Member States. However, GRECO's country reports do not provide a complete picture of corruption levels and trends across the EU as the data collected is not comparable⁴⁶. At present the GRECO evaluations can be rather 'soft' in terms of their questioning (unlike the more rigorous evaluations of the OECD Anti-Bribery Convention). It would thus not be possible to generate a visible improvement of the effectiveness of the measures taken. Moreover, given the above-mentioned shortcomings of the GRECO evaluations and of the information collected to this purpose, the data available on corruption and anti-corruption

⁴⁶ The existence of such shortcomings has been confirmed by desk-based research. Statistics on corruption cases in the Member States have been collected by GRECO during the different evaluation rounds undertaken. The evaluation reports (Round 1 and 2) have been screened and the analysis of available statistics shows that:

- The data gathered is often outdated (before 2000);
- The Member States included different types of offences and/or actions within the definition of corruption. The most common ones are extortion, bribery, money laundering, receipt of an interest/grant of an advantage, abuse of public office/power, suspicious transaction, etc.;
- Six Member States referred to the difference between active and passive corruption while others did not;
- The breakdown of corruption cases for some Member States was not clear;
- Measuring corruption and comparing the trends is challenging as different data have been collected for different years. In some cases, annual statistics have been included while in others, data have been presented for longer periods of time (for example, 1998-2002);
- The statistics gathered are not comprehensive. For some Member States, only limited data have been gathered while for others no statistics have been provided.

measures would remain weak and hence the views and judgments expressed in reports would still be challenged. The EU would be a participant along with 47 other members. This, in corroboration with the GRECO procedures may limit the leverage of the EU to generate inputs suitable for a periodical report every two years;

- The production of comparative reports for EU Member States within GRECO framework would encourage transnational learning to a limited extent and thus have a rather moderate impact on the *successful approaches to reducing corruption*. GRECO's current legal procedure does not allow for tailor-made evaluations and its procedural rules would need to be changed to accommodate a reinforced evaluation of EU Member States. Under this option, GRECO could provide inputs to a comprehensive comparative assessment of the situation in EU Member states every two years. The information available would only allow a limited comparative analysis of anti-corruption measures and their performance across the EU;
- The activities of GRECO are not well known within the EU and it is unlikely that this policy option would markedly influence public perceptions and increase the *confidence of EU citizens* in public institutions and in the fair functioning of the market. Therefore, a moderate positive impact on this objective is expected.

Economic impacts

- Policy option 2 is rated as having a rather limited economic impact that could accrue from periodical evaluation and related activities, with an estimate impact of 1.2 billion euro per year in the medium term, deducted from a rating of 2 out of maximum 10, calculated according to the method described in the preamble of section 6.
- Some limited indirect positive effects on productivity, capital inflows, and investments beneficial to the *competition in the internal market* can be anticipated, as implementation of anti-corruption measures may progress in some Member States as a result of the enhanced evaluation system.

Social impacts

- The option would have limited effects on the quality and availability of public sector jobs and private sector opportunities, since corruption opportunities would be reduced only to a slight extent;
- Some limited indirect positive effects on reinforcing the application of fundamental rights can also be expected, since the limited reduction of corruption opportunities expected from this policy option would only have little impact on the equality and non-discrimination, right to access to services of general economic interest, etc.

EU added value test⁴⁷

- GRECO's evaluation system generated important changes in the legal and institutional framework of the Member States' anti-corruption policy. However, by both scale of effects

⁴⁷ The subsidiarity aspects assessed under each policy option regard only the added value of the proposed EU action. The aspects related to the right to act and the generally applicable arguments for the need of EU action in the anti-corruption field are elaborated in section 3.5.

and effectiveness, the existing GRECO setting, although valuable to a great extent, has still not generated sufficient engagement in some Member States. One example is that of Greece, for which although 10 recommendations were issued in 2005, five years later only half of them were fulfilled. Moreover, no crisis alert was triggered with the 2005 report to anticipate the chain of corruption scandals and links with the financial crisis that emerged soon afterwards. Greece acknowledged at the highest political level in one of the most critical moments of the financial crises when a long list of scandals⁴⁸ surfaced, that corruption is a systemic problem and fight against corruption will need to be part of a structural solution towards Greek economic recovery. Such examples show that in the context of GRECO Member States alone do not always ensure an adequate follow-up of systemic corruption problems.

- The mutual benefits of the GRECO expertise and EU political influence over the Member States can stimulate further improvements in the overall evaluation and follow-up system of GRECO. The additional political leverage of the EU would have the potential capacity to generate some additional action at the level of the Member States, by reinforcing the evaluation of the EU-27, focusing on more relevant issues for the EU with a cross-border dimension (e.g. corruption in the private sector).
- However, the extent to which action might be prompted at national level would be rather limited, since it would have to follow only the Council of Europe framework and leave outside matters of interest for the EU (e.g. public procurement) and it would not create any new instrument outside the existing one to which Member States have already developed practices of response that often proved ineffective.

Overall assessment of feasibility

- GRECO's procedural framework would need to be amended to allow the development of tailor-made evaluation rounds (i.e. third element of this policy option). This would assume cumbersome changes in the GRECO methodology and difficulties in terms of practical and political feasibility, since the current evaluation framework and follow-up proceedings would need to be substantially modified. Consequently, the feasibility (both practical and political) of two elements of this option (i.e. comparative reports and follow-up of outstanding recommendations) would be higher than in the case of all three elements of option 3 being taken on board. Therefore, in the final assessment on how policy options compare (section 7), it is likely that two elements of option 2 be considered separately as opposed to the entire package of three elements analysed in this section;
- The accession/participation to GRECO may raise some legal and institutional difficulties, notably in terms of conditions of EU participation in GRECO's decision-making process and the incurred EU's rights and obligations;
- A more intensive evaluation process in the framework of GRECO would create some additional pressure on Member States to ensure the effective definition and implementation of anti-corruption measures. However, this policy option may not be viewed as an EU initiative;

⁴⁸ One of the scandals was at the end of May 2010, when a Former Greek Transport Minister was charged with receiving money from Siemens Electronics amid a government campaign for rooting out corruption in the country.

- The option would be consistent with the Stockholm Programme.

Value for money

- Funding from the EU would be provided to support the additional activities of GRECO. The costs to be born by the EU budget are estimated at maximum 2.1 million euro per year.
- This option would take advantage of the existing institutional structures and capacities including qualified national experts, as well as technical and logistical support from the GRECO Secretariat⁴⁹.
- Currently GRECO reviews 12 member countries and undertakes follow-up procedures on 29 countries per annum. The estimated costs of each element of this policy option are as follows:
 - Element (a), a comparative report based on existing national reports for EU Member States would cost an estimated 150,000 euro per year. The reports could be produced on an annual basis or every two years. At these frequencies the reports would however, only cover a small number of EU Member States. Much of the costs would be incurred in the process of validation, as the contents of the reports would be sensitive to Member States.
 - Element (b), the follow-up of a selection of recommendations going beyond current procedure of compliance reports, would cost an estimated 300,000 euro per year. It is assumed that the follow-up procedures would involve country visits and dialogue between the Commission, GRECO and Member States involved. If no additional follow-up procedures are developed, participation in GRECO would assume participation of EU in the evaluation procedure of Member States. In this case, the same amount of 300,000 Euros roughly corresponds to the annual contribution of a major contributor to GRECO budget.
 - Element (c) tailor-made evaluations for the EU-27. An additional 12 national reviews would be required per annum with this element with an estimated cost of 1,350,000 euro. There would be administrative costs of around 300,000 euro per annum.

Further information about the costs linked to the implementation of policy option 2 is provided in Annex 8.

- Given the medium impact estimated for most of the general objectives and the rating of the potential economic impact, the benefits of this policy option would outweigh the financial costs.

Conclusion: This policy option would take advantage of existing institutional structures and capacities. Compared to the baseline scenario, the effects of this policy option would include: a stronger focus on anti-corruption issues at national and EU level and the potential to better compare the progress of EU Member States in terms of the performance of their anti-

⁴⁹ At present, 11 persons work within the GRECO Secretariat, the infrastructure is provided by Council of Europe.

corruption activities than at present and a more intensive evaluation process would create some additional pressure on Member States to ensure an effective implementation of anti-corruption measures. GRECO's procedural framework would need to be amended to allow the development of tailor-made evaluation rounds and resources will need to be adapted accordingly. GRECO could therefore provide inputs to a comparative assessment of the situation in EU Member States every two years. However, GRECO's evaluation system presents several weaknesses which may limit the effects on the harm associated with corruption or on effectiveness of anti-corruption measures. Also, this option is unlikely to provide an EU solution to the concerns of the European citizens.

6.3. Option (3) – Periodical EU Anti-corruption Report

General objectives

- This policy option is likely to lead to higher political priority being given to anti-corruption measures, thus having a fairly high potential to *reduce corruption opportunities across the EU*. A more intensive monitoring process at EU level would draw a clear picture of the strengths and weaknesses of the anti-corruption efforts in the EU-27 and would create additional peer pressure on Member States to step up the implementation of anti-corruption tools. Political commitment would lead to more effective legal and operational measures likely to reduce the instances of corruption. Since the Anti-Corruption Report will highlight corruption risks at an early stage, it has the great potential to help the EU mitigate the prospective negative effects of deep-rooted, systemic problems which could evolve into crisis;
- The exchange of best practices would have a relatively high impact on reducing the *harm associated with corruption*. The mutual learning programme would maximise the chances that key lessons could be successfully applied in contexts where they would have the greatest effect. The economic impacts are assessed below;
- An EU evaluation process is likely to have a fairly high impact on the *effectiveness of the EU and international legal frameworks*. Such an evaluation system would have potential to generate additional strain on the transposition of the EU legislation, since the evaluation reports would be disseminated and a clear periodical comparative view on the level of transposition would be available. Moreover, the better knowledge of successful practices across the EU would encourage further and speedier developments in the legal, operational and institutional national anti-corruption frameworks. This option is also likely to lead to further ratifications of Council of Europe Conventions by the EU Member States, since the implementation of these instruments will also be included in the evaluation process;
- The combined elements of this policy option, and in particular the mutual learning programme, would have a relatively high impact on the application of *successful approaches to reducing corruption*. This option would allow comprehensive and comparative assessment of the situation in the EU Member States every two years. The mutual learning programme (technical assistance) would facilitate the exchange of experience between Member States on "what works where" in anti-corruption. Even though the follow-up mechanism would not involve powers over Member States to ensure that the recommendations are followed, the periodicity and publication of the EU reports would indirectly put pressure on Member States to respond to recommendations. As a disadvantage, the data available on corruption would remain rather weak and hence the

views and judgments expressed in reports would still be challenged. Nevertheless, the credibility of the reports would be enhanced through the involvement of civil society and independent experts;

- The appropriate publication and dissemination of the outcome of the evaluations may have a potential positive impact on the *EU citizens' confidence*, as the monitoring process of anti-corruption policies would be more visible.

Economic impacts

- Considered against the estimated costs of corruption in the EU, this policy option, through the scale of effects of peer pressure exerted by the periodical reporting and the mutual learning system, would have a relatively high economic return. According to the calculation and rating method described in the preamble of section 6, this policy option scored 5 out of maximum 10 (corresponding to the maximum threshold of 6 billion euro). Therefore, the possible impact on the economic costs of corruption would be of about 3 billion euro per annum in the medium term.
- Some indirect positive effects on competition in the internal market are expected, and notably on productivity, barriers to entry, capital inflows, and investments. This is due to the fact that some Member States would implement anti-corruption measures more effectively as a result of improved monitoring and evaluation and of transnational learning. Periodical reports could also act as early warning systems.

