



# INTRODUCTION

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## General concepts and main contents of the study / Introduction

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### Abstract

Chapter 1 presents the main concepts and definitions considered in the following analysis (corruption, corruption measures, corruption effects, Public Owned Enterprises-POEs) and the overall structure of the study. A specific focus is dedicated to the notion of hybrid organizations presented as simultaneously quasi-public subjects and enterprises. Due to the coexistence of private-oriented and public-oriented traits, POEs represent an interesting context of analysis in order to study the adoption of anticorruption and compliance measures on forms of control and accountability aiming at removing or mitigating the factors that make more difficult the accomplishment of their original assignments and results. Through a multi country-perspective, the study aims understanding the state of implementation of different anti-corruption and compliance measures in POEs in several European countries; a relatively new subject and one lacking in-depth theoretical and research exploration.

**Keywords:** General introduction, Definitions, Corruption, Public Owned Enterprises (POEs), Hybrid organizations

**JEL-Codes:** D23, D73, G38, H11, K23, K42, L32

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Corruption is a complex and subtle phenomenon, without a uniform definition and without consolidated measurement indexes and methodologies. In the approach adopted by the non-governmental organisation Transparency International and the OECD, for example, corruption is intended as the abuse of an entrusted discretionary power for private gains. Though, the United Nations Convention against Corruption (UNCAC) does not provide a single definition of corruption, rather it defines specific acts of corruption, and recommends States parties to criminalize these acts in their jurisdictions (UNODC, 2004). The illegal actions defined by UNCAC as corruption offences include:

- Bribery in the public and private sectors (articles 15, 16 and 21)
- Embezzlement in the public and private sectors (articles 17 and 22)
- Trading in influence (article 18)
- Abuse of functions (article 19)
- Illicit enrichment (article 20)
- Money-laundering (article 23)
- Concealment (article 24) and Obstruction of justice (article 25) related to the offences listed above

Alongside, even more inclusive definitions have been developed, contemplating not only crimes and legal violations but even acts, decisions, and procedures that, pursuing a personal or biased profit, go far from the general interest because are unjust, dishonest, or simply ineffective. A situation also referred to as maladministration or mismanagement (LGA, 2013; Previtali et al., 2018)<sup>1</sup>, which presents close interconnections with the principal-agent model and the related agency problem.

Even if someone has argued that corruption can have positive effects, helping the economic system overcoming rigid bureaucracy and excessive regulation (the ‘grass-the-wheel hypothesis’<sup>2</sup>), it is widely acknowledged that in the absence of mechanisms to identify, analyze, prevent and respond to corruption risks, they can bring about negative consequences like lower macroeconomic growth and prosperity levels (Figure 1), declining investments and financial performances of firms, security breaches and reputational damages (OECD, 2017; Baum et al., 2019<sup>3</sup>; IMF, 2019; Belhoncine & Jirasavetakul, 2020).

