

Quickstart Guide

to

Prevent and Fight Corruption Effectively



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Preface

Preventing and fighting corruption are not futile – but it takes some time to improve problematic situations and environments.

Throughout the past 50 years, a broad variety of legal and administrative norms (not to speak of morals and ethics) has been established at international and domestic level. Many Conventions and laws have been negotiated and entered in force, setting out the most relevant legal bases.

Still, corruption is complained about in each and every country. Even though the levels of corruption may differ and corruption may sometimes concern individuals and the public administration rather than companies, some aspects are repeatedly to be found helpful when addressing effective measures to prevent or fight corruption in public and private administrations.

Present guide aims at introducing 13 easy steps to ruin the fun in active and passive corruption in both private and public administrations. Most of the measures are unconventional best practices. It is recommended to implement the suggested measures successively over a period of some years and monitor the acceptance of instruments by the public and addressees.

1. Financial Incentives for Bringing On Corruption Cases

An automatised and transparent system of financial incentives should be made available and communicated to the public. This system would show the direct and timely benefit of bringing on potential corruption cases on a reasoned basis. Once the convicted person has been found guilty of corruption, the initiator would receive his financial incentive.

In case of willfully wrong allegations, a similar system of fines and/or imprisonment shall apply to prevent blackmailing.

2. Ombudsman

Complaints and potential corruption cases should be accepted upon a reasoned request along with initial proof by a public or publicly mandated Ombudsman.

To guarantee the anonymity of the information provider as well as the trust in the institution of the Ombudsman by the public, the role of an Ombudsman could be taken by a trusted law firm which is organizationally and as to personnel independent from any direct or indirect authoritative influence.

3. Signing a Specific Declaration of Honour Individually

The obligation to sign a separate Declaration of Honour for each individual in the public or private administration along with an explanation of the legal consequences of active or passive corruption for him/her will underline the concept of good governance and personal responsibility in case of initiating, furthering or condoning corruption.

4. Six-Eyes-Two-Stages-Principle

The six-eyes-two-stages-principle refers to the fact that corruption typically happens in very small groups of persons, usually between two persons.

The six-eyes-principle requires the signature and justification of a decision by three persons. The two-stages-principle requires at least one of these persons to be at a higher decision-making level, i.e. a superior to the other two persons; alternatively, each person may be located at a different administrative level.

This would result in a) the need to incorporate at least three decision-makers in a corruption case (in addition to the corrupting individual or company), b) increase the costs of corruption to a considerable extent, and c) make it more risky to meet the criteria of the definition of organised crime (where the minimum number of three persons make a criminal group).

5. Publication of Administrative Decisions Electronically

With the consent of the addressees of an administrative decision, the wording of the decision could be made available to the public. This would show the reasons for a certain decision and explain towards the public whether or not the principle of equal treatment in similar cases has been respected.

In relevant cases, such decision could be published without consent of the addressee. Such measures could be taken once a decision concerns the public interest and non-compliance with the laws could lead to imprisonment or administrative penalty.

Both the voluntary and the obligatory measure would be in line with rule of law as also criminal proceedings are typically public.

6. Centralised Collection of Administrative Decisions

A centralised system of registration of public or private administrative decisions should be organized. Access to this registry would be granted only to individuals authorised by investigative organs or the judiciary.

7. Monthly Presentation of Administrative Decisions to Superiors and the Colleagues

Each administrative decision should be justified towards the superiors and colleagues during an internal monthly meeting of staff.

To this end, it is relevant to have an orderly registry where all decisions are protocolled and subsequently justified.

8. Making the Names of Wrongdoers Institutionally Public

The reasoned suspicion of corruption should lead to an internal investigation by an authority or external experts. The fact of initiating such investigations may be published inside the respective Ministry and/or disclosed to the public by the institution. Same has to count for the investigation's findings.

9. Leadership

Honour the proud, blame the shameless! Open, direct and among colleagues recognisable reward for good conduct would support other initiatives aiming at combatting corruption. On the other hand, a wrongdoer should be individualised and blamed equally.

10. Regular Increase of Salaries at all Levels of Administration

Whether public or private: Regular increase of salaries and/or additional financial benefits will support good conduct of tasks and keep the personnel satisfied.

Even though these increases may be an issue for the budget, the costs of corruption would exceed these burdens by far.

11. The Prussian Approach

To know your job, insurances, and pension are safe is likely to exceed the short-term benefits of individual corruption gains. On the other hand, lifetime-positions are likely to come with the risk of becoming too comfortable with the position and initiate a corrupt network.

Therefore, think of the Prussian method: Ensure long-term jobs for your employees without keeping them too long in the same position. Rotation on an annual basis helps in many ways, not only with a view to corruption.

12. Regular External Controls

Written laws alone are not vivid. Conduct controls of files and speak to the persons in charge at individual and team level. Such peer-review with the latent threat of use of potentially applying lawfully force may prevent eventual undesired activities.

At the same time, peers may establish a web of trustees for the benefit of personnel.

13. Initiate Projects

The ‘international community’ is not solely observing events in each other’s jurisdiction: The vast majority of States provides for opportunities to fund projects in the area of measures against corruption.

Search for funding mechanisms by requesting information from the embassies in your country and check the websites of the International Organisations.

