Towards a More Proactive Anti-Corruption Policy in the EU?

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Proactivity (1)

› traditional proactive investigation?
  › limited added value special investigative techniques
› rather: intelligence-led approach?
  › buzz words
    › ‘integral’ and integrated’ approaches
    › information and intelligence sharing
  › NL ‘best practice’?
    › BIBOB & 2008 RIECs (Regional Information & Expertise Centers), inter-departmental convenant?
    › provinces, communities, prosecutor, police, inspection services, tax services, other (semi) public entities
  › OLAF best practice?
Proactivity (2)

- blurring boundaries administrative & criminal matters finalities
  - core issue in discussion on ‘armoured administrative law’
  - intrinsically problematic
    - trias politica, data protection, procedural guarantees
- therefore: focus on alternative approach
  - more disclosure obligations upon natural/legal persons
  - more active (spontaneous?) private actor/market transparency in view of potential scrutinisation by LE
    - accounts/transactions (see TFTP!), assets and affiliations
- also: prevention (also in private market) and ethical codes
  - move beyond current active/passive corruption definition?
  - private benefits even through professional expenditure?
  - enhanced exploitation of criminal records information (focus)
Internal market

- free movement goods, capital, persons and services
  - all highly relevant for anti-corruption policy
- internal market reality requires
  - certain alignment of MS policies
    - currently e.g. exclusion based on prior national conviction
  - rethinking/elaboration certain EU policies
    - of EU bodies (Europol, Eurojust, Eppo, OLAF)
    - criminal records (ECRIS), banking info, TFTP, PoA, etc
  - enhanced incidence and vulnerability mapping
    - EU crime statistics
    - operational LE intelligence gathering & exploitation
ECRIS and beyond (1)

- involvement end users?
  - judicial authorities: (investigating) judges, prosecutors
  - police authorities? (national, Europol)
    - national: PoA or judicial cooperation?
    - Europol: ECRIS to be linked in with Europol IS for mandated offences
  - administrative authorities (national, OLAF, etc)
- preventative screening & (proactive or preliminary) investigation?
  - current design useful for preventative screening if allowed
  - of limited relevance for (proactive or preliminary) investigation
    - only name/id-related fields queries, if known EU national
  - police to call for maximized investigative/prosecutorial value
    - make offence-/other fields searchable also
    - via MLA requests or based on PoA
ECRIS and beyond (2)

- prevention
  - additional EU legislation based on MR concept required:
    - regarding legal effect inclusion following notification
      - convictions and disqualifications
    - see Belgian practice (discriminatory?)
  - limited introduction EU-certificates non-prior conviction for corruption (and other relevant offences) or non-prior disqualification based on such offences
    - require tenderers/potential beneficiaries/contractors to deliver proof thereof through such EU-certificate
      - both legal persons and ‘responsible’ natural persons behind them
  - self-imposed in private market? (corporate policy and culture + transparency)
    - allow (certain) private market actors to require certificates for own personnel
EULOCS as an add-on to ECRIS

- EU Level Offence Classification System
- full-classification, encompassing or compatible with
  - 32 list offences (EAW categories), ECRIS classification, classifications Europol IS and Eurojust CMS, OLAF (and Eppo) mandate + 27 MS classifications police, prosecutors, courts, corrections, statistics bureaus
- definitional break-through (no definitions in ECRIS)
  - compatibility with 27 MS
  - distinction ‘jointly identified’ offence parts and parts beyond
    - based on EU minimum definitions (dynamic)
    - limit cross-border effect disqualifications based on conviction for corruption to ‘jointly identified’ corruption
- useful for crime statistics/intelligence gathering
  - integration of ‘context’ fields (both ways)
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<tr>
<th>Code</th>
<th>Category</th>
<th>Description</th>
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<tr>
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<td>CORRUPTION</td>
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<td>Offences jointly defined as corruption</td>
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<td>Active corruption in the public sector involving a EU public official</td>
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<td>Passive corruption in the public sector involving a EU public official</td>
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<td>Other forms of corruption</td>
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<td>0906 01 01</td>
<td>The conversion or transfer of property</td>
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<td>The illicit concealment or disguise of property related information</td>
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<td>The illicit acquisition, possession or use of laundered property</td>
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<td>FRAUD AND SWINDLING</td>
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<td>Offences jointly identified as fraud and swindling</td>
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<td>Counterfeiting and piracy products</td>
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<td>Forgery (i.e. Counterfeiting) and trafficking of administrative documents</td>
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<td>Forgery (i.e. Counterfeiting) of means of payment</td>
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<td>Forgery (i.e. Counterfeiting) of cash means of payment</td>
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<td>Fraud affecting the financial interests of the European Communities</td>
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<td>Tax offences</td>
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Questions and discussion