

LEGAL TOOLS FOR FIGHTING CORRUPTION IN PUBLIC INSTITUTIONS

WHAT LEGAL MECHANISMS EXIST AND HOW TO USE THEM

Jasna Selih, Transparency International EU



MULTI-LEVEL APPROACH

INTERNATIONAL

- UN Convention Against Corruption
- OECD Anti-Bribery Convention
- Aarhus Convention

REGIONAL/EU

- Regional Anti-Corruption Initiative
- EU Convention against corruption involving officials
- EU treaties
- Accession: Copenhagen Criteria, chapters 23 and 24 on the rule of law

NATIONAL

- Advocacy for more stringent regulations
- National Ombudsmen & courts

INTERNATIONAL LEVEL



UN Convention Against Corruption

- Sets global standards in corruption prevention and policies aimed at:
 - ensuring transparency and integrity,
 - adequate whistleblower protection,
 - management of conflicts of interest,
 - financial asset declarations,
 - codes of ethics and ethics training for public officials,
 - access to information relevant to the public
 - public procurement
 - political party finance
 - judicial reform

UNCAC Civil Society Coalition: complementary

EU ANTI-FRAUD OFFICE (OLAF)



- **OLAF investigates fraud against the EU budget, corruption and serious misconduct within the European institutions, and develops anti-fraud policy for the European Commission.**
- *Rationale:* the improper use of funds provided by the EU budget or the evasion of the taxes, duties and levies, which fund the EU budget directly harms European citizens and prejudices the entire European project.



REPORTING FRAUD & CORRUPTION TO THE EU



OLAF can investigate allegations of:

- fraud or other serious irregularities with a potentially negative impact for **EU public funds**, whether EU revenue, expenditure or assets held by the EU institutions.
- serious misconduct by Members or staff of EU Institutions and bodies.

OLAF cannot investigate allegations of:

- fraud with no financial impact on the EU public funds (**national police**)
- corruption which doesn't involve members or staff of EU Institutions and bodies (**national police**)
- fraudulent use of the EU logo or the name of EU institutions.



REPORTING TO OLAF

- **How to report to OLAF**
- Can be done online via the Fraud Notification System, via webform or via post.
- OLAF will **analyse** the allegation submitted to check various elements, for example:
- whether the matter falls within OLAF's competence to act (as discussed on top of this page)
- whether the information is sufficient to justify the opening of a case.
- The OLAF decides whether to open up an investigation or not

However, does this always work in practice?

EUROPEAN OMBUDSMAN



- The European Ombudsman investigates **complaints against the institutions and bodies of the European Union (EU)**.
- Its focus: on maladministration in the activities of these institutions and bodies.
- The European Ombudsman cannot investigate complaints against national, regional or local administrations in the Member States, even when the complaints are about EU matters → these complaints could be addressed to **national or regional ombudsmen or committees on petitions in national or regional parliaments**.
- It's recommendations non-binding but can cause reputational damage: no EU institution wants to be accused of maladministration



NATIONAL OMBUDSMEN

- **The European Ombudsman cannot normally deal with your complaint** if you are not a citizen of the Union or a natural or legal person residing or having your registered office in a Member State of the Union.
- European Network of Ombudsmen

NATIONAL OMBUDSMEN IN APPLICANT COUNTRIES:

- Albania
- Serbia
- FYR Macedonia
- Montenegro

Have you resorted to National Ombudsmen before?

COMPLAINT TO THE OMBUDSMAN



- 1. Contact the institution you want to complain about first
- 2. Write to the Ombudsman (enclose who you are, which EU institution or body you are complaining against, the grounds for your complaint)
- 3. The Ombudsman examines the complaint and informs you of the outcome



COMMITTEE ON PETITIONS OF THE EP

- ***One of the fundamental rights of European citizens: Any citizen, acting individually or jointly with others, may at any time exercise his right of petition to the European Parliament under Article 227 of the Treaty on the Functioning of the European Union.***
- Also open to any company, organisation or association with its headquarters in the European Union
- Can be a complaint or a request and may relate to issues of public or private interest, observation concerning the application of EU law or an appeal to the European Parliament to adopt a position on a specific matter.
- Enables the European Parliament to call attention to any infringement of a European citizen's rights by a Member State or local authorities or other institution.



