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Successes and Failures in the Fight Against Foreign Bribery: The OECD Perspective

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Which are the most corrupt countries in the world?

| CPI 2017 (position) | TI GCB (% of people paying bribes) | WB WGI 2015 (control of corruption- percentile rank) |
|------------------------|--|--|
| Somalia (180) | Yemen (77%) | South Sudan (0,5) |
| South Sudan (179) | India (69%) | Lybia (1,0) |
| Syria (178) | Liberia (69%) | Somalia (1,4) |
| Afghanistan (177) | Tajikistan (50%) | Syria (1,9) |
| Yemen (175) | Cameroon (48%) | Sudan (2,4) |
| Sudan (175) | Morocco (48%) | Yemen (2,9) |
| Lybia (171) | Sudan (48%) | Angola (3,8) |
| Korea N. (169) | Nigeria (48%) | Afghanistan (4,8) |

Which are the least corrupt countries in the world?

CPI 2017
(position)

TI GCB
(% of people
paying bribes)

WB WGI 2015
(Control of corruption-
percentile rank)

New Zealand (1)
Denmark (2)
Finland (3)
Norway (3)
Switzerland (3)
Sweden (6)
Singapore (6)
Canada (8)

UK (0%)
Japan (0,5%)
Botswana (1%)
Mauritius (1%)
Sweden (1%)
France (2%)
Hong Kong (2%)
Portugal (2%)

New Zealand (100)
Finland (99,5)
Norway (99)
Sweden (98,6)
Denmark (98,1)
Switzerland (97,6)
Singapore (97,1)
Luxembourg (96,6)

Perception VS hard data

Simple question: can a long series of unreliable perception surveys produce reliable information?

Simple fact: at a certain stage, perception (=virtual reality) turns into a (real) reality.

Monitoring of international AC standards

- Global: UNODC IRM (implementation of UNCAC), weak monitoring system
- Global: OECD WGB (implementation of the OECD Convention), „gold standard“ of monitoring
- Regional (Europe): Council of Europe GRECO (implementation of Council of Europe AC standards), strong monitoring system
- Regional (Americas): OAS MESICIC (Implementation of the Inter-American Convention against Corruption), weak monitoring system

OECD Working Group on Bribery

- 44 members
- monitoring conducted through 2 peers from the group
- evaluations divided into four phases (the first one dealing with initial assessment of countries' national legislation, the second one with the assessment of practical application and implementation of the OECD Convention and related documents, the third one with up-to-date assessment of the countries' structures to implement the Convention and 2009 Recommendation, and the fourth – current - one, with tailor-made approach on progress on recommendations from previous phases, detection of foreign bribery, enforcement of foreign bribery and engagement with legal persons)
- on-site visits are mandatory
- there is a rigorous follow-up on the implementation of recommendations and sanctions (mainly „blame and shame“) are provided
- full texts of the reports are published (in French and English)

Anti-corruption Summit, London 2016 - Communiqué

It contains 9 pages with detailed future AC measures in the following three areas:

- exposing corruption
- punishing the corrupt and supporting those who have suffered from corruption
- driving out corruption.

Although it has been foreseen that there will be a new AC Summit in 2017 in New York, BREXIT has changed everything.

Some facts about international bribery cases, I.

- The four main sectors involved in foreign bribery cases are the extractive (19%), construction (15%), transportation and storage (15%) and information and communication (10%) sectors.
- Almost half of the cases involved bribery of public officials from countries with high to very high levels of human development.
- In 41% of cases, management-level employees paid or authorised the bribe, whereas the company CEO bribed in 12% of cases.
- Bribes were promised, offered or given most frequently to employees of public enterprises (27% of cases), followed by customs officials (11%), health officials (7%) and defence officials (6%).
- In the majority of cases, bribes were paid to obtain public procurement contracts (57%), followed by clearance of customs procedures (12%).
- The bribes were considerable: on average, bribes equalled 10.9% of the total transaction value and 34.5% of the profits.

Some facts about international bribery cases, II.