Social impacts

- An intensive periodical reporting at EU level, through the high impact on reducing corruption opportunities, may contribute to ensuring an equal access to essential services like health and education. It can also lead to higher quality and an increased number of job opportunities in the public sector;
- This policy option would also have some indirect positive effects on reinforcing the observance of fundamental rights, since it would ensure a relatively high impact on the successful approaches to reducing corruption and may thus lower the number of situations when fundamental rights are not being observed as a consequence of corrupt practices.

EU added value test

- Member States have already put in place a legal and institutional anti-corruption framework largely meeting the requirements of the existing international instruments. Nevertheless, the level of corruption remains rather high in certain Member States, and enforcement is still deficient⁵⁰. A number of major corruption cases which affected more than one Member State broke out recently in the private sector. In cases like Siemens and DePuy Johnson and Johnson, multinational companies were involved in corrupt practices in several Member States, with senior management staff engaging in illegal payments ranging from 4 million to almost 2 billion euro. This shows that corruption is still part of the business culture in some Member States, with adverse effects on internal market and fair competition across the EU.

⁵⁰ See also section 3 above.

- Effective enforcement of the legal framework and adoption of robust operational measures, though the responsibility of Member States, may not materialize without political will. An EU anti-corruption evaluation mechanism would try to prompt such political will in the EU-27 to reach results that could not have been achieved by the Member States alone.
- Although evaluation mechanisms are often perceived as softer instruments less likely to foster results than hard-core legislative or operational measures, experience showed that international pressure may determine additional national anti-corruption action. Evaluation tools can also be catalyst for domestic debate and may ensure the engagement of the public to a greater extent. One illustrative example is given by the Cooperation and Verification Mechanism for Romania and Bulgaria, where EU pressure had an influence on the stability and accountability of key anti-corruption institutions. GRECO's insight in the area of financing of political parties, less regulated by the international instruments, generated significant changes in the legal and institutional setting of several Member States (e.g. Slovenia, Finland, Estonia, Latvia). World Bank evaluations also proved quite influential on creating a momentum for anti-corruption reforms. Suspension and loss of EU funds (350 million euro) in Bulgaria in 2008, due to mismanagement, fraud, nepotism and manipulated tenders, generated a wave of anti-corruption measures.
- These examples show that periodical evaluation at EU level can prompt additional anti-corruption action at national level. It would build on the gaps of the existing instruments by ensuring more transparency and making better use of the stronger EU political influence on the decision makers in the Member States. Another EU added value of an anti-corruption evaluation mechanism would be the setting up of a platform for sharing experience, which would better channel the Member States' efforts.

Overall assessment of feasibility

- None of the elements in this policy option poses particular institutional or practical feasibility issues. The Commission manages several analogous activities in other policy areas. Though this policy option has some similarities with the Open Method of Coordination (OMC), not all the ingredients necessary for a successful OMC are present. For example, there is not an agreed anti-corruption strategy at EU level, there are no formal obligation of Member States to report progress and there are no agreed targets;
- Since this option concerns a more comprehensive and intrusive instrument, it is likely that some Member States would show resistance. The most expected arguments⁵¹ to be invoked would refer to the risk of duplication and the additional administrative burden. However, the EU periodical Report would avoid these risks, since it will integrate and reinforce the results of the existing monitoring mechanisms and it would highlight the most important findings on a country-by-country basis. In addition, the combination of independent experts and network of local research correspondents would avoid any excessive burden on administrations and would allow a more accurate overview of the state of play.
- This option is consistent with the Stockholm Programme.

⁵¹ As also shown by the very few negative responses in the public consultation conducted in October-December 2010 – see Annex 1

Value for money

- The implementation of this policy option would trigger additional high costs for the EU budget estimated at maximum 4.295 million euro per year. Some components of the policy option (and therefore costs) could be phased in (for example, the mutual learning programme) and some costs would decline over time.

The overall cost can be broken down in the following annual components:

Ü 0.5 million euro for the administrative supporting actions of the bi-annual EU reporting mechanism;

Ü 50,000 euro for the work and missions of the independent experts (including administrative/logistic costs);

Ü 2 million euro for the reports prepared by the civil society;

Ü 0.97 million euro for the functioning of the network of local research correspondents;

Ü 0.775 million euro for the functioning of the mutual learning system.

Further information about the costs linked to the implementation of policy option 3 is provided in Annex 8.

- The relatively high economic return that this policy option would ensure (i.e. approximately 3 billion euro per year) and the high impacts estimated on the general objectives would outweigh the anticipated financial costs.

Conclusion: The effects of policy option 3 would be, as a minimum, to markedly improve comparative information on the state of corruption and make progress in reducing corruption at Member State and EU levels. The reinforcing elements would improve the quality of information and analysis and the complementary ‘learning’ measure would ensure a swift communication of lessons derived. This option offers an appropriate and targeted response to the identified problems, as it enables measuring the extent of corruption and its effects through introducing periodical monitoring obligations. The Periodical EU Anti-Corruption Report would be based on a mixture of official and civil society sources, thus allowing the scale, nature and remedies for corruption to be properly articulated. This policy option would allow an increase in the credibility of indicators of corruption and the reliability of comparisons between EU countries with the view to identify the appropriate policy measures at Union's level. Overall, in spite of the relatively high level of the financial costs, considering the potential effects on efficiency of anti-corruption measures, this option also offers a very good value for money.

6.4. Option (4) - The use of EU legislation

General objectives

- A medium impact is estimated with regard to the reduction of *corruption opportunities across the EU*. This option would establish a clear working definition of corruption across the EU. The provision of better statistics would create pressure on ‘poor performing’ Member States to give priority to anti-corruption measures. The requirements would be stringent and would take account of the range of different agencies involved in combating corruption of different types. This would ensure a better impact than the baseline scenario.

However, considering the approximation of laws and the setting up of a common statistics system are significantly challenging from a political point of view, it would take considerable time until the policy option could be implemented and its impact be visible;

- The legislative approximation would have a medium impact on the reducing *harm associated with corruption*. A reinforced common EU legal framework may ensure a stricter and more effective preventive and repressive system which would reduce the level of corruption and consequently the harm associated with it. A harmonised legal framework at EU level may also improve safeguards for victims of corruption and whistleblowers;
- The move towards a single EU legal framework would moderately contribute to the improvement of the *effectiveness of the EU and international legal frameworks*, notably through ensuring common standards for criminalisation of same type of corruption offences and a more dissuasive penalty system;
- As regards *successful approaches to reducing corruption*, the impact would be low, since this policy option does not directly involve transnational learning. However, the use of a common definition of corruption across the EU would reduce "corruption shopping" opportunities to a greater extent than other possible policy options;
- Some minor impacts on *confidence of EU citizens in public institutions and the fair functioning of internal market* could accrue. The periodical publication of relevant statistics would also have a small impact on public confidence. However, given the political challenges in developing a common EU anti-corruption legal framework, such an impact would take some time to build up.

Economic impacts

- Considered against the estimated economic costs of corruption in the EU, the economic return would be relatively low. Following the calculation and rating method described in the preamble of section 6, this policy option was rated 3 out of 10 (corresponding to the maximum threshold of 6 billion euro). Thus, the estimated economic impact in the medium term would be of about 1.8 billion euro per annum;
- Some indirect positive effects on competition in the internal market can be estimated, and in particular on productivity, capital inflows, and investments. This is due to the fact that approximation would further improve the functioning of internal market and cross-border trading, as a result of the application of common anti-corruption rules across the EU which is likely to reduce to a certain extent the corruption opportunities in the EU-27 and hence their negative effects on the internal market and international trading.

Social impacts

- A common legal framework on anti-corruption at EU level, by reducing the opportunities for corruption, may have a medium impact on ensuring an equal access to the essential services and to quality public sector jobs;
- The approximation of legislation may have some indirect positive effects on reinforcing the observance of fundamental rights, as it may lead to a decrease in the level of corruption

in the EU-27 and consequently to fewer cases in which rights such as equality and non-discrimination or fair access to the market are being breached.

EU added value test

- Article 83 TFEU sets the grounds for possible harmonisation of the legislation on corruption. While the legislative solution would have its benefits on the long term, addressing problems like "corruption shopping" and creating the possibility of using instruments like the infringement procedure to ensure transposition, it would not necessarily bring the added value needed to prompt additional action at the Member States level to effectively address corruption.
- The minimum standards on anti-corruption policies have already been defined by the comprehensive existing international instruments (e.g. UNCAC, OECD Anti-bribery Convention, Council of Europe's Criminal and Civil Law Conventions on Corruption). Most Member States have already transposed these provisions and all those that ratified these instruments have an obligation to ensure their implementation. Nevertheless, effective results in the fight against corruption are still not shown in a number of Member States, as the main deficiencies lie in the enforcement of the existing legal framework and the lack of a genuine will to apply a zero tolerance of corruption policy.
- There are examples of EU Member States with heavily regulated anti-corruption policies which are still confronted with widespread systemic corruption and of some others that do not have such a heavy legislation against corruption, but nevertheless are known to be less touched by corruption. This shows that the core of a successful anti-corruption policy lies in the political will to prompt action. Harmonisation of legislation would have less potential to foster additional political will at national level than an evaluation report which through its transparency, thematic structure and tailor-made recommendations may support to a greater extent the Member States in their anti-corruption endeavours.

Overall assessment of feasibility

- There are political constraints and legal complexities in achieving this policy option. The approximation of criminal laws is a slow process characterised by strong debates, as Member States are usually little inclined to make concessions in this policy area. This could be envisaged only as a long term objective. Criminal law is an attribute of sovereignty that Member States find difficult to abandon and the approximation of penalties is a particularly sensitive issue;
- It would take a long time to agree on common definitions and for the statistical framework to become operational;
- The statistical data that are feasible to collect would not provide a complete picture of the nature and scale of the phenomenon of corruption;
- The supplementary information on enforcement procedures would not be entirely comparable between countries.

Value for money

- The overall estimated cost per year to be born by the EU budget would be of maximum 2.5 million euro.

The first element of the policy option does not incur any costs as it concerns the drafting and adoption of EU legislation.

As for the costs of the second element related to statistics, in so far as the process would be reliant on the collection and processing of ‘administrative data’ (e.g. number of cases, prosecutions, convictions, penalties) then the costs would be low. The gathering of new data on public and economic actor perceptions and behaviour would however be expensive. A minimum of 2.5 million euro per annum to be born by the EU is estimated. It is estimated that the administrative burden imposed on national administrations to communicate this information would be limited. The estimates on the administrative costs would be further elaborated only if option 4 is part of the preferred option.

Further information about the costs linked to the implementation of policy option 4 is provided in Annex 8.

- Approximation of legislation would improve the operation of the internal market and potentially reduce legal costs. The medium impacts on reducing the opportunity for corruption and the harm associated with it, as well as the effectiveness of the EU and international framework, would outweigh the estimated financial costs. This policy option would ensure a good value for money, but however, given the political constraints and legal complexities associated with it, this can be seen only in a long-term perspective.

