Corruption in today's Belgium

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The Re-Bel initiative aims to rethink in depth, in an open, rigorous, non-partisan way, what the institutions of the Belgian federal state - or of whatever else this part of the world needs to become - can and must look like in the longer term, taking full account of the evolving European context.

The Re-Bel initiative does not aim to produce one programme or manifesto to which everyone involved could subscribe. Its ambition is rather to provide a fertile intellectual environment in which new ideas and promising initiatives of all sorts can germinate and develop, with a concern for their relevance to a thorough reform of Belgium's institutions, but also to the institutional design of other complex polities, most obviously the European Union.

The Re-Bel initiative involves scholars from all Belgian universities, runs a web site, publishes e-books and organizes workshops and public events. It intends to associate to its activities both foreign colleagues and the Brussels-based international community. The working language will usually be English.

The Re-Be initiative is supported by the University Foundation, which will host all its activities. The University Foundation was founded in Brussels in 1920 at the initiative of Herbert Hoover and Emile Francqui. One of its missions, also central in the Re-Bel initiative, is to foster fruitful contacts and collaboration between academics of all Belgian universities.

Each contribution to a Re-Bel e-book is written under the sole responsibility of its author. The views expressed in it cannot be assumed to be shared by either the Re-Bel initiative as such or the University Foundation.

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Preface

Belgium seems to have an odd relationship with corruption. While most people condemn it, many consider (minor) occurrences of corruption as inevitable. Likewise, while evidence shows that corruption harms competitiveness and growth and a number of indicators point to the underperformance of Belgium in the fight against corruption, the current government agreement does not contain *any* mention of anti-corruption measures, despite a first chapter devoted to competitiveness and employment.[1]

In this fascinating e-Book, based on a Re-Bel event that took place in December 2013, Antonio Estache, Jeroen Maesschalck and François Vincke take turns sharing their analysis of the drivers, prevalence, consequences and cures of corruption in Belgium. Their perspectives complement one another very nicely and offer some answers to the paradox. While it would be impossible for me to do proper justice to their analysis in this brief preface, I can't help but note a vicious cycle at play in explaining the low salience that corruption has in the public debate. Belgium's lack of commitment to fighting corruption means that the relevant data to detect and measure corruption are not collected, which reduces accountability (we live in the happy world of ignorance), which, in turn, facilitates corruptive practices and reduces the incentives for those in power to fight them. Breaking this vicious cycle is not easy: the main beneficiaries are taxpayers who are dispersed and have very small incentives individually by definition, and future generations who are not even represented. In addition, both Antonio Estache and Jeroen Maeschalck identify several cultural and institutional specificities of Belgium, such as the important role that political parties take or the strong tradition of hierarchical rather than procedural enforcement, that facilitate the current state of affairs. All three authors nevertheless outline different measures and approaches to effectively tackle corruption. This is also an area where Belgium could usefully learn from best practices abroad.

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[1] See http://www.premier.be/sites/default/files/articles/Accord_de_Gouvernement_-_Regeerakkoord.pdf (accessed May 19, 2015). Paradoxically, the government agreement does mention corruption when it says that Belgium will condition its aid to developing countries on the recipient's performance on the fight against corruption (p. 205).

Lead Piece

Corruption in Belgium: A policy-oriented survey of facts, figures and failures[1]

Antonio Estache (ECARES, Université Libre de Bruxelles)

1. Introduction

This paper has been prepared at the request of *Re-Bel* as a follow up to a public seminar organized in December 2013 to discuss corruption in Belgium.[2] Its main goals are to:

– take stock of the evidence on the level, type and possible sources of corruption in Belgium, if any, in absolute and relative terms, based on publically available data collected by international and national official agencies and watchdogs, and

– use that information to identify the reform needs and limits to eliminate or at least cut, the risks of governance failures that could favour corruption in Belgium.

First is the bad news: It's nearly impossible to achieve these goals within the scope of this paper. The topic is complex. It is not because corruption is viewed as a crime in most countries that it is easy to document and analyse. Most of the evidence is based on partial indicators produced by international sources and almost all of it is based on perception rather than on objective indicators. This evidence shows that corruption is multidimensional and that there are often inconsistencies across indicators, across countries and sometimes within the regions of a same country. Within countries, differences are particularly challenging because the national law is for all regions, but perceptions may differ across regions as a function of culture and local conventions as to what is corrupt and what is not.[3] Finally, this is one policy area for which a lot of relevant, more objective, information tends to be confidential. Therefore, this paper can only hope to be a modest effort towards achieving these goals. It should, however, help identify some of the key dimensions of what a fuller discussion could cover.[4]

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[2] "Corruption and Regulation in Belgium", December 19, 2013 and the programs is available on http://www.rethinkingbelgium.eu/rebel-initiative-events/tenth-public-event-corruption-regulation-today-belgium

[3] Maesschalck and Van de Walle (2006) deal with this when they assess the role of federalism in defining the level of corruption.

[4] See Peeters (2006) for a useful discussion of the Belgian peculiarities.

Second is the good news: a core minimal discussion is still feasible because, across countries, the concept of corruption has a common backbone and a fair amount of information is available on this backbone for Belgium. Corruption is usually defined in criminal codes around the world as *illegal or fraudulent conduct by civil servants, politicians or political appointees (across government levels and across public enterprises) entrusted with the authority to make decisions on behalf of society*.[5] The extent to which this is a potential issue in any given country is reasonably well documented by the international community, based on perception or on studies of laws, processes and institutions by various watchdogs.

The fact that the quantitative information is largely based on perception indicators is a problem in principle. Yet, perception indicators, often combined with high profile case studies, have motivated a lot of economic research which has, in turn, become an additional source of information. Economists, indeed, spend a lot of energy thinking and writing about corruption because the private interests gained from corruption are also a burden for the public interest (i.e. it imposes a deadweight loss on the economy). This defines an inefficient (and often unfair) allocation of resources, one the main focuses of modern economics. How to think and how to assess this burden/inefficiency based on information available has now become a research field in itself.

This research has generated a large number of general results. For instance, a reasonably good first order approximation of the cost of distortions imposed on the economy can be provided by the excessive cost for the delivery of public sector commitments influenced by corrupt decisions. Similarly, the quantification of the waste of public resources on projects with high private rates of return but low social rates of return (e.g. the so-called "white elephants") can easily be estimated from the difference between the private and the social return.

These quantitative assessments often do not, however, cover all sources of social cost of corruption, which is a second limitation of the dependence on perception indicators. The main missing information is the recognition that corruption can also come from political bargaining power in a wide range of negotiations. In business, this bargaining power comes from an implicit market for favours in which business people and politicians are the main players. In politics, this implicit market involves only politicians and is built around the politically-motivated appointments to key positions within the administration and on the board of businesses in which the government is entitled to sit. Whether this is a problem or not in practice is quite hard to measure objectively. What we know from research is that the scope for private gains from public policies is larger when the public sector is larger. The larger the number of possible political appointments, the larger the potential market for favours and hence the risk of corruption. Anecdotal evidence suggests that this could be a major issue in Belgium, as discussed below.

These favours between civil servants, political appointees or elected politicians are classified as a crime by international watchdogs monitoring the quality of governance around the world, even if the legal texts do not always do so. The academic literature provides ample evidence of the extent to

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[5] This is essentially also the definition adopted by Transparency International. "Corruption is operationally defined as the abuse of entrusted power for private gain."

which this market for favours can also impose a social cost on society, starting with the taxpayers.[6] In many countries, including Belgium, the compliance with legal obligations to reveal payments to political appointees nominated on the board of public enterprises is rather low. This increases the difficulty of measuring some of the financial costs of the markets for favours, as well as their social costs.

An additional concern with the proper measurement of the significance and cost of corruption is quite subtle but just as important. There are many instances of bad and costly public policy decisions. Research has also shown that these can be the result of incompetence or imperfections in the laws and policies, rather than the outcome of corruption. Indeed, incompetence, policy imperfections and corruption often have the same consequences for society.[7] If incompetence can be linked to corrupt political appointment processes, there is, however, convergence on the governance root of the problem. Excessive road maintenance costs, excessive public debt, energy rationing or insufficient treatment of water pollution can just as easily be explained by: (ii) incomplete or confusing definitions of responsibilities/entitlements or incomplete allocation of responsibilities between various administrations, (ii) corrupt activities; or (iii) incompetent decisions made by public officials/politicians which could have been appointed through a corrupt governance structure—but not necessarily so. The number of possible explanations for undesirable outcomes makes it easy for any corrupt individual to blame policy failures or even incompetence to avoid having to acknowledge corruption. Sorting out the various possible sources requires significant auditing resources. In practice, it means that corruption is usually underestimated, since the benefit of the doubt prevails in most legal systems and doubt is relatively easy to maintain under current legislation in many countries.

