

Preventing Misuse of Development Aid: On the Fight Against Corruption

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1 Introduction

The word “corruption” stems from the latin term “*corruptus*” which is the past participle of “*corrumpere*”: meaning “to destroy”. Today the term has several different meanings, but the most common probably is the abuse of an entrusted position – often a public office. This notion of corruption is a contentious topic. Regardless of whether we look north or south, east or west, corruption will be found. In other words, corruption exists in all societies – rich as well as poor. Nonetheless, much of the discussion about corruption revolves around developing countries and in particular around the misappropriation of development aid. Indeed, today many seem to be of the view that corruption is intimately connected with development aid.

In this article I examine the question of corruption with particular regard to development aid – in a European Union context. I have taken a profound interest in this topic for several years; indeed it was the topic of my inaugural lecture in 2010. The ideas and arguments presented in this article have been tried out on a number of people. Some have agreed, some have vigorously disagreed, and many have partly agreed and partly disagreed with me. In particular, many have pointed out that my initial views failed to take due account of the realities of the world. These discussions have been invaluable for the development of the arguments which appear in the present article. While the inputs from these many people have materially improved the text, I am fully aware that most of them will still find that this article sets the bar too high – that it is not realistic to do what I suggest and that corruption is here to stay. But sometimes you must reach for the stars in order to catch the moon.

In what follows, I first briefly outline how the fight against corruption has developed from being a tabooed topic to become a focal point of development policy (section 2). Then I consider the basic question: ‘What is corruption?’ (section 3). As already observed, corruption is widespread, but the world still turns – and develops. So it is necessary to ask whether corruption really is as harmful as is often claimed or whether it is merely an astute Western concept that we try to impose on the rest of the world. This is the third aspect considered (section 4). In order to identify ways in which to combat corruption I then turn to the European Union’s handling of corruption in connection with the transfer of EU funds within the Union itself, and I compare this with how the European Union deals with corruption in connection with its provision of development aid (section 5). Finally, I summarise my findings (section 6).

2 The History of Corruption

Corruption is far from new. Indeed, there are examples of corruption in the bible.¹ And as long as there has been corruption, there have been efforts to counter it.

The focus of this article is on corruption in connection with development aid. While today corruption receives considerable attention, this is a relatively new phenomenon. The focus on corruption in a development context only really began after the end of the Cold War just a couple of decades ago.² One particular occasion is widely considered to have been decisive for this development, namely the speech of James Wolfensohn, President of the World Bank, to the Bank's governors on 1 October 1996.³

According to reports, before Wolfensohn gave his speech, corruption was considered a taboo subject within the World Bank – indeed, World Bank staff would often avoid using the term and simply refer to corruption as the ‘C-word’.⁴ However, in his speech Wolfensohn overtly broke the taboo. He said:

If the new compact is to succeed, we must tackle the issue of economic and financial efficiency. But we also need to address transparency, accountability, and institutional capacity. And let's not mince words: we need to deal with the cancer of corruption.

Wolfensohn's famous ‘Cancer of corruption speech’, as it is generally called, not only changed the World Bank's approach to corruption and good governance, but also paved the way for other donors and NGOs to emphasise these issues.⁵

While the importance of the ‘Cancer of corruption’ speech should not be underestimated, it is probably fair to say that rather than being the decisive starting point, the speech was a reflection of the ‘New Public Management’

1 See e.g. the Parable of the Unjust Steward (also known as the Shrewd Manager), Luke 16:1-11.

2 In my article, *From Colonial Power to Human Rights Crusader – On the Legal Regulation of the European Union's Relations with the Developing Countries*, Cambridge Review of International Affairs, 2013, issue 4 p. 675-687, I have examined how the end of the Cold War has influenced the European Union's relations with developing countries.

