

***CORRUPTION AS BETRAYAL OF TRUST IN PUBLIC ADMINISTRATION AND AS A  
VIOLATION OF FUNDAMENTAL  
RIGHTS***

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**Abstract:** It is a commonly shared view that poor integrity undermines the main objectives of private and public activities and distracts from their main goals. The lack of integrity affects fundamental rights and is even more unacceptable and serious when perpetrated by public authorities. It causes a waste of resources and undermines the trust and effectiveness of public powers. Moreover, tolerance of corruption distorts the rules of civil society and the quality of services provided to citizens. This paper highlights to what extent corruption erodes the pillars of democracy, the solidarity principle and the trust in public institutions. The principle of solidarity provides that the citizens should assure loyalty to the members of a social body assuring social cohesion. The pillars of anticorruption should be the values of solidarity and social cohesion that hold citizens together in any legal system. Such principles should exclude any tolerance for corruption, as corruption undermines fundamental rights. People's representatives are all too often captured by non-transparent economic interests and divert the pursuit of public and citizens' interests. Corruption in the public sector represents an emblematic case of such diversion determining the betrayal of trust in public administration. Systemic corruption costs to the citizens and they pay it with lower-quality public services. In the past often stakeholders have been kept unaware of such distortions due to a lack of transparency, information asymmetries, or undeveloped competences. A wider transparency and the oversight by civil society might be extremely useful for ensuring that the public activities are correctly performed. Civil society has a key role to play in fighting corruption, from monitoring public activities to denounce bribery and raising awareness of the risks of wasting public money. A new emphasis on the accountability of politicians and of public officials, organizational design and social sanctions is needed. Wastes and corruption betray the links of solidarity among citizens and social cohesion. A concrete risk of loss of reputation and improved audit systems could become effective deterrents to improper conduct for the benefit of citizens.

**Keywords:** Corruption, Integrity, Fundamental rights, Social witness, Solidarity, Transparency, *Accountability*.

## **1. Introduction**

It is a commonly shared view that poor integrity undermines the main objectives of private and public activities and distracts from their main goals (Ackerman 2014: 5-10); (Sweeney 2013: 8). The lack of integrity affects fundamental rights and is even more

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unacceptable and serious when perpetrated by public authorities (Racca - Cavallo Perin 2014: 23-40); (Deva - Bilchitz 2013: 138).<sup>3</sup> It causes a waste of resources and undermines the trust and the effectiveness of public powers. It is important to highlight to what extent corruption erodes the pillars of democracy and the basis of sovereignty, the solidarity principle and the confidence that citizens have in the Government. Moreover, tolerance of corruption distorts the rules of social cohesion and the quality of services provided to citizens.

The principle of solidarity requires that the citizens assure loyalty to each member of a community according to the deeper meaning of solidarity implied by social cohesion. Corruption as any form of betrayal of solidarity principle affects the individuals and the community.

The pillars of anticorruption should be the values of solidarity and social cohesion that hold citizens together in any legal system. Such principles should exclude any tolerance for corruption, as corruption undermines equal treatment, liberty and dignity of citizens.

Corruption in the public sector represents an emblematic case of such diversion determining the betrayal of trust in public institutions. In the past often stakeholders have been kept unaware of such distortions due to a lack of transparency, information asymmetries, or undeveloped competences. A number of factors that encourage corruption in the public sector have been pointed out: political rent-seeking, commercial usage, culture, state of market development, low pay of public officials and especially low capacity.

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<sup>3</sup> Council of Europe, Civil Law Convention on Corruption, Art. 13, signed on 4 November 1999, entered into force on 1 November 2003, Preamble, § 4, "corruption represents a major threat to the rule of law, democracy and human rights, fairness and social justice, hinders economic development and endangers the proper and fair functioning of market economies"; Council of Europe, Criminal Law Convention on Corruption, signed on 27 January 1999, entered into force on 1 July 2002, Preamble, § 5, "corruption threatens the rule of law, democracy and human rights, undermines good governance, fairness and social justice, distorts competition, hinders economic development and endangers the stability of democratic institutions and the moral foundations of society". International Council on Human Rights Policy, *Corruption and Human Rights: Making the connection*, 2009, available at [http://www.ichrp.org/files/reports/40/131\\_web.pdf](http://www.ichrp.org/files/reports/40/131_web.pdf). The report highlights the links between acts of corruption and violations of rights; OECD *Recommendation of the Council on Public Procurement*, 18 February 2015. OECD *Recommendation of the Council on Public Procurement*, 18 February 2015. OECD, *Investing in Trust: Leveraging Institutions For Inclusive Policy Making*, Background Paper of the conference *Restoring Trust in Government: Addressing Money and Influence in Public Decision Making*, Paris 14-15 November 2013, available at <http://www.oecd.org/gov/ethics/Investing-in-trust.pdf>, 2013, 2. "A policy making process conducive to trust (i) secures the inclusiveness of the information available to decision makers, to ensure adequate participation of all actors with a stake in the policy problem at hand; (ii) safeguards the public interest and avoids capture, while effectively aggregating competing, but often legitimate interests; and (iii) is aligned with broader principles and high standards of behaviour". OECD, *Trust in government. Evidence, policies and decision making. A forward looking agenda*, C(2013)51, 2013, available at <http://www.oecdilibrary.org/docserver/download/4213291e.pdf?expires=1429007318&id=id&accname=ocid57004425&checksum=E59C7BBEF0A4EA6A4153D4C7F2413A01>; OECD, *Consequences of corruption at the Sector Level and Implications for Economic Growth and Development*, 2015, available at: <http://www.oecd.org/>

People's representatives are all too often captured by non-transparent economic interests and divert the pursuit of public and citizens' interests. Illegal behavior buys the loyalty that politicians should have towards citizens, and captures the independent exercise of the sovereignty for the benefit of maintaining privileges among the corrupts.<sup>4</sup> Systemic corruption costs to the citizens and they pay it with a distrust in their representatives and with low quality in public services. Indeed, a lack of accountability of public officials allows a significant waste of public funds.

## **2. Corruption of democracy. Systemic corruption and the loss of legitimacy: the lack of trust in the representatives.**

Corruption in a broad sense is considered as any 'abuse of public power for private gain'.<sup>5</sup> This is wide definition, covering a different range of behaviors. Corruption is "a complex phenomenon with economic, social, political and cultural dimensions, which cannot be easily eliminated."<sup>6</sup> Corruption has been defined as a crime of opportunity (Ackerman, 2012: 9) that occurs at the intersection between the public and private sectors wherever the opportunity for illicit private economic gain exists. Such behavior diverts from the standard expected in a legal system and in a specific social context (Ackerman, 2012: 9-11; 2010b:19).

Corrupted behaviors (of individuals, of institutions and of rules) deeply hamper economic activities both in private and public sectors while the lack of integrity - especially within public bodies - undermines the trust in the Governments and citizens fundamental rights and social cohesion duties.

The seriousness of the problem has been addressed by various documents, Conventions and Recommendations from the United Nations, Organization for Economic Cooperation and Development, Council of Europe and the European Union.

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<sup>4</sup> OECD, *Investing in Trust. Leveraging Institutions For Inclusive Policy Making*, Background Paper of the conference *Restoring Trust in Government: Addressing Money and Influence in Public Decision Making*, cit.

