

...information report

## CORRUPTION: A CHALLENGE FOR THE EUROPEAN UNION (AND ITS INSTITUTIONS)

Adopted by the Committee on European Affairs on 14 February 2024



The so-called "Qatargate" scandal was triggered in December 2022 when an investigation opened in Belgium into allegations of corruption of members of the European Parliament by third countries revealed the vulnerability of the European Union with regard to actors using corruption to weaken it or divert its decisions.

A few weeks earlier, on the basis of information collected by its services as part of the annual review cycle monitoring

the rule of law in the 27 Member States and in line with the warnings issued by the European agency for law enforcement cooperation, Europol, the President of the European Commission, Mrs Ursula von der Leyen, raised the alarm on this subject: *"And today I would like to focus on corruption, with all its faces. The face of foreign agents trying to influence our political system. The face of shady companies or foundations abusing public money. If we want to be credible when we ask candidate countries to strengthen their democracies, we must also eradicate corruption at home."*

### 1. CORRUPTION: A MAJOR CHALLENGE FOR THE EUROPEAN UNION, INCLUDING AT THE HEART OF ITS INSTITUTIONS

#### A. THE EUROPEAN UNION HAS MADE THE FIGHT AGAINST CORRUPTION A PRIORITY

**Corruption is neither new** (in Antiquity, bribery was an integral part of electoral campaigning in the elections for the magistracies of the Roman Republic) **nor specific to the European Union.**

It is even worth noting, in light of the international indicators, even though they remain incomplete, that **corruption is less prevalent in the Member States of the European Union than in the rest of the world**. For instance, in 2023, 11 of the 27 Member States of the European Union, including France (20th) were among the top 20 States in the annual Corruption Perceptions Index ranking published by the non-governmental anti-corruption organisation *Transparency International*, which ranks all the countries in the world in decreasing order based on their anti-corruption legislation and practices.

More specifically, France has a precise legal framework and considerable means to prevent corruption, with reporting obligations imposed on public officials, mandatory registration of interest representatives in a national register, the advisory, information and monitoring role of the High Authority for Transparency in Public Life (*Haute autorité de transparence de la vie publique*, HATVP) and the introduction of a national anti-corruption strategy by the French Anticorruption Agency (*Agence française anticorruption*, AFA).

In addition, to curb corruption, the Criminal Code provides for clear sanctions to punish active bribery (which is defined as offering a favour, a gift or an advantage of any kind to a person so that they perform an act or abstain from acting in the course of their duties), passive bribery (which corresponds to a person with a specific position accepting the gift or advantage offered) and, more generally, **breaches of integrity** (influence peddling, unlawful taking of an interest, abuse of rights, etc.). To investigate and prosecute these offences, France also has a number of effective specialised agencies such as the Office against Corruption and Financial and Tax Crimes (*Office central de lutte contre la corruption et les infractions financières et fiscales de la police judiciaire*, OCLCIFI) or Tracfin, the financial intelligence unit of the Ministry of the Economy, Finance, and Industrial and Digital Sovereignty.

### **The fight against corruption is an international obligation and a European requirement.**

On the international front, the United Nations Convention against Corruption, which all the Member States of the European Union have ratified, imposes the adoption of **national strategies** against corruption. In addition, the Organisation for Economic Co-operation and Development (OECD) has taken initiatives against the corruption of foreign public officials in international trade transactions.

The fight against corruption is also a priority of the Council of Europe. In 1999 it set up **the Group of States against Corruption (GRECO)**, whose aim is to improve its members' ability to combat corruption by organising a process of mutual evaluation (and peer pressure) to encourage them to adopt the Council of Europe's standards on this matter. Its most recent evaluation report on France was published on 30 January 2024.

For the European Union, **the fight against corruption is an integral part of the rule of law**, one of the values of the Union laid down in Article 2 of the Treaty of European Union (TEU).

It is indeed in the name of this value of the rule of law that, since 2020, the European Commission has been evaluating the situation of each Member State on several criteria: independence of the justice system, fight against corruption, independence of the press and media pluralism, and institutional issues.

### **The fight against corruption is also part of the "EU acquis" which candidate countries must accept before they join the European Union.**

### **It is also included in the European Union's Security Union Strategy and the Strategy to Tackle Organised Crime.**

On this basis, the European Union has attempted to build a harmonised European response to the challenges of corruption. It has thus:

- **obtained from the Member States that they take the measures necessary to make corruption a criminal offence and to punish it by "effective, proportionate and dissuasive criminal penalties"**, whether it concerns public officials, or the private sector;
- introduced measures to prevent any use of the financial system for the purposes of money laundering and to freeze or confiscate criminal assets;
- **guaranteed effective control of the correct use of European funds**, both by exhaustive regulation and by the investigative powers of the European Anti-Fraud Office (OLAF), the European Union Court of Auditors and the European Public Prosecutor's Office, whose first mission is to protect the financial interests of the European Union;
- **provided for the measures necessary to protect whistleblowers;**
- made the fight against corruption one of the priorities of its Common Foreign and Security Policy (CFSP) and imposed sanctions on third countries reluctant to apply international standards in this area.