3 James D. Wolfensohn, *People and Development*, Annual Meetings Address delivered 1 October 1996, available at “web.worldbank.org/WBSITE/EXTERNAL/EXTABOUTUS/ORGANIZATION/EXTPRESIDENT2007/EXTPASTPRESIDENTS/PRESIDENTEXTERNAL/0,,contentMDK:20025269~menuPK:232083~pagePK:159837~piPK:159808~theSitePK:227585,00.html” (last accessed 16 October 2013).

4 Ko-Yung Tung, *The World Bank's Institutional Framework for Combating Fraud and Corruption*, Remarks delivered at Seminar on Monetary and Financial Law, International Monetary Fund, 8 May 2002, available at “www.imf.org/external/np/leg/sem/2002/cdmfl/eng/tung.pdf” (last accessed 16 October 2013).

5 Today all major development banks work together in combating corruption, see Norbert Seiler and Jelena Madir, *Fight Against Corruption: Sanctions Regimes of Multilateral Development Banks*, Journal of International Economic Law, 2012, 15(1), 5-28.

principles which swept through Western government administrations in these years.

In essence, the ‘New Public Management’ principles make public administrations much more market-oriented, introduced performance indicators for public administration, and promote an ‘audit culture’ stressing accountability, openness, transparency and unambiguous indicators.⁶ In principle this is the direct opposite of corruption.

In order to fully understand why corruption moved so relatively quickly up the development aid agenda, we must also look at Transparency International, an NGO which was founded in 1993. The principal promoter behind Transparency International was Peter Eigen, a German economist who had worked for the World Bank in East Africa, and who had become frustrated by the Bank’s failure to ascertain whether its funding actually ended up in the right pockets. Since its inception, Transparency International has expanded considerably and has become an important and active force in the fight against corruption. For example the organisation lobbied heavily in favour of the adoption of the United Nations Convention against Corruption.⁷

As will be apparent from the above, in a development context ‘corruption’ has changed from being a tabooed ‘C-word’, which hardly anyone dared to say aloud, to being openly called a ‘cancer’ which must be dealt with. In other words, corruption moved from the bottom to the top of the agenda.

3 What is Corruption?

Having ascertained that corruption has become the focus of attention, it is necessary to consider what it is.

There are numerous general definitions of corruption, but I will limit myself to considering only two. The first is the one given by Professor Robert Klitgaard, who has been called the world’s leading authority on government corruption.⁸ And the second is the one given by Transparency International, which is arguably the leading NGO in the fight against corruption.

Professor Klitgaard gives the following definition, which is both very broad and very long:

[C]orruption means the misuse of office for personal gain. The office is a position of trust, where one receives authority in order to act on behalf of an institution, be it private, public, or nonprofit. Corruption means charging an illicit price for a service or using the power of office to further illicit aims.

6 See Steven Sampson, *The Anti-Corruption Industry: From Movement to Institution*, *Global Crime*, 11: 2, 261-278 at 275-276.

7 See Steven Sampson, *The Anti-Corruption Industry: From Movement to Institution*, *Global Crime*, 11: 2, 261-278 at 274-275.

8 David Clark Scott, *The People Shout “Basta!” And Demand Honest Leaders, As economic austerity squeezes the lower and middle classes, they grow intolerant of official corruption*, *Christian Science Monitor*, 2 March 1994, available at “www.csmonitor.com/1994/0302/02121.html” (last accessed 16 October 2013).

Corruption can entail acts of omission or commission. It can involve legal activities or illegal ones. It can be internal to the organization (for example embezzlement) or external to it (for example, extortion). The effects of various kinds of corruption vary widely.⁹

In contrast to Professor Klitgaard's definition, Transparency International's definition is short and straightforward, as follows:

Corruption is operationally defined as 'the abuse of entrusted power for private gain'.¹⁰

Both these definitions are very broad. For example, neither Professor Klitgaard nor Transparency International refer to abuse of public power. Instead they refer to 'abuse of entrusted power' and 'misuse of office'. This means that both definitions can also encompass private sector corruption.¹¹

I consider both definitions to be so broad that it is difficult to make them operational. While the definitions of Professor Klitgaard and Transparency International may be useful in academic and political contexts, they seem to lack the necessary precision to be useful in a legal context, where much more precise definitions are required, for example for defining which acts are punishable and which are not.