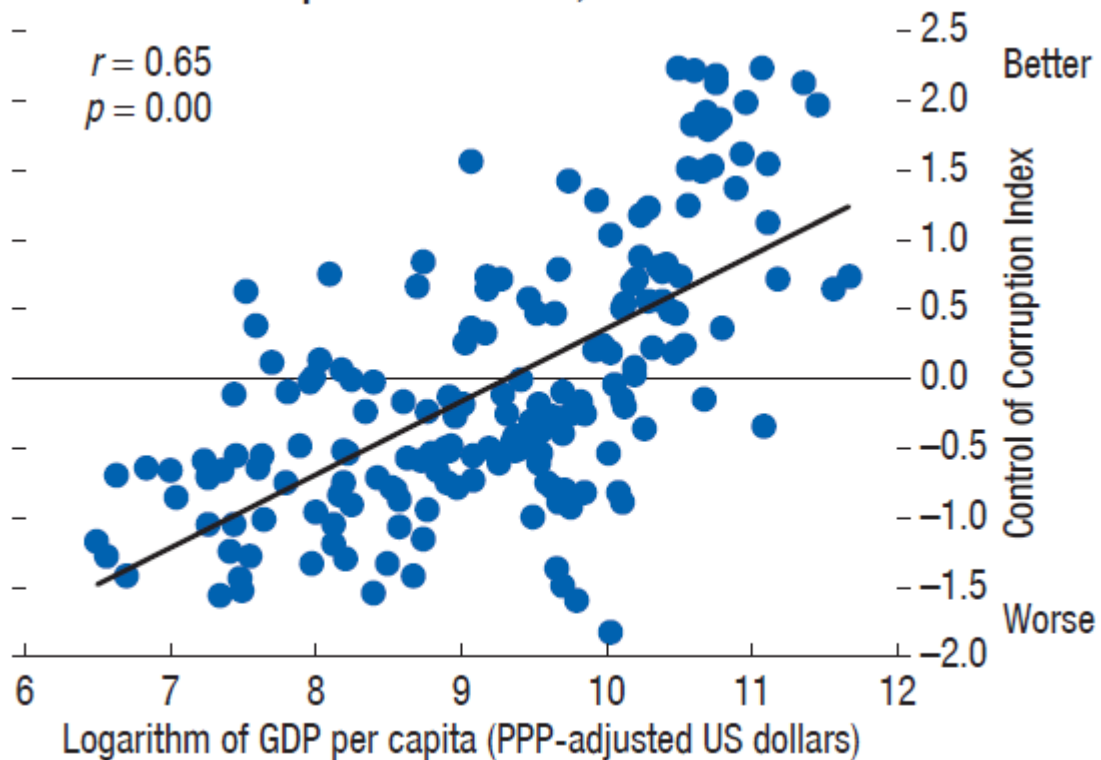
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<sup>1</sup> The same approach is adopted by the Italian Anticorruption Authority when assuming the strict relationship of the notion of corruption with that of maladministration (ANAC, 2015).

<sup>2</sup> See Baum et al. (2019) for some references on this aspect.

<sup>3</sup> In the case of firms, it is shown that distortive behaviors emerge. Instead of focusing on being the most efficient, firms may put their efforts, including by paying bribes, to get privileged access to public contracts, public services or infrastructure, relaxing regulatory oversight, and avoiding paying taxes (Baum et al., 2019).

**Figure 1. Control of corruption and GDP per capita in different countries (2017)**



Note: The Control of Corruption Index provides a relative measure of perceived corruption that ranges from -2.5 (high corruption) to 2.5 (low corruption). The figure shows the logarithm of GDP per capita in PPP-adjusted US dollars.  $p$  =  $p$  value; PPP = purchasing power parity;  $r$  = coefficient of correlation.

Source: IMF (2019, p. 40).

Furthermore, the evidence suggests that corruption distorts how governments define priorities and use public money. In fact, investments in social capital and human capital<sup>4</sup> are found to be shrank as resources are diverted from their most beneficial use, causing the most detrimental effects above all on the most vulnerable categories and countries<sup>5</sup>. This assumes a specific importance in the pandemic era, when it has been highlighted that widespread forms of corruption at the point of service delivery led to lower accessibility and quality of healthcare services (Vrushni & Kukutschka, 2021).

<sup>4</sup> IMF (2019, p. 44) reports that 'Indeed, corruption is associated with fewer resources allocated to education or health spending, especially for low-income and emerging market economies'. In the same direction a recent study by Vrushni & Kukutschka (2021): 'Where corruption is systematic, funds are often diverted from essential public services such as healthcare or education'.

<sup>5</sup> OECD (2020, p. 2) reports, for example, that: 'The Africa Union estimates that the equivalent of one quarter of the total economic output (GDP) of African states, amounting to USD 148 billion, is lost to corruption every year. The US health care programmes Medicare and Medicaid estimate 5-10% of their USD 870 billion annual budget is lost to overpayment'.

The widely disruptive effects of corruption on the economic system and, as well, on public institutions and governance have led to its inclusion in the United Nations Sustainable Development Goals (target 16.5 on corruption and bribery), making anti-corruption efforts a global imperative in building strong, transparent and accountable institutions. At the same time, corruption hinders the realization of many other SDGs, as the vast sums that are lost to corruption could have been used to upgrade standards and resource efficiency by improving housing, healthcare systems, education and water services.