<sup>5</sup> The United Nations Convention against Corruption, as well as Council of Europe anti-corruption legal instruments, including the Resolution (97) 24 on the twenty Guiding Principles for the fight against corruption and the recommendations No. R (2000) 10 on codes of conduct for public officials and No. R (2003)4 on common rules against corruption in the funding of political parties and electoral campaigns.

<sup>6</sup> EU Commission, *EU Anti-corruption report*, 3 February 2014, available at [http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr\\_2014\\_en.pdf](http://ec.europa.eu/dgs/home-affairs/e-library/documents/policies/organized-crime-and-human-trafficking/corruption/docs/acr_2014_en.pdf); OECD, *OECD Foreign Bribery Report an analysis of the crime of bribery of foreign public officials*, 2014, available at <http://www.oecd-ilibrary.org/docserver/download/2814011.e.pdf?expires=1430432527&id=id&accname=guest&checksum=64ED9EFOA19F53D5E1JC2D72114A17948>; European Court of Auditors', *View on the Commission's Report on Anti-Corruption Measures*, 9 April 2014, available at [http://eca.europa.eu/Lists/ECADocuments/PL114\\_LETIER/PL114\\_LETTER\\_EN.PDF](http://eca.europa.eu/Lists/ECADocuments/PL114_LETIER/PL114_LETTER_EN.PDF)

For example, the United Nations Convention against Corruption (UNCAC) signed in 2003 states that *“Corruption is an insidious plague that has a wide range of corrosive effects on societies. It undermines democracy and the rule of law, leads to violations of human rights, distorts markets, erodes the quality of life and allows organized crime, terrorism and other threats to human security to flourish”*.<sup>7</sup> The term *security* comes back again as one of the four fundamental rights of Man and of the Citizen as proclaimed within Declaration of the Rights of Man of 1789 (Art. 2).

Thus the OECD in the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of 1997, remarks that *“bribery is a widespread phenomenon in international business transactions, including trade and investment, which raises serious moral and political concerns, undermines good governance and economic development, and distorts international competitive conditions”*.<sup>8</sup>

The Council of Europe in the Criminal Law Convention against Corruption of 1999, recognizes that *“corruption threatens the rule of law, democracy and human rights, undermines good governance, fairness and social justice, distorts competition, hinders economic development and endangers the stability of democratic institutions and the moral foundations of society”*.<sup>9</sup>

The European Commission notes that *“Although the nature and extent of corruption vary, it harms all EU Member States and the EU as a whole. It inflicts financial damage by lowering investment levels, hampering the fair operation of the internal market and reducing public finances. It causes social harm as organized crime groups use corruption to commit other serious crimes, such as trafficking in drugs and human beings. Moreover, if not addressed, corruption can undermine trust in democratic institutions and weaken the accountability of political leadership”*.<sup>10</sup>

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<sup>7</sup> UN, Foreword to United Nation Convention against Corruption by Secretary-General Kofi A. Annan, United Nation, York, 2004.

<sup>8</sup> OECD, Foreword to OECD Integrity Review of Italy: *“Well-functioning democracies rely on the trust and the confidence of citizens and business, which legitimize the decisions taken by government officials and create the conditions for effective policy making and implementation. In turn, trust and confidence in government depend on integrity and transparency, to the extent they set high standards of conduct in the public sector”*, 2013. OECD, Preamble to OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, 1997.

<sup>9</sup> CoE, Preamble to Criminal Law Convention against Corruption, Strasbourg, 27.1.1999 ratified through 1. 28 giugno 2012, n. 110; thus the Preamble to Civil Law Convention against Corruption: *“Corruption represents a major threat to the rule of law, democracy and human rights, fairness and social justice, hinders economic development and endangers the proper and fair functioning of market economies”*, Strasbourg 4,11.1999, ratified through 1. 28 giugno 2012, n. 112.

<sup>10</sup> P11, *Communication From The Commission To The European Parliament, The Council And The European Economic And Social Committee Fighting Corruption In The EU*, 6 June 2011 COM(2011) 308 final, 3.

All these statements require a coordinate effort against corruption at a supra-national level, starting from a monitoring phase and coming to subsidiary measures, whenever States are not capable to tackle efficaciously corruption at the national level and in any social body. An effective response cannot be reduced to a standard set of measures. Corruption should be examined within any context to find out the relevant issues for each social body and the different sets of possible solutions to be addressed in any specific context. Corruption may influence legislation, the law-enforcement, the public officials involved, competition in the relevant market, and, in the end, fairness and the economic development of a fair market of business organizations. It undermines the fundamental rights of the citizens, the public interests, the quality of spending (Ackerman 1999: 30); (Matterella 2014: 30-31); (Matterella 2007: 25) and therefore the pillars of democracy, and the moral foundation of society.<sup>11</sup>

A “crisis of trust” is growing and new strategies and measures are required to tackle it.<sup>12</sup>

### **3. Corruption as a violation of the fundamental rights: the betrayal of solidarity among citizens and the violation of the duties of social cohesion.**

According to the recalled definition of corruption it seems possible to find a relationship between corruption and the fundamental rights of citizens. Since the Declaration of the Rights of Man and Citizen of 1789, the rights and duties of the human beings are co-essential to the definition of sovereignty. Rights and duties are related definitions, so that each one does not exist without the other. Whenever one of them is expressly set out, the other one can be defined through interpretation. This is normal for the rights and duties directly stated in the Declaration and in any Constitution and especially for the duty of loyalty of citizens and

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<sup>11</sup> International Council on Human Rights Policy, *Corruption and Human Rights: Making the connection*, cit., 9 et seq. "While corruption violates the rights of all those affected by it, it has a disproportionate impact on people that belong to groups that are exposed to particular risks (such as minorities, indigenous peoples, migrant workers, disabled people, those with HIV/AIDS, refugees, prisoners and those who are poor). It also disproportionately affects women and children. Those who commit corrupt acts will attempt to protect themselves from detection and maintain their positions of power. In doing so, they are likely to further oppress people who are not in positions of power, including most members of the groups listed above. The latter tend both to be more exploited, and less able to defend themselves: in this sense, corruption reinforces their exclusion and the discrimination to which they are exposed".

<sup>12</sup> EU Commission, *EU Anti-Corruption Report*, cit., 8. Measures such as: limiting presidential immunity, strengthening the rules on financing of political parties and electoral campaigns, restricting multiple office-holding by politicians, and developing a strategy to prevent conflicts of interest, as provided in the Jospin committee set up in France in July 2012 to prepare a reform on ethical standards in public life. See\_ EU Commission, *France annex to the Report from the Commission to the Council and the European Parliament, EU Anti-Corruption Report*, 2014, 2.

public officials to the community. The public powers are set to guarantee the rights of men and citizens since they are instituted “for the advantage of all and not for the personal benefit of those to whom it is entrusted”.<sup>13</sup> The sovereignty exist for the protections of rights and duties of citizens in any specific community.