However, there are such definitions in a number of international legal instruments for combating corruption, most of which have been adopted over the last two decades. These include:

- The United Nations Convention against Corruption,¹²

9 Robert E. Klitgaard, Ronald MacLean Abaroa, H. Lindsey Parris, *Corrupt cities: a practical guide to cure and prevention*, World Bank Institute, Washington D.C. 2000, p. 2.

10 See "www.transparency.org/whoweare/organisation/faqs_on_corruption/2#defineCorruption" (last accessed 16 October 2013). Previously, Transparency International further distinguished between 'according to rule' corruption and 'against the rule' corruption. Facilitation payments, where a bribe is paid to receive preferential treatment for something that the bribe receiver is required to do by law, constitute 'according to rule' corruption, while a bribe paid to obtain services the bribe receiver is prohibited from providing constitutes 'against the rule' corruption. This distinction no longer appears from Transparency International's formal definition of 'corruption', but it can still be found in the organisation's archives; see "archive.transparency.org/news_room/faq/corruption_faq" (last accessed 16 October 2013).

11 In this regard see Jeff Lovitt, *The information challenge: Transparency International and combating corruption*, in *Detering fraud by informing the public – Round table on anti-fraud communication*, European Anti-Fraud Office (OLAF) in cooperation with the OAFCN (OLAF Anti-Fraud Communicator's Network), 3rd edition, Office for Official Publications of the European Communities, Luxembourg 2009, pp. 253-260 at p. 253 (also available online: "ec.europa.eu/anti_fraud/documents/anti-fraud-communicators-network-rt-c/lovitt_en.pdf" (last accessed 16 October 2013)).

12 See the official website for the convention: "www.unodc.org/unodc/en/treaties/CAC/index.html#textofthe/" (last accessed 16 October 2013).

- The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions,¹³
- The Inter-American Convention against Corruption,¹⁴
- The African Union Convention on Preventing and Combating Corruption,¹⁵
- The Council of Europe Criminal Law Convention on Corruption,¹⁶
- The Council of Europe Civil Law Convention on Corruption.¹⁷

The European Union has also adopted several instruments which are aimed at combating various forms of corruption.¹⁸

Most of these instruments provide quite sophisticated definitions of corruption, but the problem is that different instruments apply different definitions of corruption. For example, the OECD Convention exempts ‘small facilitation payments’ from its scope.¹⁹ While the OECD Convention thus applies a *de minimis* approach, not all the international legal instruments apply this kind of approach.

Indeed, the various international legal anti-corruption instruments exhibit a large number of other differences as to what qualifies as illegal corruption. For instance:²⁰

- Some only apply to the bribing of foreign *officials* while others have a much broader scope.

13 See “www.oecd.org/document/21/0,3343,en_2649_34859_2017813_1_1_1_1,00.html” (last accessed 16 October 2013).

14 See “www.oas.org/juridico/english/corr_bg.htm” (last accessed 16 October 2013).

15 See “www.auanticorruption.org/uploads/Convention_on_Combating_Corruptioneng.doc” (last accessed 16 October 2013).

16 See “conventions.coe.int/treaty/en/treaties/html/173.htm” (last accessed 16 October 2013).

17 See “conventions.coe.int/treaty/en/treaties/html/174.htm” (last accessed 16 October 2013).

18 On the European Union’s policy on corruption, see e.g. Communication from the Commission to the Council, the European Parliament and the European Economic and Social Committee – On a comprehensive EU policy against corruption (COM(2003) 317 final).

19 See *Commentaries on the Convention on Combating Bribery of Foreign Public Officials in International Business Transaction*, p. 14, available at “www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf” (last accessed 16 October 2013).

20 These examples have been drawn from the Danish Ministry of Justice’s draft law: *Forslag til Lov om ændring af straffeloven (Grovt momssvig, EU-svig og bestikkelse af udenlandske tjenestemænd mv.)*, L15, issued on 6 October 1999, section 4.7.1.

