

# Corrupt but legal

**Institutionalised corruption and  
development finance**

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## Counter

## Balance

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Counter Balance – Challenging public investment banks is a European coalition of development and environmental non-governmental organisations with extensive experience working on development finance and the international financial institutions as well as campaigning to prevent negative impacts resulting from major infrastructure projects. Counter Balance's mission is to make European public finance a key driver of the transition towards socially and environmentally sustainable and equitable societies.

#### Contact information:

Counter Balance secretariat  
Email: [info@counter-balance.org](mailto:info@counter-balance.org)  
[www.counter-balance.org](http://www.counter-balance.org)

#### Written by:

Nicholas Hildyard

#### Graphics and layout:

[nicky@pekarev.eu](mailto:nicky@pekarev.eu)



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# Foreword

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**Xavier Sol,**  
**Director of Counter Balance**

This report was commissioned as part of a project on “Countering the capture of European public financial institutions”, supported by the Think Tank Fund of the Open Society Foundation. The project analyses new trends of state capture and illicit financial flows through public financing of large infrastructure projects at European level. We chose to focus on this area since, as recent scandals in several European countries show<sup>1</sup>, infrastructure planning, promotion and financing is vulnerable to state capture by powerful corporate and private interests.

Different case studies have been documented around infrastructure financing schemes in Europe and especially Central Eastern European countries, in parallel with broader analysis of the strengths and weaknesses of the due diligence undertaken by European Union financial institutions which are the main providers of public funds for infrastructure at EU level.

One issue that has emerged from our collective analysis is that many practices that enable institutional capture and that the public has historically viewed as “corrupt” are actually fully legal under current legislative frameworks in Europe. Such “legal corruption” is the subject of extensive analysis within academic and activist circles, particularly in the global South, but is rarely discussed within mainstream policy circles in the North.

A prime purpose of this report is therefore to bring this discussion to the attention of anti-corruption groups, policy makers and others in Europe. We hope that it will encourage what we see as a much needed debate on the need to widen current approaches to corruption – and to reclaim older approaches that root the problem not merely in bribery but in those processes and practices that enable private gain by corroding democracy.

Counter Balance’s mission is to make European public finance a key driver of the transition towards socially and environmentally sustainable and equitable societies. Since our creation in 2007, we have primarily monitored the activities of the European Investment Bank (EIB), the EU’s financial arm and one of the largest public banks in the world. This EIB is also a focus of this report, but the report highlights as well the problems of “legal corruption” in other institutions, both public and private – from US banks and corporations to the revolving doors that see ministers move into boardrooms in the UK and other countries. Indeed, as the author points out, the concerns raised over the EIB apply with equal force to other financial institutions and to other sectors.

At a time when trust in public institutions, and in particular those of the EU, is declining, we deem it crucial to hold them to account, enhance their transparency, strengthen their resistance to corporate capture and accelerate their democratization. Hence our goal in exposing „corrupt but legal“ practices is to open up space for developing proposals for fundamental reforms in the business model and practices of institutions like the EIB.

The report is a call to various stakeholders, including academics, NGOs and decision-makers to integrate the fight against “legal corruption” into their work, alongside the most needed struggle against illegal forms of corruption and economic crime.

To further this debate, Counter Balance invited comments from the EIB, anti-corruption NGOs, academics and activists. These comments are to be found in the annexes of the report. We hope that, together with the report itself, they stimulate a constructive public discussion on this far-reaching issue.



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**Corrupt** [*kõru-pt*], ppl. a. ME [- Ofr. corrupt or L. corruptus, pa. pple of corrumpere destroy, ruin, falsify, f. com COR- + rumpere break]

A. as pa. pple. Corrupted – 1600.

B. as adj. 1. Changed from the naturally sound condition; putrid, rotten or rotting, infected or defiled (arch.). 2 Adulterated; debased, as money – 1683. 3 Debased in character; depraved; perverted ME. 4 Influenced by bribery or the like; venal ME. 5. Of language, texts, etc: Destroyed in purity, debased; vitiated by errors or alterations ME.

**Corrupt** [*kõru-pt*] v. ME. (f. prec., superseding CORRUMP.) 1. trans. To turn from a sound into an unsound impure condition; to make rotten; to putrify (arch). Also fig. 2. To infect, taint 1548; to adulterate -1697. 3. To render morally unsound; to pervert (a good quality); to debase, defile ME. 4. To induce to act dishonestly or unfaithfully; to make venal; to bribe 1548. 5. To debase, destroy the purity of (a language, etc.); to vitiate (a text, etc.) by errors or alterations 1630. 6. To spoil (anything) in quality 1526. 7. intra. To become corrupt or putrid; to putrefy, rot, decay ME.

**Corruption** [*kõru-ptsen*], ME. [- (O)Fr. corruption – L. corruptio, f. corrupt-, pa. ppl. stem of corrumpere: see: CORRUPT ppl. A, -ION.] 1. The destruction or spoiling of anything, putrefaction – 1718. 2. Infection, infected condition; also fig. contagion, taint -1598. 3. concr. Decomposed or putrid matter; pus Obs. Exc. dial. 1526. Also fig. 4. A Making or becoming morally corrupt; the fact or condition of being corrupt; moral deterioration; depravity ME. 5. Evil nature, ‘the Old Adam’; temper. Now colloq. 1799. 6. Perversion of integrity by bribery or favour; the use or existence of corrupt practices ME. 7. The perversion of anything from an original state of purity ME.

The Shorter Oxford English Dictionary on Historical Principles 1984. Reproduced with permission.



# Summary

This is a report about corruption and, more specifically, the role of the European Union's main public financial institution, the European Investment Bank, in fermenting, facilitating and fostering such corruption.

But those expecting a Hollywood-style exposé of sleazy officials, brown paper envelopes (or more likely suitcases) stuffed with cash, secret bank accounts or sun-kissed villas built with backhanders will be disappointed. For this is a story about corruption that has no need to hide in the shadows because it is perfectly legal; indeed, were it to be outlawed, formal politics and commerce in much of the global North would grind to a halt.

Here, the focus is not on bribes or money laundering or fraud – important as these

are to expose – but on lawful, routine, accepted practices that decay, debase or otherwise deteriorate the political processes through which society as a whole might reach a view as to what constitutes “the good society”, contested as that view will always be. One consequence of such decay is certainly anti-social gain, generally financial or political, by well-placed groups or individuals: and this in turn may further the process of democratic decay. But it is the decay of democratic politics, not the gain per se, that constitutes corruption; and it is in this sense (hostile libel lawyers please note) that the words “corruption” and “corrupt” are used throughout the text, a usage that has longer history than the relatively recent equation of corruption simply with bribery, money laundering and fraud. Reclaiming this older usage is critical if corruption is to

be recognised for what it is: a form of politics without which modern capitalism could not flourish.

The report begins with a look through some of the many and varied forms that legalised corruption now takes in the US and Europe. It then critiques the narrow focus of many anti-corruption efforts on bribery before scrutinising three areas of EIB policy and practice – the promotion of public-private partnerships; the use of intermediated funding through private equity funds; and the rules relating to conflicts of interest – where commercial contracts and internal rules have privatised the determination of the “public interest”, enabling, in this instance, anti-social commercial or political gain. Practices that are, in a word, corrupt. Legal, it must again be stressed, but corrupt for all that.

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# Corrupt but legal

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**"[Trader A:] He . . . steals money from California to the tune of about a million.**

**[Trader B:] Will you rephrase that?**

**[Trader A:] OK, he, um, he arbitrages the California market to the tune of a million bucks or two a day."**

Enron traders, recorded conversation.<sup>3</sup>

**"It wasn't an illegal thing but it was a corrupt thing"**

John Reed, former chair of Citigroup, commenting on the 2008 financial crisis.<sup>4</sup>

It is a measure of the extent to which not only states but also societies at large have been captured by interests that are corrosive of democracy that many contemporary forms of corruption are entirely lawful.

Some corruption is certainly criminalised. The bribery of public officials is now universally outlawed, even in countries, such as Germany, where bribery of foreign (as opposed to German) officials was legal until twenty years ago. Bribes are also no longer tax deductible in Belgium, Denmark, France, Japan, Canada, Luxembourg, The Netherlands, Austria, Switzerland, the UK and the USA, a practice that was also legal until the mid-1990s.<sup>5</sup> Fraud, extortion and money laundering are unlawful in all jurisdictions, although not a single US

bank has ever been prosecuted for the crime of money laundering.<sup>6</sup>

But **bribery, money laundering and fraud are not the be-all-and-end-all of corruption.** Indeed a narrow focus on such crimes (vital as it is to investigate and prosecute them<sup>7</sup>) hides many perfectly legal practices that the general public often rightly regards as corrupt. Examples include: sweetheart deals that let companies pay minimal tax;<sup>8</sup> cronyism;<sup>9</sup> the effective immunity from prosecution granted to "too big to jail" companies;<sup>10 11</sup> official tolerance of conflicts of interest;<sup>12</sup> the deliberate engineering by corporate lawyers of loopholes in the law to circumvent rules and regulations;<sup>13</sup> and the privatisation of policy-making through special interest lobbying and political donations.<sup>14</sup>

Cue the steady stream of heads of industry, ex-Ministers and government officials that pass back and forth (quite legally) through the revolving doors between politics and business, their passage trumpeted as evidence of the benefits of "cross-fertilising experiences", "bringing the best minds together", "tapping expertise" and "promoting consensual politics". Cue banking regulatory committees whose board members (quite legally) are heads of the very banks that they are supposed to regulate.<sup>15 16</sup> Cue the ex-Goldman Sachs US Treasury staff who (no illegality here) participated in a multi-billion dollar bailout<sup>17</sup> for their old firm when a Goldman Sachs's counterparty, the insurance giant AIG, went bust.<sup>18</sup>

Cue the partly tax deductible fine (yes,



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the public pays, not the company) that Goldman Sachs negotiated when it was charged with selling worthless packages of subprime mortgages.<sup>19</sup> Cue the “immaculate” corruption<sup>20</sup> that sees companies pleading guilty to criminal charges but no individual being indicted, despite it being unambiguous law that if a corporation is guilty, personnel within the corporation must also have acted unlawfully.<sup>21</sup>

Cue the self-interested policy-making that, through privatisation, outsourcing and public-private partnerships, has transformed the provision of public services into publicly-guaranteed get-rich-quick schemes that channel billions

of dollars of public money into the hands of private investors and financiers.<sup>22</sup> Cue the successive waves of special interest-driven deregulation and reregulation in financial markets<sup>23</sup> – from the scrapping of rules separating high street banking from investment banking to bankruptcy rules that give special protection to derivative traders.<sup>24</sup> Cue the “take, not make” playground that has been created for rent-seeking financiers, with the public picking up the tab through enforced austerity – in effect, the theft of workers’ wages<sup>25</sup> – when things go wrong.

Cue the potential abuses of office when ministers and civil servants take decisions with an eye to using their contacts to land

future lucrative contracts in the private sector; when regulators regulate with an eye to protecting the industries from which they were drawn and to which they are likely to return; and when the formal processes of law-making are bypassed through backroom deals that substitute for open democratic government. Cue the downgrading of corruption (bribery apart) to a “tut tut” ethical transgression, increasingly defined, at least in part, by not being criminal behaviour. Ten million people evicted from their homes in the US as a result of sub-prime mortgage speculation?<sup>26</sup> Ah yes, the financial crisis. But hey, that wasn’t “an illegal thing”, was it? It was just “a corrupt thing”.<sup>27</sup> So there’s a comfort.



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# Neoliberalism's "corruption"<sup>28</sup>

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**"For decades, the concept of corruption has often been trivialized and reduced to a mere synonym for bribery or extortion."**

Irma E. Sandoval-Ballesteros<sup>29</sup>

Many of the perfectly legal but nonetheless corrupt practices detailed above are routine within government and companies: worse, such practices frequently pass for "good governance". Some may even be deemed duties of office; and many – privatisation, for example – are the stated mission of public bodies. Such normalisation of corruption is not new: but today it is widespread enough for Bruce Buchan, a prominent scholar of corruption, to call our current era a "Golden Age of Corruption".<sup>30</sup>

Something is clearly "rotten in the state of Denmark" – a rottenness that is in part constitutive of the law and, critically, also constituted by the law. It is not just that the law, to use the metaphor of the 18th century Anglo-Irish satirist Jonathan Swift, has been designed like a cobweb that catches "small flies but let hornets and wasps pass",<sup>31</sup> although this is certainly true.

Nor that the law is unequally applied, although, again, this is undoubtedly true – three strikes and you go to jail if you are poor and black and happen to live in the US; no jail time if you are a banker.<sup>32</sup> The decay goes deeper: the very policies and laws that overtly serve to combat corruption are now themselves a shield to the corrupt.

Consider the definition of corruption employed by the World Bank, namely, "the abuse of public office for private gain"<sup>33</sup> – a definition that has provided the template for numerous "anti-corruption" laws and regulations, including the internal policies of many international financial institutions and companies. The definition relies (like many other contemporary definitions of corruption)<sup>34</sup> on what historian of corruption Peter Bratsis has called the "fantasy"<sup>35</sup> that the "public" and "private" can be treated as fixed, coherent and neatly bounded

spheres.<sup>36</sup> When fantasy is the basis of policy, it is wise to look at the political motives that might make that fantasy attractive to certain institutions and interests. We shall discuss this in more detail later, but, for the moment, it is worth exploring how the "public/private" divide has been used by the World Bank (and others) both to exclude whole swathes of corrupt practice from scrutiny and to further its neoliberal agenda.

Most obviously, the Bank skilfully employs the public/private distinction to narrow the field of inquiry by casting corruption as a pathology exclusively of the public sector – "the abuse of public office for private gain". Private sector corruption is thus conveniently excluded from legal sanction, unless it directly benefits the holder of a public office (for example, though the payment of bribes). The definition thus renders "uncorrupt" (and legal)

a range of corrupting (or potentially corrupting) forms of power mongering – from political contributions by companies to more subtle, non-monetary forms of influence exercised through the many elite social networks that link corporate boards to government.

The field of inquiry (and sanction) is further restricted by the focus on the individual “private gain” made by individual “office holders”, who feather their own nests at the public’s expense, specifically through the extortion of bribes, the appropriation of state assets and the diversion of public funds.<sup>37</sup> **This “rotten apple” approach obscures institutionalised forms of corruption that work to advance the private-regarding interests of groups or classes without rewarding any particular “office holder” directly or at all.** An official who takes a cut of a public sector contract falls foul of the definition. But a politician who uses illegal payments from foreign governments to finance an election campaign but makes no financial gain personally does not. Former German Chancellor Helmut Kohl comes to mind (though he was never formally censured for having done so). Critically, Kohl specifically invoked the definition to argue that his action was not

corrupt because he had not benefited himself.<sup>38</sup>

The fetishizing of public sector corruption has additional strategic utility. Conveniently ignoring the collusions between “public” and “private” that make most corruption possible, it casts the ‘public’ (interpreted as “the state” or “bloated bureaucracy” or “regulators”) as a perpetually grasping hand and the ‘private’ (interpreted as “the private sector”) as its (mainly multinational) victim, tainted only because it is forced to pay bribes to get its work done (no mention here of the role that the mainly Western, mainly multinational private sector plays in facilitating the laundering of the proceeds of corruption).<sup>39</sup> Anti-corruption policies can thus be readily enlisted (as they are) to the cause of rolling back the state, privatising state assets and giving the private sector a greater say in decision-making, ostensibly in the name of protecting private interests from avaricious rent-seeking officials who would otherwise place transactional barriers in the way of business. The fight against corruption thus becomes a means of reconfiguring what the Bank defines as “the public” and harnessing it to the interests of what the Bank portrays as a

supposedly “clean” private. For the intended outcome is not to banish the Bank’s selectively-approved “private” from the Bank’s selectively-approved “public”, but rather to make certain private-regarding interests acceptable and normal within the sphere of government decision-making.