The recognition of a right recalls a related duty and it should be remembered that the recognition of both is essentially inseparable.<sup>14</sup> The basis for guaranteing the rights break off whenever the correspondent duty is violated and the public utility is undermined.<sup>15</sup>

The betrayal, as (in reverse) the loyalty to the common interest, normally does not consist merely in a single violation or enforcement of the law but it is revealed by an overall conduct repeated or serious in itself, such as to call into question the recognition of the community membership of the citizen.<sup>16</sup>

Citizens are required not only to be loyal to the State, regarded as the sum of the institutions that constitute it, but first of all, to the sovereignty of which it is part. Rights and duties should not be assured only to the State, but first of all to all the other citizens.

Such relationship appears evident for the property right, but it is important to remember that this it applies also to the other rights, which must be guaranteed, with mandatory abstention of others to prevent it (to interfere), in order to “secure the enjoyment of these same rights to the other members of society”.<sup>17</sup> As regards the duties, it is necessary to consider that they are relevant to the citizens, as members of a social body, as they are linked by the principle of mutual solidarity.

If it is normal to think that a State impose the compliance to the duties, it is important to remember that the observance of the duties is essential for the social cohesion and that it is necessary for the preservation of sovereignty.

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<sup>13</sup> Declaration of the Rights of Man and the Citizen (August 1789), Art. 12 The guarantee of the rights of man and citizen requires a public force; this force then is instituted for the advantage of all and not for the personal benefit of those to whom it is entrusted”.

<sup>14</sup> Declaration of the Rights of Man and the Citizen (August 1789), Art. 6 "Law is the expression of the general will. All citizens have the right to take part personally, or by their representatives, and its formation. It must be the same for all, whether it protects or punishes. All citizens, being equal in its eyes, are equally eligible to all public dignities, places, and employments, according to their capacities, and without other distinction than that of their virtues and talents”.

<sup>15</sup> Declaration of the Rights of Man and the Citizen (August 1789), Art. 13, "A general tax is indispensable for the maintenance of the public force and for the expenses of administration; it ought to be equally apportioned among all citizens according to their means”.

<sup>16</sup> Declaration of the Rights of Man and the Citizen (August 1789), Art, 15, "Society has the right to call for an account of his administration by every public agent”.

<sup>17</sup> Declaration of the Rights of Man and the Citizen (August 1789), Art. 4, "Liberty consists in the power to do anything that does not injure others; accordingly, the exercise of the rights of each man has no limits except those that secure the enjoyment of these same rights to the other members of society. These limits can be determined only by law”.

For what concerns “social rights”, such as education or healthcare, it is important to underline the inseparability between the favorable positions (creditor) and the unfavorable (debtor). Suffice here to note that only the fulfilment of duties and obligations - that in different historical periods mark the cohesion of a social body - can ensure to the citizens the effective guarantee of fundamental rights.

Economic freedoms, freedom of expression or other rights do not exist without the arrangement of the security service, needed to protect them (social security, police, and jurisdiction). Indeed, in the 1789 Declaration “security” is one of the four fundamental rights of the citizen together with liberty, property and resistance to oppression.<sup>18</sup>

An effective protection of the rights is possible only if the performance of duties, considered essential in different historical periods, is assured. The duty to pay taxes is considered a fundamental duty and requires the fight against tax evasion or avoidance (not surprisingly, it detects a constant symmetry between tax evasion and corruption (Weiler, 2014)).<sup>19</sup> Similarly, it is a fundamental duty the cooperation to justice, or the cooperation in situations of natural or social disasters. These are the cases wherein the lack of compliance makes evident the betrayal of each other individual member of the social body, regardless if the fact is considered as a crime.

The duty of social solidarity is therefore primarily due to the individuals, members of the same social body, even more and before that it is a duty towards the State, that is the institution normally called to ensure the rights and duties.<sup>20</sup> The State is functional to the protection of the rights and duties.

The “citizen-corruptor” betrays loyalty to the State because it violates the pact of social solidarity with other members of the social body, and betrays the freedom and the dignity of the associates, buying a discriminatory treatment towards other citizens (e.g. to win a tender or to obtain a building license).<sup>21</sup> The “corrupt-public official” betrays twice the loyalty as he or

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<sup>18</sup> Declaration of the Rights of Man and the Citizen (August 1789), Art. 2, "The aim of every political association is the preservation of the natural and imprescriptible rights of man. These rights are liberty, property, security, and resistance to oppression".

<sup>19</sup> Declaration of the Rights of Man and the Citizen (August 1789), Art. 13 "A general tax is indispensable for the maintenance of the public force and for the expenses of administration; it ought to be equally apportioned among all citizens according to their means".

<sup>20</sup> Preamble of the 1789 Declaration: "this declaration, being ever present to all the members of the social body, may unceasingly remind them of their rights and duties; in order that the acts of the legislative power, and those of the executive power, may at each moment be compared with the aim and of every political institution and thereby may be more respected; and in order that the demands of the citizens, grounded henceforth upon simple and incontestable principles, may always take the direction of maintaining the constitution and welfare of all",<sup>19</sup>

<sup>21</sup> Declaration of the Rights of Man and the Citizen (August 1789), Art. 6, II part: All citizens, being equal in its eyes, are equally eligible to all public dignities, places, and employments, according to their capacities, and without other distinction than that of their virtues and talents.

she should assure a qualified loyalty as he or she is entrusted with powers for the advantage of all and should therefore guarantee impartiality and fair treatment to all the citizens. The betrayals of such duties violate the equality and the dignity of the members of the social body, and undermine the trust in the public institutions they represent.

The link between rights and duties permits the citizens to enforce the duties and obligations in order to assure the effectiveness of the related rights. The citizen's entitlement to enforce the duties (e.g. tax evasion, fair competition principle) should support the normal task of the State to prosecute violations of rights. Forms of social control through civic engagement and civic enforcement of the duties violated by the corrupt should assure that the State would effectively act against the corrupt public official in order to get refunds and to restore trust in the Public institutions.

The State failure, or the inadequacy in such enforcement implies a legitimacy of the citizens' (correct and non corrupt) intervention to combat the infringements and the breaches of fundamental duties which are the cornerstones of the *Res Publica*.

It can not longer be tolerated the betrayal of fundamental rights that, as highlighted, are also “fundamental duties”, as they are altogether constitutive of the sovereignty of a legal system. Their violation undermines the pillars of the sovereignty the trust in the public institutions and democracy.

Corruption erodes the pillars of democracy and the deeper meaning of sovereignty as guarantee of the liberties: today, the citizens require also the liberty from corruption that violates their fundamental rights and their dignity inside a social body (Racca - Cavallo Perin, 2014: 23-40); (Racca, 2015). Only the compliance to the duties of solidarity from all the members of a community guarantees mutual trust, social cohesion and all the freedoms, and particularly the freedom from corruption.

