

The Use of Terms and Forms of Criminal Assessment

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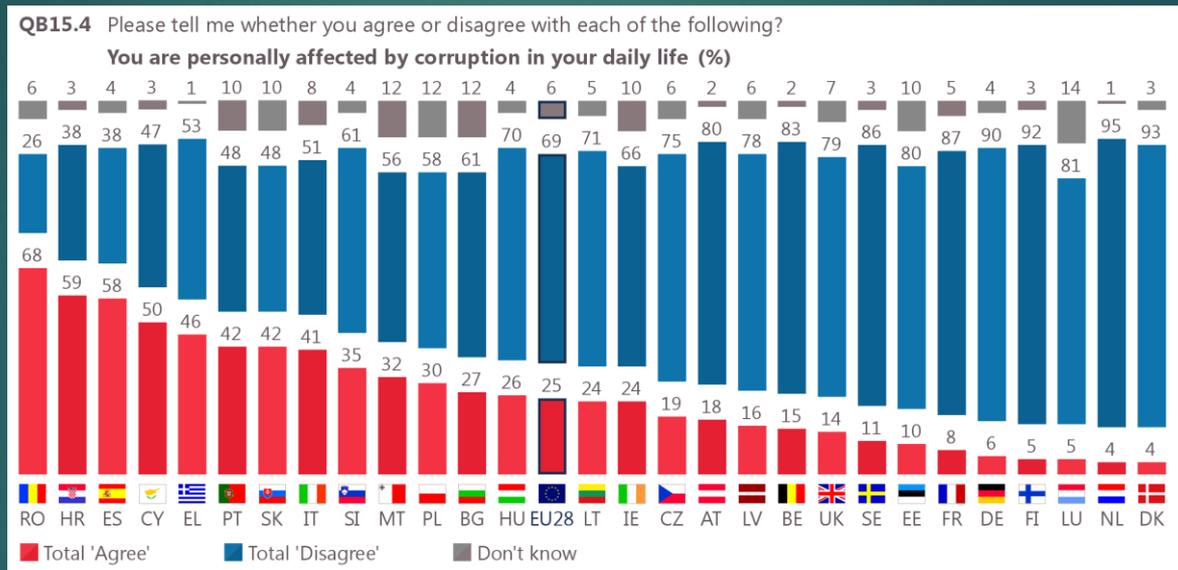
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Thinking about effectiveness

- ▶ Efficiency is not always effectiveness
- ▶ Efficiency means doing things better/cheaper
- ▶ Effectiveness means achieving objectives
- ▶ What are goals of anti-corruption?
 - ▶ Reducing costs of services and goods
 - ▶ Increasing legitimacy and credibility of government (at whatever level) among different sectors of 'the public'
 - ▶ Prevention and law enforcement, including recovering the proceeds of crime domestically and internationally
 - ▶ How important is criminal/other law in this process?
- ▶ Corruption is not just one 'thing': street and elite levels
 - ▶ Different measures will have different impacts, depending on pervasiveness and factors influencing corruption
 - ▶ State capture is one end of a continuum of corruption/crime

A quarter of Europeans say that they are personally affected by corruption in their daily lives, with wide differences across EU countries



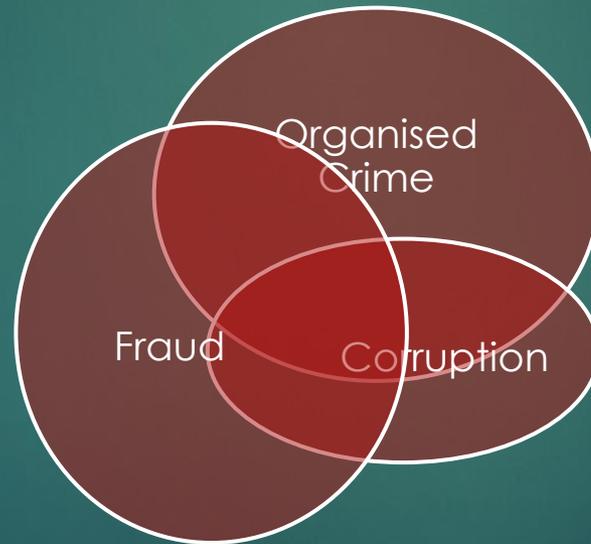
Source: 2017 Special Eurobarometer 470: Corruption

To what problem(s) are we seeking a 'solution'?

