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Hearing:

**CORRUPTION: A DANGER TO DEMOCRACY IN EUROPE  
AND EURASIA**

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TESTIMONY

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Mr. Chairman, thank you for the invitation to come and testify before you today. It is an honor to be here before this Subcommittee of the House of Representatives of the U.S. Congress. I am here to offer my personal views on the current issues regarding corruption as well as to assess the progress made in combatting this scourge.

**Introduction:**

The Oxford dictionary defines corruption as “the perversion or destruction of integrity in the discharge of public duties by bribery and favor”.

No country in the world is immune at some level from such bad practices. There are different degrees of corruption from small scale, petty, through bigger all the way to systemic corruption capturing a whole state and society.

The main bulwark to broader, encompassing forms of corruption is democracy. Functioning democratic institutions based on the rule of law within a framework of division of powers between the legislative, executive and judiciary, are key to upholding public integrity, responsible and accountable governance and curtailing the pursuit of all forms of favoritism, nepotism, clientelism, bribery, embezzlement, fraud in short of abuse of public office, but also abuse in the private sector..

Liberal democratic societies based on the rule of law have known egregious examples of corruption, but in the majority of cases these have been uncovered and prosecuted, thanks to the existence of norms, laws, rules and regulations that are successfully implemented and enforced.

It is important to note that there is also a significant international, cross-border dimension to corruption in the form of tax evasion through off-shore sites. The latest example of this was revealed in the so-called Panama Papers. Money laundering through a variety of mechanisms and laws that allow the easy registration, setting of “tax-friendly” companies, is often ubiquitous in some countries. Those holding money, cash, acquired through corrupt, fraudulent practices will try and hide it and or “launder” it so as to then inject into legal activities.

Banking secrecy, shielding people who avoid tax payments in their own countries, has been addressed more vigorously in recent years. For example, Switzerland over the past years has made agreements to share information on those holding assets in its banks. Switzerland's banks housed around \$2.1 trillion, or 27%, of offshore wealth, according to the Boston Consulting Group in 2012.

International auditing firms have a great responsibility as well given that they are present in all countries and can be the ones who can expose fraudulent activities and assess the business environment and serve as warning mechanisms to potential investors but also thus serve the public good.

All of these dimensions need to be taken into consideration when diagnosing the causes of the disease of corruption affecting the polity and body politic of the countries of the post-communist space and ways to combat it. The correct diagnosis of the ill is crucial for finding the impactful remedies to combat this blight.

### **Tracking corruption and proposing remedies**

At international and domestic levels there are a number of initiatives that help follow the levels of corruption in any given state. The *United Nations Convention against Corruption* (UNCAC) was signed in 2003. This was the first legally binding international anti-corruption instrument. International financial institutions such as the *International Monetary Fund* and the *World Bank*, the *European Bank for Reconstruction and Development*, *European Investment Bank*, to name a few, have a variety of tools and instruments by which they gauge for example the state capture compared to state autonomy, and who through their support and investment mechanisms condition and enforce good governance practices.

*Transparency International* one of the prime organizations tracking levels of corruptions publishes an annual Corruption Perceptions Index since 1995.

The chair of Transparency International José Ugaz, has said: Countries at the bottom [of the Corruption Perception Index] need to adopt radical anti-corruption measures in favor of their people. Countries at the top of the index should make sure they don't export corrupt practices to underdeveloped countries." There are always lurking temptations in major companies, multilateral or other from established democracies to seek "short-cuts", through bribes and otherwise to acquire contracts in developing countries – the responsibility to fight corruption is paramount at every level and in all quarters. That is why for example the United States' Foreign Corrupt Practices Act of 1977 was a harbinger of ways to address the issue of corruption from the standpoint of developed nations.