#### **4. Corruption, collusion, conflicts of interest, favoritism: supranational analysis and proposals to curb corruption.**

As well known, corruption is one of the most serious crimes with a cross-border dimension: in the globalized market the soaring volume of trade and international business transactions has contributed to the increased awareness of corruption in international business practices and the need for international anti-corruption tools. The private parties involved in international transactions are often multinational corporations whose activities are spread out all over the world and corruption follows them, harming numerous countries. Moreover, the



corrupted agreement has specific features and often it can be quite difficult to define which legal framework is applicable, as well as the competent law-enforcement authorities and the relevant sanctions. This causes uncertainty in the law-enforcement and loss of trust in States' commitment against corruption and the choice of defining bilateral trade agreements to define a specific set of rules. The seriousness of corruption at international level has called for anti-corruption efforts at international level, which has been largely developed in the last twenty years throughout the adoption of numerous legal tools against corruption (Lambsdorff, 2006: 186). These efforts also reflect a major change in the attitudes of countries about corruption, dispelling the myth that corruption, as a matter of culture, could be somehow acceptable (Ackerman, 2010a: 125); (Ackerman, 2002: 1889). Nor anyone can affirm that corruption could be seen as an isolated trouble of a single State in a world of economic competitiveness and interdependence (Rubin, 1998: 257).

The international dimension of corruption has been even increased during the greatest actual financial crisis (Delli Gatti et al., 2012). Indeed, corruption and even the perception of corruption, has eroded internationally trust in governments, and the social cohesion principle. On the one hand, businesses forego innovation and competitiveness for bribery. On the other hand, corruption, collusion and conflicts of interest divert the proper allocation public resources that should be instead used to promote the well-being of people (Racca — Yukins, 2014: 1). The lack of accountability of public officials permits this waste of public funds and the violation of fundamental rights of individuals. The outcomes of corruption are indeed really harsh for both private and public sector, seriously hampering the whole country efficiency and lowering its capacity to attract foreign direct investments (Ackerman, 2012); (Ackerman, 2010b: 217). International organizations have tempted to ending impunity and holding public institutions and public officials accountable to the people to restore faith in business organizations and public institutions.<sup>22</sup>

The OECD intervention has acted in this perspective, by developing an arsenal of instruments and recommendations for fighting corruption in its many forms, including through criminalizing bribery in international business, promoting responsible business conduct, protecting whistleblowers, insisting on integrity and transparency on administrative action and managing form of social control on public administrations.<sup>23</sup>

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<sup>22</sup> OECD, *Oecd Foreign Bribery Report. An analysis of the crime of bribery of foreign public officials*, 2014.

<sup>23</sup> OECD *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* (1997). The OECD Anti-Bribery Convention is the cornerstone of OECD efforts to combat corruption: it is the first international legal instrument which has criminalized bribery of foreign public officials and obliged the adherent Parties to do the same within their legal framework.

The OECD has addressed management and internal controls by remarking that the integrity and accountability of public officials is a growing concern and inadequately managed conflicts of interest on the part of public officials have the potential to weaken citizens' trust in public institutions (Gordon, 2005: 5).<sup>24</sup> The suggestion has been to review the internal integrity management systems,<sup>25</sup> in terms of instruments, processes and actors for ensuring the public officials overall *accountability*.<sup>26</sup>

The conflicts of interest has particularly been at the stake: while a conflict of interest is not ipso facto corruption, there is increasing recognition that conflicts between the private interests and public duties of public officials, if inadequately managed, can result in corruption. The immediate objective should be to maintain the integrity of official policy and administrative decisions, and of public management generally, recognizing that an unresolved conflict of interest may result in abuse of public office (Auby — Breen — Perroud, 2014: 1-352).<sup>27</sup> The recommendation has been to adopt external oversight institutions - such as independent auditors or ombudsmen - which should work together with internal control bodies to detect those who do not comply with the conduct standards required to public officials. It is considered useful to ensure that those who report violations, in compliance with stilted rules, are protected against reprisal and that the complaint mechanisms themselves are not abused compliance with policy and discouraging abuse of the integrity-management process.<sup>28</sup> This perspective has been reinforced and extended inviting the States to adopt accounting requirements, external audits, and internal ethics and compliance controls in order to prevent and detect bribery of foreign public officials: particularly, appropriate measures are needed to protect from discriminatory or disciplinary action public and private sector employees who report in good faith and on reasonable grounds to the competent authorities suspected acts of bribery of foreign public officials in international business transactions.<sup>29</sup>

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<sup>24</sup> OECD *Recommendation on Guidelines for Managing Conflict of Interest in the Public Service* (2003), Preface, § 1.

<sup>25</sup> OECD, *Recommendation on Improving Ethical Conduct in the Public Service* (1998) - *Principles for Managing Ethics in the Public Service*. In particular the Recommendation (Principle 4) states standards of conduct for public officials and procedures for allowing them to report wrongdoings occurred within the public organization they belong, acting such as internal whistle-blowers.

<sup>26</sup> OECD, *Recommendation on Improving Ethical Conduct in the Public Service* (1998), Principle 11,12

<sup>27</sup> OECD *Recommendation on Guidelines for Managing Conflict of Interest in the Public Service* (2003), Preface, § 4.

<sup>28</sup> OECD, *Recommendation on Guidelines for Managing Conflict of Interest in the Public Service* (2003), § 2.3.2., b.

<sup>29</sup> OECD, *Recommendation of the OECD Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions* (2009), Rec. IX, iii. and X.C.v., and Annex II to the OECD, Recommendation.

The conjunct document G20/OECD has remarked the utility of whistleblowing in both public and private sectors: protecting public sector whistleblowers facilitates the reporting of passive bribery, as well as the misuse of public funds, waste, fraud and other forms of corruption. Protecting private sector whistleblowers instead facilitates the reporting of active bribery and other corrupt acts committed by companies. It has been noted the need of providing incentives and rewards for reporting wrongdoings and how these mechanisms are increasingly included in the regimes to protect whistleblowers all over the world.<sup>30</sup>

The seriousness of corruption and the need of a public engagement as large as possible for the anti-corruption goals are pressing issues also within the EU: corruption represents one of the biggest challenges for the EU by seriously threatening its aim to ensure a high level of security within an area of freedom, security and justice in Europe.<sup>31</sup> The European Union has a general competence to act in the field of anti-corruption policies within the limits established by the Treaty on the Functioning of the European Union (Di Damian, 2010: 581).<sup>32</sup> In particular, the EU should ensure a high level of security, through the prevention and combat of corruption.<sup>33</sup> Most of EU Member States have ratified all or most of the existing international anti-corruption instruments: all EU Member States have ratified the United Nation Convention against Corruption and just four EU Member States have still not ratified the OECD Anti-

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<sup>30</sup> OECD, *Survey on managing conflict of interest in the executive branch and whistleblower protection*, 2014.

<sup>31</sup> Treaty on European Union, Art. 3 § 2.

<sup>32</sup> EU Commission, *Consultation on a future reporting and monitoring mechanism on EU Member states progress on fighting corruption*, in [http://ec.europa.eu/homeaffairs/news/consulting\\_public/consulting\\_0007\\_en.htm](http://ec.europa.eu/homeaffairs/news/consulting_public/consulting_0007_en.htm); Treaty on the Functioning of the European Union, Art. 83, § 1. "The European Parliament and the Council may, by means of directives adopted in accordance with the ordinary legislative procedure, establish minimum rules concerning the definition of criminal offences and sanctions in the areas of particularly serious crime with a cross-border dimension resulting from the nature or impact of such offences or from a special need to combat them on a common basis. These areas of crime are the following: terrorism, trafficking in human beings and sexual exploitation of women and children, illicit drug trafficking, illicit arms trafficking, money laundering, corruption, counterfeiting of means of payment, computer crime and organised crime". Council of the EU — General Secretariat, *The Lisbon Treaty's impact on the Justice and Home Affairs (JHA) Council: More co-decision and new working structures*, December 2009, available at [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/en/ec/111615.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/111615.pdf).

