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Beyond the Panama Papers. The Performance of EU Good Governance Promotion

The Anticorruption Report 4

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Barbara Budrich Publishers
Opladen • Berlin • Toronto 2017

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A CIP catalogue record for this book is available from
Die Deutsche Bibliothek (The German Library)

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www.barbara-budrich.net

ISBN 978-3-8474-0582-5 (Paperback)
eISBN 978-3-8474-0405-7 (e-book)

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Die Deutsche Bibliothek – CIP-Einheitsaufnahme
Ein Titeldatensatz für die Publikation ist bei Der Deutschen Bibliothek erhältlich.

Verlag Barbara Budrich  Barbara Budrich Publishers
Stauffenbergstr. 7. D-51379 Leverkusen Opladen, Germany

86 Delma Drive. Toronto, ON M8W 4P6 Canada
www.barbara-budrich.net

Jacket illustration by Bettina Lehfeldt, Kleinmachnow, Germany –
www.lehfeldtgraphic.de



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5. Turkey: The Paradoxical Effects of EU Accession

DIGDEM SOYALTIN¹

Rather than achieving good governance in Turkey, the formal institutional change promoted by the EU has failed to eliminate the informal institutions of clientelism and patronage. Instead, the ruling party has been instrumental in using anticorruption measures to gain more control over state structures and replace old patronage structures with new ones, all the while enlarging on some neoliberal reforms in the economy. Recent deteriorations of press freedom and judiciary independence have also weighed down on control of corruption.

The origins of EU's anticorruption policy in Turkey

Corruption has been a pervasive problem in Turkey for many years. Yet, a decisive anti-corruption policy was formulated only after the EU and other external donors started to challenge the problem of corruption more prominently in the aftermath of the 2001 financial crisis. Facing increasing pressure, the incumbent government mostly formed by the Justice and Development Party (Turkish acronym, "AKP") responded to the EU's demands for change and expanded the legal framework with regard to fight against corruption. The conditional incentives of the EU membership process, which became more credible when Turkey received the EU candidacy status at the Helsinki Summit in 1999, had a considerable impact on the adoption of domestic anticorruption reforms. Given the impressive number of reforms adopted to comply with the EU's rules, Turkey was considered "a textbook example" of the EU's transformative power (Kirişçi 2011). Yet, the EU accession process lost momentum after 2006 in terms of pushing Turkish government to comply with the EU rules (Noutcheva and Düzgit 2012).

Combating corruption is an integral part of the EU's enlargement policy (Vachudova 2009, pp. 49–50). The legal and administrative changes required by the EU's ambitious reform agenda incur adaptation costs for target governments. Domestic change becomes more likely when the EU's conditional incentives are credible enough to compensate the costs of adaptation (Börzel and Risse 2003). As shown in the Central and Eastern European countries (CEEs), membership conditionality, as the strategy of reinforcement by reward, have enabled the EU to induce governments to comply with its conditions and adopt certain policies (Schimmelfennig and Sedelmeier 2005) to fight against corruption. Another instrument used by the EU to support the CEECs in their transition to democracy and good governance was financial and technical assistance. Especially provided the financial assistance by the Instrument for Pre-accession Assistance (IPA) was actively linked to the fulfilment of certain democratic criteria, thus creating further stimulus for the massive reforms (Smith 2004). EU assistance was also geared towards enhancing capacity of state institutions along with strengthening of media and civil society, which was thought in turn to be able to pressure the government for further change (Börzel and Pamuk 2012). In this regard, the free media, strong civil society and active citizens can put constraints on those who have opportunities to spoil public resources (Mungiu-Pippidi 2015).

Since the civil society is traditionally too weak in Turkey to put domestic pressure on its government, the reform process of sensitive issues, including the fight against corruption,

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was primarily driven by the credible incentive structure of the EU (Düzgit and Çarkoğlu 2004, Müftüler-Baç 2005). Moreover, the capacity-building programmes of the EU provided technical and financial assistance for the anticorruption agencies that are necessary to facilitate reform.