The *United Nations Development Program's* 16 Sustainable Development Goals offer a combination of activities that create conditions in a polity for strengthening democratic institutions and bettering the socio-economic environment, which can lead to diminishing corruption

An important initiative the *European Research Center for Anti-Corruption and State-Building* based in Berlin has made important contributions to among other "develop a second generation of governance indicators to allow better monitoring of anti-corruption trends (time-sensitive) and the impact of policies (change-sensitive)", but equally importantly takes a necessary holistic approach as to how to confront and combat corruption.

The *Kleptocracy Initiative* is another excellent example of tracking and informing the public of corrupt practices worldwide.

## **Eastern Europe, South Eastern Europe and the Black Sea Region:**

### **Prologue: the old regime and the revolution**

Corruption is a major threat to democracy as it undermines democratic institutions and their credibility.

States and societies that were communist until the fall of the Berlin wall or shortly thereafter have undergone or are in various phases of democratic transition, democratic consolidation or, regrettably of democratic regression, in which democratic institutions are frail and where implementation of existing, even sometimes exemplary anti-corruption laws, is lacking. Corruption takes on forms that can and often do lead to state capture by oligarchic groups linked to political parties and factions.

Many are the reasons for this. It was clear from the outset, after 1989, if not for all, that democratic take a long time and that they do not follow a unilinear path. The shining façade of democracy does not appear suddenly or automatically as the old façade of totalitarianism or authoritarianism crumbles. Alexis de Tocqueville in his seminal work *The Old Regime and the Revolution* two

centuries ago underscored how the old authoritarian habits and views live on as a society tries to change, and often are able to rear their ugly head. Ralf Dahrendorf in his book published in 1990 *Reflections on the Revolution in Europe* wrote: it takes six months to create new political institutions; to write a constitution and electoral laws. “It takes six months to create new political institutions; to write a constitution and electoral laws. It may take six years to create a half-viable economy. It will probably take 60 years to create a civil society”. Maybe this is an exaggeration but it emphasizes that creating the norms and behaviors of a democratic institutional culture require time. This is of course not an excuse or justification for the hard work of change and struggle to consolidate democratic institutions and the rule of law.

It is important to underscore that the task is one that foremost behooves the citizens and elected officials of the countries in question. They are the ones who bear the burden of responsibility to create within their society more equitable conditions, laws and democratic institutions leading to stability, peace and prosperity. But in the spirit of the modern principle of solidarity it is also important that support is given to those who are in need and striving to better their condition.

In the case of the countries in question the transatlantic alliance, the United States, Canada and the European Union have in these past 25 years, continue and in future should continue to support these countries overcome their legacies of the past, their old regimes. Especially knowing that there are no immediate, quick-fixes, but that these are mid to long-term processes.

Key to the success is judicial reform and the creation of an independent judiciary. This is the backbone of the rule of law in a democracy and the institution by which citizens feel the fairness of the system through the dispensation of justice, due process where everyone gets a fair trial and where no one is above or outside of the reach of law.

### **Corruption and ways to stifle and overcome it in Eastern Europe: The Black Sea Region**

Each country is a story unto itself.

The entry of Romania and Bulgaria into the European Union in 2007 and the “big bang enlargement” of the EU in 2004, was, and still is criticized as a premature step, the reasoning being that they were not sufficiently reformed, and not further along the path of strengthening their democratic institutions, with still significant levels of corruption. This may be the case, but it is important to raise this case as an example of the historical and geopolitical importance of the decision to incorporate these two countries even though they effectively were not up to par with the countries that entered in 2004 (Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, Slovenia and Cyprus and Malta).

They have in the meantime during these 9 years made significant advances, Romania in particular. Romania developed a successful anti-corruption institution that showed the way forward not only for the region but for many other countries. As is always the case, leadership, even statesmanship is

essential in moving things forward. A very important role was played by Minister of Justice Monica Macovei (2004-2007). She courageously spearheaded an effort to move against all the inertias of the old regime and against vested interests and showed that things could be changed. This later produced the creation of Romania's National Anticorruption Directorate (DNA), the agency responsible for indicting more than 1000 public officials in a single year. The DNA is being heralded for its robust approach to combatting corruption at all levels. This has been welcomed by the public who see that public malfeasance and mismanagement is being tackled and that the country is slowly coming to grips with its problems.