It is clear from the above reflections, that corruption occurs and embraces both the public and the private spheres. In both cases, corruption and mismanagement occur when individuals or organizations promote interests that are different from the interest they were entrusted to serve. Alongside, integrity is seen as the capacity of upholding and prioritising the general-organizational interest over private-oriented interests (OECD, 2019a). Yet, definitions and the consequent investigations often focus on the public sector, i.e. when corruption and integrity issues involve public officials, civil servants, or politicians<sup>6</sup>, influencing the general interest. Consequences can be particularly severe in this case since corruption and mismanagement cause direct financial losses and increases in the cost of government, while, at the same time, the quality of services and infrastructures can be dramatically undermined when government decisions are distorted by bribes, nepotism or conflict of interests (IMF, 2019; Wilkinson, 2018). Moreover, and even more dangerously, corruption in the public sphere contributes to the erosion of citizens' trust in public institution, leading to biased misperception and social and political instability (IMF, 2019; OECD, 2017<sup>7</sup> & 2019a).

In the following analysis, focused on Public Owned Enterprises (POEs), the line between public and private is however intrinsically ambiguous since both their legal dress and intrinsic mission often lay in a grey area. For the same reasons, UNCAC broadly defines "public official" including any person who performs a public function. Thus, offences typical of the public sector such as trading in influence or abuse of functions are offences that can be committed by persons working in POEs when providing services with a general interest.

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<sup>6</sup> The general definition of corruption is in this case 'the *abuse of public office for private gains*' (IMF, 2019). Similarly, OECD defines the concept as "active or passive misuse of the powers of Public officials (appointed or elected) for private financial or other benefits" (OECD, Glossary of statistical terms).

<sup>7</sup> In this view (p. 214): '*Trust in government is strongly correlated with citizens' approval of their country's leadership and perceived spread of corruption in government in OECD countries. Where countries are perceived to have high moral integrity, more people trust government. Similarly, the actions of country leaders and the resulting public opinion about them may have an impact on the public perception of the government institutions they represent*'.

This is a relevant issue since Public Owned Enterprises (POEs)<sup>8</sup> play a key role in the global and local economies and societies (European Commission, 2016; Bertocchi, 2017; Wilkinson, 2018; OECD, 2019a&b; Baum et al., 2019; Sorrentino, 2020), providing value added, employment, goods and services in sectors such as transport, utilities, telecommunications, postal services, health and the extractive and financial sector (G20, 2018; Wilkinson, 2018). Currently, it is estimated that around 20% of the world's largest enterprises are publicly-owned (mainly State) and the trend is clearly upward (G20, 2018; OECD, 2019a<sup>9</sup>). Also local POEs have proliferated during the last two to three decades, often as an attempt of seeking for flexibility outside the bureaucratic structures and the related constraints on the use of public money applied within the perimeter of public administration (Grossi & Reichard, 2008; Karantounias & Pinelli, 2016; Bergh et al., 2019).

As a result, an increasing share of decisions and resources, while being kept within the public sphere initiative, are finally allocated to these, at least partially, autonomous organizational forms. Accordingly, their efficiency, efficacy, but also their sustainability, accountability and transparency should represent key concerns for both public policy makers and theoretical analysis (Klein, 2012; Zatti, 2013; Grossi et al., 2015; Previtali et al., 2018; Wilkinson, 2018<sup>10</sup>; Voorn et al., 2018). Still, the attention of scholars on this development has been scant (Bergh et al., 2019) and not enough is known about the effects of POEs on the overall operations of public governments.

In what follows we do not discuss the controversial and widely investigated ownership effects on the overall profitability and efficiency performance of enterprises (Bognetti & Obermann, 2008; Bruton et al., 2015; European Commission, 2016; Curci et al., 2017; Wollmann, 2018), but we focus on a more specific issue regarding the management of POEs. In fact, concerns with poor governance and accountability have increasingly fueled doubts about the capacity of POEs in implementing public policy and addressing market failures (European Commission, 2016; Baum et al., 2019). In particular, a recent challenge POEs are having to deal with is the internalisation of effective corruption prevention mechanisms (Previtali et al., 2018; Bergh et al., 2019).

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<sup>8</sup> In the following analysis, by POEs we mean State or regionally/locally owned (controlled or participated) organizational entities and companies which are given a legal status /personality separate from State/regional/municipal administration and are endowed with, at least to some extent, operational and financial autonomy.

<sup>9</sup> According to this study, this share has tripled since the turn of the century.