- One in three cases came to the attention of authorities through self-reporting by defendant companies or individuals. The next most common sources were law enforcement authorities (13%) and mutual legal assistance between countries (13%).
- Companies that self-reported became aware of the foreign bribery in their international operations primarily through internal audits (31% of cases) and merger and acquisition due diligence procedures (28% of cases).
- Prison sentences were handed down only to 80 individuals who were found guilty of foreign bribery; the longest combined prison sentence imposed to date in a case involving a conviction for conspiracy to commit foreign bribery is 13 years for one individual.
- In total, there were also 261 fines imposed on individuals and companies, with the highest combined fine against a single company (Siemens AG) totalling EUR 1.8 billion.
- The highest monetary sanction imposed against an individual in a foreign bribery case was a forfeiture order amounting to USD 149 million.

Some facts on liability of legal persons

Whose act can trigger liability of LP? In 10 countries only managers', in 29 countries any relevant natural person in the LP.

More conditions: 27 countries will consider whether the acts of a relevant natural person were committed for the legal person's benefit or interest, 21 countries will consider whether the acts of a relevant natural person were committed as a result of a failure to supervise, 14 countries will consider whether the acts of a relevant natural person were committed in the legal person's name or on its behalf, 12 countries will consider whether the acts of a relevant natural person were committed within the scope of the natural person's duties or authority; and 12 countries will consider whether the acts of a relevant natural person were related to the legal person's activity.

Sometimes compliance system precludes liability: in 12 countries yes, in 10 no and in 18 countries this is not known.

Sanctions: fines (all countries), debarment (33 countries), dissolution (12 countries), other sanctions (24 countries).

Mitigating circumstances: compliance system (in 14 countries), self-reporting (14), cooperation with law enforcement (14).

Exporting Corruption: Transparency International Progress Report 2018 on the enforcement of the OECD Anti-Bribery Convention

Since 1999*:

- 22 countries with 39,6% world exports with little or no enforcement
(China, Japan, South Korea, Hong Kong, Singapore, India, Russia, Spain, Belgium, Mexico, Ireland, Poland, Turkey, Denmark, Czech Republic, Luxembourg, Argentina, Chile, Israel, Slovak Republic, Finland, Colombia, Slovenia, Bulgaria, Estonia)
- 11 countries with 12,3 world exports with limited enforcement (France, Netherlands, Canada, Austria, Hungary, South Africa, Chile, Greece, Argentina, New Zealand, Lithuania)
- 4 countries with 3,8% world exports with moderate enforcement (Brazil, Australia, Sweden, Portugal)
- 7 countries with 27% world exports with active enforcement (US, Germany, Israel, Italy, Norway, UK, Switzerland)

* Costa Rica, Iceland, Latvia and Peru are not listed

Additional problem with the demand side

WGB findings from December 2018:

- enforcement actions do take place on the demand side, but public officials are known to have been sanctioned in only one fifth of the 55 schemes covered by the survey,
- the information flow between demand-side and supply-side enforcement authorities is often slow,
- exchange of information between demand-side and supply-side enforcement authorities was not a source of detection in this sample of cases,
- the media plays a major role in international information flow,
- sanctioning public officials for bribery poses the same enforcement challenges as sanctioning supply-side briber (insufficient evidence, statute of limitations,..),
- demand-side actions occurred mainly under criminal law; disciplinary actions under administrative law are reported to be rare.