Conclusion: The use of EU legislation would facilitate the implementation of the mutual recognition principle and would establish a common definition of corruption across the EU. However, addressing the criminal law legal framework in the field of corruption is less likely to foster political will at the level of EU Member States and prompt domestic debates and further engagement from the public. This option is also less realistic on a short- and medium-term perspective. Overall, it would provide a relatively good notional return, but only in a long run, since the adoption process of such EU legislation is likely to take a rather long time.

The impacts of the 4 analysed policy options are summarised in the table below.

After the assessment of the main policy options, a combination of option 3 and some elements of option 2 appeared preferable. The merits of this approach are considered in section 7.

Options	Impact on general objectives	Economic impacts	Social impacts	EU added value	Overall assessment of feasibility	Value for money
Option 1: Status quo / no new EU action	No impact on the general objectives	No economic impacts	No social impacts and no added value for further observance of fundamental rights like equality and non-discrimination, right to political participation, right to access to services of general economic interest.	N/A	Likely to receive Member States' support. The option is not consistent with the Stockholm Programme. It will inevitably lead to a more vulnerable position of Member States and the EU as a whole to deal with corruption, given its transnational nature and its perceived magnitude.	Very limited costs incurred at EU level. However, given the limited impact that this option would have in terms of efficiency, the value for money would be rather poor.
Option 2: The EU accession to GRECO	Positive medium impacts on the reduction of corruption opportunities and successful approaches. Low impact on reducing the harm associated with corruption and the effectiveness of the EU and international legal frameworks.	Rather limited economic impact, given the estimated economic costs of corruption in the EU that could accrue from periodical evaluation and related activities. Some limited indirect positive effects on productivity, capital inflows, and investments beneficial to the competition in the internal market can be anticipated.	Limited effects on the quality and availability of public sector jobs and private sector opportunities. Limited indirect positive effects on reinforcing the observance of fundamental rights.	Better streamline mutual benefits of GRECO expertise and EU political influence. Limitations of GRECO evaluation system that cannot be surpassed by EU participation.	GRECO's procedural framework would need to be amended. Compared to the baseline scenario, the effects of this policy option would include: stronger focus on anti-corruption issues at national and EU level; potential to better compare progress in EU-27. However, GRECO's evaluation system presents weaknesses. This option may not be seen as an EU solution responding to EU citizens' concerns.	Estimated costs to be born by the EU: 2.1 million euro per year. The benefits of this policy option would outweigh the financial costs, but not to a considerable extent.
Option 3: Periodical EU Anti-Corruption Report	Fairly high positive impacts on all objectives.	Relatively high economic return, given the scale of effects of peer pressure exerted by the periodical reporting and the mutual learning system. Some indirect positive effects on competition in the internal market. Periodical reports could also act as early warning systems allowing for the timely detection of complex problems at EU level.	Equal access to essential services like health and education. Higher quality and an increased number of job opportunities in the public sector. Some indirect positive effects on reinforcing the observance of fundamental rights.	Periodical evaluation at EU level may foster political will, domestic debates and public engagement to prompt results against corruption that can benefit all EU-27.	None of the elements in this policy option poses particular institutional or practical feasibility issues. It is likely that some Member States would show resistance. The effects would be, as a minimum, to markedly improve comparative information on the state of corruption and make progress in reducing corruption in the EU-27.	Estimated costs to be born by the EU: 6.25 million euro per year. The relatively high economic return and the high impacts estimated on the general objectives would outweigh the anticipated financial costs.
Option 4: The use of EU legislation	Medium positive impacts on 4 of the 5 general objectives. Low impact on the successful approaches to reducing corruption.	Relatively low economic return considered against the estimated costs of corruption. Some indirect positive effects on competition in the internal market.	Some improvements in ensuring equal access to the essential services and to quality public sector jobs. Some indirect positive effects on reinforcing the observance of fundamental rights.	Some added value in long term, but however less likelihood of influencing the political will in the EU-27.	It would facilitate the application of the mutual recognition principle and establish a common definition of corruption across the EU. However, there would be political constraints and legal complexities.	Estimated costs to be born by the EU: 2.5 million euro per year. It would ensure a good value for money, but only in a long-term perspective.

7. COMPARING THE POLICY OPTIONS

The four policy options were compared based on the potential impact assessed against the above-mentioned criteria (see also table below). Priority was given to the results of the assessment against general objectives, political and practical feasibility, and value for money. As regards the economic impacts, all policy options provide a good overall benefit versus costs return because the scale of the costs of corruption in the EU is so large, thus even small proportionate decreases will readily offset the costs of successful public sector interventions in this field.

Under **Policy Option 1**, no additional action would be taken and thus the activities in the field of corruption would continue to have a low public profile. The associated costs of corruption would continue to be enormous. There are new initiatives underway (UNCAC), but they are unlikely to make more than a minor difference to prevailing levels of corruption

Under **Policy Option 2** the current work under GRECO would be intensified and has potential to generate stronger effects on corruption level across the EU than the status quo. The assessment points to improvements that would be cost effective, but modest in their impact, especially related to the public perception on the need for more EU action on corruption. Of the three elements analysed for this policy option, only two would have a higher feasibility ranking (i.e. comparative reports and follow-up of outstanding recommendations). The third element referring to specific, tailor-made evaluation rounds is less likely to materialize, since it would need amendments to GRECO's rules of procedure and cumbersome modifications of the evaluation methodology and principles which are unlikely to be agreed by the GRECO plenary.

Under **Policy Option 3**, more use would be made of the potential of periodical evaluation to raise the profile of anti-corruption measures, to provide insights into their performance and to communicate key lessons. The resources for gathering and analysing information on corruption would be significantly increased compared with the status quo with a view to increasing the credibility of indicators of corruption and the reliability of comparisons among EU Member States. Compared to policy option 2, this option would also provide the opportunity for alternative views from civil society and the scale, nature and remedies for corruption to be properly articulated. Although there are no absolute guarantees that an evaluation mechanism can deliver the expected results, the impacts are anticipated to be greater than the other policy options reviewed and the costs would be small relative to the potential impacts.

As previously said, there are two elements to **Policy option 4**. Whilst the first element (common definition of corruption and the approximation of criminal law) has merits, and in due course positive impacts relative to the policy objectives would accrue, these impacts would be small, notably in terms of prompting additional political will at the level of the Member States to tackle corruption. The second element (legislation on the definition measurement and production of statistics), although useful, would have little impact and would take a considerable period to accrue. Also corruption is inherently difficult to measure and hence even the best possible statistical base would fail to meet all expectations.

In the light of the above, policy option 3 provides the best notional return as it better responds to the general objectives and offers the best value for money.

The preferred policy option would therefore be build around option 3, strengthened with the first two elements of option 2 (accession to GRECO, comparative analysis based on the exiting country reports and follow-up of outstanding recommendations). The implementation of policy option 4 has also some advantages and its implementation may be considered in the longer run.

General objectives

- The preferred option has high chances to generate political will among Member States through peer pressure and exchange of best practices, and to provide better guarantees to meet objectives such as the *reduction of corruption opportunities across the EU*. The limitations of the GRECO evaluation mechanism would be surpassed by the EU evaluation mechanism which is likely to determine more political commitment in the Member States and hence have more potential to reduce instances of corruption;
- The combination of GRECO's technical expertise and EU political leverage would have potential to prompt more action at national level and reduce to a relatively high extent the *harm associated with corruption*. EU participation in GRECO alone cannot have the same effects as those anticipated for the preferred option. This is because even with additional input and pressure from the EU inside GRECO, the Member States would have to react only to the requirements of the Council of Europe's legal instruments. Moreover, they would had already developed a response practice which is unlikely to radically change should no new EU instrument to complement GRECO be put in place;
- The option would have a relatively high impact on the *effectiveness of implementation of the international and European legal framework*, since it would create synergies between one of the most inclusive exiting monitoring mechanism and a new instrument at EU level;
- It would ensure a good mixture of information sources, both official and from the civil society, thus more likely to lead to a *successful approach to reducing corruption*. GRECO would become a key source of information and any duplication with GRECO's activities would be avoided. The findings of the EU Anti-corruption Report would also help improve GRECO's evaluations and comparative analysis of EU Member States' performances against the requirements of Council of Europe's anti-corruption legal instruments;
- While participation in GRECO alone could not have met the citizens' expectations for more EU action against corruption, the combination with a transparent EU periodical reporting mechanism is expected to have a fairly high effect on *EU citizens' confidence*.

Economic impacts

- This policy option, through the potential pressure exerted by the periodical reporting and the mutual learning system, combined with the intake of the existing GRECO expertise, would have a relatively high economic return against the estimated costs of corruption in the EU. However, the preferred policy option is not expected to generate much higher economic benefits than option 3 alone and, according to the calculation and rating method presented in the preamble of section 6, it scored 6 out of the maximum threshold of 10 (corresponding to 6 billion euro). The estimated impact on the economic costs of corruption would therefore be of maximum 3.6 billion euro per year in the medium term.

- Given the expectations that Member States would be better prompted via the two combined policy options to more effectively enforce anti-corruption policies, including in business transactions, some indirect positive effects on competition in the internal market may be anticipated.

Social impacts

- As shown in the assessment of option 3, a periodical reporting at EU level, by reducing corruption opportunities, may indirectly generate some improvements on equal access to essential services like health and education and on public and private sector job opportunities. Since option 2 was assessed to have a rather limited impact on these matters, the combined option is not expected to have a more prominent impact than option 3 alone;
- It is rather difficult to find illustrative examples where access to essential services, initially restricted due to systemic corrupt practices, has considerably improved afterwards. One can only take the example of Member States that are confronted with a widespread petty corruption in these services, as is the example of the healthcare system in Romania pointed out in sub-section 3.1. However, it can be only assumed that, although the EU reporting mechanism may prompt only some additional anti-corruption efforts in the Member States, it can nevertheless, through reducing corruption opportunities, contribute to reaching important social goals like fairer trading and more guarantees for equal access of the poor to critical services like healthcare;
- Some indirect positive effects may be expected on reinforcing the observance of fundamental rights, since it may reduce the number of opportunities for corrupt practices and consequently for breach of fundamental rights.

EU added value test

- The preferred option would ensure a better use of EU leverage on the Member States' political will to fight corruption and would in the same time avoid any overlapping with one of the most relevant existing monitoring mechanisms;
- The effects of the preferred option would be, as a minimum, to markedly improve comparative information on the state of corruption and progress being made to reduce corruption at Member State and EU levels. It would also allow an increase in the credibility of indicators of corruption. The different elements of the preferred policy option would improve the quality of information and analysis.
- Periodical reports could act as “crisis alerts” and therefore mitigate the potential risks of deeply-rooted problems which could evolve into a crisis with potential cross-border implications.

Overall assessment of feasibility

- The preferred option comprises only two elements of option 2 which are considered to be most realistic in terms of practical feasibility. The specific evaluation rounds for the EU-27 would need substantial amendments to GRECO's legal and procedural setting and substantial adjustments to its capacity. Such follow-up can be better ensured through the

combination with the EU Anti-Corruption Report which may take forward the relevant outstanding GRECO recommendations.

- Overall, the combination of option 3 and two elements of option 2 would have a relatively high degree of political and practical feasibility.

Value for money

- The cumulated financial costs for the EU budget of the two policy options are estimated to maximum 4.745 million euro per year.
- The relatively high economic return that this policy option would ensure (i.e. approximately 3.6 billion euro per year) and the high impacts estimated on the general objectives would outweigh the anticipated financial costs.