- ▶ Solution or mitigation?
- ▶ Better to think of it as a harm reduction exercise
- ▶ Does state capture have to be total?
- ▶ If not, what are key crime-related characteristics?
- ▶ What diagnostic and action tools are available for what kinds of problems?

Thinking straight about corruption & OC

- ▶ Organised crime, fraud and corruption used to be regarded as separate. Now there is much more overlap – but in all countries *equally*?

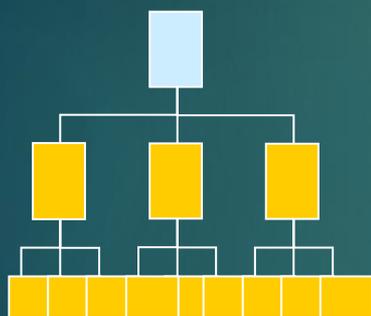


How Harmful is 'Organised crime'?

Three dimensions of harm and risk:

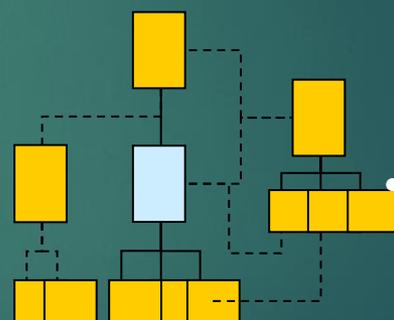
1. Economic costs (present/future) & social impact upon victims (individuals, governments, business)
2. Media imagery of risks – drives & reflects politics
3. Continuing risks arising from the kind of people who are committing crimes
 - Organized Criminals are 'polymorphous criminal networks'
 - Especially with corruption, some organized criminals move into politics locally and/or nationally to reinforce power and/or ally themselves with politicians – providing illicit political finance
 - What criminals spend their money on - though most 'offend to spend' not 'offend to save and invest'

Highly structured, cohesive mafia-type organisations are in decline...



Clear structure
Defined roles
Hierarchical

Twenty first century organised criminal groups operate differently



- Looser, flatter networks
 - Collaborate as necessary for specific projects
- Impact of technologies on crime capabilities

Reservations about this mafia-type/less 'organised' co-existence

- ▶ State capture risks
 - ▶ Inside EU
 - ▶ Peripheral/candidate countries
 - ▶ External countries that impact via 'crimmigration'
 - ▶ External countries in receipt of aid
- ▶ But how do we define 'state capture' ?
 - ▶ Does it have to be a complete capture?
 - ▶ Damage caused short of state capture
 - ▶ Halting the drift towards state capture

The Business of Crime



- ▶ All organised crime-corruption relationships vary by type of crime and offender settings, and are assisted by corruption of 'enablers' and enforcement agencies
- ▶ Tighter AML controls may make corruption more necessary
- ▶ Corrupt relationships may eliminate business rivals by arrest
- ▶ A corrupt regime may broaden its rent-seeking by offering a criminogenic environment to fraudsters, traffickers, etc.

Nature of illegal markets



▶ **Market for corruption**

- ▶ Law and rule-making
- ▶ Regulatory/law enforcement interventions
- ▶ Procurement of goods and services, especially where political power is also concentrated
 - ▶ Do we label this as 'organised crime' if not connected to drugs trafficking, etc.? It fits legally

Relationship Between Corruption, Money-Laundering and Organised Crime

- ▶ **Can we have long-term organised crime without serious corruption?**
 - ▶ Does corruption have to include *senior* public officials?
- ▶ **Can we have long-term serious corruption without 'real' organized crime?**
 - ▶ More variation *within* the category than between 'organized' and 'unorganized' crime
 - ▶ Corrupt environments attract crime groups that seek 'reliable' settings to collaborate
- ▶ **Does corruption always need laundering?**
 - ▶ Patronage and impacts on legitimacy/economic growth
 - ▶ depends on income levels of offenders and savings from crime beyond subsistence/lifestyle expenses

