Table 6. Evaluation metrics of the SIT survey

Evaluation area	Questionnaires
Anti-corruption effects of the OPEN system	-Perceived OPEN system's contribution to anti-corruption -OPEN system's effect on preventing corruption: most and least effective area
Equity of Access to Administrative Services	-Perceived equity of access to administrative services -Difference in service areas: most and least effective area -Difference in each group, i.e. the rich vs. the poor or those who own computers vs. those do not
Efficiency	-Perceived OPEN system's contribution to efficiency in sharing information -Effect on efficiency: most and least effective area -Easiness in complaints -Perceived processing speed
Evaluation of the introduction process	-Perceived confusion during the introduction period -Individual acceptability -Organisational acceptability -Room for improvement
Successful factor	-The role of leadership -The participation of public officials

Anti-Corruption Index

Case 3. Assessment of public organisation integrity and results by the Integrity Perception Index (IPI) by KICAC[64]

Objectives -- KICAC conducted an assessment of the level of integrity in public agencies in order to improve transparency and fairness in the State administration through a scientific approach. The overall objectives of the assessment were to enhance anti-corruption initiatives, identify factors causing corruption and support systemic improvement.

Timeframe -- KICAC started the actual evaluation surveys in 2002, although the design of the integrity model dates from 1999. KICAC conducted three rounds of pilot studies in 2000 and 2001 on public organisations to verify the suitability of the model. The first round assessed the accuracy of the model, and a greater number of organisations were involved in the other two rounds to further refine the model.

Procedures -- The main elements of assessment process were the establishment of an assessment framework, selection of target organisations and respondents, analyses of collected information and publication of results. The following table outlines the procedures used for assessing the level of integrity in public agencies.

64 . KICAC Annual Report 2002, Anti-corruption legal framework published by KICAC in 2003, and KICAC website (www.kicac.go.kr).

Figure 10. Procedures used for the Integrity Perception Index

Development of the Assessment Model

Developing the Assessment Model → Identifying Assessment Factors

Determining the Weights → Reflecting Advice from Experts and Assessment Subjects

Determining the Scoring Method → Defining the Scoring Method for Related Questions Gratuity/Entertainment, Offer, Importance of each Service and the Scope of Integrity Calculation

⇩

Determination of Organisations and Services to be Assessed

Organisations → Identifying the Type of Civic and Community Services Provided

Areas of Service → Identifying the Characteristics of each Service Area and the number of Applications Processed

⇩

Collection of Targets and Respondents Lists

Target Organisations → Identifying Subsidiaries of the Organisations

Name of Companies or Organisations → Checking Telephone Numbers

⇩

Assessment and Release of the Results

Assessment → Telephone Survey Conducted by a Commissioned Market Survey Company

Release of Result → Analysis and Announcement of Strategy

Scope -- KICAC assessed the level of integrity in central administrative organisations, local administrative organisations and government-sponsored organisations. KICAC identified corruption-prone areas particularly where discretionary power may affect citizen's interests as well as organisational decisions (e.g. issuing permits, licenses or performing supervisory tasks). To achieve a balanced representation, the assessment was structured to include at least 10% of the respondents from each service area of the surveyed organisation. To assign the appropriate number of respondents to each area, KICAC analysed the number of actual applications processed in each area.

Assessment model -- The assessment model consists of two integrity factors, namely perceived integrity and potential integrity. The first surveys the level of corruption experienced or perceived by citizens using public services or dealing with public organisations. The second reviews the prevalence of potential factors causing corruption as perceived by those citizens. While 'perceived integrity' reflects personal experience and perception of corruption, 'potential integrity' indicates the presence of factors that are likely to correlate with actual incidences of corruption in the future. Integrity scores were calculated according to their weight. Their scores were decided by external experts as well as the Inspector General in organisations reviewed.

Overall Integrity, IPI (100%) = Perceived Integrity (49%) + Potential Integrity (51%)

"Perceived integrity" is composed of two elements of personal experience and perception of corruption-related problems. These elements are again divided into three assessment items -- the frequency of gratuities/entertainments, their amount and their perceived level of seriousness. 'Potential integrity' indicates the likelihood of the occurrence of corruption from the perspective of citizens in general. Factors causing corruption are divided into four sections including the working environment, the administrative system, personal attitudes, and corruption control measures. As set out in the following table these four sections are again divided into eight sections.

Table 7. Evaluation metrics of the Integrity Perception Index

Integrity factor	Sub-field	Question
Perceived integrity	Experienced corruption	-The frequency of gratuities/entertainment -The amount of gratuities/entertainment offered
	Perceived corruption	-The perceived level of the seriousness of the gratuity/entertainment offer
Potential integrity	Working environment	-Habitual offering of gratuity/entertainment -Additional need for person-to-person contact
	Administrative systems	-Practicality of rules and procedures -Level of information disclosure
	Personal attitude	-Fair performance of tasks -Personal expectations of gratuity/entertainment
	Corruption control measures	-Level of corruption prevention efforts -Ease of raising objections

Definition of scores -- The assessment of overall level of integrity derived from the results of the study is measured on a scale of 1 to 10, with 10 being the highest level of overall integrity. KICAC defined the meaning of each score. The following tables show examples of definition for scoring perceived integrity and potential integrity:

Table 8. Definition of level of overall integrity

10 Points	0 Point
Respondents are not aware of any corruption in the process of civic and community services, have never experienced any incidence of corruption, and do not perceive any likelihood of occurrence of corruption in the future. Altogether it indicates "zero exposure" to corruption.	All respondents have either experienced corruption or perceive that corruption is prevalent in the process of civic and community services, perceive a very high likelihood of occurrence of corruption in the future. Altogether it indicates "full exposure" to corruption.

Table 9. Definition of perceived integrity

10 Points	0 Point
Respondents have not experienced any corruption and perceive that no corruption is taking place in the process of civic and community services. Altogether it indicates the perception of zero corruption.	All respondents have actually experienced a significant degree of corruption in the process of civic and community services, and perception that corruption is widespread. Altogether it indicates the perception of pervasive corruption.

Table 10. Definition of potential integrity

10 Points	0 Point
There exists no condition at all that could cause corruption in the process of civic and community services of the organisation. There is no likelihood of incidence of corruption.	There is a persistent condition that could cause corruption in the process of civic and community services. There is a very high likelihood of incidence of corruption.

Follow-up measures -- KICAC adopted a "naming and blaming" strategy that publicly announces the evaluation result through mass-media to encourage agency's voluntary efforts in anti-corruption. In addition, KICAC submits official recommendations for systemic improvement. The Anti-Corruption Act stipulates that the agency should provide a report on its actions implementing KICAC recommendations within a limited period of time.

In general the assessment initiatives have achieved their objectives, particularly to encourage voluntary corruption prevention efforts. For example, the agency responded most actively to assessment results was the Korea Electric Power Corporation (KEPCO). After KEPCO learned that it ranked at the bottom of the list of 71 agencies, it organised an Ethics Management Workshop for their employees, which resulted in the creation of an Ethic Management Committee. In addition, KEPCO is operating a computer-based 'Hotline' with exclusive access by its chief executive officer. This is an indication that KEPCO pays high attention to assessment results.

When assessment results were made public, the National Assembly initiated hearings at standing committees were heads of agencies who had received low rankings were requested to determine the cause of low performance and present proposals for future improvement.

Case 4 Assessment of Anti-Corruption Index (ACI) by Seoul Metropolitan Government[65]

Objectives -- ACI is intended to promote competition and voluntary efforts among district offices in Seoul. The SMG has been conducting studies on the ACI since 1999 and has announced results for each administrative area to encourage efforts for eradicating corrupt practices in the local-government administration. The assessment principally looked at whether:

- Administrative procedures were conducted in a fair manner.
- The information disclosure and administrative regulation was appropriate.
- Channels to report cases of corruption were open.
- Offering bribes ever paid off.

Procedures -- Initiated by the Mayor of Seoul, the Seoul Development Institute elaborated ACI in six months. The civil society had been involved in the design of the model through the Steering Committee of Citizens that reviewed validity of the ACI model in several meetings before finally approved it. Then SMG contracted Gallup Korea to survey the level of integrity in administrative units.

Scope -- Since 1999, surveys were conducted to measure the level of integrity of public servants in 3 agencies, 25 district offices, construction management offices and 19 fire prevention offices. In the beginning they surveyed the handling of civic applications and licensing in five areas that were considered the most susceptible to corruption:

- Food-and-entertainment.
- Taxation.
- Housing and building.
- Construction works; and
- Fire prevention.

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65. "Clean and Transparent" published by SMG in 2003, "Implementation on anti-corruption programmes by SMG" by Suntai Ahn, "Performance evaluation of anti-corruption policy" by Heungsik Park, and SMG website (www.metro.seoul.kr).

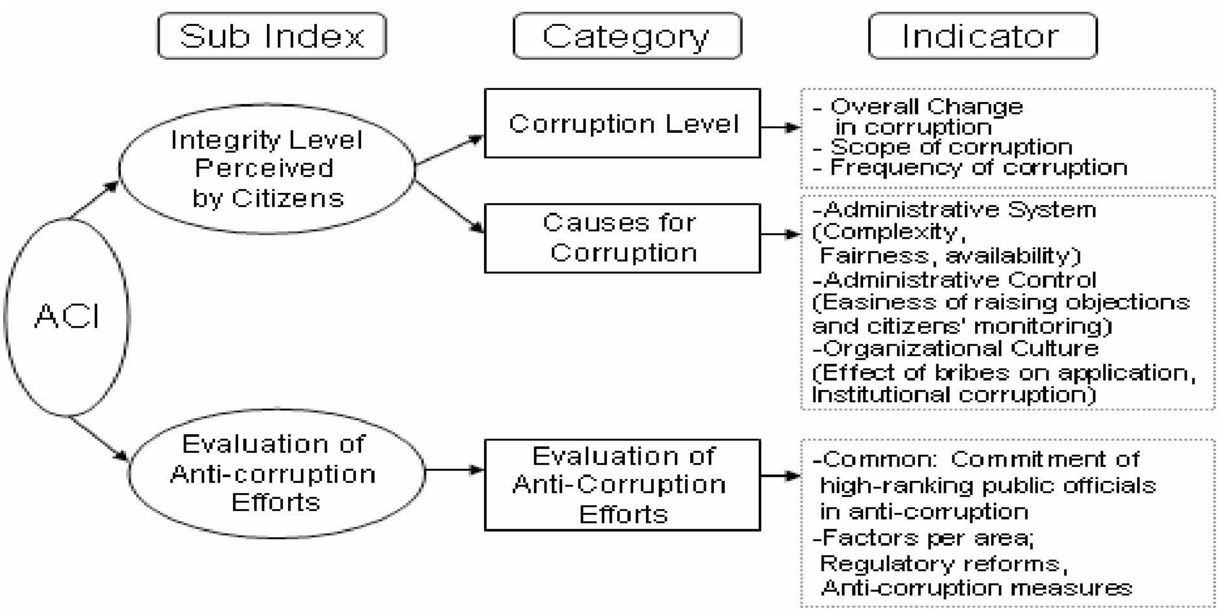
Afterwards, two additional fields were added, namely administration of transportation, as well as park and landscape to the ACI survey.

Assessment model -- The Anti-Corruption Index introduced a formula in 1999 that takes into consideration the weighted values of the integrity level perceived by citizens and the evaluation of anti-corruption efforts in the following way:

ACI (100%) = Integrity Level Perceived by Citizens (58.8%) + Evaluation of Anti-Corruption Efforts (41.2%)

This formula provides a balanced basis blending the results of opinion polls of first hand experience of citizens who actually applied for permits and approvals in the previous year, and tangible statistics on anti-corruption measures taken by each district office.

Figure 11. Evaluation metrics of the Anti-Corruption Index



Under the assumption that categories and indicators are not equal in significance weighted values have been applied to each category and indicator. Since the research was first carried out on the subject of corruption and integrity, no previous data had existed to weigh against the factors used in the model. Consequently, reputable specialists were involved in the design of the model. Thirty-nine specialists from various government and non-government organisations filled in questionnaires to determine the weight of values in each category and indicator. The weighted values calculated in the formula reflect the result of the questionnaires.

After the first application of this formula in the 1999 ACI survey, a number of institutes concerned and some experts challenged the validity of the 'Evaluation of Anti-corruption Efforts' in the model. As a consequence, this factor has been excluded from ACI since the second round of assessment in 2000. Instead, the Seoul Metropolitan Government gives 'Anti-Corruption Effort Award' to selected district offices that have been evaluated excellent in making efforts against corruption by the external evaluation organ composed of civil experts and scholars.

The results of the fourth ACI survey[66] -- published on 23 August 2003 -- show constant progress. The average score for all districts in Seoul has been increased constantly since 1999:

- 64.0 point in 1999.
- 68.3 point in 2000.
- 70.4 point in 2001; and
- 71.5 point 2002.

Follow-up measures -- Since 1999 when the Seoul Metropolitan Government announced the Anti-Corruption Index it was extensively covered by the press every year. In the beginning some District Mayors strongly protested against the bad scores their district offices received. Progressively more and more of these district offices started analysing the results, the causes of corruption and have prepared a range of adapted anti-corruption measures. The Seoul Metropolitan Government also introduced incentives -- such as the Anti-Corruption Effort Award' -- that was presented to those districts that placed high on ACI ranking and had taken explicit measures, for example intensified audit in districts and related organisations which got low-rankings. On the whole, the Anti-Corruption Index is considered mostly effective in raising public awareness about level of corruption and supporting proactive measures in district offices.

66. 12,218 citizens who raised complaints in eight vulnerable fields have been questioned. The 2003 ACI ranking was announced in eight categories.

IMPROVING METHODOLOGIES: KEY FINDINGS

Major characteristics in process and content

Key factors in the procedures -- The following three factors proved particularly crucial in the process for improving methodologies of assessment and collecting objective data based on evidences:

Quality assurance -- The establishment of independent bodies in the evaluation process, such as the Policy Measures Evaluation Council, assured the objectivity and fairness of assessments and also provided coaching for KICAC in the process from design to implementation.

Capacity expansion -- Assessment as a new activity in the anti-corruption field required the gathering of all available knowledge and experience available in Korea and abroad. KICAC and SMG successfully expanded their relatively limited capacity in the administration by involving external research organisations, statisticians, NGOs and private consultants with relevant external expertise in research methodology.

Participation of evaluated organisations -- Involving evaluated organisations in the process helped mobilise the available expertise in the application of framework methods at the actual evaluation process and also accommodated the acceptability of results.

Building-up credibility -- External participation, particularly the involvement of civil society representatives and reputable experts in the development of assessment models substantially contributed to their acceptance in the administration and by the public at large. Independent institutions also played a role in conducting the survey, for example Gallup Korea carried out the ACI survey for the Seoul Metropolitan Government. According to public officials and experts, the participation of independent institutions largely contributed to the enhancement of credibility and validity of the methodology used.

Publicising results -- The 'naming and shaming' strategy was generally used to make the results of evaluations public and mobilise influence of public opinion. Both KICAC and SMG have publicised the evaluation outcomes through mass media that put pressure on low-ranked organisations to take follow-up actions urgently. The National Assembly also received information on evaluation under request and called for organisations under its jurisdiction to improve their anti-corruption programmes specifically taking into account the evaluation results. As a result of this naming and shaming strategy, the organisations ranked low by evaluation generally made proactive efforts and initiated specific measures to avoid their low ranking evaluation results in the future.

Enhancing objectivity -- A strategic characteristic of the Integrity Perception Index and the Anti-Corruption Index is that they are based on the evaluation of citizens with direct experience of public service. International surveys, for example the TI Corruption Perception Index, could less take into consideration the specificities of country contexts, they focus rather on the perception of selected group of people across countries (for example foreign businessmen with limited experience in a country but be influenced by the person's subjective perception). The IPI and ACI is measured by inquiring whether citizens who have directly contacted the administration, dealt with public officials and received public services, they actually have experienced corruption. This direct assessment method seeks to exclude subjective perception or prejudice to some extent.

Integrating subjective and objective data -- The evaluation models intended to integrate objective factors, such as statistics of corruption, and subjective factors, such as the results of perception measurement. However, problems emerged in the integration process, for example how to interpret and analyse trends such as increased number of disciplinary punishment (could it reveal severity of corruption or stronger prosecution?). In the fine-tuning of assessment models certain factors have been excluded (for example the Seoul Metropolitan Government has not included the factor on 'Evaluation of Anti-corruption Efforts' in the Anti-Corruption Index since 2000) but other factors remained in use, such as statistics on frequency and scale of offering money, valuables and entertainments.

Identifying strengths and weaknesses -- The series of evaluations provide a considerable database for analysing results across the administration at the central and local level. The evaluation results confirmed that among 'the common initiatives' organisations paid more attention to relatively less costly and easy to do initiatives, such as increasing transparency in personnel management systems and organising anti-corruption training and promotion campaigns. On the one hand, initiatives enhancing open government, such as increasing the disclosure of administrative information, still have room to improve. The results of agency specific initiatives demonstrated a diverse trend related to the level of organisational. While central administrative agencies received high scores in planning function-intensive initiatives, they received the lowest scores in executing these initiatives. On the other hand, local government organisations obtained the highest scores in the aspect of implementation.

Table 11. Effectiveness of measures by the national evaluation of corruption-prevention initiative

Organisation	**Most effective measures**	**Least effective measures**
Ministries	- Increasing transparency in personnel management systems	- Enhancing the transparency of contract-related works
Semi-Ministries (Service-level organisations)	- Increasing transparency in personnel management systems	- Implementing and operating the OPEN system
Local governments	- Increasing transparency in personnel management systems - Enhancing the transparency of contract-related works	- Increasing disclosure of administrative information - Implementing and operating the OPEN system

In the Seoul Metropolitan Government the results of specific evaluation of the OPEN System revealed that the most effective anti-corruption areas were related to housing and construction work which were generally considered highly corruption-prone areas in the past. On the other hand, the least effective areas were related to culture and tourism which were relatively less regulated and had less civic applications.

Table 12. Effectiveness of the OPEN System in Seoul

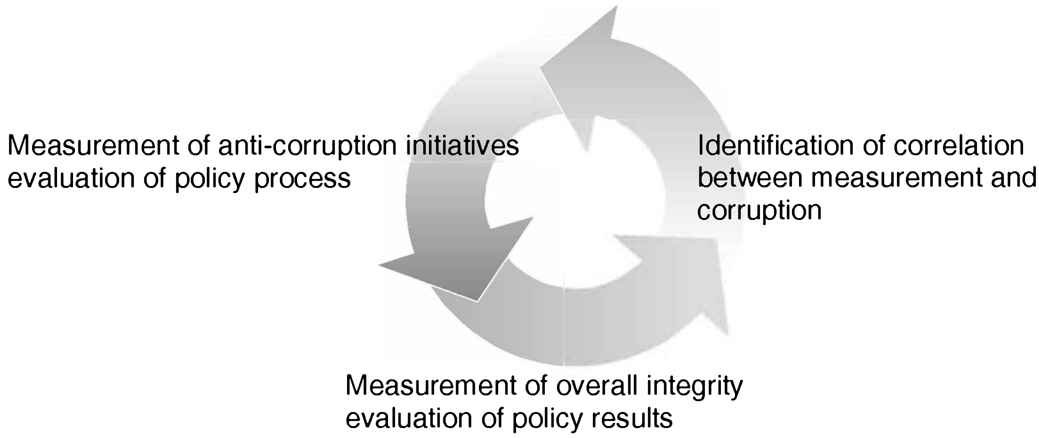
areas	Most effective	Least effective
Housing and construction	1461(29.8)	221(4.8)
Construction work	833(17.0)	238(5.1)
Urban planning	486(9.9)	300(6.5)
Transportation	479(9.8)	407(8.8)
Environment	398(8.1)	448(9.7)
Fire-fighting	316(6.4)	429(9.2)
Sanitation & welfare	372(7.6)	575(12.4)
Industry and economy	197(4.0)	511(11.0)
Administration	246(5.0)	779(16.8)
Culture and tourism	119(2.4)	730(15.7)
Total (N=1,636)	4907(100)	4638(100)

The biggest methodological challenge in the evaluation process was how to provide comparable data that may possibly rank agencies in spite of existing differences in tasks, objectives, activities and responsibilities among agencies. The involvement of assessed agencies was a crucial step to define common elements, approaches and functions suitable for the assessment model. This process also fostered the credibility and validity of methodology used and made acceptable both the procedures and results of evaluation in the assessed organisations.

Impact assessment

Establishing connections between assessment models requires the understanding how the measurement of policy implementation (particularly evaluation of policy process) is linked to the measurement of the overall integrity level, in other words, the evaluation of policy impacts. By assessing the level of integrity in public organisations, KICAC identified high corruption level areas and focused its efforts on these areas. KICAC both encouraged specific voluntary actions, such as prevention initiatives, and conducted further evaluations primarily on the identified high corruption level areas. Although the verification of correlations between assessments require more information to draw trends on actual impacts of integrity and anti-corruption policies, the identification of impacts on level of corruption could ideally be added in the policy cycle, in which the three factors are dynamically interrelated as the following figure shows:

Figure 12. Dynamic connection of assessment

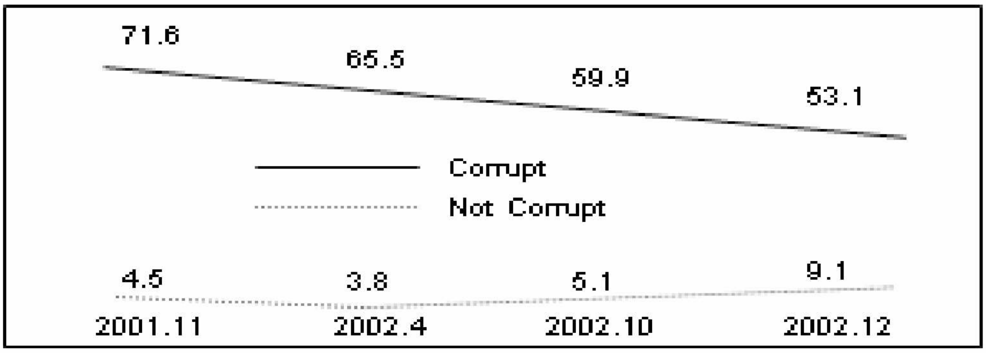


Impact on corruption

Collection of sufficient historical data provides a ground for verifying the accuracy of assessment models and also indicates level of implementation of policy measures in surveyed areas as well as their effectiveness, the impact on the level of corruption. Although evaluation efforts started relatively recently in Korea, several rounds of evaluations have been conducted in the last few years that could provide sufficient statistical data to identify trends. On the whole, general trends indicate continuous improvements in last years, although reliable analysis require sufficient historical data, with reasonable time series that has not been accumulated, to allow examination of data collected with the application of new methodologies and compare them with data collected before. Preliminary results of evaluations suggest that the assessment of anti-corruption initiatives may contribute as a factor to enhance integrity in government.

