

**OECD Anti-Corruption Network
for Eastern Europe and Central Asia**

Business Integrity in Eastern Europe and Central Asia

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Foreword

This cross-country report on business integrity analyses measures that governments, business associations and other non-governmental organizations as well as companies take to strengthen integrity of the private sector. The review focuses on Eastern European and Central Asian countries participants of the Anti-Corruption Network for Eastern Europe and Central Asia (ACN) and features also many examples from non-ACN OECD countries and international practices. Extensive desk research and particular country studies form the empirical basis of the study. Monitoring reports of the Istanbul Action Plan and communications on progress submitted under the Global Compact are among the principal sources. The study used also questionnaires that were completed by governments, business associations, and companies. Several consultations and seminars in September and November 2014 as well as in April 2015 served as opportunities to discuss research issues and validate preliminary findings. The majority of the report was prepared in 2015. The purpose of this review is to analyse current trends, identify good practices and develop policy recommendations on further promoting business integrity in the region. It serves as a reference point for policy reforms and reviews in this region. The report is prepared as part of the 2013-2015 Work Programme of the Anti-Corruption Network for Eastern Europe and Central Asia within the OECD Directorate for Financial and Enterprise Affairs. It is one of three cross-country studies within the programme: prevention of corruption in the public sector, law enforcement and criminalisation of corruption, and business integrity.

Contents

Executive summary	9
Introduction	11
Chapter 1. Key players	15
1.1. Role of governments.....	15
1.2. Role of business associations and other NGOs	16
1.3. Role of companies	17
Chapter 2. Regional overview	19
2.1. Economic structure	19
2.2. Resources.....	23
2.3. Geopolitical situation and political systems	24
2.4. Levels of corruption	25
Chapter 3. Regional trends in the promotion of business integrity	29
3.1. General situation (responses by companies and associations).....	29
3.2. Forms and sources of business integrity risks (responses by companies and associations).....	32
3.3. Prevalence of legal action taken against other companies for integrity breaches (responses by companies)	36
3.4. Business integrity and internal control practices (responses by companies)	37
3.5. Initiatives and further views by associations	42
3.6. Concluding remarks on results of the regional survey	46
Chapter 4. Regulatory environment, legal certainty and safeguards for business	49
Chapter 5. Government's actions to promote business integrity	59
5.1. Criminalization of corruption	59
5.2. Prevention of undue relations between business and politics.....	68
5.3. State policy to promote business integrity.....	74
5.4. Measures to ensure integrity in state owned enterprises	76
5.5. Information provided by government to ensure fair and safe business environment	81
5.6. Incentives for companies to improve self-regulation and introduce compliance programmes ..	86
5.7. Compensations for whistleblowers.....	89
5.8. Corporate governance rules promoting business integrity	91
Chapter 6. Actions of business associations and NGOs to promote business integrity	105
6.1. Studying of corruption risks	105
6.2. Engagement in awareness-raising, training and methodological support.....	106
6.3. Anti-corruption/ integrity structures of associations	108
6.4. Support to individual companies and advocacy	109
6.5. Channels for reporting corruption occurrences and risks	112

6.6.	Development and promotion of standards.....	114
6.7.	Collective integrity actions.....	117
Chapter 7. Companies' actions to promote business integrity.....		131
7.1.	Surveys of companies business integrity performance.....	131
7.2.	Good practice among companies of the ACN region.....	133
7.2.1.	Integrity policies.....	134
7.2.2.	Risk assessment.....	140
7.2.3.	Conflict of interest rules.....	141
7.2.4.	Standards on gifts and other benefits.....	146
7.2.5.	Requirements to partners.....	147
7.2.6.	Procurement.....	149
7.2.7.	Disclosure and transparency.....	150
7.2.8.	Political contributions.....	153
7.2.9.	Integrity compliance units/ officers.....	153
7.2.10.	Monitoring, internal control and investigations.....	155
7.2.11.	The role of audit in preventing corruption.....	157
7.2.12.	Internal reporting.....	158
7.2.13.	Whistleblower protection.....	159
7.2.14.	Training.....	161
7.2.15.	Participation in business integrity activities jointly with the government.....	162
7.2.16.	Other activities.....	163
Chapter 8. Recommendations for further promotion of business integrity.....		169
8.1.	Recommendations for governments.....	169
8.2.	Recommendations for the private sector.....	170
Annex. International business integrity standards and key players.....		171
	International standards.....	171
	Recommendations, explanatory and support materials of international governmental organizations ..	174
	International private sector guidance and recommendations.....	175
	International projects.....	176
Notes.....		178

Tables

2.1.	ACN economies by the level of income.....	19
2.2.	Inward stock of foreign direct investment (percentage of GDP, 2014).....	24
2.3.	Scores of the Control of Corruption indicator and the Corruption Perceptions Index 2014.....	26
3.1.	Sample of the regional survey.....	29
3.2.	What forms of business integrity risks are most important to your company (for companies)/ companies operating in your country (for business associations)?.....	32
3.3.	Interaction with which entities presents integrity risk for your company (for companies)/ companies operating in your country (for business associations)?.....	34
4.1.	Trust in selected institutions in ACN countries that are EU members and candidates (% tend to trust).....	51

5.1. Systems of corporate liability in ACN countries	61
7.1. Integrity-promoting tools of business participants of the Global Compact (as of May-June 2015).....	134

Figures

2.1. Average unweighted GDP per capita by region (in current USD 2014)	20
2.2. Average unweighted Gini Index values by region (2008-2013).....	21
2.3. Average unweighted score of the Index of Economic Freedom by region.....	21
2.4. Sectoral structure of ACN economies by region (unweighted averages, 2014)	22
2.5. Average unweighted proportion of working age population (15-64 years, 2014) and unemployment (2013).....	24
2.6. Average unweighted ratings of national democratic governance by region (2015, higher score means less progress)	25

Boxes

4.1. Russia: Survey data regarding risk of the abuse of criminal proceedings and illegal raiding	51
4.2. Finland: The bankruptcy ombudsman	53
4.3. Lithuania: Administrative disputes commissions	55
5.1. Assistance for SMEs.....	65
5.3. Georgia: Capture of business by the government	70
5.4. Slovenia: Lobbying regulation in the Integrity and Prevention of Corruption Act (2011).....	73
5.5. Georgia: Anti-corruption policy documents and engagement of private sector actors.....	74
5.6. Kazakhstan: The Sovereign Wealth Fund “Samruk-Kazyna”	80
5.7. Incentives rewarding companies for good practice	87
6.1. The Centre for International Private Enterprise: training and support for corporate governance and regulatory reforms.....	107
6.2. Turkey: Ethics and Reputation Society (TEID).....	109
6.3. Armenia: Advocacy by the Association for Foreign Investment and Cooperation on tax reform	111
6.4. Serbia: Certification criteria for the area of corporate governance of NALED.....	118
6.5. Germany: Berlin-Brandenburg International Schönefeld Airport Integrity Pact	121
7.1. Kesko: Anti-corruption work in Russia	137
7.2. Integrity-building experience of Guler Dinamik Customs Consultancy Inc.	138
7.3. Privredna Banka Zagreb (HR6): the policy for personal transactions with financial instruments	141
7.4. Conflict-of-interest management at BP Exploration – Caspian Sea Ltd (GE5)	144
7.5. Conflict-of-interest policy of Erste Bank a.d. Novi Sad (RS17)	144
7.6. Swedbank Group: Conflict of interest policy and requirements in different areas of business..	145
7.7. The Supplier Ethical Data Exchange (Sedex)	148
7.8. TeliaSonera: whistle-blowing cases in 2014	160

Executive summary

This study explores what governments, business associations, NGOs, and companies do in order to strengthen business integrity with a particular focus on anti-corruption measures in and for the private sector in the region of the Anti-Corruption Network for Eastern Europe and Central Asia (ACN) as well as in selected other countries. Across the region laws, regulations and policies rapidly develop for tackling private-to-public and private-to-private corruption such as bribery and other exchanges of inappropriate advantages as well as preventing risks of breach of trust within companies such as favouritism in concluding contracts and unresolved conflicts of interest. Meanwhile the level of enforcement remains uneven between different countries as does the development of good practices and policies of different associations and companies.

Actions by governments

Private-to-private bribery is criminalized across the ACN region. ACN countries have also gradually introduced liability of legal persons for corruption. Generally speaking criminal liability of legal persons is a novelty in the ACN region. At least on the face of it, the pressure to implement compliance measures within companies stems from the criminal laws of several countries where the lack of supervision can make legal entities liable for offences committed by employees, etc. However, the enforcement of such legislation remains weak in large parts of the region.

A well-known area of concern is situations when businesses use their resources to illicitly influence political decision making or businesspeople themselves turn into politicians to advance their own private economic interests. One approach to tackling problems in the interaction of business and politics is to regulate private funding for political parties and election candidates through disclosure, lowering the maximum size of donations, imposing expenditure caps, granting public funding, etc. ACN countries vary widely in how much transparency is required and restrictions imposed in this area. A growing number of countries adopt lobbying laws. However, such laws are still far from adopted everywhere and a number of countries only debate the possible introduction thereof.

Most ACN countries have anti-corruption strategies, programs and/or action plans. Some of them address specifically private sector integrity issues. In other cases, the strategies and plans do not address private sector corruption at all or address only specific aspects of it. Dialogue between governments and businesses about anti-corruption policies often takes place in the form of consultative arrangements such as councils and working groups. In many countries, governments themselves have invested major assets in enterprises. It is common to apply some public-sector rules to state-owned enterprises, for example, the status of public officials to officers of such enterprises and obligation to submit asset and interest declarations.

ACN countries have tried to increase transparency in a number of corruption-prone areas. Online registries of inspections where agencies publish their inspection plans are a new and growing trend. Several ACN countries have e-procurement systems that allow for the publication of various kinds of information. On the other hand, requirements to disclose information on beneficial ownership to competent authorities or any persons with legitimate interest are not yet common. Neither is advanced legislation for whistleblower protection, which would apply to both public and private entities.

Actions by business associations and NGOs

Associations in the ACN region often carry out research on corruption and its risks. Typically they sponsor or commission corruption-related surveys and analyse corruption risks in the business

environment. It is also common for associations and other NGOs to engage in public events that address corruption issues, for example, conferences, round tables and workshops. In terms of training, associations and NGOs commonly work with various target groups from broad circles such as company employees in general to specific categories, for example, board members. There are many instances of associations engaging in advocacy vis-a-vis governments on various issues important for the associations' members including anticorruption.

Establishing codes of conduct or defining integrity principles is also fairly common for associations across the ACN region. Banking is one of areas where sectoral codes are common and include, among other things, anti-corruption and integrity provisions. Another sector with commonly developed sectoral standards is pharmaceuticals. Often associations like chambers of commerce and industry develop anti-corruption charters or codes of ethics applicable to business in general. Wealth of information is available about standards developed and adopted by business associations across the ACN region. Nevertheless information is scarce about their enforcement.

On the other hand, it is much less common for business associations of the region to establish their own anti-corruption, ethics or integrity units or create particular mechanisms for supporting individual companies. Interesting even if relatively rare types of engagement are the mechanism for the review of grievances of entrepreneurs in the National Chamber of Entrepreneurs of Kazakhstan and the creation of the business ombudsman in Ukraine in a joint initiative by the government, international organizations and five business associations.

Some associations and other business-related NGOs engage also in collective actions. While not found in all parts of the region, examples of collective actions include certification of socially responsible or compliant companies as well as forming networks of associations and companies – in some countries as national networks of the UN Global Compact, which aim to strengthen the principles of corporate social responsibility including anticorruption.

Actions by companies

Companies of the ACN region, which participate in the UN Global Compact and use integrity-promoting measures, most often have internal written policies, codes or regulations (anti-corruption policies, ethics rules, conflict-of interest regulations, etc.). Less frequently but still commonly reported activities include integrity-related training of employees, internal channels for reporting incidents, integrity-related requirements for business partners, and dedicated integrity units or officers. Smaller numbers of companies report having transparent procurement procedures, integrity risk assessments and particular measures for the protection of whistleblowers, which exceed the mere possibility of submitting reports anonymously. Stronger integrity policies are typically found in companies, which are publicly traded and must comply with rules of the stock exchange, companies with significant foreign investments or partners, and companies in sectors where corruption causes particularly high business risks – typically in financial services.

On the other hand, there is evidence that many companies of the region do not often use or apply their anti-bribery and corruption procedures. They recognise whistleblowing as a means to strengthen anti-corruption efforts but do not ensure proper procedures for the protection of whistleblowers. They also tend not to disclose their anti-bribery and corruption measures and not take legal action against other companies for integrity breaches.

Introduction

Objective: The thematic study focuses on strengthening integrity in the business sector with a particular focus on anti-corruption measures in and for the private sector. Integrity has many aspects and not all of them can be covered in one study. A key focus of this study is on measures that directly or indirectly prevent companies from engaging into private-to-public and private-to-private corruption such as bribery, facilitation payments, unethical provision and acceptance of gifts or other favours. Another focus is on policies and particular measures that prevent the risk of breach of trust within the company without necessarily involving the exchange of inappropriate advantages (such as bribes) with third persons, for example, favouritism in concluding contracts and unresolved conflicts of interest.

To limit the scope of the study, a number of areas are deliberately excluded although they are related to upholding integrity. For this reason, the study does not cover measures against money laundering and financing of terrorism, anti-fraud policies, competition policies, accounting standards, protection of consumers' rights, measures to maintain environmental and safety standards, and customer services.

The practical objective of the study is to analyse current trends, identify good practices and develop policy recommendations on further promoting business integrity in the region of the Anti-Corruption Network for Eastern Europe and Central Asia (ACN).¹ The study and recommendations should serve as a basis for public-private dialogue at the national level to develop mutual commitments by the government and companies and monitor their implementation.

The study focuses first of all on the 25 countries participants to the ACN – Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, the former Yugoslav Republic (FYR) of Macedonia, Moldova, Mongolia, Montenegro, Romania, Russia, Serbia, Slovenia, Tajikistan, Turkmenistan, Ukraine, Uzbekistan. Out of these countries, two are members of the OECD, and nine are participants of the Istanbul Action Plan (IAP)². In addition the study includes also selected examples of practice in other OECD countries.

The study maps measures taken by three types of actors – the state (laws and policies of national governments), business associations and other NGOs that engage in strengthening business integrity, and companies. Upholding of business integrity is essential for both the public interest (for example, the citizens' interest in the mitigation of supply of bribes from the business sector) and private interests (for example, those of shareholders who want more value for their investment and employees who want safe and predictable employment). Sustainable containment of corruption is likely when different actors cooperate and complement each others' efforts against abuse. Therefore the study aims to map the diversity of efforts by a variety of actors to introduce and uphold high standards of integrity.

Methodology: In September 2013, the ACN Steering Group endorsed the Proposal for the ACN Business Integrity Study, including the Business Integrity Advisory Board, collection of data through questionnaires and expert seminars.

¹ The ACN, a regional programme of the OECD Working Group on Bribery, is open for all countries in Eastern Europe and Central Asia, including Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Estonia, Former Yugoslav Republic of Macedonia, Georgia, Kazakhstan, Kyrgyzstan, Latvia, Lithuania, Moldova, Mongolia, Montenegro, Romania, Russia, Serbia, Slovenia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan.

The OECD members are: Austria, Australia, Belgium, Canada, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Luxemburg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom and United States.

For more information about the ACN, its Work Programme and the Description of the Study, please refer to www.oecd.org/corruption/acn

² Armenia, Azerbaijan, Georgia, Kazakhstan, Kyrgyzstan, Mongolia, Tajikistan, Ukraine, and Uzbekistan.

The ACN Business Integrity Advisory Board at its first meeting on 25 October 2013 in Istanbul discussed the launch of the study and focused on the business integrity questionnaires. Three on-line questionnaires were developed with the assistance of Ernst and Young Baltics: for governments, for business associations, and for companies. They were prepared in English and in Russian.

The on-line questionnaires to governments, business associations and companies were mailed out in May 2014 and responses collected in August 2014. The responses to the questionnaires were uneven: Eastern European countries provided more complete responses while the level of responses from Central Asia was low. Besides, responses from companies were not always detailed enough to identify good practices. Additional details on the methodology of the survey as well as its results are presented in the Chapter 3 “Regional trends in the promotion of business integrity”.

To collect additional information from the Central Asian region, the ACN Secretariat with the assistance of the external consultant Jeff Erlich provided by AmCham Kazakhstan prepared country studies on Kazakhstan, Kyrgyzstan and Uzbekistan during August-September 2014. To learn more about companies’ practice, the ACN Secretariat together with the Investors’ Forum of Lithuania and Ernst and Young Baltics organised private sector consultations in Lithuania in September 2014.

The preliminary findings of the above research were presented for discussion and validation at the first ACN Expert Seminar on Business Integrity that took place in November 2014 in Istanbul. Experts were also invited to share their views on the challenges for business integrity in the region as well as present examples of good practices by governments, business associations and companies. The members of the ACN Advisory Group at their second meeting that was organised back-to-back with the seminar discussed the implementation of the project to date as well as the next steps such as further research and development of recommendations. Preliminary findings were presented also in Bucharest at the conference “Business Integrity in Romania: Challenges, Good Practices and Way Forward” and in Chisinau at the Regional Seminar on “Fostering Co-operation in Corruption Prevention between Government and Private Sector” in April 2015. During drafting of the study report, consultations took place with the OECD Trust and Business Project.

In addition, extensive desk research was carried out during 2015 to gather information on activities by governments, business associations and companies. In particular, communications on progress submitted under the Global Compact were used as a source on company practices and Istanbul Anti-corruption Action Plan country reports as a source on countries’ efforts to promote integrity in the private sector.

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Structure: The study report starts with outlining the general role of three types of actors (governments, business associations and other NGOs, and companies) in upholding and strengthening business integrity. Then the study provides an overview of key economic and political aspects of the ACN region and describes general trends in the promotion of business integrity in the region. The bulk of the main body of the study contains three chapters each focusing on the activities of one of the three types of key actors. Within each of these three chapters, subchapters cover particular kinds of measures. The subchapters provide general description of the measures or policies and examples from ACN countries and in some cases also non-ACN members of the OECD. Recommendations for governments and the private sector complete the body of the text. An annex outlines the international standards and recommendations in the area of business integrity issued by both intergovernmental bodies and private international organizations.

Chapter 1. Key players

The study covers activities of the state (laws and policies of national governments), business associations and other NGOs that engage in strengthening business integrity, and companies. Within each of the three broad categories, particular actors can carry out a variety of tasks.

1.1. Role of governments

International standards place extensive obligations on states as well as pose expectations in the form of recommendation. (See the Annex of this study.) Generally the government's obligations can be viewed in two dimensions. (Note that the terms state and government are used interchangeably in this report unless stated otherwise.)

One of these dimensions is the fight against manifestations of and opportunities for corruption in the public sector where interaction with business takes place and elsewhere. The preamble of the UNCAC reminds that the prevention and eradication of corruption is state responsibility. This responsibility shall be undertaken with the support and involvement of civil society and other private-sector actors. Nevertheless the state remains the actor who is subject to by far strongest obligations in countering corruption.

The UNCAC reiterates the concern that corruption is linked to other forms of criminality, in particular organized crime and economic crime. By extension, a case can be made that public sector corruption is linked to corrupt behaviour of business operators. Business operators interact with governments both by being entities subject to government regulations and by acting as business partners of the state. In environments where officials who act on behalf of the state are systematically corrupt, with high likelihood businesses will also engage in corruption unless they decide to leave the respective market. Therefore in the broad sense most of the measures for the prevention and criminalization of corruption as envisaged by the UNCAC shall be viewed as necessary conditions for the strengthening of business integrity.

The other dimension of the state's role is acting specifically to impose standards and otherwise promote the integrity of business operators. In particular, this is expressed in the obligation of states to prevent corruption involving the private sector (Article 12 of UNCAC). Some of the most concrete obligations of states are defined in the area of criminalization of corruption, notably bribery in the private sector (see, for example, the Criminal Law Convention on Corruption of the Council of Europe). States are generally expected to fight corruption, which involves not only interactions between private and public parties, but also such corruption where only private parties engage, in other words, the private-to-private corruption.

However, in enhancing business integrity, states are required and expected to engage in a much broader set of activities than just criminalization and enforcement. The states are required to set binding standards for the business in areas where good practice is likely to minimize corruption opportunities, for example, in bookkeeping and audit. Finally the state should also guide and assist companies in the development and implementation of business integrity standards. For example, the UNCAC suggests that countries promote "the development of standards and procedures designed to safeguard the integrity of relevant private entities" (Article 12 of UNCAC). Under the OECD Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions (2009), in addition to direct enforcement, countries are recommended to undertake a variety of activities to raise awareness, encourage companies to comply and facilitate their compliance with anti-bribery standards.

In addition to the above, the government is often not only the standard setter, enforcer and facilitator in the area of integrity but itself owner of enterprises. State owned enterprises find themselves in an area where public sector and private sector principles often intertwine. In this case, the state is expected to carry out the ownership function and adhere to company governance standards in a way that ensures high integrity.

The scope of this study does not cover all anti-corruption activities by governments even if they eventually should reduce incentives and pressure on business to engage in corruption. The need to use a selective approach means that the Chapters 4 and 5 will review activities by states in specific areas, which either serve as examples of the kind of government activity that reduces pressure on business to engage in corruption or which in a direct way address problems of business corruption (or strengthen business integrity).

1.2. Role of business associations and other NGOs

Business associations and other NGOs can have different missions but their common characteristic is that they are non-commercial (non-profit) private sector entities, which represent a certain group of interests, be it a particular branch of business or active citizens who are concerned about corruption or other public issues.

There is a variety of business associations. Some aim to represent the business as a whole, and some organize businesses of a particular sector or just a group of enterprises within a particular sector. Some associations represent only the national business sector, while others represent also or only international companies. The role of business associations can vary by the degree to which they aim to promote only the business interest of their members in a narrower sense or also to contribute to the wider good of the society.

Many factors place associations in an appropriate role to contribute to the struggle against corruption. For example, in difference from most individual companies, purposes of associations focus on achieving certain collective goals. Hence they can be expected to transcend the self interest of an individual business operator and undertake efforts for the wider good. Associations can also be a means by which an individual company that wants to refrain from corruption makes sure that its competitors do not gain a competitive advantage by continuing illicit interaction with public officials.

The Anti-Corruption Resource Centre U4 identifies at least three major ways in which business associations can support anti-corruption – facilitating collective action, advocating for reforms, and enhancing integrity within companies. (Martini, 2013: 2, 3) The OECD Good Practice Guidance on Internal Controls, Ethics, and Compliance suggests specific ways in which business organizations and professional associations can assist companies, particularly SMEs, “in the development of effective internal control, ethics, and compliance programmes or measures for the purpose of preventing and detecting foreign bribery”. (OECD, 2009) Suggested examples of activities are among other things

1. dissemination of information on foreign bribery issues, including regarding relevant developments in international and regional forums, and access to relevant databases
2. making training, prevention, due diligence, and other compliance tools available
3. general advice on carrying out due diligence
4. general advice and support on resisting extortion and solicitation.

Moreover the mentioned OECD recommendation of 2009 recommends countries to encourage business organisations and professional associations to engage in assisting companies.

Although international recommendations understandably stress the particular role of business associations, this study also reviews activities of NGOs that engage in business-related anti-corruption activities although themselves are not business associations. The importance of the participation of society in anti-corruption efforts is nearly universally recognized (see, for example, Article 13 of the UNCAC). Non-business NGOs have accumulated wealth of experience in anti-corruption activities and, like business associations, they often aim to engage companies anti-corruption activities. Such engagement may take various forms, for example, companies may be invited to participate in debates organized by NGOs or they can be encouraged to adhere to certain anti-corruption standards, for example, in the framework of the so-called integrity pacts. Depending on the national context both business associations and other NGOs, for example, Transparency International can take the lead in engaging and assisting companies. Therefore it is the approach of this study in the Chapter 6 to look at how organized non-governmental and non-profit entities promote business integrity without always drawing a strict separation between business associations and other NGOs.

1.3. Role of companies

Companies have a very important role in both passive and active sense. In a passive sense, companies shall comply with prohibitions imposed by the state, for example, the prohibition to bribe. In a narrow sense, if a company merely refrains from such illicit activity, it has thereby contributed to the anti-corruption imperative. However, mere refraining from crime is not enough. As already mentioned, international bodies and governments set standards for various aspects of business operations, for example, bookkeeping, audit and disclosure. Correspondingly companies are required to undertake particular efforts to ensure compliance with these standards. Depending on the country, companies usually are under at least some obligation to ensure internal controls and compliance measures to prevent their own engagement in bribery.

In addition to compliance with the minimum of legally binding standards, companies can take many different measures to promote business integrity and ensure compliance voluntarily. Below is an overview of measures that companies must or should implement. The overview is based on the Anti-corruption Ethics and Compliance Handbook for Business by OECD, UNODC and the World Bank of 2013. (OECD, UNODC, World Bank, 2013) A starting point for a company's business integrity policy can be risk assessment with the objective "to better understand the risk exposure so that informed risk management decisions may be taken". Given that compliance measures represent considerable costs (especially for companies operating in the international market and for enterprises with less spare resources), it is important to determine the right amount and type of effort needed and therefore risk assessment is indispensable.

Further the handbook identifies 12 anti-bribery elements, which are found in the internationally recognized anti-bribery instruments for business such as the Anti-Corruption Code of Conduct for Business (Asia-Pacific Economic Co-operation), Business Principles for Countering Bribery (Transparency International), Good Practice Guidance on Internal Controls, Ethics and Compliance (OECD), Integrity Compliance Guidelines (World Bank), Principles for Countering Bribery (World Economic Forum's Partnering Against Corruption Initiative), and Rules on Combating Corruption (International Chamber of Commerce). The 12 elements are:

- support and commitment from senior management for the prevention of corruption
- developing an anti-corruption programme
- oversight of the anti-corruption programme
- clear, visible, and accessible policy prohibiting corruption
- detailed policies for particular risk areas:

- facilitation payments
- special types of expenditures, including: gifts, hospitality, travel and entertainment, political contributions, and charitable contributions and sponsorships
- conflicts of interest
- solicitation and extortion
- application of the anti-corruption programme to business partners
- internal controls and record keeping
- communication and training
- promoting and incentivising ethics and compliance
- seeking guidance – detecting and reporting violations
- addressing violations:
 - internally
 - externally with authorities
- periodic reviews and evaluations of the anti-corruption programme.

The substance of these anti-corruption elements has been described in various international publications and this will not be repeated here. In the Chapter 7, the focus will be on what companies actually do as reflected by surveys and especially by self-reporting.

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Chapter 2. Regional overview

The ACN region is diverse in nearly every economic and political respect. The only major commonality of the ACN countries is historical – all of them had socialist economies without a significant private sector and with a dominant role of state in economy and other spheres of life until late 1980s and early 1990s. Moreover all of them were subject to authoritarian rule. After the breakup of the socialist block, the countries chose varying strategies with slower or quicker transition to the market economy and slower or quicker democratization. By 2015, several countries of the former socialist area have joined the EU and the OECD, while others are struggling with the direction and alliances ranging from BRICS, Eurasian Customs Union, Shanghai Cooperation Organisation, and others. Not only the tempo of the reforms varied but also their eventual depth and comprehensiveness. Still all of the countries have had transition experience during the last 25 years, which involves certain similarities (for example, privatization and attempts to run competitive elections against the historical background of prolonged authoritarian rule).

2.1. Economic structure

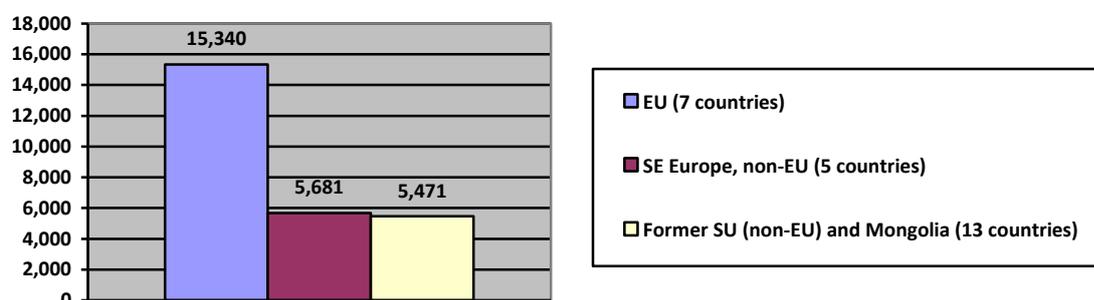
In terms of economic conditions, the ACN countries vary strongly. The World Bank classifies six of the economies as high **income**, twelve – upper middle income, and seven – lower middle income (see the Table 2.1). The GDP per capita varies from USD 1,114 (United States Dollars) in **Tajikistan** to 23,962 in **Slovenia** (in current USD 2014). (The World Bank Group, 2015a)

Table 2.1. ACN economies by the level of income

High income	Upper middle income	Lower middle income
Croatia Estonia Latvia Lithuania Russia Slovenia	Albania Azerbaijan Belarus Bosnia and Herzegovina Bulgaria Kazakhstan FYR of Macedonia Mongolia Montenegro Romania Serbia Turkmenistan	Armenia Georgia Kyrgyzstan Moldova Tajikistan Ukraine Uzbekistan

The average GDP per capita was more than two times higher in the seven EU members than in non-EU countries (South-East Europe, former Soviet Union republics plus Mongolia).

Figure 2.1. Average unweighted GDP per capita by region (in current USD 2014)



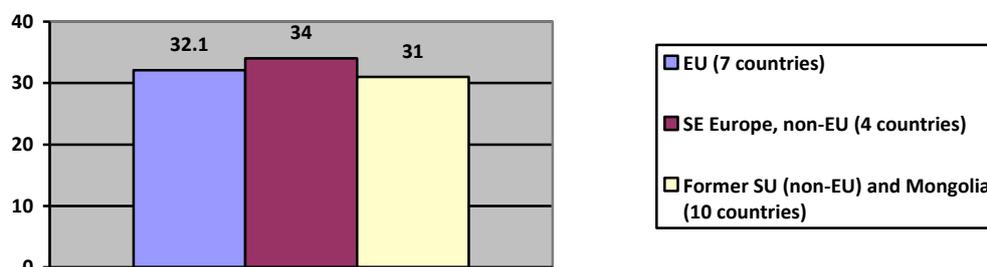
Source: Adapted from the World Bank Group (2015a), *Data* (database); <http://data.worldbank.org/>.

The level of wealth can affect corruption in a variety of ways that remain subject to scientific inquiry. It is known that higher GDP per capita correlates with lower levels of corruption as measured by such international indices as the Corruption Perceptions Index of Transparency International and the Control of Corruption measure by the World Bank. (Bai et al., 2013: 42) According to the so-called life-cycle theory of corruption, development of a country should eventually lead to reduction of corruption. (Bardhan, 1997; Ramirez, 2013) On the other hand, extensive writing argues that corruption itself is a factor that hampers growth. See, for example, Mauro, 1996.

Regardless of conclusions on the direction of possible causation, companies in richer and poorer parts of the ACN region are likely to find themselves in rather different situations. More detailed insights into the relationship between growth and corruption suggest a variety of possible interactions. Data from Eastern Europe and Central Asia show that bribe frequency as reported by surveyed firms tends to be lower in countries with higher GDP per capita. (Anderson and Gray, 2006: 28) One study concluded that firms rather tended to bribe in poorer contexts and rather tended to lobby in richer contexts. (Harstad and Svensson, 2011: 58) A recent study from another region (Vietnam) also demonstrated that economic growth reduced the proportion of company revenues that were extracted by public officials as bribes. (Bai et al., 2013: 34) These anecdotal findings may suggest that companies both suffer from corruption and are prepared to engage in corruption more in relatively poorer economies.

The regional averages are rather even for the **distribution of wealth within countries**. Unlike GDP per capita, the average values of the Gini Index do not differ substantially between EU members and other ACN countries. Note that estimates of the Gini Index by the World Bank are not published for all of the ACN countries.

Figure 2.2. Average unweighted Gini Index values by region (2008-2013)³

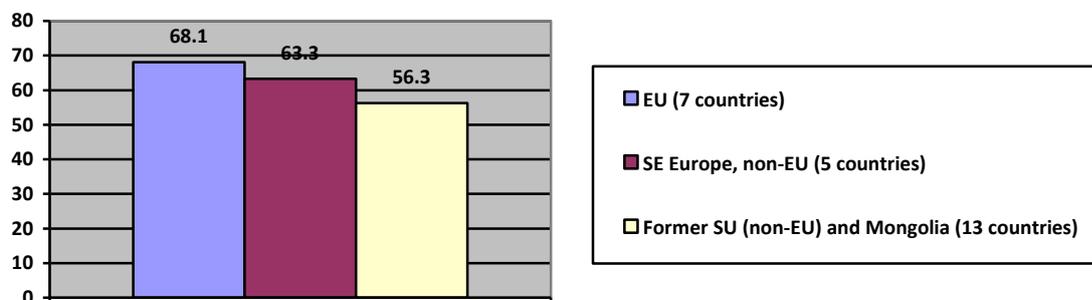


Source: Adapted from the World Bank Group (2015a), *Data* (database); <http://data.worldbank.org/indicator/SI.POV.GINI>.

However, the disparity between particular countries is rather wide with the value of the Gini Index 24.6 for Ukraine (2013) and as high as 41.4 for Georgia (2012) (higher value implies more inequality). (The World Bank Group, 2015a) However, it is reasonable to assume that the transition brought about greater economic inequality across the whole of the region. It is not the aim of this report to review literature on relations between inequality and corruption. However, it has been long argued that corruption contributes to inequality (see, for example, Chêne, 2014: 6, 7; Gupta et al., 1998). Such observations underline the importance of achieving that businesses and public officials do not exacerbate social problems by making the public sector serve narrow private interests through corruption.

Also the levels of **economic freedom and openness** vary among ACN countries. In the Index of Economic Freedom, the 2015 scores for the ACN countries varied from 76.8 for Estonia (closer to the score of 100 meaning more free) to 41.4 for Turkmenistan. (The Heritage Foundation, 2015)

Figure 2.3. Average unweighted score of the Index of Economic Freedom by region



Source: Adapted from the Heritage Foundation (2015), <http://www.heritage.org/index/explore>.

According to the classification of the Open Markets Index (2015 edition) by the International Chamber of Commerce, five of the ACN countries (**Bulgaria, Estonia, Latvia, Lithuania, Slovenia**) are in the category of above average openness, and four (**Kazakhstan, Romania, Russia, Ukraine**) are in the category of average openness. (ICC, 2015) Among scholars, a view exists that greater openness of a country to foreign trade will cause lowering of corruption even if opinions vary about exactly how this

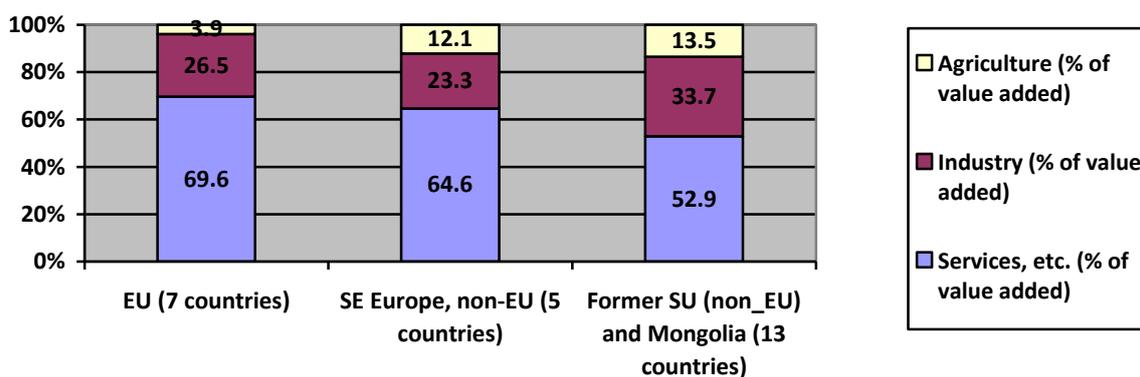
³ The latest data published as of 04 December 2015 were from different years – 2008 for FYR of Macedonia, 2009 for Tajikistan, 2010 for Serbia, 2011 for Croatia, 2012 for Albania, Belarus, Bulgaria, Estonia, Kyrgyzstan, Latvia, Lithuania, Mongolia, Romania, Russia, Slovenia, and 2013 for Armenia, Georgia, Kazakhstan, Moldova, Montenegro, and Ukraine.

relation functions. (See, for example, Gatti, 2004) Sufficient institutional development of the country may also be needed as a precondition for this positive effect to take place. (Soudis, 2009: 3, 23, 24)

As a hypothesis, it could be suggested that important influences on corruption would be brought by such multinational companies that have high internal integrity standards. These could be expected to invest more and operate in more open economies. The positive anti-corruption impact could be particularly strong in economies where foreign investment comes mainly from jurisdictions that have strong anti-corruption standards. As reported by Transparency International, “companies from countries where corporate ethics are seen as strongly entrenched are perceived to be less likely to engage in foreign bribery”. (Hardoon and Heinrich, 2011: 10) However, one should remember that overall evidence on the impact of multi-national companies on corruption in developing markets is inconclusive with evidence on cases where this impact has been detrimental. (Zhu, 2014: 29, 30)

The economies differ also by the **sectoral structure** of economies. Both agriculture and industry are on average largest by added value in the non-Baltic former USSR (industry in this statistics comprises mining, manufacturing, construction, electricity, water, and gas). The EU members are leading in the share of value added by services, followed by the South-East European non-EU members. Still, on the face of it, the regional differences in economic structure do not suggest any implications for the state of corruption and business integrity.

Figure 2.4. Sectoral structure of ACN economies by region (unweighted averages, 2014)⁴



urces: Adapted from the World Bank Group (2015a), *Data* (database); <http://data.worldbank.org/indicator/NV.AGR.TOTL.ZS>; <http://data.worldbank.org/indicator/NV.IND.TOTL.ZS>; <http://data.worldbank.org/indicator/NV.SRV.TETC.ZS>.

One indicator, which may show the potential capability of economies to counter corruption pressures, is the proportion of small and medium enterprises (SMEs). Due to limited bargaining power, lack of economies of scale and other factors, SMEs are particularly vulnerable when public authorities or private business partners encourage or pressure them to engage in corruption. They may also have less resource to invest in own integrity programs. For small companies in **Moldova** and **Ukraine** corruption is the top business constraint (in Ukraine the size of companies is apparently not decisive in this regard because corruption is the top constraint also for large companies). (Data from the Business Environment and Enterprise Performance Survey (BEEPS) here taken from: OECD, 2015b_ch2: 62)

There are no data on the distribution of SMEs across the whole of the ACN region. Data on six countries of the former Soviet Union (Armenia, Azerbaijan, Belarus, Georgia, Moldova, and Ukraine) show that

⁴ 2013 – for the Russian Federation and Tajikistan, 2012 – for Turkmenistan.

the proportion of SMEs (including micro enterprises) varies from 83.3% in **Azerbaijan** to 99.8% in **Ukraine** (2013). The share of SMEs in employment varies from 24.7 in **Armenia**⁵ to 67.3 in Ukraine) (OECD, 2015b) However, direct comparisons between countries may not be meaningful due to differences in national classification of enterprises. The share of employment by SMEs is fairly high also in **Ukraine** (67.3%). One could tentatively note that in a country with a high level of perceived corruption and high proportion of SMEs in the economy as in Ukraine, the business sector may have particularly great challenges in complying with integrity standards.

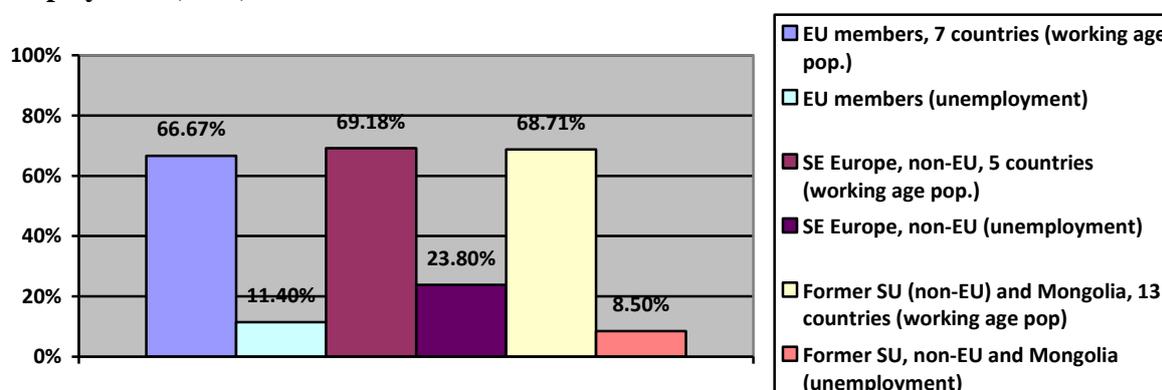
2.2. Resources

The ACN region is diverse in the availability of **natural resources**. According to OECD data three of the ACN countries are major crude oil producers (**Russia, Kazakhstan, and Azerbaijan** – from 503,297.9 to 39,679.1 thousand tonnes of oil equivalent in 2014). (OECD, 2015a) Also the three coal-richest countries belong to this part of the ACN region. In 2011, the total recoverable coal amounted to 173,073 million short tons in **Russia**, 37,338 million in **Ukraine**, and 37,037 million in **Kazakhstan**. (EIA) **Russia** is also the richest ACN country in terms of renewable internal freshwater resources per capita (30,054 cubic meters), followed by **Georgia** and **Mongolia** (2013). (The World Bank Group, 2015a) More unequivocally than the general wealth in the economy, valuable natural resources are known to facilitate corruption opportunities: “The existence of appropriable resource revenues, for which various social groups may vie, can result in a high level of rent-seeking behaviour. Secondly, corruption may occur within natural resource management (NRM) systems themselves, leading to the sub-optimal use of these resources and to poor development outcomes in terms of economic growth and/or poverty reduction. The level of corruption within NRM systems is a product not only of the resource endowments at stake, but also of the institutional arrangements in place to govern their use.” (Kolstad et al., 2008: 1, 2) The unequal distribution of natural resources across the region may be a factor influencing levels of corruption among ACN countries although it is not the aim of this study to verify this kind of possible correlations.

A different type of resource is the **working age population**. Also by this indicator (population ages 15-64, % of total), most of the top countries belong to the region of the former USSR (four out of five countries with the highest proportion are from this sub-region). However, the average proportion is marginally higher for the South-East European non-EU region. The average figure is lowest for the EU members. While a higher proportion of working age populations can be analyzed as a growth enhancing factor (the so-called demographic dividend), the regional data on this variable do not seem to suggest any explanation regarding regional differences of corruption. When data on the working age population are compared with data on unemployment, it also becomes obvious that the demographic dividend is not necessarily used to produce growth because the region with the highest average proportion of working age population (non-EU South-East Europe) also has the highest level of unemployment.

⁵ The percentage is 7.9% for Azerbaijan but the category refers only to small enterprises mostly covering individual entrepreneurs.

Figure 2.5. Average unweighted proportion of working age population (15-64 years, 2014) and unemployment (2013)



Source: Adapted from the World Bank Group (2015a), *Data* (database); <http://data.worldbank.org/indicator/SP.POP.1564.TO.ZS>; <http://data.worldbank.org/indicator/SL.UEM.TOTL.ZS>.

The distribution of **foreign direct investment** is diverse as well. The total inward stock of foreign direct investment in 2014 varied from 1,887 million USD in **Tajikistan** to 378,543 million USD in **Russia**. As percentage of gross domestic product, the inward stock of foreign direct investment varied from 14.4% in **Uzbekistan** to 139% in **Mongolia** (UNCTAD, 2015; see Table 2.2). The average unweighted regional percentage was highest for four South-East European non-EU countries (no data on Bosnia and Herzegovina). However, it would take a more detailed insight into the structure and sources of this investment to suggest any effects that it could have on corruption and business integrity.

Table 2.2. Inward stock of foreign direct investment (percentage of GDP, 2014)

European Union	South East Europe (non-EU)	Former Soviet Union (non-EU) and Mongolia
Bulgaria 83.3 Estonia 74.4 Croatia 52.1 Latvia 45.6 Romania 37.4 Lithuania 30.5 Slovenia 25.7	Montenegro 111.7 Serbia 67.4 FYR of Macedonia 45.3 Albania 33.7	Mongolia 139.3 Georgia 74.0 Kazakhstan 60.9 Armenia 56.7 Turkmenistan 54.7 Ukraine 48.8 Kyrgyzstan 47.6 Moldova 45.9 Azerbaijan 24.5 Belarus 23.3 Russia 20.4 Tajikistan 20.4 Uzbekistan 14.4

Source: UNCTAD (2015); <http://unctad.org/en/Pages/DIAE/World%20Investment%20Report/Annex-Tables.aspx>.