This should come as no surprise. For, for despite the rhetoric of “public” and “private” being separate spheres that must be kept separate, the entanglement of the two makes such a separation impossible. Indeed, a complete separation would, as Peter Bratsis points out, make “politics as we know it . . . impossible”.<sup>40</sup> The issue is *who* decides and *how* what mingling does or does not act for the common good, which presupposes a process through which society as a whole (rather than just the Bank) can deliberate what actually constitutes the common good. But it is precisely this process that has been corroded through corruption. Fretting about the proper boundaries between “public” and “private” may therefore be a distraction. A more fruitful approach would be to insist instead on anti-corruption policies that focus on identifying processes that decay collective decision-making – and on the politics necessary to rebuild such democratic practice.

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# Reclaiming “corruption”

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**“In the corrupt state, men [sic] locate their values wholly within the private sphere and they use the public sphere to promote private interests”**

S. M. Shumer, Machiavelli: Republican Politics and Its Corruption<sup>41</sup>

**“The radical position today is not to obsess over corporate corruption and remain trapped by the fallacy that if only some procedures were reformed and greed kept in check the public interest could be realized. The radical position today is to reject the categories of public and private as they are presently constituted and to expose all the questions that have been subsumed by the discourse on corruption”.**

Peter Bratsis, ‘The Construction of Corruption, or Rules of Separation and Illusions of Purity in Bourgeois Societies’<sup>42</sup>

The World Bank’s definition of corruption has been widely criticised, both from within the Bank and from outside: but the definition remains.

In 2005, in one of the first papers to use the term “legal corruption”, Daniel Kaufmann (then a director at the World Bank Institute) and Pedro Vicente of Oxford University called for more attention to be paid to corporate patterns of corruption, arguing that the definition should be broadened to “the use of public office/ policy for private gain”.<sup>43</sup> Elsewhere, Kaufmann, now at the Natural Resource Governance Institute, moves away from viewing “private gain” as a key feature of corruption, arguing that, at heart, corruption boils down to “the privatisation of public policy”.<sup>44</sup>

But the very variety of ways that corruption-as-decay manifests itself, whether in the private or public sectors or in the porous membranes that supposedly separate them or outside of

both, suggest that a single definition of “corruption” may be impossible – and even undesirable: as anthropologists Dieter Haller and Cris Shore caution, “Definitions (like theories) provide alternative ‘ways of seeing’, but they also entail ways of ‘not seeing’”.<sup>45</sup>

Private gain at public expense, a commonly-held defining feature of corruption, is not automatically corrupt: every public sector employee in a sense scores gains at the public’s expense. But anti-social gain – that is, gain at the expense of the common good – is, by any standard, corrupt. A bribe is similarly not necessarily corrupt: it may be entirely legitimate if it works to circumvent despotic authority. But a bribe that circumvents democratic decision-making is corrupt. Impunity from justice, likewise, may not be corrupt, where (for example) juries refuse to convict in resistance to an unjust law. But impunity that places those with power and wealth above the law simply by dint of their status

is corrupt. Undermining trust in an institution – a company that avoids taxes, for example – may also be key to delegitimising and challenging abusive power. But undermining trust in the law through gaming regulations in the interests of accumulation rots the “good society”.

Many of these subtleties are hidden by the public/private framing of corruption, not least because it neither invites nor tolerates discussion of what Bratsis terms the “ought” function: “the positing of what we think the good society is”.<sup>46</sup> Yet corruption can only be understood in terms of its opposite:<sup>47</sup> in terms, that is, of what is not impure, deviant, debased, tainted, disreputable, unscrupulous, venal, wicked, or any of the other common synonyms for “corruption”.<sup>48</sup> And that, of necessity, requires some shared understanding of what constitutes the good society and the “common good”<sup>49</sup> – both far broader (and less easily co-opted) concepts than that of the “public



interest” (what public agency, after all, does not automatically claim to be acting in the public interest?).

In effect, as political historian Mark Philp argues, corruption – if it is to be properly identified and challenged – forces us to “make commitments to conceptions of the nature of the political”<sup>50</sup> and the form of the common good. What does the “good society” imply for relations of political and economic power? Who decides? And through what processes? Whose voice counts? These are inherently political questions, which can never be entirely settled but whose deliberation (at the very least) requires open-ended, often conflictual, debate.

Yet it is precisely this debate that is missing from current discussions of corruption. Worse still, there are few political processes that would allow for it. The conversation rarely starts; and if it does, it is quickly shut down as “philosophising” (a common rejoinder of government and company officials when the question is raised) or by

technocratic discussions over the proper boundaries between “public” and “private” and the best means of policing them. Indeed, attempts to combat corruption without a firm politics of the common good has left anti-corruption efforts trapped (in Peter Bratsis’ words) by “the fallacy that if only some procedures were reformed and greed kept in check the public interest could be realized”.<sup>51</sup> More pertinent still, without the conversation, there can be no legitimate public sense of what does or does not constitute corruption, no way “to know if we are moving in the proper direction or are in a state of diaphthora [decay]”.<sup>52</sup> Preventing the conversation or undermining the political processes through which it might occur should thus, arguably, be recognised as the ultimate form of corruption.

Hence the need to move beyond corruption as currently conceived through the “private/public” framework. One modest step in that direction might be to reframe corrupt practices

in terms of their role in undermining democracy. For the common thread that runs between them – from bribery to revolving doors – is the capturing or bypassing of democratic forms of deliberation through which a common understanding of the common good can be reached<sup>53</sup> – or what political scientist Mark Warren calls the “duplicitous and harmful exclusion of those who have a claim to inclusion in collective decision and actions.”<sup>54</sup>

Democratic processes are privatised and the society’s voice is progressively denied; as political scientist Dennis F. Thompson notes,<sup>55</sup> even “deliberation about deliberation” is precluded, because private interests decide what can and should be deliberated. In the process, democracy (and the values that underpin it – accountability, equality before the law, open debate and political representation itself) decays: and it is this broader impact on society as a whole, rather than illicit private gain per se, that makes an action corrupt.<sup>56</sup> A bribe does not simply put money into the hands of





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a politician: it excludes all but the politician and the briber from a say in a decision that affects the broader public, whose interests should be paramount. The gaming of the law ensures that the scope, applicability and implications of legislation are changed not through democratic deliberation but through legal fora – and, more frequently, informal meetings in private law firms, upscale clubs and restaurants and other exclusive venues – in which the public may not have standing (international commercial arbitration courts, for example) or through litigation in which public interest groups cannot afford to participate. And revolving doors between companies and government ensure that those around the decision-making table share a common, partial view of the world.

The boundaries of what is or is not considered the legitimate pursuit of private gain are thus redrawn – and the public is increasingly excluded from discussions in which they have a legitimate right to be involved, opening space for the corrupt to use

their economic, political and social powers to make gains at the expense of those excluded.<sup>57</sup> And through such exclusions – “democracy grabs”, if you will – the body politic is gradually subverted: public contestation is hijacked and removed into “non-public channels of influence”,<sup>58</sup> allowing the “public interest” to be redefined and moulded to serve not the collective good but private interests. Private-regarding behaviour becomes the new normal, corrupting institutions and individuals alike. In Warren’s words, the “horizons of collective action” are diminished, shrinking the domain of democracy itself as public powers and resources are transformed into “instruments of partial, particular, or private benefit”.<sup>59</sup>

Identifying corruption through giving primacy to its corrosive effects on society has a long history.<sup>60 61</sup> It was central, for example, to the analysis of authors such as Aristotle, who warned of corruption’s baleful influence on the relationships that underpin mutuality and trust in society,<sup>62</sup> and Niccolò Machiavelli

(1469–1527), whose *Discourses on Livy*<sup>63</sup> is a treatise on the generalised decay of society that results when self-interest is esteemed more than the collective interest – when, in the words of historian S. M. Shumer, “men [sic] locate their values wholly within the private sphere and . . . use the public sphere to promote private interests”.<sup>64</sup>

This older sense of “corruption” is alive and well within the public at large, who are rarely willing to confine corruption to individual acts of greed but who regularly point to more systemic causes.<sup>65</sup> Building on that tradition may therefore greatly assist in breaking out of the anti-bribery cul-de-sac into which many anti-corruption campaigns have been driven by modern definitions. Indeed, if dominant forms of corrupt practice that are legal, routine and central to the workings of contemporary politics and commerce are to be called out and challenged, there is an urgent need to explore and document the many and varied forms that corruption-as-decay (the older, vernacular usage of the word) now takes.

# How corrupt is the EIB?

One set of institutions worthy of scrutiny are public “Development Finance Institutions” (DFIs), a term that applies to a variety of institutions, both bilateral and multilateral, whose purpose is “to stimulate private sector development in economies underserved by commercial financial institutions”<sup>66</sup> and to play “a catalytic role by facilitating additional investment flows into emerging markets”, particularly where commercial investors perceive the risks to be too high without some form of official guarantee. As such, their *raison d’être* is to use public money to support the private sector, and thus private gain (albeit, they would argue, in the “public interest”, of which more later).

Many countries have Development Finance Institutions<sup>67</sup>, as do such multilateral institutions: the World Bank Group, for example, has its International Finance Corporation, while the European Bank for Reconstruction and Development (EBRD) operates primarily as a DFI (its main clients are private sector)<sup>68</sup>.

One of the world’s largest DFI’s is the European Investment Bank (EIB), lending EUR 72 billion for 460 projects around the world in 2010.<sup>69</sup> Created by the Treaty of Rome in 1958 as the long-term lending bank of the European Union (EU), the Bank’s stated task is “to contribute towards the integration,

balanced development and economic and social cohesion of the EU Member States”, which it does both through lending to the public and private sector, both within the EU and externally, notably in emerging markets, Africa and Latin America.

As explained in the Preface, Counter Balance has a long history of monitoring the activities of the EIB: and, for this reason, this report focuses on concerns over corruption (understood as the undermining of democracy) in the institutional practices, policies and processes of the EIB, although the same concerns surround the practices of other DFIs, both national and multinational. In what ways, then, might the EIB be considered corrupt? Where do its policies and practices give the appearance of such corruption? Three areas suggest themselves as being potentially problematic: namely, the EIB’s backing for infrastructure through public-private partnerships; its use of private equity funds; and its rules relating to conflicts of interest.

## **PPPs and the foreclosing of democratic debate**

One area of concern is the EIB’s support for private sector investment in

infrastructure – roads, ports, railways, hospitals, electricity power plants and the like – through public-private partnerships (PPPs). These come in various forms<sup>70</sup> but, in the infrastructure sector, typically involve a private company financing the construction of a public facility and then being repaid by the state for the public’s use of the buildings and services provided.

There is no doubt that such support has yielded profits for private companies. PPPs – of which the EIB supported 215 directly between 1990 and 2015<sup>71</sup> – are money-spinners for private investors: annual rates of return on investment are typically 12%, but can be double that where shareholdings in completed PPP projects are sold on the secondary market.<sup>72</sup> For PPPs in the global South, where the risks are perceived to be higher, investors expect to rake in jaw-dropping returns of 25% or more a year. The main beneficiaries are (surprise, surprise) the 1% of people in the world who hold nearly 80 per cent of the world’s financial assets. And amongst this elite group, it is fund managers who probably benefit the most.

But has this private gain been achieved at the expense of democracy – the key test of institutional corruption? Some salient features of the ways in which privatisation and PPPs have been



promoted, not just by the EIB but by other development finance institutions as well, are pertinent. One is that the legislative changes needed to enable PPPs, particularly in the global South, have rarely been adopted without pressure on national legislators. Many have been a condition of loans from the World Bank and other agencies.<sup>73</sup> Or, put another way, in many instances, they have been imposed upon countries, often against the will of governments and generally through behind-closed-door negotiations from which the public is excluded. Further arm-twisting has been exerted via private sector financial institutions: the knowledge that the “quality” of a country’s PPP-enabling legislation now affects its credit rating<sup>74</sup> and hence its ability to borrow (those “fucking bond traders”,<sup>75</sup> to quote President Bill Clinton) has proved a powerful incentive for governments to adopt such legislation.

And who gives the advice on how PPP legislation should be structured? With many governments, particularly in the global South, lacking expertise on PPPs,<sup>76</sup> the answer is predominantly private sector consultants or publicly-funded advisors with a private sector background (often construction or banking). The EIB-funded European PPP Expertise Centre (EPEC), for example, is staffed by advisors drawn

from the EIB itself (mainly, to judge from their LinkedIn profiles, with a background in private banking and/or public development finance institutions)<sup>77</sup> or staff “joining us on secondment from external organisations”,<sup>78</sup> principally the private sector.<sup>79</sup> Not a single trade unionist, human rights defender or environmental activist appears to be involved. Instead the activists are all PPP team players. No allegations of wrongdoing are made or implied here: the point is simply that the advisors are drawn from a pool that reflects a limited set of experiences that are likely to reflect similar social, economic and political interests. As such, the public cannot trust that the advice given reflects “the common good”: and without such trust, the public arguably cannot have a sense of inclusion in the decisions that are made.<sup>80</sup>

Democracy inevitably suffers. In this instance, the framing is largely restricted to a question of “efficiency”, the claim being that privatisation and PPPs “improve operational efficiency”<sup>81</sup> – a claim for which the evidence is at best equivocal<sup>82</sup> and often relies on excluding key data, of which more below. Opposing views are breezily dismissed: in a recent report, for example, the European Bank for Reconstruction and Development, a

major promotor of PPPs, summarily rejects its critics with the single sentence, “Despite the protestations of commentators and politicians, the logic behind PPPs remains inescapable”.<sup>83</sup>

So that’s OK then. The issue is decided. Bye, bye, all those niggling concerns over off-balance sheet debts,<sup>84</sup> over the higher costs of private sector-delivered public services,<sup>85</sup> or over the cutting off of water and electricity to poorer consumers who cannot afford higher bills.<sup>86</sup> Put to one side the considerable violence to peoples’ lives and livelihoods when roads are transformed into toll roads, from which poorer people are effectively excluded if they cannot afford the tolls; or when patients in hospitals are subjected to management techniques pioneered in factory production lines in order to maximise their throughput and thus the operator’s profits. Oh, you silly people! Don’t let such worries keep you awake at night.