Enablers and Controls of Corruption in EU

Type of measure	Enablers	Barriers
EU legislation e.g. Conventions on the protection of the EU's financial interests; Directives on Public Procurement	<ul style="list-style-type: none"> Some legislation has been transposed by Member State 	<ul style="list-style-type: none"> Lack of transposition of some instruments Lack implementation / enforcement by Member State Some gaps in legislation: no real common protection for whistle-blowers; problems in the definition of public official
EU Institutions e.g. European Anti-Fraud Office; European Public Prosecutor; European Parliament; European Commission	<ul style="list-style-type: none"> Increasingly exercise oversight in an active manner Provide a good basis for addressing corruption 	<ul style="list-style-type: none"> Rely on Member State to initiate prosecutions regarding the use of EU funds Can call for help from EPP
EU monitoring mechanisms – Annual Corruption Report (RIP); Cooperation and Verification Mechanism (for Bulgaria and Romania - CVM); Justice Scoreboard	<ul style="list-style-type: none"> ACR raised profile of the fight against corruption, produces tailored country reports using range of indicators, includes experience-sharing programme CVM is an important lever to encourage reform and build capacity, integrated into wider reforms, supported by domestic authorities 	<ul style="list-style-type: none"> ACR does not cover EU institutions, does not generate new data, has no formal assessment procedure CVM: Mixed evidence of leading to change, costly to implement, no strong sanctions
Council Of Europe monitoring - the Group of States against Corruption (GRECO)	<ul style="list-style-type: none"> Employs a systematic approach and makes good use of 'soft' enforcement mechanisms 	<ul style="list-style-type: none"> GRECO does not cover EU institutions

The Challenges for Europe

1. **Corruption of whom by whom?**
 - ▶ **Domestic corruption (and organised crime)**
 - ▶ international components of domestic corruption
 - ▶ **Inwards corruption from abroad**
 - ▶ **Outwards corruption from European countries to companies/governments outside & inside Europe**
2. **Prosecution and/or regulatory responses?**
3. ***Unspent* Proceeds of corruption recovery**
 - ▶ **Civil and criminal mechanisms**
 - ▶ **International co-operation within/outside Europe**
4. **Monitoring implementation of anti-corruption**
5. **Measuring effectiveness of anti-corruption**

The Challenges for Europe

1. **Crime-connected whistleblowing**

- ▶ Corruption of law enforcement/regulators
- ▶ Mixing of PIF and other offending – the implications for practice

2. **Abuse of power whistleblowing**

3. **Measuring the effectiveness of whistle-blower protection**

- ▶ The dangers of assuming procedural changes will generate high rates and 'solve' the problem
- ▶ Are increased reports just a measure of increased confidence, or of increased misconduct?
- ▶ Do variations between MS in implementation matter?
- ▶ Does the motivation of whistle-blowers matter?
- ▶ Is protecting whistle-blowers an end in itself?

Models of Crime Control

- ▶ Institutional specialised Anti-Corruption bodies
 - ▶ Mixed prevention/enforcement approaches
 - ▶ Financial investigation and FIU/BO register connectivity
 - ▶ Autonomous prosecution powers?
- ▶ E-procurement and monitoring concentration of contracts/collusive rings
- ▶ Controls over media ownership by business?
- ▶ Public and private policing, and self-organised crime prevention partnerships
- ▶ NGOs, local 'civil society' and styles of policing

Concluding thoughts

- ▶ **How important is *criminal* justice to EU fraud and corruption?**
- ▶ **'Effective, proportionate and dissuasive' sanctions for violations**
 - ▶ What does this mean in practice and are these internally compatible?
 - ▶ Does shaming suspects or offenders have any effect in this arena?
- ▶ **Sunlight methods**
 - ▶ US, UK/Ireland, Council of Europe, European Directive – different approaches to whistleblowing protection and rewards
 - ▶ Financial haven criminalisation of leaks from banks and professions – can anything be done about this inside/outside the EU?
 - ▶ Beneficial ownership registers
 - ▶ E-procurement – is it feasible as a control, and what are its limitations?