2.3. Geopolitical situation and political systems

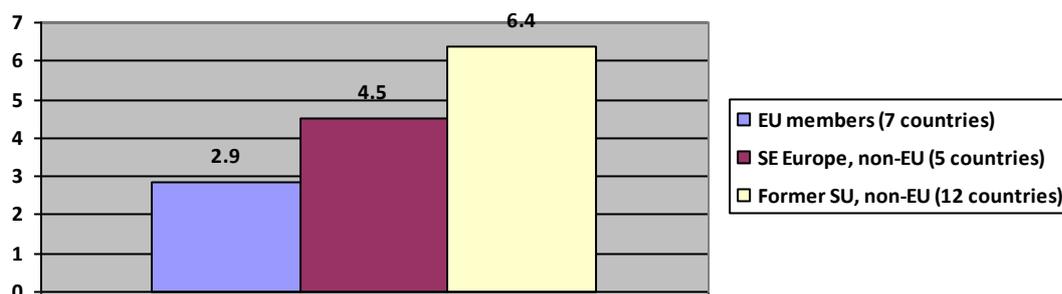
Like the economic indicators, also the political and geopolitical orientation of the ACN countries is dispersed. In addition to the EU members (**Bulgaria, Croatia, Estonia, Latvia, Lithuania, Romania, and Slovenia**), all of the currently non-member countries of South-East Europe are either EU candidates or potential candidates. (European Commission) All seven EU members plus **Albania** are members of

the NATO. Two (**Estonia** and **Slovenia**) are members of the OECD. EU accession process impacts economic policies and development of the public sector in candidate countries. Still, although a degree of control of corruption is a requirement for countries that aim to accede to the EU, major international anti-corruption standards stem from organizations with broader regional (the Council of Europe) or global (UN, OECD) reach.

Eleven countries (**Armenia, Azerbaijan, Belarus, Kazakhstan, Kyrgyzstan, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine, and Uzbekistan**) belong to the Commonwealth of Independent States, five of them (**Armenia, Belarus, Kazakhstan, Kyrgyzstan, and Russia**) also to the Eurasian Economic Union.

The ACN region is probably most clearly divided by the degree of democratic development and here the relations of countries with the European Union seem to be a major factor. The annual assessment of the Nations in Transit report by Freedom House covers all but one of the ACN countries.⁶ The assessment is expressed as ratings for seven categories and one of the categories is national democratic governance. The ratings are based on a scale of 1 to 7 where 1 represents the highest level of progress. For the EU members of the ACN region, the average rating shows most progress followed by non-EU Balkan countries. The rating shows least progress for the non-Baltic former members of the USSR.

Figure 2.6. Average unweighted ratings of national democratic governance by region (2015, higher score means less progress)



Source: Adapted from Freedom House (2015); https://freedomhouse.org/sites/default/files/FH_NIT2015_06.06.15_FINAL.pdf.

The clarity of the divide is seen particularly in that none but two of the countries of a less progressed sub-region are rated higher than the least progressed country of an overall more progressed sub-region.⁷ So the sub-regions scarcely overlap in terms of democratic development. Research overall does not warrant an argument that democracy automatically implies reduced corruption. There is evidence of more complex interaction between democracy and corruption “whereby corruption appears to increase in the short to medium term after a democratic transition and a fall in corruption levels should be observed only in the long term”. (Mondo, 2014: 23) Hence companies might expect less corrupt environment in those countries where democracy has consolidated and lasted longer.

2.4. Levels of corruption

Given the variety of the ACN countries, also the levels and risks of corruption vary. Even the seven members of EU find themselves in different positions. Mungiu-Pippidi and Kukutschka classify **Estonia**

⁶ The Nations in Transit report does not cover Mongolia.

⁷ Georgia and Moldova have one step higher ratings than Bosnia and Herzegovina.

and **Lithuania** as countries with significant anti-corruption deterrents but meanwhile with important challenges in the form of resources available for corruption, for example, sizeable informal economy and EU funds. **Slovenia** is described as a country with low constraints on corruption although resources available for corruption are low as well. **Bulgaria, Latvia, and Romania** have the highest corruption risks. (Mungiu-Pippidi and Kukutschka, 2013: 40-42) The diversity among the European Union members shows that the EU has not led to real convergence among its members in terms of the levels of corruption. Still the corruption situation is at its gravest in the non-EU countries of the former Soviet Union. Based on the Control of Corruption (CoC) indicator of the World Bank, as a whole this was the most corrupt region of the world in the period 1996-2011. (Bratu, 2013: 55) However, also here important differences between countries exist.

To show the variety, the Control of Corruption indicator can be used for the identification of highest and lowest risks of corruption within each of the three groups defined previously (on the scale from -2.5 to 2.5 where a lower score means greater extent of corruption). The lowest and highest values for the indicator among the seven EU members in 2014 was -0.28 and 1.27, for the five South-East European non-EU members they were -0.55 and 0.09, and for the thirteen non-EU former Soviet Union republics (plus Mongolia) they were -1.22 and 0.74. (The World Bank Group, 2015b) While the top achieving country (**Estonia**) is found among the EU members, it cannot be argued that being in this political block is a sufficient condition for better control of corruption. Closer scrutiny of the data suggests that the sub-region overlap between the EU members, the South-East European non-EU members, and the non-EU former Soviet Union republics (plus **Mongolia**) is stronger by control of corruption than by the democratic development. For comparison, the table 2.3 shows also the country scores from the Corruption Perceptions Index (CPI).

Table 2.3. Scores of the Control of Corruption indicator and the Corruption Perceptions Index 2014⁸

European Union	CoC	CPI	South East Europe (non-EU)	CoC	CPI	Former Soviet Union (non-EU) and Mongolia	CoC	CPI
Estonia	1.27	69	FYR of Macedonia	0.09	45	Georgia	0.74	52
Slovenia	0.69	58	Montenegro	-0.01	42	Belarus	-0.32	31
Lithuania	0.48	58	Serbia	-0.19	41	Armenia	-0.44	37
Latvia	0.34	55	Bosnia and Herzegovina	-0.28	39	Mongolia	-0.47	39
Croatia	0.19	48	Albania	-0.55	33	Kazakhstan	-0.76	29
Romania	-0.14	43				Moldova	-0.85	35
Bulgaria	-0.28	43				Russia	-0.87	27
						Azerbaijan	-0.92	29
						Ukraine	-1.00	26
						Tajikistan	-1.00	23
						Kyrgyzstan	-1.11	27
						Uzbekistan	-1.12	18
						Turkmenistan	-1.22	17

Sources: The World Bank Group (2015b); <http://info.worldbank.org/governance/wgi/index.aspx#home>; Transparency International (2014); <http://www.transparency.org/cpi2014>.

⁸ In CPI the score 100 means very clean.

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Chapter 3. Regional trends in the promotion of business integrity

This chapter presents responses by business associations and companies to the survey developed and implemented with the assistance of EY (formerly – Ernst and Young) Baltics in 2014. Potential respondents were selected based on the proposals gathered from the members of ACN. The survey was conducted during Spring-Summer 2014 using Adobe FormsCentral solution, which enabled the collection of responses both via web-based platform and email. The final sample of respondents was 10 out of 25 governments of ACN countries, 15 business associations, and 18 companies (for more details see Table 3.1).

Table 3.1. Sample of the regional survey

Governments	Associations	Companies
Bosnia and Herzegovina	1 association from Azerbaijan	1 company from Azerbaijan
Bulgaria	2 associations from Georgia	7 companies from Georgia
Estonia	1 association from Kazakhstan	6 companies from Latvia
Kyrgyzstan (studies provided)	1 association from Kyrgyzstan	1 company from Lithuania
Latvia	1 association from Lithuania	2 companies from Romania
Lithuania	1 association from FYR Macedonia	1 company from Ukraine
FYR Macedonia	4 associations from Romania	
Montenegro	1 association from Slovenia	
Romania	1 association from Turkey	
Slovenia	2 association from Ukraine	

The larger part of company respondents falls into the category of large and international companies. Therefore the results represent rather a reflection of the better and more advanced practices in difference from the standard (average) situation in the region. Moreover, the authors of the study acknowledge the limited number of respondents participating in the study. Nevertheless insights of the survey can benefit governments, business associations and companies striving to create a more transparent business practises within countries they operate in and on a regional basis.

3.1. General situation (responses by companies and associations)

The first group of survey questions focused on the general situation and efforts taken on the national level by respective governments to (i) promote business integrity and/ or (ii) fight fraud and corruption.⁹

⁹ Note: Terms of “fraud”, “corruption”, “business integrity” and others were specifically defined in the survey materials to reflect different forms and aspects of potential misconduct (i.e., cross-border bribery, domestic bribery, private-to-private corruption, etc.). Terms used in this questionnaire are defined below to reflect how the authors of the survey understand them.

- Business integrity: for the purposes of this questionnaire, business integrity is treated in a narrow manner with a focus on bribery and economic crimes, excluding other related issues.
- Code of ethics: rules of ethical conduct adopted by a company for its employees, customers, shareholders, suppliers, and towards the society. They are usually binding for employees and provide for specific sanctions for violations.
- Collective action and integrity pact: a sustained cooperation amongst stakeholders. It increases the impact and credibility of individual action, brings vulnerable individual players into an alliance of like-minded organizations and levels the playing field between competitors. For examples, a collective action against corruption in a specific public procurement or construction project can involve a pact where all potential participants of the project, including responsible government agencies and private sector bidders, suppliers and other business partners agree to abstain from bribery and invite a third party, e.g. an NGO, to monitor compliance.

Answers provided by companies and business associations reveal that the general design and organizational set-up on the national level was viewed mostly positively:

- 75% of the respondents believe that governments study business integrity risks.
- 71% admit that there are special governmental agencies and/ or specialised units responsible for business integrity in respective countries.
- 78% state that national anti-corruption strategies or other policy documents include business integrity provisions.
- 80% admit that companies can be punished for bribery.
- All respondents stated that there were (i) a duty to report suspicions of bribery for individuals/ public officials and (ii) there were channels (such as hotlines) for businesses to report when they are asked for bribes.

-
- Compliance, ethics, and integrity programme: programme aiming at preventing acts such as bribery inside companies by such measures as identifying integrity risks, establishing internal rules forbidding bribery, training staff, following transparent accounting and auditing standards, and developing internal controls and monitoring mechanisms.
 - Capture of state by business (state capture): is a type of political corruption in which companies influence a state's decision-making to their own advantage through state institutions, including the legislature, executive, ministries and the judiciary; e.g. a company dominating in a specific market can bribe law-makers to skew a new law to create favourable conditions for its own operations.
 - Capture of business by state (also see, rent-seeking): is a type of political corruption when state officials interfere with business to ensure general control over the markets assigned to their competence, thereby creating possibilities for the representatives of the agency to obtain rent in accordance with their ranks in the institutional hierarchy.
 - Conflict of interest: situation when the decision-making of an official in the public or the private sector is compromised by his or her private interests.
 - Corporate raiding: is buying a large stake in a corporation, whose assets appear to be undervalued, and can involve a hostile takeover. The large share purchase would give the corporate raider significant voting rights, which could then be used to push changes in the company's leadership and management. This would increase share value and thus generate a massive return for the raider. In the ACN countries this term is often used to signify an action where a third party is using illegal actions to force the legal owner to cede his or her property rights or to sell shares at undervalued price under threat.
 - Rent seeking: is activity where public officials aim to obtain economic benefits, e.g. portion of income that has been produced by companies, by manipulating and abusing regulations.
 - Passive bribery by state bodies: situation when a company is solicited or asked to pay a bribe by a public official. It also can involve mere acceptance by a public official of an undue advantage in order to act or refrain from acting in matters relevant to official duties.
 - Bribery of state officials by companies (active bribery): active bribery involves promise, offering or giving to a public official of an undue advantage in order for him/her to act or refrain from acting in matters relevant to official duties.
 - Private-to-private corruption (or private sector corruption): active or passive bribery act taking place between two or more companies.



Answers by companies and associations.

Despite of the positive evaluation of the regulatory environment and distribution of functions of the appropriate governments, international fraud and corruption surveys (EY, 2013a; EY, 2014b; EY, 2014; EY, 2015) show that an actual fight against fraud and corruption is seen to be ineffective in the region in the context of:

- regulation and at least some enforcement regarding anti-corruption and anti-bribery all over Eastern Europe and Central Asia
- insufficient cooperation between business organizations and the public domain, which is one of the biggest challenges involving the lack of motivational system (for example, fiscal and non-fiscal incentives) and trust between public and private sectors
- clash of interests and understanding about:
 - the primary initiative and leadership to be taken to foster business integrity initiatives
 - roles, duties and responsibilities of the public sector and business organizations in areas of fight against fraud and corruption

- level of investment and resources (including but not limited to financial, technical, know-how-related and other) needed to ensure effective fight against fraud and corruption.

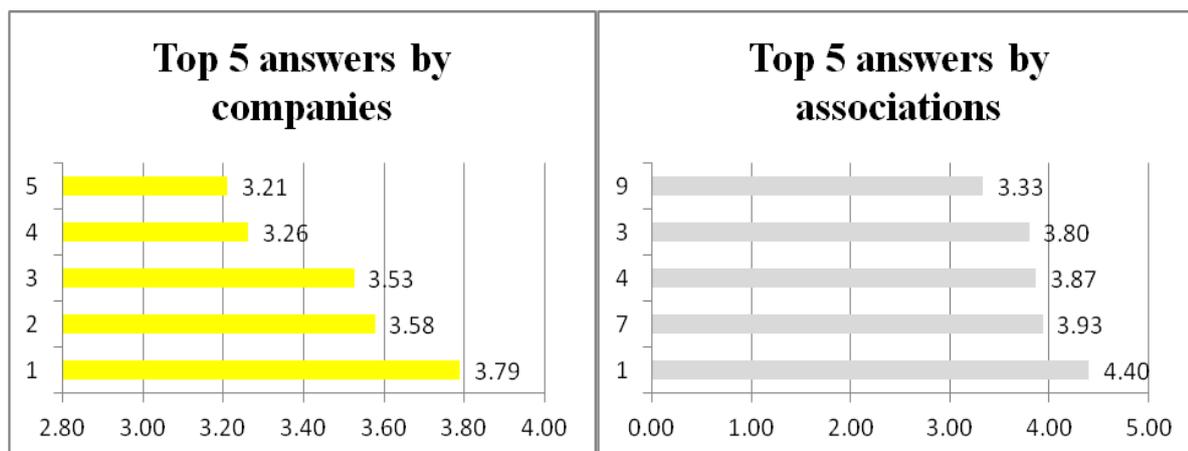
3.2. Forms and sources of business integrity risks (responses by companies and associations)

Forms of most important business integrity risks: The answer “Legal uncertainty and selective application of the law by the law-enforcement and judiciary” gained the highest score on a five-point scale (five meaning most important) with a certain margin between companies and associations (on average 3.79 for companies and 4.4 for associations). These responses emphasize the lack of consistency in the application of law by the law-enforcement bodies across the region. As a result, there is a low level of confidence and reliance on the certainty of the legal environment.

Additionally, it is worth noting that the views of companies surveyed concurred with the opinion of business associations only regarding the most important business integrity risk mentioned above. Answers covering corruption risks in the business and state relationships received a higher score in responses by associations. Business associations especially stressed bribe solicitation by public officials and other ad-hoc demand of bribes in individual cases (3,93) and state capture by business, including illegal lobbying and other forms of influencing the state decisions in favour of business interests (3,87). Meanwhile companies focused on the lack of development of competitive environment (3,58) and poor protection of property rights (3,53) (the full list of business integrity risks and the importance of those both to companies and business associations is provided in the Table 4.2 as well as the charts below).

Table 3.2. What forms of business integrity risks are most important to your company (for companies)/ companies operating in your country (for business associations)?

	Companies	Associations
	Average score	
1 Legal uncertainty and selective application of the law by the law-enforcement and judiciary	3,79	4,40
2 Insufficient development of competitive environment	3,58	3,20
3 Poor protection of property rights	3,53	3,80
4 State capture by business, including illegal lobbying and other forms of influencing the state decisions in favour of business interests	3,26	3,87
5 Business capture by state, including illegal corporate raiding and other forms of takeover of companies by the state officials	3,21	3,07
6 Offering, promising and giving bribes and other illegal advantages to the public officials by companies	3,16	3,17
7 Bribe solicitation by public officials and other ad-hoc demand of bribes in individual cases	3,06	3,93
8 Private-to-private corruption between companies	3,05	3,14
9 Rent seeking by public officials and other regular claim of official for economic benefits produced by companies	2,89	3,40
10 Bribe solicitations by foreign public officials while doing business abroad	2,89	2,80
11 Financing of political parties by companies, political donations and contributions	2,53	3,33



Note that the numbering on left-hand side of the charts reflects risks as numbered in the Table 3.2.

It is rather interesting to observe the top five score differences in the responses made by the companies and associations with the largest difference identified in the answer “Bribe solicitation by public officials and other ad-hoc demand of bribes in individual cases” as well as “Financing of political parties by companies, political donations and contributions”. Associations see a much larger importance in risks resulting from dubious financing of the political parties, bribe solicitation and rent seeking by public officials.

It could be assumed that this is due to the fact that associations have a more direct contact with the different state institutions and are closer to lobbying potential legislative initiatives. Therefore, they could be seen to have accumulated more experience of negative interactions with politicians and public officials than companies.

Key counterparts related to potential integrity risks: Regarding interactions with entities, companies and associations see different key risks:

- Companies realise the biggest risk in interactions with entities in the tax-related administration system (the score 3.95 on the five-point scale) while associations stress the risk in interacting with politicians and the permit area (3.87). Plus associations rate a number of other risk areas as almost equally important. This highly correlates with the previous answers related to the legal uncertainty (tax related legal initiatives and the potential different interpretations of tax related situations by the state revenue services may represent core challenges/ risks for businesses). The involvement of politicians in initiatives potentially supporting the business in one or another particular industry with unclear motivation is apparently among concerns behind responses by business associations.
- The permits area also involves a highly important integrity risk in the views of associations as for some industries permits are subject to potentially judgmental/ subjective approval criteria, thus involving higher risk of corruption in the decision-making process.

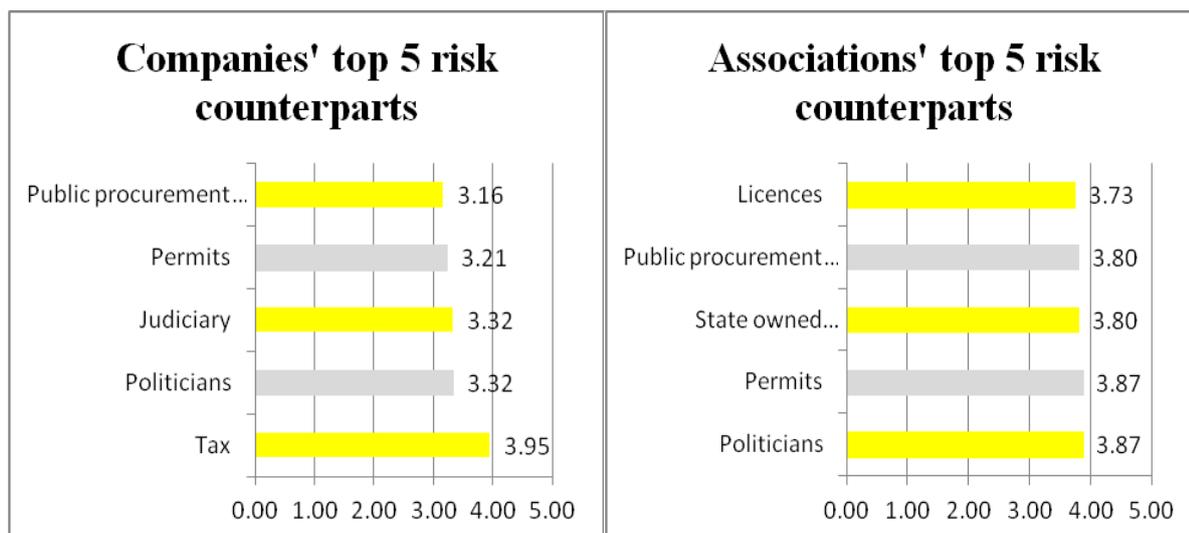
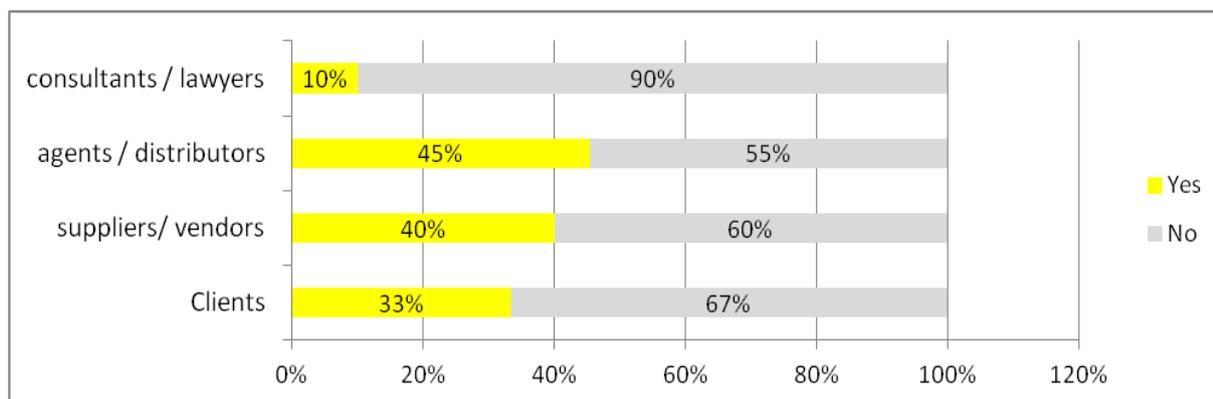


Table 3.3. Interaction with which entities presents integrity risk for your company (for companies)/ companies operating in your country (for business associations)?

	Companies	Associations
	Average score	
Politicians	3,32	3,87
Permits	3,21	3,87
State owned enterprises	2,89	3,80
Public procurement bodies	3,16	3,80
Licences	3,11	3,73
Judiciary	3,32	3,67
Tax	3,95	3,60
Utilities	2,32	2,80
Financial services	3,05	2,47

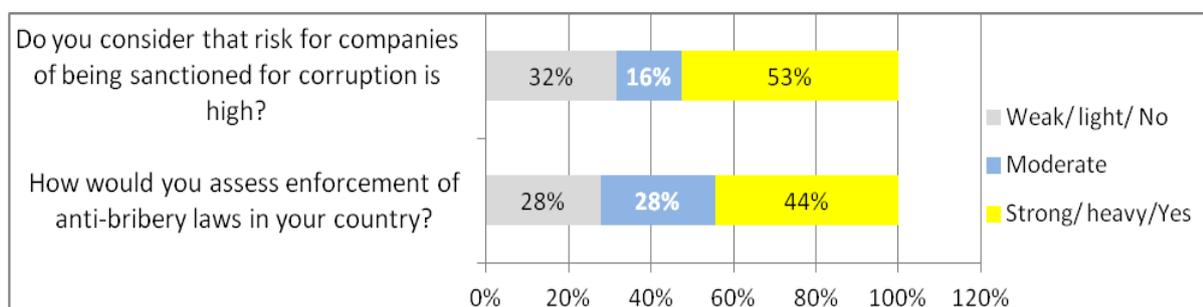
The largest differences between answers of companies and associations were related to “state owned enterprises” as well as “police” and “customs” where associations saw bigger integrity risks than companies (although the police and customs were not among top-rated risks of either companies or associations). Companies did score interaction with these institutions as neutral (regarding potential integrity risk) while the associations saw these particular risks as important.

As for the types of companies as counterparts, agents and distributors were identified as most sensitive. (The question was – what type of companies was identified to be most sensitive in terms of corruption/ bribery risk?) This could be caused by the intermediary role of agents and distributors as well as the usual lack of business integrity and compliance practices in the particular type of business (Bishop, T.J.F. et al., n.d.) (see answers of companies in the below graph).



Answers by companies.

Assessment of legal risks related to bribery and corruption: When it comes to the assessment of the potential reputational risks, all of the respondents agreed that these risks are high for companies if they are exposed as corrupt. Questions of enforcement as well as risk of being sanctioned were asked to understand if and to what extent these factors could influence the integrity of business organizations. 44% of companies assessed the enforcement of anti-bribery laws in respective countries as strong and 53% assessed the risk for companies of being sanctioned for corruption as high (answers – weak enforcement and low risk were 28% and 32% respectively). Interestingly enough, further results of the survey show that none of the companies surveyed was investigated and/ or sanctioned for bribery of another private company or a public official.



Answers by companies.

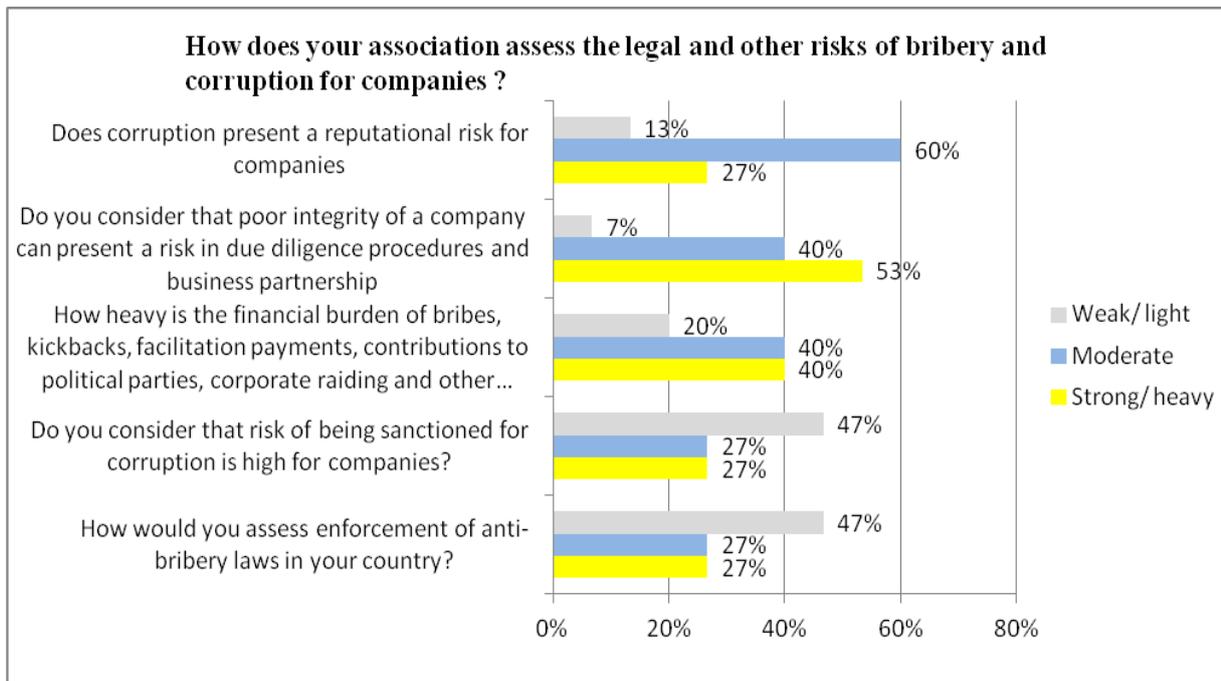
In brief, the questions on forms and sources of business integrity risks show that there is a lack of trust in some of the public institutions and officials. This suggests areas of improvement for governments that would help ensure higher compliance with laws and lower level of corruption.

According to answers by business associations, business integrity of the third party (for example, vendor, business partner, other) is one of the highest sources of potential fraud and corruptions risks. However, the majority of respondents agreed that there is a low risk of being sanctioned for corruption and the enforcement of anti-bribery laws is weak:

- 47% of associations view the enforcement of anti-bribery laws in their country as weak. The same proportion of respondents considers there is a low risk of being sanctioned for corruption in the companies.
- 60% agree that there is a moderate reputational risk for companies due to corruption.
- 53% see a strong risk from poor integrity of a company in due diligence procedures and business partnership.

- 40% consider the financial burden of bribes, kickbacks, facilitation payments, contributions to political parties, corporate raiding and other corruption related losses for companies having a heavy impact. An equal share views it as moderate. Anyway the answers indicate awareness of the harm that corruption causes.

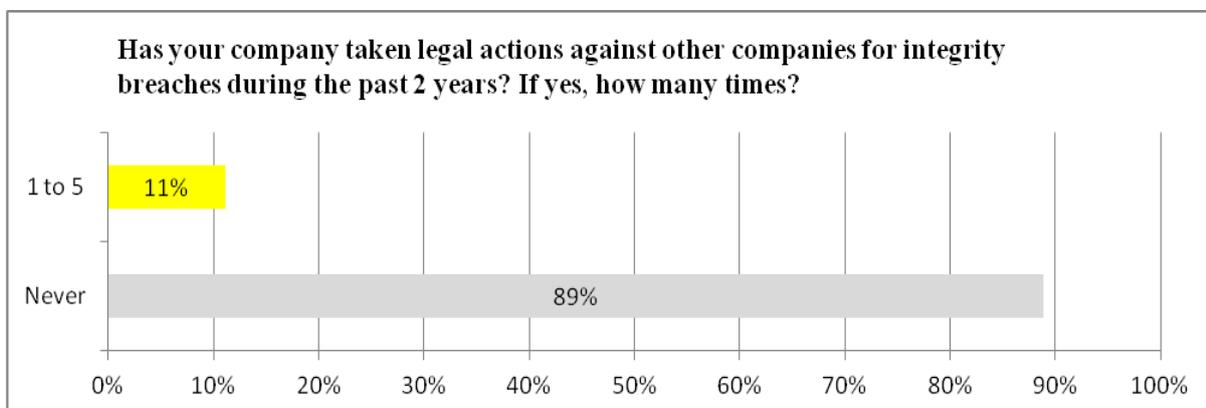
Taken together, these percentages confirm the above made statement that the fight against corruption in the region is ineffective.



Answers by associations.

3.3. Prevalence of legal action taken against other companies for integrity breaches (responses by companies)

Mere 11% of the companies indicated that they had themselves taken legal action against other companies for integrity breaches over the past two years. This phenomenon could in a way be explained by the absence of trust of companies in the impartiality of judiciary.



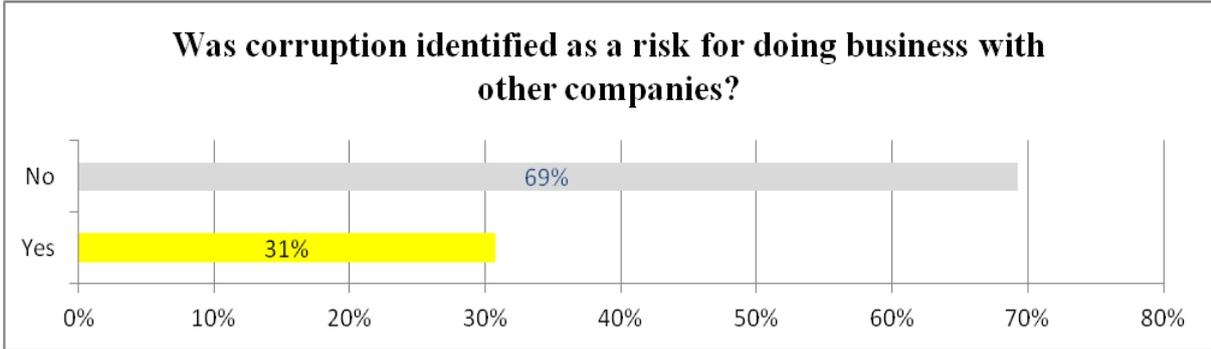
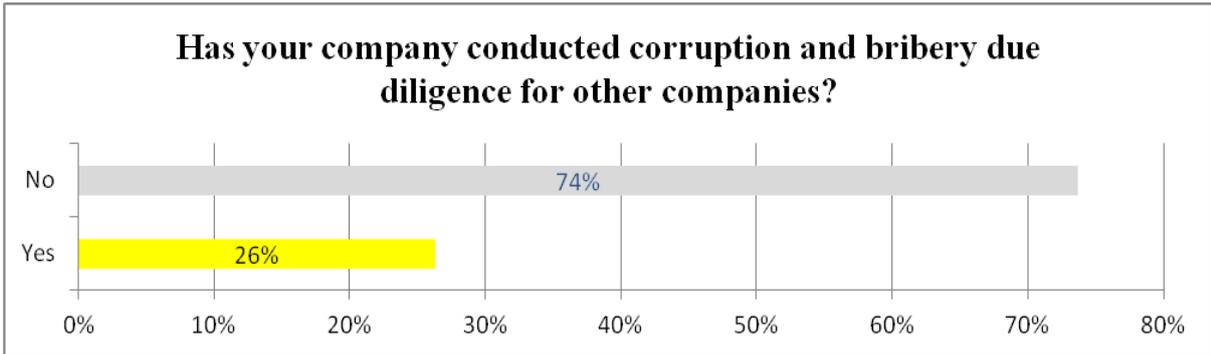
Answers by companies.

This also suggests that little action is taken against business integrity breaches (including fraud and corruption) from the side of business themselves. As explained above, the main reasons for ineffective fight against these phenomena are the lack of cooperation between business organizations and the public domain, absence of trust between public and private sectors, clash of interest and relatively low level of investment and resources that are crucial in order to ensure that bribery, fraud and corruption are contained.

3.4. Business integrity and internal control practices (responses by companies)

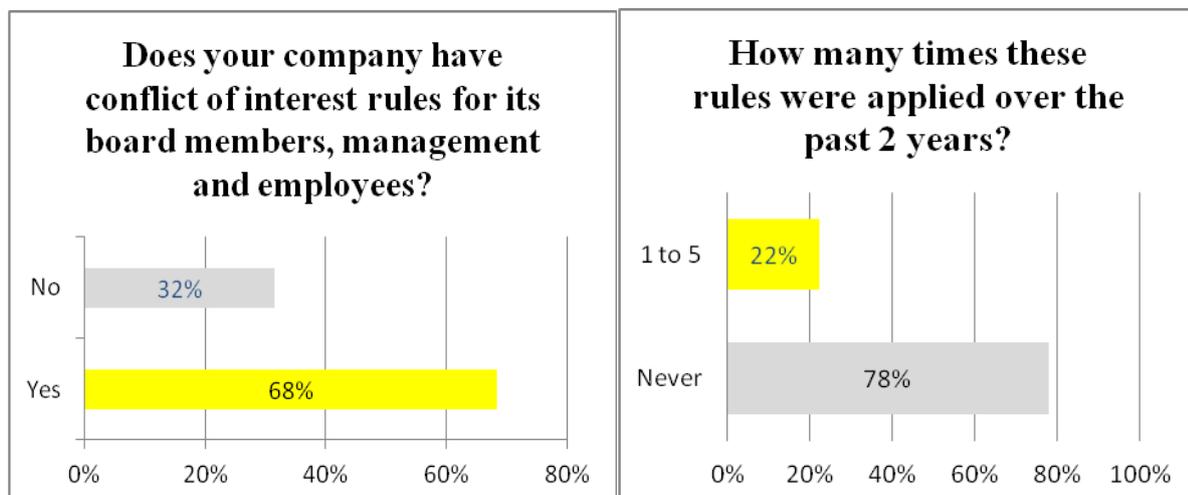
Anti-bribery and corruption due diligence practices: Only 26% responded that their company conducted corruption and bribery due diligence for other companies, while 31% answered that corruption was identified as a risk for doing business with other companies.

Considering that, as stated above, according to the results of the survey, 40% of associations believe that the financial burden of bribes, kickbacks, facilitation payments, contributions and fines on the company has heavy impact (40% believe the impact is moderate), it is quite surprising that companies are not taking sufficient care themselves to investigate potential issues and/ or strengthen appropriate internal control systems inside organizations.



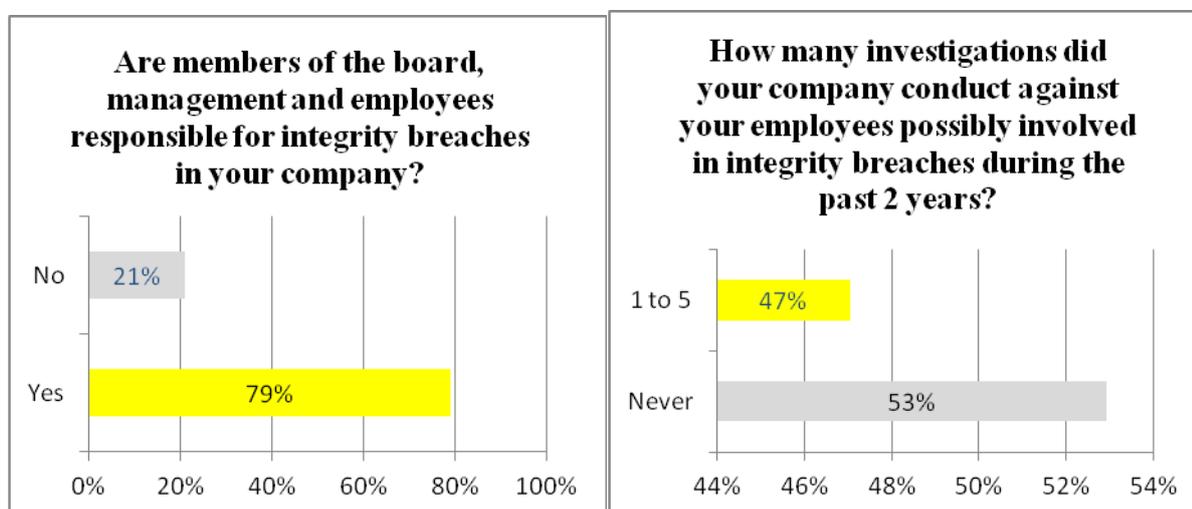
Answers by companies.

Conflict of interest procedures: Slightly more than two thirds of the respondents indicated that conflict of interest rules for board members, management and employees existed in their company. Nevertheless, when asked about the frequency of application of these rules over the past two years, 78% responded that they were never used, whereas only 22% indicated that those rules were applied one to five times over the last two years. This suggests a paradox – even though the majority of the companies have conflict of interest rules, they make use of them relatively rarely.



Answers by companies.

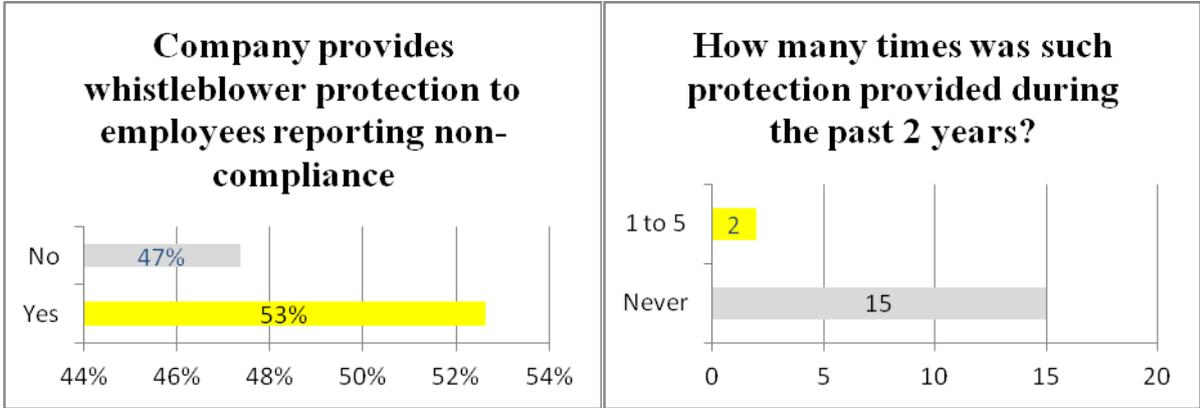
Integrity breaches: 79% responded that members of the board, management and employees are responsible for managing issues related to the potential integrity breaches in their company. However, a little more than half of the respondents indicated that no investigations over the past two years were conducted against their company's employees involved in integrity breaches (47% said that one to five investigations were done), suggesting that even though they should be held accountable for integrity breaches, mostly no investigation is done to verify that.



Answers by companies.

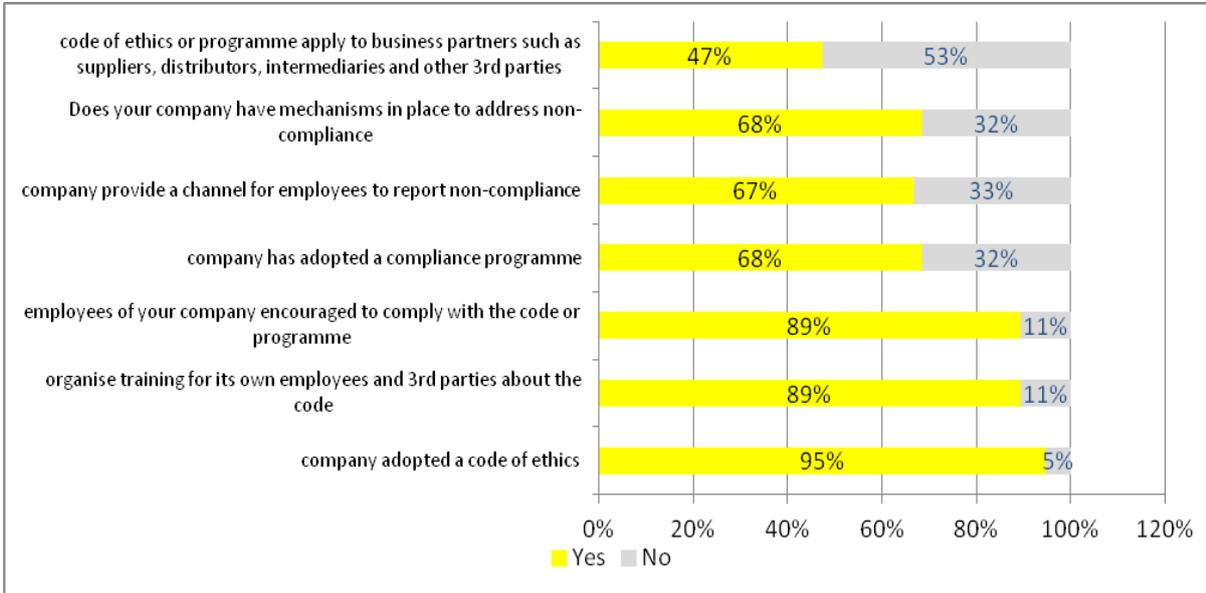
Whistleblowing: In relation to the initiatives taken by the companies, 53% of the companies indicated that they provide whistleblower protection to employees reporting non-compliance, which leads to the assumption that compliance would be ensured to a higher extent if more companies made whistleblower protection to their employees available and made it anonymous, which would encourage employees to report possible non-compliance in the company. When asked about the frequency of protection provided during the past two years, 15 companies (that is 88% of those that responded) indicated that the protection has not been provided in the last two years, whereas other 2 companies said that it was

provided one to five times. All of this points to an area where better compliance could at least partly be achieved.



Answers by companies.

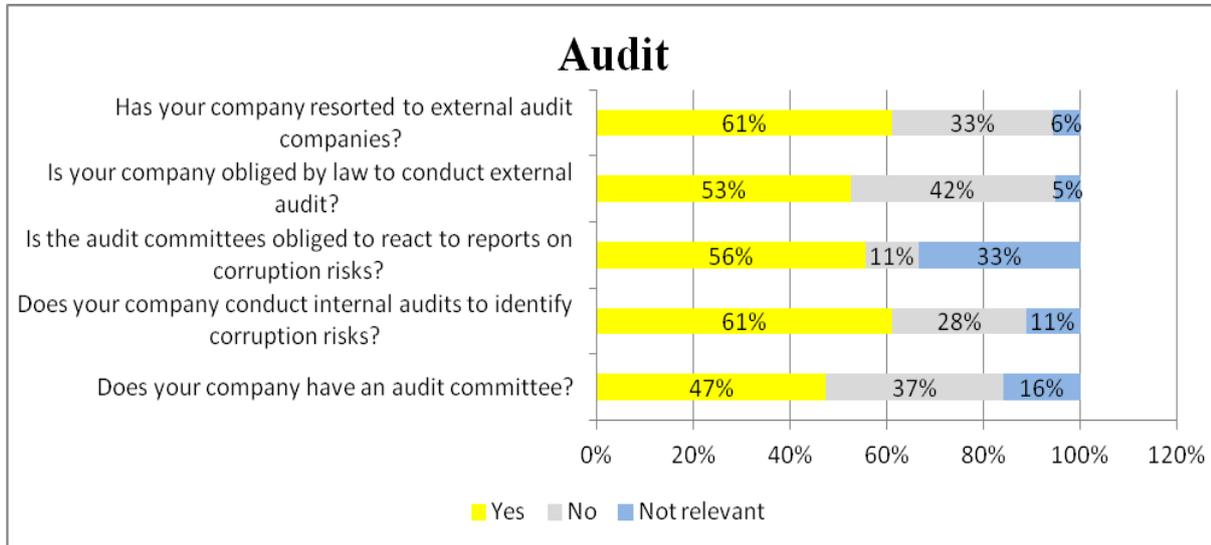
Other compliance initiatives within companies: Codes of ethics and internal trainings are used most frequently (89%-95% of respondents). The least frequent initiatives are the above described whistleblower protection to employees (53%) as well as a code or program applied to business partners such as suppliers, distributors, intermediaries and other third parties (47%). This is due to the fact that companies do not risk implementing initiatives that could change relationships with existing business partners as well as the fact that one-time initiatives or overall awareness raising initiatives are easier to organize and less investment intensive than actual compliance programs. This could also indicate that compliance is approached rather formally without actually dealing with it proactively.