Corruption has been a long-standing problem for Turkey (Baran 2000). Although the scope and form of corruption has evolved over the years, the patronage networks that had historically been part of Turkish society dating back to the Ottoman Empire largely sustained and enabled certain groups of individuals to have access to resources and appropriate gains throughout Turkey's modern history (Buğra 1994). The drastic increase in the use of particularistic politics throughout the 1980s and 1990s disproportionately benefited capital groups with close relations and affiliations with high-level representatives of the government and weakened the regulatory capacities of the existing state bureaucracy and judiciary (Güneş-Ayata 2010). Coupled with ineffective civil society organisations and poor media environment, the weak governance structure further promoted institutionalisation of complex networks of mutual dependence and favour trading (Heper 1973, Kalaycıoğlu 2005). Yet, the absence of independent strong anticorruption controllers left too much discretion to the executive and gave rise to favouritism, eventually leading to corrupt practices that went unreported or investigated for many years.²

Until the early 2000s, prior to the launch of the reforms as part of the EU accession process, corruption did not used to be considered an urgent problem by Turkish politicians (Şarlak and Bali 2008). However, corruption was listed as one of the most serious and acute problems in several surveys of the public at that time (Adaman, Çarkoğlu and Şenatarlar 2001). Experts also placed Turkey among the group of countries perceived as the most corrupt in Europe. In the Corruption Perception Index (CPI) published by Transparency International (TI) Turkey never scored more than 3.8, and generally fluctuated around a figure of 3 in the late 1990s and in the beginning of the 2000s (Yaşar 2005).

Given the high level of corruption, the EU has paid greater attention to fighting corruption in Turkey (Adaman 2011, Doig 2012, Ulusoy 2014). After the EU granted Turkey candidacy status in 1999, the European Commission consistently stated that corruption had been a very serious and widespread problem in Turkey. In this context, EU officials strongly supported the implementation of the structural economic reform programmes agreed upon with the IMF and the World Bank (European Commission 2003, p. 125) and induced Turkish authorities to take more specific legal and institutional measures with regard to strengthening governance and fighting corruption. Accordingly, Turkey had been obliged to develop management and financial control systems, ensure transparency in public procurement and political funding, and support capacity building for law enforcement and judicial authorities, as well as civil society organisations and media.³

Conditionality unleashed

The conditional incentives provided by the EU have been a main driver of the anticorruption reforms in Turkey. In the aftermath of the 2001 crisis, the EU has played a substantial role in the formulation of the anticorruption reforms that were enshrined in various national action plans.⁴ Turkey's reform efforts, combined with its desire to join the EU, went a significant way towards satisfying the conditions for the start of accession negotiations in 2005 (Uğur

² Interview with a former member of Parliamentary Investigation Committee on Causes of Corruption, June 2012, Istanbul

³ This list is derived from Accession Partnership documents of 2003, 2006 and 2008.

⁴ Interview with a former member of Parliamentary Investigation Committee on Causes of Corruption, June 2012, Ankara

2010). However, the EU's ability to push government into compliance with EU rules in the wake of deteriorating Turkey-EU relations, which have been in a downward spiral since 2006 (Noutcheva and Düzgüt 2012, p.68).

The EU has largely relied on strategy of promoting reforms through positive incentives in Turkey. Yet, the EU's monitoring tools (accession partnerships, peer based reviews and the progress reports) do not indicate the benchmarks employed to assess the level of progress and implementation, therefore they remain rather inefficient (Börzel and Pamuk, 2012, p.84; Szarek-Mason 2010, p.30). This, in turn, empowered Turkish politicians in their accusations of the EU's double standards⁵ and gave more space for political actors to selectively implement the EU demands (see Spendzharova and Vachudova 2012).

Besides conditional incentives, the EU provided financial support aimed at strengthening the capacity of state agencies to cope with the reform agenda. Under IPA, Turkey received EUR 4.87 billion, an average of EUR 608 million per year between 2007 and 2013. The EU allocation for Turkey under IPA-II for the 2014–20 periods is planned to be EUR 4.45 billion (European Commission 2014). Together with the funds provided under the Turkey Pre-Accession Assistance until 2006, the IPA funds make Turkey the largest recipient of EU aid with over EUR 13 billion (EU Ministry 2014).

Moreover, EU supports capacity building in framework of various projects co-founded by other external donors. There are relatively few international donors that are active with grant support in Turkey, while some of them receive EU grants to implement pre-accession assistance in their fields of expertise (European Commission 2014). Together with the Council of Europe, the EU is implementing projects specifically aimed at the Turkish judiciary and anticorruption agencies. Since 2007, 14 projects were completed in the judicial sector, which combined amounted to more than EUR 70 million.⁶ In recent years, the Turkish judiciary system has benefitted from higher salaries, increased technical infrastructure and investment in court buildings (CEPEJ 2011).