## **B. BUT CORRUPTION TAKES ADVANTAGE OF DIFFERENCES IN LEGISLATION BETWEEN MEMBER STATES AND THE SHORTCOMINGS OF THE EUROPEAN INSTITUTIONS**

In spite of all this, corruption remains a **widespread phenomenon in the European Union: its annual cost to the economies of the European Union is estimated by the European Commission at €120 billion, an estimate it qualifies itself as "conservative". Why?**

First of all because this **crime is often "invisible"**, serving criminal networks or hostile third countries to commit other serious crimes: drug trafficking; espionage; capturing public procurement contracts; misappropriation of European funds, etc.

**Thus, according to Europol, 60% of organised crime networks use bribery and 70% of them carry out money laundering.** The agency has also alerted Member States and the European Commission on several occasions to the control that drug trafficking networks hold over major European ports due to the existence of a **"chain of corruption"** among port officers and workers.

**This persistence of corruption also takes advantage of differences in the legislation between Member States and, sometimes, of their lack of political will to tackle corruption.** In its Rule of Law evaluation report in 2023, the European Commission even targeted our country: whilst congratulating it overall for its ethical rules and the capacity of the competent agencies to investigate corruption cases, the EC called upon France to rigorously implement its legal framework on interest representatives. Other Member States are urged to introduce rules on preventing conflicts of interest.

**Finally, corruption was also facilitated by some worrying shortcomings of the institutions of the European Union (European Commission; European Parliament; Council of the European Union, etc.), in adopting and applying "ethical frameworks" to themselves.** This state of affairs was illustrated by the "Qatargate" scandal and by several recent enquiries of the European Union Ombudsman, on the lack of scrutiny of the "revolving doors" phenomenon concerning European Commission staff, on the persistent opacity of the links between the European Commission Directorate-General for Health and Food Safety and the tobacco industry, or on the free air travel given by Qatar Airways to the former European Commission DG Move's director-general whilst he was negotiating an "Open Skies" agreement for the European Union with this country: these cases have demonstrated the need for ambitious reforms to guarantee the continued existence of the European democratic debate and restore confidence among the citizens of the Member States, at a time when the European Union has never had so much power.

**Matters are now urgent: indeed, in 2023, 70% of the citizens of Member States of the European Union considered that corruption was widespread in their country.** And more than four citizens out of ten (45%) considered that the amount of corruption in their country had increased in the last three years.

## **2. BETTER PREVENTION OF CORRUPTION**

### **A. INCREASING A MORE AMBITIOUS EUROPEAN INTERINSTITUTIONAL ETHICS BODY, WHICH THE EUROPEAN COMMISSION PROPOSES TO CREATE**

In its communication COM(2023) 311 final, presented on 8 June 2023, the European Commission proposed, by means of an Interinstitutional Agreement, the **creation of an interinstitutional ethics body** common to the nine institutions of the European Union, whose role would be to serve as a forum for exchanging best practices and to define, by consensus, a set of minimum ethical guidelines for the members of these institutions.

Considering that this very basic body was the only response possible under current European Union law (namely the principles of institutional balance and institutional autonomy requiring each European institution to assume fully the powers conferred upon it by the treaties, which give it a wide margin of appreciation to implement its internal policies in a "sovereign" manner), the European Commission considers that it must be considered as a "first step".

**In the European resolution that it proposes at the end of this report, the European Affairs Committee promotes a different analysis, observing that the "ethical upgrade" of the European Union cannot wait.**

The European Affairs Committee notes, on the one hand, that the initiative of proposing the creation of an ethical body, envisaged by the President of the European Commission early as the end of 2019, was only presented very belatedly, in June 2023, leading the European negotiators to hurry **at the risk of sealing a "cut-price deal" before the end of the European Parliament's current term.** And, on the other hand, its resolution underlines that **there is no point in creating a new European body if it is to be restricted to such insubstantial missions.**

Observing, with the European Ombudsman, that the self-regulation of the European institutions has not produced the expected results in the area of corruption prevention and that, contrary to the European Commission's interpretation, the European treaties do not prohibit the creation of an independent body with powers of oversight, **the European Affairs Committee recommends creating a true "European Ethics Committee", which would be independent** from the participating institutions **and:**

