Square pegs and round holes?

Challenges in assessing the EU-level integrity system

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Abstract (as originally submitted)

For over a decade now, Transparency International (TI) has undertaken National Integrity System (NIS) assessments to determine a country's effectiveness in fighting corruption, making recommendations for institutional or policy reform. The NIS approach evaluates key 'pillars' in a country's governance system, both in terms of their internal corruption risks and their contribution to fighting corruption in society at large, highlighting, amongst others, rules and practices regarding transparency and accountability. The TI EU Office has now embarked upon an assessment of the EU-level integrity system (EUIS) based upon the NIS methodology and focused around EU institutions. The difficulties in transposing this approach to the EU-level encompass a number of normative, analytical and empirical questions.

The lack of a normative framework for a supranational system poses a particular challenge to the adaptation of the traditional methodology to the EU reality. While the NIS begins from accepted notions of an well-functioning liberal, democratic nation state, the development of the EU – through compromises between competing national interests, the gradual codification of residual practices and norms, and not least, internal institutional power plays – has led to an institutional system where traditional state functions are frequently shared, combined, blurred or at worst, absent. Mapping existing competences in the integrity system and identifying where critical roles – e.g. oversight or accountability relationships – might best lay are both normatively and analytically challenging. Further difficulties arise in identifying and delimiting research subjects beyond the core EU institutions. Alongside public institutions, the NIS methodology also evaluates non-state actors with roles in the integrity system – namely, the media, civil society, and the private sector. Settling upon satisfyingly comprehensive definitions of these actors at the EU level without entering into an analysis of 28 national systems needs careful consideration.

Thus, the research is faced with the need to define where the national integrity systems end and the EU-level integrity system begins. This can be encapsulated in the question of what ethics rules should reasonably apply to a national diplomat or politician exercising duties within the Council: should there be a 'double-regime' for example, and if so, how could this be implemented effectively? How can integrity and corruption risks at the EU-level be captured adequately within the methodological framework and how can questions and empirical lines of enquiry be adapted accordingly? This paper will explore the nature of these challenges, the solutions reached, and lessons learned at a mid-point of the study.

1. Introduction

“The ultimate goal of establishing a national integrity system is to make corruption a ‘high risk’ and ‘low return’ undertaking. The priority should be to minimise the possibilities for corruption occurring in the first place, but in ways that do not impose unwarranted costs or needless restrictions that might obstruct people from doing their jobs effectively. The quest for integrity ought not to render government dysfunctional.” (Pope 2000: vii)

The idea to study the integrity system of the European Union (EU) originates from the experience of Transparency International in assessing National Integrity Systems (NIS) all around the world. The increase in power and relevance of the supranational political and administrative institutional system has increased public concerns about the integrity of the EU. Citizens, civil society, media and others are asking a very pertinent question: Is “Brussels” more or less transparent, more or less ethical, more or less corrupt than the national political systems inside and outside the Union? While definite or even objective answers to these questions may be difficult to provide, a baseline assessment of the European Union Integrity System (EUIS) following the concept and methodology of the NIS adapted to the EU specificities can provide a more robust understanding of the strengths and weaknesses of the EU in preventing corruption at supranational level.

To our knowledge, endeavours studying the institutional system of the EU-level with a view to resources, independence, transparency, integrity, accountability and anti-corruption policies are scarce and often focus on single institutions and single issues (e.g. EU Council transparency (Hillebrandt et al. 2014), Europol & Eurojust accountability (Busuioc & Groenleer 2011)) or on a comparison of specific rules and practices across institutions (Demmke et al. 2007). Systemic studies have been rare and even textbooks on the EU institutions do not necessarily assess interinstitutional aspects that are important for the integrity system. The ongoing EUIS study, the concepts and methods of which are presented in this paper, therefore builds on existing discussions and research, but will provide a more comprehensive and systemic view on the institutional and social system of the European Union.

What differentiates this study from academic research is its explicit orientation towards advocacy. While the study is as objective as possible in the assembly and analysis of legal and administrative documents, of academic and non-academic research, of views from individuals working within and outside the EU institutions, the analytical view is shaped by a civil society impetus for positive change. Comparing institutions to search for good practices and loopholes in rules and deficiencies

in practices should lead to institutional learning, internal and external political pressures to address shortcomings and lead to changes in legislation or implementing routines. The choice to look at certain aspects that Transparency International and others have found to be important corruption risks or integrity gaps in European national integrity systems (e.g. Transparency International 2012) has a direct impact of what we might or might not find. In that regard, the research process is part of the learning process and the preparation for future advocacy or follow-up studies.