<sup>33</sup> The EU established its own instruments to tackle corruption as the two conventions on the protection of the European Communities' financial interests and the fight against corruption involving officials of the European Communities or officials of the EU Member States and the European Anti-Fraud Office (OLAF), set up in 1999, which has interinstitutional investigative powers. The first call for action was in 1997 (see: EU Commission, *Action programme on organised crime calls for a comprehensive anti-corruption policy based on preventive measures*, 1997, see: [http://europa.eu/legislation\\_summaries/fight\\_against\\_fraud/fight\\_against\\_corruption/133301\\_en.htm](http://europa.eu/legislation_summaries/fight_against_fraud/fight_against_corruption/133301_en.htm)) followed by a 2003 Commission Communication on "a comprehensive anti-corruption policy" (see: EU Commission, *Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee on a Comprehensive EU Policy Against Corruption*, COM(2003) 317 final, May 28, 2003) and by the 2003 Framework Decision on combating corruption in the private sector since it introduced criminal liabilities for legal persons (EU Council, *Council Framework Decision on combating corruption in the private sector*, 2003/568/JHA, 22 July 2003); EU Commission, *Communication From The Commission To The European Parliament And The Council, The EU Internal Security Strategy in Action: Five steps towards a more secure Europe*, 22 November 2010, COM(2010) 673 final.

Bribery Convention.<sup>34</sup> With regard to the Council of Europe Conventions, one EU Member State has not ratified yet the Criminal Law Convention on Corruption<sup>35</sup> while six have not ratified the Civil Law Convention on Corruption.<sup>36</sup> In 2011 the EU has addressed corruption once again as a global issue to deal with throughout a common effort: within the EU Commission perspective the drivers against corruption mainly rely by endorsing information procedures to protect the whistle-blowers<sup>37</sup> and to train public officials (McKeen P. T., 2014, 319-342); (Racca et al., 2015). Nonetheless, it seems that until now the efforts have not accomplished the goal: according to the Anti-Corruption Report made by the EU Commission the actual economic costs incurred by corruption in the EU is considered to amount approximately to 120 billion € per year.<sup>38</sup> This amount constitutes one percent of the total EU Member States GDP, representing only a little less than the overall EU's annual budget.<sup>39</sup> Corruption represents a huge problem also considering its perception by the public: four out of five EU citizens regard corruption as a major problem in their State and perceive the negative effects in terms of rights and quality of services.<sup>40</sup> Several EU goals are still threatened by corruption: the integrity of public resources, particularly considering the current budgetary scarcity; the effectiveness of administrative action which is at the basis of people's trust in public institutions; the safeguard of citizens fundamental rights, which are weakened by the lack of transparency and the spread of corruption; the correct functioning of the Internal Market: SMEs - 99% of all business in EU - are particularly damaged since they cannot prosper in a corrupted market. Moreover, corruption is often linked to other forms of serious crime, such as the trafficking of drugs and human beings (Dugard, 2013: 159); (Davis, 2013: 169).<sup>41</sup> Recently

<sup>34</sup> Cyprus, Lithuania, Malta, Romania.

<sup>35</sup> Germany.

<sup>36</sup> Denmark, Germany, Ireland, Luxembourg, Portugal, United Kingdom.

<sup>37</sup> EU Commission Report, *Communication From The Commission To The European Parliament, The Council And The European Economic And Social Committee Fighting Corruption in the EU* Brussels, 6.6.2011, COM(2011) 308 final, § 4.1.3

<sup>38</sup> EU Commission, *Eu Anti-Corruption Report From The Commission To The Council And The European Parliament* Brussels, 3,2,2014 COM(2014) 38 final.

OECD, *Implementing the OECD Principles for Integrity in Public Procurement*, cit., 2013, 78. OECD, *CleanGovBiz. Integrity in Practice*, 2013 available at <http://www.oecd.org/cleangovbiz/49693613.pdf>, according to the World Bank, the document reported that corruption represents 5 % of global GDP (USD 2.6 trillion), with over USD 1 trillion paid in bribes each year; and whereas corruption adds up to 10 % of the total cost of doing business on a global basis and 25% of the cost of procurement contracts in developing countries. The economic costs incurred by corruption in the EU possibly amount to EUR 120 billion per year.

<sup>39</sup> EU Home Affairs Department, data available at the home page of DG Home affairs: [http://ce.europa.eu/home-affairs/what-we-do/agencies/index\\_en.htm](http://ce.europa.eu/home-affairs/what-we-do/agencies/index_en.htm),

<sup>40</sup> EU Commission, *Fighting corruption in the EU*, 6 June 2011, COM (2011) 308 final, in <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52011DCO308:EN:NOT>, 3.

<sup>41</sup> EU, *SMEs in the Single Market*, 9.10.2012, p. 4; EU Commission, *Fighting corruption in the EU*, cit See also EU Parliament - Directorate General for Internal Policies, *Political and other forms of corruption in the attribution*

it has been confirmed<sup>42</sup> that the anti-corruption goals cannot be sufficiently achieved by the Member States<sup>43</sup> and will require an intervention at the Union level.<sup>44</sup> Indeed, counter-measures against corruption have sometimes been ineffective exactly due to the low political commitment by the Member States and the lack of cooperation between the EU Commission and the Member States, as subsequently observed by the Council of the European Union.<sup>45</sup> New strategies are therefore needed for strengthening the fight against corruption as a necessary tool for of a smart, sustainable and inclusive economic growth in order to reinforce social cohesion.<sup>46</sup>

### **5. Transparency and accountability improved by electronic tools as means for integrity. The need of a strong political commitment to curb corruption.**

A lack of integrity, either in public institutions or in private markets, undermines fundamental rights and the citizens' dignity. As already seen, it causes a waste of scarce resources and undermines the trust and effectiveness of public powers (Gupta et al., 2001: 111).<sup>47</sup> Moreover, tolerance of corruption distorts all the rules of civil society and the quality of life of citizens.<sup>48</sup> Corruption dampens development by inflating the budgetary costs of public

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*of public procurement contracts and allocation of EU funds: Extent of the phenomenon and overview of practices, cit.*, 36-38.

<sup>42</sup> EU Commission, *Report from the Commission to the Council and the European Parliament, EU Anti-corruption Report, cit.*, 3 February 2014, 24, where is reported that "the proposal also included the setting up of oversight monitoring of the implementation of public procurement rules, red flagging and alert systems to detect fraud and corruption. However, Member States raised fundamental objections to such measures which were considered too cumbersome for their administrations".

<sup>43</sup> Treaty of the European Union, Art. 5, § 3: "Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level. The institutions of the Union shall apply the principle of subsidiarity as laid down in the Protocol on the application of the principles of subsidiarity and proportionality".

<sup>44</sup> EU Commission, *Report from the Commission to the Council and the European Parliament, EU Anti-Corruption Report, cit.*, 2. Concerning the relationship between the corruption prevention and public procurement infringements see 23 et seq.