A further measurement challenge stems from the fact that the main victims of corruption are quite silent, mostly because they are unaware of the costs and quite dispersed. The main victims are all the taxpayers and all the voters. The taxpayers are unaware victims when they pay more than they should to cover the excess fiscal costs due to corruption. Moreover, in many countries, the associated tax burden or the slower growth rate is passed on through debt to the next generations. These have no voice in current politics. Voters are also victims, in particular, when they have to live with service quantity and quality choices distorted by corruption. But most do not know how their costs and choices are linked to corruption. They only find out from media reports on specific cases, or from the publication of global corruption perception indicators. These are mostly based on investors' surveys and only focus on some of the consequences of corruption.

Measuring corruption is thus quite a serious challenge and this is why the efforts made by international and national agencies and watchdogs to generate relevant information are quite central to our collective ability to generate a local sense of the extent of corruption. It provides most of the evidence collected in this paper. But the review of the various sources of evidence also shows how

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[6] E.g. see Rose-Ackerman and Soreide (2011) for a wide-ranging recent survey of academic research on the sources and consequences of corruption.

[7] See Estache and Foucart (2013) for a theoretical treatment.

differences of emphasis and focus across watchdogs can influence the perception of corruption in both absolute and relative terms (i.e. in comparison to other countries). Notwithstanding these differences, the various rankings help assess the different policy dimensions to be addressed.

A final key limitation of this paper is that the stock-taking exercise reflects my biases as an economist and my limitations as a reader of academic research on the legal and political science approaches to corruption. This paper will nevertheless show that the significant overlap in concerns across the different disciplines leads to a significant amount of convergence on policy views.

This paper is organized as a systematic diagnostic. It starts with an overview of the main data sources in section 2. How corruption is defined and tracked in Belgium is the focus of section 3. Section 4 summarizes the evidence on the size of corruption in Belgium based on the information generated by international and national organizations and watchdogs. Section 5 discusses the main sources institutional and process issues characterizing the Belgian governance structure identified by independent observers as potential sources of corruption. Section 6 concludes with a brief summary of the policy suggestions made by these observers.

2.   Some background on data sources

Although many corruption measures are available, they are all subjective perception measures. It would thus be unreasonable to argue that they are robust enough to generate a precise sense of the governance issues in any given country, including Belgium. If public administrations were to track illegal events on a systematic basis, perception indicators would have a lower relative importance in country diagnostics. But few countries, if any, and Belgium is no exception, generate the much needed exhaustive objective assessments of corruption and so the subjective perception indicators have to be the basis of the analysis for now. [8]

Perceptions indicators have been, and continue to be, a source of debates. These debates are not futile academic exercises since these indicators are used, in some countries, by international organizations to decide whether or not to lend based on the extent of the efforts to cut corruption as measured by some of these indicators. For now, the collective consensus seems to be that the indicators available are useful in spite of their limitations. Their usefulness in making relative and absolute performance benchmarking easy is particularly appreciated and actively used in policy communications and further justifies their use in the Belgian context.

The indicators produced by international watchdogs can be organized in three groups. The first are the indicators released as part of global assessments of the economic performance of countries conducted every year by think tanks of varying degrees of ideological independence. They all release rankings of the key dimensions of the enabling environment of economic performance around the world, each with a specific spin on them, often reflecting their ideological biases, sometimes explicitly,

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[8] The Nordic countries tend to do a better job than most on this front.

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sometimes much less so. The most quoted reports include a survey-based assessment of trust in government or of the level of corruption at the country level or at the sector level within countries as expressed by the population or by investors. The best known reports among these global rankings are conducted by the World Economic Forum (with the Global Competitiveness Report covering 154 countries), the World Bank (with the Doing Business Report which covers 189 countries, the Heritage Foundation and Wall Street Journal (with the Index of Economic Freedom covering 178 countries), and the United Nations (with the Human Development Report covering 195 countries). Similar rankings are conducted at the OECD or the European Union level with a narrower focus. Some countries such as the US, Brazil or India release their own assessments within countries and cover corruption as part of their assessments.

The second group of international data sources is defined by a few annual reports focusing exclusively on the degree of corruption or on the quality of governance. The most widely used by researchers and policy analysts include the World Bank Governance Indicators (which cover 215 countries) and the Transparency International Indicators (which cover 175 countries). But there are many more and increasingly these other indicators focus on activities predictably sensitive to corruption risk such as procurement and other dimensions of interfaces. A couple of Belgian watchdogs release equivalent reports, as will be discussed later.

The third group of indicators is generated by industry lobbying groups (e.g. the construction or the banking industry) or by consulting firms (e.g. Ernst and Young, 2012), either autonomously or on behalf of a specific public or private client keen on documenting the extent to which corruption is or is not a problem. In recent years, all the major consulting firms have released such reports. Some include data on Belgium which will be used later to generate a snapshot of the corruption challenge the country is facing. All of these reports are useful, but the reader has to keep in mind that these are commercial reports, often financed by stakeholders who are not necessarily identified. This makes it hard to ensure that there is no conflict of interest.

A look at the three groups of indicators reveals a certain degree of coherence in the approach to the identification of corruption. They focus largely on processes rather than on outcomes which would require adding up the number of documented cases. The assessment of processes is often anchored in consultations with the general public or with firms to assess the extent to which bribes are required to be able to get access to the desired service. The degree of specificity of the questions asked by the various surveys is what defines their difference. In general, however, the information generated by these surveys adds up to a largely coherent picture of some of the key sources of the problem and to a lesser extent on the size of the problem. It also helps identify the various policy areas that may need strengthening as we will see later with the Belgian case study.

3. How Belgian law defines corruption

Before getting to the summary of the quantitative information on the level, sources and impact of corruption in Belgium, it may be useful to summarize its legal treatment since this is what allows the formal identification of the problem and the discussion of its policy dimensions. The definition of corruption is spelled out in Article 216 of the Criminal Code. It is a general definition anchored in the

concept of bribe and it clearly states that bribing to corrupt decisions is a crime. The law recognizes that it takes two to tango and, to highlight that both the supply and the demand for corruption are seen as crime, the law distinguishes between active and passive bribery. Offering to bribe or asking for a bribe are both a crime in Belgium.[9] The important question is thus what constitutes a bribe.

For active public bribery, the Belgian law states that offering, promising or giving (directly or indirectly) an advantage *of any kind* to a person exercising a public function, either for him/herself or a third party, in order to induce him/her to: (i) perform an act within the scope of his/her responsibilities which is not subject to remuneration; (ii) perform an improper act, or refraining from a proper one, in the exercise of one's function; (iii) commit an offence in the exercise of one's function; or (iv) use influence derived from one's function to obtain performance or non-performance of an act by a public authority, is criminal.

Similarly, for passive public bribery, the Belgian law states that a person commits a crime when exercising a public function, if he/she requests or accepts directly or via another person an offer, promise or any advantage for him/herself or a third party, to act as described in (i) to (iv) above. The scope of the law is thus not restricted to cash payments; it also covers the market for favours discussed earlier. This is valid for both active and passive bribery.

This definition thus seems quite encompassing. It is specific enough to allow a monitoring of violation of the law. Any action that can be defined as an active or passive bribe should be reasonably easy to record in some centralized database. Adding up the information and matching it against the various sources recorded by tribunals should provide a reasonable sense of the size and sources of corruption and, to a lesser extent, of the costs of corruption to society.

The gap between the text of the law and practice is large, however, in Belgium. Even if the law could be used to set up a monitoring system, there is no systematic effort to collect this information in Belgium. There are (almost) no statistics on numbers, frequency, type and details of cases. Yet, there are many potential sources which generate relevant and potentially useful raw data to increase the transparency of the crime. These data are however not designed for statistical coherence and are thus hard to use in analytical work designed to assess the size and costs of corruption. These sources include: (i) the Central Office for the Repression of the Corruption (in French: O.C.R.C.) established in 2001 as a part of the Directorate for Economic and Financial Crime (ECOFIN) of the Federal Judicial Police, and (ii) the audits of the Cour des Comptes (see the reports to the Parliament for a few well detailed assessments of information gaps in key public procurement markets).

There are lots of anecdotal cases, however, many of which are covered by the media.[10] For instance, a judge recently (in 2013) issued 71 indictments (47 individuals, 24 firms) for manipulation of public

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[9] I am not a lawyer and I apologize for my very loose interpretation of the law which certainly does not do justify to key details. My goal is only to point the very general character of the law which can be used to cover a very wide range of suspect interactions if a judge decides to do so.