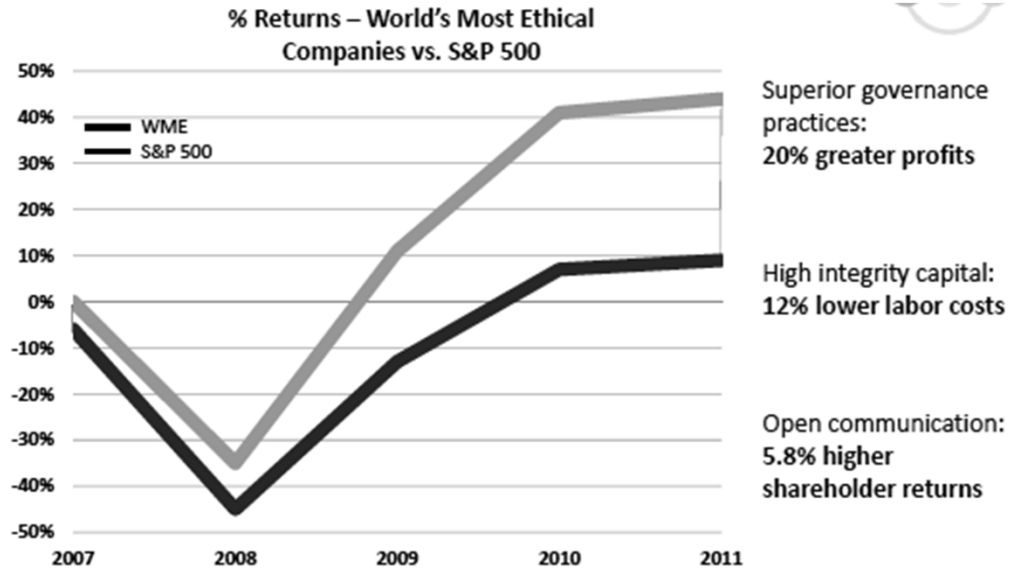
Other problems in the global AC efforts, I.

- absence of mandatory provisions in the UNCAC (i.e. articles 18, 19, 20, 21, 22, 24, 33,..)
- some countries don't want to join global AC efforts and use this as a competitive advantage
- some countries join the global/regional AC efforts only to protect their image
- countries' „anti-corruption“ activities are sometimes directed towards other goals (e.g. for protection of economic interests of companies or countries, for elimination of political competitors, economic espionage,...)
- growing nationalism often serves as a cover-up for corrupt politicians
- fighting corruption seriously is a real and genuine priority only of a limited number of governments
- in Europe, accession to the EU has proven to be the strongest incentive for countries to fight corruption, however, after the accession the motivation has gone. Still, some countries are engaging a lot in the last years (France, the Netherlands, Germany, Lithuania, Latvia, Italy,..)

Other problems in the global AC efforts, II.

- there are no substantial standards in many important areas (whistle-blowers' protection, negotiated agreements,..)
- 60% of international bribery cases involving legal persons end with negotiated agreements, whereby responsibility of individuals is very often simply „forgotten“
- despite the fact that there will be no significant development in the AC efforts without involvement of the private sector, governments still do not accept companies as equal partners in those efforts
- the key for successful AC activities in the future is proper engagement of the private sector
- constant threats to successful AC agencies
- AC „industry“ itself is exposed to corruption risks
- lack of equal treatment of all countries of the world
- sustainability of AC measures is not ensured
- some important issues emerged: corruption in sport, transparency of beneficial ownership, use of financial investigations...

Does corporate integrity pay ?



But...

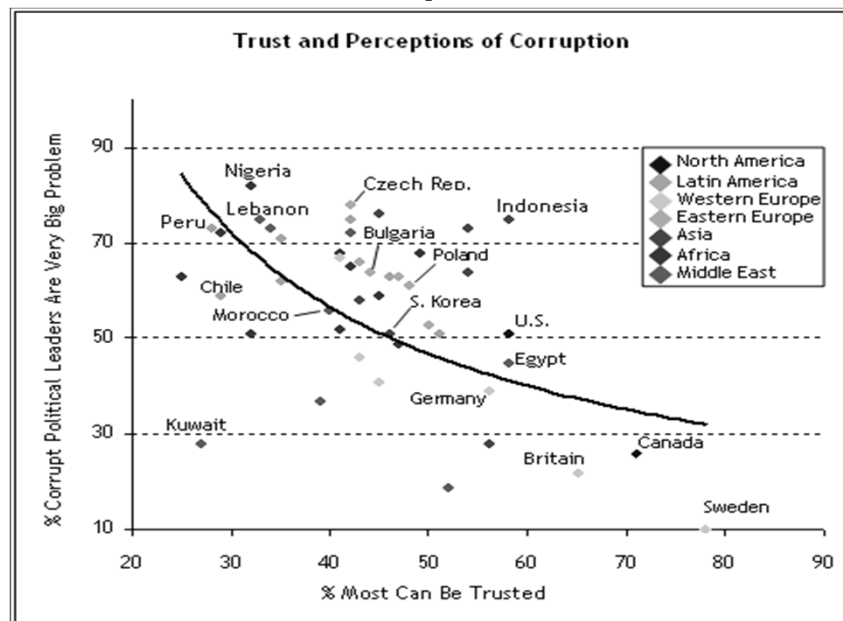
WHY WOULD COMPANIES NOT USE CORRUPTION IF THEY CAN WIN LUCRATIVE CONTRACTS WITH IT?