The legal, financial, technical and cognitive support provided by the EU accession process also empowered civil society actors and increased their visibility in Turkey (Diez *et.al.* 2005). Furthermore, the EU also urged Turkish authorities to include civil society in the policy-making process. Yet, in processes of preparation of laws, government programmes and plans, successive Turkish governments have acted unwilling to reflect views of the civil actors which are not co-opted into the clientele system. Only the Union of Chambers and Commodity Exchanges of Turkey (TOBB), known for its close ties with the government, was invited to take part in the anticorruption ministerial commission.⁷ Mostly controlled or channelled by the state, Turkish civil society is far from being able to push reforms in the country or being a strong monitoring actor pursuing the public interest (TUSEV 2014). Similarly, big business, with its growing control over the media sector,⁸ has particularistic ties with politicians and benefits from government's reform-adverse decisions, especially in the procurement and tendering policies (Emek and Acar 2015).

⁵ "Recep Tayyip Erdogan accuses EU of double standards", Telegraph, 07.06.2013, in: <http://www.telegraph.co.uk/news/worldnews/europe/turkey/10106816/Turkey-protests-Recep-Tayyip-Erdogan-accuses-EU-of-double-standards.html>

⁶ Interview with Council of Europe, Ankara office, April 2016, Ankara

⁷ Interview with Economic Policy Research Foundation of Turkey (*Türkiye Ekonomi Politikaları Araştırma Vakfı, TEPAV*), May 2012, Ankara

⁸ Sözeri and Güney (2011) argue that media in Turkey has become a tool of manipulation for big capital groups to gain political and economic benefits in their relationships with the Turkish government.

In sum, the main driver of anticorruption reforms in the post-2006 period has not been EU conditionality nor has it been domestic pushback from civil actors and business; rather the AKP government's political preferences lead the charge (Yilmaz and Soyaltin 2014). The AKP government immediately declared combatting corruption to be one of its three policy priorities⁹ after winning a landslide victory in the 2002 elections. A year after the elections, the new government established a parliamentary investigation committee and adopted proposals to open investigations into corruption allegations against a former prime minister as well as several other ministers of the previous government (Bertelsman Stiftung 2006, p. 23). The government's ambitious anticorruption agenda also resulted in the development of a robust legal framework upgrading corruption to a serious crime (see Ömürgönülşen 2009).

Review of reforms

The anticorruption policy in Turkey is mostly intended to create legal instruments through national action plans. The most comprehensive step towards fighting corruption has been the action plan to promote transparency and enhance good governance in the public sector in 2002.¹⁰ In the same year, a parliamentary investigation committee was established and started investigations into a number of public-sector improprieties. In line with the committee's 1200-page report (!), an Emergency Action Plan was issued with a special section on corruption, listing necessary anticorruption measures. The follow-up actions were taken with the introduction of a new strategy for enhancing transparency and strengthening the fight against corruption in 2010. In line with the national anticorruption plans, a substantive number of legal reforms have been introduced over the last two decades (Macauley 2015, Ömürgönülşen 2009, TESEV 2014). The alignment of domestic legislation with European and international standards was rather unproblematic and fast.

Next to legal measures, the government took steps to strengthen the institutional capacity of law enforcement agencies with regard to fighting corruption. As mentioned by scholars and international observers, Turkish bureaucracy is well equipped with institutional mechanisms to fight corruption (Acar and Emek 2009, SIGMA 2015). Yet, their autonomy and capacities to do so vary greatly (Soyaltin 2017).

All in all, however, the legal measures put in place by the AKP have hardly changed the level of corruption in the country. This outcome is at least partly due to decoupling of formal institutions and behavioural practices (Ömürgönülşen and Doig 2012). The legal change with regard to combatting corruption has also been selective (Börzel, Soyaltin and Yilmaz 2015, p.224). The ruling AKP gave special priority to the fight against petty corruption permeating the public sector while high-level corruption has been mostly left untouched¹¹ This selective approach has helped the party to consolidate its power by intervening in government institutions and neutralizing the power of their political opponents – and thus undermined the overall governance quality.