[10] Lambrecht et al. (2014) provide a useful inventory of cases widely covered over the last 25 years or so.

procurement from 1998 to 2008 at the Régie des Bâtiments. There are many more cases like these but simply adding up these anecdotes could not possibly be used as a reliable assessment of the extent of the problem in any country. Moreover, it would not say much about the size, frequency, impact, and incentive problems for instance.

As if the measurement challenge was not big enough in itself, a number of political and constitutional characteristics of Belgium add to the complexity, as pointed out by Transparency International in its 2012 National Integrity report (Transparency International, 2012). [11] Notwithstanding their differences, the two largest communities have a strong tradition of regulating the economy when markets fail, which is identified by the academic literature as a factor that increases the odds of corruption. Moreover, in both regions, there is a natural inclination for political interventionism in public and para-public institutions which also tends to influence the odds of corruption in an undesirable way.

The political nature of the appointments to the boards of "inter-communales" (public service companies) or to the board of the Central Bank has recently enjoyed a high profile in the media when the government changed in 2014.[12] But the problem is relevant to any public institution in Belgium: Appointments have to reflect a political and linguistic balance. This suggests a focus on politics rather than skills and a market for favours to be traded politically. Adding to the scope for foul play in the process is the often lax and opaque system of appointments, with no real public hearings as is tradition in many continental European countries.[13]

The main point of this discussion is that the diversity of the country and the deep commitment to a central role for politics, rather than skills, in the management of a wide range of public services, are bound to limit the incentives for transparency and hence accountability for what the law defines as bribery. The recurring discussion on the failure of politicians to comply with the legal requirements on the transparency of their income sources (e.g. see the Cumuleo website, www.cumuleo.be) illustrates what these biases imply for the proper measurement of public sector governance failures in Belgium.

4. A review of the perceived size of corruption in Belgium

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[11] The exceptionally high degree of decentralization, the strong cultural and political differences between the North and the South of the country or the differences in the degree of religiosity are all drivers of corruption identified by the academic literature which define the heterogeneity of Belgium.

[12] Intercommunales are public or semi-public enterprises responsible for the provision of key public services, e.g. utilities distribution or transport, to a number of neighbouring municipalities. The concept was initially designed to optimize scale economies in the provision of public services. They are usually run by a board staffed with active members of political parties in the majority of the municipalities enjoying the services of the enterprise.

[13] Taking an historical perspective, it could be argued that the art of negotiation and compromise has always been a matter of Darwinism in Belgium since its territory has been claimed by a wide range of countries over time. As history textbooks teach young Belgian students, Belgium has often been considered the battlefield of Europe.

This section is a synthesis of many pieces of partial information available from a wide range of sources. The idea is to try to build up a coherent snapshot from these different sources, recognizing that they take different perspectives. They include the theoretical background based on the extent a country with the institutional and historical characteristics of Belgium is more or less likely to be prone to specific levels and types of corruption. They also reflect sources influenced by actual or potential investors' beliefs (e.g. the Doing Business Indicators generated by the World Bank as well as the partial surveys generated by commercial consulting firms such as Ernst and Young or McKinsey). In addition, they reflect how the perception indicators available for Belgium are influenced by the beliefs of common citizens (e.g. the EU sources).

The first stage of this diagnostic will be a synthesis of the academic research on the lessons of international experience with corruption to get a sense of the level and type of corruption in Belgium. This research (e.g. Soreide (2012) or Treisman (2000) for relevant reviews) suggests that countries with: (i) strong internal cultural differences, (ii) strong decentralization built into their Constitution, (iii) strong religious traditions that discourage challenges to authority, (iv) legal decisions anchored into civil law rather than common law (i.e. with lawyers whose flexibility is constrained as drivers of the legal system, rather than with powerful judges), and (v) hierarchical enforcement rather than procedural tradition (i.e. with a strong tradition of reliance on the "raison d'Etat" as a legal argument to define the degree of enforcement), tend to be more tolerant of corruption than others. These elements alone suggest that tolerance for corruption should be higher in Belgium than in many other European countries.[14]

The second step is to try to test these predictions from theory and assess the extent to which each theoretical prediction is reflected in common business practices in Belgium. It turns out that there is some sense that this tolerance exists. According to a 2012 Ernst and Young study, 42% of the 50 Belgian-based firms who participated in the global survey considered that paying bribes is acceptable in times of crisis to get contracts (vs. 26% in global sample). Somewhat surprisingly, 34% admitted to have had paid bribes (vs. 11% in global sample). Even accounting for differences in sincerity across countries and the relatively small size of the Belgian sample, this is a powerful observation.

The sense that there is a certain degree of tolerance for corruption is further validated by some of the questions asked by a Eurobarometer focusing on corruption (Eurobarometer, 2012). This survey, based on citizens' perceptions, suggests that 71% of the population thinks corruption is a problem in Belgium at all levels of government, and about two thirds think it is part of the business culture. About half believe that it is a problem for public tenders and building permits, 40% for construction, food, health and sanitary inspectors and about a third see it as a problem to obtain business permits.

These are not, however, that uncommon in similar sectors in other countries (although mostly in some of the least developed European countries and in many developing countries). What stands out in the survey is that it reveals that the main reason people think corruption is a problem in Belgium is

[14] The reader should keep in mind that this is about correlation, not necessarily causality between these characteristics and corruption levels and patterns.

that authorities are not trying hard enough to deal with it and, most importantly, that there is some degree of fatalism in the way the problem is treated. This can be seen in the data reported in Table 1 comparing Belgium to the average for the EU member countries. The most revealing data is the much larger-than-average sense that corruption is unavoidable (83% in Belgium vs 70% for the EU27 agree with the assertion on the unavoidability of corruption).

Table 1: Eurobarometer also reveals the reasons why people think corruption is a problem: *Not trying hard enough maybe and some degree of fatalism* *(% of the population agreeing with the assertion in the 1ˢᵗ column)*		
	Belgium	EU 27
Government efforts to combat corruption are effective	29	22
There are enough successful prosecutions	31	22
There is sufficient transparency and supervision of the financing of political parties	28	22
Court punishment in corruption cases are too light	82	77
EU helps in reducing corruption	30	22
Corruption is unavoidable, it has always existed	83	70
Corruption is often linked to organized crime	49	57
Source: Eurobarometer (2012)		

The dark picture emerging from these surveys covering a wide range of dimensions of policy and institutional effectiveness (rather than just corruption) is, however, not entirely robust. It does not match the ranking held by Belgium in international surveys focusing on detailed dimensions of corruption. For instance, according to the 2014 Transparency International annual report, with a score of 76/100, Belgium ranks 15th out of 175 countries and 11th in Europe (Table 2). According to their 2011 survey of bribes, Belgium ranked 3 out of 28 with a score of 8.7/10 and is thus seen as one of the countries least prone to bribes. It did however point to some concerns with the dimensions. Its compliance with the OECD anti-bribery convention is moderate but it ranks in the top 10% in terms of control of corruption. This has to be balanced with the observation that in 2012, Belgium only ranked 29 out of 142 countries in terms of judicial independence.

Similar conclusions on the reasonable (if not stellar) Belgian performance can be reached from the 2014 World Bank Governance indicators. Belgium ranks in the top 10% of the world for "Voice and Accountability", "Government effectiveness" and "Control of corruption". It only ranks in the top 15% for "Regulatory quality" and "Rule of law" and top 20% for "political stability."

In absolute terms, this is indeed not a bad performance. In relative terms, when benchmarked against the rest of Europe, Belgium's performance places it in the middle of the pack (at best) for Europe. There are 14 OECD countries doing better in the Transparency International survey, all of them with a much better score than Belgium.

Considering all the information reported so far, a puzzle emerges. There is obviously a wide range of views on the *size* of corruption in Belgium. But at the same time there is a strong sense of convergence on the view that there is only a loose commitment to address a number of damaging processes. The most recurring themes include institutions that support the poor enforcement anti-bribery laws and related international conventions and the tolerance for procurement practices that reduce the scope for political interference with the public interest.