Further information about the costs linked to the implementation of the preferred policy option is provided in Annex 8.

Conclusion: The preferred policy option, although cannot offer an absolute guarantee of high impact on all problems identified above, nevertheless raises relatively high expectations in terms of boosting the anti-corruption policies at EU and Member States level. It also respects the proportionality principle. It does not harmonise substantive laws, but aims to establish a periodical evaluation system at EU level and to ensure better synergies with the GRECO evaluation mechanism, which would better streamline the anti-corruption efforts in the EU Member States and will allow peer learning. As shown above, the relatively high financial costs of this option are outweighed by the benefits calculated against the general objectives and the estimated high notional return.

Table – The comparative assessment of Policy Options

Note: The scores rated from "-" (no impact) to maximum "•••••" are given to more clearly illustrate the differences among the assessed policy options. For an estimated low/small impact a rate of "•" was given, "••" for medium/moderate, "•••" for relatively/fairly high and "•••••" for high.

Objective to be achieved/ problem addressed	Policy Options				
	Policy Option 1	Policy Option 2	Policy Option 3	Policy Option 4	Policy option 2 (first two elements) + 3
(Anticipated impacts rated from – (no impact/contribution to objective) to ••••• (maximum impact/full achievement of objective)					
To reduce corruption opportunities across the EU	-	••	•••	••	••••
To reduce the harmful economic, social and political effects of corruption, particularly in relation to EU and cross-border activities;	-	•	•••	••	•••
To improve the effectiveness of the EU and international legal frameworks;	-	•	•••	••	•••
To increase the application of successful approaches to reducing corruption;	-	••	•••	•	•••
To increase confidence of EU citizens in public institutions and in the fair functioning of the market	-	••	•••	•	•••
Economic benefits (Estimated maximum possible benefits 6 billion euro per annum – method of calculation and rating described in detail in the preamble of section 6)	Neutral	Rated as 2 out of 10 in terms of the maximum impact possible (i.e. 1.2 billion euro)	Rated as 5 out of 10 in terms of the maximum impact	Rated as 3 out of 10 in terms of the maximum impact possible (i.e. 1.8 billion euro)	Rated as 6 out of 10 in terms of the maximum impact possible (i.e. 3.6 billion euro)

Table – The comparative assessment of Policy Options

*Note: The scores rated from "-" (no impact) to maximum "*****" are given to more clearly illustrate the differences among the assessed policy options. For an estimated low/small impact a rate of "*" was given, "**" for medium/moderate, "***" for relatively/fairly high and "****" for high.*

<i>Objective to be achieved/ problem addressed</i>	<i>Policy Options</i>				
<i>(Anticipated impacts rated from – (no impact/contribution to objective) to ***** (maximum impact/full achievement of objective)</i>	<i>Policy Option 1</i>	<i>Policy Option 2</i>	<i>Policy Option 3</i>	<i>Policy Option 4</i>	<i>Policy option 2 (first two elements) + 3</i>
			possible (i.e. 3 billion euro)		
Overall assessment of feasibility	Not consistent with the intentions of the Stockholm Programme	Implies EU participation in GRECO Politically and practically feasible for two elements of the option. The third element referring to additional tailor-made evaluation rounds would raise additional difficulties in terms of feasibility.	Politically and practically feasible	There are political constraints and legal complexities on realising it. It would take a long time to agree on common definitions and monitoring procedures	Politically and practically feasible
<i>Costs relative to status quo</i>	0	Maximum 2.1. million euro	Maximum 4.295 million euro	Maximum 2.5 million euro	Maximum 4.745 million euro
Overall assessment of effectiveness/ value for money*: *** = high score on effectiveness, low/medium costs ** = lower scores on effectiveness, low/medium costs • = relatively low score on effectiveness, high/medium costs	0	••	•••	••	••••
<i>Part of preferred Policy Option</i>		R	R	* ⁵²	R

8. MONITORING AND EVALUATION MECHANISM

The implementation of the preferred option should be subject to future monitoring and evaluation. The process should be very straightforward as the preferred option will itself involve the production of better information on trends affecting the underlying problems being addressed. Potential indicators and methods are proposed, corresponding to the policy objectives of the intervention. These could include among others EU ranking on the CPI index (Transparency International), the presence (or not) of national anti-corruption strategies (EACN⁵³), proportion of citizens indicating that they have paid ‘bribes’ for public services (Eurobarometer), instances of new anti-corruption policies and practices being introduced (EACN), the number of peer learning activities sponsored by EC, the levels of awareness, the time taken to transpose and implement legislation (Implementation reports by the Commission), the perceptions of transparency (Eurobarometer). Finally, GRECO will

⁵² * to be considered in the long term

⁵³ European Anti-Corruption Network meeting twice a year in the presence of the European Commission

continuously monitor further compliance of member states of these recommendations picked up by the EU reporting mechanism.

Furthermore, regular evaluations should be carried out in order to assess how and to what extent the preferred policy option will have contributed to the achievement of its objectives. The first evaluation should be carried out after the publication of two EU Anti-corruption Reports. The Commission will then publish evaluation reports every 5 years thereafter and these will include information on implementation. On the basis of the conclusions and recommendations of the evaluations, the Commission should take into account any further amendment to or other possible developments of the mechanism. Alternatively, the Commission may on the basis of both the evaluation report and the information gathered in the context of the report published every second year, decide to complement the reporting mechanism with other legal or non-legal initiatives to support the effectiveness of the EU fight against corruption.

8.1. Annex 1 – Summarized analysis of the results of the on-line public consultations conducted between 8 October and 3 December 2010

70 responses have been received, of which 20 from public institutions, 27 from citizens, 15 from NGOs and 8 from other entities (i.e. 5 businesses/professional associations and 3 MEPs).

The vast majority is in favour of the EU reporting mechanism. Only five were clearly against. Of these, 3 public institutions, 1 citizen and 1 professional association. Few others raised the question of overlapping with GRECO, OECD and UNCAC. On a general level, most public bodies and business suggest that the reporting mechanism should be based on a gap-analysis of existing mechanisms, whereas citizens and NGOs largely call for the EU monitoring mechanism to go further than GRECO.

The practices of naming and faming and especially ranking divided opinions. Whereas public bodies tended to favour naming and faming, civil society respondents were more sceptical about the utility of this practice. On the other hand, the practice of ranking was opposed by several respondents.

See table below for a more detailed overview of the responses. Since not all respondents replied to all five questions, there are some discrepancies between the overall number of respondents and the replies for each questions.

Type of participant	Question 1 – EU specific Reporting/monitoring mechanism or not Yes (but....) No	Question 2 Other measures than a reporting mechanism	Question 3 Official sources to be completed or not with civil society, academic etc...	Question 4 vulnerable sectors	Question 5 Support for other incentives
Public body - 20 respondents	<p>5 in favour without additional comment</p> <p>3 against. Main reason quoted : duplication of efforts with other international monitoring bodies, leading to overburdening national administrations and/or undermining GRECO monitoring.</p> <p>12 in favour provided that it does not duplicate efforts (8), more information and clarity on this mechanism and its working methodology is provided (2) or the monitoring approach is different to that of GRECO (1).</p>	<p>1 would not support other measures.</p> <p>9 would support a legal initiative (and 4 explicitly opposed to one). 1 would support legal initiative under the condition that the definition of corruption would be as broad as possible.</p> <p>11 would support providing more financial means for awareness-raising campaigns or other anticorruption measures. 1 would support more financial means should a previous assessment point to the need of additional resources.</p> <p>13 would support developing better tools for data collection.</p> <p>Other measures suggested included: an impact analysis of awareness-raising campaigns</p>	<p>5 think that only official sources should be used</p> <p>8 are in favour of using the listed additional sources without adding further suggestions</p> <p>5 are in favour and thought that also the following sources could be used: private sector (2), media (1), citizen consultations (1), country visits by independent experts (1).</p> <p>1 is in favour under the condition that clear and comparable criteria</p>	<p>Following vulnerable sectors were listed :</p> <p>Public procurement (13) healthcare (9), EU-funds (8), judiciary (6), politics (7), law enforcement (5), education (2), land use (2), building sector (2), business (1) and public administration (1), subsidies (1).</p> <p>However, a number of respondents noted that when corruption is present, any sector may be vulnerable and that</p>	<p>Anti-corruption fund (14). Suggested activities to be funded: annual conference (2), research for technical solutions (2).</p> <p>Naming and faming (9).</p> <p>Ranking (3) (opposed by 3 respondents).</p>

	Question 1 – EU specific Reporting/monitoring mechanism or not				
		and developing a common definition; an anti-corruption portal.	are established across the EU for these other sources.	vulnerable sectors vary by country.	
Citizen - 27 respondents	21 in favour without additional comment 1 against. Main reasons quoted : the Union's lack of an explicit anti-corruption policy. 2 in favour provided that : the mechanism is based on monitoring of compliance to EU standards and is made publically available (1), the mechanism is based on a global anti-corruption strategy (1).	1 would not support other measures. 2 would support other measures without specifying which ones. 14 would support a legal initiative. 9 would support providing more financial means for awareness-raising campaigns or other anticorruption measures. 14 would support developing better tools for data collection. Other measures suggested included: a study on the impact of awareness-raising campaigns, developing audits, inspections,	None think that only official sources should be used. 24 are in favour of using the listed additional sources without adding further suggestions. 1 is in favour but thought that also business sources could be used.	Following vulnerable sectors were listed : public procurement (14), judiciary (10), healthcare (10), politics (7), EU-funded projects (9), public administration (4), business (3), education (3), law enforcement (2), national and international sporting associations.	Anti-corruption fund (13) Naming and faming (10) Ranking (8) EU accession to GRECO (1). Annual high level presentation of the evaluation results with participation of Commission and Member States.

	Question 1 – EU specific Reporting/monitoring mechanism or not				
		lobby registers and benchmarks for public procurement, promoting civil society initiatives and wide media coverage.			
NGO - 15 responses	<p>10 in favour without additional comment</p> <p>None against.</p> <p>5 in favour provided that : there is a compulsory consultation of civil society (2) the monitoring mechanism goes further than GRECO (3) duplication of effort with UNCAC is avoided (1)</p>	<p>7 would support a legal initiative.</p> <p>8 would support providing more financial means for awareness-raising campaigns or other anticorruption measures.</p> <p>7 would support developing better tools for data collection.</p> <p>Other measures suggested included: funding for research; a comprehensive anti-corruption strategy, extend to third countries (monitoring for trade partners and ODA recipients).</p>	<p>None think that only official sources should be used.</p> <p>8 are in favour of using the listed additional sources without adding further suggestions.</p> <p>7 are in favour but thought that also the following sources could be used: independent media. Furthermore, 1 suggested that additional sources (civil society, media) information gathering should be supported financially.</p>	<p>Following vulnerable sectors were listed :</p> <p>public procurement (5), judiciary (9), healthcare (2), politics (12), EU-funded projects (9), public administration (6), business (7), law enforcement (3), media (1), financial sector (1), extractive industries.</p>	<p>Anti-corruption fund (11).</p> <p>Naming and faming (10).</p> <p>Ranking (8).</p> <p>Debarment system / sanctions for MS and companies (6).</p> <p>Education (2).</p> <p>An open consultation process (1).</p> <p>Complaint mechanisms (1).</p>

	Question 1 – EU specific Reporting/monitoring mechanism or not				
Other - 8 Respondents (5 Business groups/professional associations, 3 MEPs)	2 in favour without additional comment 2 in favour provided that there is no duplication of effort. 1 against. 1 mentioned that the focus should be on the UNCAC review mechanism.	2 would support a legal initiative. 3 would support providing more financial means for awareness-raising campaigns or other anticorruption measures. 3 would support developing better tools for data collection. 1 would support more financial means for awareness raising. Other measure suggested: a public website tracking the use of funds within EU institutions, reinforcing participation in UNCAC, strengthening the network of anti-corruption prosecutors, use of investigative journalists.	4 are in favour of using the listed additional sources without adding further suggestions.	Following vulnerable sectors were listed : public procurement (5), judiciary (2), healthcare (4), politics (3), EU-funded projects (2), public administration (1), business (2), law enforcement (2), education (1).	Anti-corruption fund (3) Naming and faming (2) Complaint mechanisms (1) Ranking (2) Legislation to limit cash payments (1). Obligatory training for law students (1).