The national corruption perception surveys have regularly collected accurate information on the level of perception of citizens, public officials and experts. According to these survey carried out quarterly by KICAC, the perception level of corruption is declining. For example, a comparison with surveys conducted in November 2001 and in December 2002 showed that the percentage of general citizens who thought civil servants are corrupt has declined from 71.6% to 65.5%, to 59.9% and then to 53.1% within a year.

Figure 13. Trend of perception level of corruption

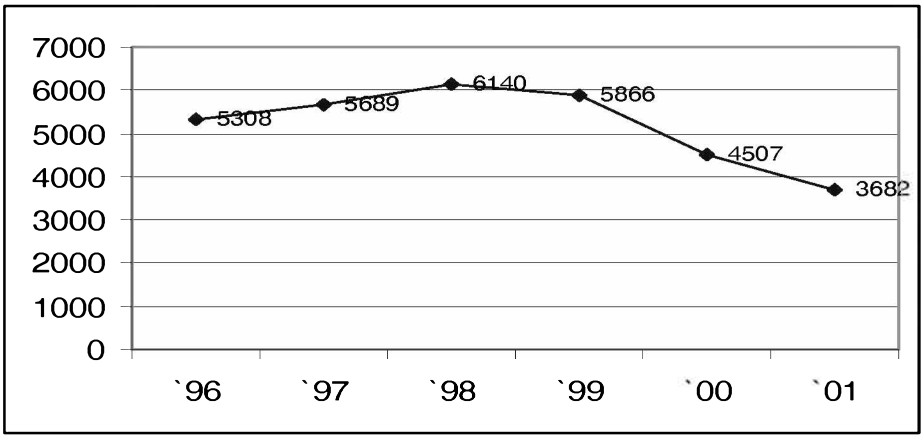


The results of the most recent two surveys in 2003 indicated slight improvement, the level of perceived corruption had been gradually lowered in 2003:

- Corrupt (59.3%), not corrupt (5.6%) (March 2003)
- Corrupt (58.2%), not corrupt (5.8%) (June 2003).

The level of corruption measured by traditional statistical methods has also been improved since 1999. For administrative punishment, the number of reprimanded public officials has significantly decreased by more than 40 % between 1998 and 2001[67].

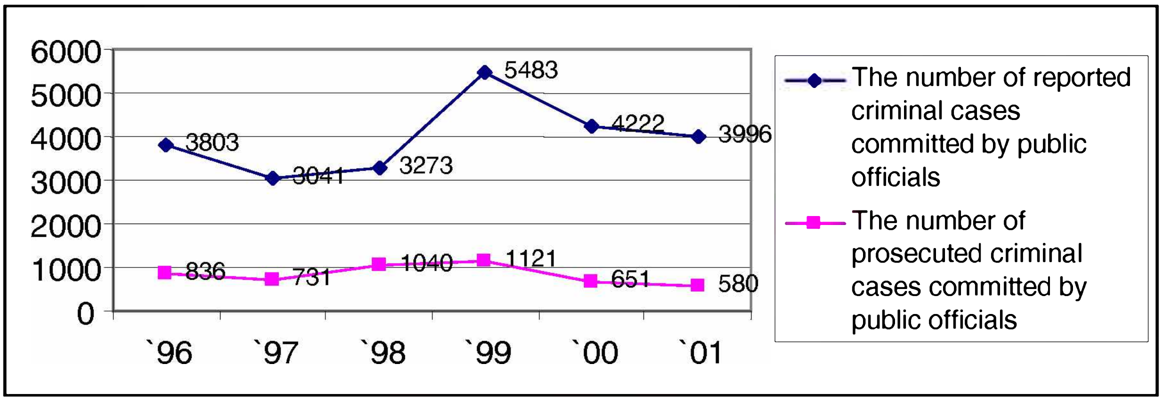
Figure 14. Administrative punishment; number of reprimanded public officials



67. Annual report on administrative statistics published by the Ministry of Government Administration and Home Affairs in 2002.

Concerning the more serious cases, the criminal punishment of corruption by the justice system, both the number of reported and prosecuted criminal cases committed by public officials are on the decrease since 1999[68].

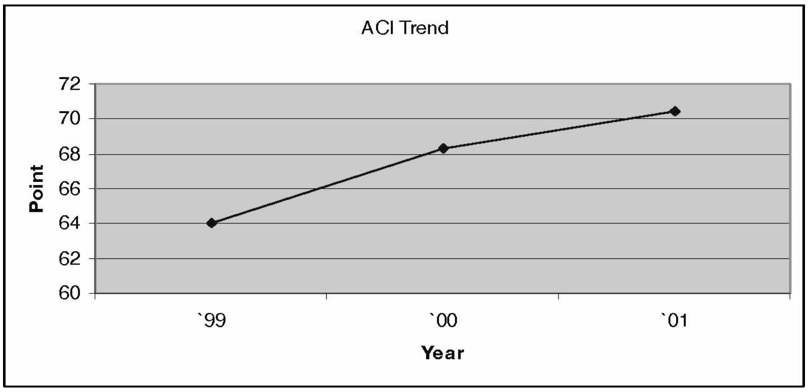
Figure 15. Criminal sanctions: number of reported and prosecuted criminal cases



Evaluations using traditional statistical methods, such as the justice statistics, could also provide more historical data (over a five-year period) that is considered necessary to verify the impact of policy implementation in mid-term. Although, the information provided by traditional statistical methods should be carefully analysed (for example identify the causes for the decrease of cases that may also mean less effective investigation than less actual corruption cases).

Similarly to the national level, at the sub-national level the figures resulted by the evaluations commissioned by the Seoul Metropolitan Government show constant improvement. The average of the Anti-Corruption Index of Seoul Metropolitan Government was 64 in 1999, 68.3 in 2000, and 70.4 in 2001 (100 is the maximum point for a corruption-free score), indicating steady improvement in the level of integrity in the city administration.

Figure 16. Trend of Anti-corruption Index



The level of satisfaction with the OPEN System and perceived opinion of citizens that the OPEN system contributed to eradicating corruption also show constant improvement since its launch.

68. Annual report on prosecution statistics published by the Supreme Public Prosecutor Office in 2002.

Figure 17. Satisfaction with the OPEN system

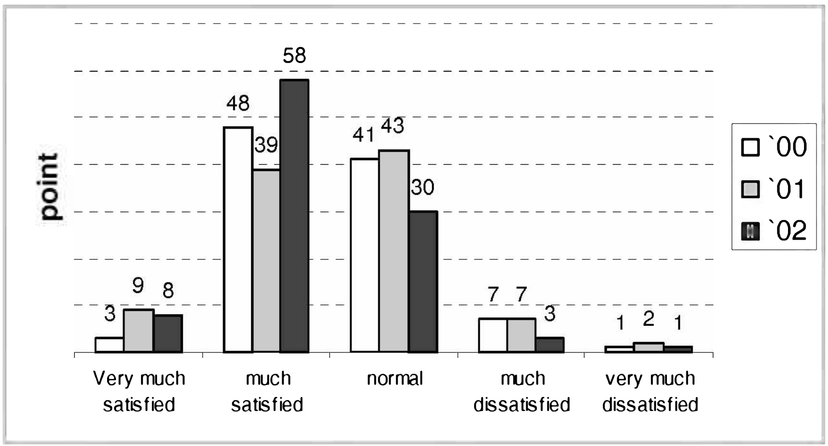
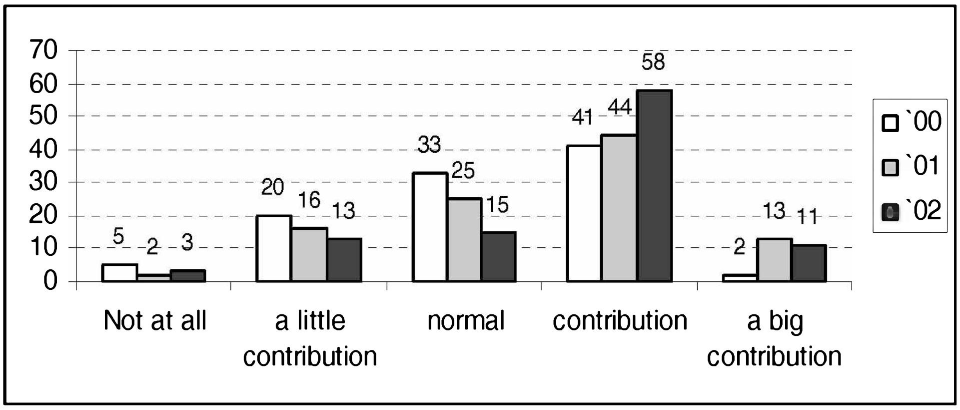


Figure 18. The OPEN system contribution to anti-corruption



EFFORTS TO EVALUATE INTEGRITY AND CORRUPTION PREVENTION MEASURES IN OECD COUNTRIES

Executive Branch of the United States[69]

The ethics programmes in the Executive Branch of the United States have moved from an approach that put the emphasis on reactive criminal prosecutions to a more proactive approach with training and counselling. The Office of Government Ethics (OGE), a dedicated central agency within the executive branch has general responsibility for the overall direction of executive branch policies related to ethics. As a part of its oversight responsibilities, OGE periodically reviews agency ethics programmes to ensure that they are carried out within a consistent framework. Specifically, OGE is exploring ways to raise its policy focus from simple compliance to aspiring to the highest principles. In order to monitor the implementation and evaluate the programme, OGE has been regularly carrying out reviews since 2001. The survey had two primary objectives to assess:

1. The effectiveness of the executive ethics programme from an employee perspective;

2. The executive branch ethical culture[70].

Methodology

The survey was distributed to a random sample of employees in 22 executive branch departments and agencies. There were three key employee demographic variables:

1. Financial disclosure filing status.

2. Work location within or outside the Washington, D.C. area; and

3. Supervisory status.

The ethics survey was conducted by an international private consultancy firm that sent out questionnaires by mail. In the process, the consultancy firm developed and customised the "IntraSight Assessment"[71], an assessment tool to the policies and ethics programme.

OGE set up and distributed guidelines and tips for the ethics programme review. The 'Guidelines for Conducting Reviews of Ethics Program' provides specific guidance to OGE reviewers on the requirements to which they must adhere when conducting an ethics programme review. 'The Tips on Preparing for an Ethics Program Review' provides a detailed listing of the key programme elements OGE examines during a routine ethics programme review. These tools constitute a useful road map for preparing for a review.

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69. "Guidelines for conducting reviews of ethics programs", June 2002. "Executive Branch Employee Ethics Survey 2000 final report", OGE Memorandum March 2001 and December 2002; Report on the United States Experience prepared for Expert Group on Managing Conflicts of Interest, January 2003.

70. Ethical culture means the climate and environment of the executive branch that supports employee conduct responsive to executive branch ethical standards.

71. Details on the evaluation areas and the questionnaires can be found in Annex 2.

Follow-up measures

After the first review in 2001, OGE revised the survey questionnaire and changed programme review procedures to evaluate the programme more effectively. A pre-review step was introduced to determine the type of review for agencies. This pre-review consists of examining OGE internal documents filed by the agency, an examination of prior agency review reports and discussions with the agency's OGE desk officer, the agency's ethics officials and the Inspector General's Office. Based on the pre-review work, a decision is taken on the type of review to be carried out. If the pre-review finds no weaknesses in the programme, generally no further review will be performed. If the pre-review finds problem areas, three types of reviews are implemented:

- Level 1 Review -- This is a quick inspection of the programme or parts of the programme.
- Level 2 Review -- This is an in-depth review of one or more aspects of the ethics programme which appeared to have some weakness in the pre-review process.
- Level 3 Review -- It is the full review as done in 2001.

This review process did not attempt an agency-level analysis and evaluation of individual agency culture or programmes. The overall purpose of these reviews was not to rank or compare agencies but rather to inform the entire executive branch regarding the overall awareness and perceived effectiveness of the programme.

After review, OGE sends a report to agencies with recommendations for improving the programme. Then, the agencies must respond to OGE recommendations within 60 days as to the actions taken or plans for action.

Even though OGE does not send the reports to the Congress, a Congressional committee requests a report by an agency under its jurisdiction and OGE sends the reports. In addition, periodically, OGE releases reports to the media.

A follow-up review is conducted after six months from the date of the report in order to determine whether the agency has taken adequate and effective action on each of the recommendations. By doing this, OGE ensures that the plan has actually been implemented.

Finland[72]

The Finnish state administration has developed a strong legal basis as well as long tradition for ensuring that authorities fulfil their task properly and public officials meet high standards of conduct in exercising public power. Finland has a strong tradition of transparency and openness, which resulted in the lowest perceived corruption figures world-wide published by Transparency International.

As a principal actor, the Personnel Department of the Ministry of Finance, the State Employer is responsible for the general personnel policy of state administration and development of legislation relating to State civil servants. There is no separate agency in Finland responsible for ethics. The Personnel Department set up the Ethics Working Group that conducted the survey on values and ethics in 1998. The two overall objectives of the survey were to:

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72. "Values and Ethics in the Finnish State Government", report prepared for the Expert Group Meeting on Managing Conflicts of Interest, January 2003.

- Examine ways of maintaining and enhancing traditionally high quality ethics in the central government; and
- Present a comprehensive picture of the values upon which the Finnish civil service ethics is based.

The questionnaire survey on ethics and values of civil servants was addressed to both managers and representatives of personnel in the Finnish ministries and government agencies. It was limited to the point of view of civil servants and authorities. The questionnaire[73] was sent to 170 agencies and institutions of the central State administration. This survey intended to improve the specific elements of human resource management by clarifying and integrating basic values into the practical work of operative units as well as avoiding conflicts of interest. The decision of the Government in 2001 forced government organisations to integrate the values consented through the debate process into working practices.

As a follow-up, the Ministry of Finance launched a pilot project on 'Values to be part of the daily job' in September 2002. The main objective of the project is to provide practical models for determining values and their incorporation into the daily activities of the agencies. Another aim is to make the values common to the agency and also part of their everyday activities. The results of the project will be presented in spring 2004.

Australia

As a principal actor, the Australian Public Service (APS) Commission is responsible for ethics-related policy at the Commonwealth. The 2002-03 State of the Service Report[74] primarily focused on the values in the public service, for the first time, used an employee survey results to provide statistical evidences. The APS Commission also conducted a project of assessing how six selected central agencies were applying the APS Values and ensuring compliance with the Code of Conduct.

At the state level, specialised agencies such as the Independent Commission Against Corruption (ICAC) in New South Wales undertook research projects to develop a snapshot of corruption-related issues. The objectives of the ICAC project[75] launched in late 2001 were to:

- Have public sector organisations indicate the corruption risks they believe they face and detail the prevention strategies in place.
- Identify differences among public sector organisations in respect to the risks they face and the prevention strategies in place.
- Assist the ICAC in developing sector-specific advice for dealing with corruption risks.
- Promote discussion of the corruption risks facing New South Wales public sector organisations.
- Provide information to individual organisations to assist them in targeting areas where the development of further prevention strategies is warranted.

73. The specific assessment areas and the questions can be seen in Annex 2.

74. The full text of the Report can be consulted on the Internet at http://www.apsc.gov.au/annualreport/0203/index.html .

75. "Profiling the NSW public sector" published by ICAC in 2003

The ICAC developed two surveys[76] for this research: an organisational survey for Chief Executive Officers and Chairpersons and a staff survey for public sector staff.

Japan[77]

The National Public Service Ethics Board (the Ethics Board) established in 2000 is responsible for conducting research and studies concerning ethics in the national public service as well as developing standards for disciplinary actions as sanctions against employees violating the ethics laws.

In order to recognise how the Ethics Law and Ethics Code are being applied in each Ministry and how they affect work practices and what public employees expect of them, the Ethics Board collected opinions from representatives of the society. Since 2000, the Ethics Board has continued to gather opinions from intellectuals in different regions. The Ethics Board held meetings with private sector managers, newspaper editors, scholars, local government heads and social critics in cities. At these meetings, the Ethics Board gathered information about the various opinions people held on the ethics system, such as the effectiveness of anti-corruption measures.

Moreover, the Ethics Board carried out a survey about employee ethics in 2001. The areas reviewed by the questionnaire included:

- Respondents' impressions of the sense of ethics among public officials.
- Their overall impression of the code of conduct, e.g. the level of detail and strictness.
- The opinion that public employees are too restricted by the code of conduct and that information gathering has become more difficult due to the code of conduct.

Trends from a comparative perspective

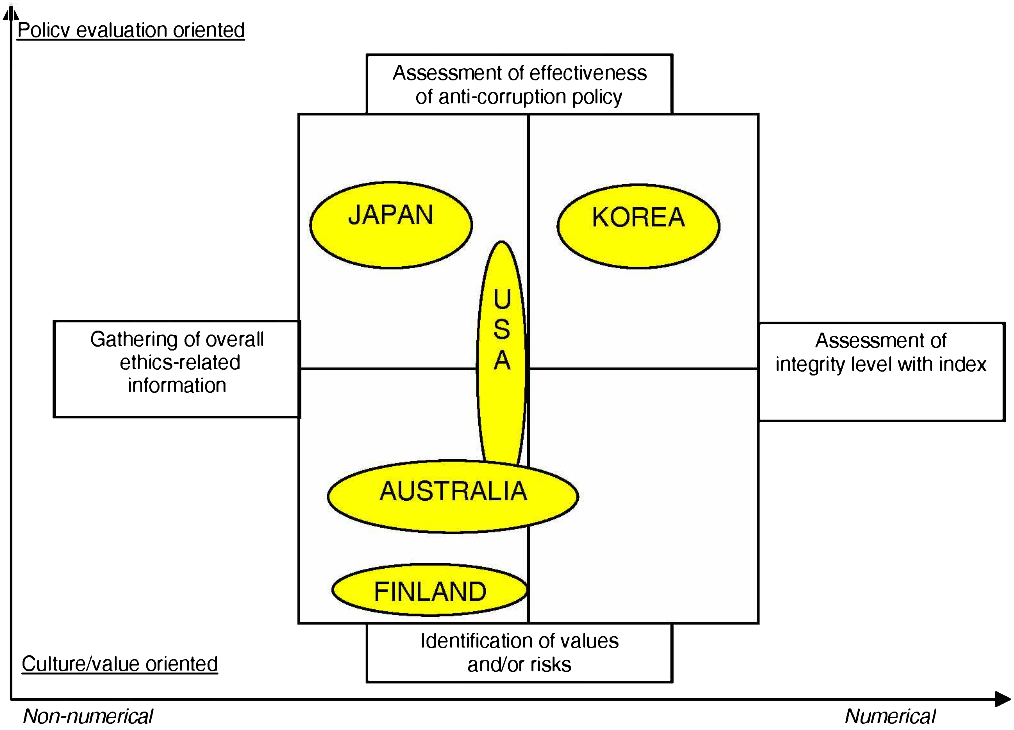
The experiences of Korea, the United States, Australia, Finland and Japan show that that these countries have started collecting evidence to provide feedback for improving ethics policies in the government organisations. These initiatives aimed at mapping out systemic, significant ethics-related issues in organisations rather than focusing on individual cases. Their overall objectives[78] showed that difference resulted from the various cultural, administrative and historical country contexts. The following chart attempts to outline these different objectives:

76. Information on the specific assessment areas and the questionnaires used can be found in Annex 2.

77. Annual Report FY 2001 published by National Personnel Authority Japanese Government

78. Key objectives include Korea: Assessment of anti-corruption policy and assessment of integrity level with index, USA: Assessment of the ethics program and identification of ethical culture, Finland: Identification of values and integration values into organisations, Australia: Application of values and identification of risks and corruption prevention strategies, Japan: Assessment of anti-corruption measures and gathering overall ethics-related information

Figure 19. Comparative perspective



Common elements: Developing an assessment framework

The Korean experience, although these methodologies are at an experimental stage and it may be premature to recognise them as best practice of developing and verifying innovative methodologies, they could provide preliminary ground for identifying key elements of a sound assessment framework. Some features in their methodologies were identified as good components in the Korean context and have also been reported by heads of agencies as good practice.

With the recognition that there is no one-size-fits-all solution across countries, the methodologies reviewed in the Korean study provided a preliminary outlook to determine principles and components of a sound assessment framework that can support the design and implementation of assessment in OECD member countries. Taking into account the results in case studies, the following list consists of the first preliminary inventory of common elements:

1. **Aims are in line with country context** -- Adapting the objectives to policy demands that take into consideration the administrative context of a country.

2. **Regular review** -- Conducting regular reviews enables comparison of outcomes. The reviews will then provide a useful means by which to assess the effectiveness of programmes implemented and identify gaps between practice and theory.

3. **Involving external experts --** Involving external professional capacities can be used effectively when internal knowledge and experience is not sufficient but it could also enhance the credibility the evaluation process by ensuring quality both in the design and implementation.

4. **Evaluation by citizens --** Engaging citizens concerned in the evaluation provides direct feedback from service user and also exercises public scrutiny (watchdogs). Citizen participation can also contribute to building public trust in government.

5. **Participation from the evaluated organisations --** Involving the evaluated organisations in the design process could support applicability/feasibility of methodologies and also make more acceptable the results in the evaluated organisations.

6. **Balanced assessment framework --** Compiling subjective evaluation data with objective data could contribute to achieve a well-balanced assessment framework.

7. **Publicising results** -- Publicising evaluation results could generate support from the Parliament and the media. Public announcement of results is an effective incentive to generate voluntary actions in low ranked organisations.

8. **Using the evaluation results** -- Determining the most effective and the least effective areas and measures provides impetus for action in assessed organisations. Distributing good practices has a positive spill-over effect on other organisations and allows each organisation to determine the future direction of their corruption-prevention efforts.

9. **Follow-up measures** -- Supporting with adequate follow-up mechanisms starting with recommendations for improving programmes, mandatory responses from executives within a limited timeframe and follow-up reviews to ensure implementation.

10. **Assessment of assessment methods --** Last but not least, investing adequate time and resources in identifying the adequacy and actual impact of evaluations. Good evaluation methodologies include not only evaluation of tools and programmes, but also evaluation of the impact of evaluation itself.

ANNEX 1.