Table 2: How do European countries rank in terms of the Transparency International Anti-Corruption Index			
(100 = the best; 0 = the worst)			
World Rank	European rank	Country	2014 Score
1	1	Denmark	92
3	2	Finland	89
4	3	Sweden	87
5	4	Norway	86
5	4	Switzerland	86
8	6	Netherlands	83
9	7	Luxembourg	82
12	8	Germany	79
12	8	Iceland	79
14	10	United Kingdom	78
15	**11**	**Belgium**	**76**
17	12	Ireland	74
23	13	Austria	72
26	14	France	69
Source: Transparency International (2014)			

These concerns also have implications for the sustainability of the current management of the public sector. For instance, even if the link is seldom made in policy debates, the recent acceleration of the

public debt burden, combined with the slowdown in economic growth can also be related to weak governance, including corruption. Poor choices of public expenditure and the lasting tolerance for business tax loopholes are usually correlated with various sources of distortions from optimal decision-making processes as recommended by public economics and public policy textbooks. Even if the relationship between poor practices and corruption simply reflects a random correlation, it seems reasonable to suspect causality. If the data were available, this could be tested. The data are however not available.

The lack of data is not coincidental and is the result of the weak commitment to anti-corruption information generation and institutions, which is below OECD standards in Belgium. Some of this is consistent with corruption (e.g. political capture). Some is also consistent with limited competence due to poor institutional design. The two explanations are once again consistent with the predictions of incentive theory models of government; e.g. high cost and poor quality of public services can be the outcome of either corruption or limited government capacity (e.g. Estache and Wren-Lewis, 2011).

These observations are not simply loose validations of academic theories. They are intended to serve as the starting point for a fair assessment of the consequences of poor public sector management, independently of their sources. Unless this is done, and unless sustainable long term solutions are identified, dynamic theory models all predict that the next generation of citizens is likely to pay the consequences of today's poor management. This is seen in the evolution of the national debt in Belgium. Since the solutions to be adopted depend on the source of the problem, it is important to assess the extent to which the governance and institutional support to anti-corruption laws are lacking. The main purpose of the next section is to show the main sources of corruption in Belgium that have been identified and that should not be confused with incompetence.

5. What are the potential sources of corruption according to watchdogs?

One of the main "actionable" messages that emerge from the review so far is that there are information gaps. Without a reasonable amount of information, it is difficult to distinguish between incompetence, poor institutional or governance design and straightforward corruption. The next step of the "investigation" conducted in this paper is an assessment of the sources of information available to allow independent observers to distinguish between what is a crime versus a competence or institutional failure.

Four documents are particularly relevant to identify some of the recurrent detailed legal and administrative weaknesses that are identified by watchdogs as issues that could facilitate corruption in Belgium:

- The National Integrity Survey (NIS) of Belgium by Transparency International
- The Right to Information Report published by produced by the Center for Law and Democracy in Canada and the NGO Access Info Europe
- The GRECO (Group of States Against Corruption of the Counsel of Europe)'s 3rd evaluation report is quite useful with its focus on Criminal Law reform and on Political Party Financing
- The EU procurement contracts database

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They are all easily available to independent auditors and watchdogs. They all contain a large volume of information. In the three first cases, the information is straightforward and has been digested for the users. In the case of the EU procurement contracts database, the information is quite raw and raises some issues as discussed later but is sufficient to identify some key biases in the Belgian approach to procurement as revealed by those benefiting from EC support (i.e. those covered by that database).

The picture emerging from the NIS may be the most precise in terms of the process and institutional issues that raise concern. This survey assesses the design of the national integrity system in terms of laws and institutions as well their effectiveness on the ground (i.e. how well they work). They cover political parties, parliaments, the judiciary, public administrations and the private sector in their role as promoters of integrity. They assess anti-corruption safeguards and their enforcement, including codes of conduct for parliamentarians, the mandatory disclosure of interests, assets and income, and restrictions on post-employment once members leave parliament. They also discuss the role of public watchdog institutions such as national public audit offices and ombudsman institutions as well as the media and civil society. Since these surveys are conducted for various countries, they can be used to compare and benchmark any given country. Just as important, they conclude with a set of reform options specific to each country.

The survey published in 2012 points to a number of positive developments in Belgium, including significant efforts to increase transparency; even if it is still problematic in some key dimensions (e.g. only judges have access to some key details and the modest compliance by politicians and political nominees with respect to their financial disclosure obligations).[15] It also points to a wide range of issues. Some of these include the size and skills of the staff involved in anti-corruption, which points to an inadequate level of training at parliamentary level, for instance. Staffing level, in particular, is an issue at the Justice department and the Central Office for the Fight against Corruption (OCRC).

The report also documents some distortions in the financing of parties in favour of large parties. With respect to the legal framework, there is a large discrepancy between the legal texts and practice. The report finds the parliament and the executive to have only limited independence from party headquarters and to some extent from civil society organizations (e.g. unions) on key decisions. The report also points out an occasional strong impact of media, public opinion and political interference on judiciary judgments.

In addition, the survey points to a number of issues with respect to accountability. There is a poor track record of control over parliamentary and executive performance outside of the election process. The report points to the absence of systematic audits of federal ministerial cabinets (strategic cells). It also points to the inefficiency of complaints and disciplinary procedures among politicians as well as civil servants. In addition, the report points to the fact that the federal level has not yet managed to create a functioning whistleblowing system.

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[15] This is also a point made and documented by the NGO Cumuleo (see. http://www.cumuleo.be/)

Finally, the report finds that the level of integrity achieved is insufficient whether in parliament, in the executive, or, to a lesser extent, in the judiciary. This includes the absence of an ethical code of conduct for members of parliament and quite incomplete rules on gifts or conflicts of interests.[16] Compliance is also an issue. Across the board, there seems to be problems with control and disciplinary procedures. The much better situation in the public sector and law enforcement agencies is given as an example, at least in terms of formal arrangements (e.g. the ethical code of conduct). It also still suffers from insufficient implementation however, according to Transparency International (2012).

The Right to Information ranking focuses on the generation and access to information.[17] It validates the TI report. The extent to which information is transparent and easily accessible to potential watchdogs or NGOs for instance is considered quite poor in Belgium, not only in absolute terms but also in relative terms. In this international ranking, Belgium is in the bottom 10 (94th in the sample covered by the survey) on this dimension. It is worth noting, however, that only 23 countries perform reasonably well. This is hardly a consolation for Belgium in view of its relatively low ranking.

The final recurring source of process-oriented information on corruption sources on which to focus policies is the recurring monitoring conducted by the Council of Europe Anti-Corruption Group (GRECO). The GRECO was created in 1999 to improve the capacity of member states to fight corruption. It includes 45 countries and releases regular country assessments. In the 2014 report, the GRECO points to the need to continue to improve preventive measures within parliamentary and judicial institutions. It welcomes the recent establishment of codes of conduct and a Federal Ethics Committee, as well as the introduction of preventive measures for federal parliamentarians, which include a system for the declaration of donations, official appointments, other positions held and assets.

The report also expresses some concerns. It regrets the complexity of the ethics codes, the lack of a regulatory system and of a clear commitment to enforce the code, notably concerning gifts and other benefits as well as the poor publicity of information on income and assets for members of the Parliament. It also regrets the lack of rules with respect to relations with interested third parties (e.g. lobbies). The Belgian justice system can be seen as independent and decentralised, but it is poorly financed and understaffed. Moreover, the monitoring of its performance is weak. The GRECO, finally, points to the need to finalise the organisation of the system of administrative justice, in particular to ensure the integrity of the staff, as is the case in other courts.

A last source of information that can help shape the snapshot of the corruption challenge in Belgium is the country-specific information revealed by the EU procurement contract database. Maybe the most interesting information that can be derived from this dataset is that Belgium has a strong preference for contracts which favour subjectivity over objectivity in the identification of the winners. In its 2013 annual report, the Belgian National Audit Office (Cour des Comptes) suggests that it

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[16] The recent introduction of an ethical code has addressed this issue.

[17] The country report is available at http://www.rti-rating.org/view_country.php?country_name=Belgium

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would be desirable for Belgium to try to get similar statistics for all contracts awarded by public institutions and not just those involving the EU.

With so many lenses used to define the levels and sources of corruption and to assess the possibility that the problem is incompetence or poor policy design instead of corruption, it is difficult to be strongly assertive on the assessment of the many drivers of the Belgian situation. The Global Competitiveness ranking may be the closest to achieve that complete picture. Table 3 summarizes the ranking on the questions that come closest to the issues raised by the various studies reviewed so far.

Table 3 confirms the mixed impression left by the review of the partial evidence collected from various sources. Overall, Belgium is not doing badly when compared to the rest of the world (it is 18th), but it is not doing great when compared to OECD countries. In spite of that performance, it is hard not to be puzzled by the difficulty of reconciling this ranking with many of the other perceptions, including the fact that transparency is lacking (56th). How can anyone argue that there is no problem, if transparency is lacking?

