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Fighting Corruption
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Deliverable D2.5

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Abstract: Deliverable D2.5 examines the legislative measures and policy landscape that characterize the four typologies of corruption at the core of the FALCON project. These four typologies are I) corruption in public procurement; II) sanction circumvention; III) border corruption; and IV) conflict of interest of politically exposed persons. The four sections are organized around an introduction, with the definition of key terms and concepts; an examination of the baseline on the different issues; an examination of the strengths and weaknesses of the legislative measures and policy landscapes; and a presentation of key legislative macro-trends for the four areas under analysis. The final section of Deliverable D2.5 elaborates some suggestions and recommendations with the goal of helping policy makers and bureaucrats at EU and member state level to design and implement better anti-corruption legislation and policy frameworks.

Executive Summary

Deliverable D2.5 explores the legal frameworks and policy landscapes that characterize the four typologies of corruption that are at the core of the FALCON project. These are corruption in public procurement, sanction, circumvention, border corruption, and conflict of interest of politically exposed persons. In addition, the deliverable D2.5 offers suggestions and recommendations for policy-makers and legislators to improve anti-corruption legal frameworks at the EU and member state levels.

The public procurement sector is vulnerable to corruption due to factors such as high transaction volume, financial interest, complexity, and the close interaction between officials and businesses. To effectively combat corruption, a legal framework that promotes transparency, accountability, and integrity is crucial. Establishing objective decision-making criteria and implementing e-procurement solutions can also enhance transparency and efficiency. The EU Directives 23/2014, 24/2014 and 25/2014, have significantly advanced the harmonization of public procurement across member states, setting common rules for tendering procedures, decision-making criteria, and conflict-of-interest measures. They have also increased market access, centralized regulations, and promoted digitalization and SME participation in procurement. To balance centralized control with local autonomy, many governments create regional contracting authorities that operate independently while adhering to national standards. While the EU legislative framework is quite strong, the limited scope of its applicability restricts its efforts in preventing corruption. Continued efforts are necessary to further harmonize the legislative and regulatory framework across the EU.

Sanction regimes in the European Union, the United States and the United Kingdom have become more complex in the recent decades. In parallel, the sanction circumvention mechanisms have become increasingly sophisticated. The EU plays a key role in developing legal frameworks and best practices to prevent and combat sanction circumvention. These include identifying sanctioned individuals and entities; regularly updating sanction lists; clearly defining roles and obligations in enforcement; and treating circumvention as a specific offense. To effectively prevent circumvention, it is crucial to address related issues like money laundering, smuggling, political influence, foreign propaganda, and opaque investments. Further, compliance by business, trade, financial and banking sectors with the sanction regime is also essential. Despite existing best practices, challenges remain, such as inconsistencies between sanctioning bodies, debates over the use of frozen assets, and variations in the effectiveness of criminal justice systems across EU member states. A unified and coherent framework is needed to strengthen efforts against sanction circumvention.

Border corruption is a key issue as it facilitates a variety of criminal activities such as smuggling and illicit trafficking, tax avoidance and evasion, and white-collar frauds.

However, the issue of border corruption is highly complex with numerous dimensions involving various actors, behaviours and determinants. Addressing this issue requires clear objectives, such as enhancing border management efficiency, securing and protecting borders from crime, and facilitating legitimate trade. Effective reforms should focus on automating border management, simplifying and rationalizing administrative procedures, and improving human resource practices to mitigate corruption risks. International cooperation is essential for sharing information and dividing responsibilities among countries. In Europe, trends in border management reforms include liberalizing borders, modernizing customs through automatization, and increasing the militarization and surveillance of border areas. However, the EU's efforts to harmonize legal frameworks reveal the complexity of balancing innovation with the challenges of external border control.

For what concerns the issue of conflict of interest, the analysis has revealed that having a private interest as a public official does not inherently create a conflict of interest; at the same time, the mismanagement of such interests can lead to corrupt behaviour. To prevent and manage conflicts of interest effectively, it is essential to establish standards and systems, including declaration mechanisms, revolving door regulations, and restrictions on gifts. Fostering a culture of integrity and accountability encourages officials to disclose and manage their interests responsibly. Recent trends show a movement towards stricter ethics rules, expanding the definition of conflict of interest to include non-financial issues and enhanced digitalization for monitoring. The EU has a robust framework for regulating conflicts of interest in public procurement through Directive 2014/24/EU, but other areas remain fragmented with inconsistent enforcement across member states. This decentralization hinders transparency and accountability, especially for high-level officials, highlighting the need for clearer definitions and comprehensive codes of conduct.

To improve anti-corruption legislative action in these four types of corruption, a focus on proactive and anticipatory strategies is essential. Shifting from reactive measures to prevention involves predicting potential corruption issues and strengthening existing safeguards. It's crucial to manage new risks that may arise from stricter laws by addressing them before they become significant problems. Prioritizing the refinement and maintenance of current legal frameworks over continually introducing new ones ensures a stable and sustainable approach. Policymakers should aim for solutions that provide long-term benefits rather than immediate gains.

Anticipatory governance, which integrates foresight and strategic planning, is vital in addressing future corruption challenges. By examining future trends, vulnerabilities, and potential unintended consequences, this approach helps to pre-emptively address evolving corruption methods. Technological advancements, economic and political

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shifts, and new legislative frameworks could impact corruption dynamics. Despite its benefits, anticipatory governance faces challenges such as the adaptability of corrupt actors and the risk of misuse of emerging technologies. Balancing long-term strategies with immediate political needs and ensuring robust protection against corruption within new systems is crucial for successful implementation.