PROCEDURES TO DEAL WITH CORRUPTION CASES

Figure 20. Procedure for High-Ranking Officials [79]

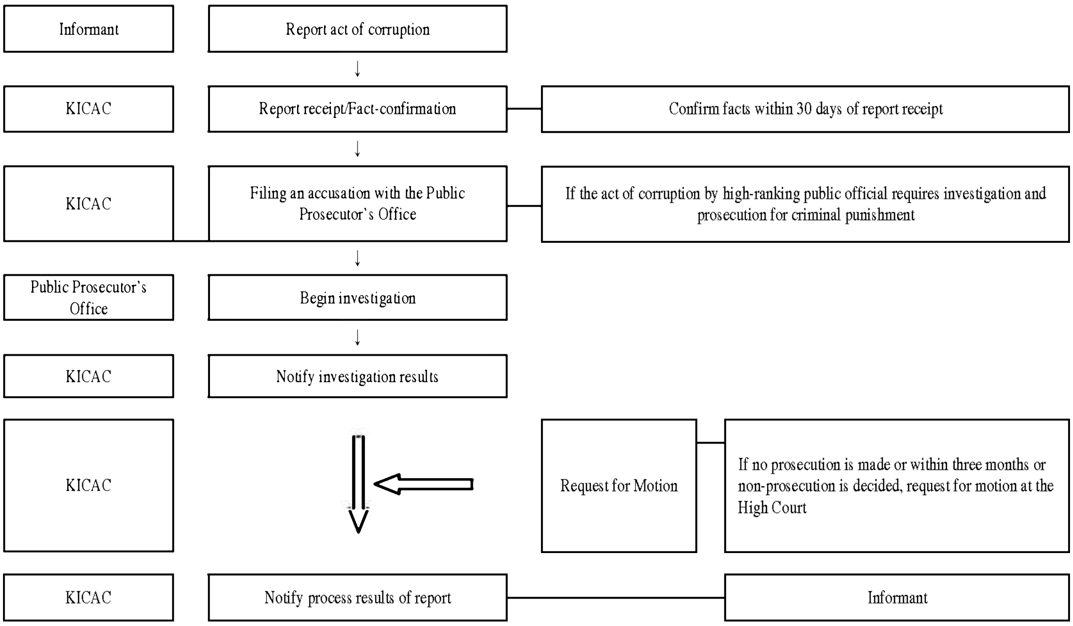
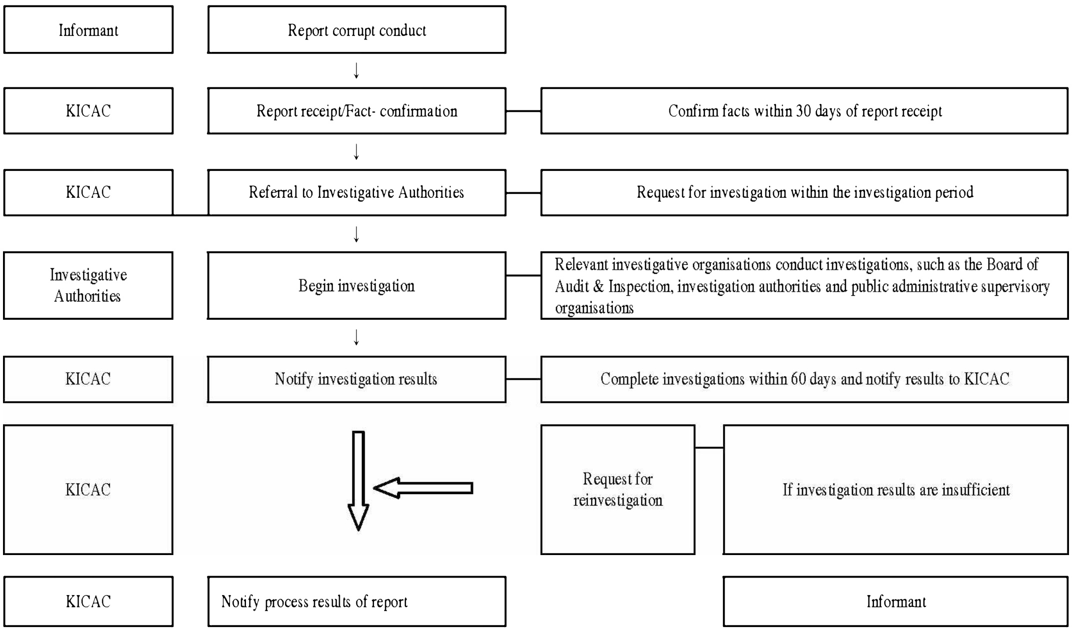


Figure 21. Procedure for Ordinary Public Officials



79. High-ranking public officials include: Mayors of Seoul and other metropolitan areas and provincial governors at vice-ministerial level and higher, police officers with the rank of superintendent-general and higher, judicial officers or public prosecutors, military officers at ministerial level and members of the National Assembly

ANNEX 2

EVALUATION METRICS OF THE UNITED STATES, FINLAND AND AUSTRALIA

Table 13. Evaluation metrics used in the Executive Branch of the United States

Assessment area	Questionnaire
Programme awareness	- Familiarity with the ethics programme - Familiarity with the Rules of Ethical Conduct - Awareness of ethics officials in the agency - Perceived objectives of the ethics programme
Programme effectiveness	- The usefulness of the Rules of Ethical Conduct in guiding decisions and conduct - The helpfulness of resources consulted when ethics issues arise - Reasons for not seeking advice and, if advice was sought, for not seeking advice from ethics officials - The frequency with which employees received ethics training - The usefulness of training in making employees aware of ethics issues and in guiding decisions and conduct
Agency culture factors	Employees' perceptions that in their organisational culture: a. Supervisors pay attention to ethics, b. Executive leadership pays attention to ethics, c. There is consistency between ethics and agency practices, d. Open discussion about ethics are encouraged and occur, e. Ethical behaviour is rewarded, f. Unethical behaviour is punished, g. There is follow-up on reports of ethics concerns, h. Efforts are made to detect violators, i. Unquestioning obedience to authority is expected, and j. Employees are treated fairly
Culture outcomes	Employees' perceptions regarding the extent to which: a. Unethical behaviour occurs in their agency, b. Employees are aware of ethical issues when they arise, c. Employees seek advice when needed, d. It is acceptable for employees to deliver bad news, e. Violations are reported by employees when they occur, and f. Discussions on ethics are integrated in decision-making processes

Table 14. Evaluation metrics used in Finland

Assessment areas	Questionnaire
Changes in the values of governance in the last 10 years.	- Perception level of value-basis of civil service ethics - Traditional values and new values - The most important values - Values in practice (correlation of the values and practical operations)
The clarity of principles of civil service ethics	- The clarity of principles - The necessity of the duty to declare one's interests - The evaluation of the permissibility of ancillary jobs
Unethical practices	- The most harmful unethical administrative practices - The most usual unethical practices
Factors affecting civil service ethics	- The most effective measures - Communicating values - Training - How is ethics taken into account in recruitment?

Table 15. Evaluation metrics used by ICAC in NSW, Australia

Assessment areas	Questionnaire
Perceptions of corruption risk	All respondents were asked to provide their perceptions of corruption risk areas within their own organisations. The survey set out a number of business processes and activities and asked a number of questions about perceived risk in these areas
The organisation and its function	A range of questions were asked about the organisation, e.g. the main area of business, the number of locations the organisation possessed, etc. The organisational survey had considerably more questions than the staff survey. Additional questions asked of CEOs and Chairpersons included how the organisation was funded and the size of the recurrent budget. The organisational survey also asked whether organisations performed 15 business functions of interest to the ICAC (e.g. allocating grants of public funds, performing an inspectorial and/or regulatory role, receiving cash payments, etc)
Organisational corruption prevention strategies	Both survey asked a range of questions on corruption prevention strategies in place (e.g. code of conduct, gift and benefits policies, etc). The organisational survey included additional questions directed at CEOs and Chairpersons, such as whether an internal audit strategy was in place and whether the organisation complied with particular legislation. The staff survey asked specific questions of staff, such as how useful they found their code of conduct.

ANNEX 3

SURVEY QUESTIONNAIRE
USED IN THE STUDY RESEARCH OF THE KOREAN EXPERIENCES

1. General framework[80]

1.1. Organisation's name ____

1.2. Organisation's roles and responsibilities related to the ethics/anti-corruption programme

1.3. Relevant organisations referred to or with which there was cooperation in order to implement the organisations' functions. (i.e. other executive bodies or the justice structure) How organisations co-ordinate with each other?

1.4. Current ethics programmes or anti-corruption policies established by your organisation

2. Methodologies of assessing the effectiveness of ethics/ anti-corruption programme

- Does your organisation have relevant principles, guidelines, or laws mandating the programme review or the assessment of the ethics/anti-corruption programme?
- Did your organisation carry out programme reviews or assessment during the past 5 years? Or is there an on-going project? Please specify one or two review cases.

For easy reference, possible examples are provided after this table.

	Case 1	**Case 2**
2.1. When and how often		
2.2. Aims		
2.3. Objectives		

80. NOTE: You may attach the relevant materials or web site address of your organisation.

2.4. Commission		
2.5. Criteria		
2.6. Preparatory procedure		
2.7. Implementation of the assessment		
2.8. The related materials		

EXAMPLES: These examples are provided for reference only

2.1 **When and how often**

- Regular review (annual/biannual) since when
- Irregular review when

2.2. What were the **aims**?

- To find out whether objectives were reached (i.e. control)
- To adjust the process under evaluation (i.e. management)
- To document experiences (i.e. learning)

2.3. What were the **objectives**?

- Research the changes in the values of governance, principles of civil service ethics
- Identify unethical practices and factors affecting civil service ethics
- Evaluate anti-corruption policies and their enforcement in public institutions
- Research the mindset and behaviour of public servants
- Other, such as information provision, consultation, public participation

2.4. Who **commissioned** the evaluations?

- The government service directly concerned
- Other government services (e.g. internal audit unit, evaluation unit)

- External oversight bodies (e.g. parliament, supreme audit institution)
- Other (e.g. civil society organisations, think tanks)

2.5. What **criteria** were used? Please specify the evaluation factors and sub-factors.

- Realised corruption level (corruption experienced or perceived)
- Potential corruption level (work environment, institutional system, individual behaviour, or corruption control)
- Programme awareness (familiarity with ethics programme, familiarity with the rules, awareness of ethics officials in the agency, perceived objectives of the ethics programme)
- Programme effectiveness (usefulness of rules, helpfulness of resources consulted, the frequency of ethics training)
- Organisational culture factors (attention of supervisors, consistency between policies and practices, open discussion), etc.

2.6. What was the **preparatory procedure**? How was the methodology developed?

- By consensus with internal public officials
- By agreement with citizens, NGOs, or the Congress
- By external research organisation

2.7. How did your organisation implement the assessment?

- Method: Surveys, Interviews, Observation, Reviews of document
- Sample : citizens, public official, etc
- Job categories assessed, etc.

2.8. Please indicate the document title and attach the **materials** if any

- Survey questionnaire
- Guidelines of programme review
- Training material of programme review

3. Follow-up measures

3.1. Did your organisation provide feedback to other public organisations? e.g. an official recommendation, a written or verbal recommendation, administrative action, prosecution, etc.

3.2. Is there any principle regulating the mandatory/voluntary response from other executive organisations to the feedback?

3.3. How did your organisation adjust the policies or make specific decision according to survey outcomes? e.g. revision of the survey questionnaire for new statistics, introduction of the pre-review step or the electronic system, improvement of the human resource management system, etc.

3.4. How were the results communicated and used?

- Was there a communication strategy?
- Which communication channels were used?
- How much did it cost to disseminate the results of the evaluation?
- How were the evaluation results used? e.g. report on the outcomes to the other organisations such as the Congress
- If you have the reports on outcomes or findings of the survey, please attach them.

3.5. Does a policy on evaluation of citizen engagement exist?

- Do general or specific guidelines for evaluation exist?
- Are guidelines for evaluating citizen engagement being developed?

3.6. Please specify the quantitative and/or qualitative results of the assessment. e.g. the positive feedback from internal employee or citizens about the assessment programmes, the lower level of corruption, etc.

3.7. What institutions and procedure were identified as best practices or as problems?
Please specify why?

3.8. Please specify the problem encountered in the assessment process

3.9. Please advise on how to reduce terrors and solve problems that may occur in the process

Your response is greatly appreciated. Thank you for your assistance.

EVALUATING THE EFFECTIVENESS OF MEASURES TO PREVENT AND COMBAT CORRUPTION IN FRANCE[81]

Introduction

Good governance involves the evaluation of government policy, including measures to prevent or combat corruption. Defining the right approaches, methods and conceptual frameworks to evaluate the impact of anti-corruption measures is a priority in OECD member countries, which seek to gain a better grasp of policy effectiveness in this sensitive field.

The specific aims of the French case-study are:

- To take stock of evaluation practices in France with regard to anti-corruption measures: are there any, how is information passed up through the system, and is it effective? Should the term be evaluation, monitoring, or control (inspection, auditing)?

- To highlight novel practices but also weaknesses in the system used to prevent and combat corruption, basing the analysis on consultations with key players in the system.

Scope

The complexity of the French system and the number of measures and institutions dealing with corruption in France make it quite hard to define the subject for evaluation. In the broadest sense, evaluation covers:

- A whole raft of measures (which relate to prevention or enforcement, and may be legislative, regulatory, managerial, informational or otherwise).

- The many institutions with some degree of responsibility for implementing, monitoring or evaluating those measures.

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81. The chapter was prepared by **Marie Scot**, consultant at the OECD, who would like to thank all those who agreed to take part in the study on measures to prevent and combat corruption in France, including: Mr. Bertucci, Mr. Bouchez, Mr. Bueb, Mr. Dahan, Mr. Dommel, Mrs. Gisserot, Mrs. Hourt-Schneider, Mrs Labrousse, Mr. Lagauche, Mrs. Lamarque, Mr. Le Bonhomme, Mr. Leplongeon, Mrs. Leroy, Mr. Loriot, Mr. Marin, Mr. Mathon, Mr. Maury, Mr. Mongin, Mr. Pancrazi, Mr. Pichon, Mr. Pons, Mrs. Prada-Bordenave, Mr. Quesnot, Mr. Rohou, and Mr. Terray.

    Special thanks go to Mrs. Hélène Gadriot-Renard, Conseillère at the Court of Auditors (Cour des Comptes) and to Mr. Denis Berthonier, Conseiller at the Court of Auditors, for helping to launch the study and facilitate its completion, and to Elodie Beth and Marie Murphy for finalising it.

A cross-cutting view can also serve to evaluate the anti-corruption system by risk area, such as conflicts of interest and "*pantouflage*" (leaving public office to work for a private company), or public procurement.

This particular study is confined to *administrative corruption* and does not address efforts to combat corruption in the private sector, particularly in major enterprises or groups at the interface with administrative corruption. This will be the subject of future analysis as part of the programme of work undertaken by the Public Governance and Territorial Development Directorate.

Evaluation is a fairly recent concern in France, where specialist institutions distinguish it from control (legality checked against clear, pre-defined criteria) and monitoring (checks to ensure sound management in line with operational goals). Evaluation judges a programme in terms of its performance and impact on society[82].

The aim is therefore to describe experiments/approaches/attempts to evaluate or measure the effectiveness of a policy or policy component (to prevent or combat corruption), before going on to identify good practice and sound measures to prevent or combat corruption in France.

Methods

This case study is based on *self-evaluation* by France of its own system, via interviews with *multiple* players (see list in Annex 3). It draws on *objective analysis* but also on *subjective perceptions* to back up or supplement a purely quantitative approach.

The report sets out:

- Mechanisms to prevent and combat corruption in France[83].
- Methods and experiments relating to the evaluation of anti-corruption measures in France.
- Specific examples of good practice in corruption prevention and control brought to light through evaluation.

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82 Conseil National de l'Evaluation, *1999 Annual Report, L'évaluation au service de l'avenir* – Key concepts for defining an evaluation project, by Eric Monnier.

83 For further details see the following two OECD reports on France:

- *Trust in Government: Ethics Measures in OECD Countries, 2000*
- *Managing Conflict of Interest in the Public Service, 2002*

SUMMARY OF MAIN CONCLUSIONS

Presentation and description of the French system of preventing and combating corruption

The French system is broadly characterised:

- By dispersed and overlapping systems of prevention and control.

  The institutional system of prevention and control is complex and piecemeal. There are multiple players, many of whom have more than one role. There is no single independent specialist agency in France that takes full responsibility for everything from prevention to enforcement and co-ordinates all the relevant services. There are, however, specialist bodies with some degree of autonomy which advise, supervise, control and even impose sanctions in individual risk areas.

- By a *predominantly legal and administrative approach* to the handling of corruption.

  The French system is characterised by laws, regulations, rules and codes, contrasting with the "soft law" of professional codes of ethics.

- By a *novel system of preventive controls* -- dual or triple controls, numerous internal controls *a priori* (legality checks by Prefects, or accounting audits for officials with power to authorise expenditure) and controls relating to so-called "preventive" offences (*délits préventifs* or *délits-obstacles)* such as taking undue advantage, or by geographical mobility for vulnerable staff.

- By a *civil service system* that in itself guarantees the independence and probity of its staff. Recruited by competitive examination, trained in the *grandes écoles* (leading higher- education institutions) or by the major corps impregnated with the public service ethic, and in regular receipt of what society views as an acceptable level of pay, public servants enjoy prestigious social status.

Evaluation practices, methods and tools

Information on corruption comes in the form of an estimate, based on statistical tools and the feelings of those working in the field, without constituting a genuine system of evaluation. In France, no real *scientific study* has ever been carried out to assess the impact or effectiveness of the anti-corruption system or any of its constituent parts. *The emphasis is on another, non-scientific form of evaluation.* It reflects the characteristics of the only type of evaluation carried out in this field:

- Administrative self-evaluation that is ongoing and voluntary, without devising new scientific instruments.

- The unique contribution of practitioners, experts, and people with experience working in the field, all of whom give their impressions, intuitions, feelings and perceptions which are probably reliable but not very specific.

As a monitoring, information and advisory centre on corruption, the SCPC (*Service Central de Prévention de la Corruption*) could be particularly well placed to conduct evaluations of anti-corruption measures. The SCPC is an interministerial body that plays a key role. With regard to prevention, the management would like to see it become an evaluation and auditing body for professional ethics programmes, and regrets their lack of information on how the system is implemented and run. The same applies to internal controls: SCPC training-courses already include the evaluation of internal control units in some government departments and enterprises. Because it stands back and takes a detached and overall view (it has no investigative or crime-prevention department), it would be particularly qualified to identify and review the impact of anti-corruption measures on the instances of corruption it detects.

Genuine efforts are being made to gain qualitative and quantitative insight into the phenomenon of corruption. The resulting picture is, however, piecemeal and incomplete.

Quantitative data on corruption

The French legal system has, like some administrations, a longstanding tradition of statistical reporting, one example being the information held in the *Casier Judiciaire National* (national criminal records). Macro-economic indicators are needed, but these are being drawn up.

Qualitative data

Risk analysis: The SCPC, an inter-ministerial service reporting to the Minister of Justice, has been pursuing an original, pioneering policy of risk analysis. It draws the attention of those working to combat corruption to high-risk areas, and provides them with the instruments they need to identify corruption mechanisms by describing the illegal practices specific to each sector.

Risk mapping: TRACFIN (Unit for Intelligence Processing and Action against Secret Financial Channels) has developed a geographical analysis and processing system that serves to identify the geographical or geo-economic factors behind corruption, and gear responses appropriately. This is conducive to comparative analysis, or geographical "benchmarking".

Surveys or targeted studies -- as developed by the NGO *Transparency International*, for instance -- are "perceptions" indicators seldom used by the French Government.

Databases

Wide-ranging experiments with new databases are being conducted to combat and target corruption. One major obstacle identified by many of those interviewed is the legislation on the use of computerised data, in particular the 1978 Computer Information and Freedom Act and its rigorous enforcement by the computer information watchdog *Commission nationale de l'Informatique et des Libertés,* or CNIL.

Enhancing the French system of corruption prevention and control: good practice and challenges

A critical analysis, conducted through interviews, of the French system of corruption prevention and control highlights some examples of good practice:

Control bodies

The criteria that ensure the effectiveness of these *control bodies* in combating corruption are their independence, guaranteed by law, their membership, and the supervisory authority to which they report.

In this field, the trend is towards layers of institutions that vary in status:

- Traditional control bodies (conducting internal and external inspections, e.g. the financial jurisdictions).

- Independent regulatory authorities whose decisions are binding (e.g. the *Conseil de la Concurrence* on competition issues, or the *Commission Nationale d'Equipement Commercial* for commercial land-use planning).
- Independent advisory authorities that must be consulted but whose opinions are not binding (Ethics Commissions).

These were all set up at different points in time in response to specific needs, and have seen their status evolve as corruption has become more complex. The large number of different bodies is a reflection of the many attempts to tailor controls to the changing face of corruption.

Control

With regard to control, the French model is built around three pillars:

1. periodic controls at regular, defined intervals;
2. rather formal legal and accounting controls;
3. a posteriori controls.

Apart from actual enforcement, the control process is increasingly part of a comprehensive approach covering the use of public resources and performance. Many interviewees from the monitoring bodies stressed the need *to supplement existing legal controls with a genuine approach based on prevention and risk management.*

Sanctions

The French system combines at least three types of sanctions: administrative, criminal and financial. This complex approach is not straightforward, in terms of enforcement, as it raises problems of co-ordination -- of processes or the scale of sanctions -- but the advantage is that it provides scope for a whole range of responses to the complex phenomenon of corruption.

Dialogue and co-ordination among institutional players

Sophisticated institutional arrangements do not make for dialogue or streamlining, and there is a need to introduce mechanisms that will foster co-ordination and concertation. One of the original solutions adopted by France to tackle corruption has been to set up *interministerial* structures. To promote closer co-ordination, *standing liaison committees* or *discussion forums* can bring players together.

This approach is strongly recommended. Shifting from bilateral relations between government departments to multilateral, targeted relations is an appropriate management response, given the host of players, institutions, information and procedures. Through commitment, involvement and more accountability, government departments can become fully fledged partners in tackling corruption, rather than "passive" opponents of it.

Opening up to civil society and outside players

Involving *unions* in the fight against corruption would be an excellent and necessary step. As social partners, they play a major role not only in informing, training and raising awareness among public servants, but also in modernising risk management (introduction of whistleblower schemes, for instance).

France is exploring two innovative avenues to make it easier for *enterprises* to report irregularities: the first relates to the plea-bargaining procedures set up by the *Conseil de la Concurrence* (Competition authority), and the second to the legal obligation to report suspicions to TRACFIN.

Calling in *outside experts*, particularly from the scientific and academic community, is also strongly recommended.

Another most necessary step would be greater involvement on the part of *Parliament* with regard to transparency and performance in the way government departments handle corruption.

As for mobilising the *public at large*, there is widespread evidence of distrust on the part of the authorities and French anti-corruption experts with regard to whistleblowing arrangements or survey-based consultation.

AN EXPLANATORY INTRODUCTION TO THE FRENCH ANTI-CORRUPTION SYSTEM

The purpose of this chapter is to present the leading features of the French anti-corruption system.

Legislative and regulatory arsenal

The French system is characterised by laws, regulations, statutes and codes.

Prevention

The salient features of the French system of prevention are as follows:

- A set of legal rules, in some cases too abstract to be enforced directly by operational staff.
- Very little "soft law" in professional codes of ethics: only a few codes have been drafted (see below).
- Theoretical ethics training provided in civil-service training colleges (e.g. the *Ecole Nationale d'Administration*, or ENA, and the *Ecole des Douanes* for customs and excise staff), although this remains of secondary importance.