Things are different and have not moved at the same pace as in Romania, although they entered the EU at the same time. Bulgaria on Transparency International's latest Corruption Perceptions Index among the 28 member states of the EU has the highest perceived corruption. Romania is third worst, just ahead of Italy.

Bulgaria has been unable to tackle the nexus of oligarchs and politicians. Hristo Ivanov, who resigned as Bulgaria's justice minister last December has said "corruption in Bulgaria is not merely a matter of isolated individual actions, but of well-organized networks echeloned in the economic, political, media and judicial sectors,"

Corruption is a wide spread and deeply rooted phenomenon in the Black Sea region. In this region, corruption is a threat not only to democracy but to the states themselves, as Moldova and Ukraine stand proof. In these countries corruption has reached the maximum level, that of weakening the state and rendering its institutions dysfunctional. In a region that is eyed by Russia corruption is a high vulnerability, as it is used by this to make attempts at destabilization, influence and ultimately at control.

Russia uses corruption to infiltrate not only the political system, but especially a country's economy. Un-transparent privatization of major economic objectives allowed/allows Russia to infiltrate its capital into the economy, or to take control of enterprises it sees as competitors, and weaken them. Yet the main drive of corruption in these countries is not Russia but local elites, most of them with direct ties or the same people from the former (communist) regime.

In approaching the issue of corruption as has been said the example of Romania stands out. Four elements aligned a few years ago to embark the country on a serious anti-corruption path: external pressure, internal political will, great investigative journalism and pressure from society at large, and civil society in particular. There are other models of anti-corruption efforts, which rely less on external pressure, but for Europe's east this is an important component.

In the case of Romania, this pressure came from the EU, and other political measures, conditionality and penalties, but also, maybe more decisively, from the US, whose interest in having a reliable partner is mainly connected to its investments in security and the major role Romania plays in this.

In Ukraine the recent positive developments with the application of E-Government procedures in the field of procurement have shown how important transparency and accountability. This has saved

significant funds for the public purse. Also the requirement that public officials declare their assets a month ago has caused huge interest and bewilderment (by the wealth that some public officials have amassed).

Of course we the advances that Ukraine is making there is still systemic inertia and what some call “imitation” of reforms. It is a battle royal that is ongoing and where the commitment and engagement of those forces in society and state that are for reform are fighting a relentless struggle to create a democratic political culture.

Again the importance of the transatlantic joint effort is clearly visible in supporting democratic reform efforts.

The German Marshall Fund of the United States (GMF) works on anti-corruption in the Black Sea region and focuses on the following:

- Encouraging and promoting a strong and professional investigative journalism. GMF focuses not as much on building the skills for these journalists, but on creating contacts between them so they can not only exchange and verify information, but feel better protected as part of a larger network. RISE Project is an investigative group, working in both Romania and Moldova, with an eye on Ukraine.
- Supporting civil society in its efforts to advocate and support anti-corruption activities. The role of civil society is very important in advocating for the right legal framework that not only punishes, but also prevents corruption, and for the right institutions that implement these laws (judicial system, or a dedicated part of it). GMF’s Black Sea Trust for Regional Cooperation (BST) has supported advocacy efforts in Ukraine, Georgia and Moldova and exchanges of experience between these groups and their Romanian counterparts. Reform Package in Ukraine is a coalition of NGOs working on anti-corruption.
- Supporting the magistrates in carrying out their anticorruption responsibilities. GMF funded projects that trained these magistrates in Moldova, Ukraine and Georgia, and allowed for exchanges of experience between these and their Romanian counterparts (organized study tours of these people to Romania). The Expert Forum is the lead organization on this in Romania.
- Keeping anti-corruption on the agenda of these countries’ international partners, as the main conditionality for further assistance. Both through grants and policy work – events, meetings with officials, study tours. One of the main messages of this effort is that a good legal framework, albeit essential, is not sufficient to ensure the success of anti-corruption efforts. As a matter of fact, passing the right laws is the easiest thing to do, and many countries in the region do have excellent laws, in general, and on anti-corruption in particular. Enforcing their provisions is what the international community needs to focus on.
- Ensuring transparency of both political and economic governance. Lack of transparency is the main condition for corruption, so ensuring transparent processes is paramount to eliminating it. Again, not only laws and regulations are important (all countries in the region have some version of the Sunshine law), but their implementation. BST supports efforts to