Maybe because...

...by paying the bribe they :

- convert the buyer's attention from the quality of their products to the value of present and future bribes
- begin to lose control (next time they will have to pay more..)
- cannot complain if they do not get what they paid for
- break the law and become vulnerable to blackmail
- will have difficulties to break corrupt relationship
- risk to suffer serious consequences (sanctions, shame, blow to their CSR)
- influence the level of social and economic consequences of corruption and start to feel being hit by them

Correlation between trust and corruption



Trust VS corruption in an organisation

- More corruption \Rightarrow Less trust
- More trust \Rightarrow Less corruption
- Less corruption \Rightarrow More trust

TO REDUCE CORRUPTION WE HAVE TO
INCREASE TRUST !!!!

Trust between the governments and the private sector

Governments don't trust companies at all.

Companies trust their governments even less.

Consequences

- Strong orientation of governments towards the enforcement
 - Tendency for excessive monitoring
 - Sanctions for non-existing or weak compliance systems
- Absolute lack of positive rewarding for effective compliance systems
 - No real will for cooperation

Governments are “incentivising” private sector integrity

Many countries of the world have introduced (criminal or administrative or civil) liability of legal persons.

In Italy and UK existence of an effective integrity system can – by the law - be a full-fledged defence, in the US (according to the Federal Sentencing Guidelines) it can be a mitigating circumstance.

What about positive motivation?

Such as:

- Effective compliance programs as pre-condition for entering public procurement processes
- Effective compliance programs as additional criteria for winning public procurement contracts
- Effective compliance programs as (additional) condition to receive official development assistance
- Effective compliance programs as (additional) condition for access to export credits

- ?

Preconditions for an effective compliance system

- it is based on analysis of the relevant risks
- it involves simple procedures fully integrated into daily operations
- it rests on an independent and reasonable compliance organisation

Effective compliance system brings tangible benefits to the company

Since it:

- attracts customers to the firm's products, which means boosting sales and profits (when companies were ranked by integrity, the top 25% outperformed the average, with the bottom 25% averaging a negative 7.4% 10-year shareholder return - according to the 2011 Corporate Executive Board research)
- makes employees want to stay with the business, reduce labour turnover and increase productivity (by 12%, according to the 2011 Corporate Executive Board research)
- attracts more employees wanting to work for the business, reduce recruitment costs and enable the company to get the most talented employees
- attracts investors and keeps the company's share price high, thereby protecting the business from takeover

There is a link between high integrity and high revenues of the company, I.

| | Results from businesses with increased revenues | Results from businesses with decreased revenues |
|---|---|---|
| How would you rate your company's ethical standards when doing business? | 31% Very good | 18% Very good |
| How confident are you that your business's operations in different countries meet the same ethical standards? | 62% Fairly or very confident | 41% Fairly or very confident |
| Do unethical practices often go unnoticed by head office? | 19% Agree | 28% Agree |
| Have ethical standards got better or worse in your company in the last two years, or have they stayed the same? | 43% Got better | 20% Got better |
| What impact has regulatory activity in your sector had on ethical standards in your company? | 30% Positive impact | 14% Positive impact |
| What impact has regulatory activity in the last two years had upon results in your company? | 26% Positive impact | 8% Positive impact |

Base: Companies reported as having increased revenue (2,132); Companies reported as having decreased revenue (665)

There is a link between high integrity and high revenues of the company, II.