ACCESS TO DOCUMENTS

- **FREEDOM OF INFORMATION REGULATION:** Any citizen of the Union, and any natural or legal person residing or having its registered office in a Member State, has a right of access to documents of the institutions
- 6752 applications for access to documents in 2015
- **EXCEPTIONS:** public and commercial interests

Remaining issues: all legislative documents should be made public automatically



OTHER EU MECHANISMS

- Infringement proceedings: for specific violations of EU law, triggered by the Commission
- EU funds can be frozen
- **EU Convention against corruption involving officials** (EU and national)
- European Court of Justice

EIB COMPLAINTS MECHANISM



2-TIERED REDRESS PROCESS:

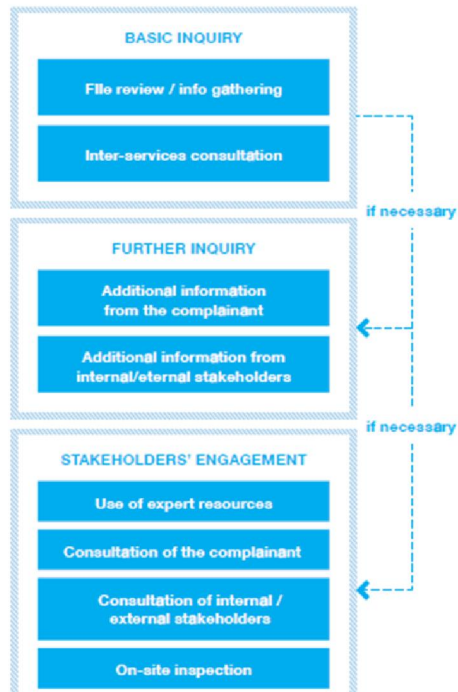
1. **INTERNALLY:** the complaints managed by the Complaints Mechanism Division
 2. **EXTERNALLY:** complaints managed by the European Ombudsman: complainants may lodge a complaint of alleged maladministration against the EIB should they not be satisfied with the CM's reply
- 'Maladministration': failure to comply with human rights standards, applicable laws and the EIB's own policies, or with the principles of good administration
 - **POTENTIAL PROBLEM:** non-binding recommendations which can be overridden by the Management Committee



STEP 1: Receipt of the complaint

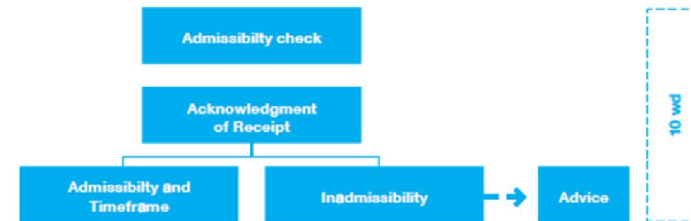
- Letter to the EIB Secretary General
- Complaint Form
- Email to the EIB Complaints Inbox

STEP 3: Inquiry



The EIB Complaints Mechanism

STEP 2: Preliminary check



STEP 4: Outcome

- Reasoned judgement
- Decision of senior management
- Reply to the complainant including Conclusions Report
- No maladministration
- Operational corrective action
- Review of policies and/or procedures

STEP 5: Final stage of the procedure



STEP 2 to 4: 40 working days (6 months in case of complexity)
 In the special case of complaints concerning access to information: 20 working days (40 working days in case of complexity)

Source: EIB Complaints Mechanism Policy

COUNCIL OF EUROPE



Criminal Law Convention on Corruption

- The COE Criminal Law Convention aims to coordinate the criminalisation of corrupt practices, provide complementary criminal law measures and improve cooperation for the prosecution of offences.
- Entered into force in 2002
- Compliance is monitored by the [Group of States against Corruption](#) (GRECO).
- Focused on bribery, but also ‘trading in influence’
- Ratified by Albania, BiH, Bulgaria, Croatia, Italy, Montenegro, Serbia, Slovenia, Macedonia amongst others

COUNCIL OF EUROPE



Civil Law Convention on Corruption

- It requires Contracting Parties to provide in their domestic law "for effective remedies for persons who have suffered damage as a result of acts of corruption, to enable them to defend their rights and interests, including the possibility of obtaining compensation for damage"
- Also monitored by GRECO



EU ACCESSION

Priority to chapters 23 & 24 of the EU integration negotiations: judiciary and fundamental rights

- EU integration: strong incentive for reform?
- Compliance with EU law
- Anti-corruption steps in Western Balkans: legislation, international conventions
- EU support for anti-corruption reforms: financial and through knowledge/expertise sharing
- Trainings for judges and public officials
- Good governance reforms given priority in accession negotiations
- This relates especially to judicial reforms (Chapters 23 and 24 of the accession *acquis*), which are often considered to be the main challenge of the current accession talks.



INSTRUMENT FOR PRE-ACCESSION ASSISTANCE

Instrument for Pre-Accession Assistance: a funding mechanism through which the European Union promotes reforms in potential enlargement countries.

- EU's vehicle for supporting anti-corruption reforms in accession countries
- Coupled with technical advice
- Cooperation with the Council of Europe's Group of States Against Corruption
- Regular progress tracking
- Increased focus on the involvement of civil society in policy-making

And in your experience?



MOVING FORWARD

How best to utilise these legal channels? What has been your experience so far?

- Pressuring your government
- National ombudsmen & national prosecutors
- Civil society coalitions
- EU-level pressure
- Trainings, workshops (citizen and participating in public official trainings)
- Awareness raising on obligations associated with key international anti-corruption conventions & accession negotiations (rule of law chapters)
- Using the Instrument for Pre-Accession Assistance

THANK YOU FOR YOUR TIME



www.transparency.eu

© 2017 Transparency International. All rights reserved.