Answers by companies.

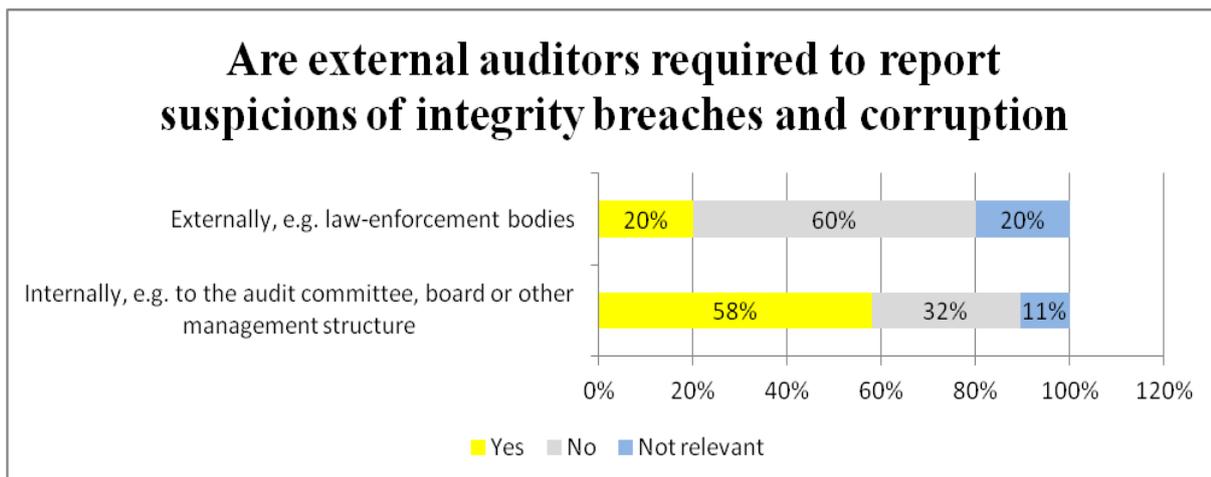
Audit: 61% of the companies resorted to external audit companies while 42% indicated they were not obliged by law to conduct an external audit. Although 61% of the responding companies conducted internal audit, 28% did not and, even more surprisingly, 11% indicated that internal audit is not relevant in identifying corruption risks. Moreover 47% said they had an audit committee while the rest indicated that they did not or that an audit committee was not relevant (37% and 16%, respectively). Lastly, 33%

of the respondents believe that audit committees are not obliged to react to reports on corruption risks. All of this suggests that many companies have not exploited effective compliance tools that would help ensure better compliance and decrease the financial burden of corruption and bribes, which, as pointed out before, by the majority of associations is regarded to be high or medium.



Answers by companies.

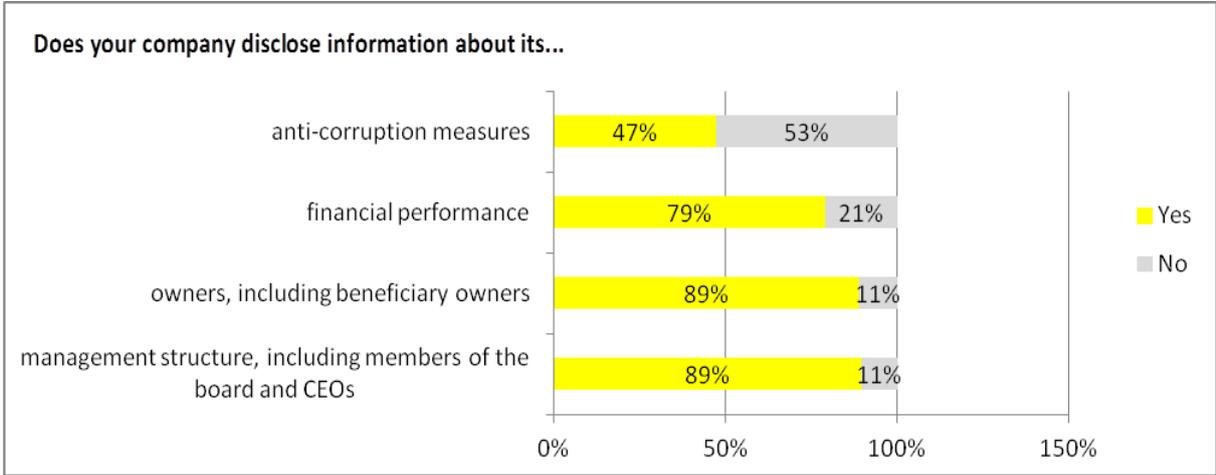
58% responded that external auditors were required to report results to the audit committee or other management structure. Only 20% answered that they were required to report externally, for example, to law enforcement bodies. Furthermore, a fifth indicated that reporting suspicions of integrity breaches and corruption to law enforcement bodies was not relevant. Even more surprisingly, 11% said it is not relevant to make those kinds of reports internally, that is to the audit committee, board or other management structure. Companies should make reporting internally mandatory, for it would not be costly, while the benefits could prove really high.



Answers by companies.

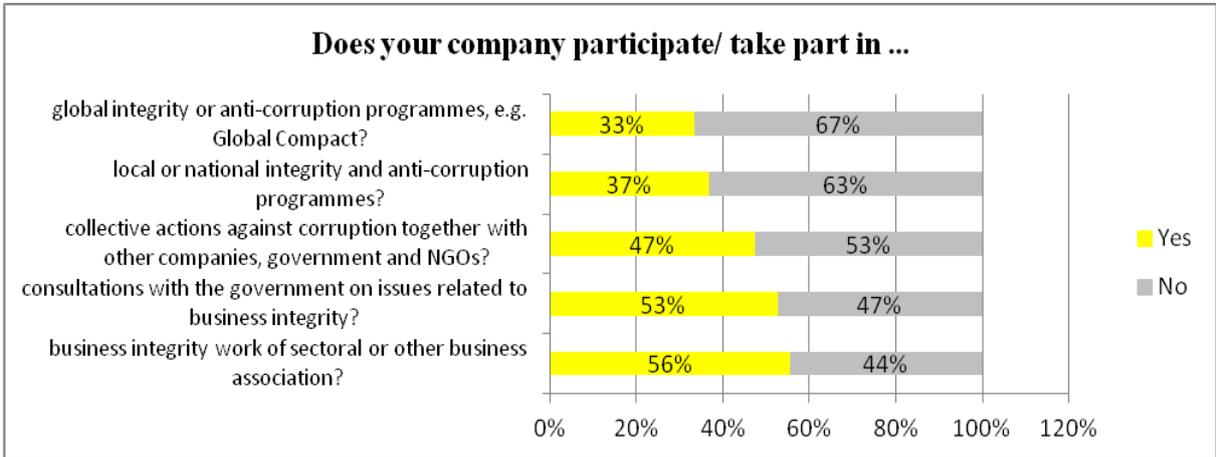
Disclosure of information: Companies are more ready to disclose their structure, owners and financial performance than compliance initiatives used internally (only 47% of responses). This is due to the fact

that for companies, compliance is not yet considered as significant information to be disclosed to the public or part of an overall positive image as the increase of sales figures and the quality of service.



Answers by companies.

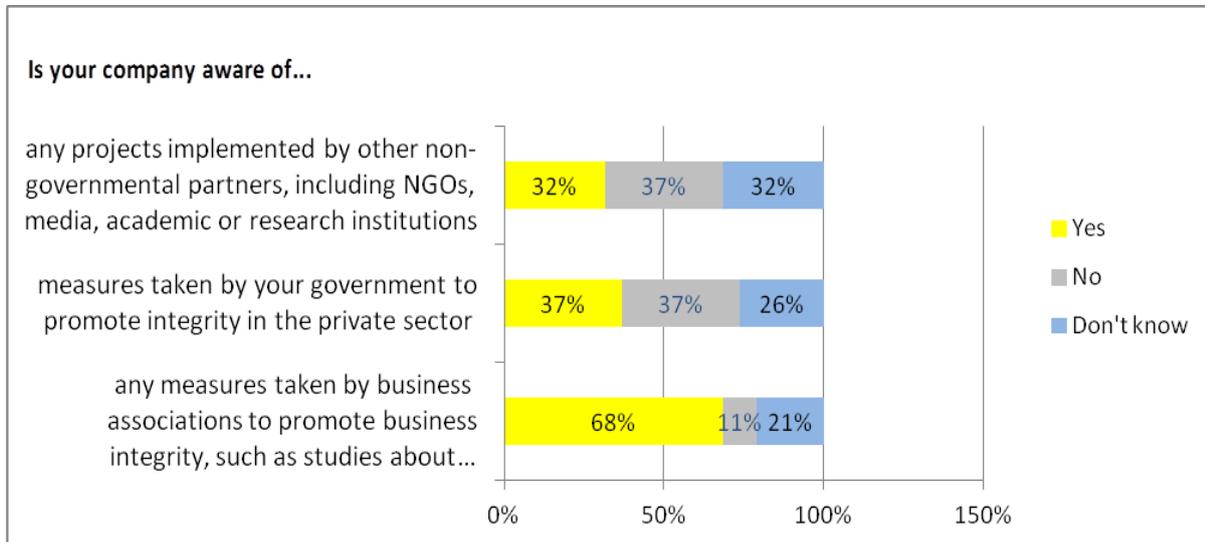
Participation in integrity and anti-corruption initiatives: Analysis of companies’ participation in integrity and/ or anti-corruption initiatives shows that companies apparently seek tangible results when choosing the type of initiatives to be a part of. Sectoral business integrity initiatives and consultations with the government on issues related to business integrity (respectively 56% and 53% of responses) are more likely to relate to specific questions of concern to the companies while participation in global or national level anti-corruption programmes (33% and 37% respectively) is usually more distant from issues of immediate concern.



Answers by companies.

General awareness regarding business integrity initiatives: Most companies are informed about such initiatives, particularly ones organized by industry associations. 68% of the participants are aware (only 11% not aware) of measures taken by business associations to promote business integrity, such as studies about corruption risks, training on anti-corruption and integrity, support in individual cases of bribe solicitation, collective integrity actions such as labelling, reporting, anti-corruption coalitions, channels to report instances of bribery, sector specific integrity standards and model codes of ethic. 32-37% of the companies are aware of projects or measures by either non-governmental organizations or the government. A similar share of respondents is not aware of such initiatives. Companies do have a more

direct interest in being aware of developments in their industries compared with wider national initiatives.

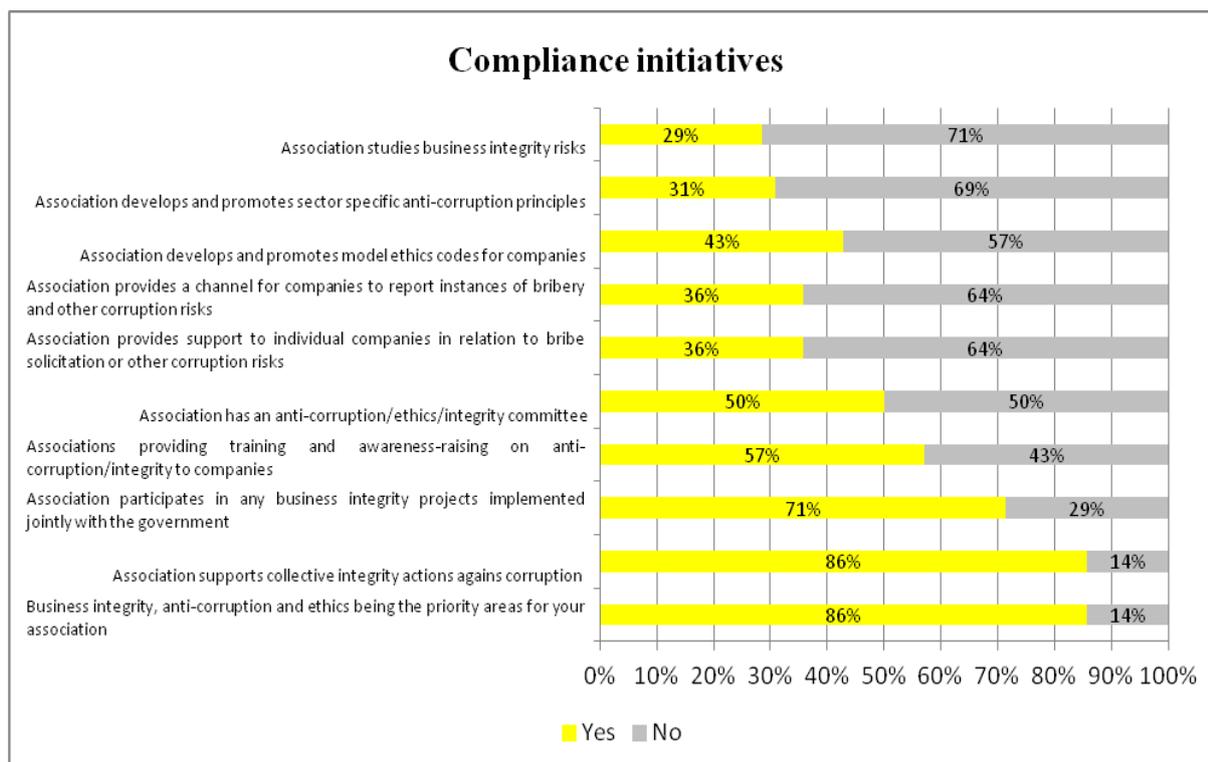


Answers by companies.

3.5. Initiatives and further views by associations

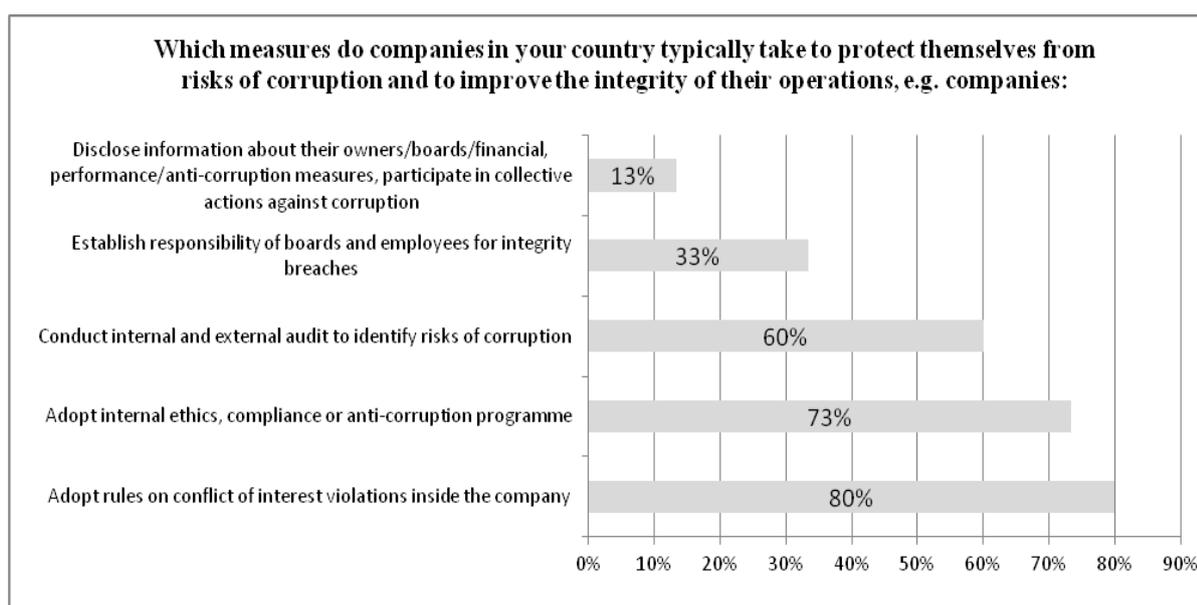
Initiatives by associations: The survey sought to measure what initiatives and how frequently business associations undertake to increase business integrity, compliance efforts and cooperation between governments and the business community. The results showed:

- 86% of the associations confirmed business integrity, anti-corruption and ethics among the priority areas of their work.
- The same amount of respondents supported collective integrity actions that bring together companies, governments and NGOs (good practices include labelling and awards related to transparency initiatives, fostering non-financial reporting and disclosure, promotion of anti-corruption coalitions and integrity pacts).
- The least frequently mentioned initiatives are related to studying business integrity risks, development and promotion of sector specific anti-corruption principles, providing a channel for companies to report instances of bribery and other corruption risks, and support to individual companies in relation to bribe solicitation or other corruption risks (only 29-36% of surveyed business associations engage in such initiatives).



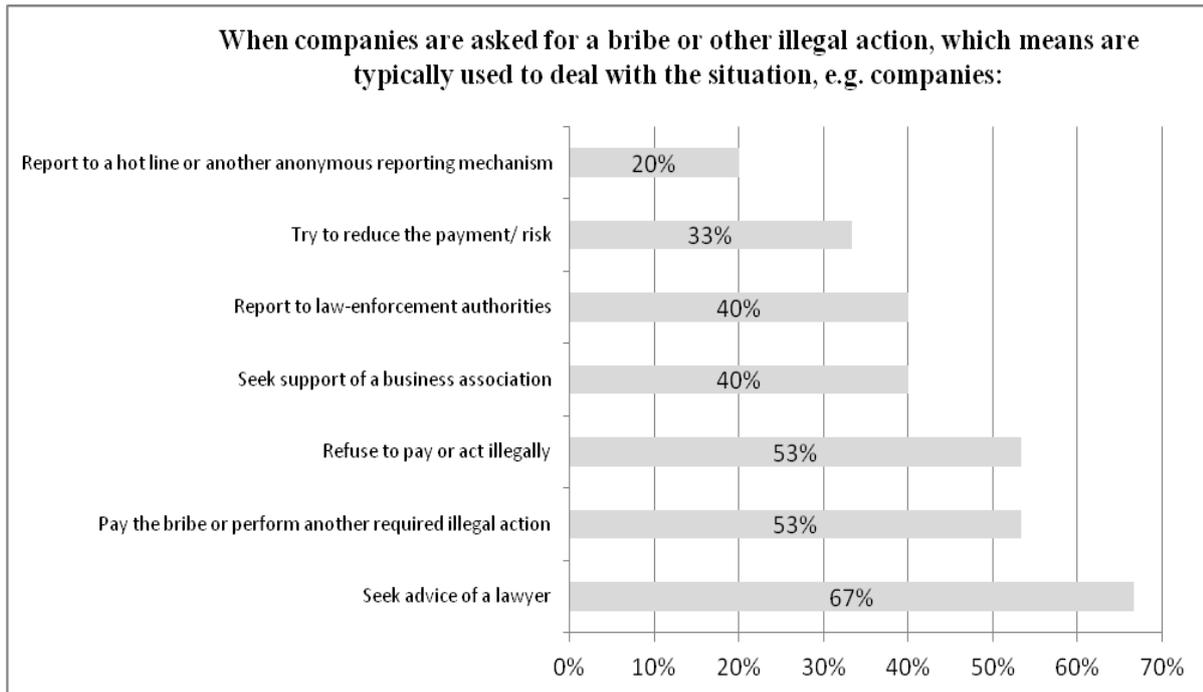
Answers by associations.

Associations see the adoption of rules on conflict of interest violations inside the company (80% respondents) as well as internal ethics, compliance or anti-corruption program (73% respondents) as most typical measures for the protection of companies against corruption risks. The least typical initiatives, in view of associations, are the establishment of the responsibility of boards and employees for integrity breaches (33% of the answers) as well as disclosure of information about company’s owners, boards, financial performance, anti-corruption measures, participation in collective actions against corruption (only 13% of the respondents).



Answers by associations.

In case when companies are asked for a bribe or required to do other illegal action, associations believe that typically companies prefer to use the advice of the lawyer (67% of the responses). Second and third most frequent answers are either the choice to pay a bribe (or perform other required illegal action) or refusal to pay the bribe (or commit illegal action). Reporting to a hot line or another anonymous reporting mechanism is perceived as the least preferred action (only 20% believe that companies would prefer to do that).

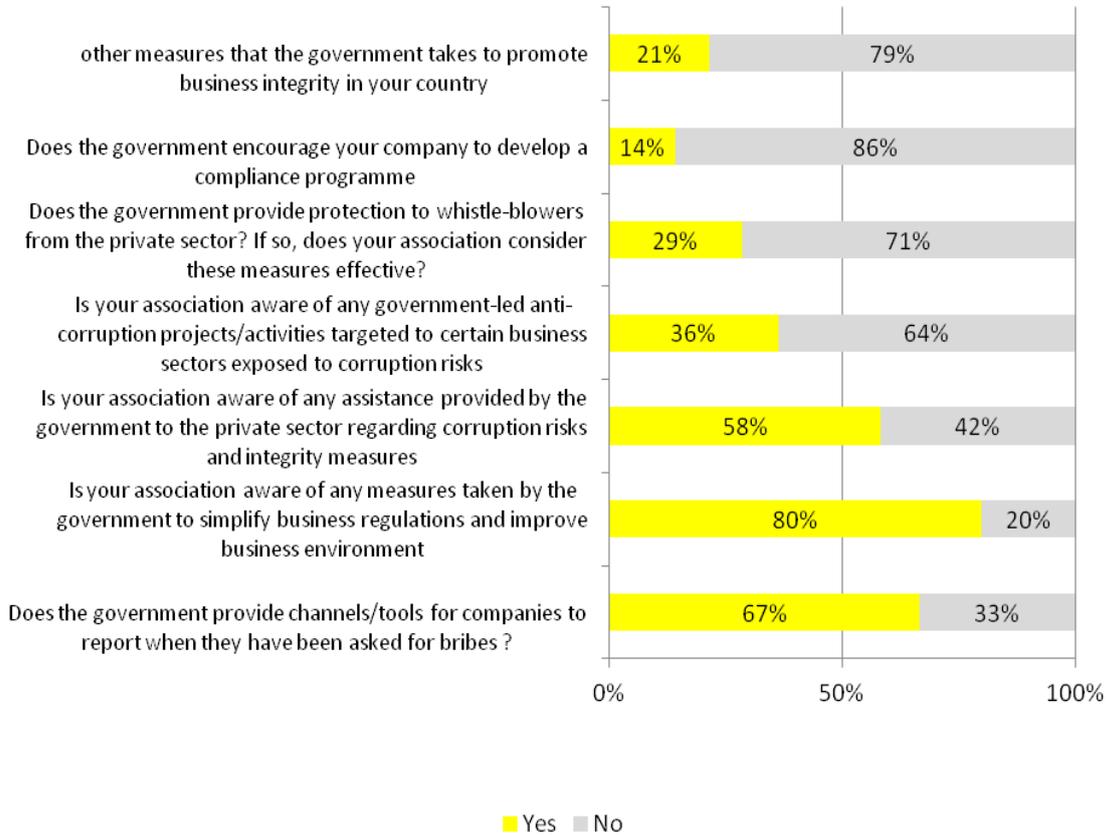


Answers by associations.

The survey also revealed that there is a clear lack of awareness of government initiatives related to business integrity (either because there is a deficit of such initiatives or because the associations do not know enough about them). It should seem natural that associations are mostly aware (80% of the respondents) of initiatives taken by the government to simplify business regulations and improve business environment. It has to be noted that 67% of the associations believe that governments (and such institutions as state tax authorities, anti-corruption agencies, etc.) provide channels/tools (such as hotlines) for companies to report when they have been asked for bribes. However, associations are least aware of government initiatives to:

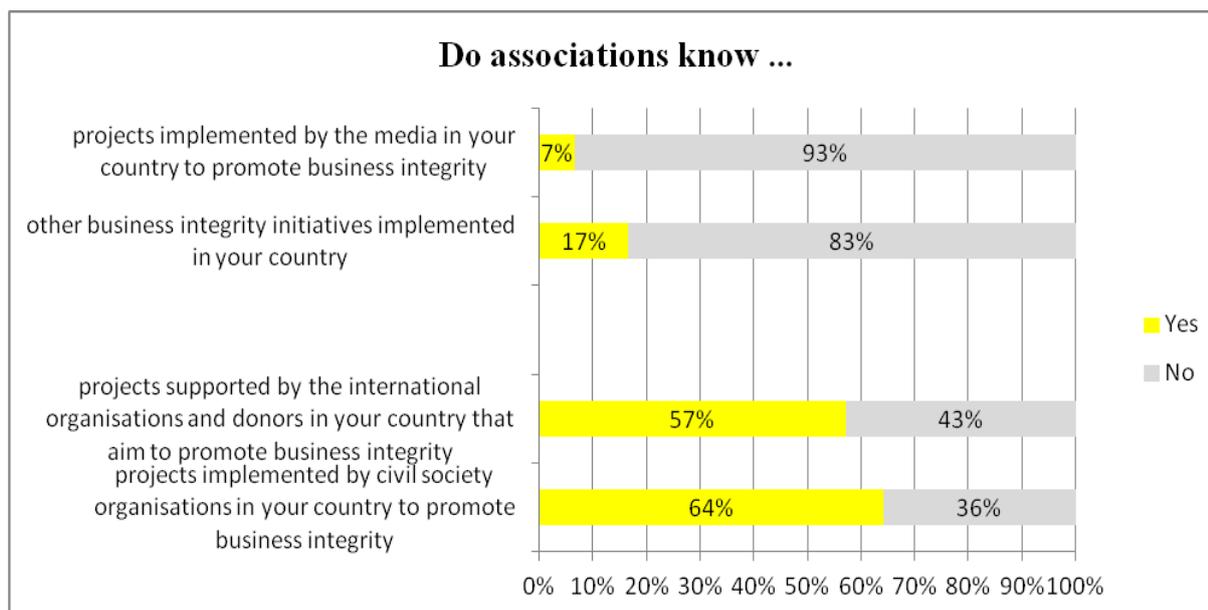
- provide effective protection to private-sector whistleblowers (only 29% of responses affirmative)
- encourage companies to develop compliance programs (only 14% of responses affirmative).

Awareness of government initiatives



Answers by associations.

64% of the surveyed associations know of projects to promote business integrity implemented by civil society organizations. 57% of them know of projects supported by international organizations and donors with the aim to promote business integrity. Projects implemented by the media to promote business integrity are least known (only 7% of the associations knew such projects).



Answers by associations.

3.6. Concluding remarks on results of the regional survey

The results of the survey presented in this chapter as well as other external surveys (EY, 2013a; EY, 2014b; EY, 2014; EY, 2015) highlight that companies and business associations acknowledge bribery and corruption as a widespread and high risk both globally and in the region. Risks of bribery and corruption are perceived as a general concern but in particular relations with third parties and with public sector organizations with licensing and controlling functions are seen to involve the highest risk.

When asked about tools used by companies to ensure their compliance with the anti-corruption laws and regulations, most of the respondents declared having anti-bribery and corruption procedures and instruments, however:

- Most of them never used and/ or applied those during the last two years.
- Whistleblowing is seen as a measure to increase the effectiveness of anti-corruption efforts, however, it often lacks proper implementation procedures (for example, protection of whistleblowers).
- Anti-bribery and corruption measures are not being disclosed openly by most of the companies.
- Most of the companies have not taken legal action against other companies for integrity breaches over the past two years.

The results of this survey and other external surveys indicate the lack of motivation for companies to advance their anti-bribery and corruption practices. Moreover, the public domain is not seen to be effective in fighting bribery and corruption, as:

- Anti-bribery laws are enforced poorly (mainly on a “pro-forma” basis) or only satisfactorily.
- The majority of companies have not been subject of investigation and/ or proactive audits on a specific topic related to effectiveness of the anti-bribery and / or anti-corruption systems neither by the regulatory bodies, nor by any other related parties (due to the fact that there is a general lack of regulatory requirements to test and/ or audit the effectiveness of anti-bribery / anti-corruption controls established both within public and/ or private organizations).
- The level of actual sanctions related to bribery and corruption is very low.

The main reasons for the ineffective fight against fraud and corruption seem to be the lack of (i) motivation to foster the culture of business integrity and compliance, (ii) lack of cooperation between business organizations and the public domain, (iii) absence of trust between the public and private sectors, clashes of understanding about who shall take the primary initiative and leadership, and (iv) relatively low level of investment and resources (both within public and/ or private organizations) that are crucial in order to ensure that bribery, fraud and corruption do not spread and are countered systemically.

Generally, all parties agree that joint cooperation in the fight against fraud and corruption could potentially lead to a “win-win” situation as:

- The implementation of appropriate self-regulation mechanisms would decrease the level of state regulation.
- The market would not be overregulated, thus businesses would be facing fewer unnecessary challenges.
- The cost of regulation for the government would decrease.

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Chapter 4. Regulatory environment, legal certainty and safeguards for business

Successful economic development requires certainty that investment is safe against possible predatory practices of public authorities, public subsidies and other support will not arbitrarily distort competition, and contracts can be enforced in a fair court of law. Overall this requires all regulatory and distribution functions that affect business operators to be fulfilled in a fair manner. Legal certainty is also a factor that can enable companies to plan long-term, which is the time perspective necessary for sound corporate strategies including corporate integrity policies. This chapter reviews certain problems and good practices in the regulatory environment in ACN countries and is based on the recognition that particular integrity measures need sound regulatory environment as a precondition for their effectiveness.

Governments run policies in many various areas that affect business operations. For example, in an evaluation of the World Bank Group support to reforms of business regulations, the Independent Evaluation Group identified 24 regulatory areas.¹⁰ (IEG, World Bank Group, 2014: 32) Different international standards, recommendations and best practices relate to this issue area. Some such standards and recommendations cover relatively narrow areas while others focus on the business environment more generally. For example, the Recommendation of the Council of the OECD on Regulatory Policy and Governance recommends, among other things, that “the policy should have clear objectives and frameworks for implementation to ensure that, if regulation is used, the economic, social and environmental benefits justify the costs, the distributional effects are considered and the net benefits are maximised”, and members “develop a consistent policy covering the role and functions of regulatory agencies in order to provide greater confidence that regulatory decisions are made on an objective, impartial and consistent basis, without conflict of interest, bias or improper influence”. (OECD, 2012) A number of monitoring mechanisms measure important aspects of business environment. For example, the *Doing Business* project of the World Bank Group measures 11 indicators sets in 189 economies focusing on the complexity and cost of regulatory processes as well as the strength of legal institutions. (World Bank Group) The U.S. Department of State publishes Investment Climate Statements focusing on investment laws and practices. (United States Department of State, 2015)

In some situations legal certainty and regulatory quality in the broader sense can suffer from factors unrelated to corruption, for example, poor drafting of legislation and poorly designed or resourced implementation mechanisms can be due to the lack of skills, insufficient experience, haste, economic underdevelopment, etc. In other situations it is corruption on various levels that affects the state’s regulatory activity.

Poor legislative practice can manifest itself as too frequent changes in legislation, for example, in 2009 **Kazakhstan** made numerous amendments to improve business environment (in particular in the Law on Private Entrepreneurship) and then adopted another law in 2011, which focused on the same issues. (OECD ACN, 2014a: 82) In 2013, the European Commission stressed that in **Ukraine** “frequent fragmented legislative changes as opposed to a coherent strategic approach to legislative reforms pose serious risks to legal certainty and can render the implementation of anti-corruption policies more difficult”. (European Commission, 2013: 14) Another problem can be insufficient or selective engagement of stakeholders, for example, in Ukraine the lack of proper consultations during drafting of

¹⁰ The regulatory areas are: business registration, business licensing, accounting and auditing, registration, business licensing/permits, company laws (business regulations, inspections), contract laws, competition policy, consumer protection, courts and proceedings (that is, contract enforcement), environmental laws, property law, intellectual property and other goods protection (privacy laws, copyrights/patents/trademarks, unfair business practices act), investment policy/promotion, employment law, labour protection, apprenticeships and training, labour safety and health, land regulations, taxation, trade and logistics, bankruptcy, debt resolution and insolvency, alternative dispute resolution.

the Tax Code in 2010 provoked public protests from companies and business associations. (OECD ACN, 2015b: 177)

There are many steps that can be made in order to improve the quality of legislation. With a focus on the need to reduce corruption risks, quality of legislation could be improved with the help of anti-corruption assessment of draft and existing legal acts. (OECD ACN, 2015c: Chapter 5) Mandatory or optional anti-corruption screening is envisaged in a number of ACN countries and, for reasons of improving business environment, could use also contribution from business representatives or institutions that work closely with the business. In **Ukraine** the business ombudsman has identified corruption risks in regulations as part of its review of complaints (for example, it found that the timeframe for the inclusion of scrap metal exporters in the so-called green list is too long and creates conditions for corruption). (Business Ombudsman Council, 2015:18) A tool for the improvement of legislative quality with a broader focus is the regulatory impact assessment. Its implementation has received positive reactions from the business community in, for example, **Kyrgyzstan**. (OECD ACN, 2015a: 68)

In addition to legislative defects caused by some generally poor practices, narrow private interests may distort legislation directly. For example, in **Ukraine** a private company, which for a number of years was the sole provider of materials for identification documents to the government, achieved with the help of certain MPs “legislative amendments which favoured extensive use in various documents of expensive technologies owned by the company”. (OECD ACN, 2015b: 77) In 2010, the parliament excluded from the general public procurement rules purchases for the preparation of the European football championship co-hosted by Ukraine and Poland. The new special rules allowed this procurement without competitive procedures and led allegedly to the inflation of costs and awarding of contracts to companies affiliated with government officials including the Vice Prime Minister. (OECD ACN, 2015b: 75, 76)

At least until the political changes of 2014, it was commonplace to refer to the Ukrainian political institutions as captured by oligarchic interests as in this anecdotal media description: “In many cases, the legal framework set up by the oligarchs’ political cronies ensured their actions remained within the boundaries of the law. Whenever a new minister was appointed, it was common for people to ask which oligarch “owned” him or her. Members of parliament also formed a tight network around the oligarchs they served.” (Lutsevych, 2015)

The last general point to be mentioned here is the widespread mistrust in political, enforcement and judiciary institutions, which is present in a number of ACN countries. Comparative data on trust in institutions is found regarding EU member states and candidates (see the Table 4.1). Among the seven EU ACN countries, only **Estonia’s** population has trust in the justice/ legal system, the police and national parliament above the EU average. The trust in justice/ legal system and the police is lowest in **Bulgaria**, the trust in political parties is lowest in **Latvia**, and the trust in the national parliament is lowest in **Slovenia**. These are also correspondingly the lowest levels of trust in institutions in the whole EU. Although these figures reflect the opinion of whole populations rather than just businesses, it can be presumed that the trust is low also among entrepreneurs. On the level of hypothesis, this can be a factor that represents a disincentive to invest in integrity measures and refrain from corruption.

Table 4.1. Trust in selected institutions in ACN countries that are EU members and candidates (% tend to trust)

	Justice/ system	legal	Police	Political parties	Parliament
Albania	31		56	16	30
Bulgaria	20		38	12	14
Croatia	33		55	13	19
Estonia	60		78	15	33
Latvia	41		54	5	17
Lithuania	41		65	9	16
FYR of Macedonia	25		48	16	24
Montenegro	48		49	14	38
Romania	48		49	13	18
Serbia	38		47	12	28
Slovenia	25		61	7	12
EU average	52		69	16	31

Source: Adapted from European Commission (2015), pp. 30, 31, 33, 36;
http://ec.europa.eu/public_opinion/archives/eb/eb83/eb83_anx_en.pdf

Criminal proceedings: One area with high risks for business operations is criminal enforcement in countries where the government fails to uphold strict standards of the rule of law and is not subject to adequate safeguards. Criminal procedures can be abused against companies, for example, when someone uses influence on law enforcement agencies, seeks and achieves criminal investigation against a target company for the purpose of extorting assets from its owner or illegally taking over (raiding) the company. This may be done, for example, based on a pretext of would be economic violations of the target company. Such abuse is sometimes called commissioned criminal prosecutions (заказные дела – Russian language), which at least in the past were notorious, for example, in **Russia**. Commissioned criminal prosecutions is “a term referring to (a) criminal cases “commissioned” by third parties as a way of sabotaging business competitors and (b) criminal cases initiated by law enforcement for extortionate or other improper purposes. [They] are probably the most clear-cut examples of criminal legal abuse in Russia”. (Firestone, 2010: 556)

Box 4.1. Russia: Survey data regarding risk of the abuse of criminal proceedings and illegal raiding

A recent Russian survey of 779 experts contained a question “How often do you think criminal persecution is used as an instrument of property redistribution in our country?” To this question, 16.1% responded that it happened all the time and 36.9% responded that it happened periodically. A survey of 4149 owners and top managers of SMEs contained a question “Whose support of raiding activities appears most dangerous?” Three most frequent answers were the Ministry of Interior Affairs of Russia (39.4%), the Federal Bureau of Security (30.5%), and the Public Prosecutor’s Office of the Russian Federation (28.8%). Almost every third entrepreneur thinks that the risk of encountering raiding has increased with crisis developments in the economy. The data were published by the business ombudsman as part of his 2015 report to the President of Russian Federation and attest to the continued relevance of the risk of abuse of criminal procedures.

Sources:

Уполномоченный при президенте РФ по защите прав предпринимателей (2015а), p.12;
http://doklad.ombudsmanbiz.ru/pdf/2015_adminklimat.pdf.
 Уполномоченный при президенте РФ по защите прав предпринимателей (2015b), p.11;
http://doklad.ombudsmanbiz.ru/pdf/2015_portret.pdf.

The fight against economic crime is essential in order to maintain safe and predictable business environment but can result in quite the opposite if the laws and powers of enforcement agencies are abused. There are extensive international standards for safeguarding human rights and through this also legitimate business interests in criminal procedures. The European Convention on Human Rights

(ECHR) and respective case law among the most prominent standards. Although traditionally the primary focus of human rights standards has been on the protection of physical persons, in many aspects, companies shall enjoy similar protections. For example, search and seizure are among the tools that can have a particularly detrimental effect on the business concerned. The European Court of Human Rights (ECtHR) recognizes that measures such as search of residential premises and seizure of physical evidence normally interfere with a person's right to respect for private and family life under Paragraph 1 Article 8 of the convention. The ECtHR has allowed the protection of the Article 8 to extend also to business premises.

The Court acknowledges that in certain circumstances the rights guaranteed by Article 8 could be construed to include the right to respect for a company's head office, branch office, or place of business.

In a case (*Colas Est v France*) involving road construction companies that had been fined for illicit practices following an administrative inquiry, the Court found that investigators had entered the applicants' premises without a warrant, which amounted to trespass against their "home". The relevant legislation and practice did not provide adequate or sufficient guarantees against abuse. The Court considered that, at the material time, the relevant authority had very wide powers and that it had intervened without a magistrate's warrant and without a senior police officer being present. (Kalniņš, Visentin and Sazonov, 2014: 43)

A full review of criminal law aspects where abuse can seriously obstruct business operations is beyond the scope of this study. Suffice it to say that adequate safeguards are essential to reduce opportunities and incentives for legitimate business to engage in corruption.

Civil proceedings: Legitimate business interests can be harmed also in civil proceedings. Uncertainty about possibilities to enforce commercial contract in a fair court and risks of the court system being abused in the interests of business competitors are major detriments. There are many aspects of civil proceedings where risks of abuse are present. For example, vague or too liberal rules for granting interlocutory injunctions in civil proceedings can lead to abuse where a company's assets are frozen and business operations seriously hampered or even halted. Even worse, where a judge is not fair and independent, interlocutory injunctions can be imposed deliberately for the purpose of harming business competitors. The review of claims to impose interlocutory injunctions represents a risk in particular because it may proceed without participation of representatives of the defendant and the standard of proof may not exceed a *prima facie* case. It is therefore crucial that countries also use adequate safeguards.

All European countries have some safeguards against such misuse, for example, higher standards of evidence where injunctions are granted in the absence of the defendant, requirements for the court to assess the proportionality between the benefits of the applicant and the costs and prejudice to the defendant, compensation for damage to the defendant, the requirement of a security deposit from the claimant, etc. (Kalniņš, Visentin and Sazonov, 2014: 114)

A situation where a company can expect a legally ungrounded attack by a competitor or predatory raider will create incentives for the company to look for extralegal protections, which may involve also corrupting public officials.

Another example of an area of civil law that can be abused is insolvency proceedings. Abuse of insolvency procedures may result in "wrongful satisfaction of claims of particular creditors, facilitation

of the withdrawal of the company's assets, the overstatement of expenditures in the bankruptcy proceedings, failure to take action against transactions of the debtor right before the bankruptcy even when they can be legally challenged, etc.” (Kalniņš, Visentin and Sazonov, 2014: 127) Therefore this is one area where countries have been introducing particular safeguards including procedures (for example, for the selection of insolvency administrators and court supervision) and special organizational arrangements like the Bankruptcy Ombudsman in Finland (see the Box 4.2).

Box 4.2. Finland: The bankruptcy ombudsman

The Bankruptcy Ombudsman, attached to the Ministry of Justice, supervises the administration of bankruptcy estates (along with the creditors, the Finnish bar Association and the Chancellor of Justice). The duties of the Ombudsman are, among other things, to supervise that bankruptcy estates are administered in a lawful and proper manner and that the estate administrators appropriately fulfil the duties entrusted to them as well as to undertake the necessary measures as regards omissions, transgressions and other comparable circumstances that have come to his knowledge (Article 1, Paragraphs 1 and 2, Act on the Supervision of the Administration of Bankruptcy Estates). The Bankruptcy Ombudsman was introduced in 1995 based on, among other things, a concern that the creditors' control and supervision by the Finnish Bar Association over the conduct of its members was insufficient.

The Ombudsman may turn to the court and demand:

- that the administrator who has neglected his/her duties either remedies the failure or faces a fine;
- that the administrator is dismissed from his duties, if the administrator has essentially neglected his duties or for other weighty reasons;
- that the administrator's fee must be reduced if he has significantly failed to perform his duties or if the fee clearly exceeds what can be deemed reasonable (Article 7, Paragraphs 1-3).

Sources: Quoted from: Kalniņš, Visentin and Sazonov, 2014;

<http://www.coe.int/t/dghl/cooperation/economiccrime/corruption/Projects/PRECOP/Technical%20Papers/TP%202014/ECCU-2312-PRECOP-TP-1-2014.pdf>.

Ministry of Justice, Finland (n.d.);

http://www.konkurssiasiamies.fi/material/attachments/konkurssiasiamies/konkurssiasiamiehtoimistonliitteet/6JZrLGPn1/Act_on_the_Supervision_of_the_Administration_of_Bankruptcy_Estates.pdf.

Vatunen, 2005; <https://www.insol-europe.org/>.

Administrative proceedings: A third area, which constitutes a major element in the legal environment of business operations, is the administrative regulatory and supervision activity of the state and local government bodies. Like in criminal and civil law areas, also the administrative system represents various risks of abuse, of which there are numerous examples in ACN countries. For example, in **Tajikistan**, businesses have been facing examinations and extortion by authorities, which thus exert pressure to obtain services and works. (OECD ACN, 2014b: 105) On the face of it softer violations have been reported on **Kazakhstan** where inspections by controlling agencies have involved abuse in planning, mistakes in risk-based classification of businesses (low-risk entities are regarded medium-risk), inspections of recently established entities despite legal prohibition to subject such entities to inspection, unjustified extension of inspections and inadequate supervision of inspection activity. (OECD ACN, 2014a: 84) A common type of abuse in Kazakhstan is the application arbitrary fines: “Foreign companies report that authorities at the local and national level arbitrarily impose environmental fines which are then placed in the general budget, as opposed to directly offsetting any alleged environmental damage. As a result, they argue that environmental fines are assessed to generate additional revenue rather than to punish companies for breaching environmental regulations.” (United States Department of State, 2015) In the past the practice of **Russia’s** Federal Antimonopoly Service (FAS) has been criticized for being too aggressive “particularly toward small and medium enterprises (SMEs). In 2013, FAS reviewed over 55,000 cases – more than all other national anti-monopoly agencies worldwide. Over one-third of the cases investigating abuse of market position were against SMEs, often in rural areas where the local market demand could not support multiple businesses.” (United States Department of State, 2015) There have been initiatives to liberalize the legislation since then.

A review of all possible administrative abuses against business could be continued. In order to remedy such problems, along with adequate definition of competencies of administrative bodies, clear and transparent work procedures, adequately skilled and resourced staff and other factors, effective administrative appeal possibilities against decisions and actions of authorities represent one of the cornerstones of safe and predictable business environment.