8.2.

8.3. Annex 2 - Background on the Corruption Perception Index of Transparency International

Transparency International (TI) defines corruption as the abuse of entrusted power for private gain. This definition encompasses corrupt practices in both the public and private sectors.

The Corruption Perceptions Index (CPI) ranks roughly 180 countries worldwide according to the perception of corruption in the public sector. The CPI is an aggregate indicator that combines different sources of information about corruption making it possible to compare countries. The scores range from 0 (most corrupt) to 10 (least corrupt). TI has published the CPI annually since 1995.

Broadly speaking, the surveys and assessments used to compile the index include questions relating to bribery of public officials, kickbacks in public procurement, embezzlement of public funds, and questions that probe the strength and effectiveness of public sector anti-corruption efforts.

For a country or territory to be included in the index a minimum of three of the sources that TI uses must assess that country. Thus inclusion in the index depends solely on the availability of information.

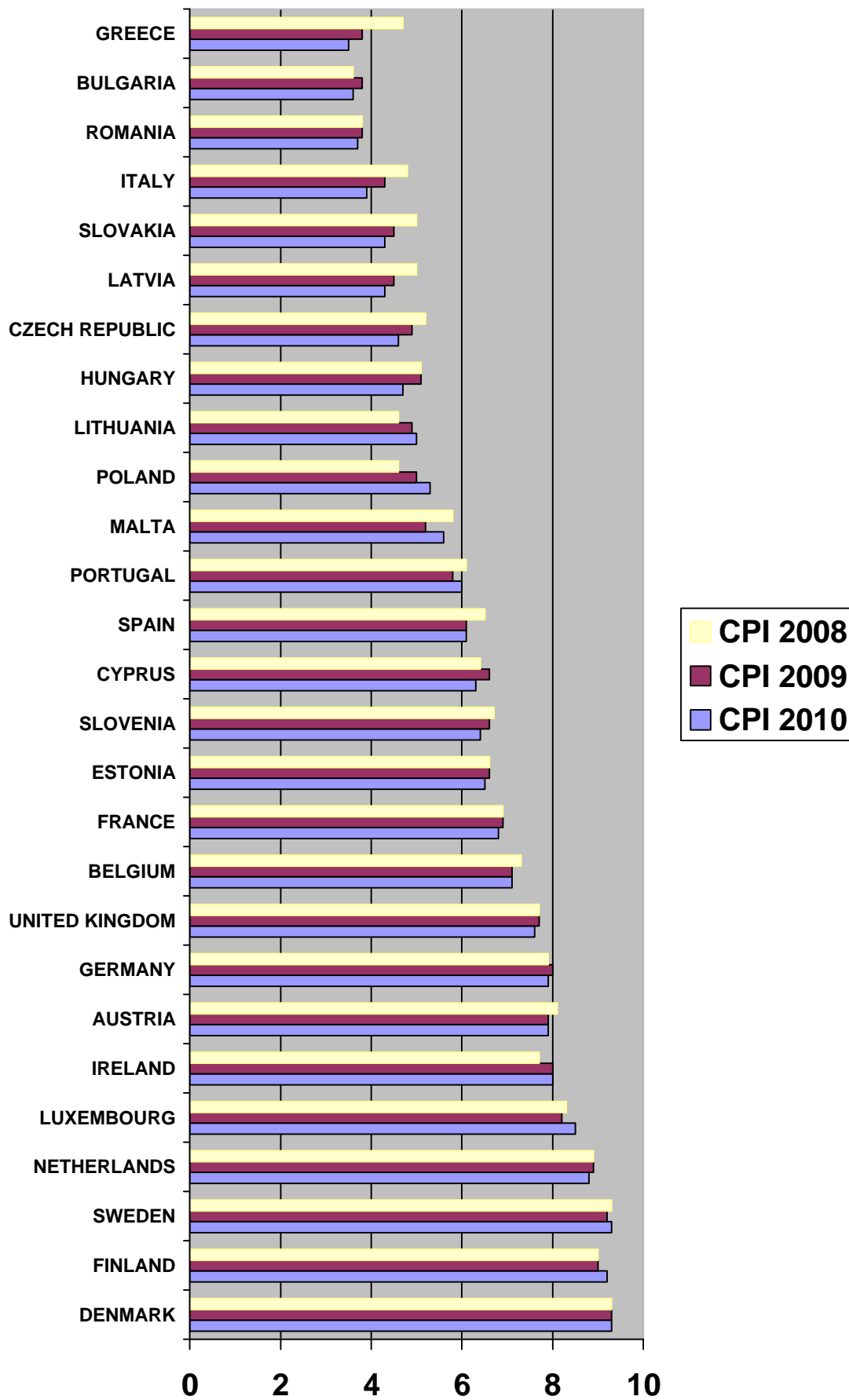
Perceptions are used because corruption – whether frequency or amount – is to a great extent a hidden activity that is difficult to measure. Over time, perceptions have proved to be a reliable estimate of corruption. Measuring scandals, investigations or prosecutions, while offering ‘non-perception’ data, reflect less on the prevalence of corruption in a country and more on other factors, such as freedom of the press or the efficiency of the judicial system. TI considers it of critical importance to measure both corruption and integrity, and to do so in the public and private sectors at global, national and local levels. The CPI is therefore one of many TI measurement tools that serve the fight against corruption.

CPI 2010 brought together data from sources that cover the past two years. This included surveys published between January 2009 and September 2010. The CPI 2010 was calculated using data from 13 sources by 10 independent institutions. All sources measure the overall extent of corruption (frequency and/or size of bribes) in the public and political sectors, and all sources provide a ranking of countries, i.e. include an assessment of multiple countries.

Evaluation of the extent of corruption in countries/territories is done by two groups: country experts, both residents and non-residents, and business leaders. In the CPI 2010, the following seven sources provided data based on expert analysis: African Development Bank, Asian Development Bank, Bertelsmann Foundation, Economist Intelligence Unit, Freedom House, Global Insight and the World Bank. Three sources for the CPI 2010 reflect the evaluations by resident business leaders of their own country, IMD, Political and Economic Risk Consultancy, and the World Economic Forum.

See below chart on the evolution of CPI scores for the EU-27 for 2008, 2009 and 2010⁵⁴.

⁵⁴ The ranking of the EU Member States which appears in the table reflects the results of the most recent CPI in 2010.



8.4. Annex 3 –Global Corruption Barometer of Transparency International

Citizens' views on governments' anti-corruption efforts and perceptions of corruption within the national parliament/legislature and amongst public officials/civil servants (Global Corruption Barometer 2010)

Member State	% of respondents who think their government is somewhat/very ineffective in the fight against corruption	Member State	% of respondents who think their <u>parliament/legislature</u> is corrupt (from 1: not at all corrupt to 5: extremely corrupt)	Member State	% of respondents who think their <u>public officials/civil servants</u> (from 1: not at all corrupt to 5: extremely corrupt)
Romania	83%	Romania	4.5	Greece	4
Ireland	82%	Greece	4.3	Bulgaria	3.9
Lithuania	78%	Lithuania	4.2	Lithuania	3.8
Slovenia	78%	Ireland	4	Romania	3.8
Germany	76%	Italy	4	Czech Republic	3.7
Portugal	75%	Bulgaria	3.9	Italy	3.7
Spain	74%	UK	3.8	Latvia	3.6
Latvia	73%	Slovenia	3.7	Slovenia	3.6
France	68%	Latvia	3.7	Spain	3.5
Greece	66%	Portugal	3.7	Poland	3.4
UK	66%	Czech Republic	3.6	UK	3.4
Finland	65%	Spain	3.5	Ireland	3.3
Italy	64%	Hungary	3.4	Hungary	3.2
Czech Republic	59%	Poland	3.4	Germany	3.2
Poland	57%	France	3.1	Portugal	3.2
Hungary	51%	Germany	3.1	France	3
Denmark	44%	Finland	2.9	Netherlands	3
Netherlands	43%	Austria	2.7	Austria	2.8
Austria	34%	Netherlands	2.7	Luxemburg	2.7
Luxembourg	30%	Luxembourg	2.5	Finland	2.7
Bulgaria	26%	Denmark	2.3	Denmark	2.5

Changes in the direct experiences of corruption, 2004, 2006, 2009 and 2010 GCB (% of respondents who answered positively to the question as to whether in the past 12 months they or anyone living with them paid a bribe in any form)⁵⁵

Member State	2004	2006	2009	2010	Change 2004-2010	Change 2009-2010
Austria	1%	2%	2%	9%	800%	250%
Bulgaria	6%	n/a	4%	8%	33%	100%
Czech Republic	21%	17%	11%	14%	-33%	27%
Denmark	2%	2%	1%	0%	-100%	-100%
Finland	3%	1%	1%	2%	-33%	100%
Greece	11%	17%	17%	18%	38%	5.8%
Lithuania	32%	n/a	28%	34%	6.25%	21.42%
Luxembourg	2%	6%	4%	16%	700%	300%
Netherlands	2%	2%	1%	2%	0%	100%
Poland	5%	5%	4%	15%	200%	275%
Portugal	2%	2%	2%	3%	50%	50%
Romania	25%	n/a	12%	28%	12%	133%
Spain	2%	2%	2%	5%	150%	150%
UK	1%	2%	3%	1%	0%	-66%

⁵⁵ Source; 2004, 2006, 2009 and 2010 GCB.