On balance, what emerges from this specific and more encompassing ranking is that incompetence in the public sector and poor policy are as likely as corruption to be a costly problem in Belgium. As mentioned earlier, all three forms of distortion lead to similar degrees of government ineffectiveness. The harsh evidence is that it is a lot more costly than appreciated. The connection between these weaknesses and the evolution of public debt is seldom made. But as recently shown by Grechyna (2012) for high income countries and Cooray and Schneider (2013) for a sample of 106 countries, they are related. So blaming the crisis for the increase in the debt/GDP ratio is too easy a way out to be credible to public finance specialists.

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Table 3: How did Belgium rank according to the World Competitiveness Report 2014 on corruption-related issues (out of 144 countries)	
Global competitiveness index	18
Diversion of public funds	16
Judicial Independence	18
Irregular payments and bribes	19
Reliability of police services	23
Public trust in politicians	23
Favouritism in decision of government officials	24
Public institutions quality	25
Strength of auditing and reporting standards	30
Efficiency of legal framework in settling disputes	42
Government efficiency	53
Transparency of government policymaking	56
Wastefulness of government spending	59
Government procurement of advanced tech products	63
Burden of government regulation	130
Source: World Competitiveness Report 2014-15	

At most, 20 points of the over 100% debt to GDP ratio can be blamed on the crisis. The rest is still very high and is the best proxy available to measure the long term impact of the combination of corruption, incompetence and poor policy design. Grechyna's model, which allows a test of how well corruption perception indicators can help, predicts quite well the stock of debt in most countries and provides useful insights for Belgium. It shows that corruption perception indicators clearly contribute to drive the debt to GDP ratio but there has to be something else to explain this debt level. This could be incompetence or bad policy design. But she also suggests that the problem may be that the level of debt is not consistent with the low levels of perceived corruption but is coherent with a much higher level of actual corruption. She also adds that accounting for political instability improves the prediction of the model for Belgium. Belgium is clearly not a simple case study, but these sorts of results beg for a more in depth explanation for the high level of debt. It is unlikely to be random and it is unlikely that most of it can be blamed on the crisis.

The main point, however, is that future generations of Belgians will suffer from the numerous sources of institutional weaknesses (some by design, some by inertia) that leave room for unaccountable conflicts of interests in the use of public resources.

6. Some policy-oriented concluding comments

It would be absurd to claim to be able to design an anti-corruption agenda from this survey. There is a lot of information missing either because it is not accessible to the public or simply because it is not being collected. But there is enough food for thought flowing from the sum of these partial explanations to point to a few policy areas that deserve the attention of politicians and civil society. The main sources of institutional weakness are indeed identified quite explicitly in the various surveys and can be turned into a synthetic list of the main areas on which policy should focus. This list should include fixing a few areas recurrently identified as troublesome:

- *Biases favouring non-competitive and non-transparent procurement processes*

  – This is illustrated by the fact that negotiations are too often preferred over auctions for the award of public procurement contracts, without any obvious reason.
  – Reassessing the choice of auction design for public sector contracts to favour their transparency, the minimization of fiscal costs and the accountability of poor service providers is possible and should be the subject to a special task force or commission.

- *Biases favouring discretion vs rule in many policy dimensions*

  – This is illustrated by the poor perception shared by many rankings with respect to contract enforcement. Increasing transparency on votes at the parliament by increasing access to the information and increasing access to the justification
  – This is needed to be able to understand the extent to which quantitative information is used to anchor decisions rather than subjective political instinct and is part of what international experience suggests makes sense to improve the fairness and the accountability of democratic processes

- *Biases in top civil servant appointments*

  – This is illustrated by the composition of the boards of most public enterprises or enterprises in which the government is a key shareholder in which political affiliation is more relevant than skills.
  – The kind of information generated by the NGO Cumuleo is a strong step in the right direction simply because it increased the transparency of the strong political representation on the board of key agencies but it would seem to make sense to do it more systematically across every agency and to use it to improve the benchmarking of performance of these nominees and use it to improve accountability for poor performance in the same way poor performance is used for accountability in private boards.

- *Biases against measurement*

  – This is illustrated by the difficulty of getting access to enough financial data on key public sector activities (including procurement not involving the EC)) and on the salaries and

assets of public office holders as well as coordinated and public data on convictions for corruption (except for the few useful studies conducted by the Government Auditing Office (Cour des Comptes). In the context of public procurement for instance, a simple ex-ante diagnostic could be conducted to assess the extent to which processes can easily be manipulated to generate a desired winner by spelling out incomplete, imprecise or incoherent rules. In addition, it would be quite easy to track non-compliance, lack of sanctions or lack of accountability (i.e. cheaters can be allowed to bid again in future contracts).

— Increased transparency on all types of costs is not only useful to identify suspicious outliers which could be linked to inadequate or illegal processes but they are also necessary to be able to get a sense of the extent to which there is margin to reduce fiscal expenditures without reducing the quality or the quantity of service

- *Biases against accountability*

  — This is not only illustrated by the data gaps just mentioned but also by fact the judicial system is underfunded which limits the scope for taking corrupt actors to court.

  — Anti-corruption laws are like any other law: unless they can be enforced they are largely useless. In the Belgian context, the survey suggests also that a fair assessment by a judge (supported by experts on the matter being analysed) of the extent to which corruption can be distinguished from incompetence or wrong policy decisions is likely to be an important contributor to the improvement in the accountability for overall management of the public sector in the interest of taxpayers and of public service beneficiaries. For a country with such a high debt level that cannot afford to cut many expenditures and does not have a significant margin to increase tax revenue, increasing accountability is essential to ensure the improvement in the quality (i.e. efficiency) and the composition of public expenditure (i.e. the extent to which expenditure decisions are made to support both growth and social goals at the lowest possible fiscal cost) and of taxes. These improvements are likely to be major drivers of the return to a robust and fairly shared growth and this survey should have made it clear that there is a link between the quality of the public sector and the macroeconomic and social prospects.

For those interested in studying corruption, there is not much novelty in this list. Tracking the evolution of the performance indicators over long periods of time suggests that very little progress has been made in the last 10 to 15 years according to most evaluations and rankings. This is in spite of the potential fiscal cost savings that could significantly contribute to cut the debt burden as seen in the international experiences (e.g. see Rose-Ackerman and Soreide (2011), for various surveys).

Specific suggestions to address each of these problems have already been made by international and national legal teams looking at Belgium. For the interested reader, a good place to start is the solutions identified by Transparency International (2012) in its Belgian case assessment as well as the most recent documents released by the GRECO (Group of States Against Corruption of the Council of Europe), with a focus on Criminal Law reform and on Political Party Financing.

Many of the solutions will work whether the problem is corruption, incompetence or policy mis-management. They should reduce the number of conflicts of interest, allow skills to prevail over

politics, and increase accountability in front of judges for those cases in which corruption is the source of the high costs or the wrong choices rather than the other two potential sources. Lower costs will eventually also allow tax cuts. How fast and how much can be achieved is hard to estimate precisely because perception indicators are useful but not a substitute for objective information on corruption and its sources.

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A comment on "Corruption in Belgium"

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The note by Antonio Estache offers a very thorough overview of what we know and don't know about corruption in Belgium. He brings together data from many different sources, while carefully emphasizing the still significant limitations of using these data to understand prevalence of corruption in Belgium. The result of this exercise is a very interesting analysis that also includes a very clear normative position. Particularly notable is his repeated reference to the negative impact of corruption on national debt and, in turn, on future generations. He is also careful to point out that corruption is not the only antecedent of poor performance. Factors like incompetence and poor design might lead to the same outcome.

Having the luxury to be able to continue upon such an extensive overview and analysis, my commentary will be limited. I will address four issues. First, I will complement Estache's review of data on the prevalence of corruption in Belgium with a few additional reflections. Then, I will discuss some factors that are said to increase the risk for corruption in Belgium. This will be followed by a brief exploration of some aspects of anti-corruption policy that might help to prevent corruption. Those reflections on risk and preventive factors will be complementary to Estache's discussion as it will mainly draw from political science and public administration, while Estache mainly focused on arguments from economics. I will conclude with a caveat about the unintended consequences of anti-corruption policies.

1. Prevalence of corruption in Belgium: some reflections on measurement

As already mentioned, Estache presents an extensive and critical overview of different types of indicators offered by various organizations such as the World Bank, the World Economic Forum, Transparency International as well as consulting firms and lobbying groups. Importantly, he also offers an extensive discussion of the limitations of these indicators. I would complement that discussion with two additional considerations.