Even when the public’s concerns are forced onto the agenda, the response of the EIB and other development finance institutions is typically to carry on regardless. Not even internal evaluations that are critical of PPPs<sup>87</sup> get in the way. A recent assessment of the development outcomes of World Bank-funded PPPs, for example, revealed that the Bank was unable to support its





# Secret

claims that PPPs were beneficial for the poor, since barely a single project had actually been evaluated for its impacts on poverty, despite poverty eradication being, on paper, the central stated goal of the World Bank group.<sup>88</sup>

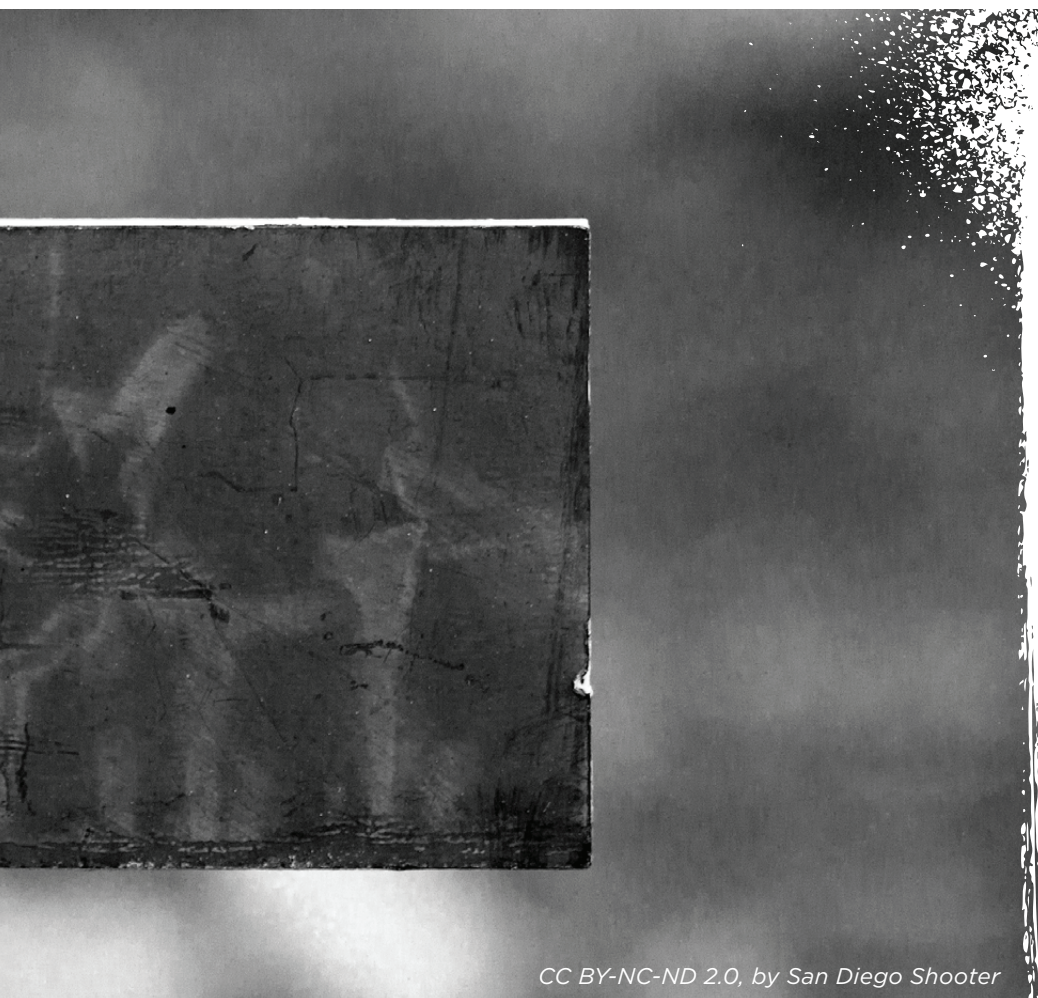
Duplicitous exclusion indeed – but the exclusion does not end there. Indeed, the “public interest” case made by the World Bank is revealed as pure private sector propaganda, elaborately sustained by a policy of not looking for evidence that might reveal it to be the bullshit<sup>89</sup> that the public suspects. Data “on the actual long-term performance of PPPs” turns out to be “rare” (shredding the certainty with which the Bank proclaims the benefits of PPPs);<sup>90</sup> confirmation that access to public services improved for the poor “was only recorded in about 10 percent of cases”<sup>91</sup> (suggesting that there is a distinct possibility that in 90 per cent of cases, that access actually declined); and that “downstream contingent liabilities are rarely quantified at the

project level”<sup>92</sup> (who cares about the debt burden of future generations – in 2012, Peru alone clocked up PPP liabilities estimated at \$6.5 billion<sup>93</sup> – or the austerity programmes they will undergo to pay the bank back?).

But, hey, no worries, dear public: for the measure of success of the millions of dollars of publicly-funded support was “business performance” – read corporate profits – and, on that score, all was rosy in the PPP garden.<sup>94</sup> And small wonder, for PPPs are a rent-seeker’s dream. To attract private sector investors into PPPs, governments are obliged to guarantee income streams that will provide the above-average returns that investors demand. Indeed, without such guarantees, a road or a pipeline is not even considered by finance to be “infrastructure”. Negotiated in secret (usually under the guidance of private sector advisors), the guarantees are subject to strict commercial confidentiality clauses: no contract has

ever been placed on the EIB’s website, despite hundreds being supported. But where PPP contracts have come to light, they reveal institutionalised rent-seeking at public expense on an industrial scale. The guarantees include guaranteed loan repayments,<sup>95</sup> guaranteed rates of return,<sup>96</sup> guaranteed minimum income streams,<sup>97</sup> guaranteed currency exchange rates and guaranteed compensation should new legislation affect an investment’s profitability.<sup>98 99</sup> As of 2012, Chile alone had agreed \$7 billion worth of Minimum Revenue Guarantees. And more freebies for the private sector are on the way as governments the world over seek to attract investors into infrastructure.

The secrecy in which the contracts are negotiated are one form of exclusion. But the contracts themselves further corrupt democratic processes. Each guarantee locks in the trajectory of privatisation: taking privatised public services back into public ownership



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incurs stiff financial penalties that act as a deterrent to renationalisation. Each guarantee also restricts a government's own ability to invest itself: PPP payments eat up health, transport and energy budgets, leaving governments with little room for manoeuvre (in Portugal, the annual payments to just two major road PPPs cost €800 million, larger than the entire national transport budget).<sup>100</sup> And each provides legally-enforceable liens on future public flows of money that are irrevocable for the length of the contract. Once signed, they cannot be withdrawn, unlike tax breaks and other subsidies which remain at a government's discretion. The guarantees and compensation payments are locked in. Should a government seek to build a public road that interferes with the profits of a PPP toll road, it could do so only if it paid the operating company compensation. Should car-sharing be legislated for environmental reasons, then compensation would be due. Should

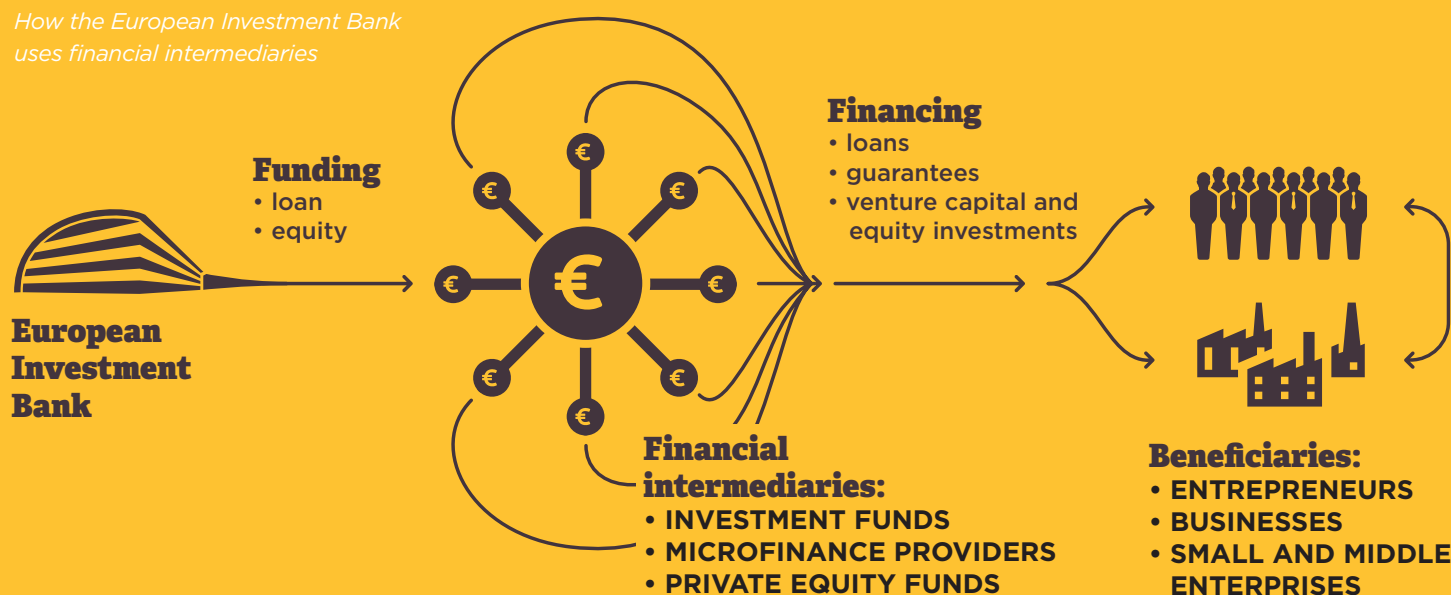
the minimum wage for hospital workers be increased, undermining the returns on a PPP hospital, then the government would have to make up the difference. And should the government seek to dispute the compensation, the final decision is not up to the national courts but, more often than not, secret arbitration tribunals. PPP operators are thus elevated to having quasi-governmental status, achieving through PPP contracts a disproportionate influence (enforceable in law) over what legislation gets passed and what does not.<sup>101</sup>

Profits are locked in, but democracy is locked out. And it is this result that makes the private gain at public expenses from PPPs "corrupt"; and, by extension, the EIB's support for PPPs "institutionally corrupt".

No laws have been broken, no regulations flouted. But that is precisely the point: the corruption is entirely legal – but no less corrupt for that.



How the European Investment Bank uses financial intermediaries



### Private Equity Funds – beyond accountability

Many of the same forms of corruption would appear to characterise EIB (and other DFI) funding for the private sector via so-called financial intermediaries, notably private equity funds. Here the financial support provided is not direct (as with financing for a PPP project, where the investment takes the form of a loan to the developer) but indirect: a private sector fund manager is provided with funds by the EIB that are then invested on its behalf.

Since 1996, the EIB's European Investment Fund (EIF, part of the EIB Group) has 144 supported private equity funds in the UK alone.<sup>102</sup> It is also invested in 30 active private equity funds that invest in the African, Caribbean and Pacific regions,<sup>103</sup> with total commitments of EUR 462 million, and in a further 32 that invest in Egypt, Jordan, Morocco and other countries bordering the southern coast of the Mediterranean.<sup>104</sup> EIB support for private equity funds, via the EIF or directly, has included the Atlantic Coast Regional Fund, which invests in countries along the African coast of the Atlantic Ocean from Morocco to Angola; the African Lion Fund III, a fund that invests in

mining, including uranium and gold mining; and Emerging Capital Partners Africa Fund II, of which more later.<sup>105</sup>

As with PPPs, there is little doubt that the EIB's investments enable private gain to be made at public expense. Typically, private equity funds aim to make returns of 30% per annum. The main beneficiaries are the funds' investors and the shareholders of the companies in which the fund invests (assuming the investments make a profit, which some do not). But the fund managers also mint it, typically demanding 2% of the money raised for the fund from investors, in addition to 20% of the profits that the fund makes. Small wonder that Macquarie, a major infrastructure fund management firm and investment bank, several of whose investments have support from the EIB,<sup>106</sup> has earned the reputation of being "the millionaires' factory".<sup>107</sup>

But public investments in private equity funds come at a huge cost to democratic accountability. Like PPPs, the contracts are negotiated in secret and rarely disclosed. The public is not therefore able to scrutinise their terms. However, some details have emerged in the UK of the contracts for at least one fund, Emerging Capital Partners Africa Fund II, in which

EIB invested, following a complaint to the UK's Parliamentary Ombudsman that the Department for International Development (which is invested in the fund via its wholly-owned private equity fund manager, the CDC Group) had failed to investigate allegations of corruption brought to its attention by Nigerian anti-corruption campaigner, Dotun Oloko.<sup>108</sup>

The Ombudsman's investigation into the complaint highlighted a number of problems with the intermediated fund model, and, in particular, the contracts between CDC and fund managers. It pointed out that many fund managers through whom CDC had invested have simply refused to implement CDC's human rights and environmental Business Principles, without CDC being able to take any action against them; the contracts give no enforcement rights. Similarly, under the contracts, CDC has only "limited rights" to the accounts and records of fund managers. A further feature of the intermediated investment model (as opposed to direct investment by CDC itself in a company) is that CDC has no rights whatsoever to withdraw from an investee company (even where it has concerns about its operations) or to carry out anti-money laundering checks on companies in a CDC-invested private equity fund's portfolio.<sup>109</sup>

Leaked copies of the contracts between a number of US private equity funds and their investors, including public pension funds, reveal a similar pattern. Again, the contracts give investors in the funds limited or no rights to see the accounts of the companies that they own through the funds. In one contract, investors have only the right to know “the name of the portfolio company, a description of the business of such portfolio company and information regarding the industry and geographic location of such portfolio company”.<sup>110</sup>

In effect, the channelling of public investments through private equity funds not only hands decision-making power to the funds, but effectively places those decisions largely beyond account. This is corrupt, or at the very least, opens the way to corruption.

But the issue goes deeper than poorly negotiated contracts, which could (to an extent) be written in future to increase transparency and accountability. The EIB and other DFIs invest through private equity in order to “stimulate and catalyse” private investors to do the same.<sup>111</sup> In the case of their private equity infrastructure investments, the aim is to transform “infrastructure” into an asset class that will attract the trillions of dollars held by pension funds and insurance companies.<sup>112</sup>

The claimed “public interest” rationale is that the public coffers are bare – and that tapping private funds is therefore necessary to bridge an estimated \$50–70 trillion “infrastructure funding gap”. This reflects a very partial – private-regarding – view of the problem: there is, in fact, more than enough public funding available to ensure heating, lighting, healthcare, clean water and other amenities for ordinary people, the more so were governments to replenish their depleted coffers by abandoning the low-tax regimes imposed through neoliberal structural adjustment

programmes, or by clamping down on tax evasion and capital flight.