In fact the originality of the French system lies essentially in its public service rules and regulations (*Statut de la Fonction Publique*) adopted under the Fourth Republic in 1946, and in the way government operates. Obligations and duties under the rules, breaches of which are heavily sanctioned, can take the form of "preventive" prohibitions known as *dispositifs de prevention pénale* or *délits-obstacles.* The idea is to prevent and avoid any situation that could lay public servants open to a breach of the law or a conflict of interest.

The obligation of *exclusive* performance of duties prohibits public servants from working in the public and the private sectors at the same time. The obligation of *disinterestedness* prevents them from deriving undue advantage (*prise d'intérêt*). *Incompatibilities* seek to avoid any form of partiality in public decision-making. Administrative organisational resources also play a part in preventing corruption. Transparency and administrative accountability, like the "double-key" system, are used to separate roles (accounting officer/officials with power to authorize expenditure, for example) and to provide a substitution mechanism for cases of conflicts of interest, or collegial decision-making.

Risk areas also have their own specific regulations, such as the Public Procurement Code and the Regulations on secondment, leave of absence and "*pantouflage*" (Act No. 94-530 of 28 June 1994).

Sanctions

A list of disciplinary and administrative sanctions can be found under Section 66 of Act No. 84-16 of 11 January 1984. They fall into four categories: 1) warning and reprimand; 2) striking off the promotion lists, demotion, temporary suspension from duty, or transfer; 3) suspension; 4) early retirement or dismissal from public service.

The *Code Pénal* (CP) or Criminal Code, provides for four types of offence: extortion (Art. 432-10), passive corruption and influence-peddling (grouped under Art. 432-11), abuse of office (*délit d'ingérence*) and undue advantage (*prise illégale d'intérêt*) (Art. 432-12 and 13), and favouritism (Art. 432-14). The criminalization of corrupt practices is a particularly dissuasive feature of the French system, as the sanctions are so heavy. And under Article 40 (2) of the Code of Criminal Procedure, public servants who know of any crime or offence must report it the Public Prosecutor without delay and forward the relevant evidence.

Institutions and services working to prevent or fight corruption

The institutional system of prevention and control is complex and dispersed. There are a host of players, many playing more than one role. The institutions and bodies can be broken down into categories according to their function.

Prevention

- Service Central de la Prévention de la Corruption (SCPC):

  The SCPC, set up in 1993, is an interministerial service reporting to the Minister of Justice which:

  1. Centralises the information required to detect and prevent offences involving active or passive corruption and the corruption of private-company managers or staff, undue advantage, extortion, favouritism and influence-peddling.

  2. Lends assistance, at their request, to the judicial authorities investigating such offences.

  3. Issues opinions on measures liable to prevent such offences for a defined list of various authorities at their request.

- Through the opinions they issue, the civil service Ethics Commission (established in 1994); the *Mission interministérielle d'enquête sur les marchés publics* (MIEM) (interministerial unit for procurement investigations) (set up in 1991); public service delegations; and the *Commissions Spécialisées des Marchés* (CSM), which also monitor procurement.

Controls

Some forms of control are exercised within ministries or government departments, e.g. ministerial inspectorates and in particular the IGF (General Finance Inspectorate), the IGA (General government inspectorate) and the DGCCRF (General directorate for competition, consumer affairs and trading standards).

Other forms of control are external but come under the authority of official government bodies:

- Administrative controls: prefects, administrative courts.
- Financial auditing by general financial jurisdictions such as the Court of Auditors (CC) and the Regional auditing chambers (CRCs).
- Interministerial monitoring units/services: MIEM, SCPC.
- Parliamentary controls: standing or *ad hoc* Parliamentary boards of enquiry.

Enforcement

- Criminal justice: the *Pôles économiques et financiers* (Economic and financial investigation units) reporting to the Courts of Appeal of the *Tribunaux de Grande Instance* (TGI) or higher regional courts.

- Jurisdictions whose main remit is not to impose sanctions for corruption-related offences but to refer to the criminal courts any offences they may detect.
- *Cour de Discipline Financière et Budgétaire* (CDBF).
- *Conseil de la Concurrence*, the competition authority, which tracks and punishes anti-competitive practices.

General remarks

The structure of controls may therefore be either the vertical silo type (by institution) or cross-cutting and horizontal, by programme or sector (e.g. public procurement).

Although France does not have an *independent, specialist agency* encompassing everything from prevention to enforcement and co-ordinating all the relevant departments, the SCPC does focus solely on corruption. With no coercive powers, it is confined to the role of a monitoring, information and advisory centre on corruption. However, there are specialist bodies with some degree of autonomy that advise, monitor, inspect and even impose sanctions in specific *risk areas*. Conflicts of interest and *pantouflage*, for instance, are handled specifically by the civil service Ethics Commission. By the same token, public procurement and public service delegations are supervised by the MIEM, the CSMs, the DGCCRF and the *Conseil de la Concurrence.*

The novelty as far as anti-corruption measures are concerned lies in the adoption of an *interministerial* approach, which takes into account the complexity of corruption phenomena and has led to the creation of such bodies as the SCPC and the MIEM.

Procedures used in prevention, control and the fight against corruption

To illustrate the complex nature of the process of control over the use of public funds, the table below outlines the work of some of the many bodies working in this field.

Table 16. Control procedures and mechanisms

	Financial jurisdictions		**Interministerial unit**	**Internal control corps**		**Independent regulatory authority**
Institutions	CC (Court of auditors)	CRC (Regional auditing chambers)	MIEM	DGCCRF	General Finance Inspectorate	*Conseil de la Concurrence* (competition authority)
Competence	Audits the accounts of: - accounting officers - statutory authorities - government enterprises - social security institutions - associations receiving government subsidies	Audits the accounts of local authorities and public corporations within their jurisdiction Reviews the management of: - local authorities and - their associated private undertakings (e.g. Sociétés *d´économie mixtes* locales, associations receiving local funding or public service delegations	- any government buyer - monitors cases of favouritism, undue advantage, misuse of public property, forgery	- in the field of competition, identifies illegal agreements, abuse of dominant position, favouritism	- inspects MINEFI departments, in particular the Treasury and the General Tax Directorate - investigates cases involving: officials with power to authorize expenditure . bodies subject to economic and financial monitoring . any body receiving public funds	Combats illegal agreements and abuse of dominant position
Referrals	Initiates own enquiries, draws up own auditing programme	Initiates own enquiries - Prefects - other players (e.g. accounting officers, local executive subject to justifiable audit requests)	- Does not initiate own enquiries - Prime Minister - Ministers - Court of Auditors - Prefects		Ministerial request	Government, Parliament, local authorities, trade organisations or unions, consumers, courts, but also initiates own enquiries
Frequency and volume of work	Target: each institution on average every 4 or 5 years. Produces an average of 700 reports a year	- Automatic review every four years - Audits selected quantitatively and qualitatively by field - 600 reports a year	- Number of cases dealt with in 2001: 29. Investigation requests: 11	Took part in 23 500 competitive bidding processes in 2001.		In 2000: 112 decisions, 31 opinions, 28 sanctions

Procedures	Operates on a collegial basis (rapporteurs and counter- rapporteur) by means of an adversarial process	Audit *in situ* based on documentary evidence - operates on a collegial basis, adversarial process	Adversarial Institutions have access to case files		Investigation *in situ* based on documentary evidence. Adversarial procedure. Authors' responsibility	Collegial, adversarial
Powers	Wide-ranging investigative powers, even over supervisory authorities	Wide-ranging investigative powers	Criminal investigation department (PJ) staff have wide-ranging powers	DGCCRF officials entitled to attend competitive bidding commissions		Investigative powers - may request assistance of DGCCRF inspectors
Effects	- judgments may implicate the personal and financial liability of accounting officers - judgments may be overturned by the Council of State - comments of an administrative nature may result in interlocutory procedures (letters to Ministers from First Presiding Judge), letters from the Presiding Judge or the Public Prosecutor, public reports - referral of cases to Ministry of Justice	- judgments may implicate the personal and financial liability of accounting officers - possible appeal against judgments before the Court of Auditors - review by the court and non-binding decision leading to acquittal or restitution order - comments of an administrative nature that result in observation reports and public reports	-referral to Public Prosecutor if evidence of favouritism	Written comments No voting rights		- protective measures - injunctions - pecuniary sanctions - referral to the courts - documents published and made available for consultation

Control	- Public Prosecutor, gives advice on work in progress, monitors performance - judgments may be overturned by Council of State	- appeals procedure: Court of Auditors, Council of State - judgments may be overturned by Court of Auditors	- procedure subject to authorisation and control by judicial authorities			- appeals heard before the Paris Court of Appeal and the Court of Cassation
Limits	- observation, no powers of injunction vis-à-vis government - a posteriori control		Unable to initiate own enquiries		- May make reports available for consultation subject to authorisation by the Minister for the Economy and Finance	

The French system is therefore characterised by:

- Dispersed and overlapping systems of prevention and control.

- A predominantly legal and administrative approach to dealing with corruption.

- An original system of preventive controls – dual or triple controls, numerous internal controls *a priori* (legality checks by the Prefect, or checks on officials with power to authorise expenditure) and on what are known as "preventive" offences (*délits préventifs* or *délits-obstacles)*, whereby officials must not even lay themselves open to suspicion (of undue advantage).

- By a civil service system that in itself guarantees the independence and probity of its staff.

EVALUATION PRACTICES, METHODS AND TOOLS

Evaluation requires reliable measuring tools and instruments. Where incidents of corruption are concerned, a lack of information and clarity is a major barrier to:

- Raising awareness and *mobilising* players.
- Setting *goals and targets* for anti-corruption programmes.
- Setting up *processing* and effective policies/initiatives.
- Measuring the effectiveness and *impact* of anticorruption policies.

Data on the corruption phenomenon

The SCPC is the only corruption monitoring centre that collects and processes information on corruption. It is more a *non-scientific, intuitive estimate* than a national mapping process indicating scale and specific sectors.

There are no indicators or methodologies *specifically* dedicated to measuring corruption (e.g. benchmarking at-risk institutions, conducting user surveys, or monitoring specific measures).

This brings us to the question of the purpose served by such indicators: are they there to provide information on the number of offences, amounts involved, indirect implications and economic impacts (dysfunctional, pointless, additional operating costs) or political consequences (public trust)?

Insight into corruption is presented as an estimate, based on specific statistical tools and the perceptions of those working on the ground.

Numerical data and problems involved in their use

Criminal law statistics

The legal system has a longstanding tradition of statistical reporting, particularly with the data in its national criminal records (*Casier Judiciaire National).* For corrupt practices in general, irrespective of type, statistics and trend analyses on convictions for corruption or assimilated offences set the number at some 300 criminal convictions a year.

Using the statistics for each type of offence (as identified by the articles of the CPP), it is possible to identify the type of corruption and monitor trends in offences.

The legal system has refined its statistics[**] on a set of offences that come under the heading "economic and financial crime" and cover corruption-related offences known as "breaches of the duty of

[**] *Infostat Justice,* Ministry of Justice, June 2002, No. 62.

probity" (see table in Annex 1: Table on "Convictions for infringement of the duty of probity"). The statistics also include figures on money laundering and "interference with market processes" (*atteinte au fonctionnement des marches*), together with information on misuse of public property (*abus de biens sociaux*). This degree of refinement provides information on types of conviction (sentence and fines) and on the socio-professional status of those convicted (see table in Annex 2: Convictions and sentences under Article 432-11).

There are, however, a few problems relating to clarity and interpretation. Corruption is hidden and invisible. The distinction is not between the number of crimes committed and cases resolved (thereby highlighting the number of cases that remain unresolved), but between "knowns" and "unknowns". Furthermore, the statistics and figures published by investigation departments or the courts are hard to interpret: if the number of cases increases, does it mean that corruption is on the rise or that enforcement is more efficient?

In terms of simple figures, this kind of information is confined to convictions, and does not count the number of new cases reported or forwarded to the Ministry of Justice, cases that are settled, discontinued proceedings or some other alternative. Nor does it include the financial/economic cases dealt with by the police or *gendarmerie* in their investigations. Furthermore, because of the limitation period, a number of cases are dealt with as offences relating to the misuse of public property, which excludes them from the corruption statistics.

Box 19. *Infocentre* and *Cassiopée:* new statistical tools at the Ministry of Justice

The setting up of a new criminal statistics software system, *Infocentre*, is an attempt to fill the gap by counting and analyzing in greater depth not just "output" or criminal convictions, but also "input", and not just in terms of volume but by type of offence. This provides a breakdown of the work of each Public Prosecutor's office by type of offence, the links between types of offence, and the outcome of each case (dismissal, prosecution, other).

In addition, it is now possible to monitor a cohort of cases through the various stages of the process. Currently *Infocentre* is confined to statistics on courts in Paris and the Paris region. This will be extended when *Cassiopée* comes on stream (new computer programme for courts in the provinces).

Source: Bilan des actions d'évaluation menées en 2002 et perspectives 2003, French Ministry of Justice, *DACG, Annexe 10 « La Lettre du Pôle études et évaluations », February 2003.*

Offences relating to corruption are numerous (from corruption in the strictest sense to the offence known as favouritism) and scattered through France's many codes (Criminal Code, Tax Code, Customs Code, Labour Code, Code of Commerce), making it hard to identify clearly what does or does not constitute corrupt practice. And the statistics do not distinguish between public, political, administrative or other forms of corruption.

The figures on referrals to the courts or on criminal convictions are only one of many categories, a final link in the chain dealing with corruption. As indicators, they are accordingly limited and less than perfect.

Figures on administrative sanctions in each service, administration or ministry

Some government departments keep statistics on cases of corruption involving their own staff.

Box 20. Statistics on corruption cases involving DGDDI staff (General Directorate of Customs and Excise)

The DGDDI has a 'departmental inspectorate' whose main remit is to conduct periodical audits of how the customs services are organised and run, but it can be asked (by the General Directorate or heads of external services) to conduct one-off audits to reveal any corruption when such breaches of the rules are suspected.

Since 1990, the DGDDI has been keeping statistics on cases of corruption involving its officials and breaks them down by type, social factors and geographical area.

It has a set of specific indicators: type, number of cases, year, category of staff, directorate/location, administrative sanction, criminal sanction.

There are *6 broad categories of corruption-related offence:*

- Duty-free sales invoices: fraudulent stamp, with consideration;
- Duty-free sales invoices: fraudulent stamp, without consideration;

Corruption: extortion of funds from users;

Corruption as defined under Article 59 of the Customs Code (accepting gifts, gratification or reward with or without consideration);

Abdication of duty for money (gratification from a customs declarant);

Miscellaneous: corruption, and aiding and abetting smuggling.

Source: Cas de corruption mettant en cause des agents des douanes depuis 1990, DGDDI

Some directorates, such as the tax administration, also disclose details of administrative sanctions in their in-house lists or publications.

These internal statistics do have their limits, however. Their status is ambivalent, as they are not compulsory, may be informal and may or may not be disclosed and published. There is no institution in charge of collecting the data available on corrupting practices from government departments, to gain an overview of risk areas and types of fraud.

Data held by advisory or control bodies

The specialist or control bodies all describe their work in annual reports. The SCPC and the MIEM, for instance, provide information on the number of cases brought and referrals to the criminal courts in their own fields. Similarly, TRACFIN (unit for intelligence processing and action against secret financial channels), in its annual report, provides information on "declarations of suspicion" received, and referrals to the courts.

Control bodies such as the Regional auditing chambers (CRCs) or the Court of Auditors provide the same information in their activity reports. For instance the 2002 Annual Report by the Court of Auditors, under the heading "Report on the work of the financial jurisdictions", takes stock of the number and type of referrals to the criminal courts by the CRCs since 1985, including infringements of the duty of probity.

Box 21. Financial jurisdictions and criminal courts: corruption statistics

From 1983 to 2003, the financial jurisdictions referred 530 cases to the Public Prosecutor, with a particularly sharp rise between 1993 and 1997.

Around two-thirds of the cases referred concerned infringement of the duty of probity (Articles 432-10 to 432-16 of the Criminal Code):

1. Undue advantage (33%);
2. Favouritism (15%)
3. Extortion, passive corruption, influence peddling (12%);
4. Corruption (2%).

There are also numerous cases of misuse of public property (12%), some of which mask cases of corruption.

While 69% of cases involve elected officials, others involve staff from audited bodies (18%, including 6% involving unelected officials with power to authorize expenditure and 12% involving other officials) and civil servants (3%).

Source : *2002 Activity Report of the Court of Auditors*

Advisory institutions such as the *Commissions Spécialisées de Marché,* the *Commission Nationale d'Equipement Commercial* (CNEC)[84] and Ethics Commissions[85] also provide statistics on unfavourable opinions and the grounds on which they are based.

Box 22. Ethics Commissions – statistics

The Ethics Commissions, established in 1993, have had to make good a complete lack of statistical data on practices prior to that date.

Once the Civil Service Ethics Commission had been set up, however, it developed a highly comprehensive and extremely detailed statistical tool that gives a good snapshot of the areas and social groups at risk from *undue advantage* and *"pantouflage".*

Data are available on:

Referrals to the courts

- Status (leave of absence, resignation, retirement, unpaid leave, termination of contract, dismissal);
- Origins of referrals: by administration, sector, category, corps, gender.

Opinions

- Type of opinion (lack of jurisdiction, inadmissible, justifiable, justifiable subject to conditions, unjustifiable, unjustifiable in the present state of the file)
- Breakdown of opinions by administration, category and corps.

Follow-up

- List of administrations that have failed to provide information on follow-up;
- List of administrations that have contravened opinions, and analysis of cases in which there has been divergence.

This detailed reporting provides some extremely refined data. For instance, it reveals the lack of follow-up and controls where retired civil servants are concerned, and appropriate steps have now been taken to make administrations more aware of the problem.

The Ethics Commission also practises an indirect form of benchmarking by comparing the resourcefulness and efforts deployed by administrations in preparing their case-files (this can be traced by the number of opinions declared to be justified) or following up recommendations.

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84 For details of the CNEC's work see: http://www.pme.gouv.fr/chantiers/equip/equip02.htm

85 See annual reports published by the *Commission Nationale de Déontologie* (National Ethics Commission)

Just as the primary focus of the activities and mandates of the various advisory and control bodies is not on fighting corruption, the statistics are not sufficiently detailed or compiled in such a way as to provide insight into the nature of the problem concerned (i.e. irregularities or actual corruption).

Qualitative or economic data

As well as statistics and numerical data, other indicators can provide insight into the impact and scale of corruption.

Macroeconomicdata

Very few macroeconomic indicators have been put in place to identify irregularities. Yet submitting economic data to comparative analysis is an excellent way of detecting corruption. Indices have been developed for:

- Illegal agreements; the *Conseil de la Concurrence* looks at inexplicably stable prices, for instance, or stabilized sectors with low rates of productivity and technical innovation.

- Corrupting practices relating to land-use planning, pressure on land, and the links between supply and demand to be taken into account when calculating risk factors.

There is an urgent need, particularly in the field of procurement, for national databases and benchmark prices to assist public procurement officers and auditors alike.

Risk analysis

The SCPC is conducting some pioneering and original work on risk analysis. Much of the SCPC Annual Report is given over to studies on fraudulent and corrupting practices in individual risk areas. Not only does the SCPC draw the attention of anti-corruption players to vulnerable areas, but it provides them with the tools to identify the mechanisms behind corruption, by describing the irregular practices specific to each area.

Box 23. Inventory of risk areas selected by the SCPC[86]

1993-1994: Lobbying and influence peddling, sport and corruption, international trade and corruption, decentralisation, acts of corruption, and review of lawfulness.

1995: Extortion, undue advantage and favouritism in public procurement, the healthcare sector and international trade.

1996: Advertising agencies, commodity derivatives, fraud and corruption in public procurement, international business transactions, competition and corruption, economic rationality and international fraud.

1997: Sects, computer markets, domestic retail trade, crafts and tradeable services, high-risk situations, use of monies derived from corruption;

1998-99: Use of consultants and middlemen to mount fraudulent schemes, risks of abuse in the mass-marketing sector, risks of abuse in the vocational training sector.

2000: Publicity and internal controls, *pantouflage* and grey areas, poverty and corruption: the adoption issue.

2001: Corruption and exclusion, globalisation, corruption and the charity business, arrangements that circumvent the 1997 OECD Bribery Convention, private security: emergence of a virtuous circle, risks of abuse in the cleaning sector, fact-sheet on undue advantage.

2002: Ethics, abuse in the voluntary sector, anti-corruption services.

Source: 2002 SCPC Annual Report

However, there are some limits to what the SCPC can do:

- Its choice of sectors to target is *random*, although made in response to indicators or whistleblowing, or based on social or political demand;
- It can only study a limited *number* of sectors, owing to a lack of staff in the SCPC;
- Its coverage and analysis of a sector are *snapshots,* relevant at the time of writing and therefore soon out of date. To update its information, the SCPC is trying to provide follow-up by reworking themes from a different angle and launching a four-yearly publication in the form of a widely distributed “Letter”.

Many administrations carry out implicit risk analysis by developing typologies (for instance at the DGDDI) or identifying vulnerable sectors and situations.

Box 24. Risk analysis by the General Government Inspectorate/Ministry of Foreign Affairs (IGA/MAE)

Areas at risk

- Visa and asylum applications
- Civil status and naturalisation applications, French community administration, dual nationals
- Adoption.

Posts at risk

- Posts in contact with the public, counter staff
- Civil servants in Categories B and C
- Local officials, without the status and pay of expatriates
- Staff in consulates and vice-consulates, more than embassies
- Posts with few staff and little scope for rotation
- Posts with a *low ratio of expatriate managers to local officials.*

Risk mapping

- *Countries with a high level of external corruption, putting the consulate or embassy staff under pressure*
- Countries with underperforming civil-status departments (applications for naturalisation)
- Developing countries.

86 SCPC, *2002 Annual Report.*

Risk mapping

While mapping and tackling risks on a geographical basis would probably be worthwhile, implementation has been half-hearted to date. Yet this would enable comparative analysis or geographical benchmarking. Mapping highlights the geographical *factors* contributing to corruption (insularity, local practice, proximity to money-laundering areas). By the same token, mapping can help to find *solutions* or lead to better practice. As there are territorial disparities when it comes to corruption, solutions must be geared to the locality (e.g. heightened vigilance or more staff and resources in some areas), while some preventive practices such as moving staff around may be relaxed or stepped up as required.

Box 25. TRACFIN mapping

TRACFIN is the only institution that includes mapping among its activities. In its 2002 Activity Report, for instance, it maps out the areas in which declarations of suspicion have been filed and reveals fairly stable geographical patterns, linked to the concentration of banking and financial institutions. Similarly, it maps out the main courts receiving referrals, since territorial jurisdiction depends largely on where the perpetrator lives or where the offence was committed.

Mapping can shed light on what has or has not changed (provided it is comparative and chronological) and highlight features typical of certain offences (e.g. geographical concentration). While some forms of mapping may seem superfluous to information in table form, they do offer the advantage of instant visualisation.