8.5. Annex 4 – Relevant EU anti-corruption legislation monitoring processes

Area	Legislation	Monitoring and evaluation of the transposition
<p>Protection of EC's financial interests:</p>	<p>Convention on the protection of the European Communities' financial interests (OJ 95/C 316/03 27.11.95) and Explanatory report on the convention on the protection of the European Communities' Financial Interests, (OJ 97/C 191 23.6.97) establishing minimum standards of protection against fraud in relation to funds provided by the EC and to funds due from the MS to the EC, and provide for cooperation between MS;</p>	<ul style="list-style-type: none"> • <i>Annual report 2002 on the Protection of the Communities' financial interests, Brussels, 4.12.2003, COM(2003) 445 final</i>⁵⁶ <p>The report analysed the way the Member States have conformed to their obligations with a view to transposing the 1995 Convention and its Protocols and any aspects or provisions not yet covered by national measures and any difficulties encountered.</p> <ul style="list-style-type: none"> • <i>Report from the Commission. Implementation by Member States of the Convention on the Protection of the European Communities' financial interests and its protocols Article 10 of the Convention (SEC(2004) 1299), Brussels, 25.10.2004 COM(2004) 709 final</i>⁵⁷ <p>The report took stock of how the EU-15 Member States had fulfilled the obligations placed on them by the PFI Convention, the 1st Protocol, the ECJ Protocol and the 2nd Protocol ("the PFI instruments").</p> <ul style="list-style-type: none"> • <i>Commission Report to the European Parliament and to the Council. Protection of the Communities' financial interests – Fight against fraud – Annual report 2005, (SEC(2006)911), (SEC(2006)912), Brussels, 12.7.2006, COM(2006) 378 final</i>⁵⁸ <p>An annual report on the measures taken in 2005 to ensure the protection of the Communities' financial interests, for transmission to the European Parliament and the Council and detailed the main results of them. The report consisted of five parts: the assessment of the Commission's strategic approach throughout 2001-05 for the protection of the Communities' financial interests; the results of statistics in the cases of irregularities communicated by the Member States; the measures taken during 2005 by the Member States for the implementation of Article 280 of the EC Treaty and by the Commission to improve operational efficiency of the European Anti-Fraud Office (OLAF); the measures taken to improve the covering of the non-collected or unduly paid amounts; the procedures for the certification of accounts.</p> <ul style="list-style-type: none"> • <i>Commission Report to the European Parliament and to the Council. Protection of the financial interests of the Communities – Fight against fraud – Annual report 2006, [SEC(2007) 930], [SEC(2007) 938], Brussels, 6.7.2007, COM(2007) 390 final</i>⁵⁹ <p>The report listed the measures taken by the Community and the Member States in 2006 to ensure the protection of the Communities' financial interests and detailed their main results, for transmission to the European Parliament and the Council. The report consisted of four parts:</p> <ul style="list-style-type: none"> - The first part provided a summary of the statistics concerning irregularities reported by the Member States in accordance with sectoral regulations and provides some figures relating to the operational activities of the European Anti-Fraud Office (OLAF); - The second part concerned the measures taken by the Member States and the Commission to prevent fraud and to deal with other

⁵⁶ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2003:0445:FIN:EN:PDF>

⁵⁷ http://ec.europa.eu/dgs/olaf/mission/legal/709final_en.pdf

⁵⁸ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2006:0378:FIN:EN:PDF>

⁵⁹ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0390:FIN:EN:PDF>

Area	Legislation	Monitoring and evaluation of the transposition
		<p>irregularities. It also examines the topic of risk analysis and risk management and debarment databases and warning systems;</p> <ul style="list-style-type: none"> - The third part provided an account of the anti-fraud measures taken. It also contains a section on warning systems involving internal informers; - The fourth part presented the steps taken to improve recovery of amounts not collected or wrongly paid. It contains a section on mechanisms for recovery by offsetting under national law. <ul style="list-style-type: none"> • <i>Second Report from the Commission. Implementation of the Convention on the Protection of the European Communities' financial interests and its protocols. Article 10 of the Convention (SEC(2008) 188), Brussels, 14.2.2008, COM(2008) 77 final</i>⁶⁰ <p>The purpose of this report was to check the progress made towards the objective of effective and equivalent protection of the EC's financial interests in the EU. It looked at the state of play of the transposition of the instruments in the EU-15 Member States, in the light of the conclusions of the first report, and also at the legislative situation in the other Member States.</p> <ul style="list-style-type: none"> • <i>Commission Report to the European Parliament and to the Council. Protection of the Communities' financial interests – Fight against fraud – Annual report (2007), [SEC(2008) 2300], [SEC(2008) 2301, Brussels, 22.7.2008, COM(2008) 475</i>⁶¹ <p>The report listed the countries, which ratified the Convention on the Protection of the European Communities' Financial Interests and its protocols and also urged the Member States that have not ratified the Convention and/or its protocols to do so as soon as possible. The report also: 1) provided a summary of the statistics concerning irregularities reported by the Member States in those areas where the Member States implement the budget; 2) set out the main developments of 2007 concerning fraud prevention and repression; 3) focused on the recoveries made in 2007 in all budget areas.</p>
Corruption involving officials of the EC or officials of Member States	Convention on the Fight against Corruption involving officials of the European Communities or officials of Member States of the European Union 1997 (OJ 97/C 195/01 25.6.97) and Explanatory report on the Convention on the Fight against Corruption involving officials of the European Communities or officials of Member States of the European Union 1997 ⁶² ;	<ul style="list-style-type: none"> • <i>08.05.98 SEC(1998) 807 Commission Staff Working Paper Report on the implementation of the Commission's Communication to the Council and to the Parliament on a Union Policy against Corruption – Commission's contribution</i>
Private sector corruption	Joint Action of 22 December 1998 adopted by the Council on the basis of Article K.3 of the Treaty on European Union, on corruption in the private sector Council Framework Decision 2003/568/JHA of 22 July 2003 on	<ul style="list-style-type: none"> • <i>18.06.07 COM(2007) 328 final Report from the Commission to the Council based on Article 9 of the Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector (SEC (2007) 808}</i>⁶³ <p>The report analysed the measures taken by Member States to achieve the objectives set in the above Framework Decision, and called for the immediate adoption of the necessary legal measures to combat corruption</p>

⁶⁰ http://ec.europa.eu/dgs/olaf/legal/doc/2008_77_en.pdf

⁶¹ <http://afcos.mvr.bg/NR/rdonlyres/36501B71-98BD-445F-A174-8EC272098BD0/0/en.pdf>

⁶² (OJ 98/C 391 15.12.1998);

⁶³ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2007:0328:FIN:EN:PDF>

Area	Legislation	Monitoring and evaluation of the transposition
	combating corruption in the private sector.	<p>in the private sector. The evaluation criteria adopted by the Commission for this Report are the general criteria adopted in 2001 to evaluate the implementation of framework decisions (practical effectiveness, clarity and legal certainty, full application and compliance with the time limit for transposition).</p> <p>The report focused on Articles 1 to 7 (with a brief reference to Article 10 where relevant), and records the Declarations made by Member States under Articles 2 and 7. In relation to Article 2 of the Framework Decision, the Commission noted that most Member States found it difficult to incorporate into national law this "key Article" defining criminal acts of active and passive corruption.</p> <p>The report also focussed on two matters to be dealt with in future: the amendment of the legal basis of the Framework Decision and the review of Article 2 of the Council Framework Decision before 21 July 2010 with regard to renewing the declarations by Member States.</p>
Public procurement	<p>Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts</p> <p>Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procurement procedures of entities operating in the water, energy, transport and postal services sectors</p>	<ul style="list-style-type: none"> • <i>Evaluation of Public Procurement Directives Markt/2004/10/D Final Report</i>⁶⁴ <p>The purpose of this report was to evaluate the effects in the 15 Member States that were subject to the EU Procurement Directives. The study, which started at the beginning of 2005, required an economic analysis of the ways in which the Directives have affected the markets for procurement goods and services and involved a legal review of the implementation of the Directives. The study also involved a research comprising 100 in-depth interviews of awarding authorities and suppliers and an electronic survey administered by the Commission Services.</p> <ul style="list-style-type: none"> • <i>Directive 2004/17/EC of the European Parliament and of the Council of 31 March 2004 coordinating the procurement procedures of entities operating in the water, energy, transport and postal services sectors</i>⁶⁵ <p>Article 72 calls the Member States to establish a monitoring mechanisms as follows: "In conformity with Council Directive 92/13/EEC of 25 February 1992 coordinating the laws, regulations and administrative provisions relating to the application of Community rules on the procurement procedures of entities operating in the water, energy, transport and telecommunications sectors, Member States shall ensure implementation of this Directive by effective, available and transparent mechanisms. For this purpose they may, among other things, appoint or establish an independent body"</p>
Money laundering	<p>Council Directive 2005/60/EC of 26 October 2005 on prevention of the use of the financial system for the purpose of money laundering and terrorist financing</p> <p>Council Directive 2001/97/EC of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering</p>	<ul style="list-style-type: none"> • <i>Commission Staff Working Paper, Compliance with the anti-money laundering directive by cross-border banking groups at group level, Brussels, 30.6.2009, SEC(2009) 939 final</i>⁶⁶ <p>This paper (1) compares the legislative framework in the anti-money laundering field with supervisory expectations regarding global anti-money laundering risk management by banks; (2) presents how banks generally comply with anti-money laundering measures at group level; (3) describes the costs of compliance; (4) shows the main differences between groups and single institutions, with a particular analysis of the information flows within the group; (5) describes the level of stakeholders' acceptance of the rules; (6) underlines some consistency issues; and (7) finally draws a number of conclusions. This paper is also a preparatory step towards the report on the application of the Directive that the Commission has to submit pursuant to Article 42 of the</p>

⁶⁴ http://ec.europa.eu/internal_market/publicprocurement/docs/final_report_en.pdf

⁶⁵ <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2004:134:0001:0113:EN:PDF>

⁶⁶ http://ec.europa.eu/internal_market/company/docs/financial-crime/compli_cbb_en.pdf

Area	Legislation	Monitoring and evaluation of the transposition
		<p>Directive 2005/60/EC.</p> <ul style="list-style-type: none"> • <i>Council Directive 2001/97/EC of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering</i> <p>According to Article 2 of this Directive, within three years of the entry into force of this Directive, the Commission shall carry out a particular examination, in the context of the report provided for in Article 17 of Directive 91/308/EEC, of aspects relating to the implementation of the fifth indent of Article 1(E), the specific treatment of lawyers and other independent legal professionals, the identification of clients in non-face to face transactions and possible implications for electronic commerce.</p> <p>The Directive 2001/97/EC required Member States to align their national legislation to its requirements by 15 June 2003 at the latest. However, the transposition of the Directive did not take place within the foreseen deadline. In some cases, the delay affected only the legal profession.</p> <ul style="list-style-type: none"> • <i>Commission Staff Working Document, The application to the legal profession of Directive 91/308/EEC on the prevention of the use of the financial system for the purpose of money laundering, Brussels, 19.12.2006, SEC(2006) 1793⁶⁷</i> <p>This document presented the results of this examination regarding:</p> <ul style="list-style-type: none"> - The transposition of the Directive 91/308/EEC (amended by Directive 2001/97/EC) and the scope of the national implementing legislation; - The impact of the Directive 91/308/EEC on the behaviour of the legal professionals: i.e. when entering into a professional relationship with the client, when identifying suspicious transactions and reporting them; and in relation to their internal organisation to cope with the obligations of the Directive 91/308/EEC; - The impact of the legislation on the competitive environment of legal professionals; - The effectiveness of the reporting system and the view of the stakeholders as regards the role of the legal professionals in the fight against money laundering.

⁶⁷ http://ec.europa.eu/internal_market/company/docs/financial-crime/lawyers_en.pdf

8.6. Annex 5 - Description of the existing international anti-corruption monitoring mechanisms applicable to EU Member States

This Annex aims to provide a description of the review mechanisms applicable (also) to EU Member States and established at international level to monitor and evaluate the implementation and compliance of the States' parties to their anti-corruption instruments.

Overall, the existing monitoring mechanisms usually involve a combination of different elements, such as⁶⁸:

- Self-assessment (e.g. Member States responding to a questionnaire);
- Expert reviews (e.g. review of Member State responses and/or performances by independent experts);
- Peer reviews (e.g. government representatives evaluating the performances of other governments);
- Country visits;
- Participation of civil society and the private sector in the assessment and evaluation processes;
- Publication of reports with recommendations to improve the State's compliance with the instruments; and,
- Existence of a follow up mechanism to review the implementation of the recommendations.