The Council of Europe Recommendation Rec(2004)20 of the Committee of Ministers to member states on judicial review of administrative acts sets the principle that “all administrative acts should be subject to judicial review” and it “should be available at least to natural and legal persons in respect of administrative acts that directly affect their rights or interests”. (Council of Europe, 2004) According to a study of 2010, among the ACN countries that used to be part of the Soviet Union, administrative judicial review was established first in Estonia, Latvia and Lithuania. The development of this sector in the region continued around the turn of the century. Georgia adopted the Administrative Procedure Code in 1999, Moldova adopted the Law on the Administrative Court in 2000, and Ukraine introduced administrative courts with the Law on Judicial System in 2002. Since then, further steps have been made in other countries, for example, Armenia and Azerbaijan. The study concluded that the institute of administrative justice developed actively in the Baltic and Caucasus countries as well as in Ukraine and Moldova while remained procedurally and organizationally insufficiently developed in the other countries of the former Soviet Union. (Куйбида, 2010) Development in this area continues and, for example, Kazakhstan considers developing and establishing new systems of administrative justice. (OECD ACN, 2014a: 83, 84)

The monitoring reports of the Istanbul Action Plan have noted challenges even in the more developed systems of administrative judicial review such as protracted consideration of complaints in the courts and the lack of their independence (**Georgia**). (OECD ACN, 2013: 74, 75) In **Ukraine**, business associations argue that private companies find it very hard to win administrative cases against state bodies in the court if the dispute is related to financial issues such as fines. (OECD ACN, 2015b: 180)

In addition to judicial review, countries provide various other appeal mechanisms such as pre-trial review or quasi-judicial bodies, for example, municipal administrative disputes commissions, the Chief Administrative Disputes Commission, and the Tax Disputes Commission in **Lithuania** or the Procurement Monitoring Bureau in **Latvia**. Grievances regarding administrative matters may be communicated to ombudsmen, for example, the Tax Ombudsman in **Georgia**.

A relevant factor for (usually major) businesses and entrepreneurs who engage in civil legal disputes or who have disputes with authorities is possibilities to use other jurisdictions such as the UK or the United States. One of the most prominent cases of this type in the UK was the court suit of Boris Berezovsky against Roman Abramovich where the former sought unsuccessfully to claim compensation related to a sale of shares of the oil company Sibneft. (BBC News, 2012) In a different type of case in 2014 Russian authorities targeted in the UK the formerly politically influential billionaire Sergei Pugachev for alleged embezzlement of government loans to Mezhprombank. (Willsher and Bowcott, 2015)

Box 4.3. Lithuania: Administrative disputes commissions

Lithuania established administrative disputes commissions in order to reduce time needed for the review of administrative acts and make appeal procedures more effective. Data of the Chief Administrative Disputes Commission show increasing use of this appeal mechanism. 972 persons submitted applications to the Chief Administrative Disputes Commission in 2014 compared to 966 persons in 2013, 652 in 2012, 713 in 2011, 715 in 2010, 604 in 2009, and 531 in 2008.

In 2014, the Chief Administrative Disputes Commission satisfied 32% of all complaints, rejected 51% and did not review 17% complaints because they were outside the Commission's competence. 88 out of 842 decisions of the Commission were appealed to the Vilnius Regional Administrative Court, which annulled only 12 decisions. The 754 unchallenged decisions of the Commission can be regarded as a reduction to the potential burden of administrative courts.

The Tax Disputes Commission received 267 applications in 2014. In difference from the Chief Administrative Disputes Commission, a higher proportion of decisions of the Tax Disputes Commission is appealed to the court. In 2014, the Tax Disputes Commission made 325 decisions, out of which 134 were appealed in the administrative court. In 77% of cases, the administrative court upheld decisions of the Commission.

In comparison, the Chief Administrative Disputes Commission appears more successful in acting so as not to give reasons for parties to turn to the court. In the case of both commissions, speed is an advantage of their work. The default time limit for the review of a complaint with a municipal administrative disputes commission and with the Chief Administrative Disputes Commission is 14 days. Upon existence of objective grounds, this can be prolonged to 14 additional days. The Tax Disputes Commission shall decide within 60 days.

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Chapter 5. Government's actions to promote business integrity

5.1. Criminalization of corruption

There is a consensus that countering corruption requires a combination of prevention and repression. Both international organizations and national governments have been engaged in the development of legislation against public and private corruption. The development of international standards such as the OECD anti-bribery convention, Council of Europe and United Nations conventions and anti-corruption laws in countries with major presence in international business operations have contributed to the increase of risks for businesses that engage in corrupt practices. However, levels of enforcement vary between countries.

Laws: The chapter will start with a review of two national anti-bribery laws that have attracted large amount of international attention, namely, those of the United States and the United Kingdom. These laws target foreign bribery with extraterritorial jurisdiction and thus may be directly relevant also for companies that work in the ACN region.

The **United States** Foreign Corrupt Practices Act (FCPA) of 1977 is the most well-known national anti-corruption statute. The FCPA prohibits active bribery of foreign officials, foreign political parties or officials thereof or any candidates for foreign political offices. The FCPA features a number of particularly demanding provisions. One of them is the broad scope of coverage regarding persons to whom the prohibition applies, that is, not only entities and persons as such but also “any officer, director, employee, or agent” of such entity or person “or any stockholder thereof acting on behalf of [it]”. From here stems the necessity of companies to make sure that, for example, even their agents do not engage in bribery. Another important feature is that money or things of value shall not be provided also to “any person, while knowing that all or a portion of such money or thing of value will be offered, given, or promised, directly or indirectly, to any foreign official, to any foreign political party or official thereof, or to any candidate for foreign political office”. Foreign entities are subject to the FCPA, in particular, when they are listed in the United States securities exchanges and this could affect companies of the ACN region that would like to raise investment in the US.

The FCPA determines that the Attorney General may issue “(1) guidelines describing specific types of conduct, associated with common types of export sales arrangements and business contracts, which for purposes of the Department of Justice’s present enforcement policy, the Attorney General determines would be in conformance with the [requirements of the FCPA]; and (2) general precautionary procedures which domestic concerns may use on a voluntary basis to conform their conduct to the Department of Justice’s present enforcement policy regarding the preceding provisions of this section.” The Department of Justice and Securities and Exchange Commission have prepared a Resource Guide to the U.S. Foreign Corrupt Practices Act. (The U.S. Department of Justice and the U.S. Securities and Exchange Commission, 2012) See more on the Resource Guide below in this subchapter.

The 2010 Bribery Act of the **United Kingdom** is one of the most comprehensive pieces of anti-bribery legislation in Europe. In difference from the FCPA, the number of actual cases under the UK Bribery Act is still low. The law focuses on both public- and private-sector bribery. Under particular conditions, a bribe can relate to any function of a public nature, any activity connected with a business, any activity performed in the course of a person's employment, or any activity performed by or on behalf of a body of persons (whether corporate or unincorporate) (Article 3). The Law also establishes as an offence “a failure by a commercial organization to prevent a bribe being paid for itself or on its behalf”. The law may apply to bribery regardless of where it has taken place when a certain close connection of the

perpetrator to the UK exists. Foreign companies with operations in the UK can fall under its jurisdiction even where the bribery took place outside the UK.

It is a defence for an organization “to prove that [it] had in place adequate procedures designed to prevent persons associated with [it] from undertaking” bribery (Article 7, Paragraph 2). (Bribery Act 2010) The Bribery Act requires that the Secretary of State publishes “guidance about procedures that relevant commercial organisations can put in place to prevent persons associated with them from bribing”. (Article 9, Paragraph 1) Such guidance can help companies reduce the risk of engaging in corruption and being subject to enforcement action. The guidance reviews some of the key provisions of the Bribery Act and sets out six principles according to which companies should design procedures to prevent bribery. The six principles are proportionate procedures, top-level commitment, risk assessment, due diligence, communication (including training), and monitoring and review. For example, regarding due diligence, the guidance explains.

... in lower risk situations, commercial organisations may decide that there is no need to conduct much in the way of due diligence. In higher risk situations, due diligence may include conducting direct interrogative enquiries, indirect investigations, or general research on proposed associated persons. Appraisal and continued monitoring of recruited or engaged ‘associated’ persons may also be required, proportionate to the identified risks. Generally, more information is likely to be required from prospective and existing associated persons that are incorporated (e.g. companies) than from individuals. This is because on a basic level more individuals are likely to be involved in the performance of services by a company and the exact nature of the roles of such individuals or other connected bodies may not be immediately obvious. Accordingly, due diligence may involve direct requests for details on the background, expertise and business experience, of relevant individuals. This information can then be verified through research and the following up of references, etc. (Ministry of Justice: 28)

Companies are expected to carry out due diligence in part because in such way they secure a defence against prosecution but this approach also deeply impacts relations between private parties. For the private-sector operator, the anti-corruption imperative has transformed from a mere duty not to engage in corruption to a requirement to take measures that others do not commit corrupt acts either. Over the past years new anti-bribery legislation has been introduced in a number of other major markets, too.

Private-to-private bribery is criminalized across the ACN region even though particular legal approaches differ. For example, most of the countries of the Istanbul Action Plan have introduced private-to-private bribery as a separate offence, sometimes called – commercial bribery. In fact, all but one of the IAP countries cover by these offences bribery in any non-public entity whether commercial or not (an approach found in a number of other ACN countries, too). According to laws of IAP countries bribery committed by someone who works for a private entity would be punishable no matter whether the perpetrator committed the bribery in breach of his/her duties. The coverage of both commercial and non-profit entities as well as bribery whether in breach of duties or not exceeds the minimum requirements of international instruments. On the other hand most IAP countries limit the coverage to persons in some managerial or administrative functions, which is more narrow than “any person who directs or works, in any capacity, for a private sector entity” as required by the international standards.

ACN countries have also gradually introduced liability of legal persons for corruption in the legislation. Nowadays liability of legal persons for corruption is firmly established in international standards – the OECD Convention, the Criminal Law Convention on Corruption, and the UNCAC. Legal persons are main operators in business. When they engage in corruption, it can be challenging to prosecute physical

persons for these acts, for example, because the complexity of the structure and decision-making mechanisms of companies makes it difficult to identify a particular physical person who can be charged criminally for the offence. Moreover mere punishment of a particular individual may not be sufficient to deter a whole corporation from continuing its business as usual. Generally speaking criminal liability of legal persons is a novelty in the ACN region and was not easily accepted everywhere.

Table 5.1. Systems of corporate liability in ACN countries

Criminal liability	Administrative punitive liability	Quasi-criminal liability
Albania Bosnia and Herzegovina Croatia Estonia Georgia Lithuania FYR of Macedonia Moldova Montenegro Romania Serbia Slovenia	Bulgaria Russia	Azerbaijan Latvia ¹¹ Ukraine
12	2	3

Source: OECD ACN, 2015e, p.14;

www.oecd.org/corruption/acn/ACN-Liability-of-Legal-Persons-2015.pdf

At least on the face of it, the pressure to implement compliance measures within companies stems from the criminal laws of several ACN countries where the lack of supervision can make legal entities liable for offences committed by, for example, employees). **Azerbaijan, Bosnia and Herzegovina, Georgia, Latvia, Lithuania, FYR of Macedonia, Serbia, Slovenia** and **Ukraine** have the so-called expanded identification model of corporate liability where a management failure to supervise employees may be a precondition of liability. (OCED ACN, 2015e: 20)

Legal requirements in this area keep developing. In 2014 **Ukraine** adopted as grounds for corporate criminal liability:

- the commission of certain criminal offences by an authorised representative on behalf and in the interest of the legal entity
- a failure to ensure that an authorised representative complies with obligations to take measures for the prevention of corruption, which led to the commission of an offence. (Верховна Рада України, 2014а)

On the face of it, these provisions provide strict liability in that steps made to ensure compliance would not protect the entity if eventually they still failed to ensure that the respective obligations are complied with. (Martinenko and Gryshko, 2014) Ukraine's recent Law of Prevention of Corruption requires a comprehensive set of anti-corruption measures in legal entities such as regular risk assessment and mandatory anti-corruption programme in state-controlled enterprises above certain size and participants in larger public procurement procedures. (Верховна Рада України, 2014b)

¹¹ Liability is classified as quasi-criminal because according to Latvian law the *mens rea* element of crime cannot exist for a legal person.

Defences and mitigating factor: One of the incentives for companies to introduce internal compliance measures is shielding the legal entity against sanctions. Where a legal entity can be held liable for a corruption offence, demonstrating that it had implemented measures to prevent corruption can be regarded as a defence against conviction or a mitigating factor. Compliance as a defence or mitigating factor creates an incentive to develop and introduce compliance measures. The presence of such measures on paper could also cause additional difficulties to establish corporate liability, for example, if the prosecution is required to prove that the company did not have adequate and actually functioning compliance procedures in place. (Hennig, 2012: 912-914) However, then it is also largely a matter of defining standards as to what constitutes sufficient evidence of proper compliance.

Countries differ as to whether the existence of adequate compliance measures serves as a defence against conviction and what weight they may have as mitigating factors. The Bribery Act of the **United Kingdom** defines failure by a commercial organization to prevent bribery as an offence unless the organization proves that it “had in place adequate procedures designed to prevent” bribery by persons associated with it (Article 7, Paragraph 2). (Bribery Act 2010) In **Switzerland**, enterprises shall be subject to criminal liability for bribery committed in the course of business activity within the frame of the goals of the enterprise either when, due to faulty organization of the enterprise, no particular physical person can be assigned the blame or, regardless of the liability of physical persons, when the enterprise is to blame for not making all necessary and reasonable organizational measures to prevent such offence. (Swiss Criminal Code) The burden of proof of faulty organization lies on the prosecution. By virtue of the law, finding that the entity had all necessary and reasonable organizational measures in place to prevent the offence constitutes complete defence for the enterprise. **Italy** is another country where compliance-based defence against corporate liability applies. A corporate entity can be held liable administratively for a number of offences committed in its interest or for its advantage (including corruption). The defence applies differently depending on the position of the physical person who committed the criminal offence. For example, when, simply worded, the person was in a senior position, the entity shall not liable:

- 1) if its management had adopted and effectively implemented, before the offense was committed, models of organization and management designed to prevent crimes of the type that occurred
- 2) supervising, enforcing, and updating of the models had been entrusted to a body with independent powers of initiative and control
- 3) the persons who committed the crime fraudulently evaded the models of organization and management and
- 4) there was no omission or insufficient supervision by the body referred to in point 2). (Decreto legislativo (d.lgs.) 8 giugno 2001, 231)

The model of organization and management must meet several requirements. First, the models shall identify the activities where offenses may be committed. Second, they shall provide procedures for making and implementing decisions in relation to the offences to be prevented. Third, they shall identify ways of managing financial resources in order to prevent the commission of offences. Fourth, there shall be information obligation to the body responsible for supervising the operation of and compliance with the model. Fifth, there shall be a disciplinary system to punish non-compliance with the measures set in the model. (Decreto legislativo (d.lgs.) 8 giugno 2001, 231)

In other countries, compliance measures serve rather as mitigating factors. For example, according to a study of 2012 in **France** “a corporate entity will not be convicted if it is able to demonstrate that the offence was not committed on its behalf” but still this does not apply if it happened “in the course of a corporate entity's business for its benefit”. (Clifford Chance, 2012: 10) Adequate compliance measures may be a mitigating factor. In **Germany** companies cannot be held criminally liable but can be subject to forfeiture orders or regulatory fines for offences committed by their officers or employees. However,

“the imposition of a regulatory fine on a corporate entity is discretionary and the court could refrain from imposing a fine if it considered that the company had taken adequate measures to prevent such breaches”. (Clifford Chance, 2012: 13) Adequate measures to prevent offences do serve as a defence against punishment under the Article 130 of the Law on Regulatory Offences, which foresees a fine for a failure of an owner of an enterprise to ensure oversight measures against other violations.

Montenegro is the only ACN country where an entity may be exempt from punishment “if the entity has undertaken all the effective, necessary and reasonable measures aimed at preventing and revealing the commission of the criminal offence”. (OECD ACN, 2015e: 49)

It can be debated whether the introduction of all reasonable compliance measures as complete defence is the best option. The risk associated with this approach would be situations where companies manage to shield themselves against prosecution because they have created and just formally introduced voluminous integrity procedures without actual internal enforcement.

Apart from compliance, also voluntary disclosure of involvement in corruption and co-operation with investigations may be treated as mitigating factors in some countries. In the Phase 3 monitoring, the OECD Working Group on Bribery identified several parties to the OECD Anti-Bribery Convention where the person (or company) who bribes a public official and self reports the case before it is detected obtains complete defence (effective regret). A report on the implementation of the UNCAC noted the following.

In several States parties the possibility is foreseen of granting immunity from prosecution to persons engaged in bribery, who voluntarily report the presentation of the bribe before the authorities receive information about it from other sources, or who confess to the offence before a criminal action is brought against them (including in one case the possibility of having all or part of the property returned). In a number of States parties it is further explicitly stipulated that such notification or confession of an act of bribery is a mitigating factor, if it occurs after a criminal action has been brought against the reporting person and until the end of the proceedings. Finally, in other States the law specifically provides for mitigated punishment, whenever the perpetrator of a corruption offence assists in the collection of decisive evidence for the identification and capture of other persons responsible, not to mention the general sentencing rules mitigating the criminal liability of cooperating persons, common in the legislation of most States parties. (United Nations, 2013: 13)

In some ACN countries, for example, **Croatia, FYR of Macedonia, Montenegro, Romania, and Slovenia** timely voluntary reporting leads to exemption from punishment or reduction of sentence. (OECD ACN, 2015e: 49)

Government guidance to companies: The Annex II of the OECD Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions specifies good practices that companies should consider “for ensuring effective internal controls, ethics, and compliance programmes or measures for the purpose of preventing and detecting foreign bribery”. (OECD, 2009) OECD Member countries and other countries party to the OECD Anti-Bribery Convention are recommended to encourage companies to develop and adopt adequate internal measures taking into account the Annex II. In practice, governments of countries with strict sanctions for legal entities that do not have appropriate compliance measures tend to have elaborate guidance on the expectations that companies should meet.

The guidance under the **United Kingdom** Bribery Act was already mentioned above. The “proportionate procedures” principle of the guidance requires that an organization’s procedures to prevent bribery are “proportionate to the bribery risks it faces and to the nature, scale and complexity of the commercial organisation’s activities” as well as “clear, practical, accessible, effectively implemented and enforced”. The guidance further explains as follows.

Adequate bribery prevention procedures ought to be proportionate to the bribery risks that the organisation faces. An initial assessment of risk across the organisation is therefore a necessary first step. To a certain extent the level of risk will be linked to the size of the organisation and the nature and complexity of its business, but size will not be the only determining factor. Some small organisations can face quite significant risks, and will need more extensive procedures than their counterparts facing limited risks. However, small organisations are unlikely to need procedures that are as extensive as those of a large multi-national organisation. For example, a very small business may be able to rely heavily on periodic oral briefings to communicate its policies while a large one may need to rely on extensive written communication.

The level of risk that organisations face will also vary with the type and nature of the persons associated with it. For example, a commercial organisation that properly assesses that there is no risk of bribery on the part of one of its associated persons will accordingly require nothing in the way of procedures to prevent bribery in the context of that relationship. By the same token the bribery risks associated with reliance on a third party agent representing a commercial organisation in negotiations with foreign public officials may be assessed as significant and accordingly require much more in the way of procedures to mitigate those risks. Organisations are likely to need to select procedures to cover a broad range of risks but any consideration by a court in an individual case of the adequacy of procedures is likely necessarily to focus on those procedures designed to prevent bribery on the part of the associated person committing the offence in question. (Ministry of Justice: 21)

The Resource Guide to the **United States** Foreign Corrupt Practices Act by the Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission explains the legislation and its application extensively as well as contains “Hallmarks of Effective Compliance Programs”:

- commitment from senior management and a clearly articulated policy against corruption
- code of conduct and compliance policies and procedures
- oversight, autonomy, and resources
- risk assessment
- training and continuing advice
- incentives and disciplinary measures
- third-party due diligence and payments
- confidential reporting and internal investigation
- continuous improvement: periodic testing and review
- mergers and acquisitions: pre-acquisition due diligence and post-acquisition integration. (The U.S. Department of Justice and the U.S. Securities and Exchange Commission, 2012: 57-62)

Moreover under the FCPA the Department of Justice publishes opinion procedure releases, which contain advisory opinions of the Attorney General. They are published upon inquiry by companies regarding whether certain contemplated prospective conduct would violate rules on prohibited foreign trade actions of the FCPA. (United States Department of Justice)

In **Germany** the booklet “Practical assistance for anti-corruption measures” has been published for managers and developers and implementers of compliance measures. The guidelines include risk assessment methodology. They target, among other things, private-to-private corruption, and ask, for example, “to assess whether the organization itself has standardized contracting/ procurement processes, which ensure competition and are thoroughly implemented in practice (including an internal control system, use of the four-eye principle, division of functions/ structured processed, and job rotation); whether the organization has approved and communicated rules for the acceptance of contributions (gifts hospitalities, invitations) and side jobs.” (Bundesministerium des Innen)

A study by the Martin-Luther-University Halle-Wittenberg and PwC infers from German case law the minimum standard for anti-corruption programs of enterprises consisting of four elements:

- continuous explanation and education on legal requirements
- random checks of employees
- sanctions for violations
- filled position of a compliance officer as well as anti-corruption representative. (Bussmann, Nestler and Salvenmoser, 2013: 45)

The binding character of these requirements stems from the case law applying the Article 130 of the Law on Regulatory Offences (violation of obligatory supervision in operations and enterprises). (Bundesministerium der Justiz und für Verbraucherschutz, 2014)

Box 5.1. Assistance for SMEs

In virtually any country, small and medium size enterprises produce a significant share of economic value. As a sector they play a major role in employment and represent a means for people with limited resources to engage in entrepreneurship. However, SMEs are also particularly exposed to corruption-related risks. They may find themselves in a vulnerable position when encouraged or even pressured by public officials or major private partners to engage in corrupt practices. SMEs may also lack the awareness and legal expertise to identify and assess legal risks associated with involvement in activities that are either outright illegal or find themselves in the gray area between corruption and legitimate practices. These are some of the considerations why the OECD has prepared a handbook “Strengthening Business Integrity in Small and Medium Enterprises in the Middle East and North Africa”, which covers, among other things, how to carry out risk assessment and due diligence as well as develop and implement ethics and compliance programmes in SMEs. In 2008, Transparency International published the SME edition of its Business Principles for Countering Bribery.

This study did not identify particular government measures to assist SMEs in ensuring compliance in ACN countries. An example, from an OECD member state is the SME portal of the **Swiss** State Secretariat for Economic Affairs SECO. The portal provides, among other things, some integrity-related information and tools and reminds of corruption risks associated with participation in public procurement, explains the necessity and substance of due diligence analysis in acquisitions as part of the evaluation of an enterprise, posts publications such as recommendations for the management and supervision of SMEs.

Sources:

Transparency International, 2008;

www.transparency.org/whatwedo/publication/business_principles_for_countersing_bribery_small_and_medium_enterprise_sme

Staatssekretariat für Wirtschaft SECO (2015);

www.kmu.admin.ch/kmu-betreiben/03990/index.html?lang=de;

www.kmu.admin.ch/nachfolge-betriebseinstellung/03333/03347/03354/index.html?lang=de;

www.kmu.admin.ch/publikationen/index.html?lang=de.

The Section 13.3 of **Russia’s** Law No. 273-FZ on Countering Corruption requires that organizations develop and adopt measures to prevent corruption. To assist organizations in compliance with this section, the Ministry of Labour of the Russian Federation issued Methodical Recommendations for the

Development and Adoption of Measures by Organizations for the Prevention and Countering of Corruption. The recommendations cover such issues as general approaches to anti-corruption policies, designation of units or officials responsible for countering corruption, corruption risk assessment, detection and management of the conflict of interest, implementation of standards of conduct, counselling and training of employees, internal control and audit, measures to prevent corruption in relations with contractors and subordinate organizations, cooperation with law enforcement bodies, and participation in anti-corruption collective actions. (Министерство труда и социальной защиты Российской Федерации, 2013)

Enforcement against business: According to enforcement data published by the OECD, as of end 2014, 24 out of 41 countries parties to the OECD Convention had never applied sanctions for foreign bribery since the entry of the Convention into force. “361 individuals and 126 entities have been sanctioned under criminal proceedings for foreign bribery in 17 Parties between 1999 when the Convention entered into force and the end of 2014. Out of these 17 Parties, 10 have sanctioned both companies and individuals, 6 have sanctioned only individuals, and 1 has sanctioned only companies.” (OECD Working Group on Bribery, 2015: 1) The greatest numbers of sanctioned persons (individuals and entities) in criminal foreign bribery cases in the period 1999-2014 were reported by **Germany**, the **United States**, and **Hungary**. According to Transparency International and based on its methodology only 4 countries (**Germany**, **Switzerland**, the **United Kingdom**, and the **United States**) ensure active enforcement of the OECD anti-bribery convention, 5 countries ensure moderate enforcement, 8 countries – limited enforcement, and 22 countries – little or no enforcement (years 2010-2013 taken into account). (Herman et al., 2012: 5)

The FCPA and other anti-corruption laws have created legal risks for companies and with this also boosted their effort devoted to anti-corruption compliance. The Compliance Week – Kroll Anti-Bribery and Corruption Benchmarking survey of 2015 shows that more than 90% of the respondents carry out due diligence on third parties. However, only “fifty-eight percent rate their due diligence procedures as either effective or very effective”. (Kroll and Compliance Week, 2015: 6) The survey also identifies third-party relationships as a serious risk and burden. Almost half (48%) of the respondents says that they never train the third parties on anti-corruption and bribery issues and this is an indication of risk, given the number of enforcement actions taken regarding practices that involve third parties. Moreover 15% of respondents have low and 36% middling confidence in their organizations’ financial controls ability to detect books-and-records violations of the FCPA. (Kroll and Compliance Week, 2015: 6) Companies in international markets face difficulties in complying with disparities in how different jurisdictions define corruption and bribery. The development of compliance is a positive trend but it is accompanied also by uncertainty.

Traditionally many countries have used to lag behind in the prioritization of enforcement against private-sector corruption. A few years ago, a review by GRECO found the following.

In quite a significant number of states GETs were aware of a perception that private sector bribery is a less serious form of corruption than public sector, which is viewed as a gross breach of the trust that the public places on public institutions, in particular judicial and legislative institutions. This characterisation is more commonly encountered in Eastern Europe and reflects the historic preponderance of official power over the citizen but it is also found elsewhere. The Andorran report, for example, reflects a clear view by the majority of interlocutors there that private sector bribery is less serious than that in the public sector. This is often reflected in disparity between the sanctions available for bribery for public and private sector bribery, which is considered below. Sometimes evaluation reports reflect the situation in which national laws include private sector provisions, albeit imperfectly perhaps,

but an absence of any cases accompanied by a prevailing view drawn from interlocutors met by the GET strongly suggests that it is very doubtful that the law, either through legal lacunae or lack of understanding, would really catch private sector bribery. This is for example the case in Bosnia and Herzegovina. (Macauley: 35, 36)

Weak compliance within companies remains common at least in parts of the ACN region. For example, in **Armenia** the level of sanctions for corruption remains low and does not represent an incentive for companies to strengthen their compliance and anti-corruption practices. Therefore, except for large multi-national enterprises, Armenian companies usually do not introduce codes of conduct or other anti-corruption rules. (OECD ACN, 2014a: 100) By and large the situation is similar in all ACN countries that participate in monitoring under the Istanbul Action Plan. Enforcement of corporate liability for corruption remains uneven across the ACN region with a few countries where “the sentencing of legal persons has become, or is becoming, a regular part of judicial practice”. (OECD ACN, 2015e: 33)

Still, even in the absence of effective domestic enforcement, companies of ACN countries may face other incentives to improve compliance. The companies may be affected by, for example, the FCPA or the UK Bribery Act when they enter international markets or, within their own countries, when working with foreign partners. International companies can be subject to strict anti-corruption rules and require compliance from their agents, suppliers and other partners.

Enforcement against public officials: In conclusion of this chapter, enforcement against public officials deserves attention. The inability of many countries to effectively enforce criminal laws against corruption creates a highly unfavourable context for business integrity. Companies’ business depends in many ways on public authorities. Many of those that operate in markets where public authorities are highly corrupt will likely submit to corruption demands, which rules out the effective development of integrity policies on the company level. Would-be efforts of a corrupt government to promote business integrity standards will be perceived as lip-service. These and other considerations constitute sound grounds for a particular focus on situations where public officials initiate corrupt acts. This approach finds reflection, for example, in the work of G20 that has addressed the problem of solicitation and prepared G20 Guiding Principles to Combat Solicitation. Among other things, the Guiding Principles state that “strict disciplinary, administrative, civil and/or criminal measures should be adopted and applied against those who fail to comply with administrative and integrity standards concerning the receipt and disclosure of gifts or other undue advantages”. (G20, 2013)

In all ACN countries that participate in the Istanbul Action Plan, enforcement against public-sector corruption has weaknesses. IAP monitoring reports note, for example, poor enforcement in **Armenia** (OECD ACN, 2014a: 35) and the need to increase the capacity of the law enforcement authorities to proactively detect corruption offences in **Azerbaijan**. (OECD ACN, 2013a: 34) The monitoring report on **Kyrgyzstan** particularly indicates that “criminal cases of bribery are initiated as a rule on the basis of the respective reports from either a bribe-giver or a bribe-taker”. (OECD ACN, 2015a: 51) Even more unequivocally this is stated by monitoring experts about **Tajikistan**. (OECD ACN, 2014c: 59) Since the majority of bribery takes place in the presence of the mutual interest between parties to the offence, the chance of detecting such crime based on self-reporting alone would be low. The lack of prosecution of high-level public officials and lenience of applied sanctions are among the key critical remarks regarding **Ukraine**. (OECD ACN, 2015c: 73)

The problem of weak enforcement is not confined to IAP countries. Data compiled by the Centre for Public Policy PROVIDUS of **Latvia** show a continuous and radical drop in the number of court convictions of public officials for corruption-related crimes. The number of convicted officials in courts of first instance in 2011 was 51, in 2012 it was 36, in 2013 it was 23, and in 2014 – mere 9. (Centre for

Public Policy PROVIDUS, 2015) Since this rate of reduction in convictions is well below even the most optimistic assessments of the rate of reduction of actual corruption in Latvia, this is an indication of diminished enforcement. Recently **Romania** has been a rare country case with a strong upswing in anti-corruption enforcement although the longer term impact on the corruption situation remains to be seen.

5.2. Prevention of undue relations between business and politics

A particular area of corruption is the interface between the business and political decision makers. Businesses (companies, their owners) can use their resources to influence political decision making to ensure that laws and regulations are shaped favourably to their private interests or allocation of public resources (as contracts, subsidies, concessions) benefits the particular businesses. When carried out with the help of illicit means, such influencing can be termed state capture. Originally state capture has been defined as “shaping the formation of the basic rules of the game (i.e. laws, rules, decrees and regulations) through illicit and non-transparent private payments to public officials.” (Hellman, Jones and Kaufmann, 2000: 2) State capture is a process that involves both private-sector and public-sector parties. Around the turn of the centuries, researchers of the World Bank used the term to analyse developments in former socialist countries where private companies engaged with public decision makers in order to manipulate policies and extract rents. Since state capture attempts to shape the rules, it can even attempt to legalize itself and become at least in part technically legal, for example, state capture could result in more liberal rules regarding provision and acceptance of gifts and other advantages to politicians. It also deserves attention that capture does not always target the public sector. As seen in the Georgian example in the Box 5.3, the government and ruling politicians can also use their power to capture businesses.

However, there may even be situations where the division between the private and public party in state capture becomes dubious. Various elite groups can capture the state and be themselves in control of both significant segments of the business sector and political decision making. A popular although vaguely defined term, which is used in many countries of the post-socialist area about leaders of such elites, is oligarchs. According to Anders Åslund “the popular meaning of an “oligarch” is a very wealthy and politically well-connected businessman, a billionaire, or nearly so, who is the main owner of a conglomerate and has close ties with the President”. (Åslund, 2005: 6) The word oligarch stems from the Greek term oligarchy – typically a small and rich group of people who ruled a political entity. In the 1990s, the term became particularly popular in **Russia** and **Ukraine** (Åslund, 2005: 6) but has been widely used in other countries as well, for example, **Latvia** and **Moldova**. Also in modern contexts, the term is used to describe members of narrow ruling elite groups. “Wealth and economic power remain largely concentrated among the president, his family, and a small group of oligarchs, creating a dangerous convergence of political and economic interests,” as the Nations in Transit 2015 report describes **Azerbaijan**. (Freedom House, 2015a) The role of oligarchs is viewed as a problem not only in relation to politics directly but also to specific sectors such as media or banking. Regarding **Moldova** the Nations in Transit report notes that “oligarchs and politicians have control over the majority of media outlets”. (Freedom House, 2015b)

Box 5.2. Ukraine: Case of state capture

During the rule of Viktor Yanukovich (Prime Minister 2002-2005, 2006-2007; President 2010-2014), Ukraine developed into what many consider an extreme case of state capture. According to the Nations in Transit “the nature of the Yanukovich regime might be described as personalist authoritarianism, as it had matured beyond its initial reliance on the business magnates, or oligarchs, of the eastern Donbas area, such as Rinat Akhmetov. Instead, the late phase of Yanukovich’s presidency was marked by the total domination of his direct proxies and close relatives, led by his elder son, Oleksandr Yanukovich. Open political competition was suppressed through the politicized prosecution and imprisonment of key opposition leaders, and a massive share of public spending and private business activity was controlled by the president’s inner circle.”

The Mezhyhirya estate outside Kyiv where the former President Yanukovich resided has served as a symbol of the captive regime. The residence was rented by Viktor Yanukovich during his terms as a Prime Minister in 2002-2004 and in 2007. It was privatised with alleged violations and the private ownership was “formalised” by reportedly orchestrated court decisions. Ownership of the residence was changed several times but it was clear that Yanukovich remained its beneficial owner. To somehow explain the use of the residence by the President, his administration rented for him some premises on the residence’s territory with the rent payments going to offshore companies, which, according to journalists, were controlled by persons affiliated with Yanukovich’s family. Overall the residence occupies about 137 hectares of land and includes various buildings lavishly reconstructed and refurbished at the estimated cost of USD 75 to 100 million. Such luxurious way of life could not be explained by official income of the ex-President. Allegations of property appropriation were made also with regard to land plots in the so called Sukholuchya area which allegedly were transferred into control of the companies behind the Mezhyhirya deals and used as a personal hunting area of Yanukovich. In 2014 the Mezhyhirya estate was returned to state ownership.

However, the corrupt and captive character of the Yanukovich regime manifested itself in many other ways than misappropriation of real estate. In numerous instances public resources were channelled to cronies of the ruling elite. For example, the company Activ Solar GmbH was registered in Austria and its beneficial owner was allegedly the former First Vice Prime Minister of Ukraine and former head of the secretariat of the National Security and Defence Council Andriy Klyuev. In 2010-2011, Klyuev headed the Government’s Commission on investment projects, which decided on allocating budget financing to investment projects. About UAH 372 million (Ukrainian Hryvnia) were allocated to companies controlled by offshore entities which were reportedly affiliated to Klyuev himself or members of the governing party. More than UAH 200 million were allocated to JSC “Zavod napivprovidnykiv” controlled by Activ Solar GmbH.

The media has been reporting numerous corruption allegations related to procurement in the defence sector, arms trade, use of economic entities controlled by the Ministry of Defence, and privatization of army property (including land plots).

For many years companies in Ukraine were able to receive VAT refunds to which they were entitled by the law only through bribery or political connections. In one case in 2013 where a company pleaded guilty to conspiracy to violate the anti-bribery provisions of the FCPA and agreed to pay USD 17.8 million in criminal fines, it had paid third-party vendors to pass on bribes to Ukrainian government officials to obtain VAT refunds. In total roughly USD 22 million were paid to two vendors, nearly all of which was to be passed on to Ukrainian government officials to obtain over USD 100 million in VAT refunds.

Allegations have been made in the media that several former highest officials and their relatives (including Oleksiy Azarov, the son of the former Prime Minister, the ex-President Yanukovich and his family, the mentioned Andriy Klyuev and his brother MP Serhiy Klyuev) had been using foreign jurisdictions to launder proceeds from alleged corruption, in particular through Austria, Liechtenstein, Germany, the UK.

The description of alleged episodes of high-level corruption during the Yanukovich era could go on. Considering also allegations of widespread election manipulations for the benefit of the ruling party and extensive political control over the judiciary, the state capture in Ukraine seemed near complete.

Sources:

Quoted from: Freedom House, 2015c;

<https://freedomhouse.org/report/nations-transit/2015/ukraine>.

OECD ACN, 2015c; pp.76-78; www.oecd.org/daf/anti-bribery/Ukraine-Round-3-Monitoring-Report-ENG.pdf

Box 5.3. Georgia: Capture of business by the government

The Georgian Government which came to power following the 2003 Rose Revolution implemented a number of impressive administrative and anti-corruption reforms. As a result of these, the state was able to perform many of its basic functions (ranging from tax collection to law enforcement) much more effectively than before, while certain types of corruption (e.g. bribery in public services) were eradicated almost completely.

In a less positive development, at the same time as these reforms were implemented, power was becoming concentrated increasingly within a narrow group of officials at the top of the executive branch. While undermining the independence of the legislature and the judiciary and turning them into mere tokens, the concentrated authority also made it possible for the powerful leaders of the executive branch to extend their influence well beyond the public sector and to establish effective control over important resources in the private sector. The government then mobilized these resources to reinforce the ruling party's grip of power and to ensure its electoral victories.

Georgia's most popular private TV stations -- Rustavi-2 and Imedi -- were probably the best examples of this process. Television is the main source of information for an overwhelming majority of Georgians and only three TV stations had nationwide reach at the time, two of which were private. The government set out to establish control over them and achieved this goal by means of a series of suspicious ownership changes and establishment of a new ownership structure involving people with close ties to the government. Subsequently, both TV stations provided an overwhelmingly positive coverage of the government's activities in their news programmes and stopped airing political talk shows where critical discussion of government policies used to take place.

Financing of electoral campaigns was another area where the government's grip over the private sector's resources was obvious. The ruling United National Movement (UNM) would routinely receive millions in corporate donations, while opposition parties hardly got any corporate donations at all and their combined electoral funds were only a tiny fraction of the UNM's. Moreover, private sector companies were occasionally made share the costs of some social or other types of projects implemented by the government. For example, a number of businesses were allegedly forced to buy large quantities of grapes in the government's attempt to prevent discontent among the farmers in the Kakheti region over the failure to sell their harvest. After the UNM was voted out of power in 2012, supermarket chain operator Goodwill alleged that the former government had forced it to buy 50 vehicles and donate them to the Ministry of Economic Development.

The dominance of the executive branch in Georgia's governance system and the lack of an independent judiciary were major factors contributing to the business sector's susceptibility to capture by the authorities. The impact was twofold: The control over the judiciary made it possible for the government and the ruling party to execute ownership change in a given company whenever they deemed it necessary. Meanwhile, companies who had come under various types of pressure from the government knew there was no point in attempting to defend their rights in court and so were usually willing to provide whatever contribution the government was seeking from them.

Sources:

Civil Georgia, 2007; www.civil.ge/eng/article.php?id=15706.

Freedom House, 2009;

www.freedomhouse.org/template.cfm?page=251&year=2009.

OSCE/ODIHR, 2008, p.14; www.osce.org/odihr/elections/georgia/33301?download=true.

Transparency International Georgia, 2009;

www.transparency.ge/sites/default/files/Media%20Ownership%20November%202009%20Eng.pdf.

Transparency International Georgia, 2011; www.transparency.ge/nis/.

ნაზარაძე, 2013;

www.for.ge/view.php?cat=3&for_id=27179.

Many factors make the state capture and the emergence of oligarchs possible just as many factors could contribute to countering them. A full review of such countering factors would have to focus on checks and balances in the constitutional system, the condition of the civil society and media landscape, economic structure and many others. Due to the need to use selective approach in this report, what follows is a review of two of the areas where rules directly address the relations between private interests and politics – regulation of political finances and lobbying.

Regulation of business funding for political campaigns: A major area where business can influence politics is funding of political campaigns and parties. Article 7 Paragraph 3 of the UNCAC recommends “legislative and administrative measures [...] to enhance transparency in the funding of candidatures for elected public office and, where applicable, the funding of political parties”. The Council of Europe Recommendation Rec(2003)4 of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns contains an extensive set of transparency requirements, limits, etc. (Council of Europe, 2003)

To limit excessive or undue influence of wealthy interests on politics, generally two types of regulations are used – restrictions and/or transparency requirements. A third major type of measure is public funding but it will not be reviewed here. Restrictions can represent limits on the amounts of political donations (for example, no more than a certain sum from a single contributor to one beneficiary per year), exclusion of certain contributors (for example, prohibition for legal entities or state-owned companies to donate), limits and conditions for business entities or individuals to engage directly in paid campaigning for the benefit of a certain candidate or party, etc. Transparency requirements may include the disclosure of recipients, contributors and amounts of financial contributions as well as details regarding expenditures of political parties or candidates. There can also be rules intended to limit the overall need of parties and candidates to secure major private funding (for example, prohibition of some particularly expensive types of campaigning such as television advertising, overall limits on campaign spending or provision of state funding). The density of regulation differs widely between countries of the region. Below **Georgia** with extensive regulation on the one hand and **Kyrgyzstan** and **Tajikistan** with scarce regulation on the other hand are shown as examples.

In **Georgia**, key restrictions and transparency requirements are:

- maximum limit of a donation (in money or as a service) set at GEL 60,000 (Georgia Lari) per year for physical persons and GEL 120,000 per year for legal persons
- party membership fee no higher than GEL 1200 per year
- only companies registered in Georgia with Georgian citizens as beneficial owners allowed to make political contributions (companies with more than 15% of income from “simplified procurement” contracts not allowed to make political contributions)
- loans, goods and services are considered as donations if provided under conditions more favourable than normal market conditions
- parties are allowed to receive loans only from commercial banks and the maximum amount of a loan is GEL one million per year
- party’s campaign expenditure ceiling set at 0.1% of Georgia’s GDP for the previous year
- the concept of a “person with electoral goals” and requirement for them to establish special funds for election-related financial transactions
- annual financial declarations and two-month financial reports of political subjects (parties, blocks, candidates) plus financial reports of the election campaign submitted to the State Audit Office and published
- donations are made public on a monthly bases
- the State Audit Office monitors financing of political parties and campaigns (tasks of the State Audit Office include setting the form of financial declarations, setting the auditing standards, carrying out the audit of financial activities of political parties, etc.)
- state funding. (OECD ACN, 2013b: 82-90; OECD ACN, 2015d: 72-76)

With this Georgia represents a case with comprehensive regulation focusing on both revenue and expenditure parts of political parties. Out of 18 types of provisions under the category “bans and limits on private income” in the database of the International Institute for Democracy and Electoral Assistance

(IDEA), Georgia was one of the three ACN countries that had all of these provisions (when applicable) as of mid-2015. **Latvia** and **Lithuania** were the other two countries. (IDEA)

On the other hand, in **Kyrgyzstan**, the requirements are:

- accounting and tax requirements as for legal entities in general
- general monitoring in the competence of the Ministry of Justice and the Central Election Committee
- maximum thresholds for donations by individuals and legal entities to election funds of candidates or parties, and cap on expenses that may be covered from the election fund. (OECD ACN, 2015a: 82)

In **Tajikistan**, the requirements are:

- Parties shall publish information on their financial condition and reports on sources, amounts and spending of funds, assets, and paid taxes annually.
- In law, the financial reports shall be examined by tax bodies.
- The Central Commission for Elections and referendums shall set the form of report of a candidate deputy and political party on receipts and expenditures of funds from the election fund as well as control the receipts, sources, correct account and proper use of election funds of candidate deputies and political parties. (OECD ACN, 2014c: 92, 93)

According to the IDEA database, in mid-2015 in the category ‘bans and limits on private income’, among countries of Central Asia, provisions in **Kazakhstan** and **Turkmenistan** were even scarcer while **Uzbekistan** had a more comprehensive framework in place. (IDEA)

There is overall a trend to try limiting the influence of business on political parties and election candidates indirectly through lowering the maximum size of donations and generally reducing the need of political parties to raise excessively large amounts of money with the help of expenditure caps and public funding. In some countries, donations by companies (and legal entities in general) are prohibited. Although these measures do not aim explicitly to exclude business from funding parties and campaigns, often they are intended to limit contributions of the size that only wealthy individuals or entities could afford.

Rules on business lobbying: The OECD Principles for Transparency and Integrity in Lobbying (OECD, 2010b) and the Recommendation 1908 (2010) of the Parliamentary Assembly of the Council of Europe “Lobbying in a democratic society (European code of good conduct on lobbying)” (Council of Europe, 2010) set out recommendatory standards in the area of regulating lobbying. However, only four ACN countries have dedicated lobbying laws. **Georgia** was the first European country to adopt a lobbying law in 1998, followed by **Lithuania** in 2000. According to the Lithuanian law lobbyists are required to register and disclose information on their clients, lobbied issues, etc. However, out of 34 registered lobbyists, 23 did not carry out lobbying activity in 2014. (Vyriausioji tarnybinės etikos komisija, 2015) The Chief Official Ethics Commission has approved the Code of Ethics of Lobbyists (2005), which sets out the principles of lawfulness, honesty, dutifulness, professionalism, confidentiality, and the avoidance of conflicts of interest as well as provides the principles of communication and cooperation among lobbyists and between lobbyists and state and municipal authorities.

In the first decade of the 21st century, more countries of Central and Eastern Europe adopted lobbying laws – **Hungary** (2006; repealed in 2011), **Poland** (2005), and the ACN countries **FYR of Macedonia** in 2008, and **Slovenia** in 2010. As of the summer of 2015, the latest lobbying law in the ACN region was introduced in **Montenegro**.