<sup>10</sup> For this author (p. 16): *'This evolving model of state capitalism brings a requirement for the state to ensure that the power entrusted in it by the public is expressed responsibly in its market interventions, and that it requires (and monitors) responsible behaviour of its SOEs, other entities and investments through which it intervenes in markets'*.

According to many observers (World Bank, 2014; Wilkinson, 2018; Baum et al., 2019; OECD, 2019a), in fact, POEs are prone to greater corruption risks due to some additional challenges compared to private sector firms. These are mainly due to specific vulnerabilities such as multiple principals, multiple objectives, lack of incentives and professionalism in the exercise of the (public) ownership, politicized boards and management, weaker budget constraints, poor internal and external governance and low levels of transparency and accountability (Dela Rama, 2011; World Bank, 2014; Bertocchi, 2017; Curci et al., 2017; Wilkinson, 2018; OECD, 2019a; Mocetti & Roma, 2020).

Starting from these premises there is both the theoretical and empirical need to focus on the specific nature of these hybrid organizations that are simultaneously quasi-public subjects and enterprises (Wollmann, 2014; Previtali et al., 2018; Bergh et al., 2019). In fact, the presence of a more complex principal-agent chain (general public, public sector administrators, supervisory board and board of directors, CEO and professional management) and the coexistence of private-oriented and public oriented performance measures can be cause of unclear lines of responsibility, lack of accountability and reduced democratic transparency, raising the likelihood of self-serving and corrupted behavior by corporate insiders and politicians (Previtali et al., 2018; Voorn et al., 2018; Bergh et al., 2019; Ye & Hu, 2019). Consequently, POEs represent an interesting context of analysis in order to study the adoption of anticorruption and compliance measures on forms of control and accountability in organizations characterized by a hybrid nature, as a means to facilitate the achievement of hybrid organizational and strategic objectives, aiming at removing or mitigating the factors that make more difficult the accomplishment of results. It is necessary to go beyond the simple analysis that consider the adoption of anti-corruption and compliance practices as a “formal” process: the mere introduction of these practices could be not sufficient to create the conditions to implement innovative practices and policies in POEs. The anticorruption and compliance mechanisms characterized just by rule-based processes may have negative consequences especially in POEs, reducing these mechanisms to an add-on for internal control and compliance to external regulations, derailing any real process of hybridization with the pre-existing organization management systems and practices.

However, despite an awareness of how the effectiveness of both anticorruption and compliance mechanisms depends greatly on the way in which they are introduced and implemented, there are few contributions exploring “if” and “how” they work in practice. Moreover, most of the analytical approaches adopted and the policy measures implemented concern, on the one hand, private-oriented enterprises and, on the other (and more recently) public administrations. POEs remain in the middle ground, with clear risks of ambiguity, opacity and, at the same time, overregulation (GRECO, 2017; Previtali et al., 2018). In our knowledge, few or none multi-countries comparative studies on this subject exist. This study aims at filling this gap by understanding the state of implementation of different anti-corruption and compliance measures in POEs in several European countries; a relatively new subject



and one lacking in-depth theoretical and research exploration. This accomplishes the need, clearly stated by the OECD, to provide “*guidance for governments by combining existing corporate governance and anti-corruption instruments, and developing new guidance to shine the light into the grey area between general government and private business that SOEs occupy*” (OECD, 2018 p. 10).

The overall study is organized as follow.

The second chapter gives an overview of the main definitions and analytical approaches adopted in the rest of the analysis, providing also a brief historical reconstruction of the role of POEs. The examination shows how, within a general pathway characterized by several stops and goes and changes of course, POEs have more recently become a widespread and specific way to manage public functions with respect to both internal management and full outsourcing. This phenomenon, often called satellization or corporatization, has thus attracted increasing interest by scientific studies, emphasizing at the same time positive aspects and pitfalls. Furthermore, the peculiarities of the links and inter-relationships among POEs, governance and corruption are presented, focusing on the guidelines and operative instructions elaborated by many international organizations and institutions to enhance anti-corruption and integrity in POEs.