In a self-evaluation process, governments are given a questionnaire and asked to provide its own assessment of how it is doing in complying with Conventions' requirements.

In an expert review, government performance is reviewed by an expert or a panel of experts sufficiently knowledgeable about national laws and institutions and the convention at hand to be able to evaluate these. The benefits of the process include independence of assessors and their proficiency in the topic, both of which can lead to fair and 'hard-hitting' results.

In a mutual evaluation, government representatives evaluate one another on their convention performance. In existing monitoring systems for the Council of Europe and OECD Conventions, the examination is conducted on a non-adversarial basis, relying heavily on mutual trust among the participating states. The Secretariat of the responsible international organisation often plays an important role in supporting or stimulating the monitoring.

There are other possible forms of reviews of country performance in an intergovernmental framework, including data collection and reporting (including self-evaluation), independent fact-finding missions and dispute settlement proceedings.

The Table summarises the main features of the following monitoring and evaluation instruments⁶⁹:

⁶⁸ <http://www.u4.no/helpdesk/helpdesk/query.cfm?id=163>

- *GRECO*: The Council of Europe Group of States against Corruption (established in 1999);
- *OECD*: The OECD Investment Committee established the Working Group on Bribery in International Business Transactions in May 1994. The mandate of the OECD Working Group on Bribery was amended in 1997 to include the carrying out of systematic country monitoring of the implementation of the OECD Anti-Bribery Convention and the 1997 Recommendation;
- *UNCAC*: The Conference of the States Parties to the United Nations Convention against Corruption.

Table - Common elements of the existing monitoring tools

Common elements	GRECO	OECD	UNCAC
Monitoring body composed of government representatives	R	R	R
Secretariat to the monitoring body provided by the organisation that hosted preparation of the convention	R	R	R
Cycle of reviews focussing in successive phases on different parts of the convention or different aspects of implementation	R	R Two phases	R
Questionnaire about performance sent to national government under review for self-evaluation purposes	R	R	R Self -assessment checklist
Written self-evaluation report by national government	There is a self and mutual evaluation		A self evaluation it's done throughout a software programme and a mutual evaluation.
Interviews of national government representatives	R Done by country visits	R Done by country visits	R Done by country visits if agreed by the reviewed country
Interviews of and written submissions by other entities, such as civil society and private sector organisations	R Done by country visits	R Done by country visits	R Done by country visits

⁶⁹http://www.transparency.org/global_priorities/international_conventions/advocacy/monitoring/monitoring_mechanisms

Common elements	GRECO	OECD	UNCAC
Monitoring body's country report prepared by a few government representatives and/or the secretariat to the monitoring body, including recommendations for improvements	R	R The preliminary report is drafted by the lead examiners and the Secretariat	R
Discussion of the country report with the individual government, including during a meeting with representatives of the monitoring body	R The report is communicated to the country for comments before it is submitted to GRECO	R Done by a Working group	R Done by a Working group
Publication of the country report, with recommendations	R Everything is published on the website	Subject to government's agreement	Only the executive summary
Follow-up on recommendations by the review body	R Compliance procedure		R

8.7. Annex 6 – International instruments ratified by EU Member States

Member State	CoE Criminal Law convention on Corruption	CoE Civil Law convention on corruption	Additional Protocol to the Criminal Law Convention on Corruption	UN Convention against Corruption	OECD Anti-Bribery Convention
Austria		30/08/2006		11/01/2006	20/05/1999
Belgium	23/03/2004	12/03/2007	26/2/2009	25/09/2008	27/07/1999
Bulgaria	07/11/2001	08/06/2000	4/2/2004	20/09/2006	22/12/1998
Cyprus	17/01/2001	23/06/2005	21/11/2006	23/02/2009	
Czech Rep	08/09/2000	24/09/2003			21/01/2000
Denmark	02/08/2000		16/11/2005	26/12/2006	5/09/2000
Estonia	06/12/2001	08/12/2000		12/04/2010	23/11/2004
Finland	03/10/2002	23/10/2001		20/06/2006	10/12/1998
France	25/04/2008	25/04/2008	25/4/2008	11/07/2005	31/07/2000
Germany					10/11/1998
Greece	10/07/2007	21/02/2002	10/7/2007	17/09/2008	5/02/1999
Hungary	22/11/2000	04/12/2003		19/04/2005	4/12/1998
Ireland	03/10/2003		11/7/2005		22/09/2003

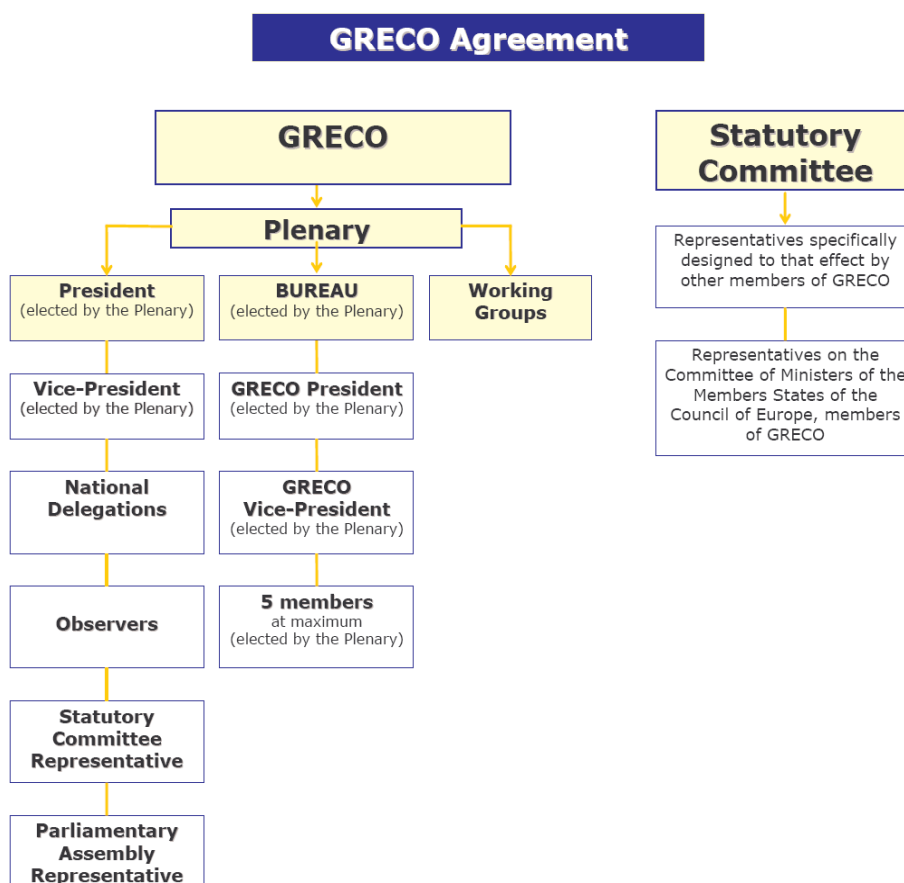
Italy				5/10/2009	15/12/2000
Latvia	09/02/2001	12/04/2005	27/7/2006	4/01/2006	
Lithuania	08/03/2002	17/01/2003		21/12/2006	
Luxembourg	13/07/2005		13/7/2005	6/11/2007	21/03/2001
Malta	15/05/2003	31/03/2004		11/04/2008	
Netherlands	11/04/2002	17/12/2007	16/11/2005	31/10/2006	12/01/2001
Poland	11/12/2002	17/12/2007		15/09/2006	8/09/2000
Portugal	07/05/2002			28/09/2007	23/11/2000
Romania	11/07/2002	23/04/2002	29/11/2004	2/11/2004	
Slovakia	09/06/2000	21/05/2003	7/4/2005	1/06/2006	24/09/1999
Slovenia	12/05/2000	17/03/2003	11/10/2004	1/04/2008	6/09/2001
Spain	28/04/2010 (entry into force 01/08/2010)	06/12/2009		19/06/2006	4/01/2000
Sweden	25/06/2004	25/06/2004	25/6/2004	25/11/2007	8/06/1999
United Kingdom	09/12/2003		9/12/200	9/02/2006	14/12/1998

8.8. Annex 7 – Organisation and Functioning of the Council of Europe Group of States against Corruption (GRECO)

General information on the structure of the mechanism

GRECO was established on 1 May 1999 by means of a Resolution adopted by 17 Council of Europe states⁷⁰. GRECO was conceived as a flexible and efficient follow-up mechanism with the objective to monitor, through a process of mutual evaluation and peer pressure, the compliance with the Guiding Principles in the Fight against Corruption and the implementation of international legal instruments adopted in pursuance of the Council of Europe Programme of Action against Corruption. Full membership of the GRECO is reserved to those who participate fully in the mutual evaluation process and accept to be evaluated. Figure 2 illustrates the structure of the GRECO mechanism.

Figure 2 - Structure of the GRECO mechanism



⁷⁰ The decision to adopt this Resolution followed a 1998 Council of Ministers Resolution authorising its creation.

Membership in the GRECO, which is an enlarged agreement, is not limited to Council of Europe member States. Any State which took part in the elaboration of the enlarged partial agreement, may join by notifying the Secretary General of the Council of Europe. Moreover, any State which becomes Party to the Criminal or Civil Law Conventions on Corruption automatically accedes to GRECO and its evaluation procedures. **Currently, GRECO comprises 48 member States** (47 European States and the United States of America). All EU Member States are members of GRECO.

The GRECO Statutory Committee⁷¹

Article 18 of the Statute⁷² establishes the composition of the GRECO Statutory Committee and lists the competences of this Committee. With regard to its composition, the Statutory Committee is to involve (i) the representatives on the Committee of Ministers of the Member States of the Council of Europe (which are also members of the GRECO); and, (ii) representatives specifically designated to be part of the Committee by other members of GRECO. At this stage, it is not clear what types of representatives the latter point refers to; this will need to be clarified.

As far as the competences of the Statutory Committee are concerned, the Committee is responsible for determining the level of compulsory contributions by the members on an annual basis⁷³. It is also the Committee's task to adopt the budget of GRECO with regard to expenditure related to the implementation of the programme of activities and common secretariat expenditure, and to approve the GRECO's annual accounts⁷⁴. These accounts are to be transmitted to the Committee of Ministers together with an approval or comments as well as a report drawn up by the Board of Auditors. This system has been put in place in order to release the Secretary-General from the responsibility of the financial year in question.

The GRECO Bureau

Article 9 provides for the establishment of a Bureau, which is assigned a number of important functions. According to the GRECO Statute, the Bureau is to be composed by seven members⁷⁵, however in 1999 it was decided⁷⁶ that, for the time being, the Bureau would be composed of only five members: the President, the Vice-President and three other members elected by the GRECO. It is not clear why the numbers of members were reduced.

