

SEVENTH FRAMEWORK PROGRAMME OF THE EUROPEAN COMMISSION



RESEARCH PROJECT: “ALACs”

Promotion of Participation and Citizenship in Europe through the “Advocacy and Legal Advice Centres (ALACs)” of Transparency International. Analysis and Enhancement of an Anti-corruption Tool to Enable Better Informed and Effective Citizen Participation in Europe

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Policy recommendations on how to better engage citizens in the fight against corruption at EU-level

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This report contains EU policy recommendations for promoting citizen engagement in the fight against corruption based on findings of the FP7 project “Promotion of Participation and Citizenship in Europe through the Advocacy and Legal Advice Centres (ALACs) of Transparency International. Analysis and Enhancement of an Anti-corruption Tool to Enable Better Informed and Effective Citizen Participation in Europe”.

Advocacy and Legal Advice Centres (ALACs) provide free and confidential legal advice to witnesses and victims of corruption. Offering a simple, credible and viable mechanism for citizens to pursue their corruption-related complaints, ALACs empower citizens in the fight against corruption. ALACs also play a critical role identifying corruption hotspots that demand reform or official action. By receiving and analysing complaints from citizens, ALACs gather real life data on the consequences and mechanisms of corruption. The complaints inform the work of Transparency International chapters to bring about systemic change in public policy and practice. First established in 2003, by now over 100,000 citizens have contacted these anti-corruption advice centres which run in over 50 countries around the world. Over the past 18 months, significant developments have taken place with regard to the EU’s internal and external anti-corruption policy. In June 2011, the European Commission launched a comprehensive EU anti-corruption package, including a new EU anti-corruption reporting mechanism. Developments in the EU Enlargement Policy have included opening Chapter 23, on the “Judiciary and Fundamental Rights”, earlier in the accession negotiations, allowing more time for candidate countries to establish a credible track record in the fight against corruption. Also the review of the European Neighbourhood Policy in 2011 put good governance and support for civil society at the centre of the revised policy.

Building on these EU policy developments, these recommendations draw on the experience of the ALACs and offer specific ways in which the EU can encourage greater citizen engagement in fighting corruption.

1. Use ALAC experience to inform EU Progress Reports and policy reviews

The project found that ALACs generate important information on corruption that helps to assess progress and weaknesses in the area of anti-corruption. Both the information on the empirical reality of Advocacy and Legal Advice Centres provided by the project and non-case sensitive information generated by ALACs can be useful

for EU progress reports. These include, for example, the half-yearly progress reports of the Cooperation and Verification Mechanism (CVM) for Bulgaria and Romania and progress reports on enlargement and the European Neighbourhood Policy.²

In the future the information gathered by the ALAC project can be a valuable source of information for the EU Anti-Corruption Report that is to be launched in mid-2013. The information provided by the ALACs project can also be used for broader policy reviews, when assessing how to better tailor EU internal and external policies to support anti-corruption and citizen engagement. The policy areas this applies to include the EU Justice and Home Affairs policy, special EU monitoring mechanisms such as the CVM, and for the Enlargement and European Neighbourhood policies. ALACs are also running in several developing countries and the data gathered through ALACs could be useful input for consultations related to EU development policy.

2. Raise awareness on fundamental rights and legal remedies

Lack of knowledge on fundamental rights, as well as basic financial and legal issues, has been an important reason for citizens to contact their local ALAC. EU citizens need to be well informed of their rights as enshrined in the EU charter, ways to enforce these rights and how to seek legal redress if they are violated.

The experience of the ALACs has also shown that there is a low level of awareness amongst citizens of their rights as well as of what constitutes criminal conduct or corruption, and which authorities are responsible for investigating cases. In Ireland, confusing legal standards for citizens were exacerbated by a lack of knowledge by employers and the public around corruption. Greater investment in public information is needed to address this shortfall, including awareness-raising through media campaigns and civil society. Greater understanding of corruption as criminal behaviour can help to reduce the prevailing apathy or tolerance towards corruption. To this end, the EU should strengthen its communication on fundamental rights and provide citizens with information on seeking legal remedies.

Empowering citizens in the fight against corruption requires easy access to justice and implementation of effective laws on freedom of information. The “one-stop-shop” in

² See also ALACs Deliverable 1: Ralf Rogowski, ALACs and the concept of citizen participation in the light of European law, ALACs Discussion Paper Series No 1, July 2010.

the area of EU justice, the European e-Justice Portal³, is a good initiative that could be followed by member states at national level. Ensuring that this type of information is adequately publicized is important to facilitate access to justice and ensure basic legal information is easily available to EU citizens. The EU experience with their justice portal could be shared with member states and linked to relevant national portals.