both pass and implement legal regulations, but also to monitor the activity of governments in all countries in the region. Fact-check in Georgia, implemented by the NGO GRASS is probably the best example, but so is the activity of Institute for Public Policy in Romania (monitoring of Parliament). One thing of major importance is privatization of major economic objectives, which journalists, civil society and international partners would need to focus on. Romania is now trying to render more transparency to these processes (perhaps a bit too late), as it has come to the realization that Russian capital has infiltrated through this process, using it to weaken certain enterprises that were in competition with the Russian ones.

### **The Balkans and the work of GMF's The Balkan Trust for Democracy (BTD) on anti-corruption**

Wide-spread corruption is one of most significant problems for citizens of the region and an impediment to the rule of law and further democratic development. It is very difficult for civil society to address and explore cases where public money ends up in private pockets or is being misused for personal gain and very few organizations have capacities to do so.

BTD support to two prominent media outlets working solely on investigative journalism demonstrates the commitment to support initiatives working to raise awareness of citizens that there needs to be a strong public check and balance to keep government structures in Bosnia-Herzegovina and Serbia accountable and transparent in their actions. This is particularly important at a time when there are different threats to media freedom and increasing self-censorship among journalists.

Key in addressing the issue of corruption is the concerted efforts of government, civil society organizations, media and in particular investigative journalism, along with international financial and other institutions and foreign governments of the European Union in particular.

As the work and support of other donors, the support of BTD to anti-corruption efforts has resulted in broadened citizen advocacy around key issues, such as promoting state accountability and transparency, increased scrutiny of organized crime and corruption, through the Network for Affirmation of the NGO Sector's (Montenegro) monitoring of public procurement processes, the Center for Development of Media and Analysis' (Bosnia) reporting on institutional responses to cases of corruption and bribery, and the Risk Monitor Foundation's (Bulgaria) development of policy responses to organized crime in the region; and stronger civic monitoring of government performance, including through the parliamentary scorecards issued by Citizens Association MOST (Macedonia), which publicly tracked the attendance and voting records of MPs, and monitoring of implementation of laws on political and campaign spending by Centre for Democratic Transition (Montenegro), including through the efforts of Speak Up! Movement (Kosovo);

BTD has supported a number of independent media in the region, including; the Balkan Investigative Reporting Network; Production Group Mreza; Radio 100+ in Sandzak; and the Center for Investigative Journalism in Sarajevo, Internews Kosovo

The National Alliance for Local Economic Development (NALED) created a successful Business Calculator which represents a collaborative effort of all three sectors of the society and because it has a great potential to be replicated elsewhere in the region. Within this project NALED analyzed nine communal services: water supplying, channeling, taking out garbage and district heating, communal fee on firm display – “firmarina”, land use fee, land development fee, market value of assets per m2 and “descriptive” property tax.

#### Government Accountability and Transparency-Western Balkans OGP Dialogue

The Western Balkans Open Government Partnership Dialogue organized the first regional summit on Open Government partnership (OGP) in Tirana, Albania, from September 10-11, 2015, under the title “Open Government, Engaged Citizens: A Learn-and-Show Initiative to Make Open Government Partnership work.” over 250 participants attended and interacted through 20 panels.