- Some only apply to corruption in the public sector, while others also apply to the private sector.
- Some require that the giver of a bribe must obtain an ‘undue advantage’ while others do not.
- Some require that the recipient of a bribe must act/refrain from acting in breach of their official duties, others do not.
- Some only criminalise the giving of bribes, while others also criminalise the receiving of bribes.

Of course, these kinds of differences between legal instruments are well-known to lawyers. However, in this case the number of combinations and legal complications appear to be in a class of their own. In addition, these regulatory instruments are not static, but are evolving as new legal measures are adopted. In other words, considerable resources are required to keep up with these instruments, and particularly in developing countries this may be a problem.

I therefore believe that what is needed is a single legal text that is capable of consolidating the requirements of all the relevant international instruments. Moreover, since this area is dynamic, it will be necessary to update this consolidated text regularly. If such a text were drawn up, it could provide a useful tool for States wanting to introduce legislation to combat corruption.

4 Is Corruption Harmful?

The discussion of corruption is based on the implicit understanding that corruption is bad. But is this really so? Is it not merely yet another attempt by the Western world to enforce its own moral values and culture on the rest of the world?²¹

This can be illustrated by a small example:

In 1996 Uganda introduced universal primary education. In principle this meant that all children were offered free primary education. The number of children attending school grew very considerably, but unfortunately there was not a corresponding increase in resources. This meant that there were not enough teachers and that the teachers were underpaid. If the teachers cannot live on the salary they receive they basically have three options.

21 Transparency International addresses this objection as follows: ‘While there are varying norms and traditions in terms of giving and accepting gifts around the world, clearly the abuse of power for personal gain -the siphoning off of public or common resources into private pockets- is unacceptable in all cultures and societies. This is confirmed by our Global Corruption Barometer survey, which analyses people’s views and experiences of corruption in more than 60 countries. The forms and causes of corruption vary across countries, however, meaning that the best ways to address it differ too. This is why our approach to fighting corruption is grounded in our system of national chapters, which are run by people who are anchored in their societies and are therefore in the best position to understand and tackle corruption in their respective countries.’ See further “www.transparency.org/whoweare/organisation/faqs_on_corruption/2#define_Corruption” (last accessed 16 October 2013).

- (i) They can quit.
- (ii) They can choose to stay, but take on extra jobs which may prevent them being able to teach during school hours.
- (iii) Or they can actually do their job, but ask the parents to help them survive.

If a teacher stays on, but asks the parents to pay a fee in order to enable the teacher to give their children real teaching, this clearly qualifies as corruption. But is it really fair to condemn this?

Another factor that appears to run counter to the view that corruption is harmful is that, if corruption has a crucial effect on development, developed regions such as the United States of America and the European Union should have close to no corruption whereas Sub-Saharan Africa should be riddled with it. But is this really the case?

In order to test this assumption we may turn to the Corruption Perceptions Index (CPI) produced each year by Transparency International.²² This CPI measures the perceived level of public-sector corruption in most countries of the world. It uses a rating from 0 to 100. A score of 0 indicates extreme corruption whereas a score of 100 means there is very little corruption. In 2012 Denmark scored 90, Sweden 88 and Norway 85. But what about those countries that have had the most impressive development over the last couple of decades – for example South Korea, Taiwan, Vietnam, India and Brazil? Their scores were as follows:

Country	Score
Taiwan	61
South Korea	56
Brazil	43
India	36
Vietnam	31

22 Transparency International has remarked that: ‘The [Corruption Perception] index is not intended to brand any one country or territory, or to pit the North against the South. Rather, it is a tool to raise public awareness of the problem and promote better governance. Corruption is as much a problem of the North as it is of the South’ (see archive.transparency.org/news_room/faq/corruption_faq” (last accessed 16 October 2013)). That it is important to be cautious when applying the Corruption Perception Index is also made clear by Thomas Roca & Eda Alidedeoglu-Buchner, *Corruption Perceptions: the Trap of Democratization, a Panel Data Analysis*, working paper accessible at [“ssrn.com/abstract=1725434”](http://ssrn.com/abstract=1725434) (last accessed 16 October 2013).