- **whose area of competence would encompass not only the members of the participating institutions, but also their staff.** At the same time, it would not establish standards for the national delegations sitting on the Council in order to avoid "duplicating" the national ethical rules by which they must already abide;

- **that would be able to self-refer potential breaches of ethics and conduct enquiries** in order to be able to issue **opinions (individual and confidential) and recommendations (public and to serve as general guidelines)** to the institutions. In practice, these enquiries would benefit from the support of the competent national authorities, the European Ombudsman, the Court of Auditors of the European Union and the European Anti-Fraud Office (OLAF);

- **that should oversee the mobility of the members and staff of the European institutions to the private sector or to entities linked to third countries ("revolving doors");**

- **that would be responsible for collecting, publishing and monitoring the declarations of interests of the members of the European institutions.** In addition, such declarations of interests should be imposed on the directors-general and directors of these institutions, and a reflection should be conducted on whether or not the persons concerned should be obliged to submit a declaration of assets at the beginning and end of their mandate;

- **would now act as the secretariat in charge of the common Transparency Register (listing the interest representatives wishing to influence the decisions of the European Union), which is currently held by a joint secretariat of the European Commission and the European Parliament and is not really subject to any oversight;**

- **finally, would produce, within the framework of the monitoring of the rule of law, an audit report on compliance with the rule of law by the institutions of the European Union themselves,** in particular with respect to the fight against corruption and the prevention of conflicts of interest.

## **B. SUPPORTING THE INTERNAL REFORMS CONDUCTED BY THE EUROPEAN PARLIAMENT TO LEARN THE LESSONS OF "QATARGATE"**

The European Affairs Committee notes, first of all, that the "Qatargate" scandal was a **"democratic explosion"** which planted the seeds of doubt regarding all of the European Union's officials.

Consequently, it commends the internal ethical reforms quickly adopted by the European Parliament during the course of 2023, based on the **"14 points"** drawn up by its President, Ms Roberta Metsola, in January 2023. In this matter, it stresses the importance of increased transparency in the declarations of interest of members of the European Parliament, the introduction of an asset declaration for members, the obligation for interest representatives

wishing to meet members of the European Parliament to register in the common Transparency Register and the introduction of an internal protection scheme for whistleblowers.

### **C. BETTER REGULATION AT THE EUROPEAN LEVEL OF THE ACTIVITIES OF INTEREST REPRESENTATIVES ACTING ON BEHALF OF THIRD COUNTRIES**

As part of the corruption prevention measures, **the European Affairs Committee also points to the Proposal for a Directive COM(2023) 637 final intended to allow better regulation of the activities of interest representatives working on behalf of third countries**, which follows the same logic as the planned Interinstitutional Agreement, already mentioned, to create an interinstitutional ethics body, and the proposal for a Directive on combatting corruption, examined below. It notes in effect that the **transparency of the interest representation activity**, the aim of which is to influence the drawing up or implementation of European policies, **must be guaranteed to maintain the satisfactory functioning of democratic debate**. Indeed, this activity presents the risk, by its very nature, of instrumentalization by third countries seeking to weaken the European Union and its Member States.

In this regard, the European Affairs Committee confirms the relevance of setting up, in 2021, of a common Transparency Register and a Code of Conduct for the registration of interest representatives wishing to meet members and staff of the European Parliament, the Council and the European Commission. **On the other hand, as already stated, it has doubts about the reality of the monitoring that actually takes place** based on this Register, which explains its proposal to entrust such monitoring to the future European ethics committee.

It notes the new Proposal for a Directive COM(2023) 637 but observes that, far from reinforcing the control of interest representatives acting on behalf of third countries, this reform seems to reduce those controls by introducing a **single registration procedure** for the European Union, whilst leaving the interest representatives the choice of the Member State where they wish to register (leading to the risk that they will all register in the least demanding Member State) and **by prohibiting the most advanced Member States (which include France) from maintaining stricter national provisions**. It also observes that corrupt undertakings do not always come from third countries, but also from European actors.

### **D. REVIEWING THE FUNDING OF EUROPEAN POLITICAL PARTIES**

The European Affairs Committee observes that the **prevention of corruption and foreign interference at the European level will also require reinforcement of the provisions regulating the funding of European political parties** and European political foundations, and reiterates in this respect the recommendations that it made to the Government in its Draft European Resolution, which became Senate Resolution no. 122 on 21 March 2022, namely:

- marking its opposition to the enacting terms of the Proposal for a Regulation on the statute and financing of European political parties and European political foundations COM(2022) 734 final, presented on 25 November 2021 and still under discussion, which would allow European political parties to benefit, up to a limit of 10% of the total contributions paid by their member parties, from financial contributions paid by member parties based in a country belonging to the Council of Europe, since these terms would foster foreign interference in their functioning;
- raising the question once again of whether the possibility that European political parties currently have of being funded by legal persons should be maintained, given the need to preserve the integrity of the European elections against any attempted manipulation.