Taking place at the Institute for Democracy and Mediation (IDM) in Tirana and co-hosted by the Albanian ministry of innovation and public administration as the Albanian OGP National Coordinator, The conference also received support from the EU, UNDP Albania, Balkan Trust for Democracy (BTD), and the U.S. Embassy to Albania. This first OGP regional gathering enabled countries of the Western Balkans to foster inclusive, accountable, transparent governance and policymaking, through enhanced civil society expertise and strengthened dialogue between civil society and their governments.

The main result of the conference was the establishment of a regional forum, whereby governments and civil society organizations (CSOs) of the Western Balkans (WB) have the opportunity to share experiences from their respective countries on improving public services, driving economic growth, reducing poverty and corruption, and restoring public faith in government. The regional approach serves to highlight good practices and successful initiatives, address the challenges faced, and establish regional support and peer-exchange mechanisms. During the two-day event, participants from the government, parliament, local government, CSOs, media and private sector have deepened their knowledge and gained the best experience with regard to different aspects of OGP implementation in their own national contexts.

In the field of government accountability and transparency the civic organization Zašto ne (Why not) works to support the development of ICT-based accountability and transparency mechanisms across Southeastern Europe, as well as regional monitoring and advocacy on the issues of open government and the promotion of civic participation. This year they hosted the fifth edition of the POINT conference (Regional Conference on Political Accountability and New Technologies) in Sarajevo. This time, an Open Data Advocacy Day was organized as an additional event to promote the need for open data from public institutions throughout the Western Balkans. This Open Data Advocacy Day showed how data can create transparency and improve the efficiency of communication between public institutions and citizens. Speakers included were government representatives, journalists, and civil society organizations (CSOs). Most importantly, all



governments from the region were represented: Serbian Directorate for e-Government, OGP Task Force of the Government of Montenegro, Office for Cooperation with NGOs of Croatia, Bosnian Ministry of Justice, and the National Agency for Protection of Personal Data of Kosovo.

The main program of the POINT 4.0 conference entitled “Open Government under Construction” was launched on May 21 with the presentation of the Action SEE network. Actively supported by BTD, Action SEE is a regional network of CSOs working jointly on promoting government accountability and transparency in Southeastern Europe. The network was presented by all member organizations: from Zašto ne from Bosnia and Herzegovina, CRTA from Serbia, Metamorphosis Foundation from Macedonia, and CDT from Montenegro. They presented the network particular initiatives like: the Regional Openness Index, Instinomer, Open Parliament, and Community Booster which they implement in regular cooperation with Mjaft! from Albania, the IPKO Foundation from Kosovo, and Fundacja Techsoup from Warsaw. The conference gathered more than 150 participants from the Balkans, as well as from Europe, the U.S., the Middle East, and North Africa. The last day featured a “Datathon,” underlining the importance of data openness and the endless possibilities if data is implemented and applied within the right contexts.

### **Three Prime Ministers indicted for Corruption**

In terms of the reality of the rule of law, its effectiveness and the reach of law there are some exemplary cases in the countries of eastern and South eastern Europe that demonstrate that no one, even the highest officials are above the law in countries of democratic transition, and all three cases come from today EU and NATO member states. These are cases significant in substantive and symbolic terms. They pave the way toward an increasingly effective judicial system as it strives to diminish the nefarious effects of corruption in society.

#### **Adrian Nastase (Romania)**

Nastase was Romania’s prime minister from 2000-2004 and was the first prime minister of his country to be condemned for corruption. He was convicted in 2012 to two years in prison for syphoning off funds, misuse of public money. In 2014 he was convicted to four years in prison for having accepted a bribe from a construction entrepreneur.