The first consideration concerns the use of **general indicators** that are supposed to describe the (perceived) prevalence of corruption or bribery in one summative figure or ranking. Transparency International's Corruption Perception Index is probably one of the best known such indicators. The idea that a very complex phenomenon with many different dimensions and manifestations in many different areas of public life could be summarized into one general figure is highly disputable. Such indicators are so crude that they are very poor indicators to evaluate policies. Yet, in spite of these obvious flaws, these general indicators are still used to support important decisions. If it is still true that,

as Estache (p. 9) describes, international organizations use these indicators as a basis for decisions about lending to countries, then I think that practice should be cause for major concern. Both international organizations and the countries they intend to help would benefit greatly from looking into alternative ways of evaluating anti-corruption policies. Recent developments in corruption research from a political science perspective might be useful in this respect (see e.g. Johnston's work, as discussed below).

The second consideration concerns the widespread use of **citizens' surveys to measure the indicator 'perceived corruption'**. As Estache points out (p. 6), because these are merely perception indicators, they should not be used as proxy for actual corruption. Yet, even as an indicator of perceived prevalence of corruption, they are debatable. There are good reasons to consider citizens' response to general questions about how much corruption they perceive as indicators of a deeper attitude, rather than as perceptions of actual behavior. For example, Van de Walle (2005), looking at data from Belgium, found that high degrees of perceived corruption coincide with high degrees of alienation. Instead of adopting the common belief that the former is the cause of the latter, he argues that it is the other way round. When asked in very general questions about the perceptions of corruption, citizens tap from their general attitudes about the political system in their country, rather than from their actual knowledge about actual behaviors. Whether this interpretation is correct will require further research, but the argument is plausible enough to at least be cautious in simply assuming that citizens' answer to a general question about perceived prevalence indeed represents perceptions of that prevalence.

Together with some of the critical reflections by Estache, these considerations suggest that in order to fully answer the question about prevalence of corruption in Belgium and elsewhere, further work on the development of measurement instruments will be necessary. I briefly list some suggestions.

As for **quantitative research**, it will be important to move away from very general crude indicators and instead look at much more specific indicators focusing on particular types of behavior by particular actors in specific sectors or even organizations. To the extent that these indicators rely on survey research, they will have to use very specific items asking about actual experiences and behavior, thus moving away from general perception questions. Asking for specific types of behavior in survey questions is of course very vulnerable to problems of social desirability bias and hence underreporting, but innovations in (web-)survey research might help to reduce that risk. Another useful alternative quantitative indicator would be police and judicial statistics. Estache discusses a number of those figures for Belgium, also pointing at the limitations. Perhaps it is useful to add to the limitations of all police and judicial statistics (e.g. dark number, registration bias), a problem specific to corruption. Corruption is often associated with other offences that are easier to prove and that generate more serious penalties. Hence, both police and the judiciary tend to focus on those other offences, thus inadvertently contributing to an underreporting of corruption in the statistics.

Perhaps more importantly, it will also be important to move beyond mere quantitative observations towards more **qualitative research**. In his influential book on 'syndromes of corruption' (2005) political scientist Michael Johnston offers, in addition to some quantitative analyses, a qualitative analysis of "the underlying developmental processes, and problems, of which a society's corruption is symptomatic" (p. 38). Instead of saying how 'high' or 'low' corruption is, he focuses on the nature of corruption in a particular country and on the underlying mechanisms. Arguably, that qualitative kind of information will offer a much more nuanced and realistic understanding of the state of corruption in a country than mere crude quantitative indicators. More importantly, it will help to offer more useful and specific advice. When the problem is described by means of general, crude indicators, the solutions offered are often of the equally general sort, typically in the form of universal recipes (e.g. establish an anti-corruption agency, increase transparency, and strengthen competition). When, instead, a more qualitative approach is used to develop a nuanced diagnosis of the syndrome, this will almost naturally lead to suggestions that are much more specific for that particular syndrome. Specifically, Johnston proposes four such syndromes of corruption, suggesting that in most countries typically one syndrome is dominant. He illustrated each of the syndromes with three country studies, and offers suggestions for different anti-corruption strategies for each of those syndromes. The four syndromes are 'influence markets' (US, Germany, Japan), 'elite cartels' (Italy, South Korea, Botswana) 'oligarchs and clans' (Russia, Philippines, Mexico) and 'official moguls' (China, Kenya, Indonesia). Unfortunately, Belgium is not presented as a qualitative case study.[18]

2. Risk factors for corruption in Belgium

Complementary to Estache's analysis of factors that increase the risk of corruption in Belgium, this section briefly discusses some risk factors often mentioned in the political science literature. The overview draws from De Winter (2003), Maesschalck and Van de Walle (2006), Peters (2006) and a chapter in the 2012 NIS-report (Maesschalck, 2012). The factors are organized in four categories.

First, many authors refer to a complex of interconnected **cultural factors** such as the relatively small trust in government, a relatively high tolerance for rule transgressions and a broader culture of clientelistic relations between politicians and their voters. These factors are said to create a context

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[18] However, in addition to the qualitative case studies Johnston (2005) also attempts to cluster a much larger number of countries in the four categories using cluster analysis on the basis of quantitative data. That analysis leaves Belgium, somewhat intriguingly, in the 'elite cartels' category, not in the 'influence markets' category. This allocation is surprising. A quick qualitative assessment suggests that many characteristics of the 'influence markets' syndrome are applicable to Belgium, while many 'elite cartels' characteristics are not. Situating Belgium in Johnston's typology requires thorough qualitative research, but my quick assessment would be that Belgium is rather a hybrid of 'influence markets' and 'elite cartels' than an instance of the latter.

that facilitates corrupt behavior. Yet, there are some reasons to believe that this culture is slowly changing, as some illustrations in the 2012 NIS-report suggest.

Second, **political parties**, and particularly their leadership, play a central role in the Belgian political system, which has been described as a 'particracy'. Traditionally, political parties had an important impact upon the careers of public servants and magistrates, because of their role in appointments. More recently, this impact has diminished as a consequence of reforms both in the administration (Stinckens & Maesschalck, 2012) and the judiciary (Janssens & Vander Beken, 2012). Yet, political party leadership's impact upon members of the legislature and the government remains very strong. This concentration of power, combined with the drastically growing demand for party funding is often blamed for the political corruption scandals in the 1990's (often about cases that actually took place in 1980's). Party financing in Belgium is much better organized now than it was in the 1980s, but there certainly still remain reasons for concern about the current party funding system (Debacker, Maesschalck & Roosen 2012).

A third category of factors has to do with the dominance of the government in political decision making and particularly with the role of the **ministerial cabinets**. De Winter (2003, p. 99) writes: "as they are central to departmental decision-making and are staffed by party loyalists, ministerial cabinets are evidently useful sites for organizing illicit activities". Several efforts were made to reduce both size and impact of these cabinets, but to only very limited effect. The fact that genuine integrity management within these cabinets is very weak adds to these concerns.

The fourth category concerns a number of specific characteristics of the Belgian political system that is often described as '**consociationalist**' in the well-known typology of Lijphart (Frognier, 1986; Lijphart, 1999). The strong ties between a political party and many other organizations from the same 'pillar' on the hand and the culture of closed decision making between the members of the elite of those pillars on the other hand are often mentioned as relevant factors. They might perhaps not lead directly to corruption, but they certainly lead to opaque decision making. Peters (2006) argues that this lack of transparency has a certain degree of functionality in a complex country like Belgium and even talks about 'functional corruption'.

Some of the factors mentioned here, were also mentioned by Estache, but perhaps it is useful to also point at some differences between Estache's approach that mainly draws from economics and a political science perspective.

Estache (p. 7), for example, hypothesizes a strong link between the size of the public sector and corruption: "What we know from research is that the scope for private gains from public policies is larger when the public sector is larger." Many political scientists would question this hypothesis, referring to countries with relatively large public sectors and still low indicators of perceived corruption (e.g. Germany or the Scandinavian countries). Political science and public administration would suggest a host of other factors, such as the ones mentioned above, that are much more relevant in explaining corruption than mere size.