Given the electoral majoritarian system in Turkey, authority and power are largely concentrated in the government, whose preferences determine the direction and extent of domestic political change. Meanwhile civil society organisations and the media cannot exert systematic pressure on government. This is, to a great extent, related to the paternalistic mode of governance

⁹ The other two were fight against poverty and restrictions (in Turkish *3Y kuralı: Yoksulluk, Yolsuzluk, Yasaklar*), available online at: <http://m.akparti.org.tr/site/haberler/basbakan-Erdoğanın-2014-butce-gorushmeleri-konusmasinin-tam-metni/56600#1>

¹⁰ Interview with a former member of Parliamentary Investigation Committee on Causes of Corruption, Istanbul, June 2012.

¹¹ Interviews with Turkey project team, ANTICORRP Project, April 2012, Ankara

and centralised bureaucratic machinery inherited from the Ottoman Empire and its efforts to restrict modernisation (Heper 1985). This patrimonial structure has remained unchallenged for many years (Kayaycioğlu 2001). The AKP government claims to have eliminated patrimonial governance structures and informal practices by promoting good governance principles, yet it accommodated them in new forms (Özel 2014). Furthermore, the AKP has won four consecutive parliamentary elections and effectively established a single party government over the last decade (Öniş 2015). The electoral dominance of the AKP government further reinforced the authority and power of the executive. The government cabinet has been stacked with loyal allies of President Erdoğan, including his son-in-law, who was named energy minister.

Like for other major policies, the AKP government centralised its control in the fight against corruption. Since 2009, a ministerial anticorruption commission has been charged with the drafting and enforcement of anticorruption policies, while the Prime Ministry Inspection Board became the coordinating body for national anticorruption strategy, providing secretarial and technical support to the ministerial anticorruption commission. Similarly, the Ethics Council for Public Servants and Board of Review of Access to Information, established with the aim to promote transparency and accountability in the promotion of public services, were actually physically located under the Prime Minister's office. Moreover, the EU's programmes for technical assistance and twinning projects largely focused on capacity building of the executive central state agencies. On the other hand, major areas that affect the implementation of anticorruption measures, such as the external auditing mechanism, public procurement regime, corruption investigations by state prosecutors and the office of Ombudsman have become subjected to political interventions (Soyaltin 2017). Furthermore, civic participation and public oversight have been largely ignored in the formulation and implementation of anticorruption plans.

In addition to its dominance in the government and state bureaucracy, the party gained control of a large portion of the economy over the years. Turkey has gone through a radical restructuring in line with the neoliberal economic programme, supported by the IMF and EU. The remarkable fiscal consolidation and structural reforms improved macro-financial stability and led to uninterrupted strong growth and economic catching-up until the second half of 2008 (Öniş 2009). In the same period, Turkey became the world's seventeenth economy with a GDP of USD 800 billion (World Bank 2015a).

The fight against corruption has become an integral part of the AKP government's liberal economic programme. The then President Erdoğan highlighted the economic achievements of the preceding decade as a result of strict monetary policies and anticorruption reforms.¹² The adoption of regulatory reforms streamlined business registration, cut red tape and boosted Turkey's success in attracting large scale of foreign direct investment after 2001 (Anti-Corruption Research Centre 2012, Bertelsmann Stiftung 2010). This general success in the economy also allowed the AKP government to invest heavily in public services, which in turn contributed to the party's electoral success. The party increased its percentage of the vote at each succeeding election (Öniş 2015).

Furthermore, party's unprecedented access to state and private resources provided space for discretionary involvement in the process of capital accumulation and created new opportunities for patronage and interpersonal forms. The companies with close relations and affiliations to high-level representatives of the government were awarded with lucrative contracts and have turned into giant conglomerates in the recent years (Buğra and Savaşkan 2014, p. 89; Özal 2014, p. 186). Since 2008, "17 out of 72 PPP contracts, including a multibillion-euro third airport in Istanbul and some other major transport and energy projects, were awarded to eight

¹² Prime Minister Erdoğan's Speech, 2011 Election Campaign, 5 June, Istanbul Prime Minister Erdoğan's Speech, 2011 Election Campaign, 4 June 2011, Izmir

companies, which control 82 percent of the market” (Emek and Acar 2015, p. 91). Disproportionately benefiting its own constituency, AKP’s politico-business strategies accommodated the particularistic power relations in new forms.