<sup>45</sup> EU, Council Conclusion on Anti-Corruption Report, 5,6,2014, § 2, 4. The Report also provides thematic chapters for the cross-cutting issue most affected by corruption, such as public contracts, and 28 country chapters outlining the corruption key-issues in each EU Member States.

<sup>46</sup> EU Commission, *Horizon 2020 - The Framework Programme for Research and Innovation*, 30 November 2011, available at [http://ec.europa.eu/research/horizon2020/pdf/proposals/communication\\_from\\_the\\_commission\\_-\\_horizon\\_2020\\_-\\_the\\_framework\\_programme\\_for\\_research\\_and\\_innovation.pdf](http://ec.europa.eu/research/horizon2020/pdf/proposals/communication_from_the_commission_-_horizon_2020_-_the_framework_programme_for_research_and_innovation.pdf).

<sup>47</sup> International Council on Human Rights Policy - Transparency International, *Integrating Human Rights in the Anti-corruption Agenda. Challenges, Possibilities and Opportunities, cit.*, 43-45.

<sup>48</sup> Concerning the policy for "zero tolerance" on corruption see: PricewaterhouseCoopers study prepared for the European Anti-Fraud office (OLAF), *Identifying and Reducing Corruption in Public Procurement in the Ii U*, 2013, available at *cit.*, 318.

goods and services because these costs incorporate kickbacks. Moreover if the elusion or the evasion is favored through corruption the impact on the government budget is direct. There is a serious indirect impact of corruption in persuading people that it is acceptable not to pay taxes because the government has been captured by corrupt officials, violating norms of fairness (Ackerman 2012: 7). Corruption undermine democratic legitimacy and trust in the public institutions.

The current widespread socio-economic crisis requires to identify shared values in order to cope with the new challenges.<sup>49</sup> The urgent need for resources provides an extraordinary incentive to ensure transparency and accountability of public authorities also through new electronic means in order to improve social controls over the quality of public spending. As a result of citizens' growing consciousness of their rights, there is a greater demand for inclusiveness and opportunities for social mobility. The citizens may mobilize pressures to establish more open and transparent governments, or for increasing a public service provision standards.<sup>50</sup> The urge to gain clear data on the quality of public spending, for a better assessment and consequently better policies, is evident. Demands for quality services can be expected to grow faster and faster, and to require improvements despite the economic crisis thus providing new efforts in a bottom-up accountability.

A firm political commitment is required to restore trust in the effectiveness of anti-corruption policies and measures (Ackerman, 1999: 143)<sup>51</sup>. Corruption has its own political dimension by making government subjected to lobbies goals aim and lowering their accountability. The adoption of codes of conduct for parliamentary assemblies, endorsed as far as possible by monitoring and sanctioning mechanism should favor restoring people's trust in institutions. Also the financing of political parties should be deeper regulated and harmonized as well as the definition of public officials duties, in order to build a common legal framework for the liability of public officials in case of corruption.<sup>52</sup>

The prevention of corruption requires integrity, transparency, efficiency and accountability of public administration which represent the best deterrent to corrupt practices.

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<sup>49</sup> EU Agency for Fundamental Rights (FRA), *Fundamental rights: challenges and achievements in 2012, 2013*, available at <http://fra.europa.eu/en/press-release/2013/eu-agency-fundamental-rights-fra-presents-its-annual-report>, 12 et seq.

<sup>50</sup> OECD, *Perspectives on Global Development 2012 Social Cohesion in a Shifting World*, 14 December 2011, in <http://www.oecd.org/site/devpgd2012/>.

<sup>51</sup> EU, Council of the European Union, *Council Conclusions On The EU Anti-Corruption Report*, Justice And Home Affairs Council Meeting, Luxembourg, 5 and 6 June 2014; EU Parliament - Directorate General for Internal Policies, *Political and other forms of corruption in the attribution of public procurement contracts and allocation of EU Aids: Extent of the phenomenon and overview of practices*, cit., 40.

<sup>52</sup> EU, *Proposal For A Directive Of The European Parliament And Of The Concil On The Fight Against Fraud To The Union's Financial Interests By Means Of Criminal Law*, COM/2012/0363 final – 2012/0193 (COD).

To enforce these principles internal and external control mechanisms are needed for rendering public officials constantly monitored by both colleagues and citizens. Transparency is especially enforced by measures of assets disclosure for public officials and also contributes to disclose conflict of interests. The EU Report particularly remarks that the rules on conflict of interests are poorly harmonized across the EU and fixing a minimum standards should represent a feasible objective.

These strategies call for anti-corruption innovative, cost-effective and smart approach not exclusively grounded on *ex post* criminal tools. Whilst effective prosecution of the corrupted remains an essential issue, standing out as one of the key-point, the EU Commission highlights that a stronger focus on preventing corruption can also play a significant role in reducing corrupted behaviours. Prevention policies must take a broad approach, as large as possible, for being successful: the accomplishment of anti-corruption goals mainly also depends by the involvement degree of public officials and citizens against corruptive phenomena.<sup>53</sup> Public officials and citizens have to comply with their duties through behaving proactively and ethically realizing a double control, internal and external, on the administrative action.<sup>54</sup> To this end, training public officials and supporting their commitment against corruption by endorsing whistle-blowers' mechanism is a key measure;<sup>55</sup> in the same way the enforcement of citizens with tools for monitoring could represent an outstanding tools in tracking and reporting corruption.<sup>56</sup>

Specific risk areas need to be addressed such as the financial sector, public contracts and urban development, deeply affected by corruption, also identifying the specific risks in these areas (Magina — McCrary, 2014: 11-20); (Gordon, 2005: 1-15). Specific law provisions for increasing, integrity, transparency and accountability in the public sector, mainly by a larger involvement of stakeholders and citizens as watchdogs, are outlined for preventing the risk lit corruption (Racca et al. 2011: 89-108).<sup>57</sup>

Improved transparency through websites and IT applications can be considered among the most effective measures to prevent corruption. There is substantial variation across countries in the degree of transparency, as well as within countries across different sectors and dimensions (Ackerman, 2012: 17). If the public activities are publicized, budgets posted online, rules and regulations are available on notice boards, citizens can hold officials to account if

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<sup>53</sup> EU, Internal Security Strategy For Europe, March 2010, 21.

<sup>54</sup> EU Commission, *EU Anti-Corruption Report*, cit., 38; EU, Internal Security Strategy For EU, 2010, 8.

<sup>55</sup> EU Commission, *EU Anti-Corruption Report*, cit., 20.

<sup>56</sup> EU Commission, *EU Anti-Corruption Report*, cit., 31.

<sup>57</sup> EU Commission, *EU Anti-Corruption Report*, cit.

they observe a diversion from what expected. Transparency through the new electronic tools become the basis to favor civic engagement and a bottom-up accountability (Ackerman, 2012: 17-19).

Civil service reforms assuring wage fairness, staff rotation, and meritocratic recruitment should reduce corruption levels, but the strength of the effects are conditional on the surrounding environment and ethical standards for civil servants, politicians, and business people can also help. Whenever bribery overcomes inefficient rules it is required to modify the rules or to legalize the payment to the State for a specific, quicker service.