The ‘deficit’ lies elsewhere: in the finance needed for the just-in-time delivery systems and massive mining and oil and gas projects that capital requires if it is to expand. Emblematic of the trajectory is the push to build infrastructure corridors. No (inhabited) continent is excluded. From Africa to Asia and the Arctic to South America, infrastructure masterplans have been drawn to reconfigure whole land masses (and the seas connecting them) into ‘production and distribution hubs’, ‘transit zones’, ‘development corridors’, ‘export zones’, ‘spatial development initiatives’, ‘interconnectors’ and ‘intermodal logistics terminals’. Some of the plans are national in scale, others regional and still others continent-wide or near-global.<sup>113</sup>

Many of the individual projects, and certainly the wider schemes as a totality, are simply beyond the resources that can be raised through historical forms of infrastructure finance. As a result, there is now a massive gap – estimated at \$50–70 trillion – between the available funding for new infrastructure and the amounts said to be needed. To plug that gap, capital has few options but to tap new sources of finance if it is not to implode.

As in the past, capital has few options but to attempt to expand the pool of finance on which it can draw. The joint stock company,<sup>114</sup> for example, arose in part to raise the huge sums needed to finance the infrastructure capital needed in the 1860s (as Marx remarked, ‘Without joint stock, the world would still be without railways’ – it would simply have taken too long for any owner-capitalist acting alone to accumulate sufficient capital for their construction). Likewise, multilateral development banks and syndicated bank loans emerged to finance post-

colonial infrastructure development in the global South. Today, capital must similarly move to tap new sources of finance, in this instance wider capital markets, if it is not to implode. Hence the new alliances that oil and gas companies, mining companies and others are building with new financial actors – notably private equity funds. Hence governments are re-engineering infrastructure finance to make it more attractive to private investors by providing guaranteed income streams, compensation against new legislation that might affect profits and the like. And hence the push for Public-Private Partnerships (which are central to every single one of the proposed infrastructure corridors) to provide both an enticement to private investors and the foundation stone on which other extractive forms of finance can be built.

The direction of travel is profoundly elitist, unstable, undemocratic – and corrupt. Elitist because the facilities that would most benefit the poor do not get built – a report by the NEPAD-OECD Africa Investment Initiative candidly admits that it is “futile” to seek private investors for rural electrification projects “due to the low returns on investment”.<sup>115</sup> Unstable because infrastructure-as-asset class has become an inflated bubble – and many in finance are warning that the bubble is about to burst.<sup>116</sup> Undemocratic because a politburo of the 1% global elite, consisting of a handful of unaccountable fund managers and rich investors, increasingly determine what gets financed and what does not. And corrupt because the private gains at public expense – not least through transforming infrastructure finance from a system in which the rich (though general taxation) are obliged to help others to a system in which the less well-off are obliged to pay rents to the rich – rests on the systematic erosion of democratic accountability.

## Rule-making that makes the corrupt “uncorrupt”

Such systemic, institutionalised corruption is reproduced through thousands of everyday acts that give licence to the corporate interests being prioritised at the expense of the common good. Such licence itself rests on rules and regulations that transform private-regarding practices that are widely regarded as corrupt into permitted behaviour.

One area where this is apparent is the rules and regulations governing conflicts of interest. Here the EIB’s current rules provide many reasons to be concerned. But first some history.

In 2004, a draft report by Monica Ridruejo, a Spanish member of the European Parliament, to the parliament’s Economic and Monetary Affairs Committee (EMAC) revealed that the EIB’s Board of Directors included people with directorships on at least 11 commercial banks or other companies, only two of which had been disclosed in the EIB’s annual report or on its website.<sup>117</sup> A contemporary news report in *The Observer* is worth quoting at some length:

“The bank publicly states that two of its directors, Italian Rainer Masera and Frenchman Pierre Richard, are also chairmen or chief executives of commercial banks. Both those banks, France’s Dexia and Italy’s Sanpaolo IMI, are also EIB intermediary banks, handling some of the €4 billion (£2.68bn) lent in France and the €5.9bn lent in Italy last year.

Sanpaolo IMI is also the majority shareholder in two other EIB intermediary banks, Slovenia’s Koper and Hungary’s Inter-Europa. Major blocks of its shares are held by other EIB intermediaries such as Deutsche Bank and Spain’s Santander.

There is no apparent evidence of public references by EIB to Richard’s directorships at Air France, Le

Monde, Credit du Nord, Generali France Holding and the US’s Financial Security Assurance. Nor is there mention of the 29,000 Dexia shares he holds, or the 177,000 shares held by Masera and his wife in Sanpaolo IMI at the close of 2002.

There is no reference to the directorship on the SES Global satellite company of Luxembourg’s Gaston Reinesch or of Italian Lorenzo Bini Smaghi’s directorship at Finmeccanica.

British director Barrie Ireton is listed as a director of the UK’s Department for International Development, although he no longer holds that post. There is no mention that he is chairman of Zambia Copper Investments Limited and Konkola Copper Mines.”<sup>118</sup>

As *The Observer* was at pains to stress – and Counter Balance reiterates – there was nothing illegal about the failure to disclose such directorships or commercial interests, nor was any illegality or wrongdoing implied. The EIB’s rules permitted such outside interests – provided that the EIB’s President is informed and the individuals concerned use their own “best judgment” to decide if the conflict is sufficient to require them to recuse themselves from a board decision.

Many of Ridruejo’s criticisms were rejected by the Economic and Monetary Affairs Committee, and the final report was considerably muted in its criticisms.<sup>119 120</sup> But the problems she raised remain live.

Twelve years later, the same conflict of interest rules broadly apply, the main difference being that individual board members must report potential conflicts to an ethics committee, which then rules on whether they are problematic.<sup>121</sup> As of July 2016, however, the committee’s Operating Rules were not publicly available on the EIB’s website: the public is thus in the dark as to how the committee reaches its conclusions.

Moreover, even where a conflict is identified, the rules continue to give the discretion to individual board members (“using his/her best judgment”)<sup>122</sup> as to whether or not they should abstain on votes. This is hardly reassuring. As the European Ombudsman argues in a recent letter to the EIB,<sup>123</sup> it should be “the responsibility of the relevant EU institution, and *not the individual in question*, to determine whether there is a conflict of interest” (emphasis added).<sup>124</sup>

The mere appearance of such conflicts, the Ombudsman stresses, is also problematic – and should be prevented. Rightly so, for, as Dennis Thompson perceptively notes, appearances are critical to maintaining public trust and hence the inclusion of the public (albeit by proxy) in decision-making: where conflicts of interest are suspected, the public’s confidence that a decision has not been influenced by private-regarding behaviour can only be diminished. The appearance of corruption is thus an important standard for judging institutional corruption: indeed, Thompson argues that to deny such a standard is “tantamount to denying democratic accountability” since “appearances are often the only window that citizens have on official conduct”.<sup>125</sup>

The EIB does not deny that appearances count,<sup>126</sup> but claims that it does not have the staff to take a proactive role in scrutinising all the affiliations of board members or, indeed, of the officers of companies and funds that receive EIB support. But relying on self-reporting and self-identifying by those who should be scrutinised has consequences, one of which, in the minds of many people, is to render corrupt a screening system overtly intended to avoid corruption, in that it blatantly falls short of fully protecting the public interest where public money is potentially used for private gain (including private institutional gain).

The rules governing a “cooling off” period between serving on the board and



being able to lobby also create a further appearance of corruption, by drawing arbitrary time limits before influence peddling can begin. For example, members of the EIB's Board of Directors must wait just six months before they are permitted to "lobby with members of the EIB governing bodies and Bank staff for their business, client or employer". Why six months?<sup>127</sup> What makes six months and a day ethical but six months less a day unethical? For that matter, what makes six months ethical? Particularly when, as recently revealed,<sup>128</sup> it sometimes takes more than a year on average between the loan proposal being made by a project promoter and the EIB signing off on such a loan, where it is approved. A cooling off period of six month thus makes it possible for a person who was involved in the discussions on the loan to leave the EIB and subsequently lobby on behalf of the promotor for the loan's approval. And why does no cooling off period apparently exist for the eight independent experts who sit on the Investment Committee of the EIB's European Fund for Strategic Investments?<sup>129</sup> Is it really credible that some might not wish to lobby for the companies they work for or have worked for? Companies which, to judge from the experts' published declarations of interest,<sup>130</sup> have in three cases<sup>131</sup> received EIB funds?<sup>132</sup> Indeed, the very arbitrariness of the rules only serves to underscore the conflicts of interest that are present and the incoherence of the "public/private" divide as a means of identifying corruption.<sup>133</sup>

Many are left with the impression – and impressions count – of an elaborate, ritualistic ballet dance of integrity, in which "holy water" is poured on certain practices either by sanctioning them through weakly drawn codes of conduct or by excluding them from mention. The cooling off rules, for example, only mention "lobbying" as a prohibited activity. They do not appear to prevent former senior executives of EIB from taking jobs with companies who have benefited from EIB loans during their period in office, either inside or outside the "purdah" period. A quick search of LinkedIn, the professional networking site, is revealing. Philippe de Fontaine

Vive, for example, served as Senior Vice President at the EIB from February 2003 to February 2015. After leaving, he worked briefly from March to June 2016 with CMA CGM, a container shipping conglomerate, which has benefitted from EIB loans, including for a PPP contract to build a new container port at Tanger Med.<sup>134</sup> He is now on the board of BMCE Bank, which has a long association with EIB. Mr de Fontaine Vive was reportedly present at the signing ceremony for a loan to the bank back in 2005.<sup>135 136</sup>

No breach of the rules or illegality on the part of Mr de Fontaine Vive is implied and none should be inferred. What is at issue is not the individual behaviour of those who act according to the rules but the rules themselves – and whether or not they allow for practices that the public consider corrupt. For, as with other examples of the revolving door between the EIB and the corporate sector and vice versa, the appearance of conflicts of interest is evident. Does this matter? Indeed, it does. To judge from public opinion polls, the public takes a dim view of former officials working for companies that they assisted while in office: 73% in a recent UK poll wanted the practice of ministers accepting corporate boardroom appointments on leaving office – currently legal – to be banned and 75% wanted to ban senior civil servants accepting corporate consultancies.<sup>137</sup> Witness also the public controversy over the decision of former President of the EU, José Manuel Barroso, to join the investment bank Goldman Sachs, a decision reportedly criticised by his successor, Jean-Claude Juncker, the current President, and by staff at various EU bodies, who have denounced their former boss's behaviour as "morally reprehensible".<sup>138</sup>

And it is the public's perception – rooted in a non-legalistic view of corruption – that matters here. Revolving doors – a pattern common to other DFIs<sup>139</sup> – are viewed as cronyism: a self-referential and self-serving system which, on the one hand, allows private

interests to enter into "the places where policies and laws are written and enforced", thereby "setting the parameters of their own scrutiny";<sup>140</sup> and, on the other, to benefit from those laws and policies. Once again, the body politic is poisoned: and it is this that makes revolving doors corrupt.

The ripples wash through the entire system. The public sector comes to be managed increasingly as a private company; rules and processes that have evolved to elicit or protect the public interest are dismissed as burdensome bureaucracy; the ethic of public service is eroded in favour of "more individualised and market driven values";<sup>141</sup> and practices that would popularly be considered "collusive" come to be taken for granted.

This is a world where regulators seeking to tighten financial regulation are told (as Brooksey Born, when Director of Trading and Markets at the US Commodities Futures Trading Commission, was told by US Secretary of the Treasury, Robert Rubin): "You shouldn't be listening to government lawyers: you should be listening to private lawyers – all the private lawyers representing the banks say you don't have the jurisdiction".<sup>142</sup> A world where government agencies (as with Britain's CDC Group) deem it appropriate that companies receiving public support should "self-assess" their compliance with the environmental and social safeguard policies on which that public support has been conditioned.<sup>143</sup> A world in which the first port of call for many of the DFIs invested in a fund where credible allegations of wrongdoing were reported was not to contact the police but to seek reassurance from the accused fund manager,<sup>144</sup> giving the impression (to ordinary members of the public) of potential collusion and, hence, potential corruption. For this is a world in which "pockets of impunity"<sup>145</sup> are created through a cosily-defined common purpose between the public and private sectors, and a myopic blindness to its conflicts. A world that is, in a word, "corrupt".

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# Beyond bribery

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What might one conclude from this brief foray into institutionalised corruption? That PPPs are an institutionally corrupt form of public service delivery? Yes siree! That intermediated public finance corrupts democratic accountability? For sure. That the EIB is shot through with rules that ferment practices that the public views as corrupt? That too.

But this should not surprise. For the distinctions between legal and illegal corruption or between public and private graft hide a simple truth: that bribery, money laundering, PPPs, revolving doors and the numerous other ways through which democracy is corrupted for private gain are not (to quote Irma Sandoval-Ballesteros of Harvard's Edmond J. Safra Center for Ethics) "unwanted side-effects which distort otherwise well-functioning and efficient markets" but rather "a central constitutive element of markets themselves and make up a

political backbone for the system as a whole".<sup>146</sup>

For while corruption is clearly not the only means whereby democratic processes are perverted, other drivers (such as inequality<sup>147</sup> and, more systemically, accumulation) are inextricably connected to corrupt practices. Indeed, in a world where capitalism is the dominant social order, corruption is arguably best viewed not as an aberration but as "a fuller expression of the inherent rationale underlying profit-making activities".<sup>148</sup> In that respect, corruption is best located in what political scientist John Girling has called "the misfit" between "the political system (especially democracy) and the economic system (especially capitalism)".<sup>149</sup> It is this "misfit" that needs exposure, inquiry and contestation.

Some anti-corruption campaigners baulk at this challenge, arguing that it is not their role to "take on capitalism".

But the entanglements between corruption and capital are such that to challenge corruption is to challenge modern capitalism. Recognising this, and taking seriously its implications, will surely be essential if strategies and alliances are to emerge that can unsettle corruption and rebuild the democratic processes that allow the "common good" to be defined through democratic politics, not those seeking political or financial gain. Far from undermining effectiveness, a failure to break out beyond bribery is likely to hamper the effectiveness of anti-corruption struggles.

Fruitful alliances beckon for those prepared to take up the challenge, not least with those at the sharp end of austerity policies and other forms of anti-social gain. Dialogue and patient building of trust will surely be needed. But the space is there. The question is whether anti-corruption campaigners will seize the opportunity.

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# Comments and responses

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## European Investment Bank

Dear Sir,

We thank you for giving to the EIB the opportunity to comment on the Counter Balance draft report *“Corrupt but legal - Institutionalised corruption and development finance: How corrupt is the European Investment Bank”*.

While the EIB generally welcomes constructive comments and criticism from all stakeholders regarding its activities, the Bank notes that, despite its misleading and sensation-seeking title, large parts of this Counter Balance report are unrelated to the EIB or its activities. The report does not address any specific recommendation to the EIB, but instead appears to be a call to anti-corruption campaigners to “challenge modern capitalism”.