Box 5.4. Slovenia: Lobbying regulation in the Integrity and Prevention of Corruption Act (2011)

In Slovenia, lobbying activities are generally allowed only for registered lobbyists (some exceptions apply). Public officials are not allowed to lobby during office and for the term of two years after the termination of office. Only physical persons can register and hence lobbying activities of legal entities can be performed only through physical persons.

The register shall contain the name of the lobbyist, tax ID number, the address where notices and invitations to public presentations and consultations are to be received, the registered office or name and the head office of the company, sole trader or interest group if that is where the lobbyist is employed, and the issue areas in which the lobbyist has registered an interest. The data shall be public (except the tax ID number).

Lobbyists have to provide annual reports plus a report no later than within 30 days of the expiry of the validity of registration. The report shall contain:

- the lobbyist's tax ID number
- data on interest groups for which the lobbyist has lobbied
- data on the amount of payment received from these organisations for each matter in which the lobbyist has lobbied; if lobbying is a part of a service contract that also includes other activities and the value of lobbying cannot be clearly determined, the lobbyist shall state the value of the service contract and the percentage of payment for lobbying
- the statement of the purpose and objective of lobbying for a particular interest group
- the names of state bodies in which the lobbyist has lobbied and persons lobbied by the lobbyist
- types and methods of lobbying for a particular matter in which the lobbyist has lobbied
- the type and value of donations made to political parties and the organisers of electoral and referendum campaigns.

The Commission for the Prevention of Corruption may verify the accuracy of the data and statements by viewing the lobbyist's documentation, making enquiries (for example, with state bodies where the lobbyist lobbied), proposing that competent authorities conduct an audit of operation of the lobbyist (or entity or interest group of the lobbyist).

As an advantage for registered lobbyists, they have the right to be invited to all public presentations and all forms of public consultations with regard to the areas in which they have registered interest and they shall be informed thereof by the state bodies and local communities.

Not only lobbyists but also lobbied persons have reporting obligations. They shall record certain data of lobbyists at every contact and forward a copy of the record to their superiors and the Commission for the Prevention of Corruption. Lobbyists shall identify themselves in front of lobbied persons by showing due identification and authorisation and shall state the purpose and objective of the lobbying in question. In turn, the lobbied persons shall verify whether the lobbyists are registered before agreeing to have a contact.

If the lobbyist fails to comply with set prohibitions (for example, provides incorrect, incomplete or misleading information) or is not entered in the register, the lobbied person shall report the lobbyist to the Commission for the Prevention of Corruption. Possible sanctions for non-compliant lobbyists are

- a written reminder
- a ban from further lobbying activities in a particular matter
- a ban from lobbying for a specified period of time which may not be shorter than 3 months or longer than 24 months in duration
- removal from the register.

Source: Commission for the Prevention of Corruption (n.d.); <https://www.kpk-rs.si/upload/datoteke/ZintPK-ENG.pdf>.

Some other ACN countries have had lengthy debates about several draft laws that have not materialized as adopted acts, for example, in **Bulgaria, Latvia, Romania, and Ukraine**. (Kalniņš, 2011) Overall a firm international consensus about the necessity to introduce dedicated legal regulation of lobbying seems yet to develop. Nevertheless secretive or even corrupt lobbying is usually recognized as a problem as noted, for example, in the Anticorruption Strategy 2014-2017 of Ukraine where illegal lobbying of interests of particular individuals or business structures is identified as one of the most widespread

manifestations of corruption of elected officials and the introduction of lobbying legislation is envisaged as one of key planned measures. (Верховна Рада України, 2014с)

5.3. State policy to promote business integrity

Private-sector corruption in anti-corruption strategies and plans: Most ACN countries have anti-corruption strategies, programs and/or action plans. As a rule, such policy documents focus mainly on the public sector corruption. However, some strategies and programs include parts that address specifically private sector integrity issues including private-to-private corruption.

For example, the Anti-Corruption Strategy for 2014-2017 of **Ukraine** contains a chapter on countering corruption in the private sector. The goal in this part of the document does not emphasise attacking the private sector corruption directly but rather focuses on the removal of conditions that lead to business corruption as well as creation of business climate favourable to giving up corrupt practices and developing intolerant attitude of business toward corruption. The envisaged measures are, among other things, to deregulate the economy, ban access to public resources for entities engaged in corruption offences, increase transparency of business (including identification of beneficiaries), create the business ombudsman, cooperate with business in providing explanations about standards of liability for legal entities, implement programs for access to information for entrepreneurs, carry out pilot projects of integrity pacts and develop a strategy for the implementation of anti-corruption standards in the private sector. (Верховна Рада України, 2014с) Prevention of corruption in the private sector is singled out as a separate priority with a list of activities also in the **Georgian** Anti-Corruption Action Plan 2014 – 2016.

Box 5.5. Georgia: Anti-corruption policy documents and engagement of private sector actors

Development of the anticorruption policy, coordination and monitoring of the implementation of the anticorruption strategy and action plan as well as ensuring the implementation of recommendations of international organizations are entrusted to the Inter-Agency Coordination Council for the Fight against Corruption in Georgia (the anticorruption council, ACC). The ACC is supported by the secretariat (the Analytical Department of the Ministry of Justice) and working groups. Members of the ACC represent three branches of state power, international and local organizations as well as the business sector. Currently the anti-corruption council consists of 47 members and is chaired by the Minister of Justice.

Business sector representatives were included as members in the ACC in 2013. Thus, apart from state institutions dealing directly with the business sector related issues (such as the Competition Agency, the Business Ombudsman, the Ministry of Economy and Sustainable Development, etc.), the following organizations represent the business sector in the council: the American Chamber of Commerce (AMCHAM), the Economic Policy Research Centre, the Research Centre for the Elections and Political Technologies and the Georgian Business Association. Representatives of these organizations take part not only in the work of the ACC but are also active on the level of the thematic and expert working groups. They were closely involved in preparing the new anti-corruption strategy and action plan of Georgia for 2015-2016 (adopted in 2015).

The anti-corruption strategic framework of Georgia included prevention of corruption in the private sector and development of competitive environment as one of the strategic directions of the Anti-Corruption Action Plan for 2010-2013. Major focus was on transparency of the financial sector and accountability of commercial banks and entities.

In the new policy documents for 2015-2016, prevention of corruption in relation to the private sector is one of the 13 strategic priorities of the fight against corruption (priority 9). Under this priority, the main goals are to support integrity, transparency and competition in the private sector; raise awareness on the issues of business integrity; establish transparent principles of corporate management; decrease risks of corruption by promoting modern mechanisms of business integrity, which contribute to the improvement of investment environment and economic growth.

Box 5.5. Georgia: Anti-corruption policy documents and engagement of private sector actors (*cont.*)

The following activities are included in relation to the private sector: awareness raising and study of risks of business integrity; implementation of integrity and anticorruption programs in state-owned enterprises; increase of transparency and objectivity in the privatization process; strengthening cooperation between state and private structures on anticorruption issues; development of e-regulation system in order to prevent corruption, etc. Main responsible agencies are the Competition Agency, the National Agency of State Property, the Ministry of Economy and Sustainable Development, and the secretariat of the ACC.

Both the new strategy and action plan were developed on the basis of intensive discussions held within the framework of the ACC, the Expert Level Working Group as well as nine thematic working groups responsible for drafting the respective parts of the new action plan, each co-chaired by a representative of a public agency and a non-governmental representative. The thematic working group on prevention of corruption in relation to the private sector included representatives from relevant public agencies such as the Competition Agency, the Business Ombudsman, the National Bank of Georgia as well as the Georgian Business Association, the AMCHAM, the Chamber of Commerce of Georgia, and other non-governmental/international organizations. A representative from the Competition Agency and representative from the Georgian Business Association co-chaired the working group.

In total, 17 meetings of thematic working groups, 7 meetings of the Expert Level Working Group, and two ACC sessions were held throughout the strategic development process thereby ensuring intensive and collaborative participation of all stakeholders.

Apart from involvement in the development of the new strategic documents, business sector representatives - members of the ACC – have the opportunity to participate in the monitoring and evaluation of the implementation of anticorruption policy documents. Particularly, according to the new Monitoring and Evaluation Methodology adopted by the ACC in 2015 the monitoring/evaluation reports and monitoring tools to be prepared by the ACC secretariat throughout 2015-2016 shall include the feedback and inputs on the implementation of activities provided by civil society and business sector representatives.

Apart from facilitating the implementation of the action plan activities as stated above, the ACC secretariat plans to organize awareness raising meetings with the business representatives about the existing anticorruption networks working on business related issues as well as other initiatives such as the Global Compact, etc.

Source: Information provided by Rusudan Mikhelidze on 9 September 2015.

In other cases, national anti-corruption strategies and plans do not address private sector corruption at all or address only specific aspects of it. For example, the Implementation Plan of the **Estonian** Anti-Corruption Strategy 2014-2017 addresses private sector corruption rather indirectly. For example, the plan aims to increase private sector awareness and draw attention to topics concerning corruption prevention. The focus is, among other things, on the interaction between business and decision makers (lobbying rules and political finance), training of managers on tackling corruption risks and preparations for publishing data on transactions between local governments and private law persons. (Justiitsministeerium, n.d.) The National Anti-corruption Programme of **Lithuania** for 2015-2025 does analyse extensively corruption risks in the private sector but proposed activities in this regard are somewhat limited – assessment of the consistency of criminalisation of corruption in the public and private sectors with international standards, preparation of guides and other documents facilitating and promoting the anti-corruption environment and ethical behaviour in the private sector as well as education-related activities targeting risk groups in the private sector. The programme envisages also rather specifically targeted activities, for example, the introduction of a legal requirement for pharmaceutical companies to publicly declare their advertising expenditure and beneficiaries of these funds as well as the approval of a corruption prevention programme in the field of sports. (Seimas of the Republic of Lithuania, 2015)

Consultative arrangements: As already seen in the case of Georgia (Box 5.5), anti-corruption policies can involve consultative arrangements between the government and business. For example, in **Romania** the Ministry of Justice has a dedicated cooperation platform with business under the National Anticorruption Strategy. The platform comprises 22 members (including 4 embassies, 3 commerce chambers, the Foreign Investors Council, the Romanian Bank Association and 10 major companies) and meets twice a year since 2012. The platform discusses topics of common interest such as compliance systems, anti-bribery programs in companies, use of anti-corruption clauses in relationships with suppliers and distributors, public procurement procedures, codes of ethics, transparency of lobbying activities and open data. The discussions have prompted the adoption of preventive measures such as ex-ante control of conflicts of interest in the public procurement and opening of contracts as part of the Open Government commitments. Members of the platform are also involved in the monitoring process of the implementation of the Anti-corruption Strategy, including through on-site evaluation visits in public institutions. Representatives of the business environment have been constant members of the evaluation teams set up under the peer review mechanism of the strategy. Compliance officers from major Romanian companies have shared their expertise and best practices with integrity officers working in public institutions and have evaluated the anti-corruption mechanisms in various central and local administrations, line ministries and other public agencies. Romania also has policies that address business governance issues in a broader sense, for example, the Action Plan for the Implementation of Measures of Good Governance in Economy of Romania.¹²

In **Russia** the Working Group on Matters of Joint Involvement of Business Representatives and Government Bodies in Countering Corruption includes representatives of public bodies from the executive, judicial and legislative branches of authority as well as major business associations. One of the recent developments in the ACN region has been the establishment of the Anti-Corruption Forum of the government agencies and the business community in **Kyrgyzstan** along with signing the Memorandum of Understanding and Cooperation in the field of combating corruption between the Minister of Economy and the business community represented by the Head of the Secretariat of the National Alliance of Business Associations in October 2015. Arrangements for public-private dialogue on corruption exist also in **Armenia, Kazakhstan**, and other countries.

5.4. Measures to ensure integrity in state owned enterprises

In many countries, governments have invested major assets in state-owned enterprises (SOEs), which fulfil important economic and sometimes also political functions. Nevertheless it is often a challenge to ensure adherence to the opening principle of the OECD Guidelines on Corporate Governance of State-Owned Enterprises that the state shall exercise “the ownership of SOEs in the interest of the general public”. (OECD, 2015c: 19) According to the Guidelines the state as an owner shall be responsible, among other things, for overseeing and monitoring compliance with applicable corporate governance standards, and developing a disclosure policy for SOEs. These are responsibilities that should contribute also to proper adherence with integrity standards in SOEs.

More explicitly the Guidelines address integrity issues regarding boards of SOEs with a recommendation for them to “develop, implement, monitor and communicate internal controls, ethics and compliance programmes or measures, including those which contribute to preventing fraud and corruption”. There is a requirement for boards to act with integrity and a recommendation to implement mechanisms for avoiding conflicts of interest of board members and limiting political interference in board processes.

¹² Calinescu, C.V., Coordinator, Secretariat of the National Anti-corruption Secretariat, the Ministry of Justice, (2015), information provided for the study.

The Guidelines also address other integrity-related matters such as insider trading and abusive self-dealing as well as political campaign contributions (which SOEs should not provide).

SOEs can be particularly exposed to corruption risks, which may include bribery of SOEs employees by other parties or the feeling of SOEs or their employees that they themselves can or should bribe. Some SOEs have unique positions in the market that can be used for winning unfair advantages. Their proneness can be linked also to privatization or public procurement processes. Exposure to risk is exacerbated by their proximity to the government. (Crane-Charef, 2015: 7) Also Transparency International recognizes this as described in one of its helpdesk answers.

In addition to corruption risks facing companies in general, SOEs are also exposed to specific governance challenges due to their proximity to policy makers and market regulators. The particular position of SOEs, however, requires additional safeguards against market distortion and misuse of public funds. The state's role as an owner of the company needs to be clearly separated from its role as a regulator and communicated as such. SOEs need to be open about their governance and ownership structures, their relations to other state owned entities, such as banks and financial institutions, and disclose any received state grants or guarantees. Transparency of SOEs implies integrity and openness from both the state's and the SOEs' perspectives. (Wickbergs, 2013: 1)

Many SOEs operate in sectors with high risks of corruption such as extractive industries, utilities and construction. In an international sample covered by an OECD report, more than 50% of the value of the SOE sector was in network industries (telecoms, electricity, gas, transportation and other utilities). (OECD, 2014d: 11) OECD data published in 2014 show that employees of public enterprises constituted 27% of public officials who were promised, offered or given bribes in concluded foreign bribery cases. (OECD, 2014b: 8, 22)

SOEs may suffer from poor image. In 2012, a study on the governance of SOEs in **Estonia, Latvia, and Lithuania** found that the public tended to view boards of SOEs "as politicized, having conflicts of interest, lacking talent, and as conduits for personal or political influence". (Baltic Institute of Corporate Governance, 2012: 6) The same study identified such weaknesses as, for example, boards representing fiefdoms of ministries and political parties; insufficient independent board members and insufficient independent oversight; lacking formal policies of boards on conflict of interest or related party transactions.

Many kinds of measures can be used to prevent corruption and strengthen integrity in SOEs in addition to the measures common for private companies. Some of the measures are those that are typically applied to the public sector. The prevention system of the public sector can be extended to cover also SOEs. This is the case, for example, in **Georgia** where freedom of information rules apply to legal persons under private law if they receive funding from public budget, heads of some SOEs have to publish property declarations, entities where state share exceeds 50% have to procure goods and services according to public procurement rules (with a possibility to apply special rules considering the specifics of the entity in question). (Sagharadze, 2015: 13-16) Also in **Estonia, Latvia and Lithuania** certain categories of officials of SOEs are subject to conflict-of-interest rules and disclosure of private interests under legal framework common with other public officials.

In **Mongolia**, the Independent Authority against Corruption commissioned the evaluation of SOEs, which resulted in recommendations on corporate transparency and procurement. (OECD ACN, 2015b: 7,8)

Disclosure and transparency: One particular option for strengthening the integrity of state-owned enterprises is the adoption of transparency policies. The OECD Guidelines on Corporate Governance of State-Owned Enterprises address disclosure and transparency extensively with the basic principle that “state-owned enterprises should observe high standards of transparency and be subject to the same high quality accounting, disclosure, compliance and auditing standards as listed companies”. (OECD, 2015c: 26)

For example, **Sweden** has guidelines for external reporting by state-owned companies adopted in 2007 (Regeringkansliet, 2015). Transparency policy for state-owned enterprises of **Lithuania** requires that a SOE discloses its goals and tasks, financial and other business performance results, current number of employees, yearly labour costs, monthly salary of the enterprise executives and their deputies, accomplished, ongoing and planned acquisitions and investments. Detailed requirements are set for the contents of annual reports, activity reports and respective interim reports. A SOE shall also prepare annual and interim (3, 6, 9 and 12 months) financial statements. The transparency guidelines envisage exact timetable for the publication of the reports and information on special obligations (social, strategic, political objectives) on the SOE’s website or the website of the state representative institution. The coordinating institution, which is responsible for the formulation of the good governance policy and coordination of its implementation by the companies, shall prepare and publish consolidated reports on SOEs and their activities. (Lietuvos Respublikos Vyriausybė, 2010)

In February 2015, **Ukraine** adopted methodical recommendations for the transparency of state-owned enterprises envisaging public financial accountability of all state-owned enterprises with publications on the websites of the enterprises or respective ministries. Moreover companies should disclose strategies and objectives of operation, investment projects, which are being implemented or which are planned, results of financial-economic activity, average number of employees, average monthly salary (including that of managers and their deputies) and salary arrears. Based on this information, the Ministry of Economic Development shall prepare an analytical report on the condition of enterprises in the state sector and their operation. (Міністерство економічного розвитку і торгівлі України, 2015; Пресс-служба Министерства экономического развития и торговли, 2015)

As presented in spring 2015, the broader reform of state-owned enterprises in Ukraine strives to “build a healthy and transparent SOE management system that will aim to make Ukraine adherent to global best practice, including OECD Guidelines”. (SOE Reload, 2015) With regard to transparency and accountability, five tasks had been envisaged:

- develop transparency guidelines, ensure that SOEs publish their accounts
- improve disclosure standards
- prepare comprehensive overviews on the SOE sector
- implement financial audits and increase their standards.
- improve financial and strategic planning.

Other tasks that are relevant in the context of anti-corruption include appointing independent board members, creation of audit committees and improvement of internal controls, setting of a transparent and professional nomination procedure, improving current privatization practices and allowing of hiring reputable advisors, etc.

State anti-corruption program for SOEs: Another option for the government is to adopt a dedicated anti-corruption program for state-owned enterprises. An example of this kind is the Anti-Corruption Program for State Owned Companies for 2010-2012 of **Croatia**. (Dubravica, 2012) The program defined

three objectives (strengthening of integrity, accountability and transparency in the work; creation of preconditions for the prevention of corruption at all levels; affirmation of “zero tolerance” approach to corruption) and focused on five target (thematic) areas:

- improving public sector services with a focus on strengthening accountability for the implementation of tasks and promotion of integrity and transparency
- business conduct in an orderly, ethical, economical, efficient and effective manner
- business in line with laws, regulations, policies, plans and procedures
- protection of property and other resources from loss caused by mismanagement, unjustified spending and use, irregularities and fraud
- timely financial reporting and monitoring of business results.

The program envisaged eighteen measures, which had to be transformed into particular activities to be included in action plans of all companies in majority state ownership (a form for such plan was annexed to the program). (Vlada Republike Hrvatske, 2009) The omission of companies owned by local governments has been identified as a shortcoming of the program (as has been the fact that the program was not extended after its originally envisaged termination). (Orlović, 2014: 15)

Sophisticated monitoring system supported the implementation of the program. The Independent Anti-corruption Sector of the Ministry of Justice took a coordinative role and coordinators for the implementation were appointed in ministries, which were in charge of SOEs. Under the auspices of the Sector of the Ministry of Justice, the appointed coordinators plus a representative of the State Audit Office ensured coordination and, among other things, designed operational methodology for the implementation of the program, ensured the involvement of relevant appointed persons and bodies within companies, designed a survey for the monitoring of the implementation. Companies were advised to use internal audit for self-assessment or, if no internal audit was established yet, use self-assessment teams. The implementation survey questionnaire was sent to all companies. The survey of 2012 consisted of 133 yes/no type of questions and 50 questions requiring quantitative and descriptive data with particular importance assigned to information on the rights to access information, strengthening of ethics and reporting of irregularities. Based on information that enterprises provided to the coordinators in ministries, five reports were prepared that reflected the implementation of the program on the whole. (Dubravica, 2015) Moreover survey responses by companies were also made publicly available. The published information included detailed review of implemented activities as well as recommendations for the improvement of the policy.

Ownership structures: In addition to particular policies, i.e. with regard to transparency, whole ownership structures can be designed to govern SOEs, including the area of integrity management (see the example of **Kazakhstan** in Box 5.6).

Box 5.6. Kazakhstan: The Sovereign Wealth Fund “Samruk-Kazyna”

The Joint stock company “Sovereign Wealth Fund “Samruk-Kazyna”” manages major strategic assets that cover oil and gas, transport and communication, atomic industry, mining, electricity production and chemical industry. The Government of Kazakhstan is the sole shareholder of the Fund, in turn the Fund is the shareholder of portfolio companies. According to the annual report of the Fund for 2014, the amount of consolidated revenue of the Fund to the country’s GDP in 2014 was 13.3%, staff number of the group of companies of the Fund was 320,827 persons out of which 91.5% represented production personnel.

The Fund is going through a transformation process in order to improve the operational efficiency of the Fund’s portfolio companies at par or above their global peers and to ensure that the following key performance indicators of the Fund are achieved in parallel: asset value growth, dividend yield for shareholder and value creation measured as economic profit. The implementation of the business integrity principle in the everyday operation of the companies is one of the tasks of the transformation program.

Selection of directors: The Fund is governed by the Board of Directors and the Management Board. The Board of Directors consists of members of the government, chairman of the management board, independent members and other persons. According to the Law of Kazakhstan Republic “On Sovereign Wealth Fund” not less than 2/5th of the Board of directors of the Fund shall be comprised of independent directors. The Corporate Governance Code of the Fund (approved by Government decree #239, 15 April 2015) recommends that up to 50% of directors of the Fund’s Portfolio Companies be independent directors (the Law on Joint Stock Companies requires the minimum of 30% in the board of directors). “Independent” means, for example, that they are not affiliated persons to the said joint-stock company and have not been such in three years prior to their appointment to the Board of Directors (except for the case where they held the position of the independent director at the said joint stock company), are not affiliated persons in relation to affiliated persons of the said joint stock company, are not subordinate to officials of the said joint stock company or affiliated organizations and have not been such in three years prior to their appointment, are not state officials, are not an auditor of the said joint stock company and were not the same within three years preceding their appointment to the board of directors; do not participate in audit of the said joint stock company as an auditor working with an auditing organisation, and did not participate in such audit within three years preceding their appointment to the board of directors. Both national and foreign individuals sit in the boards of directors of the organizations of the Fund.

For the search of candidates for the posts of independent directors of the Fund’s companies, the Fund uses databases of candidates, engages a recruiting organization, etc. According to the new Code of Corporate Governance (approved in April 2015), companies fully owned by the Fund will implement a search and selection process for members of boards of directors consisting of following elements:

1. The Fund, together with the Chairman of the Board of Directors of the company and the Chairman of the Nomination and Remuneration Committee of the Board of Directors of the Company is preparing and planning: analysis and definition of a set of necessary competencies and skills in the Board of Directors taking into account the objectives of the Company;
2. defining a channel for the search of candidates – directly or through a recruitment organization;
3. search for candidates;
4. selecting candidates: assessment, interviews and preparation of proposals on candidates (candidates to the Board of Directors of the Company are discussed with at least one member of the Nomination and Awards Committee of the Board of Directors of the Fund);
5. decision by the sole shareholder;
6. publishing of information on the company's Internet site, the press release.

For administrative staff the Fund uses transparent competitive selection, which involves publication of vacancy notices with qualification requirements, review of resumes by the HR department, testing of professional knowledge, level of proficiency in Kazakh and English, and abilities (analysis of verbal and numerical information), and interviews.

Box 5.6. Kazakhstan: The Sovereign Wealth Fund “Samruk-Kazyna” (cont.)

Integrity and notification rules: According to the Law on the Fight against Corruption individuals with managerial functions in entities with majority state-owned stock are considered as persons authorized for the execution of state functions. In this status, upon appointment they are obliged to submit income and property declarations to tax authorities. They are also subject to restrictions and incompatibilities, for example, they are not allowed to engage in other paid activity except pedagogical, scientific or creative (managerial personnel of the group may combine paid positions within the group). Rules against conflicts of interest are found also in the Law on Joint-Stock Companies and the Corporate Governance Code of the Fund (the Code). According to the Code members of the Board of Directors shall not allow situations to arise where their personal interest can influence proper discharge of the obligations of a member of the Board. The Fund also has a Policy and Corporate Standard for the prevention of the conflict of interest upon attraction by organizations of the group of the Fund of consultative services. The Code of Business Ethics of the Fund contains an anti-corruption commitment and rules.

The Fund has a whistle-blowing policy, which envisages a possibility to submit information from bottom to up without any pressure and discrimination (including through a hotline and confidence mail).

Risk assessment: Based on the Fund’s rules on the identification and assessment of risks, subsidiaries of the Fund have developed their own documents taking into account the specificity of their activity. The rules contain methods for the detection and assessment of risks, which may influence adversely the achievement of the objectives and tasks of the Fund. Risk identification and assessment result in the formation of the Fund’s group’s risk register and maps.

Procurement: The Fund has its rules for procurement, which envisage six methods of procurement: open or closed tender, two-stage procurement (open or closed), request for quotations, through commodity exchanges, single source, and through centralized trading of electric power. A unified portal of electronic procurement of the Fund’s group of companies (www.tender.sk.kz) ensures competitive selection of procurement participants in real time.

Source: Provided by Corporate Governance Department of SWF “Samruk-Kazyna” on 5 June 2015

5.5. Information provided by government to ensure fair and safe business environment

There are many types of government information that companies find useful or even inexpedient. One type of such information concerns the regulatory activity of the state. In this regard, published information is important in order to facilitate compliance of businesses with existing regulations. Predictable business environment includes knowing what, when and how shall be requested from the company. Another type of information, is what facilitates doing business with the public sector, for example, information on available subsidies, concessions and public procurement. Provision of open information in this area is important not only in order to enable a particular company to cooperate with the government but also to establish fair competition among all of the businesses that would like to participate. Yet another type of information is what helps companies engage in relations between themselves. This includes a variety of elements from transparency of court practice in commercial cases to the publication of company data that facilitate informed decisions on cooperation between companies.

For each of these three categories, this chapter selects one issue as a topic. These topics are transparency in the area of inspections, transparency in the area of public procurement (and more specifically disclosure of information through e-procurement), and access to data on beneficial owners.

Inspections are a means by which controlling authorities ensure that health, environment and other similar values are protected and verify whether private entities pose an unacceptable risk to these values and comply with rules. Inspection activity also involves educating the private entities about compliance with rules applicable to business in general or in specific sectors.

The OECD has defined inspections as “any type of visit or check conducted by authorised officials on products or business premises, activities, documents, etc.” (OECD, 2014c: 11) Inspections nearly always require that businesses spend certain resource on providing information to the authorities and, if the business has violated rules, it faces the prospect of sanctions. Given the need to make sure that rules are upheld on an everyday basis, inspections can be unexpected. This can be a warranted step in some cases for the implementation of rules but also potentially a particularly disturbing burden on the business.

The burdens of inspection activity become particularly heavy when public officials abuse their authority. Various types of abuse in the area of inspections have been observed, for example, pirate inspections by persons who are not authorised to carry them out: “In countries of Eastern Europe and the Former Soviet Union, a very frequent situation is to see inspectors, with actual authority to inspect, but visiting far more businesses, and far more often, than what they have officially been sent to do – with as a result a huge difference between the “official” number of inspections, and what businesses really receive.” (Blanc, n.d.: 21) If rules of inspections are opaque, avenues of redress absent, inspection activity is excessive or other unfavourable factors are present, inspection officials and/or inspected entities may realise that bribes may bring them extra income (for the officials) or reduce costs (for the inspected businesses). Inspections can be used to extract rents from businesses. (OECD ACN, 2014a: 61)

ACN countries have been introducing different initiatives in the area of inspections – simplification of rules, risk-based selection of inspected entities, reduced frequency and moratoriums of inspections, preferential treatment of SMEs, refraining from punitive measures against new businesses, reduction of the number of inspection bodies, e-registration and e-planning of inspections, etc. Moreover the provision of adequate information about inspections is good practice with a number of benefits including reduced possibilities to abuse inspections for rent-extracting purposes. The OECD has suggested draft international best practice principles for inspections activity and one of them requires that “governments should ensure clarity of rules and process for enforcement and inspections: coherent legislation to organize inspections and enforcement needs to be adopted and published, and clearly articulate rights and obligations of officials and of businesses”. (OECD, 2014c: 14)

Transparency is a means to limit burdens caused by legitimate inspection activity and minimize the risks of abuse. For one thing, transparency of inspections is increased by such legally prescribed instruments as the publication of planned inspection schedules as is the requirement, for example, in **Russia**. The Federal Law No. 294-FZ of December 26, 2008 on Protection of the Rights of Legal Entities and Individual Entrepreneurs upon the Realization of the State Control (Supervision) and Municipal Control requires that the Prosecutor General’s Office of the Russian Federation publishes online the annual summary plan of the realization of planned inspections (Paragraph 7, Section 9). Federal executive bodies authorized to carry out federal state supervision develop annual plans of planned inspections and publish them online (except for information whose free circulation is prohibited or restricted by law) (Paragraph 7.2, Section 9). (Федеральный закон от 26 декабря 2008) Note that a number of areas of inquiry and inspection are exempt from the coverage of this law, for example, criminal inquiry, preliminary investigation, the prosecutor’s supervision, tax and customs, banking supervision, border controls at crossing points, etc. Also **Kyrgyzstan** and **Uzbekistan** have published schedules of inspections on the internet.¹³ **Armenia** has reportedly started publication of annual inspection plans and reports on conducted inspections by state inspectorates. (OECD ACN, 2014a: 58, 59)

Another example of transparency in the area of inspections is the electronic registry of inspections launched by **Azerbaijan** in May 2011.

¹³ Erlich, J., material prepared for this thematic study.

The centralized e-Registry sets clear procedures for both inspectors and businesses, and allows for process traceability, post-inspection evaluation, and accurate data collection. Entrepreneurs will now have better access to information about planned inspections and can request clearance notification on the validity of an upcoming inspection. The e-Registry is expected to improve the effectiveness of business inspections and help strengthen compliance with government regulations. (IFC, 2011)

The e-Registry is available through the website www.yoxlama.gov.az/. An entrepreneur can log in to the database with an individual password and access information about expected verifications at his/her sites as well as results of previous verifications. Information on inspections is available also by phone call or SMS. It is possible to register complaints and observations about inspections and actions of inspectors. Any visit by an inspector at an entrepreneur's site shall be carried out only after registering in the registry proved by a statement from the registry, which shall be presented to the entrepreneur prior to the verification. (Biznesinfo.az, 2013) In April 2015, an online registry of inspections became operational in **Moldova** where about 28 agencies should publish their inspection plans. (OECD, 2015e: 310) A centralized online registry of inspections has been introduced also in **Russia**. (Генеральная прокуратура Российской Федерации, 2015)

An example of an innovative tool that facilitates cooperation between companies and controlling authorities is the Company Dossier in the **Netherlands**, launched in 2011. The company dossier is “a web tool where a company can post information, including such information as is relevant for the company's compliance with existing regulations, and then decide which government authorities shall have access to the information. Particular details of the arrangement are agreed between the authorities and relevant sector associations. On-site inspections, when necessary, can make use of preliminary review of the information that has been already posted by the company in question.” (Kalniņš, Visentin and Sazonov, 2014: 150) As of February 2015, more than 7000 businesses worked with the Company Dossier. 45 municipalities, the provinces of Noord-Brabant and Overijssel, and the Social Affairs and Employment Inspectorate had signed agreements to implement the Company Dossier. Moreover seven environment agencies and the relevant sectors also cooperated in using the Company Dossier.

Governments can provide valuable information also in the form of consultations, training and workshops. For example, in **Lithuania** in 2011, 43 business supervisory institutions signed the Declaration on the First Year of Business and committed among other things “to devote resources for consultation and providing methodological assistance to businesses during their first year of operations (for example, contacting a new business and offering consultations services, preparing consultative seminars, answering businesses' inquiries and requests, etc.)”. (Ministry of Economy of the Republic of Lithuania, 2015) In **Kazakhstan** the financial police held a workshop “My rights during the inspections of businesses conducted by the financial police” for SMEs. (OECD ACN, 2014b: 27) Assistance that targets particularly SMEs can be indeed important. However, this direction of government activity still seems rather uncommon in ACN countries (see the Box 5.1).

E-procurement: According to the European Commission e-procurement is “the use of electronic communications and transaction processing by public sector organizations when buying supplies and services or tendering public works”. (European Commission, 2012: 2) In the OECD Recommendation of the Council on Public Procurement “e-procurement refers to the integration of digital technologies in the replacement or redesign of paper-based procedures throughout the procurement process”. (OECD, 2015d: 6) As noted in an earlier ACN thematic study, many countries “use the Internet for the publication of procurement notices and other documents”. (OECD ACN, 2015f: 96) Although e-procurement can be used at various stages of the procurement process and it can allow for mutual

exchange of various relevant data between the purchasing authorities and suppliers, the focus of this chapter is on information that the government provides to companies.

A study by PwC showed e-procurement good practices from European countries. A number of them relate to information provided by the authorities or by the systems to the company users.

- Platforms automatically transmit all their notices to a single point of access for publication.
- Platforms have communication plans in place to promote the use of e-procurement.
- Economic operators can access and retrieve contract notices and tender specifications as anonymous users.
- Platforms support English in addition to the official language(s) of the member state(s) where they operate.
- Economic operators can search contract notices using a set of search criteria.
- Economic operators can evaluate whether tender specifications are relevant for them based on information available in contract notices.
- Economic operators are notified of any changes to tender specifications.
- Economic operators and contracting authorities can search Common Procurement Vocabulary categories based on their code or their description.
- Economic operators receive a proof of delivery upon successful submission of their tender.
- Platforms clearly indicate all costs related to use of the platform. (PwC, 2013: 19, 20)

Several ACN countries have e-procurement systems that allow for the publication of various kinds of information, for example, **Armenia, Estonia, Georgia, Kazakhstan, Kyrgyzstan, and Lithuania**. Thus in Kyrgyzstan

... the public procurement portal - www.zakupki.okmot.kg - disseminates the procurement plans, bidding opportunities, contract awards and latest news about changes in the legislation and other normative legal acts regulating public procurement in the Kyrgyz Republic. Further the portal provides all planned tenders (procurements) of the Kyrgyz Republican state organizations during a year; all public tenders conducted in the Kyrgyz Republic; and other information relating to modernization of the public procurement system as well as information on the planned training in public procurement. (OECD ACN, 2015a: 74)

As noted in an earlier study, the Georgian “e-procurement system allows for the publication of tender announcements, upload of tender documentation, payment of bid submission fees, electronic submission of bids by registered suppliers, asking of online questions and provision of answers publicly on the tender page, making of appeals at any stage of the tender process, digital detection of risks within tenders for the monitoring of the Competition and State Procurement Agency, etc.” (OECD ACN, 2015f: 96)

Lithuania is also one of the countries that have made major progress in e-procurement area. Since 2009 the Central Public Procurement Information System (CVP IS) provides electronic means for e-Notification, e-Access, e-Tendering and e-Reporting. The proportion of published e-procurement (when contract notices are published, contract documents accessible and tenders submitted by electronic means) increased very rapidly – from 0.03 % in 2009 to 92.7 % in 2015. E-Notification, e-Access and e-Reporting are mandatory. Moreover the Law on Public Procurement of Lithuania requires transparency throughout all public procurement processes. Contracting authorities are obliged to publish annual public procurements plans, notices, draft technical specifications and all tender documents including specifications, explanations, questions and answers, reports on procedures, winning tenders, contracts

and modifications of contracts. All these documents are freely accessible at the CVP IS. Moreover Lithuania has developed the e-Catalogue for centralized public procurement and e-invoicing system.¹⁴

In 2014 representatives of public bodies and a group of civil society actors initiated the development of an on-line procurement platform in **Ukraine**. Transparency International Ukraine (TI-Ukraine) took on the maintenance of the system and in February 2015 the new system PROZORRO (<http://prozorro.org/>) was unveiled to the public. The intention was to provide an electronic procurement solution that could be used voluntarily by public institutions. As of end 2015, the Ministry of Economic Development and Trade of Ukraine worked with TI-Ukraine to turn the PROZORRO project into a country-wide system for all public procurement. The envisaged features of the system are full transparency regarding procurement and contract implementation with unlimited access, equality of all procuring entities (the same standard of practice) and market operators (unrestricted access to procurement information in the whole country), integration with state registers to reduce administrative costs related to tenders, open data approach that facilitates external monitoring, and straightforward and fast review of complaints.¹⁵ (Prozorro, 2015)

The **European Union** has been promoting e-procurement among its members. Certain types of online publication are mandatory in all EU members, for example, e-notification (procurement notices published electronically). EU law also envisages transition to mandatory electronic access to tender documents. (Buyse et al., 2015: 13, 47)

Disclosure of beneficial owners: One of the harder issues in recording and disclosing data on legal entities concerns the beneficial owners. The FATF Recommendation 24 requires that competent authorities should be enabled to obtain or access, in a timely fashion, adequate, accurate and timely information on the beneficial ownership and control of legal persons. The related Recommendation 25 addresses transparency and beneficial ownership of legal arrangements. Access to beneficial ownership and control information should be facilitated also for financial institutions and designated non-financial businesses and professions undertaking customer due diligence requirements. (FATF, 2012) The G20 High-Level Principles on Beneficial Ownership Transparency envisage that “countries should ensure that competent authorities (including law enforcement and prosecutorial authorities, supervisory authorities, tax authorities and financial intelligence units) have timely access to adequate, accurate and current information regarding the beneficial ownership of legal persons [and] legal arrangements”. (G20, 2014)

The **European Union** anti-money-laundering directive of 2015 defines the term “beneficial owner” generally as “any natural person(s) who ultimately owns or controls the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted”. (European Parliament and the Council, 2015) The definition is complemented by minimum criteria for the indication of ownership or control. The directive further stipulates that

... the information on the beneficial ownership is accessible in all cases to: (a) competent authorities and FIUs, without any restriction; (b) obliged entities, within the framework of customer due diligence in accordance with Chapter II; (c) any person or organisation that can demonstrate a legitimate interest. The persons or organisations referred to in point (c) shall access at least the name, the month and year of birth, the nationality and the country of residence of the beneficial owner as well as the nature and extent of the beneficial interest held.

¹⁴ Keniausytė, A., information of the Ministry of Economy of Lithuania, provided by e-mail, 4 February 2016.

¹⁵ Smirnov, E., Senior Procurement Specialist, Procurement Department, EBRD, information provided for this study by e-mail, 14 December 2015.

Exemptions to access are possible in exceptional circumstances on a case-by-case basis.

Requirements to disclose information on beneficial ownership to competent authorities or any persons with legitimate interest are not yet common among ACN countries. The requirement to disclose beneficial owners was adopted recently in **Ukraine**. In November 2014, the Law on Introduction of Changes to Certain Legal Acts of Ukraine Related to Determination of Ultimate Beneficiaries of Legal Entities and Public Figures (the “Beneficiaries Law”) came into force. The existing Ukrainian companies were allowed a six-months period “to provide details about their ultimate beneficiaries to the state registrar, whilst the new ones [...] need to provide them when filing for state registration. The information will need to be updated each time a change of beneficiary takes place.” (Boichuk and Yevstafyeva, 2014) The data shall be entered into the Companies Register. Directors or other authorised representatives can be subject to fine for failure to comply. Moreover the new law requires that “information about rights to immovable property and their encumbrances contained in the State Register of Rights to Immovable Property will become open and publicly available”. (Boichuk and Yevstafyeva, 2014)

Disclosure of beneficial ownership and control information is a novelty also in Western European countries. The **United Kingdom** companies will have to register people with significant control (PSC) starting with 2016. A PSC is defined as a person who directly or indirectly owns more than 25% of equity or has direct or indirect power to control or influence running of a company. (Craig, 2015)

In addition to ownership information, there are a number of other types of company information that the state can and should require to be published. For example, **Kazakhstan** introduced the Depository of Financial Statements – an open electronic database of annual financial statements and auditor reports of public interest organisations. (OECD ACN, 2014b: 128) Public interest organizations are financial organizations (except those involved exclusively in currency exchange operations), joint-stock companies (except non-commercial), organizations – users of extractable nature resources (except extractors of generally widespread resources), organizations with a state share in the statute equity as well as state enterprises based on the business right. (Министерство финансов Республики Казахстан, 2015)

5.6. Incentives for companies to improve self-regulation and introduce compliance programmes

In addition to penalties, governments may use also non-penal means in order to incentivise companies to develop and implement good practice. At the most basic, this approach involves providing certain benefit to a company in exchange for fulfilling certain conditions. Companies found guilty of corruption or other transgressions may be debarred from participation in public procurement (for example, in **Armenia, Georgia, Kazakhstan, Ukraine, and Uzbekistan**). In this case the condition is non-involvement in corruption or other illegal activity.

Companies may also be requested to provide evidence that they have taken appropriate measures to prevent criminal offences or misconduct (and blacklisted ones then could be released from debarment). (UNODC IACA, 2013: 18) Companies may have to certify compliance with anti-corruption laws and demonstrate adequate management and accounting practices. Instead of self-certification, even third party certification may be considered. (OECD, 2005: 222) In this case the condition is certain anti-corruption measures that amount to more than mere abstention from corruption.

The OECD recommends developing “requirements for internal controls, compliance measures and anticorruption programmes for suppliers, including appropriate monitoring”. (OECD, 2015d: 7) As

mentioned in the subchapter 5.1, **Ukraine's** new Law of Prevention of Corruption requires companies participating in larger public procurements to introduce a set of anti-corruption measures. (Верховна Рада України, 2014b)

Box 5.7. Incentives rewarding companies for good practice

Incentives that reward a company for good practice recognize that meaningful commitment to and investment in anti-corruption programmes and other measures that strengthen corporate integrity are largely voluntary, beyond certain minimum legal requirements. State practices in this area have developed more slowly than for enforcement sanctions, but have produced four categories of incentives that may be considered:

Penalty mitigation. Penalty mitigation is the most common form of incentive, used primarily to encourage self-reporting of offences and to reward corporate prevention efforts. This mitigation may be applied through a reduced penalty or charge, or, in some States, through a defence against liability to the company for offences that were committed by an employee or agent.

Procurement preference. A second type of incentive offers companies that demonstrate a commitment to good practice a preference in government procurement, in the form of either a bidder eligibility condition (most common) or an affirmative competitive preference. Procurement preferences based on integrity and trustworthiness have a long history in the private sector, and are increasingly being adopted by States.

Access to benefits. Access to government support or services can also be made conditional on minimum integrity practices, or provided on a preferential basis to companies that invest in an effective anti-corruption programme. This is the counterpart to the sanction of denial of government benefits to companies that commit infractions and is used to encourage and reward proactive efforts to combat corruption.

Reputational incentives. Reputational benefits have been another tool for encouraging corporate integrity, through public acknowledgement of a company's commitment to good practice and combating corruption. Like reputational sanctions, this good practice incentive is largely non-governmental, but can be encouraged by States.

Source: Quoted from: UNODC, 2013, p.4.

www.unodc.org/documents/corruption/Publications/2013/Resource_Guide_on_State_Measures_for_Strengthening_Corporate_Integrity.pdf.

In a global survey of 223 anti-corruption experts in 2011 and 2012, 69.5% of respondents rated the impact of restriction of business opportunities (e.g. debarment) as very strong in motivating businesses to counter corruption (further 24.2% rated it as somewhat of an impact). Only 31.4% rated the impact of preferred access to business opportunities (e.g. preferred supplier status) as very strong (additional 47.1% rated it as somewhat of an impact). However, 92% of respondents think that customers, suppliers, investors etc. should apply preferential treatment to companies that demonstrate adherence to anti-corruption principles (e.g. grant preferred supplier status) and then most of all in procurement. So both negative and positive incentives are considered to have impact although in comparison the negative sanctions are considered more effective. On the other hand, the positive sanctions are the more often desired approach in the view of experts (compare the 92% affirmative answers for preferential treatment with only 88% affirmation that business representatives with a history of corruption should be ineligible for public contracts). (Schöberlein, Biermann and Wegner, 2012: 7,13,15)

Where companies with a certain integrity record or integrity practices are entered in a register and being there is part of prequalification or condition for some extra advantage, it can be called whitelisting. Michael H. Wiehen from TI-Germany has written the following.