Likewise, Estache seems to have great trust in a technocratic, a-political style of policy making. For example, he denounces "distortions from optimal decision-making processes as recommended by public economics and public policy textbooks" (p. 15), somewhat implying that decision making should be driven by handbooks, rather than by political considerations. He is also critical of 'biases favouring discretion' (p. 20), arguing that decisions based on 'quantitative information' might be better at improving the fairness and the accountability of democratic processes' than 'subjective political instinct' (p. 20). From a political science perspective, this would be debatable. Of course, in many cases public policy decisions would benefit from better information. Yet, certainly not everything that is important can be measured quantitatively, so qualitative information might be at least as important. Moreover, political scientists would emphasize that many policy issues are essentially contested and that a, sometimes messy, democratic decision making process is necessary to reach a legitimate decision. In such a process, political instinct might be at least as important in coming to decisions as quantitative indicators and recipes offered by textbooks. In fact, Johnston (2014) proposes 'deep democratization' as the central path to corruption prevention. Corruption will continue, he argues, "until those with a stake in ending it are able to oppose it in ways that cannot be ignored" (Johnston, 2014, p. 240). In this democratic process, quantitative and other technocratic information can, to some extent, empower citizens, but only when they are used in a genuinely political discourse, not merely in a technocratic discourse.

3. Anti-corruption efforts in Belgium

Estache lists a number of anti-corruption efforts in Belgium. In this section, I briefly add a few observations, particularly focusing on the public sector. This discussion draws from the discussion of the weaknesses mentioned in the conclusion of the 2012 NIS-report on Belgium and focuses on the Belgian federal administration.

First, some functions that are often considered as protective for corruption simply do not exist in the Belgian system. The most obvious example of this is the absence of **administrative investigative capacity** at the federal level. When the *Hoog Comité van Toezicht* was abolished, its judicial investigations were adopted by the police, but no actor adopted the responsibility for administrative investigations at federal level. The example at the level of the Flemish administration (where administrative investigations are the responsibility of the agency '*Audit Vlaanderen*') shows that it is both necessary and feasible to have such an actor, complementary to the judicial investigations done by the police. This re-introduction of administrative investigative capacity at federal level would be a major improvement.

Second, some functions are present, but not properly developed. For example, there have been some serious efforts to develop and communicate a '**conflict of interest**' policy at federal level, but awareness among public servants is still limited. Particularly given the Belgian tradition of clientelism, this deserves more efforts. One often mentioned instrument to manage conflicts of interest is the

mandatory disclosure of mandates, income and assets for senior politicians and public servants. Belgium has such an instrument, but it has important flaws, as Estache also points out (see below).

Third, some instruments are formally developed, but do not function as they ideally should. A case in point are **disciplinary procedures** in the administration, the police and magistracy. The existing disciplinary procedures are often complicated and tedious. This not only increases the risk for procedural mistakes, but also renders the instrument less effective then it could be.

Finally, Belgian anti-corruption policy **lacks overall coordination** and vision. There are significant efforts by the many different actors involved, but these are not really coordinated in an overall anti-corruption strategy. This is, partly, because political interest has been limited, but there are some indications that this is changing.

4. In conclusion: the limitations of anti-corruption policies

However important anti-corruption policies are, policy makers and researchers also have a duty to remain aware of their opportunity costs and their limitations.

Anti-corruption policies of course have **a cost of their own**. In many cases those costs are worth paying, but it is the responsibility of anti-corruption activists and policy makers to continuously question the efficiency of anti-corruption measures. For example, while the reporting by senior politicians and public servants of their assets and mandates might be an important means to increase transparency, it can also quickly become a very costly and time-consuming bureaucratic operation. It will be important to continue monitoring the cost-benefit balance and to consider alternative measures that might reach the same goal at less cost. Moreover, however important corruption-prevention and -fighting are, policy makers of course also have many other worthy goals to achieve. Anti-corruption interventions should not only be balanced against anti-corruption policy alternatives, but also against policy alternatives aimed at achieving those other goals.

In addition to those obvious considerations about the opportunity costs, it is also useful to refer to a number of possible **undesirable and unintended consequences** of anti-corruption policies. It will be important for both researchers and policy makers to consciously address and thus attempt to avoid these. Even if one agrees that all forms of corruption are bad, that certainly does not imply that all anti-corruption efforts are inherently good. In all their enthusiasm, anti-corruption activists might forget this obvious truth. In doing so, they run the risk of seriously harming anti-corruption efforts, as the undesirable consequences might undermine the legitimation of the anti-corruption policies as a whole. Two examples of undesirable and unintended consequences of particular types of anti-corruption policies within the public sector can illustrate this.

First, if an anti-corruption policy emphasizes **strict rules and procedures**, this implies a number of risks. The accumulation of procedures and rules could lead to 'goal displacement' (Merton, 1957) where the rule is no longer a means to an end but an end in itself, while the original goal of the rule is forgotten. A case in point would be a rule that limits the gifts a public servant might accept to a certain

amount, e.g. 25 euros. It is not unlikely that discussions would quickly be about the pecuniary value of a particular gift, rather than about the actual aim of this rule: avoiding (the appearance of) partiality. An accumulation of rules and procedures could also lead to very tedious and long decision making procedures. This could, in turn and ironically, increase the temptation among citizens to bribe officials to speed up the process.

Second, many anti-corruption policies emphasize **transparency**. While there are many good reasons for transparency, it also implies some risks. Some decision making, particularly in the preparatory phase and in a complicated political environment like Belgium's, could benefit from a certain degree of confidentiality. If this is made more difficult by transparency rules, then this might push decision makers to even more informal and backroom decision making, which might in turn invite more intrusive and costly transparency regulations.

In addition to the unintended consequences associated with specific anti-corruption measures, anti-corruption policies as a whole also generate such consequences. Again, two examples can illustrate this.

First, most anti-corruption interventions have some public visibility, often because policy makers like to advertise their, but also because some anti-corruption interventions actively involves citizens, as anti-corruption activists like Transparency International advocate. While there are many good reasons to inform and involve citizens, this also carries a significant risk. By emphasizing the risks for corruption, policy makers and anti-corruption advocates might inadvertently create a perception that there is a serious problem of corruption, even when in reality that is not the case. The result of this might be that, while anti-corruption policies usually intend to increase citizens' trust in government, they instead unnecessarily **undermine the public's trust** (Bovens, 2006). Personally, I do not think we have reached that point in Belgium yet, but it is a risk to be taken into consideration.

Second, it is useful to be aware that investment in anti-corruption policies almost inevitably implies the creation of anti-corruption actors, i.e. an **anti-corruption 'industry'** (Huberts, 2014, p. 9), with a stake in maintaining and strengthening anti-corruption policies. These actors have an interest in identifying as much corruption problems as possible and subsequently offering instruments and models to solve those problems. While they might not consciously exaggerate the problem, there certainly is a risk for them to be biased in that direction. If their observations are then made public, the result will be: 'doing better feeling worse' (Bovens, 2006, p. 70). This might weaken public trust (see above), in turn justifying further expansion of the anti-corruption efforts, etc. Again, I personally do not think Belgium has yet gone that path, but it is a risk we should remain aware of.

So, how should we now **move forward?** Arguably, any policy alternative carries with it risks for unintended consequences, so believing in risk-free anti-corruption instruments and then aggressively advocating them is not a very fruitful way forward. Nor should we be paralyzed by the awareness of these risks.

Instead, we should continuously analyze Belgian anti-corruption policies and identify measures that deserve to be introduced or strengthened in Belgium (see above). At the same time, however, we should be systematically **aware of the potential risks** of each of these measures and design policies in such a way so as to reduce those risks. One obvious way to do so is by ensuring a sufficiently broad mix of policy instruments that could each compensate for each other's weaknesses and risks. The literature on organizational ethics offers typologies that could help conceptualizing such a mix (e.g. Maesschalck, 2005).

In addition to that, it would also be important to maintain a **broad perspective** and to remain aware that **corruption is merely a symptom**. A narrow focus on fighting corruption alone will not be sufficient. While part of the answer is indeed to alleviate the symptom and to address the underlying disease, the other part is to improve society's resistance and general well-being so as to prevent the symptom from returning. This requires a much more forward-looking and optimistic perspective than that of merely fighting corruption. Johnston's (2014) 'deep democratization' as well as the growing literature on quality of government (e.g. Rothstein, 2011) offer such perspectives. As for the organizational level, the growing literature on ethics management suggests to complement the necessary but insufficient 'compliance' or 'rule-based' efforts with more positive, 'integrity' or 'values-based' efforts. The latter are aimed at supporting and coaching staff in dealing with ethical dilemmas, rather than merely controlling them. Given that Belgium has some corruption problems but is not overwhelmed by them and given that it has seen some important anti-corruption efforts but not to an excessive extent, it would be an excellent testing ground for such balanced approaches combining tough corruption fighting with more positive long-term resistance building efforts.