The Bank notes that the report contains several misrepresentations and factual mistakes. Furthermore, it challenges policy decisions and general guiding principles all the while ignoring that these have been given to the EIB by its shareholders and by the EU, are enshrined in the EU Treaty as part of the Bank’s Statute, and are in line with EU policies and objectives.

On the basis of the above, we trust you understand that the EIB is not in a position to further comment on this report.

Should Counter Balance have any allegations of actual corruption, we would encourage you to report these to the Fraud Investigations Division, via the reporting mechanisms set out on the EIB IG /IN webpage (<http://www.eib.org/about/accountability/anti-fraud/reDortina/index.html>).

The EIB remains open to a constructive dialogue and cooperation with all stakeholders on these important matters, based on mutual trust and benefits.

We would appreciate if you could publish this letter together with the final report.

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**Olanrewaju Suraju,  
anti-corruption campaigner and  
human rights activist, Nigeria**

Corrupt but legal exemplifies and exposes the trend in the developing countries and most especially my country, Nigeria, wherein governments (Federal and States) abdicate primary responsibilities of government, welfare of the people, and contract same to Development Financial Institutions and contractors. Elected and appointed officials conspire with their “partners”, under a boardroom arrangements shrewd in secrecy, to concession, excluding the people, communities, Labour unions and civil society, the provision of service and basic necessities of human existence to private establishments at the expenses of public interest. While the financial institutions and managers of their interest benefit through prompt and high rate of returns on investment, the government on the other side get more public funds freed for their selfish recurrent expenditures, misappropriation and laundering. Nigeria in particular, over the years, witnessed increased revenue from natural resources but at the same time faced with decreased in public provision of services and absence of government in infrastructure development. PPPs rarely provide alternative service. Rather, government assets are bought at give-away prices under a so-called privatization arrangement or “improvement and management” of existing infrastructure. These financial institutions also erode democratic consolidation by attaching conditions beyond economic considerations to political decisions. They influence appointment into offices in Government and suggest successor to an indebted government. Choices of electorate in transition process are thereby limited and in worst scenarios, their choice subverted for the creditors candidate. A former finance minister in Nigeria, while serving in her capacity in that office, was accused on abuse of office to the detriment of the country’s economic interest and political integrity, in favour of an international not-for-profit organisation, only to get appointed as Chairperson of the organisation’s board immediately after her office as a minister. Development financing and PPP should be alternative to basic government responsibility and not a replacement of same at higher costs to the people and lesser responsibilities for the government.

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**Winnie Overbeek,  
World Rainforest Movement,  
Brazil**

Discussing the issue of legal corruption is fundamental, as well as the undemocratic process of how this process is being established as legal.

One of the things one could learn from our experience here in Brazil is that there is a sort of 'vitrine' of struggle against corruption for the public to see (thanks in part to the very strong role of hegemonic media companies), and behind that there is a hidden but very profound and deep corruption that will not really be solved, not only because it is legal but more importantly because the actors that play a role in this have codes of mutual protection for those who participate in the corruption 'schemes' as they are called in Brazil. It involves nowadays Public-Private partnerships, and infrastructure works as the report mentions.

In this sense, I am just wondering if it is legal corruption that is the main issue here, or something more subjacent. Legal corruption is of course useful but they have a number of other ways not to be caught at some point because of their antidemocratic, corruptive, etc. behaviour. It involves a number of other actors that somehow play a fundamental role, like media companies, the police, judges, etc.

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**Simon Taylor,  
Co-founder and Director,  
Global Witness, United Kingdom**

After 20 years of fighting corruption, it is a delight to see the start of a debate about what constitutes corruption, and how the myriad behaviours and mechanisms of our predatory global economic system ensure that democracy and accountable systems of governance will always remain a mere shadow of what they should be. Though recent advances in anti-corruption laws have criminalised some forms of corruption, the practical reality is that a vast army of facilitators continue to ensure that a swathe of permitted malfeasance continues to wash our systems of accountability down the river. Politics has also begun to demonstrate just how great a percentage of our fellow citizenry have been left behind as a result. All those concerned about a societal structure that ensures an ever-greater concentration of wealth in the hands of the few, at the expense of the masses, should now engage in this discussion. A failure to confront the systemic challenges of legal corruption will have far reaching societal consequences.

This report is of much relevance to the context we live in in countries of Latin America.

From the 2000s, there was a strong swing towards the Left in the region, with Presidents linked to social movements coming to power, struggles against neoliberalism, etc. However this tendency is in reverse, with openly right-wing governments taking over. This recent change has many causes, but there is one that is central in current political debates: corruption.

This is not the first time this happened: most governments in the Andean region have ended their mandates - or have been overthrown - amid multiple allegations of looting, bribing, embezzlement of public funds and other indications of corruption. In this respect, left-wing governments were no different from right-wing governments.

The problem does not lie so much in the moral quality of those who have governed us, but rather in the model itself being the corrupter. Petrodollars, mega infrastructure projects, foreign companies with little integrity, money-laundering, etc. It is a centuries-long robbery of public funds and nature itself that characterises the Ecuadorean republican history.

But, as Nick Hildyard explains very well, corruption transcends the visibly illegal. All governments, including the current ones, have allowed private gain and undermined democracy - and this is also corruption. In the case of Ecuador, studies show that Public-Private Partnerships in the health sector have allowed a massive direct transfer of public and citizens' funds to private health and pharmacy companies. This also took place in the oil sector with direct subsidies to foreign oil companies - which are paid a fixed price per extracted barrel, even if the international oil price is several dollars lower.

Another example of corruption is the privatization of laws to the benefit of private and transnational interests. For example, the newly-enacted Seed Law simply paves the way for European seed private companies to benefit directly from the recently signed Ecuador-EU Free Trade Agreement. The risks and benefits that this treaty would entail were never discussed with Ecuadorian society, and especially with peasant communities. This is a very serious form of corruption: dismantling the participation in important decision-making processes, as Nick Hildyard mentioned in his article. The case of Yasuní is another case in point: in 2014, the Electoral Council annulled hundreds of thousands of signatures of Ecuadorians who asked not to exploit oil in the Yasuní National Park, because the signatories did not use blue ink or because the paper was letter size and not A4. This was a case of legal corruption that preceded a minimal formality on the right to participate of dozens of thousands of people. This was catalogued as fraud but isn't this legal corruption too?

Another case of legal corruption is the privatization of public policies through the "state of emergency" status. Whether it is an emergency due to a volcanic eruption, an earthquake, floods, disease outbreaks, etc., Emergency Decrees are issued which allows for contracts to be sealed directly with private companies without public bidding during months or even years. Or when the law allows that no tender is needed when a contractor is a foreign state owned company. In other words, it is not only the private sector in Ecuador that benefits, but also foreign public transnational corporations.

We see that all forms of corruption are inherent to the model and the exercise of power. Sadly, debates focusing exclusively on "traditional" corruption are currently a way to divert attention from other forms of corruption.

For us in the South, the discourse around the issue of corruption is often seen as a Northern agenda that points fingers at corrupt Southern states, and it omits to speak about the serious problems of the other forms of legal corruption that are as worrying. Even organizations that are supposed to be allies like "Publish what you pay" or others that demand transparency or accountability are actually weakening



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the campaigns and proposals of organizations in the South calling for the closure of mines, the non-exploitation of oil, or for free trade agreements not to be concluded.

In this sense, this report is very useful, both for the friendly organizations in the North and for many in the South that are lost in the tide of the obtuse look of “traditional” corruption.

Ivonne Yáñez  
ACCIÓN ECOLÓGICA  
ECUADOR

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**Marco Valli, Member of ECON and CONT Committees at the European Parliament, Five Star Movement, Italy**

This report reveals how EIB policy and practices are systemically vulnerable to the risk of misuse of public funds to support private gains at the expense of the common good. This is a precious additional contribution, in terms of independent analysis and evidence-based information, to our efforts to denounce the potential exposure to corruption of EIB infrastructure projects - as recent scandals such as Passante di Mestre in Italy have demonstrated - and to call on the EIB to adopt a truly effective system of governance, strong rules on conflict of interest and high levels of transparency and accountability. The EU public bank should be able to ensure the most responsible and transparent use of public money making the public interest its main priority

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**Robert Barrington ,  
Executive Director  
Transparency International UK**

This is a seminal work at a time when there needs to be a much wider public and political debate about the nature of capitalism, the private financing of public services, and at what stage legitimate private interest tips over into corruption. The paper makes a compelling case that lobbying and the revolving door are out of control, and that the current system cannot plausibly be seen as operating in the public interest. The slow convergence of new financing mechanisms, a decline in the ethical boundaries for public officials and the opening up of new opportunities for private capital has long passed the tipping point for a ‘public interest’ test, and this paper lays down an important marker that the status quo needs to change. Voters instinctively know this, and know they are getting a raw deal. Politicians ignore this message at their peril, and this paper will help in the first stage of redemption, which is admitting that there is a problem. At its heart is the central dilemma of this paper: that a new, modern, cronyistic, monopolistic, capitalism, more closely involved than ever before in public services and unchecked by a complicit political class, may have legalised corruption.

- 1 To give two examples:
  - In Italy, where prosecutors have made close to hundreds arrests of politicians and project developers related to two large scale infrastructure projects (Mose and Passante di Mestre) in the Venice region, the close imbrication of organized crime with project promoters and local decision-makers is very problematic. Both projects received European support through the EIB even when they were under investigation, showing the vulnerability of the EIB to capture and misuse of its funds. See Counter Balance's report Highway to Hell <http://www.counter-balance.org/highway-to-hell-european-money-fuelling-controversial-infrastructure-projects/>
  - In Slovenia, despite concerns related to corruption and environmental impacts, the EIB and EBRD have kept on financing the controversial Sostanj coal power plant.
- 2 Bratsis, P. (2003) 'The Construction of Corruption, or Rules of Separation and Illusions of Purity in Bourgeois Societies'. Social Text 77, Vol. 21, No. 4, Winter 2003. Available at <https://core.ac.uk/download/files/130/104605.pdf>
- 3 US Congress (2004) Congressional Record, V. 150, 15 June 2004, No. 82. Government Printing House: Washington. Available at: <https://www.congress.gov/crec/2004/06/15/CREC-2004-06-15.pdf>
- 4 Reed, J. S. (2013) 'Shareholder Value vs Values - Comments from a Business Person'. Edmond J. Safra Center for Ethics: Harvard. Available at: <http://ethics.harvard.edu/public-lecture-john-s-reed>  
See also:  
Fields, G. (2013) 'John Reed: On the Value of Values'. Blog, 9 March 2013. Edmond J. Safra Center for Ethics: Harvard. Available at <http://ethics.harvard.edu/blog/john-reed-value-values>
- 5 Parliamentary Financial Commission, Foreign corrupt practices of industrialized OECD countries, Bonn 1994
- 6 A conviction for money-laundering would entail the bank's licence being revoked. Prosecutions have thus been mounted instead under the Bank Secrecy Act, whose penalties are less severe.  
See:  
Garrett, B. L. (2015) 'The Corporate Criminal as Scapegoat'. Virginia Law Review: Vol 101, No.7. November 2015. Available at [http://www.virginialawreview.org/sites/virginialawreview.org/files/Garrett\\_Online.pdf](http://www.virginialawreview.org/sites/virginialawreview.org/files/Garrett_Online.pdf)
- 7 The vigour with which bribery is prosecuted varies enormously from jurisdiction to jurisdiction. In 2013, China investigated some 22,000 major corruption cases: by contrast Britain investigated just 15 companies and the US prosecuted 27, despite London and New York being command and control centres for international financial crime.  
  
See:  
Baijie, A. (2014) 'Major corruption prosecutions up in 2013'. USA China Daily 6 January 2014. Available at [http://usa.chinadaily.com.cn/china/2014-01/06/content\\_17216616.htm](http://usa.chinadaily.com.cn/china/2014-01/06/content_17216616.htm)  
Fraud Intelligence (2014) 'The UK response to bribery: How do we measure up on a global scale?' Available at <https://www.eversheds.com/documents/services/fraud-financial-crime/Fraud-Intelligence.pdf>
- 8 Syal, R. (2013) 'Revealed: "Sweetheart" tax deals each worth over £1bn'. The Guardian, 29 April 2013. Available at: <http://www.theguardian.com/politics/2013/apr/29/sweetheart-tax-deals>
- 9 Jenkins, S. (2016) 'Fantastically crony-capitalist: that'll be Cameron-land'. The Guardian, 12 May 2016. Available at: <https://www.theguardian.com/commentisfree/2016/may/12/crony-capitalist-corruption-david-cameron-british-tax-havens-avoidance>
- 10 Former US Attorney General Eric Holder has acknowledged that the big banks (like many other large corporations) are now viewed in law enforcement circles as just "too big to prosecute". Holder told the US Senate Judiciary Committee: "I am concerned that the size of some of these institutions becomes so large that it does become difficult for us to prosecute them when we are hit with indications that if you do prosecute, if you do bring a criminal charge, it will have a negative impact on the national economy, perhaps even the world economy. And I think that is a function of the fact that some of these institutions have become too large."  
See:  
American Banker (2013) 'Transcript: Attorney General Eric Holder on "Too Big to Jail"'. American Banker, 6 March 2013. Available at [http://www.americanbanker.com/issues/178\\_45/transcript-attorney-general-eric-holder-on-too-big-to-jail-1057295-1.html](http://www.americanbanker.com/issues/178_45/transcript-attorney-general-eric-holder-on-too-big-to-jail-1057295-1.html)
- 11 The "too big to prosecute" phenomenon is by no means restricted to the banking sector.  
For further analysis, see:  
Garrett, B. L. (2014) Too Big to Jail: How Prosecutors compromise with corporations. Belknap Press of Harvard University Press: Cambridge.  
University of Virginia School of Law, Federal Organizational Prosecution Agreements Database. Available at [http://lib.law.virginia.edu/Garrett/prosecution\\_agreements/](http://lib.law.virginia.edu/Garrett/prosecution_agreements/)  
Garrett, B. L. (2016) '(Not) Prosecuting Financial Crimes'. Regblog, 21 June 2016. Available at <http://www.regblog.org/2016/06/21/garrett-not-prosecuting-financial-crimes/>  
Garrett, B. L. (2015) op. cit. 6.  
Garrett, B. L. (2016), 'The Metamorphosis of Corporate Criminal Prosecutions'. Virginia Law Review Online: Vol 102: 1-13. February 2016. Available at: <http://nasaa.cdn.s3.amazonaws.com/wp-content/uploads/2016/03/Presentation-Whither-the-White-Collar-Prosecution.pdf>



- 12** For examples in the carbon offset market, see:  
Lohmann, L. (undated) 'Regulation as Corruption in the Carbon Offset Markets: Cowboys and Choirboys United'. The Corner House: Sturminster Newton. Available at: <http://www.thecornerhouse.org.uk/sites/thecornerhouse.org.uk/files/Athens%2010.pdf>
- 13** For examples, see:  
Partnoy, F. (2010) *Infectious Greed: How Deceit and Risk Corrupted the Financial Markets*. Profile Books: London.  
Global Witness (2016) *Lowering the Bar: How American lawyers told us how to funnel suspect funds into the United States*. Available at: [https://www.globalwitness.org/documents/18208/Lowering\\_the\\_Bar.pdf](https://www.globalwitness.org/documents/18208/Lowering_the_Bar.pdf)  
Global Witness (2016) *Undercover in New York*. Available at: <https://www.globalwitness.org/shadyinc/>
- 14** OpenSecrets.org (undated) 'Influence & Lobbying'. Available at: <https://www.opensecrets.org/influence/>
- 15** The Organisation for Economic Cooperation and Development (OECD) notes that 26 of the 36 people who served on the board of UK's Financial Services Authority (FSA) from 2000 to 2009 "had connections at board or senior level with the banking and finance industry either before or after their term or office, whilst nine continued to hold appointments in financial corporations while they were at the FSA".  
See:  
OECD (2009) *Revolving Doors, Accountability and Transparency - Emerging Regulatory Concerns and Policy Solutions in the Financial Crisis*, Expert Group on Conflict of Interest. OECD: Paris. Available at [http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=GOV/PGC/ETH\(2009\)2&docLanguage=En](http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=GOV/PGC/ETH(2009)2&docLanguage=En)
- 16** In one case, James Crosby, was simultaneously the chief executive of HBOS and a FSA board member, meaning that "the head of a regulated institution was overseeing the regulator".  
See:  
Prat, A. (2009) 'A political economy view of financial regulation'. VOX, 9 March 2009. Available at <http://voxeu.org/article/political-economy-financial-reform-effective-regulations-require-effective-regulators>  
Wilks-Heeg, S. (2015) 'Revolving-Door Politics and Corruption' in David Whyte (ed) (2015) *How Corrupt is Britain?* Pluto Press: London. Available at: [https://www.academia.edu/20288864/How\\_Corrupt\\_is\\_Britain](https://www.academia.edu/20288864/How_Corrupt_is_Britain)
- 17** Wachtel, K. (2011) 'Goldman Sachs Can't Say It Didn't Get Bailed Out Anymore - It Kept Billions From AIG'. Business Insider, 27 January 2011. Available at: <http://www.businessinsider.com/goldman-sachs-aig-bailout?IR=T>
- 18** Hank Paulson, the former Goldman Sachs executive who was Treasury Secretary during the 2008 financial crisis, states in his autobiography that many of his team were former Goldman Sachs employees.  
See:  
Paulson, H. M. (2010) *On the Brink*. Business Plus: New York.  
Salter, M.S., 'Annals of Crony Capitalism: Revisiting the AIG Bailout'. Edmond J. Safra Working Papers, No. 32, December 5, 2013. Edmond J. Safra Center for Ethics: Harvard. Available from [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2364090](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2364090).
- 19** Dayen, D. (2016) 'Why the Goldman Sachs Settlement Is a \$5 Billion Sham'. New Republic, 13 April 2016, <https://newrepublic.com/article/132628/goldman-sachs-settlement-5-billion-sham>  
Phil Angelides (2016) 'No consequences, no justice in Goldman Sachs settlement'. Fresno Bee, 16 April 2016, <http://www.fresnobee.com/opinion/opn-columns-blogs/article72095607.html>
- 20** The term 'immaculate corruption' was coined by Phil Angelidis, who served as chair of the US government commission which investigated the 2008 global financial crisis, to describe the failure to prosecute a single senior banker for the financial chicanery and malfeasance that led to crisis.  
See:  
McLannahan, B. (2016) 'Charge senior bank bosses, says former commissioner'. Financial Times, 9 February 2016. Available at: <http://www.ft.com/cms/s/0/380a4406-cf4e-11e5-831d-09f7778e7377.html#axzz4J06SwdB2>  
Park, D. (2016) "'Immaculate corruption' continues to enrich the meritless'. Juggling Dynamite, 19 April 2016. Available at: <http://jugglingdynamite.com/2016/04/19/immaculate-corruption-continues-to-enrich-the-meritless/>
- 21** In two-thirds of US corporate prosecutions, no individual is ever charged: more often than not, the company reaches an agreement with the prosecutors which leaves it with no criminal record.  
See:  
Garrett, B.L. (2015) op. cit. 6.  
Office of Senator Elizabeth Warren (2016) *Rigged Justice: How Weak Enforcement Lets Corporate Offenders Off Easy*. US Senate: Washington DC. Available at: [http://www.warren.senate.gov/files/documents/Rigged\\_Justice\\_2016.pdf](http://www.warren.senate.gov/files/documents/Rigged_Justice_2016.pdf)  
Hildyard, N. (2016) *Licensed Larceny: Infrastructure, Financial Extraction and the Global South*. Manchester University Press: Manchester. Available from: <http://www.manchesteruniversitypress.co.uk/9781784994273/>
- 22** Hildyard, N. (2016) *Licensed Larceny: Infrastructure, Financial Extraction and the Global South*. Manchester University Press: Manchester. Available from: <http://www.manchesteruniversitypress.co.uk/9781784994273/>
- 23** Hildyard, N. (2008) 'A (Crumbling) Wall of Money: Financial Bricolage, Derivatives and Power'. Corner House Briefing 39. The Corner House: Sturminster Newton. Available at: <http://www.thecornerhouse.org.uk/resource/crumbling-wall-money>

- 24 Steine, S. (2012), 'Is the Wealth Gap Hurting all of Us? Interview with Joseph Stiglitz'. Fox Business, 3 July 2012, <http://www.foxbusiness.com/features/2012/07/03/is-wealth-gap-hurting-all-us.html>
- 25 Lapavitsas, C. (2013) *Profiting Without Producing: How Finance Exploits Us All*. Verso: London.
- 26 Gottesdiener, L. (2013) 'The Great Eviction: The landscape of Wall Street's creative destruction'. *The Nation*, 1 August 2013. Available at: <https://www.thenation.com/article/great-eviction/>
- 27 Reed, J.S. (2013) op. cit. 4.  
See also:  
Fields, G. (2013) op. cit. 4.
- 28 Neoliberalism refers to policies adopted in the name of free market economics aimed at restructuring the role of the state in favour of the public sector. A characteristic of neoliberalism has been to cast the state as "problematic" and the private sector as "the solution".
- 29 Sandoval-Ballesteros, I. E. (2013) From "Institutional" to "Structural" Corruption: Rethinking Accountability in a World of Public-Private Partnerships. Edmond J. Safra Working Papers, No. 33. Edmond J. Safra Center for Ethics: Harvard. Available at [http://ru.iis.sociales.unam.mx/jspui/bitstream/IIS/4675/1/From\\_institutional\\_to\\_structural..pdf](http://ru.iis.sociales.unam.mx/jspui/bitstream/IIS/4675/1/From_institutional_to_structural..pdf)
- 30 Buchan, B. (2016) 'Our Golden Age of Corruption'. *Arena*. Available at: <http://arena.org.au/our-golden-age-of-corruption-by-bruce-buchan/>  
See also:  
Buchan, B. and Hill, L. (2014) *An Intellectual History of Political Corruption*. Palgrave: Basingstoke and New York.  
Buchan, B. (2004), 'The Moral Physics of the Body Politic: Changing Contours of Corruption in Western Political Thought'. Paper presented to the Australasian Political Studies Association Conference University of Adelaide 29 September – 1 October 2004. Available at: <https://www.adelaide.edu.au/apsa/docs/papers/Others/Buchan.pdf>  
Buchan, B. (2012) 'Changing Contours of Corruption in Western Political Thought, c. 1200–1700' in Barcham, M., Hindess, B., Larmour, P. (2012) *Corruption: Expanding the Focus*. Australian National University EPress. Available at: [http://press.anu.edu.au/apps/bookworm/view/Corruption%3A+Expanding+the+focus/9901/ch05.html#toc\\_marker-15](http://press.anu.edu.au/apps/bookworm/view/Corruption%3A+Expanding+the+focus/9901/ch05.html#toc_marker-15)
- 31 Swift, J. (1707) *A Trritical Essay upon the Faculties of the Mind*. Available at: [https://www.uni-muenster.de/imperia/md/content/englischesseminar/swift/tritical\\_essay\\_typeset\\_ic.pdf](https://www.uni-muenster.de/imperia/md/content/englischesseminar/swift/tritical_essay_typeset_ic.pdf). Cited by Seldes, B. (2014) 'The Shifting Landscape of Corruption in the United States: legal Corruption, Systemic Corruption or a New Norm?' in Mendilow, J. and Peleg, I. (eds) (2014), *Corruption in the Contemporary World: Theory, Practice and Hotspots*. Lexington Books: London.
- 32 In the year ending 2013, the UK Serious Fraud Office prosecuted 20 individuals. By contrast, in the same year the UK Crown Prosecution Service prosecuted just under 40,000 burglars.  
See:  
Whyte, D. (2015), 'Introduction: A Very British Corruption' in Whyte, D. (2015) *How Corrupt is Britain?* Pluto Press: London. Available at: [https://www.academia.edu/20288864/How\\_Corrupt\\_is\\_Britain](https://www.academia.edu/20288864/How_Corrupt_is_Britain)
- 33 World Bank (1997) *Helping Countries Combat Corruption: The Role of the World Bank*. World Bank: Washington DC. Available at: <http://www1.worldbank.org/publicsector/anticorrupt/corruptn/corrptn.pdf>
- 34 Carl Friedrich, for example, states: "[Corruption] is deviant behaviour associated with a particular motivation, namely that of private gain at public expense. But whether this was the motivation or not, it is the fact that private gain was secured at public expense that matters. Such private gain may be a monetary one, and in the minds of the general public it usually is, but it may take other forms".  
See:  
Friedrich, C. J. (2007) "Corruption concepts in historical perspective" in Heidenheimer, A. J. and Johnston, M. (eds) (2007), *Political Corruption: Concepts and Contexts*. Transaction Publications: New Brunswick.
- 35 Bratsis, P. (2003) op. cit. 2.
- 36 Boundaries that may seem clear-cut (state-owned companies versus privately-owned companies, for example) are on closer examination often more ambiguous. Is Thames Water a private company when its controlling shareholders are state-owned foreign companies, notably the China Investment Corporation? Are private equity funds the "purely private" investment vehicles they are made out to be when, on closer scrutiny, many are financed by publicly-owned pension funds, publicly-owned sovereign wealth funds or publicly-owned development finance institutions? And are "public offices" still "public" when their functions have been contracted out to the private sector?
- 37 Variation on the same theme include the definition adopted by the Organisation for Economic Development and Co-Operation ("The active or passive misuse of the powers of Public officials (appointed or elected) for private financial or other benefits").
- 38 Shore, C. and Haller, D. (2005) 'Introduction – Sharp Practice: Anthropology and the Study of Corruption' in Haller, D. and Shore, C. (eds) (2005) *Corruption: Anthropological Perspectives*. Pluto Press: London.
- 39 Kaufmann, D. (2005) *Myths and Realities of*

- Governance and Corruption. World Bank: Washington DC. Available at: [http://siteresources.worldbank.org/INTWBIGOVANTCOR/Resources/2-1\\_Governance\\_and\\_Corruption\\_Kaufmann.pdf](http://siteresources.worldbank.org/INTWBIGOVANTCOR/Resources/2-1_Governance_and_Corruption_Kaufmann.pdf)
- 40 Bratsis, P. (2003) 'Corrupt Compared to What? Greece, Capitalist Interests, and the Specular Purity of the State'. August 2003. The Hellenic Observatory/The European Institute. London School of Economics and Political Science: London. Available at: <http://www.lse.ac.uk/europeanInstitute/research/hellenicObservatory/pdf/DiscussionPapers/Bratsis-8.pdf>
  - 41 Shumer, S. M. (1979) 'Machiavelli: Republican Politics and Its Corruption'. *Political Theory*: Vol. 7, No. 1, Feb., 1979.
  - 42 Bratsis, P. (2003) op. cit. 2.
  - 43 Kaufmann, D. and Vicente, P. C. (2005) *Legal Corruption*. World Bank: Washington DC. Available at [http://siteresources.worldbank.org/INTWBIGOVANTCOR/Resources/Legal\\_Corruption.pdf](http://siteresources.worldbank.org/INTWBIGOVANTCOR/Resources/Legal_Corruption.pdf). Revised version available at <http://www.pedrovicente.org/legal.pdf>.
  - 44 Daniel Kaufmann (2005) op. cit. 39.
  - 45 Haller, D. and Shore, C. (eds) (2005) *Corruption: Anthropological Perspectives*. Pluto Press: London.
  - 46 Bratsis, P. (2003) op. cit. 2.
  - 47 Mulgan, R. (2012) 'Aristotle on Legality and Corruption' in Barcham, M., Hindess, B. and Larmour, P. (eds) (2012) *Corruption: Expanding the Focus*. Australian National University EPress. Available at: <http://press-files.anu.edu.au/downloads/press/p191341/pdf/ch02.pdf>
  - 48 Philp, M. (1997) 'Defining political corruption'. *Political Studies*: XLV. Available at: <http://conferences.wcfia.harvard.edu/files/gov2126/files/philpcorruption.pdf>
  - 49 Philp, M. (1997) op. cit. 48.  
Some sense of the 'public interest' is implicit in most definitions of corruption; even the World Bank's 'abuse of public office' approach hints at corruption having a public interest dimension, in that the abuse is held to be deviant because it results in private gain.
  - 50 Philp, M. (1997) op. cit. 48.
  - 51 Bratsis, P. (2003) op. cit. 2.
  - 52 Bratsis, P. (2003) op. cit. 2.
  - 53 Thompson, D. F. (1993) 'Mediated Corruption: The Case of the Keating Five. *The American Political Science Review*: Vol. 87, No. 2 (Jun., 1993), pp. 369-381. Available at: [https://www.jstor.org/stable/2939047?seq=1#page\\_scan\\_tab\\_contents](https://www.jstor.org/stable/2939047?seq=1#page_scan_tab_contents)
  - 54 Warren, M. (2004) 'What Does Corruption Mean in a Democracy'. *American Journal of Political Science*: Vol. 48, No. 2, April 2004. Available at: <http://projects.iq.harvard.edu/gov2126/files/warrendemocracy.pdf>
  - 55 Thompson, D. F. (1993) op. cit. 53.
  - 56 Warren, M. (2004) op. cit. 54.
  - 57 Warren, M. E. (undated) 'The Meaning of Corruption in Democracies'. Paper prepared for prepared for: Heywood, P. (ed) *The Routledge International Handbook on Political Corruption*. Available at: [https://disciplinas.stoa.usp.br/pluginfile.php/840817/mod\\_resource/content/0/7\\_2015\\_Warren.Meaning\\_of\\_Corruption\\_in\\_Democracies\\_-\\_Corruption\\_Handbook\\_Draft\\_1.pdf](https://disciplinas.stoa.usp.br/pluginfile.php/840817/mod_resource/content/0/7_2015_Warren.Meaning_of_Corruption_in_Democracies_-_Corruption_Handbook_Draft_1.pdf)
  - 58 Warren, M. E. (undated) op. cit. 57.
  - 59 Warren, M. E. (undated) op. cit. 57.
  - 60 Philp, M. (1997) op. cit. 48.
  - 61 Shumer, S. M. (1979) op. cit. 41.
  - 62 Stachowicz-Stanusch, A. (ed) (2010) *Organizational Immunity to Corruption: Building Theoretical and Research Foundations*. Informational Age Publishing Inc., Charlestown.
  - 63 Machiavelli, N. (1517), *Discourses Upon The First Ten (Books) of Titus Livy*. Available at: <http://www.constitution.org/mac/disclivly.pdf>
  - 64 Shumer, S. M. (1979) op. cit. 41.
  - 65 Whyte, D. (2016) 'Want to know how squeaky clean Britain is? Ask the people'. *Tax Justice Focus*: Volume 11, No.1, 2016. <http://www.taxjustice.net/2016/05/02/tax-justice-focus-the-corruption-issue/>
  - 66 CDC Group (2009) *Development Review 2009*. CDC Group: London. Available at: <http://www.cdcgroup.com/Documents/Annual%20Reviews/cdcdevelopmentimpactreport2009.pdf>
  - 67 These include: Austria's AWS, Belgium's BIO, Spain's COFIDES, Germany's DEG, Finland's FINNFUND, The Netherlands' FMO, Denmark's IFU, Norway's NORFUND, Austria's OeEB, France's PROPARCO, Switzerland's Sifem, Italy's SIMEST, Sweden's SWEDFUND, the UK's CDC Group and the USA's OPIC.
  - 68 European Bank for Reconstruction and Development (undated) 'Frequently asked Questions'. Available at: <http://www.ebrd.com/corporate-information/faq.html> The EBRD states: "Investing primarily in private sector clients whose needs cannot be fully met by the market, the EBRD promotes entrepreneurship and fosters transition towards open and democratic market economies".

- 69** European Investment Bank (2011) 'Leading Development Finance Institutions Launch Corporate Governance Framework to Support Emerging Markets'. Press release, 23 September 2011. EIB: Luxembourg. Available at: <http://www.eib.org/infocentre/press/news/all/leading-development-finance-institutions-launch-corporate-governance-framework-to-support-emerging-markets.htm>
- 70** The most common forms of PPP are 'Build, Operate, Transfer', 'Build, Operate, Own' and 'Lease, Develop, Operate' projects, known by their acronyms BOT, BOO and LDO. With a BOT, a private sector entity finances construction and is repaid by the state, in regular payments, for the use of the buildings and services provided under a facilities management contract. The facility passes to the government when the operating contract ends, or at some other pre-specified time. With a BOO, the ownership remains with the private entity but the contract provides for various forms of government support during the contract period. With a LDO, an existing asset is leased from the government, with the private entity contracted to renovate and operate it.
- 71** EPEC - European PPP Expertise Centre (2016) PPPs financed by the European Investment Bank from 1990 to 2015. European Investment Bank: Luxembourg. Available at: [http://www.eib.org/epec/resources/publications/ppp\\_financed\\_by\\_EIB\\_1990\\_2015](http://www.eib.org/epec/resources/publications/ppp_financed_by_EIB_1990_2015)
- 72** Whitfield, D. (2014) PPP Wealth Machine: UK and Global Trends in Trading Project Ownership. European Services Strategy Unit Research Report No. 6. European Services Strategy Unit: Tralee. Available at: <http://www.european-services-strategy.org.uk/publications/essu-research-reports/essu-research-report-no-6-ppp-wealth-machine-u/ppp-wealth-machine-final-full.pdf>
- 73** See, for example: Honkaniemi, N. (2010) Conditionality in World Bank crisis-lending to Ghana. Eurodad: Brussels. Available at: [http://eurodad.org/uploadedfiles/whats\\_new/reports/under%20the%20influence%20of%20the%20world%20bank%20lay%20out.pdf](http://eurodad.org/uploadedfiles/whats_new/reports/under%20the%20influence%20of%20the%20world%20bank%20lay%20out.pdf)
- 74** See for example: Moody's Investor Service (2014) 'Rating Action: Moody's upgrades Paraguay's sovereign rating to Ba2 from Ba3, and changes outlook to positive'. Moody's Investor Service, 4 February 2014 Available at: [http://www.hacienda.gov.py/bonos/archivos\\_bonos/informes/O4-02-rating.PDF](http://www.hacienda.gov.py/bonos/archivos_bonos/informes/O4-02-rating.PDF)
- 75** Surowiecki, J. (undated) 'Bonds and Domination'. New York News & Politics. Available at: <http://nymag.com/nymetro/news/bizfinance/columns/bottomline/199/>
- 76** Muzenda, D. (2009) Increasing Private Investment in African Energy Infrastructure. NEPAD-OECD Ministerial Meeting and Expert Roundtable, 11-12 November 2009. Available at: <https://www.oecd.org/investment/investmentfordevelopment/43966848.pdf>
- 77** See for example: Chris Blades, <https://www.linkedin.com/in/chris-blades-78005518> Guy Chetrit, [https://www.linkedin.com/in/guy-chetrit-1a99594a?authType=name&authToken=UDYV&trk=prof-sb-browse\\_map-name](https://www.linkedin.com/in/guy-chetrit-1a99594a?authType=name&authToken=UDYV&trk=prof-sb-browse_map-name)
- 78** EPEC - European PPP Expertise Centre (2016) 'The Team'. Available at: <http://www.eib.org/epec/about/index.htm>
- 79** See for example: Edward Farquharson, <https://www.linkedin.com/in/edward-farquharson-b0079329> Giorgio Watschinger, <https://www.linkedin.com/in/giorgio-watschinger-b94a6617> Elena Galan, <https://www.linkedin.com/in/elena-galan-121a6423> Steven Burgess, <https://www.linkedin.com/in/steven-burgess-581693103> Micaela Celio, <https://www.linkedin.com/in/micaela-celio-0362709>
- 80** Warren, M. E. (undated) op. cit. 57.
- 81** Independent Evaluations Group (2014) World Bank Group Support to Public-Private Partnerships: Lessons from Experience in Client Countries, fy02-12. World Bank Group, Washington DC. <https://openknowledge.worldbank.org/bitstream/handle/10986/21309/936290WP0Box380ion000for0disclosure.pdf?sequence=1&isAllowed=y>
- 82** See, for example: Charles, N. (2014) Private Provision of Public Services in Developing Countries? The Case of Uganda's local governments, Paper presented to the Fourth International Procurement Conference, 14-16 August 2014, Dublin, <http://www.ippa.org/IPPC4/Proceedings/15PublicPrivatePartnership/Paper15-1.pdf>. The author looked at the experience of over 30 local government units and concludes, "Contrary to theory, private involvement in local service delivery does not imply the attainment of higher levels of efficiency". For further research and examples, see: Public Services International Research Unit, <http://www.psir.org/> CEE Bankwatch Network, Overpriced and Underwritten: the Hidden Costs of Public-Private Partnerships. CEE Bankwatch Network: Prague. Available at: <http://bankwatch.org/public-private-partnerships>
- 83** Economist Intelligence Unit (2012) Evaluating the environment for public private partnerships in Eastern Europe and the Commonwealth of Independent States: The 2012 EECIS Infrascopes Findings and methodology, Commissioned by the European Bank for Reconstruction and Development. Economist Intelligence Unit: London.

- Available at: <http://www.ebrd.com/downloads/news/eecis.pdf>
- 84 Romero, M. J. (2016) What lies beneath? A critical assessment of PPPs and their impact on sustainable development. Eurodad: Brussels. Available at: <http://eurodad.org/files/pdf/559e6c832c087.pdf>
  - 85 EPSU (2014) Public and Private Sector Efficiency. European Public Services Union: Brussels. Available at: <http://www.epsu.org/article/report-challenges-assumptions-private-sector-efficiency>
  - 86 Hall, D., Lobina, E. and de la Motte, R. (2005) 'Public resistance to privatisation in water and energy'. Development in Practice: Volume 15, Numbers 3 & 4, June 2005. Available at: <http://unpan1.un.org/intradoc/groups/public/documents/APCITY/UNPAN022859.pdf>
  - 87 Bain, R. (2009) Review of Lessons from Completed PPP Projects Financed by the EIB. European Investment Bank: Luxembourg.
  - 88 The Independent Evaluations Group states: "Despite the Bank Group's central goal of fighting poverty—reaffirmed by the new strategy's dual goal of ending extreme poverty and promoting shared prosperity— little is recorded on the effects of PPPs on the poor". See: Independent Evaluations Group (2014) op. cit. 81.
  - 89 For a discussion of "bullshit", see: Frankfurt, H. (2005) On Bullshit. Princeton University Press: Princeton. Available at: <http://www.stoa.org.uk/topics/bullshit/pdf/on-bullshit.pdf> Frankfurt writes: "the bullshitter . . . is neither on the side of the true nor on the side of the false. His [sic] eye is not on the facts at all, as the eyes of the honest man and of the liar are, except insofar as they may be pertinent to his interest in getting away with what he says. He does not care whether the things he says describe reality correctly. He just picks them out, or makes them up, to suit his purpose".
  - 90 Independent Evaluations Group (2014) op. cit. 81.
  - 91 Independent Evaluations Group (2014) op. cit. 81.
  - 92 Independent Evaluations Group (2014) op. cit. 81.
  - 93 Aslan, C. (2014) How Do Countries Measure, Manage and Monitor Fiscal Risks Generated by Public Private Partnerships? Chile, Peru, South Africa, Turkey. World Bank: Washington, DC. Available at: <http://www.worldbank.org/content/dam/Worldbank/document/Debt/Presentation%20Cigdem%20New%20Avenues.pdf>
  - 94 Independent Evaluations Group (2014) op. cit. 81.
  - 95 PPPs are typically wrapped in multiple guarantees that bind governments to servicing project loans if the private sector partner fails to do so. Obtaining such guarantees is usually a pre-condition set by banks before they will agree to lend developers the money for their project. In some cases, the guarantees come in the form of blanket protection against the risk of a PPP company's default on loan repayment or its bankruptcy, irrespective of the reasons for such failure. For further discussions, see: EPEC (European PPP Expertise Centre) (2011) State Guarantees in PPPs: A Guide to Better Evaluation, Design, Implementation and Management. Luxembourg: European PPP Expertise Centre, May 2011. Available at: <http://www.eib.org/epec/resources/epec-state-guarantees-in-ppps-public.pdf>.
  - 96 Guaranteed rates of return – which, to be clear, mean that the investors make a profit regardless of performance – are a feature of many PPP contracts. In Indonesia, for example, subsidiaries of water multinationals Thames Water and Suez successfully negotiated a concession agreement under which the public authorities covered 'all the companies' costs, including investment, and guarantee[d] a 22 per cent rate of return on capital' See: Hall, D. and Lobina, E. (2006) Pipe Dreams: The Failure of the Private Sector to Invest in Water Services in Developing Countries. Public Services International Research Unit (PSIRU), Public Services International and World Development Movement: London. Available at: [http://gala.gre.ac.uk/3601/1/PSIRU\\_9618\\_-\\_2006-03-W-investment.pdf](http://gala.gre.ac.uk/3601/1/PSIRU_9618_-_2006-03-W-investment.pdf). Hall, D. (2015) Why Public-Private Partnerships Don't Work. The Many Advantages of the Public Alternative. Public Services International Research Unit (PSIRU): Greenwich. Available at: <http://www.psiru.org/sites/default/files/2015-03-PPP-WhyPPPsdontworkEng.pdf>.
  - 97 Minimum Revenue Guarantees (MRGs) bind governments to paying the difference if a concession's revenues are lower than those that have been pre-defined in a PPP contract. MRGs have been widely used as a form of guarantee for PPPs in Latin America, South Africa and Malaysia, particularly for airports, ports, toll roads and public transport concessions. See: World Bank Institute (2012) Best Practices in Public-Private Partnerships Financing in Latin America: The Role of Guarantees. Washington, DC: World Bank. Available at: [https://einstein.worldbank.org/ei/sites/default/files/Upload\\_Files/BestPracticesPPPFinancingLatinAmericaguarantees.pdf](https://einstein.worldbank.org/ei/sites/default/files/Upload_Files/BestPracticesPPPFinancingLatinAmericaguarantees.pdf) (accessed August 2015). PWC (2011) Funding Infrastructure: Time For a New Approach? PWC: Australia. Available at: <http://www.pwc.com/gx/en/psrc/pdf/time-for-a-new-approach.pdf>.
  - 98 Financial and economic equilibrium (FEC) clauses, also known as 'stabilisation' or 'adverse action' clauses, entitle the private company to compensation for changes in laws or regulations that adversely affect a project's revenues or its market value. They are a common feature of PPPs in many jurisdictions – indeed



- the World Bank specifically recommends their inclusion in contracts.  
See:  
Dannin, E. (2011) 'Crumbling infrastructure, crumbling democracy: infrastructure privatization contracts and their effects on state and local governance'. *Northwestern Journal of Law and Social Policy*, 6 (1). Available at: <http://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=1061&context=njlsp>  
World Bank/PPIAF (2015) Report on Recommended PPP Contractual Provisions. World Bank: Washington, DC. Available at: [http://ppp.worldbank.org/public-private-partnership/sites/ppp.worldbank.org/files/documents/150808\\_wbg\\_report\\_on\\_recommended\\_ppp\\_contractual\\_provisions.pdf](http://ppp.worldbank.org/public-private-partnership/sites/ppp.worldbank.org/files/documents/150808_wbg_report_on_recommended_ppp_contractual_provisions.pdf)
- 99** For further example of guarantees, see: Hildyard, N. (2016) op. cit. 22.
- 100** Hall, D. (2015) op. cit. 96.
- 101** Dannin, E. (2011) op. cit. 98.
- 102** Finsmes (2016) 'Brexit, The Impact on UK Venture Capital'. Finsmes, 26 June 2016. Available at: <http://www.finsmes.com/2016/06/brexit-the-first-impact-on-uk-venture-capital.html>
- 103** European Investment Bank (2015) 'Equity funds in the ACP region: Current Portfolio'. European Investment Bank: Luxembourg. Available at: [http://www.eib.org/products/lending/equity\\_funds/acp\\_equity\\_funds/index.htm](http://www.eib.org/products/lending/equity_funds/acp_equity_funds/index.htm)
- 104** European Investment Bank (undated) 'Equity funds in the Mediterranean region: Current Portfolio'. European Investment Bank: Luxembourg. Available at: [http://www.eib.org/products/lending/equity\\_funds/med\\_equity\\_funds/index.htm](http://www.eib.org/products/lending/equity_funds/med_equity_funds/index.htm)
- 105** European Investment Bank (2015) 'Equity funds in the ACP region: Current Portfolio'. European Investment Bank: Luxembourg. Available at: [http://www.eib.org/products/lending/equity\\_funds/acp\\_equity\\_funds/index.htm](http://www.eib.org/products/lending/equity_funds/acp_equity_funds/index.htm)  
See also:  
Nicholas Hildyard (2012) 'More than Bricks and Mortar - Annexe 1'. The Corner House: Sturminster Newton. Available at: <http://www.thecornerhouse.org.uk/sites/thecornerhouse.org.uk/files/Annex%201%20Listing%208.9.12.pdf>
- 106** See for example:  
European Investment Bank (2016) 'EIB supports D4/R7 PPP in Slovakia with EUR 426 million of financing – first EIB transaction under EFSI in Slovakia'. European Investment Bank: Luxembourg. Available at: <http://www.eib.org/infocentre/press/releases/all/2016/2016-157-eib-supports-d4-r7-ppp-in-slovakia-with-eur-426-million-of-financing-first-eib-transaction-under-efsi-in-slovakia.htm>
- Horney, B. (2015) 'Macquarie Takes €720M Stake In German Offshore Wind Farm'. *Law360*. Available at: <http://www.law360.com/articles/608931/macquarie-takes-720m-stake-in-german-offshore-wind-farm>  
European Investment Bank and Yorkshire Link Limited, 'A1-M1 DBFO Road Project: EIB Facility Agreement'. Available at: <http://www.techagreements.com/agreement-preview.aspx?title=Macquarie%20Infrastructure%20-%20Eib%20Facility%20Agreement&num=714565>
- 107** McLean, B. (2007) 'Would you buy a bridge from this man?' *Fortune*, 2 October 2007. Available at: [http://archive.fortune.com/2007/09/17/news/international/macquarie\\_infrastructure\\_funds.fortune/index.htm](http://archive.fortune.com/2007/09/17/news/international/macquarie_infrastructure_funds.fortune/index.htm).
- 108** Parliamentary and Health Service Ombudsman (2014) Handling allegations of corruption: A report by the Parliamentary Ombudsman on an investigation into a complaint about the Department for International Development. House of Commons: London. Available at: [http://www.ombudsman.org.uk/\\_\\_data/assets/pdf\\_file/0009/24300/FINAL\\_Handling-allegations-of-corruption.pdf](http://www.ombudsman.org.uk/__data/assets/pdf_file/0009/24300/FINAL_Handling-allegations-of-corruption.pdf)
- 109** Parliamentary and Health Service Ombudsman (2014) op. cit. 108.
- 110** Smith, Y. (2014) 'The Surprising Information that Private Equity Limited Partners Don't Get'. *Naked Capitalism*, 29 May 2014. Available at: <http://www.nakedcapitalism.com/2014/05/surprising-missing-sections-private-equity-limited-partnership-agreements.html>
- 111** European Investment Bank (updated) 'Equity and fund investments'. European Investment Bank: Luxembourg. Available at: [http://www.eib.org/products/lending/equity\\_funds/index.htm](http://www.eib.org/products/lending/equity_funds/index.htm)
- 112** An asset class is a group of securities whose risk profile is held to be uncorrelated to that of other assets.
- 113** In Africa, over 30 corridors have been initiated, principally to enable the extraction of agricultural produce and minerals. No less ambitious plans are on the drawing board for South America. Under current proposals, some 579 projects, costing an estimated \$163 billion, have been identified. All the countries of Asia have similar plans. In Indonesia, six corridors are being promoted under an ambitious 15-year, \$1 trillion Masterplan for Acceleration and Expansion of Indonesia's Economic Development. But the Big Daddy of corridor projects is China's 'One Belt, One Road' (OBOR) programme, officially launched in 2013. Encompassing 60 countries (potentially half the world), OBOR is intended to create a network of free trade areas connected by both terrestrial and marine corridors stretching from the Pacific to the Baltic Sea. Multiple social, ecological and political dynamics lie behind this push for corridors; but one bundle of

- influential drivers stands out. They stem from a problem that some people in finance term the 'production-consumption disconnect'. This disconnect arises in part from economies of scale that have enabled more remote deposits of raw materials for industrial production to be extracted; in part from the increasing distances between those deposits and the industrial sites where the extracted resources are transformed into consumer goods; and in part from the distances between those production sites and the places where the 'global consuming class' live. Distance matters because time matters. And time matters because the faster commodities can be produced and exchanged, the greater the profits for individual capitalists and the sharper their competitive edge over rivals. Hence the push for 'global infrastructure connectivity'. For further discussion, see: Hildyard, N. (2016) op. cit. 22.
- 114** A company jointly owned by its shareholders
- 115** Muzenda, D. (2009) op.cit.76.
- 116** For discussion, see:  
Phillips, M. K. (2016) 'Are Investors Expecting Too Much from Infrastructure?' *Enterprising Investor*, 12 January 2016. Available at: <https://blogs.cfainstitute.org/investor/2016/01/12/are-investors-expecting-too-much-from-infrastructure/>  
Bishop, P. (2013) 'An Infrastructure Asset Pricing Bubble?'. *Preqin Blog*, 10 September 2013. Available at: <https://www.preqin.com/blog/0/7363/infrastructure-asset-pricing>  
Authers, J. (2013) 'Investors should tread carefully on infrastructure'. *Financial Times*, 4 August 2013. Available at: <https://www.ft.com/content/b9fdb232-f377-11e2-b25a-00144feabdc0>  
Jacobius, A. (2015) 'Supply-demand issue to hit infrastructure'. *Pensions&Investments*, 26 January 2015. Available at: <http://www.pionline.com/article/20150126/PRINT/301269981/supply-demand-issue-to-hit-infrastructure>
- 117** Tremlett, G. (2004) 'Conflicts at the heart of the EIB'. *The Observer* 7 March 2004. Available at: <https://www.theguardian.com/business/2004/mar/07/eu.europeanunion>  
See also:  
CEE Bankwatch Network (2004) 'Mónica Ridruejo uncensored'. *Bankwatch Mail*, Issue 21, June 2004. CEE Bankwatch Network : Prague. Available at: <http://bankwatch.org/sites/default/files/bankwatchmail21.pdf>
- 118** Tremlett, G. (2004) op. cit. 117.
- 119** European Parliament (2004), Report on the activity report for 2002 of the European Investment Bank (2004/2012. Committee on Economic and Monetary Affairs. European Parliament : Brussels. Available at: [http://bankwatch.org/documents/emacs\\_report\\_final\\_randzio\\_04\\_04.pdf](http://bankwatch.org/documents/emacs_report_final_randzio_04_04.pdf)
- 120** freedominfo.org (2004) 'EU Parliamentary Committee Rejects Criticisms of EIB'. freedominfo.org 13 April 2004. Available at: <http://www.freedominfo.org/2004/04/eu-parliamentary-committee-rejects-criticisms-of-eib/>
- 121** European Investment Bank (2011) Code of Conduct for the Members of the Board of Directors. European Investment Bank: Luxembourg. Available at: [http://www.eib.org/attachments/thematic/conductCA\\_en.pdf](http://www.eib.org/attachments/thematic/conductCA_en.pdf)
- 122** European Investment Bank (2011) op. cit. 121.
- 123** European Ombudsman (2016) 'Letter from the Ombudsman to the President of the EIB on conflict of interest issues - Follow-up to her letter on proactive transparency'. European Ombudsman, 22 July 2016. Available at: <http://www.ombudsman.europa.eu/en/resources/otherdocument.faces/en/69557/html.bookmark>
- 124** European Ombudsman (2016) op. cit. 123.
- 125** Thompson, D. F. (1993) op. cit. 53.
- 126** European Investment Bank (2016) op. cit. 121.  
The Code of Conduct for EFSI members states: "A conflict of interest exists if an Expert . . . is in any other situation that compromises his/her ability to perform his/her duties impartially and objectively or that could cast doubt on his/her ability to perform his/her duties impartially and objectively or that could reasonably appear to do so in the eyes of an external third party". Such wording, however, is not included in the Code of Conduct for Board Members.
- 127** European Investment Bank (2016) op. cit. 121.
- 128** European Investment Bank (EIB) (2016) Evaluation of the functioning of the European Fund for Strategic Investments (EFSI). EIB Operations Evaluation: Luxembourg. Available at: [http://www.eib.org/attachments/ev/ev\\_evaluation\\_efsi\\_en.pdf](http://www.eib.org/attachments/ev/ev_evaluation_efsi_en.pdf) or <http://www.eib.org/infocentre/publications/all/evaluation-of-the-functioning-of-the-efsi.htm>
- 129** European Investment Bank (2016) op. cit. 121.
- 130** The declarations of interest are available by clicking on the names of the investment committee members at <http://www.eib.org/efsi/governance/efsi-investment-committee/index.htm>
- 131** Three members of the investment committee have worked for companies that received EIB support. The interest in the companies was declared, but the EIB support was not, nor was such a declaration required. As reported by Counter Balance: "Gillian Day has held different positions at the Royal Bank of Scotland (RBS), including the position of Managing Director until February 2015. Over the last decade, the EIB has awarded numerous loans to RBS, including when

- Gillian Day held senior positions at the bank. Thierry Deau is the founder CEO of Meridiam SAS (Paris, France), a global investor and asset manager specialising in public and community infrastructure. This investment fund has received support from the EIB in the past, in 2009 and 2015. Dalia Dubovske was project manager for Lietuvos Energija, a Lithuanian energy company. In 2015 the EIB financed the Vilnius CHP Project. In 2015 the EIB financed the Vilnius CHP Project for the development of two combined heat and power plants constructed by Lietuvos Energija.”
- See:  
Counter Balance (2016) What’s new in the investment plan for Europe: Business as usual or genuine innovation? Counter Balance: Brussels. Available at: <http://www.counter-balance.org/wp-content/uploads/2016/07/What%E2%80%99s-new-in-the-Investment-Plan-for-Europe.pdf>
- 132** Counter Balance (2016) op. cit. 131.
- 133** For further discussion, see:  
Bratsis, P. (2003) op. cit. 2.
- 134** Alfaro, J. L. and Vouche, D. (2010) ‘EIB Financing for Port Projects in Africa’. IFC Ports PPP Seminar, April 13th 2010. European Investment Bank: Luxembourg. Available at: [http://www.icafrica.org/fileadmin/documents/ICA\\_sponsored\\_events/IFC\\_PPP\\_Ports\\_Cairo\\_2010/EIB%20Financing%20of%20Port%20Projects%20in%20Africa%20DVouche.pdf](http://www.icafrica.org/fileadmin/documents/ICA_sponsored_events/IFC_PPP_Ports_Cairo_2010/EIB%20Financing%20of%20Port%20Projects%20in%20Africa%20DVouche.pdf)
- 135** European Commission (2005) ‘First FEMIP bank loan without sovereign guarantee in Morocco’. European Commission : Brussels. Available at: [http://europa.eu/rapid/press-release\\_BEI-05-87\\_en.htm?locale=en](http://europa.eu/rapid/press-release_BEI-05-87_en.htm?locale=en)
- 136** Mr de Fontaine Vive was sent a copy of the copy in advance of publication for comment and a right of reply. No response was received.
- 137** Whyte, D. (2016) op. cit. 65.  
See also:  
Ellis, D. and Whyte, D. (2016) ‘Redefining corruption: Public attitudes to the relationship between government and business’. Centre for Crime and Justice Studies: Briefing 15, May 2016. <https://www.crimeandjustice.org.uk/sites/crimeandjustice.org.uk/files/Redefining%20corruption%20briefing,%20May%202016.pdf>
- 138** Monaghan, A. (2016) ‘Juncker questions Barroso’s decision to join Goldman Sachs’. The Guardian, 15 September 2016. Available at: <https://www.theguardian.com/business/2016/sep/15/jean-claude-juncker-jose-manuel-barroso-decision-to-join-goldman-sachs>  
For another recent controversy, see:  
Descamps, L. (2016) ‘Après Barroso chez Goldman Sachs, une commissaire de l’UE rejoint Volkswagen’. leJDD, 30 September 2016. Available at: <http://www.lejdd.fr/International/UE/L-ex-commissaire-europeenne-au-Climat-rejoint-l-entreprise-Volkswagen-813571>
- 139** For analysis of revolving doors at the World Bank, see: Cray, C. (2000) ‘The World Bank’s Revolving Door: Share Program Exchanges World Bank and Corporate Employees’. Multinational Monitor, June 2000: Vol. 21, No.6. Available at: <http://www.multinationalmonitor.org/mm2000/062000/cray.html>
- 140** Whyte, D. (2015) op. cit. 32.
- 141** Wilks, S. (2015) The Revolving Door and the Corporate Colonisation of UK Politics. High Pay Centre: London. Available at [http://highpaycentre.org/files/FINAL\\_REVOLVING\\_DOOR.pdf](http://highpaycentre.org/files/FINAL_REVOLVING_DOOR.pdf)
- 142** US Secretary of Treasury, Robert Rubin, as reported in: PBS (2009) ‘Interview: Michael Greenberger’. Frontline: 20 October 2009. Available at: <http://www.pbs.org/wgbh/pages/frontline/warning/interviews/greenberger.html>  
For further discussion, see also:  
Seldes, B. (2014) ‘The Shifting Landscape of Corruption in the United States: legal Corruption, Systemic Corruption or a New Norm?’ in Mendilow, J. and Peleg, I. (eds) (2014) Corruption in the Contemporary World: Theory, Practice and Hotspots. Lexington Books. 2014.
- 143** The Corner House and Oloko, D.(2010) ‘Written Evidence’ in International Development Committee (2010) Department for International Development Annual Report & Resource Accounts. House of Commons: London. Available at: <http://www.publications.parliament.uk/pa/cm201011/cmselect/cmintdev/605/605vw08.htm>
- 144** In 2009, CDC Group were sent credible allegations of alleged money laundering by the private equity firm Emerging Capital Partners (ECP), also backed by EIB. The allegations made by Nigerian anti-corruption campaigner Dotun Oloko were initially sent to the UK Department for International Development, which passed them to CDC which in turn passed them (along with Mr Oloko’s identity) to ECP. Although some DfID staff recommended that the allegations made against ECP be referred to the police, this was never done. For further details, see:  
Parliamentary and Health Service Ombudsman (2014) op. cit. 108.
- 145** Sandoval-Ballesteros, I. E. (2013) op. cit. 29.
- 146** Sandoval-Ballesteros, I. E. (2013) op. cit. 29.
- 147** Falana, F. (2016) ‘The Limit of the War Against Corruption in Nigeria’. Public lecture delivered at a seminar convened by the Olabisi Onabanjo University branch of the Academic Staff Union of Universities held at Ago Iwoye, Ogun State , 31 March 2016.



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- 148** Fleming, P. and Zyglidopoulos, S. C. (2009) *Charting Corporate Corruption: Agency, Structure and Escalation*. Edward Elgar: Cheltenham.

Girling, J. (1997) *Corruption, Capitalism and Democracy*.

- 149** Routledge: London and New York. Available at: [http://www.untag-smd.ac.id/files/Perpustakaan\\_Digital\\_1/CORRUPTION%20Corruption,%20Capitalism%20and%20Democracy.pdf](http://www.untag-smd.ac.id/files/Perpustakaan_Digital_1/CORRUPTION%20Corruption,%20Capitalism%20and%20Democracy.pdf)