Whitelisting is a potential approach to the selection of contractors. It is a form of prequalification where bidders must meet certain criteria to be added to a list, and only companies on that list will be invited to participate in bidding (or other more restricted selection events). Under standard pre-qualification procedures (e.g. in the selection of civil

works contractors for large projects) the criteria relate primarily to financial and technical competence. For a whitelist designed to reduce corruption one would add integrity criteria. The criteria for pre-qualification may include previous convictions of, or involvement with corruption-related crimes and the existence of internal corruption prevention and control instruments such as codes of conduct and other safeguards against corruption. Whitelisting cannot substitute for the debarment of a company that has committed corruption in an actual bidding process, unless the company found to be corrupt is promptly removed from the whitelist. To be effective, a whitelist would have to be totally transparent and fully accessible to the public. Otherwise the risk of manipulation would be too high. (OECD, 2005: 279)

Nevertheless whitelisting is not very common and – along with some other forms of preferential treatment – it has several weaknesses. The reduction of the number of eligible companies can have detrimental effects on public procurement, for example, higher prices because of reduced competition. Moreover good record in the past is not a guarantee against corrupt conduct in the future. Being an administrative barrier, the requirement to fulfil certain anti-corruption requirements may itself create a risk of corruption whereby the company would attempt to acquire necessary certification or admission with the help of corruption. These could be among reasons why not many examples of whitelisting in public procurement in ACN countries are known.

The **Georgian** public procurement system is special in that it uses a blacklist of dishonest participants of the procurement, a white list, and a warned suppliers list maintained by the State Procurement Agency (all lists available on the website of the agency). (State Procurement Agency, 2015) The white list includes qualified suppliers who meet certain criteria. However, the seven criteria, which are published in the Frequently Asked Questions section of the website of the State Procurement Agency, are only indirectly related to integrity, for example, the participant may not have been in the black list for one year (neither in the blacklist of the revenue service), it shall have at least one positive recommendation from the purchasing agency on compliance with the contract of not less than GEL 50,000, and there must be no criminal case ongoing or conviction against the director or authorised representative of the supplier on economic crimes provisions of the criminal code. (State Procurement Agency, 2015) A whitelisted qualified supplier shall enjoy simplified procedures of public procurement provided by executive order.

In **Bulgaria** white list is used as part of integrity pact in public procurement. TI-Bulgaria developed the white list and the integrity pact model. The pact represents a contract between the contracting authority and the awarded tenderer, which envisages monitoring by an independent observer. Although this is a project developed by an NGO, it is based on participation of public authorities. While entry in the white list does not provide any formal advantages, it is a tool that shows, among other things, tenderers/contractors which have acceded to the integrity pact. A tenderer shall be deleted from the white list when the independent observer finds violations of the integrity pact rules. The website by TI-Bulgaria shows three white lists for procurements of the Road Infrastructure Agency (Ministry of Regional Development and Public Works), the Ministry of Health, the Ministry of Labour and Social Policy. (Transparency International Bulgaria, n.d.) The scarce use of white lists in the ACN region suggests the need for further discussion on the possibilities and limitations of this tool to encourage business integrity and strengthen incentives to refrain from corruption.

Fulfilment of certain integrity conditions can be linked not only to access to public procurement but also other advantages, for example, fast-tracking in certain administrative procedures (customs, etc.), lighter inspections, a preference in export credit support or targeted corporate tax benefits. (UNODC, 2013: 29) However, such incentives are uncommon in the ACN region. An example of this kind from a different region is **Paraguay**, which “has streamlined its customs office and created a one-stop-shop mechanism

for the import and export of goods. Companies with a proven record of integrity have benefited from expedited processing. One method of eligibility has been through a training and certification system developed by Pacto Ético Comercial, a private sector collective action initiative.” (UNODC, 2013: 30) Another example of advantages for socially responsible companies is those provided by the Customs and Indirect Tax Administration, the National Social Security Fund, the “Crédit Agricole du Maroc”, the group “Banques Populaires”, the “Banque Marocaine pour le Commerce et l’Industrie”, and the General Tax Directorate to companies that have obtained the Corporate Social Responsibility label of the **Moroccan** General Confederation of Enterprises (CGEM). The benchmark for granting the label is the CGEM Charter on Corporate Responsibility, which contains nine commitments including prevention of corruption, reinforcement of transparency of corporate governance, and promotion of social responsibility of suppliers and of subcontractors. The label is granted to CGEM members for three years. The enterprises that wish to obtain the label have to undergo evaluation by an independent expert accredited by the CGEM and offer tangible evidence of not violating the commitments. The advantages and specific treatment available to label holders include preferential tariff, simplification of procedures, lighter controls, personalised management, and faster treatment of files. (OECD, 2010a: 35)

5.7. Compensations for whistleblowers

Whistleblowing is a well known and often the only means to detect corruption or other breaches. The area is extensively covered by international standards. The UNCAC requires each State party to consider whistleblower protection measures. Provisions aimed at the protection of whistle-blowers are found also in the anti-corruption conventions of the Council of Europe. There are recommendations in documents by both the OECD (for example, the Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions) (OECD, 2011a) and the Council of Europe (Recommendation on the protection of whistleblowers). (Council of Europe, 2014) In 2011 G20 and OECD compiled a set of guiding principles and examples of best practices to strengthen whistleblower protection. (OECD, 2011b) In 2015 the UNODC published a resource guide. (UNODC, 2015)

Advanced legislation for whistleblower protection typically applies to private just as to public entities, for example, in **Slovenia** and the **United Kingdom**. There is typically no general legal requirement to report integrity breaches in private entities to public authorities. Rather private entities themselves may be required to introduce whistleblowing policies. For example, the Directive 2014/65/EU of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU obliges member states to require certain entities to have appropriate procedures for their employees to report infringements internally through a specific, independent and autonomous channel. (European Parliament and the Council, 2014b)

This chapter will not review all of the elements of whistleblower protection. Rather it will focus on one rather controversial aspect – providing of financial incentives. Countries differ in policies with regard to such incentives, for example, they are less accepted in the United Kingdom compared to **the United States** where private citizens who know of fraud against the United States can file *qui tam* suits under the False Claims Act on the government’s behalf. A successful claim can allow the citizen to receive 15-25% of the recovered value. (Bowers et al., 2012) Of relevance for whistleblowing is also the so-called Dodd-Frank Act of 2010, which sets “forth monetary incentives and protection for whistleblowers, including an award to whistleblowers who voluntarily provided original information to the [Securities Exchange Commission] SEC that led to the successful enforcement of a covered judicial or administrative action brought by the SEC under the securities laws that results in monetary sanctions exceeding \$1 million”. (111th Congress, 2010) The award may constitute an amount of 10-30% of the monetary sanctions collected. In the fiscal year 2014, the SEC authorized awards to nine whistleblowers with the largest award of more than USD 30 million. (United States Securities and Exchange Commission: 10)

Financial incentives are provided also in **Korea** where rewards can be granted for reporting incidents of wrongdoing if certain requirements set in the law are met. The requirements set out in the law are that the

... whistleblowing has (1) resulted directly in the recovery of or increase in revenues for the central or local governments through any of the following Subparagraphs or (2) the legal relations in that matter are established.

- 1) penalties or disposition of notification
- 2) confiscation or imposition of additional charges
- 3) imposition of fines for negligence or charges for compelling the compliance
- 4) imposition of penalty surcharges (including the cancellation or suspension of a permit, license, etc. when there is the possibility to pay a penalty surcharge in lieu of the cancellation or suspension of a permit, license, etc.)
- 5) other dispositions or judgments as prescribed by Presidential Decree. (South Korean Ministry of Government Legislation, 2014)

The Korean legislation provides protection to both government and corporate whistleblowers.

Whistleblowers who contribute directly to increasing or recovering government revenues can receive 4 to 20 percent of these funds, up to US\$ 2 million. Whistleblowers who serve the public interest or institutional improvement can receive up to US \$100,000. As of May 2014 the largest reward paid was US \$400,000 from a case in which a construction company was paid US \$5.4 million for sewage pipelines that it did not build. Eleven people faced imprisonment and fines, and the US \$5.4 million was recovered. (Wolfe et al., 2014: 47, 48)

Research shows that providing rewards to individual whistleblowers has proved to be a viable tool against cartel schemes in Korea. Moreover the use of rewards actually allows enforcement authorities to increase detection without significant additional resources. (Stephan, 2014: 22)

It has been said that regulators in Europe are generally more sceptical about financial incentives to whistleblowers. (Crowe, 2014) **The United Kingdom** has adopted a different approach of offering financial compensations. The Public Interest Disclosure Act enables a worker to “present a complaint to an employment tribunal that he has been subjected to a detriment” for making a “protected disclosure” and be awarded compensation. (Employment Rights Act, 1996; Public Interest Disclosure Act, 1998) “If a whistleblower is fired, the employer must prove that the act of whistleblowing was not a factor in the dismissal. Employees subjected to retaliation can be compensated, including for aggravated damages and injury to feelings; the highest award to date is £5 million.” (Worth, 2013: 83) However, the UK legislation is designed to protect disclosures that are made in the public interest rather than for personal gain. The law defines no particular share of savings available to the whistleblower as a reward. (Bowers et al., 2012)

In 2014, the Financial Conduct Authority and the Bank of England Prudential Regulation Authority published an opinion that the introduction of US type of financial incentives for whistleblowers in the financial sector “would be unlikely to increase the number or quality of the disclosures” hazards being malicious reporting by opportunists and uninformed parties, entrapment of others in order to benefit financially, weakened reliability of the whistleblower’s evidence due to the financial gain, inconsistency with the regulators’ expectations of firms, which deal with the regulators in an open and cooperative way. A whistleblower would be motivated by a reward while the regulators would not want to reward for providing poor information. Paying significant sums to well-remunerated individuals of the financial industry might evoke negative public perception. (FCA, 2014)

Financial incentives for whistleblowers are rare in the ACN countries. An earlier ACN/OECD thematic study found that “**Kazakhstan** is one of the few countries with a functioning mechanism for awarding reporters of corrupt acts financially ... In 2013, 172 persons were awarded in total about 19 million tenge (approximately 92 thousand euros).” (OECD ACN, 2015f: 108) The practice of Kazakhstan should be further studied to identify risks and opportunities that may arise in other ACN countries if they introduced an awarding system. According to information provided for this study by **Lithuania** special legislation does not necessary ensure the effectiveness of the system of financial rewards to informants. Until 2014 governmental regulations envisaged financial incentives to persons who provided law enforcement agencies with valuable information on corruption-related criminal offences as well as offences against the economy, business order, and financial system. The system was not effective because of several reasons. The payment of the reward was linked with repair of the financial damages for the state (if relevant) and could be applied for only after the court decision, which implied long time gaps between the information submitted and reward received. Moreover too many different categories of offences were covered. Originally this legislation regulated the rewards for information on economic and financial offences (thence the link of the reward and repair of the financial damages for the state). Corruption was added later. The final decision on the reward was carried by a special commission of the government members and representatives of the law enforcement agencies. The information provided by citizens was of very different value in cases of different offences and crimes. Therefore it was very difficult to find one general procedure and it was not flexible enough for the needs of different law enforcement bodies. The rewards would be paid from the general budget of law enforcement agencies and most of them preferred using the funds for other purposes. The previous regulation was eventually abolished and all relevant law enforcement bodies were mandated adopt their own internal regulation and provided with earmarked funds to reward informants.

5.8. Corporate governance rules promoting business integrity

A number of integrity-related corporate governance principles are found in the G20/OECD Principles of Corporate Governance (2015). In particular, “the legal and regulatory requirements that affect corporate governance practices should be consistent with the rule of law, transparent and enforceable.” (OECD, 2015b: 14) There are also provisions that apply to conflicts of interest such as rules on the approval and conducting of related-transaction transactions so as to ensure proper management of conflict of interest and protect the interest of the company and its shareholders, disclosure of how institutional investors manage material conflicts of interest, disclosure and minimization of conflicts of interest of advisors, analysts and others who provide analysis or advice, and the function of the board to monitor and manage “potential conflicts of interest of management, board members and shareholders, including misuse of corporate assets and abuse in related party transactions”. In the area of disclosure the G20/OECD Principles require that disclosure includes but is not limited to:

- 1) the financial and operating results of the company
- 2) company objectives and non-financial information
- 3) major share ownership, including beneficial owners, and voting rights
- 4) remuneration of members of the board and key executives
- 5) information about board members, including their qualifications, the selection process, other company directorships and whether they are regarded as independent by the board
- 6) related party transactions
- 7) foreseeable risk factors
- 8) issues regarding employees and other stakeholders
- 9) governance structures and policies, including the content of any corporate governance code or policy and the process by which it is implemented.

Of relevance for the upholding of integrity are also the principles regarding audit, principles that apply to the role of stakeholders, for example, the rule that stakeholders should be able to freely communicate their concerns about illegal or unethical practices, etc.

Corporate governance rules stem from a variety of sources (laws, regulations, codes, principles). Also implementation mechanisms differ with some countries using the so-called “comply or explain” approach whereby companies are expected to implement certain principles of corporate governance or explain why they have not done so as set out in the following example extracted from the Corporate Governance Recommendations of **Estonia**.

The principles described in these Corporate Governance Recommendations are recommended to be carried out by Issuers and each Issuer shall decide whether or not they will adopt these principles as a basis for organizing their management. Issuers shall describe, in accordance with the “Comply or Explain” principle, their management practices in a Corporate Governance Recommendations Report and confirm their compliance or not with the Corporate Governance Recommendations. If the Issuer does not comply with Corporate Governance Recommendations, it shall explain in the report the reasons for its non-compliance. The Corporate Governance Recommendations Report shall be a separate chapter of the Management Report contained in the Annual Report. (The Tallinn Stock Exchange and Financial Supervision Authority, n.d.)

Some countries have established formal mechanisms that mandate national authorities or stock exchanges to analyse and publish reports about how listed companies comply with disclosure requirements. (OECD, 2014a: 13) Corporate governance rules cover a wide range of issues. A full review thereof would require a separate study. Therefore two elements (disclosure and audit committees) have been selected for a somewhat detailed description in this chapter.

For example, in **Kazakhstan**, the Joint-Stock Company Law requires that a public company has a corporate website and defines what information must be published there. Moreover such company is obliged to have a corporate management code and its board shall monitor the efficiency of the company’s corporate governance practice. (OECD ACN, 2014b: 127) Disclosure and other rules are also commonly found in codes of stock exchanges. The Corporate Governance Code of the Zagreb Stock Exchange and the **Croatian** Financial Services Supervision Agency requires that companies publish all important data regarding the companies, their financial position, business results, ownership structure and management. “All information which may influence the decision-making process relating to investments in company’s financial instruments shall immediately be made public and available at the same time to all persons who might be interested.” (Croatian Financial Services Supervisory Agency and Zagreb Stock Exchange: 21) The companies shall publish all information that a reasonable investor would consider as part of the basis for making an investment decision (material facts). Other disclosure requirements relate to financial statements, which shall be in line with international standards, latest international tendencies in financial reporting and market requirements. There are set requirements regarding annual, semi-annual and quarterly reports, publication of the calendar of important events of the next business year, ownership structure and data on the main risks that the company is exposed to. Both laws and codes establish relevant disclosure principles also in a number of other ACN countries.

Another example of a mechanism that is expected to strengthen accountability and with this also integrity is independent audit committees, which are required in listed companies in many jurisdictions. According to the **European Union** Directive 2014/56/EU of 16 April 2014 amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts a listed entity shall have an

audit committee and a majority of its members including the chair shall be independent of the audited entity (some exception apply).

The audit committee shall, inter alia:

- (a) inform the administrative or supervisory body of the audited entity of the outcome of the statutory audit and explain how the statutory audit contributed to the integrity of financial reporting and what the role of the audit committee was in that process;
- (b) monitor the financial reporting process and submit recommendations or proposals to ensure its integrity;
- (c) monitor the effectiveness of the undertaking's internal quality control and risk management systems and, where applicable, its internal audit, regarding the financial reporting of the audited entity, without breaching its independence;
- (d) monitor the statutory audit of the annual and consolidated financial statements, in particular, its performance, taking into account any findings and conclusions by the competent authority pursuant to Article 26(6) of Regulation (EU) No 537/2014;
- (e) review and monitor the independence of the statutory auditors or the audit firms in accordance with Articles 22, 22a, 22b, 24a and 24b of this Directive and Article 6 of Regulation (EU) No 537/2014, and in particular the appropriateness of the provision of non-audit services to the audited entity in accordance with Article 5 of that Regulation;
- (f) be responsible for the procedure for the selection of statutory auditor(s) or audit firm(s) and recommend the statutory auditor(s) or the audit firm(s) to be appointed in accordance with Article 16 of Regulation (EU) No 537/2014 except when Article 16(8) of Regulation (EU) No 537/2014 is applied. (European Parliament and the Council, 2014a)

In **Slovenia** having a board-level audit committee is mandatory and in addition it is recommended that all of the members of such committee are independent and that the committee has also a risk management role. (OECD, 2015a: 85) The Commercial Code of **Turkey** requires that every joint stock company has an audit committee. The annual general meeting of shareholders appoints and dismisses the audit committee. The committee shall audit accounts and ensure compliance with legislation and the articles of association. However, at least in the past, it has been suggested that the committee members often lacked sufficient independence and the committee had been viewed as a formality. Special controllers may be appointed by shareholders to examine particular matters in the company. (World Bank Group, n.d.) The Capital Markets Board defines further requirements for entities under its regulation. The board's Principles of Corporate Governance envisage, among other things, that "the Audit committee shall be in charge of the supervision of the corporation's accounting system, public disclosure of the financial information, independent auditing and the operation and efficiency of internal control and internal audit system". (Capital Markets Board of Turkey, 2014) The audit committee shall also supervise the election of the independent audit institution, initiation of the independent audit process, and the work of the independent audit institution. The audit committee shall designate methods and criteria for the review and settling of complaints about the accounting and internal control systems and the independent audit as well as for the evaluation of confidential notifications concerning accounting and independent auditing provided by employees. The audit committee shall communicate its evaluations, findings, and resolutions to the board of directors.

In relation to audit and anti-corruption, obligations of auditors to report suspicions of corruption are highly relevant but not universally adopted across the region. According to the Istanbul Action Plan monitoring report of March 2015 on **Ukraine** auditors

... do not have any obligations to report suspicions of corruption that can be uncovered during the audit. There is an option that allows the auditors to inform the managers of the

audited companies about such suspicions. According to the private sector representatives interviewed during the on-site visit, auditors do inform the managers of companies about corruption risks, but the managers do not react to this information. Disclosure of information about possible violations outside the company would be considered as a violation of confidentiality by the auditor. (OECD ACN, 2015c: 180, 181)

Ukraine has intended to introduce the reporting obligations as part of the implementation of the Association Agreement with the EU.

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Chapter 6. Actions of business associations and NGOs to promote business integrity

6.1. Studying of corruption risks

Associations can use their resources to carry out research and assessment of corruption and its risks when individual companies find it hard to afford. Reputable associations with broad membership base may provide added trustworthiness to the findings. This is also an area where business associations can well cooperate with other non-governmental organization or such NGOs can act independently.

Surveys: Occasionally business associations do sponsor or commission corruption-related surveys. In **Ukraine**, the European Business Association used to prepare and publish quarterly Investment Attractiveness Indices between 2008 and 2012 based on surveying CEOs of member companies of the association. In the 17th wave of the survey (3rd quarter 2012), 10% of respondents mentioned corruption among the negative changes of the investment climate. (EBA, 2012) In 2015, the American Chamber of Commerce in Ukraine conducted a survey of companies (87% of which had international business) about their assessment of corruption in Ukraine, companies' anti-corruption practices, opinions on Ukraine's anti-corruption efforts and related matters. 98% of companies considered corruption widespread (it was 99% in 2014), and 88% admitted that they had faced corruption while doing business in Ukraine (it was 91% in 2014). (American Chamber of Commerce in Ukraine, 2015) In 2013, the Chamber of Commerce and Industry of **Uzbekistan** jointly with the Prosecutor General's Office surveyed 10,000 entrepreneurs about factors that impede performance of business activities and about bureaucratic barriers. The anonymous survey covered also the issue of the spread of corruption in the field of entrepreneurship. (OECD ACN, 2014b: 14) The Chamber of Commerce and Industry of **Kyrgyzstan** surveyed its members on impediments to the development of their business and corruption was the most commonly mentioned impediment. (Торгово-промышленная палата Кыргызской Республики, n.d.a) A common limitation in many survey efforts is missing regularity and hence the lack of possibility to compare data over time and detect changes. Time-series of data can be used effectively not only for spurring one-off debates but also for longer-term monitoring and improving of policies (as in the above-mentioned examples by the European Business Association and the American Chamber of Commerce in Ukraine).

In the latest Investors' Confidence Index of the Investors' Forum of **Lithuania**, a survey of 62 foreign capital businesses in Lithuania featured a number of questions directly focused on business ethics – on key drivers of ethical behaviour in the business of respondents, business environment drivers and barriers impacting/impeding business ethics in Lithuania, and business practices/processes that contribute to ethical corporate culture in respondents' companies.

... investors were asked to identify the key drivers of ethical behaviour in their business. One factor stands out – protection of company brand and reputation (83%). Second most important factor is public acceptance/ recognition (57%). This proves that the greatest power to motivate companies to act in an ethical way lies in the hands of consumers, since companies strive to stand out in their eyes as more socially responsible than their competition. In addition, the main drivers and barriers impacting business ethics in Lithuania today were asked to be identified. Investors highlighted corporate social responsibility initiatives (64%) and high social values (57%) as the main drivers that positively contribute to ethical behaviour in business. Paradoxically, social values are also indicated as a barrier (57%), but the biggest obstacle to ethical business is seen as the shadow economy (88%). Finally, managers were asked to specify the measures that are taken to ensure ethical behaviour in their companies. 83% of surveyed managers identified that their companies

have a code of conduct, corporate social responsibility programs (71%) and business ethics trainings (67%). (Investors' Forum, 2016: 6)

Other kinds of studies: Associations also analyse business environment, identify problems and propose recommendations for particular sectors. Although such analysis does not necessarily focus primarily on corruption, certain recommendations, when implemented, would also indirectly reduce corruption problems. An example of this kind is white books published by the Foreign Investors Council in **Bosnia and Herzegovina**. The edition of 2012/13 covered nine areas (business registration, taxes, labour law, construction permits, environmental permits, concessions, energy efficiency and renewable energy sources, judiciary, export), of which at least some are known to be prone to corruption risks. The analysis found that, for example, the large number of laws on concessions lead among other things to conditions favourable to possible corruption in granting concessions. (Foreign Investors Council, 2013)

An example of a less common type of study-related activity was the International Integrity Case Study Competition Awards organized by the American Chamber of Commerce in **Hungary** and the Central European University in 2014. The competition was launched “in order to stimulate the development of case studies centering on actual managerial issues associated with corruption and lack of integrity in the Central and Eastern European context”. Among the aims of the competition was “to expand the availability of learning material in business education that is specifically related to integrity management and anti-corruption”. (CEU Business School, 2014) The winning case focused on the efforts of Telenor Hungary in establishing ethical and transparent practices and promoting integrity in business decision making.

6.2. Engagement in awareness-raising, training and methodological support

Awareness-raising: It is common for associations and other NGOs to engage in public events that address corruption issues, for example, conferences, round tables and workshops. Such events serve to bring together people from different sectors of society or from different countries, raise the visibility of the covered topics, and facilitate the exchange of experiences and joint learning. Often such activities are carried out by international associations. For example, the ACN Istanbul Action Plan monitoring report on **Georgia** of 2013 mentioned two workshops on business ethics organized by the American Chamber of Commerce in cooperation with the US Department of Commerce. (OECD ACN, 2013: 101) In **Ukraine**, the European Business Association was one of the partners for the International Anti-Corruption Conference in Kyiv in November 2015 and facilitated a session on mainstreaming anti-corruption in sectoral and regional reforms. The American Chamber of Commerce facilitated a session on corruption and business. Many other cases of this type of involvement could be mentioned.

The International Business Leaders Forum (IBLF) runs a program Improving Business Standards in **Russia**, which “seeks to build and facilitate partnerships between government, business and civil society to create an environment which is attractive to investments in Russian social and economic development. IBLF, in partnership with PwC and Association of Independent Directors, holds Forum of Directors, aimed for members of the board of directors of Russian companies to discuss corporate governance and development of social responsibility and transparency in Russia.” (IBLF Russia, n.d.) The programme includes such activities as roundtables, collective action, building a website as a resource to support the partnership between business, civil society and state in promoting responsible business conduct, publications, educational materials on business ethics and meetings between business leaders and students. In December 2014, the IBLF and the Moscow Government organized the international conference “Moscow Contractual System: Government and Business against Corruption”. The major event was attended by more than 700 experts and covered topics such as “the improvement of public procurement, innovative approaches to anticorruption actions in public procurement, evaluation of the

first year results following introduction of contractual system, ensuring security and transparency of the public procurement procedures and others”. (IBLF Russia, 2014)

Box 6.1. The Centre for International Private Enterprise: training and support for corporate governance and regulatory reforms

The Centre for International Private Enterprise (CIPE, an institution of the American organization the National Endowment for Democracy) is a major supporter of business integrity activities in the ACN region. Many activities implemented or supported by CIPE include training and methodological support elements. For example, in **Kyrgyzstan**, CIPE has worked with the Corporate Governance School (CGS) to promote corporate governance principles in Kyrgyz enterprises through training programs and seminars for members of government, boards of directors, executive committees, and audit committees, as well as corporate secretaries. CGS published a corporate governance manual and established a dialogue with the government on corporate governance implementation. Training programs have covered such issues as “as protecting the rights of shareholders, strategic management and planning, capital market opportunities, evaluation of the Board and its members”.

In **Russia**, beginning in 2002, CIPE worked through chambers of commerce and businesses associations to give the small and medium-sized enterprise (SME) sector a voice in advocating for an improved business environment, including through reducing corruption risks stemming from poorly worded or poorly designed legislation. CIPE’s partner, the Saratov Chamber of Commerce and Industry, developed an approach to assess both the corruption potential in draft laws and regulations, as well as the corruption risks arising during various business processes that require SMEs to interact with regulatory agencies. The methodology then informs the advocacy process, allowing the private sector to target specifically which laws need to be rewritten or reformed, or which regulatory processes streamlined.

CIPE then worked with the Saratov Chamber to share that approach with 17 regional coalitions of chambers and associations, representing 225 organizations with more than 20,000 member businesses. These coalitions then conducted over 200 advocacy efforts leading to nearly 150 regional-level legislative changes to improve the business environment. In part due to these efforts, a 2009 law gave Russian organizations the right to become accredited with the Ministry of Justice to review legislation for corruption potential. CIPE then supported 16 regional chambers of commerce in obtaining such accreditation, helping to reduce contradictory, overlapping and vague wording of laws at the local, regional and federal levels. CIPE exported this successful methodology to partners working on similar issues in Kyrgyzstan, Ukraine, and Albania, among others.

Following its work in Russia, CIPE launched a regional anti-corruption initiative to strengthen anti-corruption reforms at the local level in three pilot regions in **Ukraine** – Sumy, Vinnitsa, and Ivano-Frankivsk. The program trains business association leaders and local authorities to identify corruption risks in local regulations, and to advocate for the change of poorly-designed regional regulations. These efforts have laid the groundwork for the creation of an inventory of ordinances with high corruption risk, with the goal of having such laws and regulations either amended or abolished.

CIPE has also published a number of practical publications such as:

- “Anti-Corruption Compliance: A Guidebook for Mid-Sized Companies in Emerging Markets” to help local companies introduce or strengthen their compliance programs. Aimed at firms underserved by existing resources, the guide outlines elements of a successful anti-corruption compliance program. It has been translated into Russian and Urdu and used for training in Russia, Ukraine, Kenya, and Pakistan.
- “Combating Corruption: A Private Sector Approach”, an anti-corruption toolkit outlining the ways in which the private sector can address the underlying causes of corruption through governance reform.
- CIPE and the International Finance Corporation jointly published “The Moral Compass of Companies: Business Ethics and Corporate Governance as Anti-Corruption Tools” to outline the set of tools and practical guidelines for good corporate governance and business ethics as strategic components of both long-term business success and economic development.

Sources: Abridged from information material provided by CIPE for this study on 8 June 2015. Niet – Araket (2013), <http://en.niet-araket.kg/news/4/11.html>.

An example of a domestic business organization active in raising awareness is the Chamber of Commerce and Industry of **Serbia**. Among the Chamber's many activities have been four round tables "Fight against corruption – the way we do it" organized in cooperation with the Global Compact in Serbia in 2014 and 2015.¹⁶

Training and methodological support: In terms of training, associations and NGOs in the ACN region commonly work with various target groups from broad circles such as company employees in general to specific categories, for example, board members. Associations have been providing integrity-related training in a number of ACN countries, for example, **FYR of Macedonia, Russia, and Serbia**.

Training activities are often supported methodologically or financially by international actors. For example, the International Chamber of Commerce, Transparency International, the United Nations Global Compact, and the World Economic Forum have developed the training tool RESIST to "provide practical guidance for company employees on how to prevent and/or respond to an inappropriate demand by a client, business partner or public authority in the most efficient and ethical way". (ICC et al.: 2011) The tool contains 22 real-life-based scenarios that include soliciting of bribes in the procurement process and in the implementation of projects. The scenarios address the basic questions: "How can the enterprise prevent the demand from being made in the first place?" and "How should the enterprise react if the demand is made?" The Chamber of Commerce and Industry of **Serbia** has co-organized seminars and trainings on different anti-corruption issues in co-operation with and support from the TAIEX instrument of the European Commission, the German Agency for International Cooperation (GIZ), and other international and domestic partners.¹⁷

An example of guidance for companies from an OECD country is the brochure "Export Proceeding. Prevention of Risks of Corruption" published in 2008 by the Movement of the Enterprises of **France** (MEDEF). The brochure explains the main terms and legal standards related to corruption, gives reasons why one should not engage in corruption, provides guidance for the assessment of particular risk situations and choice of partners in international operations. (MDEF, 2008)

6.3. Anti-corruption/ integrity structures of associations

A devoted committee or other structure within an association can be a means to prioritize and concentrate resources and responsibility for anti-corruption/ ethics/ integrity. For example, the Corporate Responsibility and Anti-Corruption Commission of the International Chamber of Commerce is engaged in developing "rules of conduct, best practices and advocacy for fighting corruption and for corporate responsibility". (ICC, n.d.a) Nevertheless it is uncommon for business associations in the ACN region to establish anti-corruption, ethics or integrity structures. The Compliance Club at the American Chamber of Commerce in **Ukraine** can be mentioned as an example of this kind. (Chamber of Commerce in Ukraine) The club was presented in 2013 and its work "is focused on promoting Compliance to business on Ukrainian market and educating Chamber member companies about Compliance practices in business". (Siemens, 2013) The Chamber in Ukraine also has its Anti-Corruption Working Group.

¹⁶ Božanić, M., information on the Chamber of Commerce and Industry of Serbia provided for this study by e-mail, 15 January 2016.

¹⁷ Božanić, M., information on the Chamber of Commerce and Industry of Serbia provided for this study by e-mail, 15 January 2016.

Box 6.2. Turkey: Ethics and Reputation Society (TEID)

The Ethics and Reputation Society in Turkey represents a rare type of business association whose sole purpose is related to business ethics and integrity. TEID was established in 2010. It aims to increase awareness on business ethics and ensure that ethics culture becomes the keystone of the Turkish business. TEID has over 115 corporate members. Together they manage 14% of Turkish GDP and have over 200,000 employees.

Each member of TEID signs the Cross-Sectoral Declaration of Ethics in order to declare its commitment to the principles of TEID and the Global Compact. Signing serves as an announcement to abide by these principles in every administrative and commercial activity as well as spread these principles to employees and shareholders.

TEID cooperates with other organizations on both the national and international levels. In January 2015, 250 customs brokers signed the Customs Brokers Ethical Values Statement and agreed also to abide by the principles of TEID and the Global Compact. Being one of the members of the B20 Anti-Corruption Task Force, TEID has participated in the drafting of materials of G20/B20, for example, the Anti-Corruption Toolkit for Small and Medium Sized Companies. The organization is involved in a number of other global memberships and partnerships.

TEID has been organizing International Ethics Summits that have addresses issues of business ethics, anti-corruption, ethical leadership. The 5th International Ethics Summit in 2015 focused on topics such as responsible citizenship, the effectiveness of sustainable production policies, innovation and reputation as elements that define the success of companies along with making profit.

Established by TEID, the Turkish Integrity Centre of Excellence (TICE) aims to include the private sector into combating corruption. The pillars of the work of TICE are:

- Data collection – to collect coherent data on corruption and integrity through regular surveys of the business community.
- Education, training and professional certification – to produce and deliver courses and online training modules, provide “Compliance Officers Certification Programs” for the education and certification of relevant private sector professionals and produce tools for the use of compliance officers.
- Communication and publications – to create stakeholder engagement, strategize and execute the communications plan and engage in event management for higher visibility and effective communication.
- Advocacy – to facilitate collective actions, create a point of leverage before the regulators, influence regulatory change in combating corruption and effective management of integrity risks, enhance the commitment of the private sector with a strong advocacy program and become a point of reference for business ethics and compliance related matters.

In addition, TEID opened the Business Ethics Research and Application Centre in cooperation with the Istanbul Bilgi University. This centre intends to provide certificate programs as well as two-year programs that will cover topics of ethics and compliance, ethical risk management, and anti-corruption regulations. TEID engages also in a number of other communication, education and advocacy activities.

Sources: Quoted from:

Ethics and Reputation Society of Turkey, 2015;

https://www.unglobalcompact.org/system/attachments/cop_2015/206161/original/TEID_COE_2015.pdf?1446298331

Globethics.net (2015),

www.globethics.net/-/5th-international-ethics-summit-understanding-today-inspiring-tomorrow.

Turkish Integrity Center of Excellence (n.d.); www.tice.org.tr/about-us/about-tice-2/.

6.4. Support to individual companies and advocacy

Being membership organizations, business associations have a natural incentive to assist member companies when they face violations of their rights and pressures to engage in corruption. The associations are in a good position to provide such support also because, in difference from an individual company, they represent larger segments of the business sector and therefore are less vulnerable. Nevertheless it is not so common for associations of the ACN region to have particular mechanisms for supporting individual companies. In countries with developed judicial review, such support is probably not essential because the state has already provided effective means for channelling of grievances. Still in

certain contexts in the ACN region such alternative avenues of addressing grievances can provide valuable support.

Support to companies: A protection mechanism for entrepreneurs is found in the National Chamber of Entrepreneurs of **Kazakhstan** “Atameken”. Co-founded by the government and with obligatory membership of all businesses, the chamber has a Department for the Legal Protection of Entrepreneurs. The procedure of review comprises establishing feedback with the entrepreneur who has submitted a complaint, requesting additional information, review of the issue and preparation of a legal opinion, and taking measures to protect rights of the entrepreneur. When necessary, the process can involve also a concrete assignment to a regional chamber and control over the implementation of the assignment. Similar departments work also in the regional chambers.

The Department for the Legal Protection of Entrepreneurs performs also the function of secretariat for the Council for the Protection of Entrepreneurs “Atemeken” with equivalent councils in regional chambers. The central council comprises deputies, law practitioners, public figures, scientists and representatives of the media. The council meets monthly and deliberates on ways to resolve concrete situations.

The chamber has a memorandum of cooperation and a joint plan of measures with the Prosecutor General’s Office. The chamber provides full legal review, conclusions and anticipated consequences together with references to legal norms regarding an issue of an entrepreneur and this warrants a detailed review of the problem by the prosecutorial bodies. According to the chamber many applications are followed by respective measures of the prosecutor’s office including protests against judicial acts and submissions regarding illegal activity (inactivity) of public bodies and officials. (Национальная палата предпринимателей РК „Атамекен”, 2015a and 2015b)

Also other types of activities by associations could potentially support individual companies on integrity-related issues. Like audit and consultancy companies, in certain contexts business associations could provide paid consultations on the implementation of compliance programs or certification. This could be a way for ensuring the sustainability of the association’s activity in this area especially if commercial operators do not provide such services sufficiently in the particular market. Where business disputes involve problems related to integrity on the part of any of the dispute parties, mediation and arbitration by associations could address among other things such integrity issues. For an example of dispute resolution services by an association, see those (arbitration and alternative dispute resolution) by the International Chamber of Commerce. (ICC, n.d.b) The **Croatian** Chamber of Economy represents another example of an association that provides the mediation of disputes and arbitration. (Croatian Chamber of Economy) In **Russia**, the Association of International Pharmaceutical Manufacturers (AIPM) has a Code of Practices and, in case of violations, “the company whose interests are affected has the right to immediately resort to the procedure for reviewing complaints and disputes regarding violations established by this Code”. (Association of International Pharmaceutical Manufacturers) AIPM members and other interested parties may file a complaint with the AIPM Executive Director. If the disputing parties to the case do not find an agreement in a preliminary process with the involvement of the Executive Director, the Executive Director shall form a Special Panel for reviewing and taking a decision on the case. There is also an appeal procedure. (AIPM, 2013: 83-87)

Advocacy: There are many instances of associations engaging in advocacy in relation to governments on various issues important for the associations’ members. As for any interest organization, advocacy is a part of the natural role of an association (and certainly of other NGOs for that matter). A prominent example in the past was the participatory policy dialogue and advocacy efforts that the Association for Foreign Investment and Cooperation made in **Armenia** on the issue of tax reform as a means for fighting corruption.

Box 6.3. Armenia: Advocacy by the Association for Foreign Investment and Cooperation on tax reform

After the fall of the Soviet Union, a lack of transparency and accountability in the Armenian fiscal system together with unclear and duplicative terms of taxation allowed officials to manipulate the system while placing businesses in constant violation of ambiguous laws. Abuse of tax laws in Armenia seriously impaired the business and investment environment and stalled the democratic process. In 2006, the Association for Foreign Investment and Cooperation (AFIC) partnered with the Centre for International Private Enterprise (CIPE) to combat corruption through increased advocacy and public and private sector cooperation on tax reform. AFIC initiated a research and advocacy program that increased the democratic dialogue between the government and civil society, resulting in reforms to tax laws that had enabled the perpetuation of corrupt practices. AFIC initiated the adoption of a new unified Tax Code and successfully advocated for reforms to eliminate opportunities for corruption.

Identifying the Taxation Problem: AFIC conducted a thorough analytical study in order to identify specific inefficiencies within the tax system that gave rise to corruption. Using CIPE models, AFIC carried out an anonymous survey among 205 entrepreneurs and business associations. The survey helped to identify loopholes within the tax system while analysts researched existing anti-corruption and taxation studies from within CIPE's network of think tanks. Ambiguous legislation and frequently changing laws as well as unnecessary bureaucracy were two of the major problems highlighted by the study.

AFIC established a coalition of business associations, chambers of commerce, and NGOs to be the main engine of advocacy and awareness building for anti-corruption and fiscal reform. The coalition synthesized the findings of the survey into concrete policy recommendations, then advocated for these reforms through meetings with legislators, tax officials, business associations, and NGOs. In the first year of the program, the coalition held five public-private roundtables with 106 participants. In this way AFIC established a participatory policy dialogue on the issue of tax reform as a means for fighting corruption.

Promoting Fair Taxation: In order to maintain the momentum of the public and political support, AFIC ensured a steady flow of information to taxpayers on reforms and project results. In addition to circulating two publications – Recommendations for Armenian Tax Reform and the Tax Mini-Manual, AFIC created a webpage in both Armenian and English where it posted information on tax policy and invited experts and policymakers to comment and make suggestions for reform.

Through targeted legislative amendments, the project had a remarkable impact on the creation of a new tax system to combat corruption. In August 2008, Armenia's National Assembly adopted a legislative reform package that included recommendations from AFIC. Among these was an amendment to the Law on Simplified Tax. Under the previous simplified tax law, large businesses were able to misrepresent their annual revenues in order to qualify for lower taxes. Revisions to this law recommended by AFIC restricted the ability of large businesses to manipulate the tax system and simultaneously promoted the growth of small and medium enterprises that need and benefit from tax breaks. Other amendments approved by the National Assembly allowed businesses to mail in their tax information and created a modernized, computer-based system through which tax documents can be filed and processed. Together these amendments aimed to shrink the opportunity for bribe-seeking by diminishing the need for face-to-face interaction between businesses and tax authorities. All of these reforms reduced bureaucracy and the amount of time needed for businesses to complete their taxes, thus also reducing the attractiveness of corruption as a means to expedite tax procedures. According to AFIC's survey of entrepreneurs these tax reforms lowered tax-related business costs by 12% to 15%. This reduction in costs was seen primarily through lower demands for facilitation payments.

AFIC's approach highlighted how combating corruption requires attention to the underlying causes that produce incentives and opportunities for corruption. In the case of Armenia, poor fiscal policy created both the supply and demand for corruption. By making fiscal reform the issue, AFIC simultaneously addressed the supply and demand sides of the problem and tackled a fundamental source of mistrust in public institutions. At its core, the unified Tax Code eliminated bureaucracy and opportunities for wide discretion in tax administration, thus causing fewer occasions for tax officials to demand bribes and fewer incentives for businesses to supply bribes as a means of expediting procedures. AFIC's experience also highlighted the need for wide private sector support in order to dismantle systemic corruption. "Quite an interesting atmosphere of cooperation of business associations and business support organizations with state government bodies has already formed," said AFIC Deputy Chairman Gagik Poghosian, "and I hope that this cooperation will be lasting."

Source: CIPE, 2011, pp.7-9;

<http://www.cipe.org/sites/default/files/publication-docs/Anti-CorruptionToolkit0308.pdf>.

In many countries representatives of business associations participate in drafting laws, for example, a representative of the Chamber of Commerce and Industry of **Serbia** participated in the working group drafting the law on protection of whistle-blowers, which came in force in 2014. The Chamber also participated in working groups elaborating consecutive national strategies for the fight against corruption.¹⁸

6.5. Channels for reporting corruption occurrences and risks

Ombudsman: Some business associations of the ACN region are known to provide channels for companies to report/complain about corruption but it is not a widespread practice. Therefore the key focus of this subchapter is on a particular case where associations together with public authorities created a highly visible mechanism for reporting business grievances (ombudsman) in Ukraine. Internationally the ombudsman institution is one of the most well known types of arrangements for reporting grievances, including occurrences of corruption. Ombudsmen are typically public institutions established by the state and embedded in the law as is the case, for example, of business ombudsmen (officially called – authorised persons for the protection of entrepreneurs) in **Russia** (Федеральный закон от 07.05.2013 N 78-ФЗ) and the tax (business) ombudsman in **Georgia**.

A less common model of the ombudsman was adopted in **Ukraine** in 2014, which foresees a major formal role for non-governmental partners. The government, international organizations such as the European Bank of Reconstruction and Development (EBRD) and OECD and five business associations (the American Chamber of Commerce in Ukraine, the European Business Association, the Federation of Ukrainian Employers, the Ukrainian Chamber of Commerce and Industry, and the Ukrainian League of Industrialists and Entrepreneurs) signed the Memorandum of Understanding with the creation of the post of business ombudsman as a key element. The intention was to create an opportunity for businesses to “report claims of unfair treatment and corruption. The office of the Business Ombudsman will assess the claims. Where it concludes that the alleged business malpractice may have occurred, it will be able to request further investigation by the relevant bodies and seek to have these complaints addressed by governmental authorities. It will periodically report to the general public, including the business community, about the progress made in the fight against corruption.” (Usov, 2014) In short, the ombudsman would function as an intermediary between the entrepreneurs and public authorities.

The Business Ombudsman Council in Ukraine was established under the government regulation No 691 of 26 November 2014. The main tasks of the Council include:

- reception and review of complaints from entrepreneurs on the actions or inaction of state or local government bodies (including economic operators in their sphere of management)
- submission of recommendations to state and local government bodies for the making and implementing of policy in the area of entrepreneurship (including in order to prevent corrupt activities) as well as for the improvement of procedures and means of executing authority and other activities of state and local government bodies.

The Council is entitled to request information about the implementation of its recommendations, publish its activity reports including results of the review of cases on corrupt acts and/or other violations of the legal interests of entrepreneurial actors, in the case of necessity submit to the Cabinet of Ministers proposals for amending legislative acts, etc. The Council consists of the Business Ombudsman, his/her two deputies, and employees (secretariat) of the Council.

¹⁸ Božanić, M., information on the Chamber of Commerce and Industry of Serbia provided for this study by e-mail, 15 January 2016.

The governing body of the Ombudsman's Council is the supervisory board, which consists of authorised representatives of (1) the Cabinet of Ministers of Ukraine, (2) international financial institutions (EBRD, OECD), and (3) business associations (the American Chamber of Commerce in Ukraine, the European Business Association, the Federation of Ukrainian Employers, the Ukrainian Chamber of Commerce and Industry, and the Ukrainian League of Industrialists and Entrepreneurs). The supervisory board may, among other things, „submit to the Cabinet of Ministers of Ukraine a proposal on appointment and dismissal of the business ombudsman and his deputies”. (Кабінет міністрів України, 2014)

At the time of drafting this study, Ukraine still did not have a law on the Business Ombudsman and the proper range of powers of the institution remains an issue. During the monitoring visit of the Istanbul Action Plan in November 2014, interviewed business associations “supported the idea of creating the institution of the Business Ombudsman in general, but they stressed that this institution should be provided with sufficient powers if it is to succeed in the fight against corruption. Such powers could include for instance the right to veto certain corruption-prone regulations or decisions taken by the state administration, a right to appeal against such decisions, a right to request specific information from various state bodies”. (OECD ACN, 2015a: 178) However, it is legally difficult if not impossible to assign hard powers such as veto or suspension of administrative decisions and regulatory acts to a body, which is outside rather than a part of the formal state apparatus as in the case of Ukraine.