These CPI scores may be compared with the CPI score for a country such as Botswana in Southern Africa. Botswana scores 65, which is level with Taiwan and significantly better than Vietnam and India.²³

Indeed, if we move further north and consider a country such as the United States as well as European Union Member States such as Italy, Greece, Bulgaria and Romania, then Transparency International's figures give food for thought:

Country	Score
United States of America	73
Romania	44
Italy	42
Bulgaria	41
Greece	36

What does all this show? In reality, not so very much. The main conclusion that may be drawn from the above is that corruption is not the only factor that is relevant to a country's development, but it does not really show much more than that. And it certainly does not show that corruption is harmless.

On the contrary, there is plenty to prove that corruption clearly is harmful. Let me give you just one example:

Some years ago I was in Cambodia to do field research into trade and development. In Cambodia I had meetings with representatives from the business community as well as government officials and NGOs. A very important Cambodian export is garments produced in huge factories around Phnom Penh, the country's capital. The garments are shipped to the United States and Europe. Phnom Penh is quite a distance from the sea, so the garments are transported by road to the harbour. This in itself was not a problem. However, I was told that in order to be able to get the lorries carrying the garments to the harbour it was necessary to bribe various officials. This bribery added so much to the cost of the garments that the Cambodian garment factories found it very difficult to compete with the garment factories in Vietnam and China, where the corruption was less onerous.

This example is just one illustration of how corruption frustrates the efficient use of resources in society. From a development perspective, corruption creates a number of further problems that must be taken into account. Thus, systematic corruption generates:

23 Botswana is an exceptional case in Sub-Saharan Africa. With the exception of Lesotho, Namibia and South Africa, all countries in this region have very low scores. For the purposes of the present article Botswana is included simply to illustrate that corruption is not inherent in a region's culture.

- economic costs by distorting incentives,
- political costs by undermining institutions, and
- social costs by redistributing wealth and power to the undeserving.²⁴

Indeed, it has been pointed out that corruption tends to be more damaging in poor countries, where it can undermine property rights, the rule of law and incentives to invest.²⁵

Moreover, when development aid ends up in the wrong pockets, it erodes support in the donor countries for aid programs and humanitarian relief. If tax payers in Scandinavia and elsewhere are to be persuaded that we should provide assistance to developing countries, it is clearly not very helpful if some of the tax-payers' money ends up in Swiss bank accounts.

In my opinion, the main problem of corruption in connection with development aid is that it means that the people who are suffering and whom the aid is intended to help receive less aid than is intended by the donors.²⁶

It follows from the foregoing that I consider corruption to be harmful to society and I believe that there are strong indications that it is particularly harmful in a development context.

5 What should we do about Corruption?

As argued above, corruption is bad and it should be countered. The question is: how? Presumably, a combination of several different approaches may be useful.

Professor Klitgaard has considered the question of when a person is willing to be corrupt, and he has produced the following equation:

If I am not corrupt, I get my pay and the moral satisfaction of not being a corrupt person. If I am corrupt, I get the bribe but 'pay' a moral cost. There is also some chance I will be caught and punished. In which case I will also pay a penalty, and lose my pay. So I will be corrupt if: the bribe *minus* the moral cost *minus* (the probability I am caught and punished) *times* (the penalty for being

24 Robert E. Klitgaard, Ronald MacLean Abaroa & H. Lindsey Parris, *Corrupt cities: a practical guide to cure and prevention*, World Bank Institute, Washington D.C. 2000, p. 4. Whereas Klitgaard *et al* identify three costs caused by corruption, Transparency International finds that the cost of corruption is four-fold: political, economic, social, and environmental.

