

## Anti-Corruption Priorities for Europe

UNCAC Coalition Submission to the 9<sup>th</sup> Session of the UNCAC Conference of the States Parties

26 November 2021

The UNCAC Coalition civil society organizations from Europe are making this written submission to contribute to the discussions of the States Parties, meeting for the ninth Conference of the States Parties in Egypt.

The year 2021 brought unprecedented attention to the fight against corruption. The **UN High Level Panel on International Financial Accountability, Transparency and Integrity (FACTI Panel)** made ambitious recommendations to recover billions of dollars lost to corruption, money laundering, and tax abuse, to redirect them back to the productive economy, and to achieve the Sustainable Development Goals.<sup>1</sup> At the first-ever **Special Session of the UN General Assembly against corruption** held in June, Member States committed to strengthen cooperation and promote the rule of law, crucial to ensuring a sound recovery from the Covid-19 pandemic and to meeting the sustainable development agenda. In addition, the release of the Pandora Papers<sup>2</sup>, the biggest leak of financial data in history, shed light on the opaque networks enabling powerful individuals and political leaders from Europe and countries across the globe to hide vast amounts of funds.

While many countries in the European region have received relatively positive assessments when it comes to perceived corruption<sup>3</sup>, enormous challenges remain. Many countries **rate high on transparency and on the integrity of public officials** but are vulnerable to more evasive forms of corruption. Despite significant gaps in legislation on such issues as public procurement and whistleblower protection, there is the widespread belief that legislation is robust. An even more pressing problem is the lack of adequate implementation and enforcement. Over the past year, institutional and legal anti-corruption frameworks have been established, but they do not systematically detect and stop phenomena such as state capture. As the last link in the chain, citizens do not always perceive results of anti-corruption efforts.

Furthermore, in some countries of the region, legislation has been introduced (and in one case also repealed) **seeking to discredit organizations that receive funding from abroad, contributing to an atmosphere of shrinking space for civil society in some countries**. In other parts of Europe,

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<sup>1</sup> Report of the High Level Panel on International Financial Accountability, Transparency and Integrity for Achieving the 2030 Agenda, February 2021: [https://uploads-ssl.webflow.com/5e0bd9edab846816e263d633/602e91032a209d0601ed4a2c\\_FACTI\\_Panel\\_Report.pdf](https://uploads-ssl.webflow.com/5e0bd9edab846816e263d633/602e91032a209d0601ed4a2c_FACTI_Panel_Report.pdf).

<sup>2</sup> Pandora Papers, an investigation by the International Consortium of Investigative Journalists, October 2021: <https://www.icij.org/investigations/pandora-papers/>.

<sup>3</sup> Transparency International (2020), Corruption Perceptions Index 2020, <https://www.transparency.org/en/cpi/2020/index/nzl>.

organizations working on anti-corruption and transparency **lack adequate financial support and resources.**

Despite these challenges, **EU guiding principles and directives have generated momentum around the anti-corruption agenda for EU member states and beyond.** They are the impetus behind efforts to advance legislation on anti-money laundering, beneficial ownership transparency, corporate country-by-country reporting and whistleblower protection.

The **business case for integrity** has become clearer, prompting large companies to put due diligence measures in place. There is mounting international pressure for the UN to adopt a stronger, legally-binding agreement to regulate transnational corporations against human rights violations and environmental harm in global value chains.

Finally, European governments increasingly recognize that the **inclusive participation of citizens in the policy-making process is the key to democratic transformation and better governance.** Civil society organizations are playing a vital role in promoting transparency and government accountability. Still, they are not systematically integrated into the design, implementation, and monitoring of anti-corruption policies.

Hence, the UNCAC Coalition membership in Europe urges UNCAC State Parties from Europe to prioritize and take action on the following issues to advance the fight against corruption in 2022:

### **1. Address grand or large-scale corruption**

Although significant progress has been made in fighting bribery and petty corruption in most countries, grand corruption is an increasing problem in some European countries. These cases involve high-level officials and result in the misappropriation of vast amounts of public funds.<sup>4</sup> Due to the sophisticated methods used to manipulate a complex global financial system, large-scale corruption cases under investigation may only be the tip of the iceberg. Therefore, governments should:

- Put an end to the impunity of perpetrators by effectively prosecuting and sanctioning acts of corruption.
- Counter incentives and opportunities that facilitate the laundering of proceeds of corruption and organized crime through the countries' financial sector and the wider economy. This entails reviewing regulations of financial service providers and adjusting anti-corruption systems to respond to and anticipate new risks.
- Ensure transparency of company ownership through centralized and freely accessible public registries. Mutual cooperation between states should facilitate their interconnection.
- Guarantee the independence of anti-corruption bodies and prosecutors; provide them with relevant powers, adequate capacity and resourcing to investigate high-profile corruption cases.