2. Conceptualising the European Union integrity system

The concept of a (national) “integrity system” (NIS) has evolved out of the interest to understand why and how corruption happens in national political systems and is built upon the ideal liberal-democratic state. It has been discussed conceptually and implemented practically for almost two decades by Transparency International¹. A central question of the NIS concept is how to design political systems that minimise corruption risks through appropriate institutional and legal structures that encourage ethical behaviour and punish corrupt practices or practices that favour corruption. Applying this question to the supranational level needs an understanding of the conceptual bases and the essence of the methods applied to national systems. As the comprehensive study of corruption and integrity at EU-level is sparse, with few exceptions looking into the role of the EU’s Anti-Fraud Office (OLAF) from a principle-agent perspective (Brandt & Svendsen 2013) or looking into ethics rules a (Demmke et al. 2007), this study of the EU-level integrity system (EUIS) drew mostly on the NIS framework and its previous findings, enriched by academic debates accountability in European governance (for an overview see by Curtin et. al 2010) and ongoing public discussions on EU integrity, transparency and accountability.

At the core of NIS research is the concept of “pillars” of the political and social system fulfilling vital roles in the prevention of corruption: the legislature, the executive, the judiciary, the public sector etc. (see the “temple” below). The functional differentiation of the political system is often assigned to specific institutions or bodies, although the boundaries between those functions are, in the absence of “perfect” political system, not always clear-cut. The NIS toolkit therefore foresees that, “[w]here significant variation exists, the pillar assessment can be disaggregated to accommodate this” (NIS Toolkit Sept. 2012: 17). In order to adapt the NIS methodology to the EU’s institutional context, it was thus necessary to reconsider the original design and intention of the pillar structure.

¹ For more details: <http://www.transparency.org/whatwedo/nis/>.

The NIS Toolkit defines pillars as “those public institutions and groups of actors which have the (official or unofficial) power to influence how a country is being governed” (NIS Toolkit Sept. 2012: 17). The conceptual frame was a classical state with checks and balances. But the European Union’s (EU) founders did not design the EU in the image of a traditional liberal-democratic state. Rather, they designed it as a supranational entity that would ‘integrate’ its member states over time and would transfer certain functions and powers to supranational and intergovernmental institutions and bodies at European level. With this integration process, the EU has gained increasing amounts of (both inter-governmental and state-like) power. Consequent to both this design and this integration process, traditional governmental functions (such as legislation and the implementation of legislation, for example) remain spread over several institutions, while the debate about division of labour and competences continue both between EU institutions as well as between the EU- and the national level.

In the light of the reality of the EU’s institutional system, a simple copying of the NIS template to the EU system would have meant to work with overlapping functional pillars composed of several institutions. Especially with regards executive and legislative functions, the original template did not seem appropriate. Hence, the conceptualisation and choice of pillars had to be rethought in the EUIS context. An important consideration for this conceptualisation of an integrity system at European level was to build on the underlying concepts of the NIS assessment methodology, for which we use the following working definitions:

- *Resources*: describe the means available for a pillar (an institution) to fulfil its function(s), in

particular with a view to ensuring integrity of the overall system;

- *Independence*: is the extent to which a pillar (an institution) can act without undue interference from other pillars and can decide its own leadership and actions;
- *Transparency*: means the ability of the public to watch the decision-making and actions of a pillar (an institution), in particular those aspects where there are potential corruption risks;
- *Integrity*: describes the level to which “[b]ehaviours and actions [within a pillar (an institution) are] consistent with a set of moral or ethical principles and standards, embraced by individuals as well as institutions, that create a barrier to corruption.”²
- *Accountability*: is that a pillar (an institutions) and the persons or sub-units representing the pillar “are held responsible for executing their powers properly”³;
- *Role*: refers to the scope of involvement of a pillar (an institution) to support the integrity of the overall system or the broadening and deepening of anti-corruption policies and measures.

While each of these concepts are used to assess each pillar of an integrity system in law and in practice, especially independence and accountability, refer to the more systemic aspects of integrity that can only be thought in relationship between two or more pillars. In addition, transparency provides the public (incl. media or civil society) with means to ensure the integrity and accountability of single pillars but also of the functioning of inter-pillar control relations (see conceptual map below).

² Transparency International Plain Language Guide July 2009, p. 24.

³ Ibid.; p. 2.