25 Robert E. Klitgaard, Ronald MacLean Abaroa & H. Lindsey Parris, *Corrupt cities: a practical guide to cure and prevention*, World Bank Institute, Washington D.C. 2000, p. 4. See also Paolo Mauro, *Why Worry About Corruption?* International Monetary Fund, Washington D.C. 1997.

26 See e.g. Kenneth Odiwuor, *In Africa, corruption dirties the water*, published by IRIN, the humanitarian news and analysis service of the UN Office for the Coordination of Humanitarian Affairs, accessible at "www.irinnews.org/report/97642/in-africa-corruption-dirties-the-water" (last accessed 16 October 2013).

corrupt) is *greater than* my pay plus the satisfaction I get from not being corrupt.²⁷

In other words, according to Klitgaard it is the risk of being caught and sanctioned that really matters when combating corruption. This applies in all countries, whether they are developing or not. Accepting Professor Klitgaard's argument, I believe that the best way to combat corruption requires the existence of an effective system for uncovering and sanctioning corruption.

In this regard it is appropriate to look to the European Union for inspiration. As is well known, the European Union supports a wide variety of activities in the Member States through the transfer of very considerable sums. These sums are generally distributed by national authorities and, unsurprisingly, some of the money ends up in the wrong pockets. In order to combat this, the Member States are required to ensure that the money is spent in accordance with the conditions under which it is allocated.²⁸ If they find that money has been misappropriated, the Member States are obliged to take action²⁹ – which may include the imposition of effective criminal sanctions. If a Member State fails to fulfil its obligations, this will in itself constitute a Treaty infringement and the European Commission may bring an action against the Member State before the Court of Justice of the European Union. Moreover, the Commission has set up the European Anti-Fraud Office (OLAF) to protect the Union's financial interests.³⁰

In other words, the transfer of European Union funds to the Member States means that:

- 1) an external authority controls how the funds are used,
- 2) each Member State is obliged to control the use of the funds,
- 3) if a Member State finds that funds are misappropriated, it must take action against the wrongdoer,
- 4) Member States' actions must have a deterrent effect, and
- 5) if a Member State fails to fulfil its obligations, it may be brought before the Court of Justice.

While the European Union imposes quite burdensome requirements on its own Member States, its requirements vis-à-vis third countries receiving development aid are much less strict. Admittedly, the European Union insists on a rather comprehensive control of how the development aid is spent, but where aid is found to have been misappropriated, the Union will invoke

27 Robert E. Klitgaard, *Controlling Corruption*, University of California Press, Berkeley and Los Angeles, California 1988 at pp. 69-70.

28 This follows from the loyalty principle laid down in Article 4(3) of the Treaty on European Union.

29 See e.g. Joined Cases C-383/06 – C-385/06 *Vereniging Nationaal Overlegorgaan Sociale Werkvoorziening and others* [2008] ECR I-1561.

30 See “ec.europa.eu/anti_fraud/index_en.html” (last accessed 16 October 2013).

measures that are rather different from those that apply when a Member State misappropriates Union funds. If misappropriation is found to have taken place in a developing country, the European Union will exert political pressure to have the money repaid. However, it is up to the authorities of the developing country in question to decide whether, and if so how, any action should be taken. We may reasonably assume that the more senior the suspected wrongdoer is, the less likely it is that the developing country will take any action.

Put simply, while a European Union Member State has a legal obligation to prosecute a wrongdoer, there is no similar obligation on the part of a developing country.

The above presumably means that where there is corruption in a developing country by someone of substantial power, for example a government minister, the chances of the culprit being brought to justice are very slim. In this situation the only sanction available to the European Union will be to withhold development aid that it has otherwise pledged to the country in question.

Personally, I consider the above approach to be inappropriate, as it means that those in need will suffer twice while those misappropriating the funds go free. This is illustrated by the following example:

Assume that a donor agrees to fund the construction and operation of 10 hospitals in a developing country, and that a government minister misappropriates the funds intended for building these hospitals so that only one is built. The misappropriation and the ensuing restriction of hospital capacity necessarily means that those in need of hospital treatment will suffer. If the donor then sanctions the misappropriation by cutting down on the funds allocated to the hospital project, this will lead to a further restriction of the hospital care that will be available to those in need; in other words, they will suffer once again. This would make the innocent suffer for the sins of the guilty.