Source:: 2002 TRACFIN Annual Report

The fact that no mapping has been done for *public procurement* in general is regrettable. The MIEM statistics, for instance, are comprehensive when it comes to geographical patterns of referrals to the courts but soon become meaningless without the aid of maps. The same can be said for the *Commissions Specialisées des Marchés*, which publish reports with no geographical information whatsoever. On such a sensitive subject as public procurement, where the geographical factor often reveals irregularities, there are no clear data for the country as a whole.

To a lesser degree – given the number of cases and the statistics which are purely for internal use – the General Directorate of Customs and Excise takes into account (but does not map) territorial data, particularly for its policy on staff mobility.

The Ministry of Foreign Affairs does not map out corruption patterns, even though geographical and geo-economic factors play an essential role in the potential occurrence of such offences. In future, it would be desirable to include mapping in the Annual Report by the MAE/General Government Inspectorate.

Surveys

It has never been the tradition for government departments and services to survey users among the general public about how they perceive or see corruption. To our knowledge, there have been no surveys among firms, users of government services or civil servants themselves on the topic of corruption.

Most government departments have a complaints book in which the public can set down their grievances in writing. However, they are often kept in the departments concerned, which does not make complaining particularly easy.

An NGO, Transparency International (TI), has developed a Corruption Perceptions Index and publishes its own country ranking. Most of our interviewees contested TI's methods and findings.

Box 26. Transparency International, its Corruption Perceptions Index (CPI) and the French authorities

Many institutions – be they international organisations (World Bank), consultancy firms or NGOs (like Transparency International) – have tried to measure "passive" corruption by focusing on the perceptions of the public or of target groups (business community).

With regard to France, Transparency International (TI) has developed a Corruption Perceptions Index which focuses on perceptions of France in international business circles.

"The TI Corruption Perceptions Index (CPI) in 2003 ranks 133 countries in terms of the degree to which corruption is perceived to exist among public officials and politicians. It is a composite index, drawing on 17 different polls and surveys from 13 independent institutions carried out among business people and country analysts, including surveys of residents, both local and expatriate".[87]

This Corruption Perceptions Index, which ranks France 23rd in the world, is contested by the French authorities and the people we interviewed, in particular in the SCPC[88]. By and large, the use of surveys to measure corruption raises a number of questions: can perceptions serve as the sole basis for talking about corruption in France? Should the emphasis be on perceptions in business circles or among the general public?

The CPI is an interesting and useful instrument as it helps to raise awareness of the scale of corruption that exists. However, it does not reflect the complexity of the phenomenon and should be set against other data. Aware of the CPI's limits, TI assesses its reliability in each country (number of sources available, converging information) and collects additional material (e.g. by identifying sectors most vulnerable to corruption).

Source: TI and the SCPC

While surveys are merely indicators of perceptions and feelings, there is a need for such instruments in France. Surveying the opinions of public officials as to the amount of corruption in their departments, of enterprises on risk areas or situations in their dealings with government services, and of the general public as public service users would provide more insight into how the French relate to corruption.

Databases

France lacks tools, in particular for data-processing, that could be shared among government departments to make them better informed, more responsive and better equipped to deal with corruption. The tools would provide scope:

- To access updated information on multiple data (benchmarks).
- To identify pockets of expertise within government departments or elsewhere.
- To take a more targeted and sensitive approach to risk identification and management.
- To co-ordinate and combine controls.

Experiments

Some experiments are worth noting. Some investigation services have their own databases, such as ANACRIM, used by the *gendarmerie*. The SCPC would like to gear them to specific types of crime (economic and financial crime in the case of corruption) and provide investigative/analytical templates to

87 Transparency International website, http://www.transparency.org/cpi/2003/cpi2003_faq.fr.html, December 2003

88 SCPC, *2002 Annual Report,* ERRATUM on page 17 of the 2001 Annual Report on relations between TI and the SCPC.

help inspectors working on the ground. An analytical list of some ten types of fraudulent financial arrangements (indicators and indices) has already been drawn up for training purposes but has not yet been brought into widespread use.

The MAE General Government Inspectorate, which has not developed its own databases, uses databases such as R*éseau Mondial Visa* to handle visa requests or applications for naturalization. This enables it to detect anomalies or irregularities, by comparing activity in certain postings.

When the special investigation units for economic and financial crime (*Pôles Economiques et Financiers*) were set up within the judicial system in 1999, a computer-assisted investigation system was also introduced to give a direct view of microphenomena and reveal connections between cases or highlight any upsurge in specific types of cases.

In 1997, financial jurisdictions such as the CRCs set up a process planning commission, subsequently known as the *Mission Outils et Méthodes* (tools and planning unit), with a remit to enhance auditing practices and produce the necessary tools. The main tools developed by the financial jurisdictions are guides to investigative methodology. These use the information garnered from the many data-collection bodies (including INSEE, public accounts, the Interior, and clerks' offices) to enrich the financial jurisdictions' own databases and enhance their audits. As for the information held by the entities subject to audits, modes of access are defined by strict procedures and ethical principles applying to all control bodies, even if the financial jurisdictions do have a very substantial right of disclosure. Attention was drawn to the need for access to external databases, including hospital files or civil-service pay files. The pooling of data – e.g. inspection/auditing guidelines, handbooks, basic investigation templates, benchmarks, and warning procedures – makes it possible to take stock of competencies within the financial jurisdictions and elsewhere, and make them available on networks to create pockets of expertise.

Obstacles

Many of those interviewed saw the legislation on the use of computerized data as a major obstacle, in particular the 1978 Computer Information and Freedom Act (*Loi relative à l'informatique, aux fichiers et aux libertés*) and its rigorous enforcement by the CNIL. The obligation for files to remain anonymous prevents their shared use within a directorate and restricts the development of databases in general.

Box 27. The Computer Information and Freedom Act and the CNIL[89]

Faced with the almost infinite potential unleashed by information technologies, the Act of 6 January 1978, known as the Computer Information and Freedom Act, provides some strong safeguards to protect individuals against the proliferation of data files. Greater involvement and accountability is the key to this system of protection: those who create the processes should be made subject to obligations, and those whose details are held in databases should be given specific rights.

At the centre of the system is an independent authority, the CNIL (*Commission Nationale de l'Informatique et des Libertés)* which ensures that rights are respected and obligations fulfilled. Its main remit is to protect personal privacy and individual or public freedom. It is responsible for ensuring compliance with the Computer Information and Freedom Act.

The CNIL *issues opinions on new data-processing systems in the public sector* and is notified of any data-processing conducted in the private sector (Sections 15 and 16). Data-processing managers who fail to comply with these requirements are subject to criminal sanctions (Section 226-16). *Data processing in the public sector requires a decree adopted with the endorsement of the Council of State to overrule an unfavourable opinion from the CNIL* (Section 5, parag. 1).

The CNIL keeps a "file of files" available for public consultation, i.e. its inventory of the data files and their main characteristics (Section 22)."

Source: *A quoi sert la CNIL?*, December 2003, http://www.cnil.fr/index.htm

Advantages

Yet databases do have potentially significant advantages:

- Databases would improve the processing and monitoring of data files between institutions.

  Databases on corruption would allow the ongoing *monitoring* of risk areas, fraud and fraudulent arrangements, and irregularity indicators by centralizing the information provided by all those working to fight corruption.

  Specialised macroeconomic databases could act as a national price monitoring unit.

- They could serve as a tool to evaluate the work of various departments and how well they are co-ordinated (e.g. measuring the rates of referrals, investigations, discontinued proceedings, discharges and convictions).

Evaluation methodology

Policy evaluation has taken time to become established in France, both in theory and in practice. Yet evaluation is essential in many respects:

- It calls for detailed thought as to policy goals and how to achieve them.
- It enables the development of methodological tools (e.g. criteria, indicators and surveys) which can, in turn, develop insight into corruption, thereby helping to improve the anti-corruption system.
- It is a source of information.
- It is a means of identifying, with fairly objective criteria, best practice and the best institutions in the field of corruption prevention and control, and of identifying and remedying the shortcomings and limitations of the rest.

89 CNIL website, http://www.cnil.fr/index.htm, December 2003

- Policy evaluation therefore has a beneficial impact on the management of the anti-corruption system and so in turn reduces corruption.

Where does evaluation stand with regard to the prevention and control of corruption?

There have been no strictly *scientific studies* to evaluate the impact and effectiveness of all or part of the anticorruption system. *The preference goes to another, non-scientific form of evaluation.* In 1993, for instance, the Bouchery Commission was asked to take stock of corruption "hot-spots" and the anti-corruption system in France, but did not develop specific tools to identify the problem more closely.

That approach reflected the only type of evaluation conducted in this field:

- *Ongoing and voluntary self-evaluation* by government, without creating new scientific instruments.
- The unique *practical experience* of experts and those working on the ground, who talk about their impressions, intuitions, feelings and sensations which are probably reliable but not very precise.

Yet there is a growing need for evaluation in France, particularly since the Finance Act which makes it mandatory. The challenge lies in institutionalising evaluation and turning something that is still piecemeal into an integrated policy approach.

Who could undertake the evaluation of France's anti-corruption system?

Evaluation institutions and cultures fall into two broad categories. The main point here is that control bodies are becoming increasingly involved in evaluation.

Bodies with a specific mandate to undertake evaluation

- The *Office parlementaire d'évaluation de la legislation,* or OPEL (Parliamentary office for the evaluation of legislation) and the *Mission d'évaluation et de contrôle*, or MEC *(*Evaluation and inspection unit):

The OPEL, set up in 1996, made up of members of Parliament and the Senate, is responsible for gathering information and undertaking studies to assess whether the legislation is up to dealing with the situations it is meant to regulate. Another aspect of its remit is to simplify the legislation. The OPEL may be called upon to evaluate the impact of anti-corruption measures.

The MEC -- equivalent to the Committee of Public Accounts in the United Kingdom -- was set up in 1999 and focuses more on monitoring the effectiveness of public expenditure. It works to that end with the Court of Auditors.

There are also standing Parliamentary committees (on specific themes), and in particular select committees, that could be asked to evaluate the anti-corruption system. So Parliament could conceivably play a leading role, either in evaluating anti-corruption legislation in France, or in setting up a select committee along the lines of the Seguin Commission, the working party on "Politics and money", or the Bouchery Commission on "Preventing corruption".

- Independent bodies, set up to specialize in evaluation:

The *Conseil scientifique de l'évaluation*, set up in 1990, became the *Conseil national de l'évaluation* or CNE (National evaluation council) in 1998, reporting to the *Commissariat Général du Plan* (government planning authority), but was wound down in 2002. Yet the CNE would probably have been the most appropriate body in terms of methodology and expertise to provide scientific tools for evaluation purposes.

Control bodies shifting to performance audits and evaluation[90]

The bodies that conduct external audits (Court of Auditors, Regional auditing chambers) and internal audits (General Government Inspectorate) are increasingly becoming involved in evaluation. A number of general inspectorates (e.g. finance, social affairs, education) have added evaluation to their remit. This trend towards evaluation in France reflects the broader trend found in Europe and North America.

The external control bodies with judicial status have the independence and breadth of scope to grasp the intricacies of multi-stakeholder policies.

The Court of Auditors and the CRCs undertake evaluations, either of areas at risk from corruption or of bodies with a mandate involving corruption prevention and enforcement, without actually evaluating anti-corruption programmes themselves.

Bodies which, by virtue of their mandate or scope, could address anti -corruption systems, programmes and measures

- Ministry of Justice:

The Ministry of Justice, by virtue of its overarching position, plays a co-ordinating role. It has also always processed criminal data and is thus used to handling information. Within the Ministry[91], the Directorate for Criminal Cases and Pardons (DACG) set up a *Pôle Etudes et Evaluation* (Research and Evaluation Unit) in 2001. Its mandate is to develop standardised monitoring tools, as well as quantitative and qualitative information on specific phenomena, monitor the performance of the penal policy drawn up by the Chancellery, and measure the impact of penal policy. It is responsible for evaluating not only penal policy implementation (resource allocation, goal-setting, known and measured impacts and outcomes) but also how the Ministry of Justice operates (delivery time, service quality). It is currently creating new monitoring systems and instruments (annual performance indicators for the Ministry, monthly ones for the Public Prosecutors' Offices, and a system to measure the work and performance of the Economic and financial investigation units), drawing up quality-related questionnaires and numerical surveys, and producing data and analyses on selected topics (e.g. court work, enforcement of specific articles of the Criminal Code, specific offences).

Apart from evaluations by the Economic and Financial Investigation Units – which are part of the anti-corruption system – the Ministry's Research and evaluation unit has not undertaken an evaluation of the anti-corruption system as a whole[92].

90 *CNE Rapport Une évaluation à l'épreuve de son utilité sociale,* « Contrôle et évaluation: l'évaluation dans les institutions de contrôle », D. Lamarque, Activity Report 2000-2002.

91 *CNE Rapport Une évaluation à l'épreuve de son utilité sociale, « L'évaluation en développement : l'exemple du Ministère de la Justice : la Direction des affaires criminelles et des grâces (DACG) », V. Chanut, Activity Report 2000-2002.*

92 Ministry of Justice, DACG, *Bilan des actions d'évaluations menées en 2002 et perspectives 2003,* March 2003.

Box 28. Evaluation system to measure the work and achievements of the *Pôles économiques et financiers*

In 2001, an initial stock-taking exercise requested by the Minister of Justice found a patent lack of tools capable of measuring the work and performance of these *Pôles* against the goals to be met. The Research and Evaluation Unit has introduced a standardised framework in the form of a set of work and performance indicators, specific to the legal field and to the work of specialised assistants.

The exercise concerns three of the *Pôles* or Economic and Financial Investigation Units (Paris, Lyons and Marseilles). An outside consultancy (ATOS Odyssée) has been commissioned for the study, which will take place in three *stages*:

1. Diagnosis in each of the three Economic and Financial Investigation Units (first semester 2003);
2. Modelling and defining a set of performance indicators;
3. Supporting the introduction of the performance indicators at a lead site.

The *aims* of the exercise are:

- to identify measurement tools currently used in specialist jurisdictions and analyse their strengths and weaknesses;
- to highlight the salient features of major economic and financial cases, see how they are handled by the Economic and Financial Investigation Units compared with other non-specialist services, and indicate the targets to be met by a measurement goal;
- to draw up a definition of work and performance indicators, in particular by looking at other sectors facing similar challenges and constraints. Special emphasis is to be laid on the role and work of specialised assistants;
- to model a unique system of evaluation for the work of the Economic and Financial Investigation Units and assist with its implementation in the relevant jurisdictions.

The study will focus on the following *targets*:

- current Economic and Financial Investigation Units and the specialised jurisdictions;
- specialised assistants;
- complex economic/financial case-files.

The study will comprise:

- a qualitative phase, which will be based on typically complex case-files and an analysis of the salient features of the economic and financial field, and will help to determine what essential and relevant information is required;
- an operational phase aimed at producing a model framework with both quantitative and qualitative components, to be set up in the Economic and Financial Investigation Units and in other jurisdictions.

The performance *indicators* will include:

- management indicators (personnel, data-processing, ratio of resources/goals/costs);
- work indicators [number, deadlines, size and processing of case-files; case-file processing procedures (searches, questioning, expert assessment, confrontation); judgments].

Other indicators focus on the type of case-file (simple, complex, highly complex) and their nature (broken down by offence, type of decision, origin of referral). There are no external indicators on the effects and impacts of the work of the Economic and Financial Investigation Units or on economic and financial crime.

Source: *Rapport phase 3,* Ministry of Justice, DACG and *Atos Odyssée*, Management Consulting.

The Ministry of Justice also maintains links with university research centres. The *Centre de Recherches Sociologiques sur le Droit et les Institutions Pénales* (CESDIP) conducts research into the law and penal institutions and is working on the sociology of standards and regulations, and more specifically on the penal aspects of legal standards and regulations. No research has been done on corruption. The Ministry's Law and Justice research unit (GIP) has set up working parties and held a seminar on "The legal aspects of combating economic and financial crime in Europe", at which specialists and those working on the ground throughout Europe described and reviewed their experience. Yet players and decision-makers do not view or use university research centres as operational management tools (long surveys, comparatism).

- SCPC:

The SCPC, as a monitoring centre for corruption, could be particularly well placed to conduct evaluations of anti-corruption work. The SCPC is an interministerial body that plays a key role. As its focus is prevention, the management would like it to become an agency that evaluates and audits ethics programmes and regrets having so little information on how the system is set up and operates. The same applies to internal controls: SCPC training-courses already include the evaluation of internal control services in government departments or private companies. By virtue of its status – it is not an investigation or enforcement service – and because of its overarching view of corruption, the SCPC would be particularly qualified to observe and subsequently review the impact of the anti-corruption system.

What programmes, measures and institutions should be evaluated?

The fact that there is no evaluation of the anti-corruption system in France may be linked to the problems involved in comprehending the piecemeal and complex body of laws, measures, bodies and arrangements relating to the phenomenon of corruption. In that case, should evaluation focus on specific institutions (e.g. Ethics Commissions, Economic and Financial Investigation Units, the SCPC), specific measures (e.g. codes of ethics, training initiatives, the criminalisation of public procurement offences), specific legal provisions (e.g. Article 40), specific policies or the system as a whole? These avenues should of course be discussed and explored by the professionals dealing with corruption, so that evaluation can be geared to genuine needs.

IMPROVING THE FRENCH SYSTEM OF FIGHTING CORRUPTION: GOOD PRACTICE AND CHALLENGES

Even without scientific evaluation, good practices can be identified by means of existing data and the opinions of those working in the field.

Institutions working to combat corruption

Status, composition and supervisory authority are all factors which determine the effectiveness of control bodies involved in the fight against corruption. These different elements must be combined.

Independence and *autonomy* are key factors for the effectiveness of control bodies responsible for fighting corruption. Financial jurisdictions or *ad hoc* independent authorities with the power to make binding decisions (e.g. *Commission Nationale d'Équipement Commercial* or *Conseil de la Concurrence*) can serve as a model. Thus, financial jurisdictions enjoy total autonomy and wide-ranging powers, both as to the appointment of their members (by means of a competition) and their status (security of tenure). This independence is reflected in their inspection programme and in their total freedom of action and approach. Independence goes hand-in-hand with accountability and control: the collegiate nature of decision-taking, the right of reply and of appeal on the part of those controlled, the publicity given to their activities and reports or again the obligation to report to higher authorities, all guarantee that this will be the case.

As far as the *supervisory authorities* of control bodies are concerned, the best approach appears to be total independence (for example the Court of Auditors). Any supervision by a ministry could raise questions about dependency or pressures. Being directly answerable to the highest administrative or political authorities does, however, give an institution a certain authority and power, reflecting the interest of the highest State authorities with regard to the issue in question. This applies also to an inspection service within a given government department or ministry: the question arises of answerability to the minister's private office or human resource management. An interministerial approach has the advantage of avoiding too strong an attachment to a single ministry and thus enables relative emancipation.

The *composition* of control bodies is also an important factor, guaranteeing the independence of its members and public trust. The French model of recruiting senior civil servants on the basis of a competition -- no favouritism or nepotism -- and giving them secure conditions of employment – security of tenure and salary scales – goes part of the way to freeing them from political pressure. Together with the sense of public service fostered by the major training colleges, this explains why most control bodies comprising senior civil servants work well. Only pressure from the administrative hierarchy, often itself subject to political supervision, can affect to some degree the independence of civil servants working in a hierarchical structure.

There are two main types of inspection services: inspectorates, which are permanent bodies made up of professional inspectors, and also an original model of peer review, using staff temporarily assigned to inspection duties.

Box 29. An example of an internal inspection service: the General Government Inspectorate of the Ministry of Foreign Affairs (Ministère des Affaires Étrangères – MAE

The MAE General Inspectorate is not a control body but a service comprising officials seconded from their diplomatic posts for fixed periods, who carry out inspection duties on a temporary basis.

The *strengths* of this peer review *system* are numerous. In particular, the inspectors have practical experience in the field and are therefore the best qualified to identify errors and shortcomings.

Improvements are being looked for. Thus, in order to promote exchanges and contact with all categories of staff and expatriate staff on the spot, it is planned to recruit inspectors from category B, and eventually category C, staff. The aim is to promote a relationship of trust and the improved dissemination of information when inspections are being carried out.

Shortcomings and *gaps* may, however, be noted. The MAE General Government Inspectorate, an internal inspection service, only has jurisdiction over MAE staff and sectors, while some 50% of staff and monies are from other ministries (Minefi, Interior, Defence, Education or Culture). It is therefore highly desirable to create an interministerial inspection service, both as regards its composition and jurisdiction, one that would include officials from the General Government Inspectorate.

The major question-mark relates to the *validity of the system used:* can an inspector be fully objective if he knows that he is inspecting a potential superior or a potential inspector? Can one be both, and in turn, judge and jury?

The composition of external control bodies must be beyond reproach so that such bodies are recognised as being perfectly objective and so that their verdicts or decisions are accepted.

Box 30. A difficult balance to attain: the example of the rules and composition of the Commission Nationale d'Équipement Commercial, or CNEC (National commission for commercial land-use planning)

The history of the CNEC, responsible as from 1969 for monitoring the balanced economic development of the retail network in France and ensuring that building and extension licences or permits are delivered in accordance with the law, is an example of trial and error, as well as multiple experimentation, in order to set up an institution which is respected and autonomous.

From 1973 to 1993, the presence of a significant number (20 members) of retail professionals and elected representatives within the Commission, as well as its dependency on the political authorities in the person of the Minister responsible for Trade, the only and last level of authority and arbiter, led to malfunctioning and created doubt about the decisions taken.

In 1993, the Sapin Act on the prevention of corruption entirely remodelled the rules and composition of this discredited institution, which became independent. The CNEC's decisions are subject to review by the *Conseil d'État* (top administrative court).

It is composed of 8 members. At national level, elected representatives are no longer members (their presence at *départemental* level remains a problem, in the opinion of the European Commission itself). The presence of 4 civil servants from the major services – members of the *Conseil d'État*, the Court of Auditors, the General Finance Inspectorate and the *Inspection Générale de l'Équipement* – reinforces the apolitical and objective character of decisions. The 4 other members include "qualified" persons of standing appointed by the Government, who often have close links with economic groups or consumers' representatives. The composition therefore reflects a compromise, which functions if everyone present plays the game of neutrality and is willing to stand aside in situations of conflict of interest. The length of the mandate (6 years) and the fact that it cannot be renewed, also help to prevent any pressure on the members of the Commission, or any expectations on their part (career).

The arrangements for making *referrals* to control bodies also play a role in the effectiveness of anti-corruption measures. The power of such bodies to initiate investigations themselves and the free establishment of control programmes are obviously good practices, which are often the prerogative of independent institutions. Mandatory referral – in the case of ethics commissions – is also an exhaustive means of examination. Limiting referrals to certain authorities is always perceived as a constraint, even if the need for a filter and for processing requests having regard to the – often limited – resources of certain services is well understood (e.g. the repeated requests from MIEM and SCPC to obtain the right, respectively, to undertake own-initiative investigations and to be able to respond to the requests of citizens). While inter-ministeriality broadens the possibilities to make referrals, it does not, however, equal own-initiative rights.