### 3. BETTER POLICIES AGAINST CORRUPTION

#### A. SUPPORTING THE PROPOSAL FOR A DIRECTIVE ON COMBATTING CORRUPTION

The Proposal for a Directive COM(2023) 234 final on combatting corruption, presented on 3 May 2023 by the European Commission, is without doubt one of the most important reforms prepared by the current College of European Commissioners.

This text is a genuinely ambitious attempt to harmonise the criminal offences relating to breaches of integrity and the penalties for them at the European level. It also lays solid foundations for increasing the efforts to prevent corruption, by requiring that each Member State set up a specialised prevention body, as is already the case in France.

**This is why, whilst deploring the time it has taken to bring forward this reform and the lack of impact assessment to justify its provisions, the European Affairs Committee wishes to give its approval in principle to this important text.**

In addition, this proposal for a European Resolution:




- calls for clarification of several clumsily worded sections (in French the text refers to the "appareil judiciaire" rather than the "magistrature" for the judiciary) or incorrect terms (notion of "haut fonctionnaire politique" (senior political official));
- asks for the specialised corruption prevention bodies to benefit from statutory or functional independence, as the HATVP or the French Anticorruption Agency (AFA) do, and that the possibility of "upward harmonisation" of the Member States' anti-corruption measures be preserved;
- considers that the obligation to provide information imposed on anti-corruption bodies must be reconciled with maintaining the effectiveness of their enquiries and prosecutions;
- takes note of the extension of the criminal liability of legal persons in the event of a lack of supervision and control, but requests the preservation, within this framework, of the specific nature of the criminal liability of local authorities ("conditional" criminal liability) and the regime applicable to local elected officials in the event of unintentional offences ("Fauchon Law") , as currently provided for in French law, in the eventuality of a local authority being accused of a criminal offence connected to a lack of supervision or control.

#### B. REINFORCING THE LEGAL AND OPERATIONAL "ARSENAL" OF WEAPONS AGAINST CORRUPTION

In addition to the support expressed for the enacting terms of the proposal for a Directive on combatting corruption, **the European Affairs Committee** wishes to reinforce the European operational measures aimed at clamping down on criminal networks, which are behind a great deal of corruption, and to reiterate that the requirement to combat corruption is part of the EU acquis. On this point, it:

- **recommends firmer action against crime networks that use corruption on a massive scale to commit other serious offences**, which implies: supporting the strengthening of the resources of Europol and, in France, the police's Central Office for the Control of Serious Financial Crime (OCRGDF) and Tracfin ; supporting the European Union roadmap on drug trafficking adopted on 18 October 2023, which, among other things, recommends "following the money" of crime networks to facilitate their dismantling; asking for the rapid deployment of the "European Port Alliance" announced on 24 January, which is intended to mobilise political authorities, law enforcement agencies, major port operators and shipping companies in the fight against drug trafficking and the "chains of corruption" that these networks have set up in the ports;

- approves the agreement reached on 12 December 2023 on updating the proposal for a Directive on asset recovery and confiscation, which reinforces the measures on recovering assets and expands the scope of confiscations to a wider set of crimes, as well as the agreement reached on 13 December 2023, on the revision of European regulations countering money laundering. On this matter, it **supports Paris's bid to host the seat of the new European Authority for Anti-Money Laundering and Countering the Financing of Terrorism (AMLA)**;
- notes the first positive results achieved by the European Public Prosecutor's Office against corruption and money laundering offences that are damaging to the financial interests of the European Union and encourages the extension of its operational cooperation with the competent authorities and agencies in Member States;
- commends the joint communication of the European Commission and High Representative of the Union for Foreign Affairs and Security Policy of 3 May 2023 which **confirms that the fight against corruption is one of the objectives of the Common Foreign and Security Policy (CFSP)**;
- takes note with satisfaction the repeated commitment of the European institutions to prioritise the fight against corruption in European enlargement and neighbourhood policies, and confirms that the candidate countries for accession to the European Union (Ukraine; Moldova; Bosnia-Herzegovina and other Western Balkan countries; Georgia) must, like the others, comply fully with the EU "acquis" in this area.

			European Affairs Committee <a href="https://www.senat.fr/travaux-parlementaires/commissions/mission-des-affaires-europeennes.html">https://www.senat.fr/travaux-parlementaires/commissions/mission-des-affaires-europeennes.html</a> Phone : + 33(0)1.42.34.24.80  Link to the report online : <a href="https://www.senat.fr/notice-rapport/2023/r23-345-notice.html">https://www.senat.fr/notice-rapport/2023/r23-345-notice.html</a>
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