3. Improve access to legal aid for EU citizens

The high number of enquiries received by the ALACs confirms the important role and need for free legal advice in the fight against corruption. The right to legal aid, as enshrined in Article 47 of the EU Charter of Fundamental Rights⁴ and Article 6 of the European Convention on Human Rights⁵, requires that legal aid will be made available to those who lack sufficient resources to have access to justice. The difference across EU member states in how legal aid provided for, whether a general free service or limited to the very poorest, creates imbalances across member states in access to justice for citizens.

It should be considered to set up minimum standards for legal assistance for member states. This could be done by extending the legal aid Council Directive 2002/8/EC⁶ beyond cross-border disputes. In that case the European Social Fund could extend its priorities to include supporting disadvantaged European citizens in legal assistance. Further, the EU should encourage member states to devote greater resources for legal aid services, and could alternatively consider providing EU funding to independent civil society organisations in order to avoid dependency on government agencies and any potential conflict of interest where cases relate to government bodies. Special attention should be given to the scope and sustainability of future legal aid models, to ensure that all citizens can rely on legal aid for at least the initial stages of consultation.

In order to encourage networks of pro bono lawyers who donate their time, the EU could consider providing them with incentives such as trainings. This could facilitate access to legal aid for citizens as well as non-nationals.

³ E-Justice Portal: <https://e-justice.europa.eu/home.do?action=home>

⁴ EU Charter of Fundamental Rights: http://www.europarl.europa.eu/charter/pdf/text_en.pdf

⁵ European Convention of Human Rights: <http://conventions.coe.int/treaty/en/Treaties/Html/005.htm>

⁶ Link to Council Directive 2002/8/EC: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2003:026:0041:0047:EN:PDF>

4. Increase visibility of EU fraud investigations

ALAC experience has shown that there is a lack of public awareness on EU fraud investigations. Especially in times of austerity, evidence about the loss of EU funds could create public pressure to do more against fraud. In Czech Republic, the country could be set to lose 1 billion EUR in EU funds due to cases of alleged fraud and corruption related to EU funds⁷. The potential loss of these funds has accentuated public anger over perceived corruption and pushed national authorities to become more active in following-up cases.

A more active European Anti-Fraud Office (OLAF), with more investigations, on-site visits, and presence in the media, would be conducive to bringing attention to this issue and encouraging EU citizens to report fraud. Increasing the visibility of OLAF could also bring attention to the fact that EU money may be lost when national authorities fail to detect and act on fraud relating to EU money.

5. Explore potential for collaboration between OLAF and ALACs

In view of the natural link between the activities of the OLAF and ALACs operating in EU member states, information exchange and communication could be strengthened between these two bodies. With its mandate to fight and investigate fraud affecting the EU budget, as well as corruption and serious misconduct within the European institutions, OLAF also operates a web-based platform through which citizens can alert them to potential cases of EU fraud.

The ALACs are well-positioned and connected with citizens in their countries to refer citizens to relevant national and EU authorities when receiving information relating to corruption and fraud cases involving EU funds. It might be worth exploring whether ALACs could provide an additional channel through which OLAF can reach more citizens, and citizens can be made aware of OLAF or national authorities and their responsibilities for the EU budget. Since witnesses to corruption can find it difficult to report sensitive cases, having a locally-based ALAC to provide legal advice could help overcome this barrier. At the same time, in those cases where OLAF receives input from citizens on other instances of corruption or fraud, not involving EU funds,

⁷ Reuters (via TrustLaw) 25/9/2012, "Czechs could lose up to 1 bln euros in EU funds". Available at: <http://www.trust.org/trustlaw/news/czechs-could-lose-up-to-1-blm-euros-in-eu-funds-ministry>

the citizen could be referred to the local ALAC, in addition to relevant national law enforcement authorities. The ALAC in this instance could play a facilitating role between the citizen and national institutions and track the progress of the complaint.

6. Ensure new EU rules on public procurement that include greater public oversight and transparency provisions

Corruption and irregularities tied to public procurement are still common in EU member states and further efforts are needed to address this problem. Through the running of ALACs in several EU member states, public procurement has been identified as a corruption “hotspot”. The Europe-wide National Integrity System assessment⁸ by Transparency International identified public procurement as a particular corruption-prone area. For example, in Lithuania the law on public procurement provides for a broad definition of confidentiality, allowing for secrecy around contracts and a greater corruption risk. Common abuses reported to the ALACs relating to public procurement include overpricing construction, giving kickbacks to local decision-makers, or purchasing unneeded or low quality items or services from preferred local enterprises⁹.

The EU is currently reviewing its public procurement directives¹⁰, which are expected to be finalised by the end of 2012 or early 2013. These new rules offer an important opportunity to ensure transparency in public procurement and minimising the scope for corruption to occur through public contracting. It is essential that the new directives address previous weaknesses and should include:

- greater inclusion of the public, including civil society, in the monitoring of public procurement activities¹¹,

⁸ <http://www.transparency.org/enis>

⁹ Corruption risks in the public procurement process are particularly acute during the drafting of the technical criteria of the tender, and exacerbated when the complaint procedure is limited to those involved in the tender.