International Legal Instruments

UN CONVENTION AGAINST CORRUPTION (UNCAC)

Adopted: 31 Oct 2003; Entry into force: 14 Dec 2005

The UNCAC is an international treaty aspiring to universal participation that bans corruption and obliges signatory states to take a large variety of measures to fight it. Signatory countries commit to prevent and criminalise corruption, to openly co-operate with one another in cases of cross-border corruption activities and to return stolen assets to countries of origin. Under the UNCAC review mechanism, compliance is reviewed through a process involving country self-assessments, a country visit, and the drafting of a review report submitted to the country under review for approval. The UNCAC is the most comprehensive anti-corruption treaty in existence today, both in terms of geographical coverage and issues addressed.

OECD ANTI-BRIBERY CONVENTION

Adopted: 17 Dec 1997; Entry into force: 15 Feb 1999

The OECD Convention is the first and only international anti-corruption instrument focused on the 'supply side' of the bribery transaction. It establishes legally binding standards to criminalise bribery of foreign public officials in international business transactions and provides for related measures, such as rigorous country monitoring and extensive follow-up mechanisms, to ensure effective implementation.

UN CONVENTION AGAINST TRANSNATIONAL ORGANIZED CRIME

Adopted: 15 Nov 2000; Entry into force: 29 Sept 2003

the UN Convention against Transnational Organized Crime recognises combating corruption, among other issues, as an integral part in the fight against transnational organized crime. It requires signatory countries to take measures to prevent and criminalize corruption as well as to curb money-laundering. It further provides for a broad framework reinforcing international cooperation on these matters.

AFRICAN UNION CONVENTION ON CORRUPTION

Adopted: 11 July 2003; Entry into force: 2006

The AU Convention is a comprehensive regional treaty criminalising the multiple facets of corruption and requiring signatory states to prevent, detect, punish and eradicate corruption and related offences in the public and private sector. Moreover, it lays out a framework for

international cooperation and mutual legal assistance to effectively combat corruption and recover stolen assets. The Convention provides for a follow-up mechanism on progress made by each state party.

SADC PROTOCOL AGAINST CORRUPTION

Adopted: 14 August 2001; Entry into force: 2005

The South African Development Community Protocol is the first sub- regional treaty to fight corruption in Africa. Similar to the later AU Convention it obliges state parties to prevent, detect, punish and eradicate corruption in the public and private sector and to cooperate internationally. It also establishes a committee consisting of state parties to oversee the implementation of the protocol. Little progress has been made in implementation since the Protocol entered in force in 2005.

ECOWAS PROTOCOL ON THE FIGHT AGAINST CORRUPTION

Adopted: 21 Dec 2001; Entry into force: forthcoming

The Economic Community of West African States Protocol is a sub-regional treaty to re-inforce the fight against corruption in West Africa. Adopted in 2001 it still has not entered into force due to a lack of ratifications.

OAS INTER-AMERICAN CONVENTION AGAINST CORRUPTION

Adopted: 29 March 1996; Entry into force: 6 March 1997

The Organization of American States' (OAS) Inter American Convention against Corruption was as at the time of its adoption the first international anti-corruption treaty. It establishes a set of preventive measures, provides for the criminalization of certain acts of corruption and contains a series of provisions to strengthen the cooperation between its States Parties in areas such as mutual legal assistance and technical cooperation, extradition and identification, or asset recovery. In 2002 a Follow-Up Mechanism for its Implementation (MESICIC) was instituted.

COUNCIL OF EUROPE CRIMINAL LAW CONVENTION ON CORRUPTION

Adopted: 27 Jan 1999; Entry into force: 2002

The Council of Europe Criminal Law Convention aims at co-ordinating the criminalisation of a large number of corrupt practices. It also provides for complementary criminal law measures and improved international co-operation in the prosecution of corruption offences. The

treaty monitors compliance of States through a process of mutual evaluation and peer pressure in a specialised body, the Group of States against Corruption (GRECO).

COUNCIL OF EUROPE CIVIL LAW CONVENTION ON CORRUPTION

Adopted: 4 Nov 1999; Entry into force: 2003

The Council of Europe Civil Law Convention is the first attempt to define common inter-national rules in the field of civil law and corruption in an international treaty. Contracting Parties are required to provide compensation for persons who have suffered damage as a result of acts of corruption. Its implementation will be monitored by the Group of States against Corruption (GRECO).

EU CONVENTION AGAINST CORRUPTION INVOLVING OFFICIALS

Adopted: 26 May 1997; Entry into force: 28 Sept 2005

This European Union Convention is designed to fight corruption involving European officials or national officials of Member States of the European Union. Member State must ensure that any act of passive or active corruption by officials is a punishable criminal offence. In serious cases penalties should include deprivation of liberty and extradition. Moreover, heads of businesses are to be declared criminally liable for active corruption by a person under their authority acting on behalf of the business entity. The establishment of an evaluation mechanism regarding anti-corruption efforts in EU member states is currently debated.

EU CONVENTION ON THE PROTECTION OF THE EC FINANCIAL INTERESTS

Adopted: 26 Jul 1995; Entry into force: 17 Oct 2002

The Convention on the Protection of the European Communities' Financial Interests and its protocols are aimed at creating a common legal basis for the criminal-law protection of the European Communities' financial interests. Fraud affecting both expenditure and revenue must be punishable by effective, proportionate and dissuasive criminal penalties including custodial sentences that can give rise to extradition.