Figure 1

The abstraction of **an ideal integrity system** thus refers to a framework in which each pillar is (a) having sufficient resources to ensure its own *integrity* and to fulfil its *role* in protecting the overall integrity system, (b) has independence from undue encroachment that could prevent it from fulfilling its role, (c) has functioning *integrity* mechanisms that allow the internal prevention of corruption risks, (d) can be held accountable if its integrity mechanism do not work so that instances of corruption can occur, and (e) is promoting the integrity of the overall institutional system and broadening and deepening of anti-corruption policies and measures.

While the original temple remains a valid image, the more relational concept of an integrity system describe in its smallest form in Figure 1 can also be described as a “Birds Nest” as put forward by Sampford et al. (2005: 105, figure 6):

This bird’s nest view of the integrity system seemed a very appropriate way of conceptualising the ideal-type integrity system at European level. In the light of the EU’s institutional system where the classical functions analysed are shared between institutions, are pooled within institutions and bodies or are only performed in a limited way, the conceptualisation of the EUIS very much from the

beginning decided to take an institution-focused and less a function-focused approach.

Placing the emphasis on governmental functions over forms (i.e. institutions) would have required studying specific institutions several times – which would have caused much redundancy in both the research process and in the contents of the final report – and so the institutional approach with a bird's nest integrity system concept was found to be most appropriate. This is in fact not a deviation from the conceptual bases: The 'integrity system' is a conceptual tool based on a "holistic approach to preventing corruption, since it looks at the entire range of relevant institutions and also focuses on the relationships among them" (NIS Toolkit, p.4). Using this relational and institutional approach also does not contradict the main aims of the (nation) integrity system assessment:

"The information generated by the [integrity] assessment provides benchmarks for measuring the impact of anti-corruption interventions and a basis for comparing the performance of [integrity] pillars. A look at the [integrity] indicators gives a good indication of which areas possess high integrity and which are lagging behind. Comparing weak to strong areas helps generate competition for improvement and provides incentives for positive change. If undertaken iteratively over time, the [integrity] assessment can be used as a monitoring tool to evaluate overall progress of the entire integrity system as well as individual institutions, thereby offering useful information for advocacy and reform efforts" (NIS Toolkit, p.9).

Although following the traditional executive-legislature-judiciary division would have allowed a better comparison between the EU and member states (i.e. between the EUIS and NIS findings from around Europe), but it would have made internal comparison between EU institutions more difficult. With the NIS being an advocacy-focused research, one of its purposes is to seek to install a 'race to the top' between EU institutions through comparison (despite their obvious differences). Moreover, since the EU does not function like a state, comparison with states is methodologically questionable (i.e. they are too heterogeneous to be compared) and is more-or-less useless from an advocacy perspective – if the EU is to 'set an example', such example-setting should be understood in terms of standards and applied ethics, and not in relation to policies particular to a supranational context. In short, incentives for positive change are likely to come from competition within one integrity system and not from competition between integrity systems, although latest discussions around EU lobby regulation have shown changes in this regard.⁴

⁴ See <http://www.transparencyinternational.eu/2013/10/reviewing-the-eu-transparency-register-how-to-regulate-eu-lobbying/>.

Deciding to let institutions stand as pillars (thus having governmental functions spread over several pillars) allowed for a more inductive approach (often applied in qualitative, change-orientated research) to understanding how the EU integrity system prevents corruption and what its integrity weaknesses are. This approach allows a better understanding of the relationships between institutions, which might have been obscured had we focused on governmental functions.

3. Studying the EU Integrity System (EUIS): Empirical challenges and initial findings

Having made the initial conceptual choices described above, it was first of all necessary to choose the objects of the EUIS, i.e. the institutions and bodies that were to be analysed. Selecting those pillars – i.e. “those public institutions and groups of actors which have the (official or unofficial) power to influence how [the EU] is being governed” – questions (1) of relevance of the pillar in the EU’s integrity and anti-corruption system and (2) of feasibility within the resources and time available to conduct the study were at the centre of our considerations. The original NIS toolkit allows for a great deal of flexibility when it comes to specifying the empirical boundaries of the cases (i.e. pillars), and recommends: “where significant variation exists, the pillar assessment can be disaggregated to accommodate this” (NIS Toolkit, p.17). This means that where sub-institutions wield great power to influence how the anti-corruption framework is governed, it was recommended to study these sections as individual pillars. This applied for example to the EU’s Anti-Fraud Office (OLAF), which is formally a directorate general of the European Commission. Thus, beyond practical considerations, the selection and delimitation of pillars for the EUIS study was based on institutional actors’ possibility to independently influence integrity at EU-level. We finally chose to study all seven EU institutions (European Commission, European Parliament, EU Council, European Council, European Court of Auditors, Court of Justice of the European Union, European Central Bank) as well as the EU Ombudsman, OLAF (separate from the Commission), the EU law enforcement Europol and Eurojust (jointly) as well as European Political Parties. Due to the conceptual difficulty in assessing EU-level media, civil society and business as clear-cut categories at European level (usually they are distinct pillars in national integrity system), they will be analysed as part of the EU institutional environment or social foundations of the EU-level integrity system.