#### **Ivo Sanader (Croatia)**

Sanader was Croatia’s Prime Minister from 2003-2009. In 2014, Zagreb county court preliminarily sentenced Sanader to nine years in prison for siphoning money from state institutions through Fimi Media marketing agency. However, the Croatian Supreme Court last year quashed the preliminary verdict, arguing that procedural errors had deprived Sanader of fair treatment, and sent back to the Zagreb county court for retrial. Sanader was accused in several corruption cases, but so far he has not been convicted in any of the cases. Croatian Constitutional Court in 2015 quashed the final ruling against Sanader in two corruption convictions -- Hypo and INA-MOL cases -- for procedural errors and ordered for retrial. Sanader was sentenced to eight years and six months in jail for allegedly taking a bribe from the Hungarian oil group MOL in 2008 to allow it to have a dominant

position in Croatian state-owned oil company INA, and also taking a bribe from Austria's Hypo Bank in 1994 and 1995, when he was vice foreign minister.

### **Janez Jansa (Slovenia)**

Jansa was Prime Minister of Slovenia from 2004-2008, and 2012-2013. A conviction of corruption was unanimously overturned by the Constitutional Court on 23 April 2015. Prior to that Mr. Jansa, He was convicted of corruption and sentenced to two years in prison earlier in 2014. He has always maintained the charges were politically motivated. The constitutional court issued a temporary injunction on the prison sentence, allowing the opposition leader to pursue at large his appeal against his bribery conviction. The ruling follows the court's decision last month to restore Mr. Jansa's parliamentary seat which he secured in the July general election after the start of his prison term in late June. His seat was then suspended in October after he attended parliamentary hearings on temporary prison leaves. Mr. Jansa's bribery case, relates to the purchase of infantry armored vehicles by the Slovenian army in 2006. Mr. Jansa has denied any wrongdoing in the army procurement case and has appealed to be cleared of his conviction to the constitutional court.

A particularly high-visibility and in the eyes of some, a controversial case has been that of a Serbian businessman Miroslav Miskovic. The Special Court in Belgrade convicted him to five years for helping his son Marko Miskovic with tax evasion. The Court said Miskovic, owner of Serbian industrial giant Delta Holding, helped his son evade payment of 3 million euros in taxes. Besides the prison sentence, Miskovic will have to pay a substantial fine. In the first-instance trial, Miskovic was also charged with financial abuses related to the privatization of road maintenance companies but was acquitted of this. Serbia's prosecution for organized crime had sought a 12-year prison sentence plus fines for abuse of office and tax evasion. His defense claimed there was no evidence that he conducted financial irregularities with the road maintenance companies. Miskovic, who had been in custody for eight months before being released on bail set at 12 million euro, did not attend the verdict. His trial was delayed for health reasons at the end of last year.

His son was jailed on March 25 for three-and-a-half years in prison and fined 2.6 million euros for tax evasion in his first instance trial.

### **Conclusion**

In a book published in 2004 Ivan Krastev, chairman of the Centre for Liberal Strategies in Sofia, Bulgaria, published a book *Shifting Obsessions: Three Essays on the Politics of Anti-Corruption*, in which without apologies for the abuses of power and misuse of public funds, offers a more skeptical reflection and some wariness to the anti-corruption policies of these past years of democratic transition. They are a sobering read with the intent and suggestion that these policies be conducted more wisely and less in the spirit of self-righteousness.

The threats to democracy today come from multiple quarters, internal and external to states. Publics are wary of their elites as populist movements on both sides of the Atlantic have demonstrated. Upholding the corpus of liberal democratic values is more important than ever in light of these challenges. Democracy and democratic freedoms have not been given to any person or society on a silver plate. They been conquered in the streets and cities of the world during the past more than two centuries and they need to be refought for every day, because there will always be those who will attempt to roll back those freedoms for their own personal gain and power.

Fighting corruption it is one of the key aspects of the defense and strengthening of democracy and democratic institutions – that it is why is important not to relent and to constantly seek efficient and effective ways to combat corruption.

The support of the United States to these processes has been crucial. The continued engagement of the US administration and of USAID remains crucial to the overall success of the democratic reform process. Working together in close cooperation with the European Union and individual European member states is essential. This will contribute to the process of consolidating democracy and help the accomplishment of the full unification of Europe in peace, and stability.