The Business Ombudsman Council started its operations in May 2015. By June 30 it had received 172 complaints. In the third quarter (July-September 2015), the number of lodged complaints was 197 (of them 64 complaints were dismissed). According to the third quarter report, the most common subjects of complaints were:

- exceeding of authority by state tax and fiscal agencies during inspections (16%)
- dilatory VAT refund (12%)
- requests to facilitate legislation drafts/ amendments (9%)
- actions of local councils/ municipalities (9%)
- unfounded criminal proceedings against business (8%)
- customs procedures, including determining customs value of goods, as well as licensing, quota allocation, dual-use goods expertise, and enforcement (7%)
- repeated failure of central and local state officials to enforce court rulings in favour of a business (7%)
- Ministry of Justice enforcement/ registration service (6 %)
- problems with the electronic VAT declaration (4%)
- refusal of VAT taxpayer registration (3%).

The Business Ombudsman Council reports publicly the results of the review of complaints in notable cases, for example, the cancellation by the State Fiscal Service of a decision by the State Tax Inspection, which saved the complainant more than UAH six million, refund of an overdue VAT amount to a business, issue of a building permit by the State Architecture and Construction Inspection, due registration of a share capital contribution by a Danish shareholder as a foreign investment, etc. (Business Ombudsman Council, 2015a; Business Ombudsman Council, 2015b: 4, 10, 13, 15, 16, 18) The Ombudsman has published also a number of systemic reports about particular areas, for example, the administration of business taxes and problems with cross-border trading.

High level reporting mechanism: The Ukrainian business ombudsman is another form of what can be widely characterised as a high level reporting mechanism (HLRM), conceptually developed by the Basel Institute on Governance and the OECD and first piloted, in the infrastructure procurement context, in **Colombia** in 2013. A HLRM provides companies with a means to counter solicitation and extortion and

“involves a process that allows companies to report bribery solicitation to a dedicated and high-level institution that is tasked with responding swiftly and in a non-bureaucratic manner”. (B20 Collective Action Hub) Among the advantages of a HLRM is the possibility to provide swifter responses than conventional legal redress mechanisms. However, a HLRM should not be viewed as a replacement for the traditional institutions of review, rather as a complement.

6.6. Development and promotion of standards

Establishing a code of conduct or defining integrity principles for members of the association can be one of the most straightforward ways to strengthen business integrity standards. In some cases the standards shall be applicable to particular sectors of business. In other cases the ambition of the initiators is to cover broader segments of the economy. Such standard-setting activity is fairly common across the ACN region.

Sectoral standards: One type of standard-setting activities is when business associations develop standards for a particular business sector. The extent and manner how such standards address anti-corruption issues vary. For example, out of five sectoral business associations represented in the Public Consultative Council of the **Latvian** Corruption Prevention and Combating Bureau, (KNAB, 2015) only two have anti-corruption related provisions in their regulations. The Code of Good Trading Business Practice of the Latvian Traders’ Association prohibits trading networks and suppliers mutually to offer or demand payments or gifts from employees in order to gain benefit including more favourable contractual conditions. Employees of the parties have the right to offer and receive small gifts presented in relation to birthdays or other special events. Whenever an employee of one party demands or offers a payment or gift for personal gain, the other party shall immediately report to the employee’s employer in writing. The Code of Ethics of the Latvian Builders’ Association contains provisions regarding gifts (members of the association and employees of its administration shall not accept from their enterprise, agency, organization’s employee, client, buyer, supplier or business partner valuable gifts, which could influence or could be regarded as such that could influence their professional judgment), handling of information (information, which has been obtained during their activities, shall be used with care and confidential information shall not be used for gaining any personal benefit or contrary to legal requirements or in a way that causes loss to their enterprises, organizations, agencies or any person whom they serve), and political activity (participation in politics in the private capacity may not harm the discharge of duties and influence decision making). (Latvijas Būvnieku asociācija, n.d.)

Banking is one of areas where sectoral codes are common and include, among other things, anti-corruption and integrity provisions. 13 global banks cooperate within the association Wolfsberg Group founded in 2000 with the purpose to develop financial industry standards primarily in the area of anti-money laundering. The Wolfsberg Group Anti-Corruption Guidance (2011) covers internal measures for the prevention of corruption among employees of financial institutions, measures to counter the misuse of financial institutions to further corruption as well as areas for cooperation between governments and other entities for a multi-party approach to anti-corruption. (The Wolfsberg Group, 2011) National associations of banks have developed their own standards in a number of ACN countries. For example, the Code of Professional Banking Conduct of the Association of **Serbian** Banks contains an imperative to avoid all situations that may give cause to the conflict of interest and prohibits seeking, receiving or accepting, from any source outside of the bank, any benefits, direct or indirect, that would be in any way connected with the employment at the bank. (Association of Serbian Banks, 2007: 2, 11) The Corporate Governance Code for Commercial Banks of the Association of Banks of **Georgia** (developed together with the International Finance Corporation and the Georgian Stock Exchange) states that “the Supervisory Board should ensure the establishment of reliable and effective internal control and risk management systems” and sets out detailed provisions thereof. Moreover the Code addresses policies

and procedures for avoiding and managing conflicts of interest. An unusually high level of transparency is envisaged in the recommendation to disclose conflicts of interest in a public annual report. (Association of Banks of Georgia, 2009)

Another sector with developed of sectoral standards is pharmaceuticals. For example, in **Russia**, the Association of International Pharmaceutical Manufacturers has the Code of Practice, which covers such topics as the interaction with healthcare professionals and advertising to them, advertising and promotion to the general public, pharmaceuticals products studies, interaction with legal entities, and disclosure of transfers of value to healthcare professionals and healthcare organizations, etc. Examples of anti-corruption rules are the prohibition “to offer, promise, provide, or transfer remuneration in any form to healthcare professionals for the prescription or recommendation of a particular pharmaceutical product to patients” and the prohibition to make the provision of a donation to a non-commercial organisation “dependent, directly or indirectly, on the prescription or purchase of the company’s pharmaceutical products”. (Association of International Pharmaceutical Manufacturers)

In 2015 a working group under the auspices of the Health and Pharmaceuticals Committee of the Association of European Businesses in Russian Federation started preparation of the draft Code of Conduct for Pharmaceutical Manufacturers. A number of the issues that the envisaged code covers are related to competition matters, for example, the prohibition of ungrounded refusal of supply and prohibition of exclusive agreements between dominating producers and distributors. There have been regular consultations between the Association of European Businesses and the Federal Antimonopoly Service. (Грибцова and Демидова, 2015) The work is still ongoing. Moreover, in 2013 the Automobile Manufacturers Committee of the Association of European Businesses adopted the Code of Conduct, which was met approvingly by the Federal Antimonopoly Service and the Ministry of Industry and Trade. (Konishev, 2015: 16) The implementation of its provisions was and remains on the agenda of FAS and manufacturers. In 2015 the Association of European Businesses also launched a Compliance and Ethics Committee where business representatives of different industries discuss practical questions and share experience related to compliance. (Association of European Businesses, n.d.)

Cross-sectoral standards: Another approach to setting standards is covering the business sector as a whole regardless of particular branches of activities. For example, the Chamber of Commerce and Industry of **Kyrgyzstan** initiated the charter “Business of Kyrgyzstan against Corruption”. As of June 2015, according to the website of the chamber twenty one business associations and enterprises have joined the charter. The signatories of the charter commit themselves to encourage among entrepreneurial actors the implementation of corporate management principles and measures to prevent and fight corruption, ensuring of financial discipline and effective financial control, refusal from illegal advantages, relations with state authorities, partners and subsidiaries based on compliance with legislation, partnership and mutual respect, work with personnel and publicity of anticorruption measures, compliance with legality and collaboration with justice. (Торгово-промышленная палата Кыргызской Республики, n.d.b) A working group of the Chamber of Commerce and Industry of **Uzbekistan** drafted a framework Code of Business Ethics. The draft was circulated among business entities to gather proposals and comments. Adopted in May 2014, the code sets the standards of behaviour for persons engaged in entrepreneurship, provides practical recommendations on settlement of ethical and legal problems. (OECD ACN, 2014b: 15; OECD ACN, 2015b: 24) The extensive document contains two major substantive parts – integrity (covering such topics as, for example, fighting money laundering, countering corruption, gifts and entertainments, political and social activity) and responsible business practice (including such topics as, for example, confidentiality of information (data protection), conflict of interest, and investigation of violations and liability measures). (Торгово-промышленной палаты Республики Узбекистан, 2014) Another example of a cross-sectoral standard is the **Slovenian** Corporate Integrity Guidelines of the Slovenian Chamber of Commerce and Industry, Managers’

Association of Slovenia, Slovenian Directors' Association, and the Faculty of Economics of the University of Ljubljana. They have also created the portal of corporate integrity (www.korporativna-integriteta.si). Other examples from South-East Europe are the Code of Ethics in Business of the **Croatian** Chamber of Economy (Hrvatska Gospodarska Komora, n.d.) and the Code of Business Ethics and the Code of Corporate Governance of the Chamber of Commerce and Industry of **Serbia** (CCIS). (Privredna komora Srbije, n.d.) A member corporation of the CCIS shall inform the Chamber if it applies the CCIS Code of Corporate Governance. A corporation that does not apply the CCIS Code shall inform the Chamber about the code of corporate governance that it applies and where it is publicly available.¹⁹

Overall great wealth of information is available about standards developed and adopted by business associations across the ACN region. Nevertheless information is scarce about their enforcement. In part this could be because membership organizations depend on their members and may be reluctant to police their conduct. However, demonstrating seriousness with regard to the adopted standards can greatly improve business reputation and actually reduce corruption-related incidents. There are also exceptions to the general situation. For example, the Association of International Pharmaceutical Manufacturers in **Russia** publishes reports on ethics disputes. (Association of International Pharmaceutical Manufacturers)

Co-operation between associations and public authorities: The development and adoption of standards may involve cooperation between associations and public authorities. The round 3 monitoring report of the Istanbul Action Plan (October 2014) took note of “ongoing efforts in **Kazakhstan** to draft an Anti-Corruption Charter for Business. The monitoring team examined the document drafted by the Financial Police Agency and sent for feedback to the National Chamber of Entrepreneurs of Kazakhstan. It states a number of principles for a corruption-free business; business entities will be invited to join the Charter. The expectations are that the Charter will be adopted under the auspices of the National Chamber of Entrepreneurs.” (OECD ACN, 2014a: 129) It has been announced that the charter could be adopted by the end of 2015. (Сабеков, 2015)

International sectoral standards: An international example of sectoral standards set by a business association is the European Common Industry Standards for the Prevention of Corruption in the Aerospace and Defence Sector adopted by the Aerospace and Defence Industries Association of Europe. The standards require abstaining “in all circumstances from all forms of direct and indirect corruption, through subsidiary companies, controlled entities, joint-ventures and subcontractors” and envisage:

- conditions when gifts or hospitalities to government customers or public officials shall not be permissible
- conditions for political donations and contributions
- due diligence assessment and other aspects of managing business partners
- integrity measures such as integrity programs, training, designated high level personnel for overseeing compliance by the company
- appropriate, proportionate and dissuasive sanctions for non-compliance with the Common Industry Standards. (ASD Aerospace and Defence, 2012)

An organization with 100 member associations and associates including from ACN countries, the International Federation of Consulting Engineers (FIDIC) has developed a rich body of standards and guidance for business integrity. FIDIC has its Code of Ethics to which member associations shall subscribe and a Model Code of Conduct for Consulting Firms. Among FIDIC’s key documents are Guidelines for Integrity Management in the Consulting Industry. The Guidelines define, among other things, the general principles of FIDIC Integrity Management System (FIMS) – leadership, involvement

¹⁹ Božanić, M., information on the Chamber of Commerce and Industry of Serbia provided for this study by e-mail, 15 January 2016.

of people, a systems approach, documentation, and training. The document guides consulting firms step-by-step through the development and operation of their FIMS. The key steps are:

- establishment of the FIMS framework
 - formulation of the firm's Code of Conduct
 - defining the firm's Integrity Management Policies
- design of a firm-specific FIMS
 - appointment of the FIMS representative
 - analysis of integrity risks
 - preparation of Integrity Management Procedures
- FIMS operations
 - prevention activities
 - detection activities
 - response to wrongdoing (as well as to commendable conduct)
 - documentation
 - continuous improvement. (FIDIC, 2011 and 2015)

FIDIC has also developed draft guidelines for the Government Procurement Integrity Management System meant for government procurement units. The step-by-step instruction, which resembles FIDIC guidance for consulting firms with appropriate adjustments, is a rare example of a business association developing guidelines that should be used by government bodies. (FIDIC, 2006)

ISO anti-bribery standard: As for international non-government non-sector specific standards, since 2013 the International Organization for Standardization (ISO) has been working on anti-bribery management systems standard ISO 37001 for private- and public-sector organizations. The standard would cover anti-bribery measures and controls including implementation guidance. (Lazarte, 2015)

6.7. Collective integrity actions

According to the World Bank ““Collective Action” is a collaborative and sustained process of cooperation among stakeholders. It increases the impact and credibility of individual action, brings vulnerable individual players into an alliance of like-minded organizations and levels the playing field between competitors. Collective Action can complement or temporarily substitute for and strengthen weak local laws and anti-corruption practices”. (World Bank Institute, 2008: 4) Collective actions can bring a number of benefits for anti-corruption activities – the involvement of a larger number of actors can help exert greater pressure on policy makers, within collective actions ethical businesses can make sure that their competitors uphold the same standards, and it is possible to promote, adopt and implement standards that surpass the requirements posed by the state. Collective actions represent a suitable tool for business associations as well as other NGOs, companies, state and municipal bodies.

A number of activities described earlier in this report also correspond to the definition of collective action. Therefore this subchapter does not aim to explore the whole spectrum of collective actions as classified by the B20 Collective Action Hub (integrity pacts, standard setting initiatives, and declarations and joint activities). (B20 Collective Action Hub) Rather it will focus on a few specific types of activities such as certification and labelling and others.

Certification and labelling: One type of collective actions is certification or labelling, which is a way of voluntarily agreeing to comply with certain standards. This type of tool is potentially effective for the mitigation of concerns of competitive disadvantage when a company that upholds high integrity standards loses out to companies that only claim to adhere to the standards. It is also a way to strengthen a company's reputation and eventually pressure other market participants to comply.

In **Serbia**, the National Alliance for Local Economic Development (NALED) launched a pilot project for the certification of socially responsible companies. Integrity performance is one of the areas of assessment. NALED developed the certification scheme in cooperation with USAID and realized the pilot project of certifying five multinational and domestic companies in Serbia (Coca-Cola, Holcim, Tigar Tyres, Eurobank, Sunce Marinkovic). Following the pilot stage of CSR certification, NALED initiated a national program for combating grey economy and CSR certification criteria were integrated in the program as the basis for establishing a so-called white list of responsible companies in Serbia. It was planned to re-launch the call for companies interested in being certified before the end of 2015.²⁰

Box 6.4. Serbia: Certification criteria for the area of corporate governance of NALED

- 1) The company has transparent procedures on the appointment and work of the Managing Board.
- 2) Information on the work of the Managing Board provided by the company is correct, clear and balanced.
- 3) Independence of the Managing Board members is subject to constant monitoring.
- 4) All shareholders have equal and timely access to relevant information on company's operations and performance.
- 5) The company has a defined Policy on the protection of minority shareholders.
- 6) There is a procedure and deadline for responding to shareholders' complaints.
- 7) All investors have equal and timely access to relevant information on company's operations and performance.
- 8) The company has a Code of Ethics/Code of Conduct, and all employees are familiar with it.
- 9) Code of Ethics/ Code of Conduct is available to the public.
- 10) The data regarding company's ownership structure are available to the public.
- 11) Company's financial reports are available to the public.
- 12) The information on the sector the company operates in is available to the public.
- 13) The company transparently publishes information about the markets it operates in.
- 14) The company has a defined Policy on Conflict of Interests.
- 15) The company has a defined Policy on Competition.
- 16) The company has a defined Anti-corruption Policy.
- 17) The company has an Internal Audit department / job position.
- 18) The company has a clearly defined reward system for all employees, including top management.
- 19) The company has procedures/ department/ position for ensuring compliance.
- 20) The company publishes data on non-compliance with laws and regulations.
- 21) The company implements some of the management system standards: quality standard, environment protection standard, occupational health and safety, food safety, information privacy, etc.
- 22) The company has a risk management strategy.
- 23) Social responsibility and sustainable development are incorporated into company's mission/ vision/ strategy.
- 24) The company has defined social responsibility principles.
- 25) CSR principles are integrated into company's business goals.
- 26) Managing Board and the management are familiar with CSR principles.
- 27) The employees are familiar with corporate social responsibility principles.
- 28) The company has a department/ position in charge of CSR.
- 29) Corporate social responsibility is among responsibilities of one of the top management members.
- 30) The company reports on sustainability/ social responsibility.
- 31) The company reports on sustainability/ corporate social responsibility in accordance with a previously established time schedule.
- 32) The company reports on sustainability/ corporate social responsibility in accordance with one of the internationally recognized methodologies (e.g. the Global Reporting Initiative).
- 33) Reports on sustainability/ corporate social responsibility are subject to independent verification.
- 34) The company is a member of a business association promoting social responsibility/ sustainable development.
- 35) The company has mechanisms for monitoring indirect negative impact on business.

Source: Quoted from "Certifikacija društveno odgovornih kompanija", file provided by NALED.

²⁰ Jovanović, V., Executive Director of NALED, information provided for this study by e-mail, 16 May 2015.

The **Russian** Compliance Alliance (RCA) has set the aim to “create a private-sector certification process that defines ethics compliance standards for Russian supply chains of multinational companies operating in Russia”. (B20 Collective Action Hub) The Russian Compliance Alliance is non-commercial and has been sponsored by the B20 Collective Action Hub (Basel Institute on Governance). The approach of RCA resembles the ISO9000 quality management standards model and is based on self-evaluation. The stated purposes are to:

- 1) educate the Russian market about global and Russian anti-corruption legal requirements
- 2) improve the competitive position of companies that participate in the self-evaluation by listing them in the Russian Compliance Alliance Registry
- 3) support the implementation of the Section 13.3 of the Law No. 273-FZ on Countering Corruption and guidance by the Ministry of Labour of the Russian Federation
- 4) assist multinationals in building anti-corruption compliance programs that can protect them from 3rd party agent liability under the American Foreign Corrupt Practices Act and the UK Bribery Act
- 5) improve the efficiency of due diligence process by centralizing and standardizing a methodology for describing a company’s compliance program. (Russian Compliance Alliance, n.d.)

The ambition is to develop a global anticorruption standard, which could be used by multinationals, especially across their emerging economy operations, and by local companies in any country. The model can be adapted to other languages and can be rebranded as appropriate. The RCA provides access for free and charges only for out of pocket costs if customization is required. According to RCA four companies (Coca Cola, Pfizer, Glaxo Smith Kline, ABB) had agreed to participate in the pilot project as of may 2015.²¹

The RCA uses a complex questionnaire that contains the following sections:

- 1) culture: executive leadership
- 2) culture: governance
- 3) culture: risk management
- 4) culture: human resource management
- 5) culture: corporate social responsibility
- 6) communications and training: internal operations
- 7) communications and training: business relationships (vendors, agents, partners, joint ventures, etc.)
- 8) monitoring: internal operations
- 9) monitoring: business relationships (contractors, vendors, agents, suppliers, distributors, subsidiaries and branches, joint ventures, partners, etc.)
- 10) conflicts of interest
- 11) financial management
- 12) improper payments (payments = cash and anything of value)
- 13) benchmarking information. (Russian Compliance Alliance, n.d.)

The questionnaire has been reviewed by experts and corporate compliance officers and regarded as comprehensive with respect to the FCPA, the UK Bribery Act, and Russian law. The survey is anonymous. As of May 2015, about 16 companies appeared to have accessed the questionnaire and five had registered. The intended incentive for registration was providing a marketing advantage for Russian businesses wishing to do business with multinational companies.²²

²¹ Dowden, P. E., Managing Director, Russian Compliance Alliance, information provided for this study by e-mail, 13 May 2015.

²² Dowden, P. E., Managing Director, Russian Compliance Alliance, information provided for this study by e-mail, 13 May 2015.

A related type of activity is the business-labelling initiative Clear Wave in **Lithuania**. The initiative aims to encourage transparent and ethical business practice. Company-participants of the project commit themselves

...for the creation of a responsible and transparent way to operate, and to encourage their business partners to:

- take transparent and fair participation in the tenders (public procurement) – without corruption to their organizers and members of the jury, without resorting to illegal financial and non-financial measures to gain advantage against other participants
- comply with the laws of the Republic of Lithuania and honestly pay the fees and taxes provided
- maintain transparent accountability and payment to their employees. (Clear Wave)

The initiative started in 2007 and, as of 2014, involved over 50 members who use the Clear Wave label for their products, services, and marketing material. The initiative is gradually expanding in terms of geographic coverage (in 2015 the label was registered also in **Estonia** and **Latvia**) and the scope of action. Together with the association “Investors’ Forum”, the Clear Wave initiative started a dialogue with the Public Procurement Office to provide proposals for improvements in the procurement area and hereby undertook an advocacy role.²³

Integrity pact is a different type of collective action. According to B20 Collective Action Hub integrity pacts represent the most binding level of collective action.

As in declarations and standard setting coalitions, participants commit not to pay bribes or collude. In the case of Integrity Pacts, these commitments are often connected to a concrete public tender or bidding for a large project such as a sports event or a major construction project. One of the most defining features of Integrity Pacts is the presence of external third party monitoring. At its most enforceable, the Integrity Pact will include a certification process which may stipulate sanctions in case of violations of the terms of the agreements, including exclusion from the Collective Action initiative. Indeed, contracts are usually formulated in such a way to enable participants to seek action against each other in situations of non-compliance. (B20 Collective Action Hub)

A number of integrity pacts have been concluded and implemented in the EU members of the ACN region. The B20 Collective Action Hub has published information on several integrity pacts from the region. For example, “in 2005, TI **Latvia** and the Latvian Ministry of Culture agreed to apply an integrity pact to the contracts of three major construction projects of a national library, a concert hall, and a contemporary art museum. TI Latvia was appointed as an independent external monitor to guarantee transparency and provides public reports on the process.” (B20 Collective Action Hub) As of 2015, only the national library had been constructed. In a report of 2013, TI-Latvia identified a number of risks related to belated procurement procedures for the equipment of the new library building, delays in coordination and certain works that could lead eventually to increased costs, and possible approval of the new building with defects. (Sabiedrība par atklātību – Delna, 2013) Transparency International **Bulgaria** engaged in integrity pacts related to public procurement (see the subchapter 5.6).

²³ Ruseikienė, A., Communications and Strategic Projects Development Manager, Investors’ Forum, information provided for this study by e-mail, 27 January 2016.

Box 6.5. Germany: Berlin-Brandenburg International Schönefeld Airport Integrity Pact

In the early 1990s, the Federal Republic of Germany and the lands of Berlin and Brandenburg agreed to build a large international airport in the Berlin area. In 1995 first corruption suspicions with regard to the airport appeared in the media and then kept recurring. As the result, in 2001 all decisions on the construction were repelled.

In 2004 it was decided to implement the project although on a somewhat smaller scale. The total estimated costs were EUR 2,400 million and the completion envisaged for the year 2011. The Federal Republic and the lands of Berlin and Brandenburg founded the company “Flughafen Berlin-Schönefeld GmbH” (FBS). Given the rather bad experience with allegations of corruption, the management of FBS turned to Transparency International Germany (TI-Germany) in 2004 and requested ideas for avoiding corruption. TI-Germany proposed the integrity pact developed by Transparency International. TI-Germany emphasized the need to appoint an external independent observer who could effectively shield FBS against possible corruption attempts.

On 20 January 2005, a contract was concluded between the management of FBS and a small working group of two experts under the leadership of Professor Peter Oettel. Before his retirement, Peter Oettel had been a procurement expert for many years. He had excellent reputation and was known for his strong commitment to integrity. He became a member of TI-Germany before he took the post of the observer.

The Integrity Pact was mandatory for signing by each bidder and contractor. Among other things it contained the following elements:

1. The contracting authority shall undertake all necessary measures to avoid corruption and let all bidders receive the same information during procurement procedures in order to achieve the optimum transparency. The contracting authority disqualifies biased individuals as envisaged in legal regulations.
2. The contracting authority shall inform the public prosecutor’s office if it learns about a corruption offence committed by an employee. It can also initiate disciplinary or civil law action.
3. If the contracting authority learns about conduct of a bidder/ contractor/ subcontractor that amounts to a corruption offence or has concrete suspicion, it shall also inform the public prosecutor’s office.
4. The bidder or contractor shall take all necessary measures for avoiding corruption. This includes, for example, the prohibition to provide any benefits to the contracting authority or own employees in order to obtain advantages in the procurement or engage in impermissible agreements with other bidders.
5. If the bidder violates provisions of the Integrity Pact before the award of the contract, the contracting authority is entitled to exclude the bidder from the procurement procedures (in serious cases also from future procedures). The contracting authority may claim damages in the amount of 3% of the tender value but no more than EUR 50,000.
6. If the bidder violates provisions of the Integrity Pact after the award of the contract, the contracting authority is entitled to terminate the contract (in serious cases also exclude the bidder from future procedures). The contracting authority may claim damages in the amount of 5% of the contract value.
7. The bidder or contractor shall request declarations identical with the Integrity Pact from all subcontractors and present them to the contracting authority.
8. The contracting authority appoints a qualified external independent observer for the duration of the project who shall verify whether and to what extent the parties comply with obligations under the Integrity Pact.
9. The observer is not subject to any instructions of the parties and has the right of insight to the project documents of the contracting authority, contractors and subcontractors. He shall perform his obligations independently and impartially.
10. As soon as the observer detects or believes to have detected a violation of the Integrity Pact, he/she shall inform the management of the contracting authority and call on it to stop or remedy the violation, or undertake other relevant action.
11. The observer shall provide the chairman of the supervisory board and the management with a regular written report on his/her activities.
12. When the observer has reported a reasonable suspicion on corruption criminal offence to the chairman of the supervisory board of the contracting authority and the latter has not done anything tangible in reasonable time in order to counter the offence or report to the public prosecutor’s office, the observer may pass this information directly to the public prosecutor.

The monitoring group was protected in its position by virtue of the fact that it could be removed only by the management of the contracting authority with prior approval by the Chair of the Supervisory Board or by the Chair of the Supervisory Board him/herself.

Box 6.5. Germany: Berlin-Brandenburg International Schönefeld Airport Integrity Pact (*cont.*)

As of January 2013, the observer had verified practically all procurement procedures above the EU threshold and a representative selection of contracts below the EU threshold. He had found no evidence of corruption, collusion or other corruption offences in relation to the reviewed procedures.

In a single case there was suspicion of collusion between bidders. Since the collusion could be neither proven nor ruled out, the contract was re-formatted, re-tendered and awarded without further deviations. Another case of suspected corruption fell outside the scope of the observer because the contract was awarded by a different body rather than the airport. Especially in view of the experience with suspected corruption in the late 1990s, it was remarkable how few dubious cases (including the low number of proceedings before the public procurement tribunal and the appeal court) were identified during the implementation of the Integrity Pact.

In the early years of the operation, the observer often suggested changes in individual procurement procedures and normally the FBS took these proposals into consideration. However, a number of corruption incidents since the beginning of 2013 and their handling cast doubt on the effectiveness of the Integrity Pact. In March 2015, TI-Germany terminated its cooperation with the company “Flughafen Berlin Brandenburg GmbH” (former FBS).

Source: Abridged from Wiehen, 2013;

https://www.transparency.de/fileadmin/pdfs/Themen/Verwaltung/Integritaetspakt/BBI_Transparency_Integritaetspakt_13-02-02.pdf.

Transparency International Deutschland e.V., 2015, <https://www.transparency.de/2015-03-24-Integritaetspakt-BE.2603.0.html?&contUid=6031>.

A directly business-focused initiative has been the Integrity Pact for SMEs developed by the Centre for Integrity in Business of Transparency International in **Romania**. According to description of the B20 Collective Action Hub website “this collective action instrument arose from the need felt by its signatories, representatives of SMEs, to come together around certain values that they share and promote. Its underlying principles are integrity, accountability, transparency, compliance, proactivity and respect. By signing this pact, entities shall make public their adherence to these principles and promote them in their own areas of activity and across the entire business environment. A set of rules of conduct accompany each of the six principles.” (B20 Collective Action Hub) The integrity pact features an implementation mechanism – the Integrity Monitoring Commission. In case of failure to comply with the obligations under the pact, the Monitoring Commission may issue a written warning, suspend a member temporarily from the integrity pact, or exclude the member permanently (subject to approval of the general assembly of signatory entities). (Centre for Integrity in Business of Transparency International)

On the international level, prominent integrity pacts are the Extractive Industries Transparency Initiative (EITI) and Construction Sector Transparency Initiative (CoST). EITI is a global standard of transparency and accountability in the management of natural resources (oil, gas, and mineral). At the core of EITI functioning is the adherence of countries to the EITI standard and disclosing “information on tax payments, licences, contracts, production and other key elements around resource extraction”. (EITI, 2015) Companies have a possibility to commit to supporting the EITI (over 90 major companies have committed as of 2015). Countries that are implementing the EITI standard are candidates and, when all requirements are met, they become compliant. Among ACN countries, **Albania, Kazakhstan, Kyrgyzstan** and **Mongolia** are compliant; **Azerbaijan, Tajikistan, and Ukraine** are candidates. (Extractive Industries Transparency Initiative)

The CoST represents a partnership between participating countries and international stakeholders and “provides a set of principles, guidelines on enhancing transparency and accountability in public construction, and an international standard framework for evaluating and recognizing the performance of country programmes.” (CoST, n.d.) It runs programs for particular countries with **Ukraine** being the

only participating country from the ACN region. According to information on the CoST website of December 2013, the Ukrainian State Road Agency (Ukravtodor) agreed to engage in a CoST Ukraine programme. A particular highway reconstruction project, co-financed by the International Bank for Reconstruction and Development, was chosen as a pilot project for the implementation and testing the effectiveness of CoST standards. (CoST, 2013)

Networks: Other collective actions are based on less formalized networks where stakeholders agree to coordinate and cooperate to achieve certain goals. According to the typology of the B20 Collective Action Hub networks would fall into the category of declarations and joint activities, a declaration being “a statement by a group of companies, or by companies and government, committing the parties not to engage in corruption, and to respond to corruption should it be detected. [...] In addition, declarations are often accompanied by various types of joint activities, for example to raise awareness about ethics principles, or to engage other partners in training activities on business ethics.” (B20 Collective Action Hub)

An example, of national-level networks is the local networks of the Global Compact. For example, companies and business associations have formed the semi-formal Network of the Global Compact in **Serbia**. The mission of the network is to promote the Global Compact, the concept of socially responsible business in Serbia and improvement through the implementation of the ten principles and:

- learning through the exchange of knowledge and experience as well as disseminating good practices with each other and the public at large
- partnerships that at the same time create opportunities
- stakeholder dialogue
- advocacy through collective action.

The network is not a legal entity but it has a steering committee, composed of representatives of members of the Global Compact. The activity is financed through voluntary financial contributions of the individual members. The Chamber of Commerce and Industry of Serbia supports the operation of the network and acts as the secretariat of the network. The network has a working group for the fight against corruption chaired by Siemens Serbia. The website of the network has minutes of the working group published for the years 2008-2013. In 2010, the network adopted the Declaration against Corruption where members declare, among other things, that they will apply in their business even higher anti-corruption standards than those stipulated by the law (including the prohibition of the employment of civil servants and officials who before obtaining their positions in a certain company have been bringing decisions while in public service in favour of that very company) as well as undertake actions for eliminating and reducing to the smallest possible level all possibilities for their own corruption acts or such acts of their personnel, their subcontractors and suppliers for public sector projects, as well as business partners. Participants are encouraged to develop integrity plans in line with guidelines of the Anticorruption Agency. (Global Compact in Serbia, 2010; Network Serbia, n.d.) The Global Compact **Slovenia** initiated the project “Ethos” with the mission to “establish mechanisms, processes and know-how with which the economy would be able to proactively and following their own initiative (without pressure of repressive organs) fight corruption and increase compliance to ethical and legal norms”. (UN Global Compact Slovenia, 2013) The first output of the project was the Declaration on Fair Business opened for signing by companies and other organizations in 2011.

As seen above, it is common for networks to engage in standard setting. In **FYR of Macedonia** in 2012, representatives and experts of the Business Confederation of Macedonia, State Commission on Prevention of Corruption, Coordinative Body on Corporate Social Responsibility, Chamber of Crafts of the Republic of Macedonia and Chambers of Commerce developed the Business Ethics Code – Guideline for Macedonian Business Community, which covers principles of social responsibility,

professional relationships (with stakeholders, employees, suppliers and subcontractors, competitors, authorities, clients and customers), operating principles (conflict of interest, prevention of extortion and bribery, lobbying, and protection of whistleblowers), the administration of the code as well as recommendations for developing companies' own codes. (BusinessMacedonia, 2012)

Another example of standard-setting activity by a network is the Anti-corruption charter of the **Russian** business signed in 2012 by the Russian Union of Industrialists and Entrepreneurs, Chamber of Commerce and Industry of the Russian Federation, the all-Russia public organization "Business Russia", and the all-Russian non-governmental organization of small and medium business "Opora Russia". Any company, organization with objective to represent interests of entrepreneurs' community or individual entrepreneur may join the charter. Joining the charter obliges participants to take measures for the prevention of corruption within their organizations according to the guidance of the Ministry of Labour of the Russian Federation. As of 12 December 2015, the published register of the charter contained 632 participants. The charter itself covers such issues as company management based on anti-corruption programs, monitoring and assessment of the implementation of anti-corruption programs, effective financial control, training of cadres and control of personnel, collective efforts and publicity of anti-corruption measures, refusal of illegal receipt of advantages, relationships with partners and contractors with consideration for the principles of anti-corruption policy, transparent and open procurement procedures, informational counteraction to corruption, cooperation with the state, cooperation with the discharge of justice and legal compliance, and countering of bribery of foreign public officials and officials of public international organizations. (Антикоррупционная хартия российского бизнеса, n.d.)

Collective actions of various formats appear to be among the most promising approaches for raising integrity standards in particular sectors or whole of economy. Moreover this is an area where considerable experience has been accumulated in several ACN countries.

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Chapter 7. Companies' actions to promote business integrity

7.1. Surveys of companies business integrity performance

In the global economic arena, bribery and other forms of corruption remain a pervasive problem and companies do not do enough to prevent it. In a survey of 3800 employees of large companies in Europe, Middle East, India and Africa carried out in 2014-2015 and published by EY, 42% of respondents said that their companies did not have anti-bribery policies or they were unaware of them. 37% of respondents had not received any anti-bribery training. On the other hand, where such policies existed, 91% responded that the senior management had communicated strongly their commitment to them. (EY, 2015: 3) The 12th Global Fraud Survey of EY carried out in 2011-2012 found about Eastern Europe²⁴ that it

...trails behind other regions in the use of anti-fraud and ABAC [anti-bribery and corruption] measures. For example, the East European organizations sampled in our survey are less likely to have ABAC policies, clear penalties for policy breaches or to hold training when compared to the global average.

This is also reflected in organizational challenges. Our respondents indicated that businesses in Eastern Europe are the least likely to have a compliance or internal audit function. The data also showed that East European respondents were the most likely to lack confidence that these functions can effectively protect the business from fraud, bribery and corruption risks. (EY, 2013: 24)

Respondents from the region were also generally sceptical about the effectiveness of self-policing and preferred more of external oversight. The mentioned survey from 2014-2015 affirms that a certain divide between the former socialist European countries (12 countries in the survey) and the rest of Europe (17 countries) remains. On average (unweighted) 40% of respondents of former socialist European countries responded that senior management had strongly communicated its commitment to the company's anti-bribery and corruption policies. The same number for the rest of Europe was 51%. (Adapted from EY, 2015:23)

In 2013, the Centre for Legal Resources in **Romania** surveyed private and public companies on the topics of ethics and compliance. A thousand largest companies by the number of employees and annual turnover were asked to fill the online survey but only 52 companies responded, which the authors of the study interpret as a sign of "reduced interest and availability of the companies from Romania to participate in researches and consultations regarding legal ethics and compliance". Out of the respondents, 66% were companies with foreign capital. Out of the surveyed companies:

- 68% had an internal code or guide of ethics in business (or applied the internal code or guide of ethics in business established by the group of companies they were a part of), which was distinguishable to the internal regulation policy.
- 38% had an ethics and compliance department or a designated person that had the quality of an ethics and compliance officer.
- 77% had procedures for prevention of bribery.
- 75% had procedures for preventing the conflicts of interests.

²⁴ Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Russia, Turkey, and Ukraine were surveyed.

- 36% had last year (2012) at least one ethics training for its employees or management.
- 68% had mechanisms through which the employees can report anonymously an ethical, corruption or conflict of interests' incident.

Each of the elements was considerably more common among the companies with foreign capital compared to companies with Romanian capital. Another part of the survey gauged the attitude of companies toward public policy proposals that would aim to strengthen the integrity of companies through the public procurement system such as obligations to develop internal compliance programs for companies involved in public procurement, introducing mandatory anti-corruption clauses in contracts between public organizations and private companies. Interestingly the support for obligations to develop internal compliance programs for companies involved in public procurement was nearly equal between companies with foreign and Romanian capital (49 and 50% respectively).

Some of the conclusions by the researchers were as follows.

Although most of the companies included in the survey have a code of ethics and internal procedures to prevent bribery and conflicts of interest, they do not have mechanisms for implementing the procedures (mechanisms such as ethics training or compliance departments). The main mechanism for implementing internal procedures seems to be the anonymous referral of ethical incidents.

Companies surveyed agree that the existence of an internal ethics and compliance system have to play an important role in awarding public procurement contracts.

The research identified a series of paradoxes regarding companies with domestic capital. While seeking higher legal standards in public procurement, companies with domestic capital are less prepared to audit their compliance system than companies with foreign capital. Then, although they are less prepared, domestic capital companies demand regulation of anticorruption clauses in public contracts in greater extent than foreign capital companies. (Centre for Legal Resources, 2013: 17)

The study by the Martin-Luther-University Halle-Wittenberg and PwC on economic crime and enterprise culture of 2013 was based on telephone interviews with individuals responsible for the prevention of crime and intelligence in **Germany** for 603 enterprises with at least 500 employees. The study found that 74% of the enterprises had a compliance program and 52% had an anti-corruption compliance program. 26% of enterprises claimed that they had lost a business opportunity because of corruption of a competitor. (Bussmann, Nestler and Salvenmoser, 2013: 12, 35, 36) In 2015, a survey by the American Chamber of Commerce in **Ukraine** found that 84% of surveyed companies (mostly with international business operations) had anti-corruption programs (additional 5% reported having compliance measures regulated by other document), 76% had compliance officers, 64% had procedures for internal reporting of corruption (additional 5% reported having procedures for external reporting), only 7% reported having an example of successful cooperation with law enforcement agency on alerted corruption case. (American Chamber of Commerce in Ukraine, 2015)

In 2015, a study "Private-to-Private Corruption. A survey on Danish and Estonian business environment" was carried out in **Denmark** and **Estonia** in cooperation between Aarhus University, Tartu University and the Estonian Ministry of Justice. The aims of the project were to obtain data on the extent and forms of private-sector corruption, its causes and countermeasures. The survey covered 500 Estonian and 500 Danish private-sector managers. Reported corruption experience was slightly more frequent among

Estonian than among Danish responses (correspondingly 57% and 51% of respondents had encountered at least one type of corruption within their business sector). Also as far as company-level actions are concerned, the response frequencies of both countries respondents are similar for some questions. Only 3% of Estonian managers and 10% of Danish managers respond that they would not report a case of corruption. Among the vast majority who would report, in either country they would do it predominately within the company. The vast majority in both countries also find that “the personal example of the manager is an effective anti-corruption measure”. Managers in both countries believe in the effectiveness of internal control systems and sanctions by ending employment contracts. Differences arise in beliefs in ethical standards and training and in the effectiveness of law enforcement (more frequent among Danish managers). (Johannsen et al., 2016: 4, 5)

7.2. Good practice among companies of the ACN region

This part of the study is largely based on information that participants in the UN Global Compact provide in their annual communication on progress (COP). This source does not provide a representative overview of company policies in the covered countries since participation is based on voluntary self selection. However, it does show what companies that are willing to share their corporate social responsibility practices are prepared to disclose.

Only those participants were selected that represent companies. The selection includes all company participants from the ACN countries that have reported on progress under Principle 10 of the UN Global Compact: “Businesses should work against corruption in all its forms, including extortion and bribery.” In the summer of 2015, the database of the Global Compact was changed and the categories of participants refined. So the selection is based on the previous category “business participant” and the new categories “company” and “small or medium-sized enterprise”.

The study uses the latest COPs submitted as of May-June 2015 including also businesses that have been marked as non-communicative if they have submitted their COP previously (non-communicative means that at some point the business has failed to issue COP). Companies from 19 ACN countries had submitted COP. The table 7.1 presents an overview of selected integrity-promoting tools that businesses have reported in their COP.

In the remaining part of the chapter, measures taken by companies will be reviewed. It is important to note that the measures have been presented here “as is” and it implies no assessment or endorsement of their actual implementation. The real company names are not used. Instead each company is denoted with a code consisting of two-character ISO country code and a number (except for certain multi-national companies and in text boxes).

Table 7.1. Integrity-promoting tools of business participants of the Global Compact (as of May-June 2015)

Country	Number of participants	Explicit policy/ code/ regulations*	Integrity risk assessment	Integrity requirements for partners	Transparent procurement procedures	Political neutrality / no political donations etc.	Dedicated / authorised units/officials	Reporting channels	Whistleblower protection measures **	Training
Albania	1	1	-	-	1	-	-	-	-	-
Armenia	6	5	1	-	-	-	-	2	-	1
Azerbaijan	4	1	-	2	-	-	1	-	-	1
Bosnia and Herzegovina	3	1	-	-	-	1	-	-	-	1
Bulgaria	21	14	1	3	4	5	4	4	-	4
Croatia	28	21	3	6	2	3	7	4	4	11
Estonia	3	1	1	3	-	-	-	1	-	1
Georgia	5	3	2	1	-	-	2	3	1	3
Kazakhstan	9	4	1	1	2	1	4	5	2	3
Latvia	4	3	-	1	-	-	-	-	-	-
Lithuania	32	14	3	9	9	6	6	6	3	7
FYR of Macedonia	13	10	-	3	2	2	-	-	-	1
Moldova	3	2	1	1	1	1	1	1	1	1
Montenegro	2	1	-	-	-	-	-	1	-	-
Romania	5	5	-	3	1	1	1	2	-	3
Russia	19	12	4	4	2	-	8	11	1	9
Serbia	20	13	7	3	2	2	5	9	3	8
Slovenia	3	1	-	1	-	-	-	-	-	1
Ukraine	34	24	8	13	12	1	8	14	3	14

* Including conflict of interest and gift rules but excluding pure anti-fraud or theft policies.
** In addition to mere confidentiality.

7.2.1. Integrity policies

Company policies on integrity may be expressed in a variety of forms. A typical approach is to adopt **codes** of ethics, conduct, or business practice defining principles and standards that employees shall observe. Such documents usually cover broad issue areas. Integrity standards can be defined also in **manuals** such as the Employment Policies and Procedures Manual of the company AM6 where, for example, standards regarding gifts are included.

In codes and internal manuals, individual companies determine what aspects of anti-corruption to cover and the choices can differ widely depending on what the company perceives to be important. There is no uniform format for such anti-corruption policies and different companies highlight different elements. For example, the company RU8 highlights that the company's Anti-Bribery and Corruption Procedure includes a list of categories of employees who are considered to be high-risk and who must attend individual training on the requirements of this procedure. Some of the documents define particular corruption elements, for example, the code of ethics and operational workbook of the company HR2 defines what is considered by the terms "bribery", "extortion", "nepotism" and "conflict of interest". The Code of Business Ethics of the company RO1 contains rules for dealing with issues such as conflicts of interest, gifts, bribery and corruption, antitrust matters, trade control and embargoes, dealing with intermediaries and lobbyists.

Other companies choose to adopt **separate anti-corruption and conflict-of interest policies** that address these issues more specifically. Examples of titles of such policies are the Anti-corruption Program (RS15), the Fight against Corruption Policy (LT24), the Policy for Preventing Corruption and other Conflicts of Interest (HR15), instruction “Anticorruption Legislation Compliance” (AM4), protocol/guidance to guide staff in extortion or bribery (GE1, GE3), Conflict of Interest [Management] Policy (LT24, RS18 and HR6, the latter also has its Code of Ethics, Code of Conduct and other regulations). The company HR14 reports on its action plan adopted as required in accordance with the Anti-Corruption Program for State Owned Companies for 2010-2012 of Croatia (see the subchapter 5.4. “Measures to ensure integrity in state owned enterprises”).