## **6. Reprobation of the corrupts and definition of social sanctions. Social reward for whistleblowers. Social control for the improvement of trust and of the quality of life of citizens.**

Civil society has a significant role to play in fighting corruption, from monitoring public activities and services to denouncing bribery and raising awareness of the risks of wasting public money (Cavallo Perin, 2009: 159-161); (Szarek-Mason, 2014: 288).<sup>58</sup>

Governments are realizing the growing importance of social control, and are starting to involve citizens in scrutinizing government activities.<sup>59</sup> As representatives of the general public, civil society organizations should investigate and bring to light cases of corruption. In this context, new technologies and social media can be used to gather information and publicly hold governments and public entities to account.<sup>60</sup> The monitoring of public activities by an independent voice might provide a source of expertise and make it possible “to raise issues and difficult questions, to manage conflict and balance powers and bring together groups of people”.<sup>61</sup>

Public oversight requires the transparent management of public finances in order to improve the likelihood of limited resources being used as intended. All countries should establish transparent and accountable public finance management systems.<sup>62</sup> Not only the

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<sup>58</sup> United Nations Office On Drug and Crime (UNODC), *Good practices in ensuring compliance with article 9 of the United Nations Convention against Corruption*, cit., 26.

<sup>59</sup> See also a Mexican case where the participation of “social witness” to scrutinise the integrity of the procurement procedure is mandatory for large contracts. A study of the OECD and the World Bank Institute (2006) found that such practice had resulted in savings of approximately USD 26 million in 2006 and increased the number of bidders by over 50%.

<sup>60</sup> Clean gov biz, *Boosting Integrity fighting corruption*, 2013, available at: <http://www.oecd.org/daf/anti-bribery/50350066.pdf>.

<sup>61</sup> Transparency International, *Handbook for Curbing Corruption in Public Procurement*, cit., 80 et seq.

<sup>62</sup> United Nations Office on Drug and Crime (UNODC), *Good practices in ensuring compliance with article 9 of the United Nations Convention against Corruption*, cit., 30-31.



economic efficiency in allocating resources is important, but so it is the perceived legitimacy of public decisions. This legitimacy is fostered by due procedures in awarding any public benefit (a licence, a position, a contract) even if due processes might be more expensive (i.e. less economic efficiency).<sup>63</sup> Collective complaints by groups of citizens concerning general failures of government and objections raised by particular individuals against their own treatment by public authorities can provide means for a bottom-up accountability (Ackerman, 2012: 17). In a far-reaching transparency policy, civil society can become very active in the “complex monitoring of procurement processes and public contracts” that are one of the most affected sectors.<sup>64</sup> “Integrity pacts” could present an effective instrument for defining further instruments to provide transparency, monitoring activities by civil society organizations, especially in the public contract sector.<sup>65</sup> Voluntary compliance with the terms defined in integrity pacts might allow economic operators to engage the monitoring activity. The reciprocal obligations between private parties and public entities makes each party liable in respect of the others for any violation.<sup>66</sup>

Social control has already had a “beneficial effect on the accountability of local administrations with regard to transparency of public spending”.<sup>67</sup> Civil society, “be it a single citizen, media, a company, an NGO, academia, etc.” may identify possible improper public official actions which may be the result of collusion between a public official and the corruptor (Racca et al., 2011: 99-100).<sup>68</sup>

The reputation of the subjects involved would be compromised and this might be an incentive for an appropriate behavior. Civil society can generate pressure against corruption, leading to various kinds of sanctions of the corrupt actors (Hodess, 2013: 77-78),

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<sup>63</sup> EU Parliament – Directorate General for Internal Policies, *Political and other forms of corruption in the attribution of public procurement contracts and allocation of EU funds: Extent of the phenomenon and overview of practices*, 2013, 30.

<sup>64</sup> EU Commission, Report from the Commission to the Council and the European Parliament, *EU Anti-Corruption Report*, cit., 31.

<sup>65</sup> EU Commission, op. ult. cit., 31. Transparency International, *The integrity pact. The Concept, the Model and the Present Applications: a Status Report*, 31 December 2002, 12.

<sup>66</sup> Transparency International, *The integrity pact. The Concept, the Model and the Present Applications. A status report*, cit., 5. OECD, *Principles for Integrity in Public Procurement*, 2009, 36-37; Transparency International, *Handbook for curbing corruption in public procurement*, 2007, 82.

<sup>67</sup> EU Commission, *Report from the Commission to the Council and the European Parliament, EU Anti-Corruption Report*, cit., 28.

<sup>68</sup> OECD, *Implementing the OECD Principles for Integrity in Public Procurement*, cit., 119. One of the ten OECD principles for enhancing integrity in public procurement provides that “Member countries should empower civil society organisations, media and the wider public to scrutinise public procurement. Governments should disclose public information on the key terms of major contracts to civil society organisations, media and the wider public. The reports of oversight institutions should also be made widely available to enhance public security. To complement these traditional accountability mechanisms, governments should consider involving representatives from civil society organisations and the wider public in monitoring high value or complex procurements that entail significant risks of mismanagement corruption”.

This practice of "direct social control" could complement more traditional accountability mechanisms under specific circumstances. Strict criteria should be defined so as to determine when direct social control mechanisms may be used, on the basis of the high value, complexity and sensitivity of the activity, and for the purpose of selecting the external observers.<sup>69</sup> Obviously, a systematic verification should be carried out to ensure that the external observer is exempt from any conflict of interest to participate in the process and that they are also aware of any restrictions and prohibitions with regard to potential conflict-of-interest situations, such as the handling of confidential information (La Porta et al., 1997: 333-338). The oversight of third parties could prove extremely useful for ensuring that the competitive selection principle is respected and the procurement correctly executed (Racca - Cavallo Perin, 2014: 23-40).<sup>70</sup>

Governments should support an effective monitoring by civil society "by ensuring timely access to information, for instance through the use of new technologies, and providing clear channels to allow the external observer to inform control authorities in the case of potential irregularities or corruption".<sup>71</sup> Social control could benefit also of the enforcement of a sound whistle-blowers legal framework with preferential channels for reporting (e.g. hotline), legal protection against retaliation and discriminatory action, social and economic rewards for whistleblowers.<sup>72</sup> Such means could allow a large public of subjects to be informed of suspected acts of corruption and to report them to competent authorities, thus maximizing the chances for uncover corruption. Indeed whistle-blowers may represent a preminent actor in the fight against corruption.<sup>73</sup> However whistle-blowing still appears as a tool of a little account in the fight against corruption at the international level. Limitations concerning public sector whistleblower protection legislation may be due to legal frameworks not comprehensive enough, weak enforcement and oversight, allowing eases of retaliation against whistleblowers,

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<sup>69</sup> OECD, *OECD Principles for Integrity in Public Procurement*, cit., 47; OECD» *Implementing the OECD Principles for Integrity in Public Procurement*, 2013, cit., 84, OECD, *Consequences of Corruption at the Sector Level and Implications for Economic Growth and Development*, 2015, available at <http://mvw.oecd-ilibrary.org/docserver/download/0315011e.pdf?expires=1428998991&id=id&accname=ocid57004426&checksum=F8D7E20C0B88B5C87S8ABIEDAD2567BC>. 65 where it is highlighted a lack of civil and political participation "undermine the basic principles of democracy, which is found to have a positive impact on economic performance".