Finally, the AKP government instrumentalised the fight corruption to strengthen state apparatus and to replace the power structures established by the Fethullah Gülen, whose followers have allegedly occupied positions in the police and the judiciary. When a massive corruption scandal erupted in December 2013, the then Prime Minister Erdoğan purged thousands of police officers and hundreds of prosecutors. It is argued that these attempts aimed at cleansing the judiciary and the police from followers of the so-called Gülenists (Transparency International 2016, p.84).

The government’s reactions to the corruption probe was followed by an amendment on the law on High Council of Judges and Prosecutors, the legally independent self-governance body of the judiciary, to transfer many critical powers of the Plenary of the Council to the Minister of Justice. The government also restricted the scope of investigations by state prosecutors. The purge in the public sector, especially in the judiciary, has continued in the aftermath of the July 2016 coup attempt, which was organised by a small faction of the military believed to have ties to the *Hizmet* movement.¹³

The unlawful government interference in the judiciary was coupled with increasing restrictions on freedom of the press, which has steadily deteriorated from 2010 onwards and took a steep decline following the 2013 corruption probe (GRECO 2016; Transparency International 2016). The AKP government used corruption allegations to promote its control over media and to prevent news coverage critical of its politics (Freedom of House 2014). While a huge number of journalists and writers have been arrested and prosecuted in recent years, the placement of several outlets under government trusteeship has resulted in dozens of dismissals and changes in the outlets’ editorial lines. Coupled with lack of legal framework guaranteeing transparency of media ownership, increasing political intervention and self-censorship has significantly damaged the press freedom in Turkey.

Precisely such elements are dropping the country’s rank on public integrity below EU Member States, even recent ones like Croatia, as well as below EU accession countries like Serbia and Macedonia. It currently outranks only much poorer Albania in the public integrity index with 6.19 out of 10 possible points, coming in 52nd from 105 countries. Turkey does well only on trade-related red tape and e-citizenship, a component measuring Internet and Facebook empowerment, but lags behind the average of its income rank group on judicial independence and freedom of the press, the two elements which have been recently deteriorating.

Table 1. Turkey’s public integrity deconstructed

Components	Component score	World rank	Regional rank	Income group rank
Judicial independence	3.96	78/105	6/12	18/28
Administrative burden	8.46	39/105	7/12	7/28
Trade openness	7.04	59/105	4/12	17/28
Budget transparency	8.07	32/105	5/12	10/28
E-citizenship	6.02	44/105	3/12	9/28
Freedom of the press	3.57	79/105	7/12	21/28

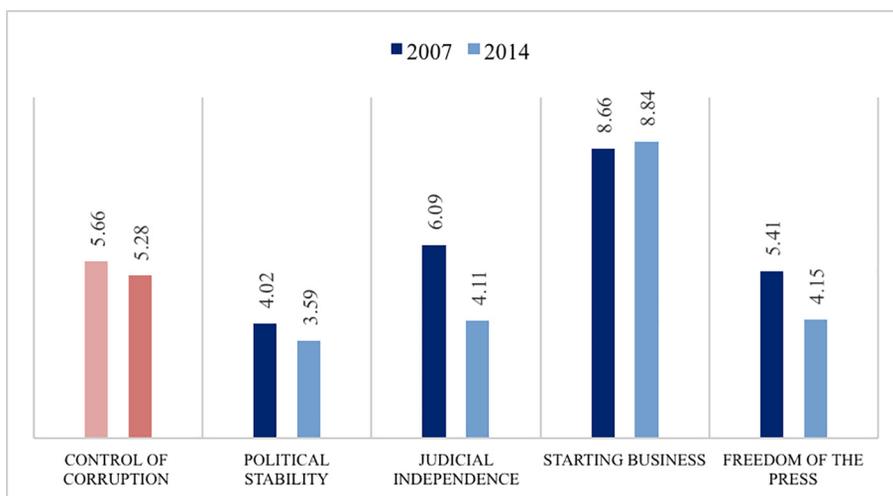
Source: www.integrity-index.org

¹³ Named after the US-based Islamic cleric Fethullah Gülen, Gülen movement –known in Turkey as Hizmet, or service – is a religious and social movement whose followers have allegedly occupied positions in the police and the judiciary. The movement runs schools around the world, including in Turkic former Soviet Republics, Muslim countries such as Pakistan and Western nations including Romania and the US