As regards the different bodies involved, the trend is to superimpose institutions with different rules: traditional control bodies (internal and external inspection), regulatory authorities (such as the *Conseil de la Concurrence* or the *Commission Nationale d'Équipement Commercial*) and advisory authorities (ethics commissions). This institutional abundance is a reflection of the many attempts to adapt supervision as well as possible to the changing environment of corruption.

Prevention framework

It can be seen that effective prevention depends, on one hand, on the rules and precise codes promulgated for this purpose, and on measures to increase the awareness of the players involved, on the other.

So-called "soft" law (non-binding) and codes and charters of ethics or behaviour, have not really become part of French administrative life. The State and its administrative services often invoke the 1946 Civil Service Rules or different Codes (Tax, Customs, Commerce, Labour) to explain why it is unnecessary to draft codes of ethics.

Nevertheless, these texts, in particular the Civil Service Rules, remain extremely general and are limited to a list of principles: principles of public service (freedom, equality, continuity, impartiality, neutrality, respect for others' beliefs, decency, good morals, free service), principles of loyalty and obedience to the employer institution and the Nation, and a reminder of obligations of personal conduct (personal integrity, strict moral standards, etc.). It can therefore be said that the existing texts are often insufficient. They cannot therefore be considered to be a detailed set of rules regulating a profession or activity and indicating clearly what is prohibited.

As regards the introduction of codes of ethics, the SCPC should have a key supporting role in validating and monitoring the effectiveness of such codes in the French civil service.

Below, are two original examples of the many preventive measures taught in training colleges for civil servants or in the civil service.

Box 31. Codes of ethics and the French experience

Introducing codes of ethics involves a significant effort to educate and involve civil servants and their hierarchies, and can therefore be described as a preventive measure.

A number of codes of ethics have been introduced in the French civil service, for example in the police force and in certain high-risk departments (tax or customs). No precise count has been made of the exact number of codes of ethics in the civil service as a whole.

A number of those interviewed are of the opinion that there is a real need to introduce such codes, for French civil servants are often left to deal themselves with difficult situations: gifts, various invitations, seminars, travel, etc.

Training the staff involved is essential as regards prevention, and the SCPC, as a preventive service, proposes training modules for this purpose.

Box 32. SCPC training modules

The SCPC offers training modules to government services and private enterprises which ask for them.

There are two main types of module on offer:

1. *For control services*, in order to help them detect fraud or corruption, the SCPC has drawn up a diagram of risks and a list of the indicators of fraud making it possible to identify, demonstrate and prove fraudulent arrangements. To this end, the most common such arrangements are analysed and described, while "fraud cards" are prepared for each accounting heading (between 3 and 10 fraud possibilities per heading). Broadly speaking, the tools used are those of account auditing.

2. *For government services and enterprises*, emphasis is placed rather on the introduction of preventive and effective internal control procedures. Based on the theme "how to structure an effective internal control", the SCPC leads the officials concerned in an analysis of:

-- identifying a system of reference: existing corpus, legislation, regulations or codes, their gaps and limitations;

-- a typology of risks: What are the weak points? What type of corruption? At what level? What are the risk indicators?

-- improving internal controls following an inventory: propositions and approval or otherwise by the SCPC.

For the purposes of such training, the SCPC groups officials together by profession or by directorate (taking account of sectors and posts with different risks), involves them continuously with the critical examination of their organisation (self-assessment by the staff) and waits for them to make reform proposals which it validates (tailored amendments depending on the staff and risks involved). Once the programme of measures has been determined, the SCPC validates it and monitors implementation (by means of inspections).

Some leading examples of SCPC training:

-- mobilisation of the SCPC following the scandal of the construction of TGV Nord (high-speed train link);

-- the Ministry of Public Works: 3 years' monitoring of 3 000 senior managers, in particular those in charge of procurement contracts.

Source: La formation, SCPC, http://www.justice.gouv.fr/minister/formscpc.htm

Controls

The French control system is based on three pillars:

1. Periodic controls at regular defined intervals;
2. Rather formal legal and accounting controls;
3. A *posteriori* controls.

This model is perfectly illustrated both by the functioning of internal control bodies (e.g. the MAE General Government Inspectorate, which carries out controls every 4 or 5 years of posts abroad) as by that of external control bodies such as the Court of Auditors or the CRCs which, at intervals of roughly 4 years, check the accounts of public accountants, and budgets, and ensures the effective management of public monies. Beyond the strict monitoring of application of the rules, the control process is being increasingly incorporated into a comprehensive approach of the use of public resources and the goal of performance.

Many interviewees from control bodies spoke of the need to supplement the existing legal control by real measures to prevent and *manage risks*. Thus, in order to treat cases quickly and better, controls need to be directed towards strengthening the system for analysing and detecting risks, in particular by creating databases and benchmarking mechanisms.

Box 33. Risk management as addressed in control bodies: Court of Auditors and CRCs

Financial jurisdictions exercise controls based on risk management, and set up institutions and procedures for this purpose. The thinking behind risk analysis is perfectly illustrated by:

- major investigations, conducted jointly by the different chambers of the Court of Auditors and by the CRCs, into the application of regulations and the implementation of public policies;
- sectoral priorities chosen by the chambers in accordance with the issues specific to sectors which are systematically monitored.

In both cases, it can be seen from the topics chosen, that focus is given to high-risk sectors. The *procedures or instruments* adopted to carry out this risk analysis include:

- in addition to the permanent and informal information reaching the members of the chambers, which makes it possible to define grey areas of irregularities, each Chamber of the Court of Auditors has a Head of sector, with the task of leading and guiding the organisation of controls. He is responsible for monitoring sectors, reading the specialised literature, and keeping himself informed through contacts with members of this sector and senior staff from ministries, thus enabling a targeting of controls;
- the creation of a Tools and Methods Unit of the Court of Auditors in 1999 met the need to establish and support control practices. The Unit is responsible both for analysing methodology and for developing tools (databases).

Source : *2001 Annual Public Report of the Court of Auditors, Chapter II: La politique de contrôle*

There is thus a positive development in the practices and mentalities with regard to controls. Legal control is increasingly being incorporated into a wider approach of risk management and the quest for performance.

Sanctions

With regard to the sanctions that should be used to punish, and above all deter, corruption, there is a current debate and change in approach which here again result from an acknowledgement of the complexity of the problem. The French system includes at least these three types of sanction: administrative, criminal and financial. How should the choice be made between administrative, financial and criminal sanctions, or a combination of them? This is a difficult problem -- contradictory or non-co-ordinated decisions, questions of legitimacy -- but has the advantage of presenting multiple responses to the complex issue of corruption.

Administrative sanctions

The threat of recourse to the administrative courts is not a great deterrent. However, if they are mobilised and vigilant, the administrative authorities, i.e. the hierarchical chain, potentially have strong deterrent powers in the form of heavy administrative sanctions. There are three points to emphasise:

- The potential effect depends on the degree of tolerance or of severity of the authorities vis-à-vis corruption.
- Co-ordinating administrative and criminal sanctions can be difficult.
- The thorny question remains of suspending pension entitlement, for this is the strongest sanction available. It is the only way of exerting pressure on retired civil servants who, for example, are in

breach of the rules about "*pantouflage*" (working subsequently in the private sector) and conflicts of interest.

Criminal sanctions

The fear of criminal courts and a sentence of imprisonment is without doubt the most effective deterrent as regards corruption.

Box 34. Penalties regarding public procurement: no freedom without accountability

Until the creation in 1993 of the *offence of favouritism -- undue advantage in public procurement and public service delegation agreements* -- the weakness of the rules protecting public procurement and the absence of sufficiently dissuasive criminal provisions had led to the institutionalisation of corrupt practices and the financing of political activities in the field of public procurement. Creating the offence of favouritism, with the resulting penalties applying to public procurement, has been extremely effective and has "cleaned up" this high-risk sector. This effectiveness is shown by:

-- the level of *MIEM referrals* -- a body set up at the same time with responsibility for tracking down this new offence – which shows both the scale of the problem of corruption in public procurement in the 1990s, and the current improvement;

-- the desire to avoid sanctions under the new Act and to remain within the law, which has been shown by a multitude of *institutional creations* (procurement services or offices), the recruitment of specialised staff (DESS, a training course in public procurement, specialised lawyers) and the appearance of specialised publications, etc.

Creating the offence of favouritism is likely to change the balance of power between decision-maker and purchaser between elected representative and civil servant. This measure may be compared to the personal and financial responsibility of public accountants. While decision-makers could previously put pressure on purchasers to tolerate illegal practices, the personal and criminal liability of a civil service purchaser is today, on the contrary, a strong argument for saying no to his superiors or elected representative. The law is offering protection and making people more responsible.

This is an example of legislation designed to change a general practice, and the effectiveness of the principle "no liberty without accountability": the offence of favouritism is a preventive as well as a repressive offence, and the law plays its deterrent role.

Source : MIEM Annual Report, 2002

The main weaknesses of the criminal process are its lack of flexibility as regards:

- nature of the activity;
- the burden of proof and the problem of intention;
- the time needed for enquiries and investigations, and prescription.

The judicial system therefore often has difficulties in dealing with corruption cases and bringing them to a successful conclusion. More flexible procedures can offer an alternative to cumbersome judicial ones: administrative processes, or recourse to regulatory authorities such as the *Conseil de la Concurrence*, or to other types of sanction such as financial sanctions.

Financial sanctions

The criminal courts can impose financial sanctions and ask for part of the misappropriated funds to be returned, but practice has shown that financial penalties are often ridiculously low compared to the money misappropriated, and therefore ineffective.

Box 35. Financial sanctions and the *Conseil de la Concurrence* (Competition authority)

In the past, the *Conseil de la Concurrence*, which has since 2002 had available similar procedures to those in English-speaking countries (plea bargaining and settlement) essentially used pecuniary sanctions. The level of proof is in theory lower than in criminal proceedings, especially for unilateral practices, but in practice it is very similar, which explains why the *Conseil de la Concurrence* can impose severe sanctions, often much higher than the criminal fines used to punish economic and financial offences. The ceiling for pecuniary sanctions is very high (10% of total turnover since 2002, 5% before), even though in practice much lower fines are imposed (1.5% of total turnover on average). To sanction illegal commercial or economic practices affecting the market, it may therefore be thought that a fine remains the appropriate sanction.

However, this raises certain questions:

- there are cases in which the personal responsibility of senior management is involved, and recourse to the courts is necessary;

- financial sanctions can also be counterproductive economically (which would be the opposite of the objective sought), notably if they penalise shareholders or employees, or endanger an economic activity, which explains why the *Conseil de la Concurrence* has imposed moderate sanctions as compared to the maximum fines available.

It is by a flexible use of sanctions, adapted to practical situations, and by a combination of different ones, that corruption can be effectively addressed.

Co-ordinating French anti-corruption mechanisms

French anti-corruption mechanisms are scattered and diffuse, which means that information circulates poorly, legislation and regulations abound and there is a lack of co-ordination between the bodies responsible for fighting corruption. However, a number of initiatives have been introduced to reduce these problems.

The circulation of information

The circulation, bottom-up transmission and collection of information, within and between government services, between them and ministries, between institutions, between criminal/financial/administrative courts -- as well as the dissemination of information about anti-corruption measures in civil society, are one of the weak points of the French system for preventing and combating corruption.

The information network, as it functions today, could be described as being:

- Aadministrative and hierarchical (the permanent and often effective bottom-up transmission of information);
- Informal and spontaneous (based on feelings, impressions, personal experience and the practice of workers in the field); and therefore, fragmented, even limited.

Box 36. Description of the Directorate for Criminal Affairs and Pardons of the Ministry of Justice

The most formal procedures include:

The annual criminal policy report by the Prosecutors' Offices of the *Tribunaux des Grande Instance*, Economic and Financial Investigation Units, is a key instrument for monitoring the functioning of the criminal law with regard to economic and financial offences.

It includes a heading entitled "Measures to combat the corruption of public officials", including cases involving the equality and freedom of access of candidates for government procurement, and another heading entitled "Public Procurement-Competition".

Particular attention has been paid to the relationship between financial and criminal jurisdictions: circulars from the Ministry of Justice[93] (*Relations between judicial authorities and financial jurisdictions, June 1996, November 1997, June 2003*) have been published since 1996 with a view to improving co-ordination between the two types of jurisdiction. These circulars, addressed to the public prosecutors' offices, in fact institutionalise contacts, by giving them a legal basis.

Multiple sources of information

-- independent administrative authorities (*Conseil de la Concurrence*, COB, etc.);

-- internal administrative inspectorates (IGF, IGAS, etc.);

-- specialised units: MIEM, MILOS;

-- financial jurisdictions (Court of Auditors and CRCs);

-- TRACFIN;

-- denunciations by auditors;

-- complaints by victims (few cases).

All these sources send the Public Prosecutor's Office the cases which they consider illegal, either directly by alleging the offence or crime, or under Article 40 of the Code of Criminal Procedure, or by obligation the breach of which is a criminal offence (accountants). It is only when cases are submitted that information is circulated

Co-ordination of action plans

French anti-corruption measures are fragmented and diffuse, involving many texts (legislation, rules, regulations) and many institutions -- non-specialised (control bodies, internal inspectorates), specialised (economic regulation, legality of government purchases, management of conflicts of interest) – deal with or process, directly or indirectly, measures to prevent and combat corruption. This complicated framework helps neither the co-ordination nor the rationalisation of tasks. What is needed therefore is to set up mechanisms for co-ordination and concertation so as to turn the current arrangements into a veritable anti-corruption system.

One of France's original measures to combat corruption was the creation of *interministerial* structures. Many *interministerial* bodies (SCPC, MIEM, MILOS) were created in order to prevent and combat corruption, while others recruit staff from different government services (e.g. TRACFIN, Customs, Treasury, Justice, Police, Constabulary).

93 DACG, *Relations entre l'autorité judiciaire et les jurisdictions financiers,* June 1996, November 1997, June 2003, Ministry of Justice.

Box 37. Interministeriality

The strengths of interministerial systems

Such systems have two main assets:

- *skills*: different types of expertise and skills are pooled (multi-disciplinarity and a wealth of approaches to a common objective);

- *a network*: a tool for inter-service dialogue and co-operation is constituted (privileged links with government services, referrals, the circulation of information).

Examples of interministerial services

- The composition of the SCPC in 2002:

  – a judge, Head of service; a judge, Secretary-General; a counsellor from the regional auditors' chamber; an administrative Head of service of equipment; an officer from the national constabulary; a deputy-director from Customs; a tax inspector. Eight other posts (two judges, three civil administrators, one police officer, one Head of service from DGCCRF, and one central government official) have not been filled. Others should be created shortly to cope with the new and growing tasks of the service.

  – The idea is that these privileged links, as ensured by the founding rules of the Service, facilitate the circulation of information and the (theoretically efficient) decompartmentalisation of measures. The SCPC has moreover created an internal standing liaison committee comprising representatives from the various ministerial departments with which it collaborates, a committee which helps it with regard to the centralisation of information, research and planning.

- The composition of TRACFIN in 2002.

At 31 December 2003, TRACFIN was served by 48 central government civil servants (33 of whom were responsible for operational analysis, the core of the Unit's work), from various services, in particular financial ones (General Customs Directorate, decentralised services of the Treasury). In addition to a judge, the staff includes two officials, one seconded from the Ministry of Defence and the other from the Ministry of the Interior in 2002 and 2003, respectively.

Sources: SCPC Annual Report 2002 and http://www.finances.gouv.fr/pole ecofin/politique financière/tracfin/fiche presentation.htm

Conditions for effectiveness

However, for interministeriality to be really effective, the following is required:

1. the government services concerned must second staff or make them available on a full-time basis (hence the vacant posts);

2. inter-departmental co-operation links must be involved formally and officially (bottom-up circulation of information, co-operation, involvement in pilot schemes).

Mechanisms other than interministeriality -- doubtless less cumbersome to set up and more flexible -- should be used to combat corruption. To improve co-ordination, *standing liaison committees or co-ordination meetings* can also be used to bring together actors from various fields. However, this approach is only relevant to certain sectors and very special or sensitive cases, and has been adopted only recently. Thus, a liaison committee for combating money laundering, chaired jointly by TRACFIN and the Ministry of Justice, has recently been created by law (Act of 15 May 2001 on new economic regulations – Article L 562-10 of the Monetary and Financial Code). This body currently has 30 members from all the relevant occupations, control authorities and different government services (Ministry of the Economy, Finance and Industry, Ministries of Justice and the Interior). Its goal is to improve the mutual information of its members and to issue proposals about how to improve national anti-money laundering procedures.

Box 38. An effective and focussed network model: The FINATER Unit

Set up on 27 September 2001 by the Ministry of Economy, Finance and Industry, the FINATER Unit is a body for strategic ministerial co-operation in the fight against the financing of terrorism.

It gathers together a small number of key players around a common purpose (to detect networks financing terrorism). Chaired by the Director of the Treasury, with the Customs Directorate carrying out secretariat duties, it includes the Director-General of Customs, the Director-General of Tax, the Secretary-General of TRACFIN, the Director of Fiscal Legislation, the Director of Legal Affairs and that of external economic relations of MINEFI. It meets regularly, and its members are geared for action. It may be thought that current events and the political focus on this sensitive topic have contributed greatly to the success of this co-ordination tool.

Source : *TRACFIN 2002 Report*

There is no working party specifically bringing together the many partners involved in the fight against corruption. Such a method of working is highly desirable. Changing from bilateral relations between departments to multilateral and targeted relations would seem to be the best way to manage the multiplicity of actors, institutions, information and procedures.

Involving authorities and making them aware of their responsibilities

The decentralisation policy implemented since 1982, reflecting the political will to redistribute powers between the central government and local authorities, has to some extent reinforced the autonomy of the latter. However, the prevention and combating of corruption in France remains to a large extent the responsibility of ministries, and government departments and services.

Yet, thought should be given to the relationships – for long perceived as conflictual – between investigative, advisory and control institutions on the one hand, and the services being assessed on the other. If the authorities being assessed are involved, associated and made aware of their responsibilities, this turns them into full partners in the fight against corruption, and not potential adversaries. The discretionary power given in this way to the authorities being assessed makes them more aware of their responsibilities. Ministries therefore become active partners, responsible in part for ensuring execution of the contract (supervising their staff on secondment) and in the firing line should there be a scandal. If the services assessed are actively involved in the evaluation process, on a voluntary as opposed to mandatory basis, this would be an additional guarantee of success as regards control and monitoring procedures.

Should non-binding partnership relationships be transformed into ones of control and constraint, with the risk of destroying the partnership? Some members of the Ethics Commission were reluctant to see changes to the rules of the Commissions, for example changing advisory opinions into binding ones. This type of modification changes the philosophy of their task, based on prevention and increased awareness, and gives it a more repressive and authoritarian aspect. The risk is of introducing a power struggle with the services evaluated and rendering the prevention process more cumbersome by introducing a formal and binding procedure which, ultimately, makes the whole process more legalistic.

Involving outside players and increasing transparency

To combat corruption in its many forms -- economic, political or social -- requires a concerted effort by society as a whole, from politicians, public servants and administrators to company directors and ordinary citizens. Without that effort and political determination, measures to prevent and control corruption will be piecemeal and disorderly. Without necessarily being ineffective, their performance will never be optimal.

Involvement of outside institutional players

In France, the fight against corruption has traditionally been the domain of:

- The legal community -- public prosecutors, judges and magistrates;
- The higher ranks of government -- the *Grands Corps* (Court of Auditors, CRCs, Council of State, Finance Inspectorate) – and departmental inspectorates.

The prevailing view on corruption was for a long time that of legal and government specialists, a fact reflected in the membership mix of the commissions set up to examine the issue in the 1990s. This tightly closed circle takes a narrow view of corruption, through the prism of the law and the distorting mirror of crime. And the hierarchical, disciplinary approach to the problem taken by government departments (where the emphasis is on public-service rules and sanctions) has not been an incentive for staff interaction on this issue.

To date, the *unions* have not backed the introduction of anti-corruption or evaluation instruments, which they perceive as unwarranted and casting doubt on the probity of public servants in general. Unions tend to underestimate the magnitude of the corruption phenomenon, reducing it to a few cases that are as exceptional as they are unfortunate. Yet the avenues being explored for whistleblowing include the involvement of the unions to act as intermediaries, thereby shielding the whistleblowers who would remain anonymous. The involvement of the unions in combating corruption would therefore appear to be necessary. As social partners, they have a major role to play not only in informing, training and raising awareness among public servants, but also in modernising risk management.

Enterprises would also appear to be crucial players in combating corruption, since they are:

- The leading source of corruption; but also;
- Victims of corrupt practice, be it active or passive (additional costs, exclusion from procurement, unfair competition, decline in productivity and competitiveness among actively corrupt firms);
- Whistleblowers or denunciators;
- Test-beds for new measures to prevent and combat corruption.

Very few firms denounce bribery or other illegal agreements that come to their knowledge. Out of interest or fear of reprisals, firms seldom report corruption or act as whistleblowers.

France is exploring two original avenues to facilitate the involvement of enterprises in reporting irregularities: the first is the introduction of leniency or settlement procedures by the competition authority (*Conseil de la Concurrence*), while the second concerns the legal obligation to report suspicions to TRACFIN.

Box 39. The NRE Act and settlement/leniency procedures

The 2001 Act on New Economic Regulations provides an alternative to direct financial sanctions by introducing a *leniency procedure* under which, along the lines of the *plea bargaining* system in English-speaking countries or the European Commission, firms that are first to denounce illegal agreements or abuse of dominant position are granted impunity. This incentive for firms themselves to denounce or break a cartel is too recent for the practice to have been evaluated in France, although a few proceedings are under way.

According to France's *Conseil de la Concurrence,* cartels are often reported to the authorities when special circumstances arise that create divisions among the members. Two situations appear to be particularly critical to the survival of a cartel. The first, a change in the capital structure of one of the members, is a threat to the cartel as the new management may wish to break with old habits. The second is when a cartel knows itself to be under threat or coming to an end because of internal conflict, each partner may be tempted to leave it as promptly as possible before being denounced by the others. In any event, particular caution is needed to ward off the risk of the procedure being manipulated or exploited (e.g. competitors denounced by cartel organisers).

Box 40. Tracfin and "declarations of suspicion"

Only as part of the fight against money-laundering have significant results been achieved and economic players become closely involved.

The banks, which are legally obliged to "declare suspicions", have become key players in the reporting of irregularities. They have set up intelligence cells and expertise units to process this kind of information. After a period of adjustment and staff training, the figures show an increase in reporting (6 896 "declarations of suspicion" in 2002).

This mandatory reporting system, introduced in 1991, places an obligation on members of the banking profession to report any financial operations, conducted by private individuals or corporate entities, which the bank finds suspicious. The principle behind "declarations of suspicion" is subjective, since members of the banking profession make a personal analysis of the facts, environment and characteristics of a banking operation, based on their own experience and vigilance. Such declarations are not based on standards, or on a specific framework, nor are there even any drafting specifications. They can be extremely varied in form and often lack detail, so it is then up to Tracfin, the investigation service, to process and supplement them with additional information. Where appropriate, Tracfin refers them to the courts.