¹⁰ As announced in the Single Market Act, the European Commission published its proposals on modernising EU public procurement in December 2011. The revision of EU public procurement directives includes the revision of Directive 2004/17/EC (procurement in the water, energy, transport and postal services sectors) and 2004/18/EC (public works, supply and service contracts), as well as the adoption of a directive on concessions.

¹¹ Civil society can – and already does – play an important role as independent monitors of both the tender and execution of projects.

- improved access to information on public procurement contracts, including the use of new tools such as e-procurement and enforced publication of contracts to enable greater scrutiny;
- strengthening of monitoring mechanisms, including national oversight bodies, to ensure concerns over public procurement are investigated fully and monitored in a way that allows for pan-EU comparison.

7. Support improved whistleblowing rules and wider awareness-raising for citizens

ALACs are often approached by whistleblowers who seek advice on corruption-related complaints. In most countries, whistleblowers are not adequately protected. Their complaints are often dismissed and they face the risk of retaliation, dismissal or even physical danger. The protection varies significantly among EU member states¹² and is weak or even absent in most countries covered in this project.

The EU Anti-Corruption Report could serve as an opportunity to highlight this issue and provide recommendations to member states on how to improve their whistleblowing frameworks, based on existing best practice¹³.

Changes to whistleblowing legislation need to be accompanied by a wider awareness-raising on its implications. This is important to achieve a greater understanding of whistleblowing as an effective tool for detecting corruption, improving accountability and serving the public interest. In many countries there is a need to promote whistleblowing as a concept, as confusion and scepticism still exists on what it entails and its added value in relation to other issues such as witness protection.

Civil society can play an important role in changing cultural attitudes and enhancing appreciation of whistleblowing throughout society. It is essential that the EU, together

¹² See Transparency International's report "Alternative to Silence" (2010) which assesses whistleblowing legislation, policies and practice in 10 EU countries.
http://www.transparency.org/whatwedo/pub/alternative_to_silence_whistleblower_protection_in_10_european_countries

¹³ Such as TI principles on whistleblowing legislation (2009):
http://www.transparency.org/files/content/activity/2009_PrinciplesForWhistleblowingLegislation_EN.pdf
 and the G20/OECD principles (2012): <http://www.oecd.org/general/48972967.pdf>

with national authorities, invest in these types of initiatives to better communicate the changes to citizens.

8. Enhance transparency and support for civil society initiatives through Enlargement and European Neighbourhood policies

Promoting EU values and supporting the development of democratic and accountable governments is an important goal of the Enlargement and Neighbourhood policies. The running of the ALAC in both Azerbaijan and Bosnia and Herzegovina has confirmed that the scale of corruption faced by citizens in their daily lives in these countries is significant. Citizen empowerment in the fight against corruption can be promoted by the EU through supporting innovative civil society initiatives and investigative journalism as a means to expose corruption and raise awareness on the issues and channels for redress. New technology and online tools provide for opportunities to engage the public, such as websites where citizens can safely report their corruption complaints and receive legal aid, without fear of repercussion. Supporting these types of initiatives will also help raise awareness on citizens' rights and increase public intolerance of corruption.

An important issue is transparency of EU funds relating to Enlargement and the European Neighbourhood Policy. Since a large proportion of EU assistance to these countries is given in the form of budget support to national governments, making this information transparent and easily understood is an important way for citizens to hold their governments to account. This could include making better use of online tools, infographics and providing information through open data platforms.

Having civil society monitor EU spending is a low-cost, effective and empowering way to ensure funds are used for their intended purpose. Civil society should be included in permanent monitoring mechanisms to provide oversight and report irregularities for Enlargement and ENP countries.

ALACs - Next steps

The ALACs project found that ALACs generate an important amount of unmatched primary data on corruption that can be successfully captured and utilised to assess progress and weaknesses in the area of anti-corruption. This approach to tackling

corruption has proven successful in very diverse contexts, from Azerbaijan to Ireland and from Bosnia Herzegovina to the Czech Republic.

Despite the remarkable success of ALACs, many still operate on very small budgets with a volunteer network. To achieve even greater impact, ALACs should be scaled up significantly. Substantially greater resources would have the potential to significantly broaden the operational scope of ALACs and their ability to effect change. In particular, much additional effort is needed to make ALACs widely known to citizens from all sectors of society, with a focus on those sectors that are particularly prone to corruption, in order to receive more relevant complaints.

The recommendations were prepared by Nienke Palstra, Transparency International liaison office to the European Union and Professor Ralf Rogowski, University of Warwick

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