Following the conceptual choices made these pillars of the EU Integrity System (EUIS), a reconsideration of the methods proposed by the NIS toolkit was necessary to see how they would fit. NIS assessments are not scientific studies. They consist, in principle, of a two-step approach. In a first step, each pillar is assessed along the lines of the core indicators – resources, independence,

transparency, integrity, accountability, and role – in law, followed by a study of the practices in each of these areas (see below).

<i>Dimensions</i>	Capacity				Governance						Role
<i>Indicators</i>	Resources		Independence		Transparency		Accountability		Integrity		<i>Pillar-specific⁵</i>
	Law	Practice	Law	Practice	Law	Practice	Law	Practice	Law	Practice	Law & Practice

The NIS Toolkit provides a list of guiding and scoring questions for each of these indicators assigned to each of the original NIS pillars. For the EUIS study, these questions were adapted to the conceptualisation of EU-level pillars, additional questions were added for each pillar after an initial overview research before ensuring through a horizontal review that relevant issues were addressed in similar ways across all EU institutions and bodies covered. An important aim was to cover core corruption risks and integrity gaps identified in a cross-European NIS study (Transparency International 2012: 5): inadequate regulation of political (party) finance, secret lobbying, lack parliamentary ethics, limited access to information, problematic public procurement and limited whistleblower protection.

To assess the indicators for each of the pillars chosen and to answer the adapted questionnaire, the NIS methodology foresees a combination of desk research, field tests and interviews with inside and outside experts. All three are empirically challenging, yet in different ways, and all three have already led to a number of initial findings.

For the **desk research**, legal documents and quasi-legal documents as well as institutional reports (such as audits or discharge documents) and third party analyses (such as academic studies or think tank research) were needed. While all basic legal documents (EU treaties, statutes and regulations, rules of procedure etc.) are in principle available through the EU’s Official Journal or via institutional websites and document registers, the availability and accessibility of implementing rules or guidelines on issues such as procurement and ethics, interinstitutional procedures regarding access to information, or internal reports relating to audits, compliance with ethics rules, lists of gifts and hospitalities etc. are not equally accessible. Part of the desk research thus included formal requests for access to documents or for background insights where appropriate.

⁵ For the dimension “role”, the indicators differ from pillar to pillar, since different pillars perform different roles for the integrity system.

One of the intermediate findings of the study is that, while there is a general regulation on access to EU documents (Regulation 1049/2001), the implementation of the right to access document differs between institutions, both with regards to the direct availability of information on their websites and with regard to replies to requests for access to documents or information. In principle, most institutions seem to be ready to give access to formally adopted legal documents that are not (yet) published online. Most implementing documents are available (only) in English, but institutions such as the European Court of Justice have French as their working language, so that certain administrative documents can only be accessed in French. Some institutions/bodies contacted preferred providing research-specific access instead of providing public access to documents. The time frames with which such documents could be accessed differed considerable between institutions/bodies, some of which react almost immediately on simple requests while others take longer.

Through the desk research of institutional documents, both law and practice indicators can be addressed, the latter to the extent that official documents and reports assess problems and shortcomings or relevant statistics, including through reports published by oversight bodies such as the Ombudsman, the Court of Auditors or parliamentary (discharge) reports. The desk research is also an indirect means of assessing the easiness with which documents and information that are necessary to assess the EU-level integrity can be accessed and found, which informs the “transparency” indicator. Academic studies and reports by NGOs such as Access Info Europe, Friends of the Earth or Corporate Europe Observatory, or think tank assessments of EU institutions (e.g. by the Center for European Reform) provide outside assessments that can be used to answer the questions. Those external assessments tend to focus on politically sensitive topics (e.g. lack of transparency, problematic lobbying) and/or single institutions, often the core institutions such as the European Parliament or Commission. This makes it comparatively easier to assess (negative) *practices* in those institutions and bodies that are already in public focus, while institutions such as the Court of Auditors, the Court or Europol/Eurojust need additional focus in the desk research, the field tests and the interviews. More technical issues such as procurement procedures receive very little attention despite considerable sums that are spent by the institutions (e.g. on IT or external communications support). Desk research so far has for example shown the diversity of ways in which ethics rules address potential conflicts of interests at different administrative and political levels. Codes of Conduct for members of the institutions differ considerably in depth and precision when it comes to addressing gifts, hospitalities or post-office; obligations for staff to refuse or report gifts vary despite the fact that the EU staff regulations are applicable to most pillar assessed.