What went wrong? A hybrid governance context

Given the steady decline in media freedom and judicial independence, it can hardly be said that the EU catalysed governance improvements in the intended fashion. Apart from the ease of starting a business, which has slightly improved due to reduction of red tape for economic activity, the major indicators of governance have been backsliding considerably (figure 1). This outcome reflects the certain degree of blending that occurs between the formal institutions and norms of market liberalisation with the particularistic modes of governance in Turkey (Özel 2014). Yet, more importantly, it is this hybrid context that empowers certain groups of individuals in the system and enables them to appropriate gains, while formal institutions are infused with the particularistic politics of the rulers (Soyaltin 2016). Thus, it could be argued that the EU reform process promoted bad governance in Turkey, since the incumbent elites exploited anticorruption policies to change existing power structures in the state institutions and instead consolidate their own power. The consolidation of power around the executive prevents other institutions, such as the legislature, judiciary, audit agencies, ombudsman and media, to perform their duties in effectively participating in anticorruption measures while disrupting the checks and balances in the state structure (Esen and Gümüüşcü 2016, Özbudun 2014). Recent developments in the country have raised further concerns with regard to the separation of powers and system of checks and balances. In April 2017, a national referendum was voted in favour of replacing the parliamentary system with the executive presidency long sought by incumbent Erdogan. Time will tell how the new system will take shape and influence Turkish democracy.

Figure 1. Governance indicators for Turkey 2007–2014



Available data has been standardised to a scale from 1 (worst) to 10 (best).
Sources: World Bank (2016), World Bank (2016a), Freedom House (2016)

In conclusion, the EU's demands for improving governance increased significantly for Turkey after the 1999 Helsinki Council granted candidacy status to Turkey. Given the high level of corruption and increasing pressure for adaptation, incumbent authorities introduced a rather impressive amount of reforms to fight corruption. Apart from exerting pressure on the government through its political conditionality, the EU provided substantial amount of financial and technical assistance to Turkey to improve the capacities of anticorruption institutions. However, the

EU and its fading conditionality have not managed to improve control of corruption in Turkey. Instead, the EU accession process empowered incumbent elites, who have used the corruption-fight agenda to consolidate their own power and change existing institutional structures. As observed since summer 2016, this restructuring of power is still going on, and its impact on control of corruption in Turkey is more a source of concern than of optimism at this stage.

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Acknowledgments



This project is co-funded by the Seventh Framework Programme for Research and Technological Development of the European Union

This policy report, *The Anticorruption Report 4: Beyond Panama Papers*, is the fourth volume of the policy series “The Anticorruption Report” produced in the framework of the EU FP7 ANTICORRP Project. The report was edited by Prof. Dr. Alina Mungiu-Pippidi from the Hertie School of Governance, head of the policy pillar of the project.

ANTICORRP was a large-scale research project funded by the European Commission’s Seventh Framework Programme. The full name of the project was “Anti-corruption Policies Revisited: Global Trends and European Responses to the Challenge of Corruption”. The project started in March 2012 and lasted for five years. The research was conducted by 21 research groups in sixteen countries.

The fundamental purpose of ANTICORRP was to investigate and explain the factors that promote or hinder the development of effective anti-corruption policies and impartial government institutions. A central issue was how policy responses can be tailored to deal effectively with various forms of corruption. Through this approach ANTICORRP advanced the knowledge on how corruption can be curbed in Europe and elsewhere. Special emphasis was laid on the agency of different state and non-state actors to contribute to building good governance.

Project acronym: ANTICORRP

Project full title: Anti-corruption Policies Revisited: Global Trends and European Responses to the Challenge of Corruption

Project duration: March 2012 – February 2017

EU funding: Approx. 8 million Euros

Theme: FP7-SSH.2011.5.1-1

Grant agreement number: 290529

Project website: <http://anticorpp.eu/>

All these contributions were given as part of the European Union Seventh Framework Research Project ANTICORRP (Anti-corruption Policies Revisited: Global Trends and European Responses to the Challenge of Corruption). The views expressed in this report are solely those of the authors and the European Union is not liable for any use that may be made of the information contained therein.