# European Commission Report on Serbia for 2016 - chapter on corruption

General evaluation of the Report:[European Commission Report on Serbia for 2016](http://ec.europa.eu/enlargement/pdf/key_documents/2016/20161109_report_serbia.pdf) states **recommendations and evaluations of the status that are properly formulated**. In the chapter referring to anti-corruption we haven’t noticed any wrong observation or recommendation. However, Transparency Serbia considers that significance given to certain problems and solutions, i. e. line of priorities for fight against corruption, should have been different. Even more important, when reading and interpreting Brussels’ messages, is to understand that the Report does **not comprehend all important issues** related to fight against corruption.

Structure of this year’s report is a bit unusual. Namely, paragraph on corruption in the introductory chapter „political criteria“ does not represent only shorter version of the description of the status and the results given in the chapter 23, but also a special text, whereas viewpoint and including of information in one or the other chapter are not always clear. Besides, summary of the report**, prepared in advance for the journalists, didn’t contain some of the key recommendations** that can be found in the rest of the text – that **„No progress was made** on meeting last year’s recommendations **“**.

Transparency Serbia thinks that, overall, **Report was useful to the citizens of Serbia** (and it is a shame that the next will be published only in March 2018). **In what level will the messages from the report be of use to the authorities,** **depends of their goal**. If they are willing to make essential progress in Serbia through establishing of institutions and rule of law, criticism and recommendations from the EC (and even more those from their own citizens), will be of help. If the only goal of the authorities is that the report has a „positive note“, as can be concluded by recent reactions, then Serbia will miss a unique opportunity for anticorruption reforms, even if it becomes member of the EU eventually.

Matter of law implementation:Transparency – Serbia considers as positive, that European Commission explicitly mentions problem of public enterprises („particularly vulnerable to corruption“), but that more attention should be dedicated to poor implementation of the Law on Public Enterprises in all of its aspects (depolitization, transparency, accountability).

The good thing as well is that it is stated that independent supervision for determining of irregularities related to work of state companies, as well as with public-private and strategic partnerships is insufficiently developed. These are the problems that our organization states for years now and we feel as extremely important that they finally entered the focus of European interest. However, the problem is far greater – even when control mechanisms exist in the laws of Serbia, they are not being used when large infrastructural projects are being implemented based on interstate agreements. Recent mentioning of these problems in the report of EC, raises hope of placing these types of problems on the agenda of future consideration of Serbian progress in EU integrations. However, one can conclude that these messages from EC are still to „shy“ in order to expect swift reaction of the authorities of Serbia, that already misses out for much more explicitly mentioned subjects.

Especially significant is recognizing of the problem of „**blurring of the distinction between state and party activities“of public officials** during the election campaign, related to that we remind that TS initiated specifying of legal obligations and limitations.

Question of the statistics is very important segment of the EC Report, because through it implementation of the law is being monitored (so called “track record“). This time as well, **public in Serbia learns about acting of state organs of Serbia from the report of EC**, and not from the publicly available statistics and the published report of the police, public prosecution and courts. However, matter of scope of statistics, when it comes to corruption, justifiably occurs. Namely, number of over eight thousand of reported cases of corruption in 2015 cause for doubt, because it turned out that statistics included even some criminal acts that have nothing to do with corruption. The report contains detailed presentation of Anti-corruption Agency’s work, in the areas of conflict of interest and financing of political campaigns.

Regarding curbing corruption, EC criticizes that financial investigations are not being launched systemically. On the other hand, EC notices that police and prosecution „more often use“ proactive investigations, but that there are some obstacles – lack of equipment, trainings and platforms for safe exchange of information. Related to this, TS considers that it is primarily **problem of lack of will** to implement such investigations and to use investigative techniques, then it is about lack of assets.

EC expresses serious concern for often commenting of ongoing investigations and court rulings on corruption by politicians, as well as for „leaking“ information on investigations towards media. On the other hand, „A number of high-profile cases, including some where evidence of alleged wrongdoing has been presented by the media, have still not been seriously investigated“. This problem was treated in AP for chapter 23, but completely inappropriately – like there was lack of knowledge and procedures of what can be communicated to whom, and not that it was **targeted dissemination of information to selected media**.

Evaluations of the European Commission were relatively mild related to implementation of the Anti-corruption Strategy and Action Plan, but it is still being recognized that the results of implementation „are limited“ and that „number of measures have been delayed“. Causes of such status are not being mentioned – complete absence of accountability in the case of noncompliance with obligations, including absence of reaction of the National Assembly to the Reports of the Anti-corruption Agency. Hence the conclusion of the EC at the end of this chapter of the Report: **„The fight against corruption in Serbia lacks both a long-term strategic vision and the political will to boost reforms.“**

Adoption and amendments to laws:The Report mentions very important issue of **expected amending of the Constitution**. We remind that TS formulated ten priorities for changing the supreme legal act by the beginning of this year, therefore, one should always be aware that issues of amending the Constitution that were identified in EU strategic acts (changes of the structure of SJC and SPC) currently, are not the only ones. Related to that, the key is to provide **public debate on changes of the Constitution**. There is a great risk that it won’t be organized since there is no legally defined procedure for implementing of such debates prior to changes of supreme legal act, and there is previous bad experience of nontransparent process of preparation of the Constitution in 2006.

In this chapter EU tackles the Law on Free Access to Information of Public Importance. They warn that the Law still hasn't been amended to improve the effectiveness of the work of the Commissioner, and still enforcement of some of Commissioner's decisions is not secured. Unfortunately, opportunity to plan activities for resolving of this problem was missed with the Action Plan for chapter 23 of negotiations of Serbia with the EU (TS timely indicated to Ministry of Justice and EC to this shortage during drafting of Action Plan).

The report states obstacles that stand in the way of more successful work of the Anti-corruption Agency (especially when it comes to access to data bases of other organs), as well as of the need to adopt Law on Lobbying and amend regulations on conflict of interest. TS considers that current draft Anti-corruption Agency Law (that wasn’t considered by the EC) should be improved and that there are no indications on when other laws mentioned in the Report could be amended.

By our opinion, European Commission rightfully emphasizes problem of exaggerated use of the provisions of the Criminal Code on „abuse of office in the private sector“. According to the opinion of TS, politicians, even some public prosecutors in Serbia are mistaking when they present investigations of economic crime as curbing corruption, although they do not determine whether there was bribing in place or participation of any public official or servant. Transparency – Serbia thinks that EC shouldn't encourage this confusion and that comments related to economy crime should be presented in other parts of the report, not to blur the essence of fight against corruption. On the other hand, we emphasize that it is necessary to change and amend parts of Criminal Code that refer directly to corruption, but it is still not being tackled. Although elaboration of draft amendments of the CC mentions relation to European integrations, there is no confirmation for now that these changes really meet the recommendations of the EC (amendments to CC are published too late to be recognized by this Report).

Other parts of the Report:It is important to mention that matters that are of significance for fight against corruption that haven’t been analyzed in details here are mentioned in other chapters of the Report as well, including issue of freedom of expression and media functioning, public procurements, awarding of state aid, public administration reform and of some services, as well as chapters that generally refer to National Assembly, Government, judiciary organs and independent control state organs.

Transparency – Serbia

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