The functions of the Bureau are also established in Article 9; these are as follows:

- § Prepare the preliminary draft annual programme of activities and the draft annual activity report;
- § Make proposals to the GRECO concerning the preliminary draft budget;
- § Organise country visits on the basis of the decisions taken by the GRECO;

⁷¹ http://www.coe.int/t/dghl/monitoring/greco/general/statutorycommittee_en.asp

⁷² [http://www.coe.int/t/dghl/monitoring/greco/documents/2005/Greco\(2005\)6_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/documents/2005/Greco(2005)6_EN.pdf)

⁷³ The scale according to which the contributions of non-members of the Council of Europe are calculated are to be decided in agreement with the latter; as a general rule, the scale of contributions need to be in line with the criteria for the determination of the scale of contributions to the general budget of the Council of Europe.

⁷⁴ These are to be drawn up by the Secretary General of the Council of Europe in accordance with the Financial Regulations of the Council of Europe and submitted to the Statutory Committee accompanied by the report of the Board of Auditors.

⁷⁵ *There shall be a Bureau composed of the President and the Vice-President referred to in Article 8 paragraph 8 above and five other persons elected by the GRECO, among the representatives of the members entitled to vote which are, as far as possible, Parties to at least one of the international legal instruments adopted in pursuance of the Programme of action against corruption.*

⁷⁶ at its 2nd meeting (1-3 December 1999).

- § Make proposals to the GRECO on the composition of the ad hoc evaluation teams;
- § Prepare the agenda for the meetings of the GRECO including those at which evaluation reports will be discussed;
- § Make proposals to the GRECO as regards the provisions to be selected for evaluation procedures in pursuance of Article 10 paragraph 3 below;
- § Make proposals to the GRECO concerning the appointment of scientific experts and consultants.

In addition to these tasks, the Bureau is to carry out other functions assigned to it by the GRECO. The Bureau carries out its functions under the general supervision of the GRECO.

Functioning of the mechanism

The monitoring undertaking within the framework of GRECO comprises:

- § A “horizontal” evaluation procedure (all members are evaluated within an Evaluation Round) leading to recommendations aimed at furthering the necessary legislative, institutional and practical reforms; and,
- § A compliance procedure designed to assess the measures taken by its members to implement the recommendations.
- ü GRECO works in cycles of evaluation rounds, each covering specific themes. The following three evaluation rounds have been launched to date:
 - § The first evaluation round took place in 2000-2002. This evaluation round dealt with the independence, specialisation and means of national bodies engaged in the prevention and fight against corruption. It also covered the extent and scope of immunities of public officials from arrest, prosecution, etc.
 - § The second evaluation round, which was carried out in 2003–2006, focused on the identification, seizure and confiscation of corruption proceeds, the prevention and detection of corruption in public administration and the prevention of legal persons (corporations, etc) from being used as shields for corruption.
 - § The third evaluation round was launched in January 2007. This evaluation round addressed: (a) the incriminations provided for in the Criminal Law Convention on Corruption; and, (b) the transparency of party funding. Two themes were covered, namely: Theme I = Incriminations; and, Theme II = Political Funding⁷⁷:
- ü The evaluation process follows a well defined procedure, where a team of experts is appointed by GRECO for the evaluation of a particular member. The analysis of the situation in each country is carried out on the basis of written replies to a questionnaire and information gathered in meetings with public officials and representatives of civil society during an on-site visit to the country. Following the on-site visit, the team of experts drafts a report which is communicated to the country under scrutiny for

⁷⁷ http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/ReportsRound3_en.asp

comments, before it is finally submitted to GRECO for examination and adoption. The conclusions of evaluation reports may state that legislation and practice comply - or do not comply - with the provisions under scrutiny. The conclusions may lead to recommendations which require action within 18 months or to observations which members are supposed to take into account but are not formally required to report on in the subsequent compliance procedure.

8.9. Annex 8 – Key assumptions on costs and policy actions

Policy option 1 - Status quo

Under the status quo, Member States will continue bearing the economic and wider social and political costs of corruption. These costs, as indicated in the study, are likely to increase. There would be no additional financial costs to the public sector linked to the implementation of this policy option.

Policy option 2 – EU accession to GRECO

As far as the financial costs to the EU of Policy Option 2 are concerned, these are estimated to be a maximum of 2.1 million euro per annum if all the elements of the policy option are chosen. Table 1 provides a breakdown with comments on the estimates made.

Table 1 – Breakdown costs for Policy Option 2

Type of costs	Euro per annum	Comments
Comparative report based on existing national reports	150,000	This is a typical cost of a comparative report covering all EU MS based on synthesising the content of national reports and signaling outstanding recommendations.
Participation in GRECO (contribution to the budget)	300,000	This would be the estimated equivalent for a major contributor to the GRECO budget (thus covering all costs triggered by EU full participation in GRECO).
Tailor-made evaluations for the EU 27	1,350,000	The average cost of a national review may be round 100,000 euro
Administrative costs associated with further meetings of the EU and EU Member States (these costs are linked with the tailor-made evaluations mentioned above)	300,000	This estimate includes travel and accommodation for MS' national officials as well as costs linked to the organisation of bigger meetings/workshops (Room hire + refreshments)

Policy option 3 – Periodical EU Anti-Corruption Report

Overall, the total maximum costs for this policy option would amount to 4.295 million euro per annum. However, it is important to stress that some components of the policy option (and therefore costs) could be phased in (for example, the mutual learning programme) and some costs would decline over time.

Table 2 – Breakdown of cost of Policy Option 3

Type of costs	Euro per annum ⁷⁸	Comments
EU Anti corruption periodical report (HR and administrative supporting actions)	500,000	The costs of Commission human resources involved, as well as the costs of administrative supporting actions (costs of meetings, conferences, dissemination,

⁷⁸ In practice some of the costs such as the development of indicators would be incurred during the first years of implementation.

		publication, communication, Eurobarometer, etc).
Expert group/panel	50,000	The costs of establishing an EU level expert group would be in the order of 50,000 euros every two year. The experts would work pro-bono (i.e. no fees involved). The costs would cover the organisation of approximately 5 meetings/year for approximately 17 experts (i.e. transport, accommodation, etc). The Commission's human resources involved are included under the item above.
Civil society input for the EU Anti-corruption Reports	2,000,000	The costs of sponsoring inputs prepared by civil society are estimated to be an average of 2,000,000 euro per year. The costs would cover the research (reviews of published and 'grey' material, case studies and consultations) plus the preparation of reports/studies/updates. One such input is already in preparation (i.e. the National Integrity Systems studies) which is a project funded by the EU prevention and fight against corruption programme covering almost all member States and spanning for a period of two years with a budget of approximately 1.6 million euros. The targeted call for proposals for civil society of the EU programme on prevention and fight against corruption may be used for this purpose, encouraging civil society organisations to apply for subject specific assessments of Member States' anti-corruption efforts. The object of the specific assessments will be determined at a later stage, once the methodology for gathering data, identifying indicators and formulating recommendations will be put into place (i.e. 2011-2012).
National research correspondence network	970,000	These costs would cover fees for 27 national correspondents from EU MS (based on an average cost of 30,000 euro per correspondent – 810,000 euro in total). The costs would also cover costs for the organisation of meetings of national correspondents (approx 32,000 for travel and accommodation of experts for 2 meetings per year), as well as the administrative costs for the management of the network (approx. 130,000 euros)
Mutual Learning Programme (to be developed at a later stage, once the work for the first Report will be finalised)	775,000	The average resource costs for the organisation of exchange of good practice are estimated to be 55,000 euro. These costs would cover: the time inputs of experts to identify good examples for anti- corruption measures and to undertake research to assess their effects and the factors that influence success; the logistical costs of undertaking the review work; and, the costs of small scale two day meetings to discuss the results and identify transferable lessons. It is reasonable to assume that five such "exchanges" would be held each year and

		the aggregate costs to the EU budget would be 1,200,000 euro.
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Policy option 4 – the use of EU Legislation

As far as the financial costs to the EU of Policy Option 4 are concerned, these are estimated to a maximum of 2.5 million euro for the implementation of legislation defining corruption and its measurement.

Table 3 – Breakdown of costs of Policy Option 4

Type of costs	Euro	Comments
Approximating the prevention, prosecution and punishment of corruption offences in Member states	no costs	
Implementation of legislation defining corruption and its measurement	2,500,000	Resources would be needed for the systematic gathering of new data on public and economic actor perceptions and behaviour relating to corruption. The estimated costs are indicative and are based upon a judgement as to what costs are likely to be acceptable to MS. Corruption is difficult to measure and very large levels of resources would be required to generate ‘ideal’ measures. Even then some commentators would question their validity. At the same time relatively low costs data gathering processes could contribute to a step change in the quality and comparability of available information and indicators.

Policy option 2 (partial) +3 – Participation in GRECO, comparative reports, follow-up of outstanding recommendations, and periodical EU Anti-Corruption Report

Table 4 – Breakdown of costs for combined policy option 2+3

The overall estimated annual financial costs of this combined policy option would be of maximum 4.745 million euro.

Type of costs	Euro per annum ⁷⁹	Comments
Comparative report based on existing national reports	150,000	This is a typical cost of a comparative report covering all EU MS based on synthesising the content of national reports and signaling outstanding recommendations.
Participation in GRECO (contribution to the budget)	300,000	This would be the estimated equivalent for a major contributor to the GRECO budget (thus covering all costs triggered by EU full

⁷⁹ In practice some of the costs such as the development of indicators would be incurred during the first years of implementation.

		participation in GRECO).
EU Anti corruption periodical report (HR and administrative supporting actions)	500,000	The costs of Commission human resources involved, as well as the costs of administrative supporting actions (costs of meetings, conferences, dissemination, publication, communication, Eurobarometer, etc).
Expert group/panel	50,000	The costs of establishing an EU level expert group would be in the order of 50,000 euro every year. The experts would work pro-bono (i.e. no fees involved). The costs would cover the organisation of approximately 5 meetings/year for approximately 17 experts (i.e. transport, accommodation, etc). The Commission's human resources involved are included under the item above
Civil society input for the EU Anti-corruption Reports	2,000,000	The costs of sponsoring inputs prepared by civil society are estimated to be an average of 2,000,000 euro per year. /studies/updates. One such input is already in preparation: i.e. the National Integrity Systems studies which is a project funded by the EU prevention and fight against crime programme covering almost all Member States and spanning for a period of two years with a budget of approximately 1.6 million euros. The targeted call for proposals on financial and economic crime of the EU programme for prevention and fight against crime may be used for this purpose, encouraging civil society organisations to apply for subject specific assessments of Member States' anti-corruption efforts. The object of the specific assessments will be determined at a later stage, once the methodology for gathering data, identifying indicators and formulating recommendations is put in place (i.e. 2011-2012).
National research correspondence network	970,000	These costs would cover fees for 27 national correspondents from EU MS (based on an average cost of 30,000 euro per correspondent – 810,000 euro in total). The costs would also cover costs for the organisation of meetings of national correspondents (approx 32,000 for travel and accommodation of experts for 2 meetings per year), as well as the administrative costs for the management of the network (approx. 130,000 euros)
Mutual Learning Programme	775,000	The average resource costs for the organisation of exchange of good practice are estimated to be 155,000 euro. These costs would cover: the time inputs of experts to identify good examples for anti-corruption measures and to undertake research to assess their effects and the factors that influence success; the logistical costs of undertaking the review work; and, the costs of small scale two day meetings to

		<p>discuss the results and identify transferable lessons. It is reasonable to assume that five such "exchanges" would be held each year and the aggregate costs to the EU budget would be 775,000 euro. However, the decision on the setting up of such programme and the details of its functioning may only be taken/clarified at a later stage, once the preparations for the first Report are more advanced.</p>
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