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Corruption in Belgium: Comments

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1. An unavoidable subject matter

It is Re-bel's ambition to stimulate a debate around the re-thinking of the Belgian institutions. Clearly, the fight against corruption has to find a place of choice in this context. Corruption, however one wants to define it, undermines political institutions and brings confusion to the understanding of the power relations in the political and economic community. Governance structures in either the public or the private sector are destabilized by corruptive practices, as these create parallel loyalties, conflicts of interest and non-transparent belongings. Re-thinking a new Belgium cannot shy away from also re-thinking legal and ethical attitudes and behavior towards corruption.

2. And still, there is this denial…

Awareness about the dangers of and the damage from corruption has become common good almost everywhere in the world with only a few countries still noted as laggards in this context, such as, most surprisingly, Belgium. It is remarkable that *e.g.* in the Peoples' Republic of China, a one-party regime, the combat against corruption has taken incredible proportions, while our country is lukewarm about fighting corruption.

In our country, even after experiencing the trauma of the Agusta Dassault case – which, by the way, was efficiently handled by the Belgian Supreme Court *(Cour de Cassation)* - one still meets with people who tend to sweeten the pill: "Do we really have a serious problem of corruption in Belgium?" Belgium hardly comes out of a lingering state of denial.

3. What is the present state of play in Belgium?

In fact, there may be some reasons for some of our fellow countrymen to still indulge in such an illusion. When Antonio Estache aptly reviews in his ground breaking analysis the available indicators about the extent and pervasiveness of the corruption phenomenon in Belgium, he *i.a.* refers to the Transparency International (TI) Corruption Perceptions Index (CPI), which grants Belgium a remarkable 15th place in a world ranking (and an 11th place in an European ranking) of the countries reviewed. And Antonio also mentions the same NGO's Bribe Payers Index (BPI), where Belgium is

ranked - even more remarkably- 3rd out of 28 exporting countries. The (inadvertent) reader of such indicators could take home the impression that Belgium belongs to Europe's, if not the world's, integrity champions.

Is this to say that – apart from a few nitpickers like me – there is a consensus about the fact that Belgium is an island of integrity in a sea of corruption? Would our fellow countrymen be right when they question the need for large reform of our business and administrative practices? Is corruption only a minor issue that shouldn't prevent anybody from sleeping peacefully at night?

4. A few missing indicators

In his article, Antonio extensively refers to the GRECO review mechanism reports, in which GRECO, the *Groupe d'Etats contre la corruption*, conducts examinations of the way the countries signatory of the Council of Europe anti-corruption instruments implement the latter. The GRECO reviews are thorough and are relatively favorable in their conclusions of our country.

One should, however, in order to have a full picture, also include in one's analysis the reviews performed by another top quality specialized body, the Working Group on Corruption of the OECD. In the latter's reviews on the way Belgium conducts its anti-corruption policies, one can read quite a more critical view on the situation prevailing in Belgium.

5. Belgium, worst in class on legal enforcement

Similarly, one may regret that no mention is made by Antonio of the document titled 'Progress Report 2014: Assessing Enforcement of the OECD Convention on Combating Foreign Corruption', written for Transparency International by Fritz Heimann, Adam Földes and Gabor Bathory. In the latter report it appears that Belgium belongs to the lowest category of the 41 countries signatory of the OECD Bribery Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, as far as enforcement of this Convention is concerned. This means that Belgium belongs to a group of 22 countries with little or no enforcement of the OECD Convention, which was adopted in 1997, and which was meant to change quite radically the state of play in the international markets.

Admittedly, legal enforcement is only a part of the solution – while corruption requires a holistic approach - but a near total absence of any form of efficient legal enforcement or, in other words, a quasi-impunity for those giving or receiving bribes may be seen as a clear omen that the authorities are not inclined to tackle seriously the issue of corruption in Belgium. It will therefore not be surprising to understand that the Belgian general public will be inclined, as Antonio wisely indicates in his report, to indulge in fatalism in front of corruption.

6. A first European Union report

One may note, although it is a meager consolation, that Belgium is not alone in the European Union in this uneasy position on enforcement. The first European Union Anti-corruption Report of 2014 underscores the uneven law enforcement and prosecution of corruption in different member countries of the European Union.

One can *i.a.* read in this report that 'corruption cases risk becoming time-barred where judicial procedures turn out to be excessively long and cumbersome'. The report also stresses that 'in certain European countries successful prosecutions are rare or investigations lengthy and that the efficiency of law enforcement and prosecution in investigating corruption varies widely across the European Union'.

7. Criminal law settlements

It may be interesting to note on the subject matter of legal enforcement, that countries, which have an efficient criminal settlement procedure for bringing to an end corruption cases, are generally considered more apt to conduct successful legal enforcement of corruption cases. Corruption cases in those countries do not strand on time bars or on the excessive length of procedures. Concluding a settlement with suspected corruptors cuts short lengthy litigation (while at the same time saving management time) and often, but not always, offers the possibility to bring back the corruptor on the right track, through the appointment of a monitor. The victims may be compensated in time, the fine is collected and the case is successfully closed.

Belgium has introduced by the Law of April 14, 2011 'on the extended criminal law settlement' (painstakingly 'corrected' by the Law of July 11, 2011) a larger possibility to reach a criminal law settlement, even when litigation has already started before the courts. This act, although it doesn't provide for all elements required to ensure proper publicity and although it does not guarantee equality of treatment of all citizens, probably contains interesting elements for improving our country's legal enforcement position on corruptive practices.

8. Is there a political will?

The issue of lack of enforcement brings us to the next vexed question: is there in our country a sufficient political will to eradicate corruption?

The government declaration of the present federal executive lacks any mentioning of a policy on how to tackle corruption. Contrary to what happened under previous governments, the government declaration, which forms the basis for all governmental action, is silent on the topic of corruption. Therefore our questioning: is political Belgium willing to give its anti-corruption policy a real top

priority in its political action plan? Or in other words: is the federal executive ready to use sufficient resources to combat what is seen by the international community as an evil to be fought against vigorously?

9.   A pressing need for more and better preventive action

From a technical point of view, Belgium probably has the legal and regulatory means to fight corruption in its judicial system. The definitions of corruptive practices in the Belgian legal system are not fundamentally diverging from the international legal standards, as laid down in a number of international legal instruments, signed and ratified by Belgium.

Weaknesses appear, however, as soon as one looks into matters of prevention in the public as well as in the private sector. Although more and more countries introduce legislation compelling corporations to install effective ethics and compliance programmes, our country continues to turn a deaf ear when told to introduce this kind of provision in its legal framework.

An outstanding example in this field is the famous article 7 of the United Kingdom Bribery Act 2010 (UKBA), whereby companies ('organisations') are held liable, whenever bribery is discovered, for not putting into place reasonable measures to prevent the occurrence of a corruptive act. Likewise, one may refer to the semi-obligatory regulation contained in Annex II of the OECD Recommendation of November 26, 2009 or to the Federal Sentencing Guidelines of the Department of Justice of the United States, which lists the several measures a corporation should take to have a proper anti-corruption preventive system.

And indeed, the need to be active on prevention appears more and more compelling. Adopting new legislation, touting new legal texts, while not seriously trying to introduce preventive measures is tantamount to doing nothing effective to combat the evil one formally condemns.

10.   Should there be a body for overseeing the preventive anti-corruption work?

The '*Comité supérieur de contrôle/ Hoog Comité voor toezicht*' (High Control Authority), which was probably one of the oldest- if not the oldest - anti-corruption agencies in the world, as it had been created in October 30, 1910, was in charge of anti-corruption preventive work in Belgium. It has been suppressed and never has been replaced in this capacity.

Isn't it time to give the '*Office Central pour la Répression de la Corruption*[OCRC]/ *Centrale Dienst voor de Bestrijding van Corruptie* [CDBC] (Central Office for the Repression of Corruption) this preventive function again? In that capacity the OCRC/CDBC could actively stimulate awareness-raising about corruption in our country.

Fulfilling such a task is clearly necessary in the public as well as in the private sector.

In the private sector, one should not only deal with large enterprises but also with small and middle-sized ones. Companies of all sizes should be encouraged to put into place several serious and proportionate measures to combat corruption. To quote only a few: (i) establishing a code of ethics and a corporate ethics and compliance programme, (ii) creating an ethics and compliance function commensurate to the resources and size of the organization, (iii) giving employees and, to a certain degree, the company's business partners, sufficient information on and training about the corporate integrity programme, (iv) installing reasonable management, control and audit systems capable of identifying, mitigating and, if possible, eliminating corruption risks and occurrences, (v) giving whistleblowers, who report in good faith serious attempted or real infringements of the law or of the corporate ethical rules, protection to speak up, and (vi) sanctioning in a dissuasive, fair and proportionate way any infringement of the law or of the corporate ethical rules.

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