Results from businesses with increased revenues vs. results from businesses with decreased revenues

State that their company has an ABAC policy and code of conduct

63% vs. **53%**

Have attended ABAC training

69% vs. **58%**

Agree there are clear penalties for breaking ABAC policies

55% vs. **43%**

Have found ABAC training useful

75% vs. **63%**

Agree people reporting fraud or corruption would be supported

50% vs. **30%**

State that their company uses approved supplier databases

33% vs. **25%**

However, some CEOs still don't want to enter the compliance area...

...by saying that:

- they don't need to specify that the company does not pay bribes,
- they don't want to give the impression that they have problems with corruption,
- the risk of corruption in their company is very low,
- it is not their role to deal with corruption,
- they don't want to negatively impact their business.

Main problems as seen by the private sector...

..as seen by B20 Cross-Thematic Group on Responsible Business Conduct and Anti-Corruption (sub-group of G20) on May 3, 2017:

- Lack of transparency of beneficial ownership
- Lack of positive incentive schemes to promote compliance
- Responsible business conduct in infrastructure projects

The OECD (WGB) is developing new standards

.....(hopefully) also in the area of liability of legal persons through:

- positive incentives for developing and maintaining compliance programs, for voluntary self-disclosure (USA!) and for full cooperation with law enforcement authorities
- basic principles on non-trial resolutions (settlements)
- improving cross-border cooperation (especially in multijurisdictional cases),
- enhancing the system of sanctioning („harmonisation“ between different countries),
- recognising different preventive efforts (i.e. high level reporting mechanisms (Colombia, Ukraine), collective action (e.g. Fair Player Club in Korea), education and continuous training, building real culture of integrity).

The most popular proposals (February 2018)

International cooperation, including mutual legal assistance
 Multijurisdictional cases
 Whistle-blowers' protection
 Voluntary disclosure of foreign bribery allegations
 Liability of legal persons
 Transparency of beneficial ownership
 Asset Recovery
 Detection
 Guidance for companies: risk management, compliance, internal controls, self-reporting
 Negotiated settlements
 Independence of law enforcement
 Incentives for anti-bribery compliance
 Cooperative witnesses and investigative means
 Sanctions for natural and legal persons, including confiscation and debarment
 Measures to prevent foreign bribery
 Evidentiary requirements in foreign bribery cases
 Quantification of the proceeds of foreign bribery
 Demand side/bribery solicitation

The OECD (WGB) also developed new „sanctions“ for non-compliant countries

Such as:

- diplomatic interventions,
- refunding of unnecessary costs,
- internal increased due diligence warning,
- external increased due diligence warning,
- publication of the most important non-implemented recommendations.

In addition to what we already have:

- repetition of monitoring phases,
- different letters to national authorities,
- public statement,
- high-level mission.

Consequences of growing nationalism?

- some developments in Central Europe (Hungary, Poland, Romania,...) are extremely worrying,
- those countries are stepping away from the already achieved international anti-corruption and rule-of-law standards under the pretext of national sovereignty,
- when confronted with pressure of international organisations, they support each other uncritically, sometimes blocking the whole decision-making process (invented in „normal“ times for „normally behaving“ countries) of those organisations,
- at a closer look it becomes very clear that referring to anti-globalism („my country first“, „sovereignty above all“, „Sorosists are dangerous“,..) in the area of anti-corruption is nothing else but a cover up for very questionable, sometimes even corrupt practices of those governments.

Future of the private sector integrity...

...is turning into the future of all other forms of integrity (personal, public)!

Why?

Because there is so much room for improvements in this area in the private sector (especially comparing it with the governmental side),
and
because private sector will sooner or later start accelerating anti-corruption efforts of the governments.

THANK YOU!

Questions?

Suggestions?

Comments?

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