<sup>70</sup> United Nations Office on Drug and Crime (UNODC), *Good practices in ensuring compliance with article 9 of the United Nations Convention against Corruption*, cit., 26-27.

<sup>71</sup> OECD, *OECD Principles for Integrity in Public Procurement*, cit., 47.

<sup>72</sup> G20/OECD, *Protection of Whistleblowers: Study on Whistleblower Protection Frameworks, Compendium of Best Practices and Guiding Principles for Legislation*, 2011, 11.

<sup>73</sup> OECD, *Consequences of Corruption at the sector Level and implications for Economic Growth and Development*, 2015, 81; CleanGovBiz, *Whistleblower protection; encouraging reporting*, available at <http://www.oecd.org/cleangovbiz/toolkit/whistleblowerproteccion.htm>.

lack of implementation of internal procedures and cultural barriers to to whistle-blowers' actions.<sup>74</sup>

Actually, the OECD has estimated that just the 2% of foreign bribery cases has emerged thanks to whistleblowers procedures.<sup>75</sup> Instead in this area of self-reporting and voluntary disclosure (31%)<sup>76</sup> are the primary tool through which foreign bribery is brought to the attention on law-enforcement authorities.<sup>77</sup> In countries whose legal systems permit self-reporting and voluntary disclosure these mechanisms are usually associated with procedures and programs which leads to the reporting subject be less sanctioned in the event of a criminal prosecution: companies which disclose their internal wrongdoings before the authorities' investigations uncover them are rewarded by obtaining mitigated sanctions (e.g. reduced criminal penalties)<sup>78</sup> while companies which do not self-report may face additional sanctions (e.g. debarment from the public procurement market) (Yukins, 2013:1-17).<sup>79</sup>

For all these purposes, reliable judicial systems are crucial for ensuring that laws and regulations are properly enforced. If verdicts or favors can be bought, any set of laws to curb corruption will be crippled (Bogdandy — Ioannidis, 2014: 59-96). Clear rules on ethical conduct for judges and court officials, built around the fundamental principles of independence, impartiality, integrity, propriety, equality, competence and diligence, are essential, along with a system to make sure that they are being implemented.<sup>80</sup>

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<sup>74</sup> G20/OECD, *Protection of Whistleblowers: Study on Whistleblower Protection Frameworks, Compendium of Best Practices and Guiding Principles for Legislation*, 2011, 14.

<sup>75</sup> OECD, *Oecd Foreign Bribery Report. An analysis of the crime of bribery of foreign public officials*, 2014, 9.

<sup>76</sup> OECD, *Oecd Foreign Bribery Report. An analysis of the crime of bribery of foreign public officials*, 2014, 17. For being successful in detecting corruption, whistle-blowers procedures should follow this incentive model provided for the company who self-report their internal wrongdoings: ensuring that whistle-blowers shall not only not face any kind of retaliation for their behaviors but will also entitled of social and economic reward for having reported bona fide information of corruption events. The OECD data also highlight that, in regard to the self-reported foreign bribery cases, the most important mechanism for disclosing corruption are represented by internal audit (31%), due diligences tracks within mergers and acquisition procedures (28%) and whistleblowers channels (17%) such as: report to the audit committee; call to the ethics complaint hotline; civil action by employees for retaliation after refusing to be complicit in corruption. These data demonstrate the importance of encouraging and enabling individuals to bring concerns about misconducts to the attention of competent authorities without fear of reprisals trough adequate and effective channels for reporting. For accomplishing this end an ideal habitat for whistle-blowing action should be build, by training public officials on bribery and anti-corruption regulations and encouraging citizens to act such as whistleblower by endorsing civic engagement actions.

<sup>77</sup> OECD, *OECD Foreign Bribery Report. An analysis of the crime of bribery of foreign public officials*, 2014, 17.

<sup>78</sup> For instance, U.S., *Sentencing Guidelines*. § 8B.2, (b) (5) (c).

<sup>79</sup> For instance, U.S., *Sentencing Guidelines*. § 8B.2, (b) (5) (c), on reducing criminal penalties and U.S., *Federal Acquisitions Regulations* 9.406-2(b)(1)(vi), 9.407-2(a)(8), on debarment from the public procurement market

<sup>80</sup> Clean gov biz, *Boosting Integrity fighting corruption*, 2013, *cit.*, 6. International instruments such as the UN's Bangalore Principles of Judicial Conduct and the UN's work on boosting judicial integrity contribute to putting these systems in place.

Different forms of sanctions need to be applied, that could also be informal (Blau, 1964). Informal sanctions mean penalties that might also not impose tangible costs on the offender, though they may decrease their utility. It has been proven that “informal sanctions such as social disapproval, ostracism, gossip, peer pressure, or public embarrassment of offenders are often applied to try to alter behavior, and in many cases appear to be effective” (Noussair - Tucker, 2005: 649). In corporations and academic institutions, the failure to perform a level of service activity viewed as appropriate may be penalized through various sorts of sanctions. These may include financial sanctions, such as lower salary increases, or the denial promotion, as well as the engendering of expressions of disapproval and a degree of social ostracism. Within military organizations and in some academic institutions, “honor codes exist that overlap with formal policies. One reason that these institutions label cheating and theft as honor code violations may be to create a social prohibition against them in addition to the explicit penalties in force” (Noussair — Tucker, 2005: 650).

Social control through social pressure and shame can have highly effective consequences. Social penalties (condemnation, ostracism, loss of esteem) (Akerlof, 1980: 749); (Lindbeck et al., 1999: 1); (Elster, 1998: 47); (Kandel - Lazear, 1992: 801); (Kamei, 2011: 5) or some form of public “black—listing” of citizens that betrayed the common bonds of solidarity might have a significant effect in terms of reputation, and could therefore be feared.

Informal sanctions may have less of a deterrent effect because they are less certain, but they may have the advantage of avoiding fixed administrative costs (Kamei, 2011: 5). Moreover, in the context of an information society, “web reputation” can become a great value (Racca - Cavalto Perin, 2014: 46-47).

## **7. Conclusions.**

A firm political commitment is required to restore trust in public institutions and the effectiveness of anti-corruption strategies.

A wider transparency and accountability together with an improvement of the forms of social control might be extremely useful to improve fairness of public activities.

Social control and a bottom-up accountability could permit monitoring public activities and to denounce bribery and raising awareness of the risks of wasting public money through civic engagement and education (Ackerman, 2001a: 21). As representatives of the general public, civil society organizations should investigate and bring to light cases of maladministration and corruption.

A new emphasis on the accountability of politicians and of public officials is required and implies new organizational design and audit systems. Wastes and corruption betray the links of solidarity among citizens and undermine social cohesion duties. A concrete risk of loss of reputation and improved social control could become effective deterrents to improper conduct for the benefit of citizens.

A fundamental redesign of the relations between the State and civil society through a rethinking of the duties of the individuals towards the other community members is needed; this requires the respect of reciprocal solidarity that could effectively help in fight systemic corruption to overcome the distrust in public Administration.

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