Broadening this practice, and the ensuing obligation, to other professions may be a good way of raising awareness in other branches of the economy (currency exchange, real estate, insurance, mutual insurance, casinos, auctioneers and property agents) about the problems of money laundering but also more generally about irregularities and corruption.

Calling in *outside expertise*, particularly from the scientific and academic community, is also highly advisable. It is somewhat surprising that the French Government does not take a multidisciplinary approach to such a complex, changeable issue as corruption. Only administrative and legal experts have been mobilised to tackle the subject.

Unfortunately, government departments do not feel as accountable to the legislature as they do to the executive. There appears to be a need for *Parliament* to be more involved in demanding transparency and results in terms of how government departments tackle corruption.

Opening up to civil society

Corruption concerns everyone. There are many facets to *citizen involvement* in the fight against corruption:

- Ordinary citizens are the main victims of corruption, in terms of misappropriated funds and dysfunctional services;
- Members of the public are in the front line when it comes to fighting corruption – as users they can report irregularities and, as citizens and voters, they can express their moral indignation and refuse to tolerate corruption. Yet the lack of public mobilisation is striking.

There is little recourse to reporting or whistleblowing in France. Apart from public servants (Article 40 of the Code of Criminal Procedure) and members of specific professions (e.g. Court of Auditors, or banks) who are obliged to report irregularities to TRACFIN or the judicial authorities, there is no public guidance on how ordinary citizens are to deal with situations involving corruption.

Box 41. Reporting, whistleblowing and Article 40 in France

Reporting or denunciating irregular or criminal acts is a sensitive subject in France. Historical references, relating in particular to the Vichy regime and incentives to act as informants, and French culture are just two of the factors behind this reluctance.

Article 40

Content
Only Article 40 of the Code of Criminal Procedure requires public servants to report criminal behaviour or acts to the Public Prosecutor and forward any relevant clues or proof. There are no statistics on recourse to Article 40 by French public servants. Interviewees did point out that Article 40 was becoming better known and more widely used, although they were unable to provide evidence of this.

Enforcement
There are two problems here, one being the lack of concerted efforts on the part of the authorities (mainly the Ministry of Justice) to promote the use of this tool because of hostility on the part of government departments which jealously guard their independence, and the other being the administrative hierarchy's "filter" and their discretionary powers which come between public servants and the Public Prosecutor. Many government departments are content to deal with cases of corruption internally and sometimes opaquely, using administrative sanctions or transfers, and are reluctant to refer cases to the courts and thus bring out into the open conduct that might sully the reputation of government as a whole.

Future
Avenues are opening up regarding the more widespread use of Article 40. Those interviewed would prefer to see more information, as well as changes to government culture and traditions, rather than the threat of criminal sanctions or legal constraints.

Whistleblowing
As for more widespread whistleblowing by ordinary citizens who become aware of acts of corruption, there is no protocol -- other than a purely judicial one -- for encouraging and helping the general public on this. For the ordinary citizen, there is little room for manoeuvre between administrative reporting and actually going to court. Government departments have simply made complaints books or registers available to members of the public who wish to lodge a complaint, often under the eyes of the very officials who have given cause for criticism. The growing size and complexity of the complaints system (e.g. customer relations, mediators, ombudsmen), compounded by cumbersome and opaque procedures, does nothing to promote concerted efforts. Introducing a *"whistleblowing"* procedure is proving especially complicated. There are major problems, primarily legal protection for witnesses (anonymity) and the strong risk of manipulation, exploiting the system, and wrongful denunciation.

There are numerous ways of encouraging the reporting of corruption, from financial incentives for denunciation (rewards) to the simple creation of a freephone number or Internet sites. One excellent idea would be to provide public servants, and users, with a single interlocutor within government (an ombudsman, mediator or ethics counsellor). Then it would merely be a question of deciding what importance and status to give these people, who would be centralising complaints and reports. Should they work "in-house", as it were, and if so should they be part of the hierarchy or an independent entity? Should outside "corps" be called in? Should the unions be involved? Should whistleblowers remain anonymous or not? The French legal system distinguishes public testimony from anonymous informants. In both cases, reports are subject to investigation.

Given the many questions raised by whistleblowing, some of the interviewees in this study were sceptical about the need for it. Introducing such a practice would raise as many problems as not having one at all.

There is general evidence that French anti-corruption authorities and experts are very distrustful of whistleblowing. They all underlined the inherent risk of seeing the procedure manipulated, exploited or used to settle scores, while on the other hand emphasising the extreme methodological caution required in processing denunciations. Many of the interviewees evoked the cultural and historical factors behind half-hearted French experiments in this field.

Corruption is too complex and changeable a phenomenon to be confined to a single category of experts. Corruption concerns everyone, since anyone can be both briber and bribed, in some cases simultaneously. There is a need to open up both the debate and this policy arena.

Prospects

Flexibility is now being introduced in many different forms (plans to reform Public Procurement Code as well as the rules governing conflicts of interest). Citing the past successes of anticorruption measures and the current improvement in risk areas, some are advocating liberalisation and recommending that players be made more accountable.

Questions about the future remain: how can judgments be formed about a system with no means of evaluating or measuring either the corruption it targets or its own performance? Not only are there no scientific or objective data to provide clear evidence that corruption is declining in France in specific areas, instruments for a clear evaluation of what impact such liberalisation might have in the future are needed.

Corruption was central to public debate and government policy in France from 1993 to 1995. At the time, heightened awareness among politicians, inspection bodies and the judiciary, compounded by the public's refusal to tolerate corruption, led to unprecedented and concerted efforts to combat corruption. It is crucial to continue those efforts.

ANNEX 1

CONVICTIONS FOR BREACHES OF THE DUTY OF PROBITY

Table 17. Statistics: breaches of the duty of probity

		1997	1998	1999	2000	2001	2002 P*
	TOTAL	114	134	153	187	141	141
ARTICLE 432-10: Extortion		**0**	**6**	**2**	**1**	**3**	**4**
12219	EXTORTION BY A PUBLIC SERVANT UNDUE LEVYING OF FEE, TAX OR DUTY	0	1	1	1	0	0
12220	EXTORTION BY AN OFFICIAL REPRESENTING THE PUBLIC SERVICE: UNDUE LEVYING OF FEE, TAX OR DUTY	0	5	0	0	3	4
12221	EXTORTION BY A PUBLIC SERVANT: UNDUE EXEMPTION FROM A FEE, TAX OR DUTY	0	0	1	0	0	0
12222	EXTORTION BY AN OFFICIAL REPRESENTING THE PUBLIC SERVICE: UNDUE EXEMPTION FROM A FEE, TAX OR DUTY	0	0	0	0	0	0
ARTICLE 432-11: Passive corruption and influence-peddling by public servants		**39**	**36**	**49**	**33**	**25**	**35**
11707	PASSIVE CORRUPTION: ACCEPTANCE OR SOLICITING OF A BRIBE BY A PUBLIC SERVANT	19	23	22	5	7	12
11708	PASSIVE CORRUPTION: ACCEPTANCE OR SOLICITING OF A BRIBE BY AN OFFICIAL REPRESENTING THE PUBLIC SERVICE	12	9	16	12	14	16
11709	PASSIVE CORRUPTION: ACCEPTANCE OR SOLICITING OF A BRIBE BY AN ELECTED OFFICIAL	3	1	3	3	2	3
11710	PASSIVE INFLUENCE-PEDDLING: ACCEPTANCE OR SOLICITING OF A BRIBE BY A PUBLIC SERVANT	1	2	0	5	0	1
11711	PASSIVE INFLUENCE-PEDDLING: ACCEPTANCE OR SOLICITING OF A BRIBE BY AN OFFICIAL REPRESENTING THE PUBLIC SERVICE	4	1	6	5	2	2
11712	PASSIVE INFLUENCE-PEDDLING: ACCEPTANCE OR SOLICITING OF A BRIBE BY AN ELECTED OFFICIAL	0	0	2	3	0	1

P* Provisional data

ARTICLES 432-12 and 432-13: Undue advantage		25	39	35	51	27	32
10709	HOLDING BY A CIVIL SERVANT OF AN INTEREST IN AN ENTERPRISE SUBJECT TO HIS SUPERVISION OR CONTROL	0	0	1	3	0	1
10710	HOLDING BY A CIVIL SERVANT OF AN INTEREST IN AN ENTERPRISE WITH WHICH HE HAS SIGNED CONTRACTS ON BEHALF OF THE STATE	0	0	1	1	1	0
12282	ILLEGAL HOLDING BY A PUBLIC SERVANT OF AN INTEREST IN A BUSINESS OPERATION FOR WHICH HE ENSURES PAYMENT/SETTLEMENT	1	0	2	1	0	0
12283	ILLEGAL HOLDING, BY AN OFFICIAL REPRESENTING THE PUBLIC SERVICE, OF AN INTEREST IN A BUSINESS OPERATION FOR WHICH HE ENSURES PAYMENT/SETTLEMENT	0	2	1	0	1	1
12284	ILLEGAL HOLDING BY AN ELECTED OFFFICIAL OF AN INTEREST IN A BUSINESS OPERATION FOR WHICH HE ENSURES PAYMENT/SETTLEMENT	8	4	5	3	4	1
12285	ILLEGAL HOLDING BY A PUBLIC SERVANT OF AN INTEREST IN A BUSINESS OPERATION THAT HE ADMINISTERS OR SUPERVISES	4	3	1	4	1	3
12286	ILLEGAL HOLDING, BY AN OFFICIAL REPRESENTING THE PUBLIC SERVICE, OF INTERESTS IN A BUSINESS OPERATION THAT HE ADMINISTERS OR SUPERVISES	1	3	5	9	5	9
12287	ILLEGAL HOLDING BY AN ELECTED OFFFICIAL OF AN INTEREST IN A BUSINESS OPERATION THAT HE ADMINISTERS OR SUPERVISES	`11	27	19	30	15	17

ARTICLE 432-14: Undermining equality for bidders in public procurement		12	7	19	48	39	37
12370	UNDERMINING FREEDOM OF ACCESS OR EQUALITY FOR BIDDERS IN PUBLIC PROCUREMENT	12	7	19	48	39	37

ARTICLES 432-15 and 432-16: Purloining/misappropriation of property by a public servant		38	46	48	54	47	33
1435	NEGLIGENCE BY A PUBLIC SERVANT LEADING TO THE PURLOINING, MISAPPROPRIATION OR DESTRUCTION OF PUBLIC PROPERTY	1	1	1	0	0	0
12289	PURLOINING, MISAPPROPRIATION OR DESTRUCTION OF PUBLIC PROPERTY BY A PUBLIC SERVANT OR SUBORDINATE	37	45	47	54	47	33

Source: *Casier judiciaire national* (National criminal records)

ANNEX 2

Convictions and sanctions under Article 432-11
Passive corruption and influence-peddling by public servants, from 1997 to 2002

Table 18. Statistics: Passive corruption and influence peddling

11707 PASSIVE CORRUPTION: ACCEPTANCE OR SOLICITATION OF A BRIBE BY A PUBLIC SERVANT

Year	1997	1998	1999	2000	2001	2002
Convictions	19	23	22	5	7	12
No sanction	5	0	2	0	0	0
Prison sentence(suspended or otherwise)	13	22	13	5	4	12
- imprisonment (without suspension)	7	11	5	4	1	5
- in which case, number of months' imprisonment	14.4	27.8	17.4	31.0	30.0	12.2
- suspended sentence	6	11	8	1	3	7
Fines	1	1	7	0	3	0
Average amount of fine	8 000 FF	5 000 FF	10900 FF	0	2 500 FF	0 €
Alternative penalty	0	0	0	0	0	0
Educational measure	0	0	0	0	0	0

11708 PASSIVE CORRUPTION: ACCEPTANCE OR SOLICITATION OF A BRIBE BY AN OFFICIAL REPRESENTING THE PUBLIC SERVICE

Year	1997	1998	1999	2000	2001	2002
Convictions	12	9	16	12	14	16
No sanction	0	0	0	0	0	0
Prison sentence(suspended or otherwise)	9	9	15	11	11	16
- imprisonment (without suspension)	4	3	7	5	4	4
- in which case, number of months' imprisonment	7.8	9.3	7.7	16.8	12.5	18.0
- suspended sentence	5	6	8	6	7	12
Fines	3	0	0	0	3	0
Average amount of fine	4 667 FF	0 FF	0 FF	0 FF	3 333 FF	0 €
Alternative penalty	0	0	0	0	0	0
Educational measure	0	0	0	0	0	0

11709 PASSIVE CORRUPTION: ACCEPTANCE OR SOLICITATION OF A BRIBE BY AN ELECTED OFFICIAL

Year	1997	1998	1999	2000	2001	2002
Convictions	3	1	3	3	2	3
No sanction	0	0	1	0	0	0
Prison sentence(suspended or otherwise)	1	0	2	2	2	3
- imprisonment (without suspension)	0	0	0	0	1	2
- in which case, number of months' imprisonment	0.0	0.0	0.0	0.0	10.0	10.0
- suspended sentence	1	0	2	2	1	1
Fines	2	1	0	1	0	0
Average amount of fine	8 000 FF	50 000 FF	0 FF	20 000 FF	0 FF	0 €
Alternative penalty	0	0	0	0	0	0
Educational measure	0	0	0	0	0	0

11710 PASSIVE INFLUENCE-PEDDLING: ACCEPTANCE OR SOLICITATION OF A BRIBE BY A PUBLIC SERVANT

Year	1997	1998	2000	2002
Convictions	1	2	5	1
No sanction	0	0	0	0
Prison sentence(suspended or otherwise)	1	2	5	1
- imprisonment (without suspension)	1	1	2	0
- in which case, number of months' imprisonment	24.0	18.0	12.0	0.0
- suspended sentence	0	1	3	1
Fines	0	0	0	0
Average amount of fine	0 FF	0FF	0FF	0 €
Alternative penalty	0	0	0	0
Educational measure	0	0	0	0

11711 PASSIVE INFLUENCE-PEDDLING: ACCEPTANCE OR SOLICITATION OF A BRIBE BY AN OFFICIAL REPRESENTING THE PUBLIC SERVICE

Year	1997	1998	1999	2000	2001	2002
Convictions	4	1	6	5	2	2
No sanction	0	0	0	0	1	0
Prison sentence(suspended or otherwise)	4	1	6	2	1	2
- imprisonment (without suspension)	0	0	1	1	0	1
- in which case, number of months' imprisonment	0.0	0.0	36.0	1.0	0.0	12.0
- suspended sentence	4	1	5	1	1	1
Fines	0	0	0	3	0	0
Average amount of fine	0 FF	0 FF	0 FF	8 666 FF	0 FF	0 €
Alternative penalty	0	0	0	0	0	0
Educational measure	0	0	0	0	0	0

11712 PASSIVE INFLUENCE-PEDDLING: ACCEPTANCE OR SOLICITATION OF A BRIBE BY AN ELECTED OFFICIAL

Year	1999	2000	2002
Convictions	2	3	1
No sanction	0	0	0
Prison sentence(suspended or otherwise)	2	3	1
- imprisonment (without suspension)	0	0	0
- in which case, number of months' imprisonment	0.0	0.0	0.0
- suspended sentence	2	3	1
Fines	0	0	0
Average amount of fine	0 FF	0 FF	0 €
Alternative penalty	0	0	0
Educational measure	0	0	0

Source: Casier Judiciaire National

ANNEX 3

LIST OF INTERVIEWEES AND THEIR DEPARTMENTS

SCPC

Mr. **MATHON**, Judge, Head of SCPC

Mr. **BOUCHEZ**, *Conseiller,* CRC; Mr. **BUEB**, *Attaché principal,* Central Administration; Mr. **PONS**, Tax Inspector; Mr. **LORIOT,** Deputy Director, Customs; Mr. **LEPLONGEON**, Officer, *Gendarmerie*

Authorities and institutions

Mr. **DAHAN**, Rapporteur-general, *Conseil de la Concurrence*

Mrs. **LEROY**, Rapporteur, *Conseil d´État* and Chair of the *Commission Nationale d´Équipement Commercial*

Mrs. **PRADA-BORDENAVE**, *Conseiller d´État*, member of the Ethics Commission

CRCs and Cour des Comptes (Court of Auditors)

Mr. **BERTUCCI**, *Premier Avocat général, Parquet Général* (Public prosecutor's office)

Mrs. **GISSEROT**, *Procureur général, Cour des Comptes*,

Mrs. **LAMARQUE**, Chair, CRC - Upper Normandy

Mr. **PICHON**, former Rapporteur-general for the Bouchery Commission and President of the CRC - PACA region (Provence-Alpes-Côte d'Azur)

Ministry of Justice

Mrs. **LABROUSSE**, Judge, *Direction des Affaires Criminelles et des Grâces* (Criminal affairs and pardons)

Mr. **LAGAUCHE**, Judge, Deputy Director, *Justice Pénale Spécialisée (*Special criminal justice department)

Mr. **MARIN**, Director, *Direction des Affaires Criminelles et des Grâces.*

Ministry of the Economy, Finance and Industry

Mr. **LE BONHOMME**, Rapporteur-General, *Commissions Spécialisées des Marchés*

Mrs. **HOURT-SCHNEIDER:** Deputy Director, *Direction des Affaires Juridiques* (Legal directorate)

Mr. **MAURY**, Deputy Secretary-General, TRACFIN

Mr. **MONGIN,** Secretary-General, TRACFIN, and Director-General, Customs and Excise

Mr. **PANCRAZI:** Head, *Mission Interministérielle d´Enquête sur les Marchés*

Mr. **QUESNOT:** Deputy Head, General regulations office, *Direction des Affaires Juridiques*

Ministry of Foreign Affairs

Mr. **ROHOU,** Deputy Inspector-General

NGO: Transparency International

Mr. **DOMMEL**, former Inspector of Finance and President of Transparency International – French branch

Mr. **TERRAY**, Vice-President

ANNEX 4

ABBREVIATIONS

CC : *Cour des Comptes* (Court of Auditors)

CDBF : *Cour de Discipline Budgétaire et Financière* (Court of budgetary and financial discipline)

CESDIP : *Centre de Recherches Sociologiques sur le Droit et les Institutions Pénales* (Court of sociological research into law and penal institutions)

CFDT : *Confédération Française Démocratique du Travail* (trade union)

CGT : *Confédération Générale du Travail* (trade union)

CN/DEC : *Commission Nationale/Départementale d´Équipement Commercial* (National/departmental commission for commercial land-use planning)

CNE : *Conseil National d´Évaluation* (National evaluation council)

CNIL : *Commission Nationale de l'Informatique et des Libertés* (national data protection authority)

COB : *Commission des Opérations de Bourse* (Commission for stock exchange transactions)

CP : *Code Pénal* (Criminal Code)

CPP : *Code de Procédure Pénal* (Code of Criminal Procedure)

CRC : *Chambre Régionale des Comptes* (Regional auditing chambers)

CSM : *Commissions spécialisées des Marchés* (Specialised public-procurement boards)

DACG : *Direction des Affaires Criminelles et des Grâces* (Ministry of Justice - Directorate for Criminal Affairs and pardons)

DESS : *Diplôme d´Études Supérieures Spécialisées* (specialised higher education diploma)

DGCCRF : *Direction Générale de la Concurrence, de la Consommation et de la Répression des Fraudes* (General directorate for competition, consumer affairs and trading standards)

DGDDI : *Direction Générale des Douanes et Droits Indirects* (General directorate for customs and excise)

ENA : *École Nationale d´Administration* (senior civil service training college)

GIP : *Groupement d´Intérêt Public* (public-interest association)

IGA : *Inspection Générale de l´Administration* (General government inspectorate)

IGA/MAE *: Inspection Générale de l´Administration du Ministère des Affaires étrangères* (General government inspectorate/Ministry of Foreign Affairs)

IGAS : *Inspection Générale des Affaires Sociales* (General inspectorate for social affairs)

IGF : *Inspection Générale des Finances* (General finance inspectorate)

MAE : Ministry of Foreign Affairs

MEC : *Mission d´Évaluation et de Contrôle* (Evaluation and inspection unit)

MIEM : *Mission Interministérielle d´Enquête sur les Marchés* (Interministerial unit for procurement investigations)

MILOS : *Mission Interministérielle du Logement Social* (Interministerial unit for social housing)

MINEFI : Ministry of the Economy, Finance and Industry

NRE : Act on New Economic Regulations

SCPC : *Service Central de la Prévention de la corruption* (Central service for the prevention of corruption)

TGI : *Tribunaux de Grande Instance* (higher regional courts)

TI : Transparency International

TRACFIN : Unit for intelligence processing and action against secret financial channels

ANNEX 5

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- *Mission interministérielle d'enquête sur les marchés et les conventions de délégation de service public*: http://www.finances.gouv.fr/minefi/ministere/directions_services/index.htm
- *Commissions spécialisées des Marchés* : http://www.finances.gouv.fr/minefi/ministere/directions_services/index.htm
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- Ministry of Justice : http://www.justice.gouv.fr/

- SCPC: http://www.justice.gouv.fr/minister/minscpc.htm

- Ministry of Public Service, Reform of the State and Regional Planning: http://www.fonction-publique.gouv.fr

- DGFP: http://www.fonction-publique.gouv.fr/default1.htm
- *Commissions de déontologie* (Ethics Commissions)

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- *Cour des Comptes*, *Chambres Régionales des Comptes*, *Cour de discipline budgétaire et financière* : http://www.ccomptes.fr/
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DEVELOPING POLICY ASSESSMENT MEASURES FOR INTEGRITY AND CORRUPTION PREVENTION ACTIVITIES:

THE AUSTRALIAN EXPERIENCE[94]

by

Dr A J Brown, Dr John Uhr, Dr Arthur Shacklock and Ms Carmel Connors[95]

EXECUTIVE SUMMARY

Contemporary post-colonial Australian government has a number of interlocking integrity frameworks, much of which has developed in three waves of reform since the 1970s. Despite accumulating over time, these correlate highly with the OECD Ethics Infrastructure.

However, recent trends in Australian public integrity have not necessarily sat easily with one another, nor with previous traditional approaches. Since the 1970s, more resources and policy effort have been put into integrity and anti-corruption strategies but initiatives sometimes conflict, have faced co-ordination and accountability issues, and are sometimes suspected to be a diversion from important accountability problems. This highlights the need for, but complexity of, adequate frameworks for assessing the impacts of integrity measures.

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94. This chapter is based on the report prepared by Key Centre for Ethics Law Justice and Governance, Griffith University, Brisbane, Australia. Centre Director: Professor Charles Sampford. The chapter does not contain some aspects of the original report and these omissions are indicated in the appropriate places. All Annexes and most of the figures referred to in the report are not included here, except for those in the three individual case studies. The bibliography has also been reduced in the light of these reductions. The full text of the report will be available on the OECD and the KCELJAG website at http://oecd.org.gov/ethics/ and http://www.griffith.edu.au/centre/kceljag/nisa/ .