The third chapter depicts the situation of **Italy**, investigating the state of art of POEs and the main anti-corruption and transparency policies adopted in this field. Italy turns out to be an interesting case study because, on the one hand, it is among the worst performing countries in the G7 and the EU members in terms of corruption and, on the other, it has experienced a strongly proliferation of POEs during the last two or three decades, involving nearly all activity sectors of the economy. This process is deemed to have weakened the chain of control on shared units, delegating relevant financial and political decisions to a milieu of ambiguity and uncertain accountability (the ‘escape’ argument). A progressive change of direction occurred more recently, when corporatized public enterprises have been submitted to specific and increasing limits, including transparency and anti-corruption policies. The anti-corruption package, adopted in Italy starting with 2012, has promoted important steps in this direction, yet the effects of these new measures have not been resolute, and many challenges are still open.

In the fourth chapter, María del Carmen Sánchez Carreira presents the state of the art of accountability and transparency policies in **Spanish** POEs. A wide use of private law entities controlled by public authorities is described also in this case, mainly aimed at escaping administrative law, considered more rigid, slow and less responsive. The overall legislative and regulatory framework concerning these hybrids form of organization is described as scarce and very fragmented, bringing about, above all at the local level, centrifugal boosts, and financial irresponsibility. This circumstance has been more recently (2013) handled by specific normative acts on transparency and good governance in the public sector, including public enterprises; also

two interesting voluntary bottom-up initiatives in terms of corporate social responsibility and accountability are illustrated. The overall situation is however considered unsatisfactory and mainly based on formal acts with a further need of improvement and learning by doing, even through non normative instruments as training and the internalization of ethics.

Paulo Reis Mourão and Cilina Vilela describe in chapter five the **Portuguese** case, presenting the need to find an equilibrium between the urgency to fight against corruption and the search for a modern role for POEs. In Portugal, even if the importance of the public sector intervention declined in the last three decades, public companies, mainly in the form of limited liability companies ruled by commercial law, still play a relevant role. In the field of anti-corruption policies, a more incisive action by the judicial forces on outbreaks of corruption (both active and passive) has been recently carried on through the creation of a Corruption Prevention Council and a National Anti-Corruption Unit dedicated to investigation, while also obligations in terms of report information has been strengthened. Yet, the described increase in the number of cases of corruption involving public owned companies shows how several challenges persist in this field, requiring that those interested in the fight against corruption do not neglect the role played by public companies.

Birgit Grüb and Dorothea Greiling illustrate in chapter six the case of **Austria**, where POEs have a long tradition, operating at all institutional levels (federal, state, municipal) and with several legal forms. In general, the anti-corruption efforts are rather well established, and Austria shows a score of 77 on the corruption perception index, ranking on place 12 out of 180 countries (Transparency International, 2019). POEs have to comply with a specific Corporate Governance enacted in 2012, proving their special status in the fact that the public authorities as owners have a special responsibility towards public property and the public itself. Yet, the Public Corporate Governance Codex does not apply to large stock corporations, where private-oriented rules on corporate governance prevail.

In chapter seven, Merita Zulfiu Alili presents some key features of POEs in **North Macedonia** where, as in many other South Eastern Europe countries, they are still the main providers of key public goods and services, such as water, electricity, transport, telecommunications and postal services. Operations of public enterprises and state-owned companies are regulated through several acts and norms: the Law on Public Enterprises, the Company Law, as well as sub-sector laws defining the operations in specific areas. Different legal forms are applied with potential ambiguities and conflicts in terms of aims, governance structures, and staff recruitment rules. North Macedonia has established a law on corruption prevention since 2002, with a specific focus on the public administration, but its implementation and enforcement turn out to be low. The role of POEs to improve this situation is crucial, since the research indicates that basic elements and requirements of the system for preventing corruption in POEs are not yet established.

Finally, Nevila Mehmetaj describes the situation of POEs in **Albania** (chapter eight), starting with their historical background and arriving to the evolutionary process begun in the post-communist era. Even if massive privatizations occurred in the transition period, often lacking an overall implementation programme, POEs still operate in relevant economic sector, both at the national and local level. As a whole, the quality of their governance and control remains relatively weak with phenomena of mismanagement, clientelism and low efficiency. In the last two decades, Albania has implemented anti-corruption efforts, following the results of the different GRECO rounds of evaluation, as part of the National Strategy for Development and Integration. POEs are part of these efforts, but a more comprehensive approach to their management is required to improve transparency, accountability and the audit system.

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