I believe that the approach of the European Union, when it transfers funds to its own Member States, may also provide a suitable model for dealing with corruption connected with the Union's development aid. Hence, I suggest that whenever the European Union agrees to provide development aid for a project, the aid should be made conditional on the recipient country agreeing both to establish effective controls over how the funds are spent and effective sanctioning mechanisms which may apply to even the most senior government minister.³¹ Indeed, I believe that it is particularly important that the control is especially tight with respect to the top level of a developing country's citizens. If the 'big fish' dare not misappropriate funds, they are less likely to be lenient towards 'little fish' that engage in corruption.

I am well aware that many will consider such a proposal for the protection of European Union development aid against misuse to be wholly unacceptable. They will argue that it conflicts with the idea that developing countries should

31 Such effective control will necessarily require sufficient transparency to carry out the control.

take ownership of their own development.³² Nevertheless, I argue that to invoke the idea of ‘ownership’ in this context is misguided. Development aid is about helping those in need. It is not about transferring money to the Swiss bank accounts of people who are not in need. This is why it is important to combat corruption – especially corruption on a grand scale.

Not all donors follow the European Commission’s approach outlined in this article. Thus, certain donors and a number of NGOs are very keen to combat corruption – and may take legal action if funds are subject to corruption.³³ This, I believe, merely reinforces my point.

6 Conclusion

As will be apparent from the above examination, corruption is far from a new phenomenon and it has been associated with development aid for as long as aid has been provided. In contrast, the current efforts to combat corruption in the field of development aid are quite recent. These efforts have taken the form of a growing number of international legal instruments aimed at combating corruption. Unfortunately, there is a marked lack of coordination between these instruments. This is particularly clear in the lack of congruent definitions of what constitutes corruption – indeed, at times the definitions in the different international legal instruments directly contradict each other. Together with the fact that the regulation of the fight against corruption is constantly changing and developing, this means that it is not easy to implement these international instruments in national legal orders. This is a particular challenge for a number of developing countries. To remedy this, it is proposed that an instrument should be created to simplify the implementation of international instruments to combat corruption in national legal orders.

It is argued that, to prevent corruption, effective control mechanisms must be established combined with the adoption of sanctions that are capable of deterring individuals from misappropriating development aid. Moreover, it is argued that controls and the sanctions must be particularly aimed at the highest ranked individuals. In other words, it is proposed that donors should apply the

32 When the Cotonou Agreement, regulating relations between the European Union and (today) 79 African, Caribbean and Pacific (ACP) countries, was negotiated the European Union wanted to include a provision enabling it to sanction corrupt activities in the ACP countries. However, the ACP countries vigorously opposed this and in the end the provision was considerably watered down; *see* M. Broberg, ‘Much Ado about Nothing? On the European Union’s fight against corruption in developing countries under Articles 9(3) and 97 of the Cotonou Agreement’, DIIS Working Paper 2010:29, available at “subweb.diis.dk/graphics/Publications/WP2010/WP2010-29-broberg-much-ado-web.pdf” (last accessed 16 October 2013).

33 E.g. the DANIDA organisation of the Danish Ministry of Foreign Affairs places considerable emphasis upon the fight against corruption (*see* further “um.dk/en/danida-en/about-danida/danida-transparency/” last accessed 16 October 2013). Another example is the NGO Action Aid Denmark, which has shown itself willing to take specific legal steps to pursue cases of corruption (on Action Aid Denmark’s policy on corruption, *see* further “www.actionaid.dk/sw118146.asp” last accessed 16 October 2013).

same approach to corruption associated with development aid as the European Union applies to the transfer of funds to an EU Member State, i.e. effective control and deterrent sanctions.