For the **field tests**, the original methodology foresees in particular a number of test requests for information through third parties such as citizens or other NGOs in order to see how different pillars

would react to outside requests. For the purpose of the EUIS study, a different approach was chosen: in cooperation with Access Info Europe, all EU institutions and bodies selected for the study were sent the same request for access to the list of all requests for documents made to these pillars during 2011 and 2012.⁶ The aim of this meta-request was twofold, first to better understand how each institution/body was registering requests for documents and then to have a more objective perspective on the amount of documents requested, the time it takes to react and particularly sensitive or problematic areas. These meta-requests have not only revealed the considerable differences in the amount of (formal) requests for access to documents to the institutions – between less than 10 per year for the Court of Justice of the European Union and over 6000 per year to the European Commission – but also that the institutions have strong variance in the way they (centrally) record such requests and, in consequence, how they can retrieve statistics or detailed overviews on access to documents. These field test included direct consultations with officials involved in handling requests, to explain or adapt our initial requests in a way that made it answerable for each pillar, including for those which do not differentiate between requests under their rules for access to documents or media requests.

For the **interviews**, the original methodology foresees a very minimalist and generalist approach with a minimum of two interviews per pillar, one at the inside and one at the outside of the pillar/institution. As the NIS approach is rather cooperative and meant to support the following advocacy, high-level administrative leaders (such as secretaries general) within each institutions have been contacted to announce the study and request interviews or background talks with a number of individuals holding specific functions relevant for the EU's integrity system (internal auditors, ethics officers etc.). This open and direct approach is meant to allow an early buy in from the institutions, even though it may lead. For some of the institutions and bodies, it has meant that considerable time has passed before getting an initial meeting/phone call on the general approach, which has also had consequences for the actual timing of the interviews. However, most of the institutions and bodies have agreed to providing access to relevant officials at different administrative levels, and we are currently in the process of holding semi-structured interviews based on the adapted toolkit questions and initial findings in law and in practice. Those interviews and earlier background talks have for example confirmed the reliance on external checks on declarations of interests of European Commission (which are published once a year) or the absence of central rules for conflicts of interests of member state representatives in the EU Council (e.g. its working parties). As the interviews are ongoing, more findings will emerge in the coming months.

⁶ An overview of all requests and replies can be found here:
http://www.asktheeu.org/en/user/access_info_europe_and_transpare.

Altogether, a core challenge is to balance the interest in having reliable, relevant and comparable insights through desk research, field tests and interviews with available resources for the research and the need to assess large quantities of documentation and (potential) interlocutors. As one aim of the research is to provide a baseline assessment of the EU-level integrity system, we have opted for more depth and a larger number of interviews than required by the basic methodology. As another aim is to inform future advocacy and research into particularly interesting or under-studied aspects of the EU's integrity system, it will still be necessary to cut short certain interesting paths and focus on the core aspects in order to be able to answer how, in general, the EU-level system prevents corruption and promotes integrity.

5. Conclusions

At this intermediate stage of the research, the EUIS project has allowed the Transparency International EU Office team to access and study a wide range of documents that provide a horizontal overview on integrity rules and practices across the EU-level political system. The research team has been in direct contact with the administrations of EU institutions as well as the EU Anti-Fraud Office (OLAF), the European Ombudsman, Europol and Eurojust, a number of European Political Parties as well as experts and researchers working around the topic of EU transparency, accountability and ethics with whom we have not worked in the past. The NIS methodology, even though not scientific in the narrow sense, fosters a systematic and comparative approach that sharpens the eye for intra-institutional integrity or inter-institutional accountability mechanisms that are not in the focus of the public or of academic research. Intermediate findings have already informed our EU-level advocacy, for instance in a recent hearing on the review of the EU Transparency Register, and they have allowed to reply to enquiries from journalists or interested audiences at public events. This close relation between research and advocacy – potentially closer than in most NIS studies – therefore seems to be an advantage as long as there is an external oversight over the research process, which is provided by an EUIS advisory group bringing together current and former EU officials and outside experts from civil society, media and the private sector. Once the report is published, the discussion about its findings and TI-EU's ongoing advocacy should then lead to change at European level, and future EUIS assessments would build on the present baseline study to judge how significant this change will have been.

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