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<sup>4</sup> Statement submitted by Transparency International to the 8th Conference of States Parties, 12 December 2019: <https://www.unodc.org/documents/treaties/UNCAC/COSP/session8/V1911801e.pdf>.

- Increase cooperation between institutions and peer exchange at the international level to address the transnational phenomenon of grand corruption.<sup>5</sup>

## **2. Implement asset recovery and repair damage to victims of corruption**

European governments should conduct an ambitious asset recovery policy to recover funds lost to corruption and return them to the people of the nations harmed by corruption. This policy should achieve the following:

- Better identify stolen assets and proceeds of corruption through the implementation of registers with accurate, verified and comprehensive information on beneficial owners of legal entities established in the EU or doing business in the EU.
- Strengthen the capacity of Financial Intelligence Units and measures to prevent money laundering in line with UNCAC Article 14.
- Asset declaration regimes of public officials should be introduced or strengthened and more rigorously monitored.
- Modernize the freezing and seizure of instruments, assets, and proceeds of crime at the domestic and at the EU level.
- Effectively confiscate instruments, assets and proceeds of crime through non-conviction-based confiscation or legal mechanisms such as illicit enrichment, which reverses the burden of proof and requires the perpetrator to prove the legality of its funds and goods.
- Building on recent initiatives at the domestic level, develop an asset restitution policy, with civil society involvement, in line with the Global Forum on Asset Recovery principles of transparency, accountability, and inclusivity in the disposition and transfer of confiscated stolen assets in corruption cases and UNCAC Article 57.
- Reinforce multilateral mechanisms and international cooperation to recover and return criminally obtained assets.

## **3. Guarantee effective access to public information**

In some countries, the right of access to public information has declined in recent years. While the majority of European countries have adopted access to information laws, most of these do not meet the highest standards.<sup>6</sup> Also, there are still many challenges with implementation. For instance, during the Covid-19 pandemic, some countries effectively suspended the right to access information without providing justifiable grounds.<sup>7</sup> Therefore, governments should:

- Ensure that the right to information is guaranteed in practice, both by proactively publishing government-held information and by promptly addressing citizen requests for information.

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<sup>5</sup> Paragraph 18 of the Political Declaration adopted by the UN General Assembly Special Session against corruption, 2 June 2021: <https://undocs.org/A/RES/S-32/1>.

<sup>6</sup> Centre for Law and Democracy, Access Info Europe: Global Right to Information Rating: <https://www.rti-rating.org/>.

<sup>7</sup> Access Info (2021): Transparency and access to information in the COVID-19 era: <https://www.access-info.org/2021-02-25/transparency-and-access-to-information-in-the-covid-19-era/>.

- Establish and strengthen Information Commissioners or similar bodies to oversee and advance the implementation of access to information legislation.
- Ensure that barriers to access information held by state bodies are removed including for language minorities, persons with disabilities, vulnerable groups and communities.
- Strengthen public procurement transparency and supervision through central and open databases, publishing all contracts and amendments as well as execution-related information as open data throughout all procurement stages from planning to payments.
- Implement obligations and respect principles enshrined in international agreements, starting with the full implementation of UNCAC provisions.

#### **4. Ensure a safe and enabling environment for civil society and protect whistleblowers**

Following the first whistleblower protection laws from Southeast Europe and the recent EU Whistleblower Directive, many European states now have whistleblower legislation in place. However, the scope and quality of implementation varies despite governments' recognition of the invaluable role of whistleblowers. Therefore, governments should:

- Ensure the EU Directive on whistleblowing is implemented and provides for comprehensive protection beyond the minimum standards established in the Directive, including by covering all corruption offenses under the UNCAC.
- Adopt measures that specifically shield public watchdogs such as journalists, human rights defenders, activists and whistleblowers against Strategic Lawsuits Against Public Participation (SLAPPs).
- Create mechanisms to protect journalists reporting on corruption and anti-corruption activists and organizations, including by providing practical support, to ensure they are able to operate independently and without fear of reprisal. Investigate, prosecute and punish threats and acts of violence committed against them.

#### **5. Embed meaningful citizen engagement in anti-corruption strategies and policies**

Involving citizens in anti-corruption efforts remains challenging in Europe. Existing mechanisms for civic participation are often inadequate since they are mainly informative or consultative. European countries should truly embrace transparency, inclusiveness and integrity to chart a more sustainable development path:

- Share with citizens more precise and meaningful data, for instance, on governmental expenditure and public contracting.
- Support civil society actors and ensure that legislation does not impede their ability to function and carry out their work without harassment or reprisal.
- Guarantee the systematic participation of civil society actors in anti-corruption policy-making, for instance, by granting CSOs voting rights where applicable.
- Ensure that the review process of UNCAC implementation in their country is transparent, meaningfully involves civil society and that the country review report and follow-up actions are made public conducted in participatory and inclusive ways.