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Objectives

This chapter reviews assessment strategies and practices used in Australia for measuring the impact of integrity and anti-corruption policies in the public service. Australia is one of a series of selected country studies in the current synthesis report.

The chapter is primarily intended for government practitioners responsible for the design and implementation of government policy for promoting integrity and preventing corruption in the public service. As such, the chapter reviews current approaches, identifies potentials and constraints, and seeks to place in context the practical options currently available to decision-makers and managers.

Drivers of Integrity and Anti-corruption Policy Evaluation

The chapter outlines some of the existing history of integrity system performance assessment in Australia, including the four different international and national drivers of the National Integrity System Assessment (NISA) work: economic, democratic, administrative and personal. While democratic, administrative and personal conceptions of integrity are all especially important, they carry different foci and methodological implications. These differences further highlight the theoretical and practical complexity of achieving an overall assessment framework. The optimum directions appear to lie in a more integrative approach, as emphasised by the detail of Australian experience.

Current Practice in Policy Assessment Measures

Four overlapping categories of policy measures are currently used or available, to assess the take-up and impacts of integrity policies in Australia:

Implementation measures	Directed toward major, one-off or occasional initiatives – including institutional reforms – to ensure agreed actions have been implemented;
Activity and efficiency measures	Directed towards more routine, ongoing activities, such as the day-to-day operations of integrity bodies or ethics officers, to ensure that agreed systems are functioning, and providing basic value-for-money;
Institutional effectiveness	Directed towards evaluation of the overall performance of particular integrity agencies, or justifications for the creation of new ones, and tend to be more qualitative and political;
Outcome measures	Directed to measuring the substantive outcomes of integrity activities, to ensure these activities are positively enhancing ethical standards, corruption resistance, public trust, and the quality of democratic life.

This review divides these four categories into 26 sub-categories, and lists a wide variety of examples of measures and sources of performance information relevant to each. These include national-level and a variety of state-level measures. Each category is briefly summarised according to its relationship with other types of measures, and a general assessment.

Three **case studies** have been selected as examples of latest developments, sometimes cutting across a number of these categories, and demonstrating a mix of best practice, potential practices and current complex issues:

Case Study 1 State of the Service Reporting and 'Embedding Values' Studies – Australian Public Service Commission. Emphasises recent advances in implementation measures.

Case Study 2 Case handling by Ombudsman's offices and Anti-Corruption Bodies. Emphasises difficulties of comparative analysis and severe limitations in routine activity and efficiency measures even for like bodies.

Case Study 3 An Australian Anti-Corruption Commission? Emphasises the volatility of political decision-making about the roles, effectiveness and establishment of key integrity bodies, typified by recent debate over new anti-corruption bodies at a federal level and in the state of Victoria.

Conclusions: Towards an Assessment Framework

In Australian experience, most prominent evaluation efforts are still ad hoc, and sometimes scandal-driven, while standard reporting is often driven by agencies' need to justify existing or requested resources, or by central agencies as justifications for decisions already made. Integrity institutions and practices are not immune from institutional politics, but subsist in a real policy and political environment.

Nevertheless, there are a range of more routine efforts in the public sector that could potentially be used to more systematically gauge the impact and effectiveness of integrity policies. There is no existing clear performance assessment framework for political decision-making regarding integrity systems, nor may there ever be, hence the need for performance assessment to be embedded in a broader methodology. Some performance indicators will be quantitative, some will be qualitative, and many will provide a mixture of both, with the final interpretation always necessarily political. The question becomes how to structure a methodology that combines the best, and avoids the worst of administrative performance assessment, in a holistic assessment process. While we identify a number of promising 'better practices' in the 'doing' of integrity assessment, we emphasise the importance of best practices in the even harder work of 'theorising' integrity assessment.

Six **threshold issues** – practical and conceptual – are identified as particularly important in the design of any assessment framework:

1. Ethics co-ordination;

2. Benchmarks;

3. Institutional interests of the assessors;

4. Allowing for the unmeasurable in public administration;

5. Personal dimensions of integrity;

6. Relating back to fundamental drivers.

The chapter also makes eight **key recommendations** for the future, relating to:

1. The institutionalisation, but broadening and better integration and co-ordination, of empirical social-science-based employee surveys as an invaluable counterpoint to formal reports of policy implementation;

2. Additional measures to cross-check or validate the accuracy of information being received through public sector surveys;
3. Benchmarking of the relative costs of performance assessment and quality assurance regimes in other policy areas;
4. New research and policy development to rationalise, standardise and expand the basic activity and efficiency measures applying to integrity bodies with predictable workloads;
5. In-depth comparative study of the different types of information collected and/or used by parliamentary committees when evaluating integrity bodies;
6. Expansion and systematisation of substantive integrity 'outcomes' measures;
7. Cross-jurisdictional review of the relative value and accuracy of independent, central agency and internally-run survey and research activities to determine the most cost-effective mix; and
8. Legislative support for a central coordinating mechanism, with representation of key integrity agencies and parliamentary and community representation, to develop and implement an ongoing evaluation strategy.

INTRODUCTION

> Efficiency, narrowly defined, rather than social values, often dominates policy in this climate of 'economic correctness'. Yet, the thinking bureaucrat knows that 'efficiency' is meaningless if you do not know what values you are supposed to be efficiently achieving. Preston, Sampford and Connors (2002: 5)

Australian integrity and anti-corruption systems

Integrity and corruption prevention measures in the Australian public sector have a long history. For most of Australia's post-colonisation history – from the establishment of responsible democratic government in the 1850s until the consolidation of the modern welfare state in the 1970s – integrity and anti-corruption measures were defined by the traditional accountability institutions of Western liberal democracies, namely:

- A professional, salaried public service accountable to a democratically elected executive;
- Accountability of the executive to the elected legislature (in Australia's case on a British rather than American model); and
- Criminal and public law sanctions applying to appointed and elected officeholders alike, enforceable in a largely independent judicial system.

Since the federation of Australia's six original colonies in 1901, these traditional systems have existed in each of the six states (in order of population size, New South Wales, Victoria, Queensland, Western Australia, South Australia and Tasmania), two federal territories (the Northern Territory and Australian Capital Territory) and for the national or Commonwealth Government. Australia also has approximately 900 elected local governments, part-federally funded since 1973 but otherwise treated as units of state/territory administration.

Since the 1970s, a more complex integrity and anti-corruption system has evolved, as a result of three historical changes:

- From the 1970s, the enlarged size and complexity of the liberal democratic welfare state provoked two types of accountability reform: the introduction of the Scandinavian inquisitorial tradition of the Ombudsman to investigate citizen grievances against appointed (but not elected or judicial) officials; and simplification of traditional British public law remedies to enable 'aggrieved persons' to more easily challenge the merits and legality of administrative actions in the courts;
- From the late 1980s, the complexity of detecting and prosecuting *intentional* wrongdoing or gross misconduct by public officeholders (appointed and elected) led to introduction of additional, independent commissions against corruption in three states (NSW 1988; Western Australia 1989; Queensland 1990), with ongoing debate about the need for similar bodies in Victoria and at a federal level (Case Study 3);
- In parallel, the introduction of 'new public management' approaches has seen devolution of primary responsibility for public sector standards to the managers of and within individual units of administration. Ethics and accountability are dealt with through contractual, results-oriented

management, as well as more recently through rediscovery of 'values-based governance' and 'results-oriented accountability' approaches.[96]

These different phases of reform arise from a variety of drivers. Australian society is generally regarded as having high standards of public integrity, and yet the strength of its democratic, egalitarian culture is partly related to its own very real experience of political, official and corporate corruption in a variety of forms. The few general studies of corruption conclude that despite its convict origins and poor record of indigenous dispossession, Australia deserves its reputation for high public standards, and is not a "wicked place" – but that its "wish to be well regarded as honestly governed has usually been accompanied by a [corruption] tolerance level too elevated for comfort and a resistance to corruption too slowly aroused" (Perry 2001: viii, 129; see also Dickie 1988; O'Brien and Webb 1991; Tiffen 1999). Public integrity regimes matter in Australian public policy, in large part because few people, if any, believe that high levels of public integrity can necessarily be taken for granted.

Australia's interlocking integrity frameworks, despite accumulating over time, correlate highly with the OECD Ethics Infrastructure identified since 1996 (OECD, 1996: 45; 1999: 12; 2000: 23). Indeed Australia has contributed directly to the OECD description, having been an active participant in the surveys leading to the 2000 *Trust in Government* report and present project.

In comparing Australian experience with the OECD 'model', however, it is important to note that recent trends in Australian public integrity have not necessarily sat easily with one another, nor with previous traditional approaches. Since the 1970s, more resources and policy effort have been put into integrity and anti-corruption strategies but initiatives sometimes conflict, have faced co-ordination and accountability issues, and are sometimes suspected to be a diversion from society's more important accountability problems. Major components have been criticised by the present federal government as harbouring a 'grievance industry' rather than ethics regime (Mulgan and Uhr 2001: 162). Debate over the right institutional framework to support agreed policies is ongoing in several jurisdictions.

This situation highlights both the need for, but complexity of, adequate frameworks for assessing the impacts of integrity measures. Judgments as to 'effectiveness' remain highly subjective, and in many cases political, given that integrity regimes do not exist wholly within day-to-day public administration but intersect constantly with the legislative and party-political spheres, executive accountability and bureaucratic tensions. This reality is implicit in the OECD Ethics Infrastructure, at least three of whose eight 'pillars' – political commitment, an effective legal framework and active civil society – lie outside the control of the permanent public sector (OECD 2000: 24-5).

This chapter reviews current and potential Australian methods for assessing the performance of public integrity policies, but concludes with what is, in effect, an unresolved dilemma. On one hand, a more precise performance assessment framework, including empirical measures and cost-benefit analysis would be enormously useful in helping steer the development of integrity regimes. On the other hand, given the inherent complexity, subjectivity and political nature of integrity policies, traditional performance assessment approaches may only ever provide a partial basis for judging ultimate 'effectiveness'.

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96 The full report present different schematics of the public accountability systems reflected in each of these post-1970 developments in Figures 1-3. Figure 1 depicts a matrix of accountability controls for the Commonwealth and most state governments in 1987, after the first of the above changes. Figure 2 depicts the web of institutional relationships created by the second type of change (showing national private sector as well as typical national or state government). Figure 3 depicts the role of ethics as a theoretical foundation stone for good corporate governance in individual units of public administration, in the modern 'values-based governance' period.

The major decision is whether a routine assessment framework should try to internalise the political dimensions, or recognise that the political dimensions cannot be internalised into such a framework, whose purpose is to supply diagnostic tools as inputs into more general policy review processes. This is the primary issue to which we return at the end of the chapter.

National Integrity System Assessment (NISA) project

The National Integrity System Assessment (NISA) project (2002-2004) is a collaborative project between the Key Centre and Transparency International Australia. The project leader is Professor Charles Sampford. Participating researchers are drawn from the Australian National University, Charles Sturt University, University of Sydney, Royal Melbourne Institute of Technology and Monash University as well as Griffith University.

The NISA project closely informs this chapter because it is dedicated to mapping and assessment of the nation's integrity systems, including public sector systems, and was established with international applications in mind. The National Integrity System (NIS) concept was popularised in the 1990s by Jeremy Pope, foundation managing director of TI, based on two experiences: the post-Fitzgerald Electoral and Administrative Review Commission (EARC) process in Queensland, Australia in 1989-1994 (Pope 2003: 5) and a National Integrity Workshop in Tanzania in 1995 (Sedigh and Muganda 1999: 171; Pope 2000: 36; 2003: 10). The concept has been used in qualitative assessments of 33 countries, with another 22 in progress (TI 2001; Doig and McIvor 2003a; 2003b; Larmour and Barcham 2004).

The 'NIS' concept reflects a commonality of experience between different countries, in which accountability and corruption control rely on a diversity of efforts. No single reform is promoted as the key to integrity, but rather a mix of interreliant reforms. The development of the NISA methodology is directly relevant to the present OECD project for three reasons:

- Notwithstanding its use as a framework for developing countries, the NIS concept is based largely on a developed-country representative democratic model familiar to OECD members;
- The focus is as much on the "inter-relationships, inter-dependence and combined effectiveness [of integrity measures] in an holistic approach" as on individual institutional reforms (Pope 2000: 37). This is consistent with recognition that the value of the OECD Ethics Infrastructure lies in its eight elements, working in a "complementary and mutually reinforcing fashion" (OECD, 1996; 1999:12; 2000: 23);
- There is high correlation between the various institutional pillars seen by the NIS approach as fundamental to an effective integrity system, and the specific elements of the OECD Ethics Infrastructure.

This chapter does not concern itself with the private sector or business integrity dimensions of the NISA project, but otherwise draws heavily on the emerging NISA methodology. Consequently, it also draws from existing and forthcoming publications in the NISA series, in particular: KCELJAG and TI (2001), Preston, Sampford and Connors (2002), Brown and Uhr (2004), Shacklock, Gorta, Connors and O'Toole (2004) and Uhr (2004).

The NISA methodology as a whole is provisionally structured around a range of models for describing and 'mapping' the integrity system, followed by a threefold assessment framework, evaluating the **capacity** of the identified systems (variously defined), the **coherence** and their impacts or **consequences**. This chapter focuses on areas under investigation for performance information addressing the 'consequences' theme. However, the final part also briefly discusses issues of 'coherence' arising from the question of who does, or should, co-ordinate performance assessment activities. It also foreshadows some of the reasons for, but difficulties of, a broad, holistic approach to performance assessment. We rank consequences as the most relevant focus because it is the one most closely affected by debates over appropriate standards or benchmarks for integrity assessment. The choice of benchmarks is an assessment choice of considerable importance. Measuring consequences against different benchmarks will generate quite different results: hence, the issue of consequences is bound up with this issue of standards or benchmarks, which we will examine at greater length later.

Concepts and terminology

Our operational definitions for the following terms are as follows:

Integrity	The use of entrusted power according to the values and purposes for which it has been entrusted, ideally in fulfilment of a justified sense of public honour.
Corruption	The abuse of entrusted power, however defined; particularly intentional conduct fundamentally opposed to public duty.
Corruption Prevention or Resistance	Activities intended to build organisational and personal resistance to corruption, and increase the likelihood of officials acting with integrity. Corruption resistance is a preferred focus, as levels of corruption resistance can be empirically measured through risk assessment, unlike the amount of corruption 'prevented' by educative and other strategies.
Accountability Responsibility	There is frequent terminological conflation of the terms 'accountability', 'responsibility' and 'integrity' in values-based governance. However there are critical distinctions between them as discussed in detail elsewhere (Brown and Uhr 2004: 19).

DRIVERS OF AUSTRALIAN AND INTERNATIONAL INTEGRITY AND ANTI-CORRUPTION POLICY EVALUATION

This part of the chapter outlines some of the existing history of integrity system performance assessment in Australia. The National Integrity System Assessment (NISA) has identified four major drivers for its work, internationally and nationally, to the main ways in which governments and international agencies approach the performance assessment task: economic, democratic, administrative and personal. By considering these drivers, we are able to clarify to what extent the aim of integrity system assessment is to:

a) Pursue greater, i.e. liberalised and deregulated, economic development;
b) Promote and enhance democracy;
c) Establish whether existing ‘ethics infrastructure’ is performing cost-effectively, irrespective of political or economic change; and/or
d) Promote ‘integrity’ as a desirable personal quality among individuals as well as organisations.

In Australia, integrity system assessment such as pursued through the NISA project has as its drivers a mix of (b) and (c), with the need for a stronger awareness of (d), and little to do with (a) despite its dominant role in much international debate. Nevertheless, as we have seen, the relationships between these drivers are complex, and differences between styles of assessment are significant. There is a case for ensuring that an assessment framework recognises and integrates all three of the integrity dimensions embedded in these drivers: ‘legal-institutional’, ‘effectiveness/implementation’ and ‘personal-responsibility’[97].

Currently, different styles of assessment focus more on one dimension than others. For example, the National Integrity System and other public-political models tend to be institutionally focused, while most of the OECD approach leans naturally toward administrative performance assessment. Neither offers an immediate path to assessing effectiveness of integrity reforms at a personal or interpersonal level. The theoretical and political challenges of developing an integrative assessment framework are also borne out by the practical challenges, revealed when existing Australian performance assessment experience is reviewed in more detail.

[97] The complete section reviews each set of drivers in turn, is available via OECD’s or KCELJAG’s website at http://oecd.org.gov/ethics/ or http://www.griffith.edu.au/centre/kceljag/nisa/.

CURRENT PRACTICE IN POLICY ASSESSMENT MEASURES

This part of the chapter reviews the four main categories of policy measures currently used, or available, to assess the take-up and impacts of integrity and anti-corruption activities in Australia. These types of assessment are directed to different, but often overlapping types of integrity activity:

Implementation measures	Directed toward major, one-off or occasional initiatives – including institutional reforms – to ensure agreed actions have been implemented.
Activity and efficiency measures	Directed towards more routine, ongoing activities, such as the day-to-day operations of integrity bodies or ethics officers, to ensure that agreed systems are functioning, and providing basic value-for-money.
Institutional effectiveness	Directed towards evaluation of the overall performance of particular integrity agencies, or justifications for the creation of new ones, and tend to be more qualitative and political.
Outcome measures	Directed to measuring the substantive outcomes of integrity activities, to ensure these activities are positively enhancing ethical standards, corruption resistance, public trust, and the quality of democratic life.

The review here is not comprehensive, and does not attempt to describe all measures in use across Australia. It is intended to provide examples (see table below) of the assessment activity normally to be found, and thus support conclusions about strengths and weaknesses in current information, as well as prospects for a more holistic assessment framework. Further, the above categories are not exclusive – several measures fulfil more than one of these purposes, for example in providing information about activity, efficiency and outcomes at the same time. The table below summarises the examples referred to below, by the four categories and 26 sub-categories.

The three case studies have been selected as examples of latest developments, sometimes cutting across a number of these categories, and demonstrating a mix of best practice, potential practices and current complex issues. Some broad lessons are discussed in the final part of the chapter.

Current Practice in Australian Integrity Policy Assessment – Categories

Category	Sub-category	Examples (see text)	Case Study
3.1. Implementation	*3.1.1.* ***Central review***	*A1,A2,N1,Q1,Q2*	***1***
	3.1.2. ***Central research***	*A1,N1,N2,Q2*	***1***
	3.1.3. ***Best practice case studies***	*A3,Q3*	
	3.1.4. ***External investigation***	-	
	3.1.5. ***NGO/university review***	*I1,I2,U1*	
3.2. Activity and Efficiency	*3.2.1.* ***Caseload reporting***	*A4,A5,A6*	***2***
	3.2.2. ***Accessibility***	*N3*	
	3.2.3. ***Training reporting etc***	-	
	3.2.4. ***Performance audit***	*A7-A12*	
	3.2.5. ***Productivity review***	*A13*	
3.3. Institutional effectiveness	*3.3.1.* ***External investigations***	*A14,N4,Q4*	
	3.3.2. ***Law reform bodies***	*A15,A16,A17*	***3***
	3.3.3. ***Royal commissions***	*A18-20,Q5,T1,W1, N5,Q6*	***3***
	3.3.4. ***Parliamentary committees***	*A21,N6,N7,Q7,W2,A22*	***3***
	3.3.5. ***NGO/university research***	*U2,U3*	
3.4. Outcomes	*3.4.1.* ***Central ES/CR research***	*A1, A23, N8, N9, N10, N11*	***1***
	3.4.2. ***Agency ES/CR research***	*W3*	
	3.4.3. ***University research/review***	*U4*	
	3.4.4. ***Integrity recognition***	*V1, NT1, ACT1, N13*	
	3.4.5. ***Integrity testing***	-	
	3.4.6. ***Caseload outcomes***	*A1, Q8, Q23, A24*	***2***
	3.4.7. ***Public trust: public agencies***	-	
	3.4.8. ***Public trust: integrity agencies***	*N12, Q9, A25, Q10, U5, I2*	
	3.4.9. ***Public trust: general***	-	

A = Australian government
N = NSW Government
Q = Queensland Government
S = South Australian Government
T = Tasmanian Government
V = Victorian Government
W = Western Australian Government
ACT = Australian Capital Territory Government
NT =Northern Territory Government
I = International bodies/agencies/NGOs
U = Universities and independent research bodies.

Implementation Measures

Summary: Implementation measures are directed toward major, one-off or occasional initiatives – including legal and institutional reforms – and are intended to ensure that agreed actions have been implemented. They represent the minimum type of evaluation that should be expected in relation to integrity reforms, since without them there is no evidence that political promises have been honoured or that legal reform is more than symbolic.

Relations to other measures: As demonstrated by Case Study 1 (Australian Public Service Commission), some implementation measures can also extend to measures of outcomes – but this is not guaranteed. Further, the examples show that different types of assessment tend to be differently targeted, depending on who is doing the assessing: the APSC may measure implementation of codes of conduct, the Ombudsman may measure implementation of internal complaint handling systems, and anti-corruption or fraud control bodies may measure implementation of internal fraud control requirements. This possible problem of fragmentation is difficult to overcome where different reviewing agencies have different jurisdictions (i.e. coverage over different groups of agencies).

General assessment: Implementation measures are generally strong and frequently used by Australian governments, because they are a standard part of public administration. For this reason, examples such as Case Study 1 highlight the value of systematic reporting on implementation of integrity policies, and how important it is that the type of approaches described are repeated and extended. There is considerable scope for more comprehensive monitoring of this kind by all governments, probably expanded to avoid the current risks of fragmentation and duplication involved in reviews or research projects by multiple agencies on different but related issues.

Central review

The first type of implementation measure is systematic review of agency take-up of integrity policies, undertaken by central agencies by surveying other agencies. At a federal level, such reviews may be either comprehensive and regular, or selective and occasional. Leading examples include:

A1 The regular agency surveys by the Australian Public Service Commission, for preparation of the annual, legislatively-required State of the Service Report, focusing on awareness of and commitment to service values and codes of conduct (APSC 2003a) – see **Case Study 1**.

A2 Occasional agency surveys by central scrutiny agencies, such as the Commonwealth Ombudsman, who surveyed 80 Commonwealth departments in 1996-1997 to find out which agencies had established internal complaint handling mechanisms, finding less than 20 per cent of agencies had a system which would probably satisfy the Australian Standard (Commonwealth Ombudsman 1997: 11).

At a state level, the situation is somewhat reversed. This highlights a difference between the dimensions or models of integrity considered most important for monitoring at different levels of government. At state level, there is less regular monitoring of implementation by public sector management agencies on integrity policies, as opposed to human resource management, equity and other core staff management policies. Instead, the trend is for central investigation agencies with strong research functions, where these exist, to undertake such implementation reviews. However, this raises the question as to whether they are surveying agencies on the same issues of 'embedding' values, or compliance with different requirements. State examples include: