Corruption in Russia

SUMMARY

Corruption in Russia is deeply entrenched and permeates all levels of Russian society. It causes significant financial loss to the Russian economy in terms of gross domestic product and considerably lowers the country's attractiveness as a foreign direct investment destination. Despite a recent positive trend, as evidenced by various international indicators measuring the perception of corruption, Russia continues to lag far behind its G8 and G20 peers in the rankings.

The Russian leadership's decision to step up its efforts to curb endemic corruption in Russia was prompted by its ambition to facilitate Russia's further integration into the global economy, by obligations under international anti-corruption instruments and by commitments made within the G8 and G20.

In 2008, then-President Dmitri Medvedev signed an anti-corruption framework into law, and this has been repeatedly broadened and tightened. However, the fight against corruption has so far not made much headway. Law enforcement has remained ineffective and selective, allowing for impunity, notably among high-ranking officials, and even for politically motivated trials against anti-corruption whistle-blowers such as the prominent lawyers Sergei Magnitsky and Alexei Navalny.

In connection with the trials initiated against the latter, the European Parliament expressed its deepest concern and recommended that the Council urge the Russian authorities to put an end to widespread corruption and to reform the judiciary in line with international standards.

In this briefing:
- The scale of corruption and the drive to fight it in a global context
- The international anti-corruption framework
- Russia's anti-corruption framework
- Anti-corruption law enforcement in Russia
- European Parliament position
- Stakeholders' views
- Further reading
The scale of corruption and the drive to fight it in a global context

Individual, business and political corruption is deeply ingrained in Russian society.\textsuperscript{1} It causes significant financial loss to the Russian economy in terms of gross domestic product (GDP)\textsuperscript{2} and forces foreign investors to make difficult choices between the need to operate in this environment and to comply with the law (both in Russia and at home).\textsuperscript{3}

Since 2008 the Russian Government has adopted a wide range of anti-corruption measures. These measures have primarily been aimed at aligning Russian legislation with international anti-corruption standards.

They have also reflected the anti-corruption momentum generated within the G8 (2003 Action Plan, 2006 Action Plan, Fighting High-level Corruption and, most recently, the 2013 commitment to raise global transparency standards notably in extractive industries in the fight against corruption) and the G20 (2010 Anti-Corruption Action Plan/ G20 Anti-corruption Working Group Progress Report 2013).

Finally, they reveal the Russian Government’s interest in reputational change, as it has concerns about declining international competitiveness and the attractiveness of the Russian economy for foreign investors, due to rampant corruption adversely affecting the business climate in Russia.\textsuperscript{4}

At stake are Russia’s economic growth prospects and its further integration into the global economy, as well as other key aspects of a modern society such as the rule of law and human rights. Systemic corruption in Russia also has wider implications for Russia’s trading partners such as the European Union, as corrupt business practices along with their distorting effects on competition are exported by Russian companies operating on global markets.\textsuperscript{5} Furthermore, a significant share of the financial resources obtained through corrupt practices is known to be exported and introduced into international capital flows.\textsuperscript{6}

The international anti-corruption framework

International legal instruments against corruption have been developed by international and regional organisations such as the United Nations, the Organisation for Economic Cooperation and Development (OECD) and the Council of Europe.

United Nations

The United Nations Convention Against Corruption (UNCAC), adopted through UNGA resolution 58/4 of 31 October 2003, is the only legally binding universal anti-corruption instrument. It entered into force in 2005. The Convention's far-reaching scope is considered a unique tool to tackle a global problem. The UNCAC regulates five main
areas: prevention, criminalisation and law-enforcement measures, international cooperation, asset recovery, and technical assistance and information exchange. It also covers many different forms of corruption, such as trading in influence, abuse of power, as well as several acts of corruption in the private sector.

According to the terms of reference of the Mechanism for the Review of Implementation of the UNCAC adopted by the Conference of States Parties to the UNCAC in November 2009, both governmental self-assessment of the convention's implementation and an assessment carried out by an appropriate NGO are required.

A 2013 Transparency International review of the implementation of selected articles of the UNCAC in Russia concluded that the Russian legal framework is partially compliant with the UNCAC, but that some provisions, such as Article 20 on illicit enrichment, Article 26 on the liability of legal persons and Article 33 on the protection of whistle-blowers, still lack implementation.

Council of Europe
Russia is a party to the 1999 Council of Europe Criminal Law Convention on Corruption, which it signed in 1999 and ratified in 2006. However, the country has not signed the 1999 Council of Europe Civil Law Convention on Corruption. On 7 March 2009, Russia signed the Additional Protocol to the Criminal Law Convention on Corruption, but has not yet ratified it. Russia is also a member of the Council of Europe Group of States against Corruption (GRECO) which monitors compliance of states parties with the convention. In its 2012 Evaluation Report, GRECO recommends to Russia, among others, to ensure that bribery of all judges and high-ranking officials of international courts is unambiguously criminalised, to broaden the scope of the bribery provisions in the Criminal Code inter alia to cover non-material advantages, to criminalise trading in influence and to exclude misuse of the special defence of effective regret.

Organisation for Economic Cooperation and Development (OECD)
On 17 April 2012, Russia became the 39th Party to the 1997 Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention) and must undergo the Working Group on Bribery's peer review monitoring system. In March 2012 the WG adopted its Phase 1 evaluation. The Phase 2 evaluation of October 2013 followed up on areas for improvement.

World Trade Organisation (WTO)
In the framework of Russia's WTO accession in August 2012, Russia committed itself to becoming a party to the 1994 WTO Agreement on Government Procurement, and as a first step was granted observer status in May 2013.

Russia's anti-corruption framework
In December 2008, then-President Medvedev signed into law a general anti-corruption framework which entered into force in January 2009. It created the legal basis for a number of amendments to the Russian civil, criminal and administrative laws regulating civil and criminal liability of natural persons and legal entities for different forms of
Corruption in Russia

corruption-related crimes. These changes were partly required to incorporate the provisions of the UNCAC and the Council of Europe's Criminal Law Convention into Russian law.

**Federal Law No 273-FZ on Counteraction to Corruption** is the centre-piece of this framework. It sets out in 14 articles the general principles underlying the Government’s anti-corruption policy and the different state bodies' action, disclosure obligations of government and municipal employees (Article 8) and their duties to report attempts/incidences of corruption (Article 9) as well as the liability of natural persons (Article 13) and of legal entities (Article 14) for corruption offences.

<table>
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<th>Article 1 defines corruption as follows:</th>
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<td>a) abuse of public office, giving or receiving bribes, abuse of power, commercial graft or other illegitimate use by an individual of his/her official status against legal interests of society and the State to receive private gain in the form of money, valuables, other property or services of a monetary nature, other proprietary rights for himself/herself or third persons, or unlawful provision of such benefit to such a person or other individuals;</td>
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<td>b) committing acts indicated in paragraph a) on behalf or for the benefit of a legal entity.</td>
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**Criminal law**

The Criminal Code **criminalises** amongst other acts commercial bribery in a profit-making legal entity (Article 204), bribe-taking involving an official, a foreign official or an official of a public international organisation (Article 290), bribe-giving (Article 291) and facilitating bribery involving an intermediary (Article 291.1).

**Administrative law**

Legal entities cannot be held criminally liable under the Criminal Code, but they can be subject to administrative liability. **Article 19.28** of the Administrative Offences Code prohibits the provision of an undue advantage to an official for acts or omissions.

**Civil law**

**Article 575** of the Civil Code contains limitations on "permissible" donations/gifts to a public official, which may not exceed what is considered a "common gift".

**Recent legal measures adopted or proposed**

These measures are designed to enhance financial transparency in the public sector with a view to limiting the scope for corruption, to broaden the legal basis for asset recovery and to involve legal entities in preventive anti-corruption schemes:

- legal acts aimed at increasing the transparency of national public officials' finances in Russia (**Federal Law No 230-FZ**) and banning **high-ranking public officials** from holding property – bank accounts, bonds and shares, except real estate – outside Russia (**Federal Law No 79-FZ**), as well as at limiting their opportunities to give/take bribes in Russia by introducing a **rotation scheme** in the civil service;
- **proposal** by Alexander Bastrykin, the head of Russia's Investigative Committee, to create a legal basis for **confiscating** from relatives of a person convicted of corruption of property that was acquired illegally and handed over to them, regardless of whether the recipient was aware or not of the criminal origin of such property. Under **Article 104.1** of the Criminal Code, such property can only be confiscated if its recipient was aware or should logically have been aware of its illegal acquisition;
- legal acts designed to oblige **legal entities** to engage more actively in preventive anti-corruption measures (**Art. 13.3 amending Federal Law No 273-FZ**), and more broadly
to enhance transparency in public procurement procedures (Federal Law No 44-FZ);

Anti-corruption law enforcement in Russia

Anti-corruption law enforcement has been widely criticised by the Russian Government as well as other stakeholders for its ineffectiveness. It has also been questioned for its selectiveness, allowing for impunity and for politically motivated court decisions against the regime’s opponents, notably anti-corruption whistle-blowers such as the late Sergei Magnitsky and Alexei Navalny.

Legal gaps and broad leeway for judges

A 2013 Transparency International review claims that impunity is partly linked to the considerable number of public officials protected by immunity under Article 447 of the Code of Criminal Procedure. The report asserts that the enforcement of Articles 290 and 291 Criminal Code on passive and active bribery has been ineffective, as the penalties scaled according to the value of the bribe do not act as a deterrent. They allow the judge to choose from several alternative punishments, and to opt for a fine coupled with disqualification to hold certain positions for several years instead of imposing a prison sentence and a lower fine. In addition, lack of enforcement of payment, particularly of large fines is a serious issue. Confiscation of assets is fairly rare.

Selected data on law enforcement in practice

In 2012, the Russian police investigated 45 000 corruption crimes. Statistics provided by Rosstat show that 9 800 bribery crimes were registered in 2012. This compares with 12 000 in 2010 and 11 000 in 2011. Supreme Court data on court proceedings initiated on corruption charges in 2012 reveal that a total of 6 014 individuals were convicted of corruption, 87 individuals were acquitted and 298 legal proceedings were dismissed. The total includes among others 1 358 cases of bribe-taking (Art. 290 CC), 2 087 cases of bribe-giving (Art. 291 CC), 63 cases of mediation in bribery (Art. 291(1) CC) and only six cases of private commercial bribery (Art. 204 CC).

Figure 1 shows the breakdown of all bribe-taking cases by six levels of seriousness set out in Article 290 CC. Most individuals (760) were convicted of having taken a bribe below 25 000 roubles (about €530) – first column. 368 individuals had accepted a considerable bribe (beyond 25 000 roubles) for carrying out an illegal action – third column. Many fewer individuals (129) were convicted of having accepted a considerable bribe not involving an illegal action – second column, and 41 government post holders/heads of local self-government bodies accepted a considerable bribe to carry out an illegal action – fourth column. Finally, 126 individuals were convicted of either conspiracy or large-scale bribery (more than 150 000 roubles (about €3 180)) – fifth column – and 11 individuals of either conspiracy or especially large-scale bribery (over one million roubles (about €21 200)) – sixth column. Bribe-giving cases (Art. 291 CC) show a very similar breakdown. Statistics for

![Figure 1 - Breakdown of bribe-taking convictions in 2012 by levels of seriousness (Article 290 CC, paragraphs 1-6)](image-url)

Data source: Russian Supreme Court, 2013.
Articles 290, 291 and 291(1) which display the bribe amount involved in the different forms of bribery and the various levels of seriousness suggest that a large majority of court cases concerned petty crimes.

Figure 2 shows that most bribery cases involved bribes ranging from 1 000 to 10 000 roubles (roughly €21 to €212), followed by bribes below 500 roubles and bribes between 500 and 1 000 roubles. The recorded cases involving larger bribes such as one million roubles (about €21 200) and beyond are extremely low. This must be seen against a notable rise in the average size of individual bribes from 61 000 roubles (about €1 293) in 2010 to 300 000 roubles (about €6 360) in 2011. Of the 6 014 individuals convicted of corruption-related crimes, only 506 individuals were sentenced to a prison term ranging from less than one year to up to ten years.

Figure 3 shows the breakdown of their prison terms by length. The majority of those convicted, 3 990 individuals, received a fine, 155 of them as an additional punishment; 1 759 individuals had their prison sentence suspended on parole; and 293 individuals were disqualified from holding certain offices or from engaging in certain economic activities, 230 of them as an additional punishment.

A tougher approach towards high-ranking officials?
Recent data for 2013 suggest that the law enforcement agencies' focus on low-level officials has been broadened to include high-ranking officials too. 2012 and 2013 saw intensive media coverage of a series of high-profile corruption cases involving senior officials, among others former Agriculture Minister Yelena Skrynnik; former Defence Minister Anatoly Serdyukov; Yelena Kotova, a former member of the board of directors of the European Bank for Reconstruction and Development (EBRD); and Akhmed Bilalov, the former deputy president of the Russian Olympic Committee. However, former Defence Minister Serdyukov was only charged with negligence while allegedly having caused damage to the state worth 56 million roubles (€1 179 920). Former Agriculture Minister Skrynnik was heard as a witness but was not charged in a case which reportedly cost the Russian state 600 million roubles (€12 642 000). Akhmed Bilalov, for the time being, has escaped charges first by undergoing medical treatment in Germany for alleged mercury poisoning and then by settling in the United Kingdom. The trial

![Figure 2 - Bribe amount (in roubles) involved in bribery court cases in 2012](image)

![Figure 3 - Breakdown of prison terms by length in bribery cases in 2012](image)
against Yelena Kotova for abuse of office is ongoing. She was remanded to a psychiatric hospital, and claims that her case is politically motivated.

Whistle-blowers spearheading the civil society platform against corruption
Anti-corruption whistle-blowers on the other hand run a considerable risk of facing difficulties for their public criticism, as witnessed by labour union leader Lyudmila Popkova who was exposed to what is commonly known as "punitive psychiatry", and Yevgeny Dushko, the late mayor of Sergiev Posad, who publicly accused several local officials and businessmen of corruption only a few weeks before he was murdered. His murder has remained unsolved. Other prominent whistle-blowers include the late Sergei Magnitsky, Alexei Navalny and William Browder. Despite the lack of protection for whistle-blowers under Russian anti-corruption law, there is an emerging civil society anti-corruption platform, which has gained increasing prominence in Russia.

European Parliament position
In its resolution of 23 October 2012 with recommendations to the Council on establishing common visa restrictions for Russian officials involved in the Sergei Magnitsky case, the European Parliament stated that the case of Sergei Magnitsky was only the most prominent and well-documented case of abuse of powers by Russian law-enforcement authorities in blatant violation of the rule of law. It stressed that a large number of further court cases are known in which the pretext of economic crimes and alleged corruption have been systematically used to eliminate business competitors or political rivals. It therefore recommended to the Council to urge the Russian authorities to put an end to widespread corruption, and to bring the judiciary into line with international standards, by creating an independent, just and transparent system that cannot be misused for political reasons.

In its resolution of 13 June 2013 on the rule of law in Russia, Parliament expressed its deepest concern at the allegedly politically motivated prosecution in Russia of the anti-corruption campaigner and prominent lawyer Alexei Navalny on charges which he claimed amounted to an attempt to punish him for having exposed large-scale corruption within the highest ranks of the Russian state.

Stakeholders' views
Julia Pettengill, a research fellow of the London-based Henry Jackson Society, argues that anti-corruption reforms in Russia have not truly challenged the "culture of corruption" and impunity, as they have failed to introduce political competition, to ensure the independence of the judiciary and to break the Government's monopoly on the media. She suggests that corruption in Russia would be best addressed, and pro-democracy movements supported, by legislation similar to the US Sergei Magnitsky Rule of Law Accountability Act. Ben Judah, of the European Council on Foreign Relations, regrets the EU's failure to act on anti-corruption practices and visa bans against Russian officials linked to the death of Sergei Magnitsky. He suggests setting up an EU-Russia anti-corruption dialogue and working harder to prevent proceeds of corruption from being invested in the EU.

Further reading
Endnotes

1 Bribes are part of everyday life and particularly common in the education and health sectors, as well as when dealing with the traffic police. According to the Global Corruption Barometer 2013, the most corruption-prone public institutions on a scale from 1 to 5, with 5 reflecting the highest level of corruption, are public officials/civil servants (4.6), the police (4.5), the judiciary (4.4), Parliament (4.3) and political parties (4.2).

2 Calculations of the financial loss in terms of GDP caused by corruption differ significantly. They vary from Rosstat’s 2011 estimates of 3.5 to 7% of GDP, up to independent experts’ claims that the loss amounted to 25% of Russia’s GDP. The National Anti-Corruption Committee, a Russian non-governmental organisation (NGO), estimates that corruption amounts to US$300 billion a year. Sectors of the Russian economy particularly vulnerable to large-scale corruption are the military, the utilities sector and construction and infrastructure projects involving public procurement. The construction work for the 2014 Sochi Winter Olympics drastically exposes the extent to which corruption can drive up prices.

3 In the past few years, several subsidiaries of US companies became the target of US anti-corruption law enforcement in Russia under the 1977 US Foreign Corrupt Practices Act (FCPA): in 2010, the US-based Panalpina and its parent Panalpina World Transport Ltd., and in 2012, the Russian subsidiaries of Pfizer and Eli Lilly & Co (“Lilly Russia”). Following two high-profile cases involving international companies working in Russia, Daimler and Hewlett-Packard, which became public not as a result of moves by the Russian authorities, but after US prosecutors intervened, more than 50, mostly German, foreign firms in 2010 pledged in a voluntary agreement to pay no bribes in Russia.

4 A 2013 World Economic Forum report on Russia underscores that corruption considerably limits the Russian economy’s growth potential. Corruption lowers Russia’s attractiveness as a destination for foreign direct investment (FDI), which can be instrumental in modernising the country and in securing sustainable economic growth. According to an Ernst & Young 2013 attractiveness survey on Russia, only 6% of potential foreign investors would consider embarking on an FDI project in Russia, while 74% remain cautious about investing in Russia, as they share “a common perception of pervasive corruption, lack of openness and the inefficient rule of law” which dampens their FDI interest. Some 44% of foreign investors already operating in Russia envisage increasing their investment, while 41% of them do not. In the World Bank’s Doing Business 2013 report, Russia ranks at 112 (out of 185 countries) eight places up from its 2012 ranking. In 2012, the Russian Government set the target of climbing up the World Bank’s Doing Business Index to 50 by 2015, and to 20 by 2018.

5 In the 2011 Bribe Payers Index, which ranks the world’s largest economies according to the likelihood of their companies paying bribes abroad, Russia is the worst performer.

6 According to estimates published by the Central Bank of Russia, about US$ 54.6 billion of private capital left Russia in 2012, following US$ 81.4 billion in 2011 and US$ 30.8 billion in 2010.

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