Some companies combine **integrity/ anti-corruption policies with other policies**, for example, with anti-fraud policy (KZ4), quality management (the Ethics and Quality Control Manual of the company AM3), or general internal rules of procedure (HR27) or corporate code (HR24). The company RS15 integrates the Anti-Corruption Program with the Code on Professional Behaviour, the Code for Combat against Corruption and Conflict of Interest, policies on corporate management and quality management.

Larger companies with advanced integrity policies adopt **several documents**. For example, RS10 reports having:

- Code of Ethics
- Business Code
- Regulations on Relations with Political Parties
- Procedure for the Prevention of Internal Fraud and Abuse in the Bank
- procedure “Termination of Employment Relations”.

The Business Code describes rules concerning the acceptance and giving of gifts, and measures prescribed for cases of corruption related to the violation of work obligations when the employee can be subject to measures established in the labour law (for example, compensation for damages, removal of the employee from work, termination of employment) or the criminal law.

The company BG10 defines its anti-corruption policy in five internal acts:

- financial rules and orders regarding gifts, social expenses and representational expenses
- purchase rules
- identification of related and interested parties system
- donation rules, including for political parties
- rules for service payments by state employees and/or employees to business partners.

For subsidiaries/ affiliations of international companies in ACN countries, it is common to be subject to the **policies of the international companies and groups** (for example, the companies HR21 and RS17). Subsidiaries of such companies as Kesko and TeliaSonera of several ACN countries provide only the international reports and describe international policies. Companies of Kesko (LT18) for their reporting used the international Corporate Responsibility Report 2013 of Kesko, which refers to the guide “Our Responsible Working Principles” where the company’s anti-corruption principles are included. Similarly companies of TeliaSonera (KZ6, LT20, LT28, and MD2) in their reporting refer to the common Annual+Sustainability Report of TeliaSonera, which then gives description of the company’s Code of Ethics and Conduct and ongoing anti-corruption program. According to the TeliaSonera report of 2014:

“An anti-corruption instruction to support the implementation of the policy was approved in April and updated in September to include more details on gifts, hospitality and conflict of interest as well as interaction with government officials. In addition, the Group Ethics and Compliance Office prepared the guiding principles on anti-corruption which contain more specific and detailed guidance for actual scenarios as well as questions and answers.” (Telia Sonera, 2015: 73, 74)

The member of Deloitte Touche Tohmatsu Limited (DTTL) RS16 sites the requirement of the DTTL that all employees of the member companies annually confirm their compliance with the anti-corruption policies of the member firms. The report of the company goes on to list the elements of the ethics program of the DTTL and how it interacts with the member companies:

- the nine Ethical Principles and four Shared Values of the Deloitte member firms
- a global ethics policy that sets out the requirements for member firms' own ethics programs
- a global anti-corruption policy that addresses matters such as bribery, facilitation payments, political and charitable contributions, and gifts and entertainment
- ethics training programs, including an introductory online course, classroom programs, facilitator-led interactive case discussions and online training course
- support activities, including communications, workshops, and webinars to facilitate best practice sharing among member firms
- provision of a survey and self-assessment questionnaire to allow member firms to measure their program's effectiveness
- a practice review program to measure compliance with global ethics policies and encourage collaborative discussions and continuous improvement over time.

Regular **review and updating** the policy is an indication of actual implementation work. For example, the company HR15 reports that its Business Compliance Department develops annual programs and takes actions based on results of risk assessment.

Companies also occasionally refer also to **collective policies** of their business sectors, associations, or stock exchange rules. For example, Kesko refers to its compliance with the Finnish Corporate Governance Code for Listed Companies. Certain elements of integrity policies can be defined also in relation to **international management standards**. For example, the company BG4 reports practices including financial rules limiting cash payments, rules on social and representatives expenses as well as on gifts as elements of the integrated management system according to standards ISO 9001, ISO 14 001, and OHSAS 18 001.

The reports of a few companies reflect also the realization that documents have to be embedded in functioning compliance management systems. For example, the company BG17 places its Code of Conduct as the main element in its compliance management system, which is based on three pillars – prevention through awareness, identification of violations of the code and signalling, reaction through analysis and improvement.

Box 7.1. Kesko: Anti-corruption work in Russia

Kesko's operations in all countries are based on observing laws and responsible working principles. In the Corruption Perceptions Index 2013 published by Transparency International, Russia's ranking is 127. Anti-corruption work is particularly important to Kesko, because it operates in Russia in the food trade, the building and home improvement trade and the sports trade.

Kesko's anti-corruption principles are included in the 'Our Responsible Working Principles' guide. Kesko has an absolute zero-tolerance attitude to bribery and corruption.

K-rauta Rus, Rautakesko's subsidiary in Russia, adopted its anti-corruption policy in the autumn of 2013. The decision was accelerated by the anti-corruption law that came into force in Russia at the beginning of 2013 and requires companies operating in Russia to have an anticorruption policy.

In addition to the anti-corruption principles included in 'Our Responsible Working Principles' guidelines, the provisions of the new Russian anti-corruption law were taken into account in the new policy.

"It is important that all stakeholders – the management, employees, business partners and other parties – share the same view and guidelines on anti-corruption activities. When publishing the policy, we also organised a training event on the policy and its impact for the top and middle management of K-rauta Rus in St. Petersburg. All participants in the event signed a document to confirm that they had understood what the policy means," says Pavel Lokshin, Managing Director of K-rauta Rus.

An anti-fraud channel for use in Russia

In the course of 2014, a new anti-fraud whistleblowing channel for reporting suspected fraud will be adopted by Kesko's subsidiaries in Russia.

This is a Russian-language channel which the business partners and employees of Kesko's subsidiaries in Russia may use to report confidentially if they suspect fraud in a Kesko subsidiary in Russia.

Suspicious may concern, for instance:

- bribery or corruption
- deceptions
- illegal payments
- money laundering
- financial crime.

The aim is to have an anti-fraud channel available on the websites of all Kesko's subsidiaries in Russia during 2014.

"The reports made via the channel come to Kesko Group's Internal Control unit. We deal with all suspicions without delay and take required measures. The identity of people who file reports is kept confidential. Suspected fraud can also be reported anonymously," says Pasi Mäkinen, Kesko's Chief Audit Executive.

[...] K-rauta Rus, Rautakesko's subsidiary in Russia, adopted an anti-corruption policy of its own in autumn 2013. The new policy takes account of the requirements of the Russian anti-corruption laws. In 2014, Kesko's Russian subsidiaries will introduce a new anti-fraud (whistleblowing) channel for reporting suspected malpractice. The Russian-language channel is intended for confidential use by the business partners of Kesko subsidiaries and other third parties including personnel for notifying any suspicions of malpractice or unethical conduct in Kesko's Russian subsidiaries.

Source: Quoted from: Kesko, 2014, pp.42, 221;

https://www.unglobalcompact.org/system/attachments/cop_2014/107181/original/Kesko_Responsibility_Report_2013.pdf?1410506876.

Box 7.2. Integrity-building experience of Guler Dinamik Customs Consultancy Inc.

Guler Dinamik Customs Consultancy Inc. (GD) was established in the beginning of 2010 after a merger of two customs consultancy companies. Although both direct and indirect representation is possible in Turkey, because of the complexity of customs procedures more than 95% of importers opt to use indirect representation and have their transactions handled by customs consultancy firms. In indirect representation, a customs consultant is liable before the law for the transactions equally with the company on whose behalf he/she acts. As a result, customs consultancy companies need to be very careful in order to avoid penalties and charges. Consultancy companies need to be very careful about the integrity of the data that clients provide. Even minor mistakes can turn into complex customs issues, resulting in heavy penalties for the importing company and its customs representative.

GD Ethics and Compliance Program: GD made an agreement with a consulting company, advised by the Ethics and Reputation Society, to evaluate the situation, create/update the code of ethics and develop policies together with the chief auditor of the company. GD assigned a compliance officer whose only job was to run the program with the support from the very top of the management. A whistle-blowing system was setup and all employees were trained about anti-corruption, compliance and ethics. The program is currently being integrated into the company's quality management system.

Key factor – management support: At GD in each and every meeting with the managing directors or employees from all other levels and with the clients or government officials, the higher management always showed their enthusiasm to make sure the awareness of their belief in corporate ethics and compliance is made very clear. This continuous effort made sure that ethics and compliance are essential and ultimate targets of the owners of the company.

Key factor – compliance as a whole: Business integrity requires a company to comply in all aspects of its functions. In Turkey it is not a surprise to come across companies, which fail to comply with social security, tax, health or competition laws. GD has been compliant in all of these fields and also has been a financially stable company. It has the internal auditing system in place in addition to audits conducted by independent companies. With its integrated quality management system it is possible to integrate policies prepared for different purposes. When a company fails to comply in one of the fields above, it will not be possible to defend the idea of being part of the anti-corruption.

Key factor – the company structure: Countering corruption is more than just refusing bribery. It is a result of long-term planning for business integrity and compliance. Creating a compliant environment for everybody and reducing the chances of facing non-compliant situations will obviously reduce the risk of corruption. It is also important to have in-depth knowledge on key areas of customs consultancy. When every customs transaction is handled with correct data and in compliance with the legislation in force, the risk of corruption decreases mainly because there is no reason to be part of corruption as everything is done by the book. To achieve this goal, it is critical to employ knowledgeable people. However, without a solid structure that prevents mistakes and without supporting IT infrastructure this is nearly impossible. GD invests in certain areas to handle its services in an error- and thus risk-free environment. The consultancy side of the business is divided into regions where certain employees from all levels work on industry specific transactions only. This structure enables each department to have its own area of responsibility so that that department specializes on certain products.

Key factor – role of IT infrastructure: The company has been investing in IT and a number of software solutions have been developed. This was done keeping in mind that the IT tools are going to serve as controlling tools to prevent errors. Hundreds if not thousands of controls are placed to double or even triple checks that entries are made, declarations prepared and specific situations like inward processing handled correctly. Security was also one of the main concerns and the whole system is ISO27001 certified to provide secure transactions between remote locations and with the IT integrated clients.

Key factor – customer relations management: Business integrity and corruption prevention requires a certain level of understanding and ethical approach. Clients who do not have certain standards pose higher risks to customs consultancy companies when indirect representation is used. Clients who import or export goods, which GD does not have expertise on, are directed to other consultancy firms. Clients who see the speed of transaction as the only key factor for their customs clearance are warned about the risks. When a satisfactory feedback is not received and when there is no common understanding of business standards the only option left is to say politely “no”. Certain steps are taken before starting to work with a new client. It is explained how the supply chain and customs clearance setup needs to be built. The necessary documents and requirements are explained and flow charts created with optional lead times. The products that will be imported and exported are listed on article number base and each and every requirement is defined beforehand. This practice ensures that clients are aware of what to expect. Regular reporting according to the client's control and operational needs is provided in any format and intervals.

Box 7.2. Integrity-building experience of Guler Dinamik Customs Consultancy Inc. (cont.)

Key factor – changing the culture: The resistance of habits from long years of doing business is hard to break. The cultural behavior of all parties involved needs to be affected by change. Parties of effective compliance in customs brokerage business are the employees of the company itself, clients of the company, other customs brokerage companies and the customs administration.

The role of the Ethics and Reputation Society (TEID): GD is one of the members of TEID and currently holds the lead of the Customs Brokers Initiative. TEID played an important role in providing support and assistance during the implementation of GD's Corporate Ethics & Compliance program. Guidance received through TEID ensured effective preparation of an ethics code and quality system. Events and training boosted extra motivation in the company. The Customs Brokers Initiative program, led by TEID currently, provides a common understanding among consultancy companies and contributes to a common approach during daily operations. The program spreads awareness on anti-corruption through the profession and other companies are encouraged to act similarly. TEID also encourages companies to undergo due diligence certification procedures. For more information on TEID see also the Box 6.2.

The role of the Istanbul Customs Consultants Association: In Turkey every customs consultant has to be a member of one of the five customs consultants associations. When Istanbul's association first announced its intent to prepare a code of ethics in 2013, GD was the first company to sign the code. 198 out of 950 customs consultancy firms signed the association's code. Although the number of signatories seems to be insufficient, the signatory companies handle more than 50% of the transactions in the region. This initiative, started in cooperation with the Ethics & Reputation Society, raised the awareness amongst consultancy companies significantly. The initiative also placed the compliance efforts of companies like GD on common grounds with other major companies.

Challenges: The main challenges could be grouped under five sections:

- **Employees:** It is one of the key challenges to make sure every employee has the common understanding of the company's approach.
- **Customs authority:** When and if a problem occurred we always stood behind our declarations as we were sure that we had complied with legal acts. This caused certain delays at times but in the end we always managed to prove that our stance was correct and lawful.
- **Clients:** We had no issues with international clients but we received complaints from some of our local clients about delays and inability of our company to handle some of the matters. We convinced most of the clients by explaining the social responsibility side of our approach and the importance of compliance in order to avoid penalties in post-clearance audits. Another important argument was having several investigations against corruption in customs offices conducted by Turkish law enforcement.
- **Other customs brokerage companies:** Major companies have started following a similar approach. This helped speeding up the cultural change in the customs brokerage business in Turkey.
- **Costs:** The initiative involved a substantial cost related to investment in the program, increased penalties because no illegal action was taken to avoid them, and refusal to work with clients who do not focus on compliance issues.

Achievements: The most valuable outcome is the reputation the company, which is now very well known for its anti-corruption initiative. Another gain was the increase of knowledge, self-confidence and motivation of our employees. Our company became to be seen as a school for customs consultants. IT infrastructure became stronger and this resulted in better client integration. The company gained transparency and security as all processes became measurable and auditable. The quality management structure became more effective, stronger and integrated. Our reputation with customs offices resulted in faster transactions because our company is known as trustworthy.

Source: Abridged from material prepared by Guler Dinamik Customs Consultancy Inc., 2015.

7.2.2. Risk assessment

Risk assessment is a necessary step in the development of a company's compliance/ anti-corruption policy. Adequate risk assessment is also an indirect indication of genuine commitment rather than a purely formal policy. Risk assessment is all the more important because the probability of involvement in corrupt and other unethical practices varies strongly with the nature of business of the company, country of operation, type of engagement with the authorities and other factors.

A number of companies report to the Global Compact that they carry out risk assessments (for example, the companies GE1 and UA32) or identify high-risk positions among their employees (for example, the company UA1). Kesko reports systematic identification, assessment, management, monitoring and reporting of key risks (including corruption risks) at the group, division, company, and unit levels in all countries of operation. Additional risk assessments cover significant projects involving capital expenditure or changes in operations. Kesko also takes into account Corruption Perceptions Index scores of countries of operation. (Kesko, 2014: 42, 211)

The company HR15 reports annual conduct of risk assessment related to active and passive corruption, especially benefits from and to business partners. The risk assessment covers responsible persons from all business areas and all business units. In the report for 2012/2013, the company reported 27 compliance risks. For each risk, a number of possible scenarios are identified based on experience of telecommunications companies. More than a hundred of scenarios are considered in each risk assessment round and the risk portfolio revised every year. The assessment focuses first on the relevance of each risk for each business area as well as the risk in general through its perceived likelihood and financial importance. Then control mechanisms are evaluated in order to assess the company's resistance to the specific risks. The control mechanisms in five categories are assessed: "(1) existence of processes and controls, (2) quality of communication, (3) existence of adequate training programs for employees, (4) existence and quality of the internal rules on a specific topic, and (5) adequacy of control and reporting system." (Hrvatski Telekom D.D., 2014: 50) Based on this, the final net risk is defined and, if found significant, counter measures are implemented under an annual program developed by the Business Compliance Department.

At TeliaSonera, identification and assessing of corruption and bribery risks are carried out by the line management with support and guidelines of the ethics and compliance organization.

...the Group Ethics and Compliance Office facilitated country, institutional and operational risk assessments for the seven high-risk markets in region Eurasia during the first half of 2014. The results from these assessments were communicated to the Board of Directors, the Sustainability and Ethics Committee, GREC and the relevant management teams. Following these assessments, action and remediation plans were created by local management to minimize the identified risks and remediate any noted issues. As part of the annual follow-up process, the Group Ethics and Compliance Office initiated local visits in the fourth quarter to follow up on the implementation of action and remediation plans. (Telia Sonera, 2015: 74)

Overall a small minority of Global Compact business participants from the ACN region report any details on corruption risk assessment. This could be because risk assessments are not carried out at all or are very basic. Alternatively companies may consider it to be an internal preliminary process whose details should not be publicly disclosed.

7.2.3. Conflict of interest rules

To rephrase an OECD definition originally applicable to the public sector, a conflict of interest involves a conflict between the work duty and private interests of an officer or employee, in which the officer or employee has private-capacity interests which could improperly influence the performance of their work duties and responsibilities.²⁵ It is a vital interest of shareholders and managers of companies that the fulfilment of work duties of employees is not compromised by their outside private interests. For example, the company UA30 defines conflict of interest as “any situation or circumstances in which personal, social, property, financial or political interests or activities of the employee are contrary to the interests of the company or can potentially come into conflict with them and thus affect the objectivity of decisions related to the company’s activity”. (Volia, 2015: 10, 11)

There are a number of ways how conflicts of interest in the private sector can manifest. Commercial law can address at least some forms of conflicts of interest. For example, related-party deals between a company and a business owned by the company’s board member may be subject to disclosure and approval requirements because in such situation the board member may potentially harm the interests of the shareholders.

Certain businesses are subject to special requirements with regard to conflict-of-interest policies. For example, the Directive 2014/65/EU of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU obliges member states to “require investment firms to take all appropriate steps to identify and to prevent or manage conflicts of interest between themselves, including their managers, employees and tied agents, or any person directly or indirectly linked to them by control and their clients or between one client and another that arise in the course of providing any investment and ancillary services, or combinations thereof, including those caused by the receipt of inducements from third parties or by the investment firm’s own remuneration and other incentive structures” (Article 23, Paragraph 1). (European Parliament and the Council, 2014) See the Box 7.3 on the policy for transactions with financial instruments of Privredna Banka Zagreb (HR6). Stricter rules on conflicts of interest are applicable also to publicly traded companies, which can be subject to rules of corporate governance by the respective stock market.

Box 7.3. Privredna Banka Zagreb (HR6): the policy for personal transactions with financial instruments

The policy sets standards for professional conduct and:

- Defines and manages the price sensitive information and introduction of required measures securing that each person with access to the information fulfills all the prescribed obligations and is aware of sanctions prescribed for cases of misuse or unauthorized dissemination of such information.
- Designs measures and tools for management of personal transactions by relevant persons, i.e. the obligation to undertake measures in order to prevent the execution of prohibited personal transactions by relevant persons, inform the Bank in good time of all personal transactions by relevant persons and maintain records of personal transactions of relevant persons.
- Informs relevant persons and insiders and introduces them to their rights and obligations with regard to the price sensitive information and personal transactions in connection with using investment services and ancillary activities in terms of the Capital Market Act.

Specifically, any relevant person intending to trade in financial instruments issued by PBZ should obtain the consent of the Compliance Division before giving an order for the purchase/sale of a financial instrument. Also, PBZ regulates comprehensively personal transactions of employees who manage relations with clients of the Bank/issuers of listed financial instruments with financial instruments pertaining to those clients as issuers.

Source: Quoted from: Privredna banka Zagreb, 2014, p.17;

https://www.unglobalcompact.org/system/attachments/cop_2014/108111/original/Global_Compact_%282014%29.pdf?1410875238.

²⁵ The original definition from OECD Guidelines for Managing Conflict of Interest in the Public Service.

Review of the Global Compact reports shows that **rules** on managing conflicts of interest are commonly found in codes of ethics or in separate conflict-of-interest policies or regulations. For example, in the company RU12 rules define key types of possible conflicts of interest in relationships between the company and stakeholders (shareholders, customers and partners, management, employees, and regulatory and government authorities), control procedures and responsibility of subdivisions. At the bank HR6, the Conflict of Interest Policy prescribes measures to:

- identify potential and/or existing conflicts of interest that may arise when providing investment and auxiliary services and performing investment activities (with a comprehensive list of situations which are presumed to imply potential conflict of interest)
- define precautionary measures and procedures for preventing or eliminating conflicts of interest
- define the process of resolving conflicts of interest in situations where precautionary measures are inapplicable
- set high standards of conduct and transparency in conducting business, expected to be observed by relevant persons
- have all employees and relevant persons acquainted with the rules of procedure pertaining to the management of conflicts of interest in the field of provision of investment services and performance of investment activities. (Privredna banka Zagreb, 2014: 16, 17)

While many companies address conflicts of interest in a general manner, there are examples where rules focus on **particular aspects** of conflict-of-interest management. For example, the company UA16 reported about its directive “On the Introduction of Restrictions for Joint Work at the Facility of Relatives in Direct Subordination of Each Other”. In 2012-2013, the company prepared a list of employees who were subject to the restriction to work together at the facility. Members of the board of directors and employees of the company BG8 shall not carry out consulting services that may involve competing with the company.

In the Global Compact reports, a few companies described the rules and implementation measures on the conflict of interest in detail. Typically such companies recognize that an occasional conflict of interest can legitimately arise but employees shall take steps to manage it. One of such steps is the **registration** of private interests or conflicts of interest within the company. For example, the company GE5 reports having a dedicated ethics and compliance officer who, among other things, receives concerns about potential conflicts of interest. In 2013, some 20 individuals had registered potential conflicts of interest.

Companies can define particular moments when conflicts of interest have to be disclosed on a routine basis. For example, the company UA34 requires that new employees and employees upon transfer to new positions of certain level disclose any such conflicts. While such registration can be ad hoc, that is, when the conflict of interest occurs, there are also procedures for **regular declaration or screening** of conflicts of interest. UA34 described annual ethical certification of employees in line with the procedure “Management of Conflicts of Interest” of 2011.

The purpose of the certification is to detect any potential or actual conflict of interest as well as cases of violating the norms of business ethics by employees. In total, 2905 employees took part in the certification ... in 2011 [and] disclosed information related to themselves and their close relatives about:

- ownership of shares and other pecuniary interests
- additional work in other companies including suppliers, contractors and competitors

- relatives who work in the Company upon existence of a possibility to control or exert influence on the work of one's close relatives
- other circumstances, which may lead to arising of a conflict of interest or violation of company policies. (THK-BP Коммерс, 2012)

The company RU14 has introduced a system to collect and process information on income, expenses, property and financial obligations of persons in specific positions. The information is provided in hard copy and “stored in fireproof metallic safe-boxes kept in special alarmed premises”. Also the company BG4 reports that all employees have filled declarations of conflict of interest in line with the procedure to review changes in circumstances. Annual conflict-of-interest or economic interest declarations are reported also by the companies BG12 and LT24.

Companies that run routine screening of private interests of their employees also take measure to **review and analyse** the information. For example, at UA34 ethics experts are engaged to analyse declarations and confirm the adequacy of actions taken to eliminate conflicts of interest.

There can be special procedures for **particular types of employees**. At UA34, the Board of Directors reviews declarations of members of the Board of the Audit Committee. The company RU12

...applies rules for the disclosure and management of conflict of interest among its managers and members of the Financial Corporation's collective bodies.

[...]

In order to meet the requirements of the Federal Law on Corruption Counteraction, which obliges organisations to develop measures for the prevention of conflicts of interest, updated guidelines for managing conflicts of interests in respect of members of the Bank's collective management bodies and middle managers have been prepared. For compliance control purposes, a list of positions in which a conflict of interests is possible has been approved. (Uralsib, 2014: 104)

The company RU4 requires executive bodies to declare conflicts of interest. At RU14, collection of information on factors that can give rise to conflicts of interest covers persons applying for specific positions and employees that occupy these positions (including their spouses and underage children). At the company BG10, a part of corporate governance regulations “is particularly devoted to the procedures and requirements to be observed by the members of the Board of Directors of the company in case of any conflict between their interests and those of the company”. Similarly the duty of members of the managing board and executive board to pay special attention to certain conflict of interest principles is highlighted in the COP of the company RS15.

Moreover, at the most basic, companies typically require employees to **report conflicts of interest when they occur**. UA34 reminds that “for the disclosure of the conflicts, one shall not wait to the ethical certification”. Reporting of conflicts of interest can be followed by internal **disclosure of decisions** taken to tackle the conflicts. For example, RU12 reports that managerial decisions that follow disclosed conflicts of interest shall be presented in quarterly managers' reports.

Box 7.4. Conflict-of-interest management at BP Exploration – Caspian Sea Ltd (GE5)

The company (BP Exploration – Caspian Sea Ltd, Georgia) describes training, counselling, registration, and reporting obligations and opportunities in the management of conflicts of interest:

“Existing employees must refresh their ethics and compliance training every three years by completing computer-based training on the code of conduct, conflicts of interest and anti-bribery and corruption. BP Georgia has a dedicated ethics and compliance officer, who reports into a regional team located in Azerbaijan to maintain independence. The officer’s role is to oversee the implementation of the code, including training, and support staff with queries that arise. The officer receives questions about what is permissible under the code, covering topics such as whether it is acceptable or not to receive or provide gifts or entertainment, or concerns about potential conflicts of interest. We maintain registers on these topics. Approximately 20 individuals registered potential conflicts of interest in 2013, and 52 entries were logged registering gifts received, declined, or given. The key elements in this are transparency and preventing conflicts from arising. [...] Our code of conduct recognizes that conflicts of interest may legitimately arise but requires for any potential conflict to be reported and satisfactorily resolved, involving discussion with management on the appropriate course of action. [...] We encourage our people to discuss any potential problems with their line manager, HR or legal department representative, or the in-house ethics and compliance officer. Once a year, employees are asked to confirm that they have complied with the code, making a selfdeclaration as part of their end of year performance review processes.”

Source: Quoted from: BP Georgia, 2014, p.19;

https://www.unglobalcompact.org/system/attachments/cop_2014/92841/original/BP-Publication-2014-15.05.pdf?1404300515.

Box 7.5. Conflict-of-interest policy of Erste Bank a.d. Novi Sad (RS17)

The bank monitors conflicts of interest arising from ordinary activities in which the participants are aware of the consequences and conflicts of interest in which the participants engage intentionally and which lead to corruption.

In connection with the fight against corruption activities, the bank has adopted a series of policies and procedures of Erste Group:

- Policy on conflicts of interest, Manual for managing conflicts of interest, Policy on gifts
- Guidelines for the prevention of corruption – in the framework of the program for the protection of competition
- Rules for the prevention of money laundering, on the basis of which the AML program has been implemented
- Banking Code of Conduct
- Code of Ethics for employees, adopted at the the level of the bank in Serbia.

Compliance regulations do not deal directly with preventing corruption but rather through preventing conflicts of interest which, if committed knowingly and with intent, indicate corruption. Two types of conflicts of interest that could indicate corruption have been distinguished: internal, which refers to bank employees, and external, which refers to customers and business partners.

Internal conflict of interest that may indicate corruption is defined as any conflict that may arise, among other things, as the difference between private and work interests of the employee, where the private interest expressed in money, while work interests expressed as loyalty to the employer, respect for clients, application of and compliance with all regulations, preserving the reputation of the employer and their own reputation, etc.

Mechanisms to diminish this kind of conflicts of interest are raising the awareness of employees about organizational culture and policies of the bank in connection with the commission of these offenses, then pointing out to the consequences in the event of the occurrence of them, mandatory reporting of private business activities of all employees and their analysis in the area of conflict of interest, the possibility of reporting on the perpetrators or suspected perpetrators through whistleblower policy, the application of gifts policy, and control in the field of financial crime risk management.

Under external conflict of interest that may indicate corruption, the bank sees a conflict of interest of the client (or other business partner) between the private interest for savings, favourable conditions, easier and faster way to obtain money in general and the interests of fair dealing, compliance with regulations, compliance with banking institutions, etc. Mechanisms to diminish this kind of conflicts of interest are primarily the analysis of reputational risk

in conjunction with the client and again raising awareness of employees about avoiding these types of conflicts of interest, as well as the counselling of employees on the transfer of activities that can lead to conflict of interests to other organizational units where the conflict cannot arise or at least can be controlled, training on the consequences and importance of reporting suspected perpetrators, the implementation of gifts policy, control in the field of financial crime risk management, mandatory use of an independent tendering model for the evaluation of the suppliers, etc.

Training in this area is an important part of the management system of reputational and conflict-of-interest risks of the bank, as it contributes to raising awareness and strengthening internal capacity necessary for the prevention of corruption.

Source: Quoted from: Erste Bank a.d. Novi Sad, 2014, pp. 32, 33;

https://www.unglobalcompact.org/system/attachments/cop_2014/96561/original/Banka_to_su_ljudi!_Erste_Bank_a.d._Novi_Sad_Izve%C5%A1taj_o_dru%C5%A1tveno_odgovornom_poslovanju_za_2013._godinu.pdf?1405508300.

Box 7.6. Swedbank Group: Conflict of interest policy and requirements in different areas of business

The Conflict of Interest Policy of Swedbank Group (mainly operating in **Estonia, Latvia, Lithuania, and Sweden**) requires that each employee and relevant person is aware of the possibility for conflict of interest situations to arise. The policy provides guidance in identifying such situations, prohibits certain agreements between the bank and certain persons, for example, a member of the board, defines responsibilities of a manager in handling conflicts of interest of employees in his/her area of responsibility, sets restrictions of the flow of sensitive information between different parts of the Group, envisages the disqualification of an employee if a risk of being suspected of a conflict of interest exists, requires to obtain approval for external assignment outside employment, sets reporting and disclosure requirements, addresses contingencies related inducements (payments or other benefits) given or received by the Group in relation to a product or service provided, etc.

In particular the Policy provides guidance by a non-exhaustive list of examples of typical conflicts of interest in different areas of business:

For example, when providing investment research, one shall consider:

- the Group's corporate customers, for example, seeking to issue financial instruments at the best possible price
- the Group's interests in managing its proprietary trading positions
- the Group's portfolio management and fund management operations, which seek to maintain the best possible performance
- the Group and its affiliates as issuers/providers of financial instruments, and
- an improper timing consideration, since a person who receives an investment research report ahead of others may have the opportunity to act before it has an effect on the price of the financial instrument.

When conducting **portfolio management and fund management**, one shall consider:

- the Group's customers seeking to issue or acquire financial instruments at the best possible price, or to achieve other strategic goals
- the Group's interests in managing its proprietary trading positions
- the Group's and its affiliates interests as issuers/providers of financial instruments, and
- improper timing or allocation considerations, since the manner in which transactions are executed or allocated can be used to give an unfair advantage to certain funds and customers at the expense of others.

When conducting **corporate finance services**, one shall consider:

- the interests of other customers of the Group, whether they are investors or competitors of the customer in question
- the Group's issuance of investment research and provision of investment advice
- the Group's interests in managing its proprietary trading positions, and
- the interests of employees and relevant person in personal account dealings.

Related policies of the Swedbank Group are the Anti-corruption Policy and the Code of Ethics.

Source: Documents provided by Swedbank in May 2015.

7.2.4. Standards on gifts and other benefits

It is common for companies to have rules on gifts, hospitalities and other benefits. Often such rules begin with the reiteration of the no-bribe and/or no other illegal benefits principle (for example, companies HR5, HR13 and LT 21). Companies rarely have an absolute prohibition for their employees to accept any gifts.

Typically the acceptance of gifts or other benefits (hospitalities, entertainment, special privileges or discounts) is tied with certain **conditions**, which can be expressed in different ways. A not so common approach is to define value thresholds. For example, the company RU19 reports that there is a maximum cost of gifts (or services) that may be received. The company RU12 sets the approximate value of no more than three thousand Russian roubles and has a strict prohibition of the acceptance of cash gifts. The limit at companies HR5 and RS13 is 50EUR, at the company HR13 – EUR 55.

Examples of **other conditions and criteria** for the admissibility of gifts vary from rather general to specific: no “inappropriate” or improper gifts (LT21), only “adequate” and only related to legitimate business purposes (LT25), within boundaries of accepted business practices, for example, representation items and reasonable hospitality given in the ordinary course of business (HR5, RS13), may not be gained with a hint to the giver or be otherwise requested (LT27), may not invoke ungrounded obligations (LT27), may not contribute to the violation of labour discipline (LT27), no gifts that might appear to place employees under obligation or influence decisions (BG2, RS13), only symbolic, cheap gifts, for example, calendars (RS15), only when presented to the entire organization as a culturally appropriate memento or token of appreciation (as long as the value does not exceed USD 20) (AM6). The company BG2 also prohibits improper personal benefits for the family members of employees if such result from association with the company (also the policy of the company HR13 covers immediate relatives of employees).

Similarly **giving** of gifts to other persons is usually not subject to an absolute prohibition. Some companies, for example, RS13 and RU19 set the maximum value limit for gifts given in the same way as they limit gifts received. Also the other criteria mentioned above can be applicable not only to accepting but also to giving gifts. Moreover companies may have rules and guidance for gift giving so as not to violate anti-corruption laws (LT21). There is often no distinction regarding whether gifts are received within relations with other private parties or with public entities. However, some companies, for example, HR5 has a stricter standard with regard to giving gifts **to government employees or public officials** (only symbolic gifts of insignificant monetary value if permitted by law). (Tele 2 d.o.o., 2014)

A few companies report **specific mechanisms** for handling gifts that might invoke risks. For example, the company RU12 admits that a refusal to accept an expensive gift may have negative consequences and requires that an employee notifies “the Compliance Service about his or her decision to accept the gift in an established form no later than the following business day. The Compliance Service shall review the request and make a decision on approval or declining the gift. The Company’s Compliance Directorate shall keep a register of approved gifts.” (Uralsib, 2014: 105) The company HR13 requires employees to return all gifts in excess of EUR55 and report the gifts immediately to the supervisor. The company RU19 refers to its practice to **inform** employees regularly about gifts that are permitted according to the legislation, officials that may be presented with gifts, and requirements of gift-receiving/giving procedures.

7.2.5. Requirements to partners

Under specific circumstances anti-corruption legislation may make companies liable for corrupt acts committed by third parties. There are different kinds of relevant third parties in this context – suppliers of goods and/or services, clients of company's services, affiliated and subsidiary companies and so on. In COPs companies most often report on measures focusing on suppliers.

Many companies report that, at least in principle, they pose **integrity as a condition** that should be fulfilled by their business partners. In many of the reports, it is expressed in general terms, for example, the company MK13 states that it has an internal process for the application of specific aspects of the company's ethics policy to its suppliers. The company HR17 refers to its purchasing guidelines that require suppliers to act with integrity and comply with laws "including the prohibition of giving or receiving bribe or personal payment". The company UA25 refers to its Code of Ethics of Purchases and Relations with Partners. The company expects suppliers and partners to comply with all requirements of Ukrainian and international legislation in the area of tax and financial accountability as well as in relations with state authorities.

Special **anti-corruption clauses or agreements** are the practical means to impose conditions on third parties. The company RO1 made it mandatory in 2013 that all supplier contracts contain an obligation for suppliers to follow the principles of its Code of Conduct. In some cases, the company RU1 requires signing of an anti-corruption reservation with an obligation not to participate in corruption schemes as a complementary agreement to contracts with its counterparts. Interestingly, the company reports that such agreements are concluded mainly with state bodies, regional administrative structures as well as with third parties that interact with public officials on behalf of the company RU1. Also the company UA30 reports including anti-corruption norms in all contracts and a procedure of constant inspection of contractors in order to minimize the risk of company's involvement in corruption.

The company RU8 has provided a description of the **internal organization** for the integration of anti-bribery and anti-corruption requirements in the contracting processes.

The Legal Directorate shall monitor any changes in standard contract clauses which specify company anti-bribery and corruption requirements; and
The company Supply Chain Manager shall ensure that standard company contracts contain such clauses and that controls established by this Procedure are effectively integrated into the company contracting and procurement processes.
The Business Assurance Committee shall review monitoring results for compliance with anti-bribery and corruption requirements. (Sakhalin Energy Investment Company Ltd., 2014: 38)

A few companies provide some detail on how they gather data about the partners. A relatively simple means is **questionnaires**, for example, the company HR1 requires suppliers to fill pre-qualification questionnaires where they shall declare "the management system certificates they possess, possible debts to the state, as well as the respect for human and labour rights and attitude towards the environment and corruption". The company RO1 has introduced a business ethics and human rights questionnaire as part of its supplier audit (it also uses corporate social responsibility and compliance questionnaires for suppliers).

The compliance process with regard to suppliers can be arranged in the form of **certification** of trusted partners as done, for example, by HR3, which also reports such compliance tools with regard to third parties as the anti-corruption letter and anti-bribery clause in agreements.

Suppliers can also be subject to **auditing**. For example, Kesko uses the BSCI process and in 2013 suppliers' factories and farms were subject to 81 full audits and 25 re-audits. Kesko has a supplier monitoring database where "information on supplier audits, certifications and monitoring visits to suppliers in high-risk countries is saved alongside their respective risk ratings". (Kesko, 2014: 94) In 2013, the company RO1 carried out 14 compliance visits to potential suppliers and selected eleven of its 190 "A suppliers" for comprehensive audits.

Companies can also use **international mechanisms** for gathering relevant information on suppliers, for example, LT31 reported joining the global Supplier Ethical Data Exchange (SEDEX). The company reports that joining this system allows it to strengthen ethical and responsible business, create strong relations with suppliers, and improve the image by reducing risk and acquiring competitive advantage (see more on SEDEX in the Box 7.7). Kesko uses international assessment systems BSCI auditing and SA8000 certification for supplier audits in high-risk countries. (Kesko, 2014: 149, 209)

Box 7.7. The Supplier Ethical Data Exchange (Sedex)

Sedex "is a not for profit membership organisation dedicated to driving improvements in responsible and ethical business practices in global supply chains". "Our core product is a secure, online database which allows members to store, share and report on information on four key areas:

- labour standards
- health & safety
- the environment
- business ethics.

For buyers – Sedex offers an electronic system for collecting and analysing information on ethical and responsible business practices in your supply chain.

A variety of reporting tools enables you to keep track of your suppliers' performance and you will also have access to an advanced Risk Assessment Tool that we have developed with our partner, Maplecroft.

For suppliers – Sedex provides an efficient and cost effective way of sharing ethical information with multiple customers, helping cut down on unnecessary paperwork and saving you time and money. Suppliers complete one self assessment questionnaire and can choose to share this with multiple customers on Sedex, along with any other relevant ethical information, such as audit reports and certifications.

The Sedex system is secure and confidential and suppliers have complete control over who can view their data.

By allowing suppliers to share the same data with many customers, Sedex helps reduce the need for multiple audits, allowing both parties to concentrate on making real improvements."

Source: Quoted from: Sedex, n.d.; www.sedexglobal.com/about-sedex/what-we-do/.

TeliaSonera mentions suppliers due diligence process with "screening, supplier evaluation, compliance monitoring and training". The company provides requirements and guidelines that can be incorporated in the operations of local companies. TeliaSonera published a rather detailed description of supplier evaluation with a mention of difficulties in particular related to the establishment of beneficial owners of certain companies with minority ownership in local operations.

New process for risk identification and supplier evaluation: During the year, we developed a new tool for identifying risk within all sustainability areas. The tool will be used at the start of each procurement process.

If there is an indication of high risk in any sustainability area, the supplier will be asked to complete a self-assessment questionnaire. This self-assessment is provided by an external party, EcoVadis, which scores the supplier's performance based on their answers and

supporting documentation. Each supplier must achieve a certain score to continue in the procurement process.

In the case where no suppliers have achieved a sufficient rating, in order to continue the procurement process the selected supplier will need to be granted an exception from the CPO. An exception will be accompanied by a set of corrective actions that the supplier must complete.

If a high corruption risk is identified, the supplier will also undergo a specific anti-corruption due diligence process aimed at identifying politically exposed persons as well as blacklisted, criminal or fraudulent persons and companies.

During 2014, we carried out screening of existing suppliers using EcoVadis. We achieved the goal of screening, or initialized screening of, suppliers corresponding to 80 percent of yearly spend in the Nordic countries, and suppliers in Eurasia with yearly spend of over USD 100,000.

At the end of the year, approximately 1,600 supplier code compliance deviations had been identified among suppliers who were transparent in disclosing information, and willing to improve their work. A deviation is a gap identified vis-à-vis the supplier code and the supplier's performance. Deviations need to be corrected in order for TeliaSonera to continue doing business with the supplier.

A big problem remains with the suppliers, often in Eurasia, who do not want to be transparent. We have yet to decide how to handle these suppliers. (Telia Sonera, 2015: 84)

SEB Bank (LT26) is one of the few companies whose COP mentions measures taken to ensure compliance in companies where the participant invests. The company reports a two-tiered approach, which consists of proactive thematic engagements in collaboration with other investors and individual dialogues with companies regarding areas of improvement of environmental, social and governance aspects. SEB held 239 dialogues with portfolio companies in 2014. The company also collaborates with a number of international investors within the PRI Clearinghouse on the theme of anti-corruption. (SEB, 2015: 24, 50)

7.2.6. Procurement

Apart from setting requirements for suppliers, companies also develop and implement procedures to ensure fair and efficient procurement of goods and services. Companies commonly report having procurement procedures although provided details are rather scarce. For example, the company RS1 reports that “relations with suppliers and contractors are systemized through Purchasing Procedures (ISO 9001), and the Code of Conduct for Procurement”. The company LT4 reports having a unified procurement methodology and specifies only the principles thereof – selection transparency, objectiveness, and free competition. Companies state that their tender procedures are transparent (UA1, UA32), clear and in line with the legislation (UA1) and exclude the possibility of corrupt schemes (UA17). Transparency considerations can be placed along efficient spending and competition promotion purposes as in the case of the company UA30, which has a policy on procurement activities and regulations for selection of suppliers.

There is generally scarce information on **selection criteria** that companies use for the suppliers. The company MK9 selects suppliers from at least three offers based on the best-offer criteria. The company

UA25 guarantees equal treatment of its suppliers (similar to UA30), which are selected based on the following criteria: financial conditions (price, payment conditions, etc), corporate governance and quality of work. The company UA30 claims to carry out more than 90% of procurement based on tenders.

A few companies describe how they ensure transparency of procurement by **publication**. The company KZ8 published in 2012 on its website and on websites of its daughter and dependent companies full information about goods and services planned for purchase in 2012-2016. The company UA9 publishes on its website information about conditions of participation and terms of performing tenders. Also the company UA30 publishes on its website principles of cooperation under the section “Purchases”. The company BG4 is one of the few that reports publishing actual calls for bids on its website. BG4 also reports including an anti-corruption statement in publications and correspondence with candidate bidders, which warn against attempts of influence through corruption. The statement includes also a reference to consequences – dismissal of involved company officials and termination of contracts.

A few companies describe particular **procurement units**. For example, since 2005 the company UA9 employs the Tender Committee allowing for transparent selection of suppliers. The Tender Committee is a permanent collegial body with the task to ensure effective spending of funds for the purchase of goods, materials, works and services by setting the most advantageous terms of contract on the basis of tender analysis of price, quality and delivery terms. The chairman and members of the Tender Committee are personally liable for violations committed during the preparation of the tender, the correctness and objectivity of decisions, non-compliance with requirements for the authenticity and security of confidential information. Decisions of the Tender Committee serve as the basis for the conclusion of contract. The company MK6 has set up continuously functioning supply committees composed of two hierarchical levels. One of the committees contains top management members and the other one – employees from various levels and departments. The reported purpose of this spread of responsibility is increased transparency and openness for new suppliers.

Procurement is an area where in some jurisdictions significantly different procedures apply to **state- or municipal-owned enterprises**, namely, they may be to a larger or lesser degree subject to public procurement requirements. For example, the municipality-owned company LT14 reports purchasing goods, services and works according to the Law on Public Procurement and the respective procedure of the company. In the company, procurement shall be carried out according to the principles common for public procurement: “Equality, non-discrimination, mutual recognition, proportionality, transparency and confidentiality.” Moreover the company reports that responsible persons who participate in procurement processes shall sign a declaration of impartiality and pledge of confidentiality. The company LT19 uses the electronic Central Public Procurement Information System for more than 90% of the value of its procurement procedures.

7.2.7. Disclosure and transparency

In all countries of the ACN region, companies are obliged to disclose certain types of information, for example, owners, governance structure, financial performance and so on depending on the particular jurisdiction. Stricter transparency requirements apply to particular types of companies, for example, banks and other providers of financial services and publicly listed companies. This chapter looks into transparency measures that companies consider relevant for reporting in the integrity/ anti-corruption context. These include disclosure of information both more generally about owners, management, operations, and financial performance of the company as well as more particularly about anti-corruption measures.

Transparency of companies brings several benefits. Disclosure of information about the company's organization, financial results and integrity policies strengthens its reputation and makes it more attractive for cooperation with reputable partners. Transparency makes the business environment more predictable and hence encourages investment and growth. Moreover transparency is a way to assure the public that the company operates in an ethical and socially responsible way – an important aspect particularly in democracies where public perceptions of the business can bear strong influence on regulatory policies. The area of disclosures sees the introduction of new public standards, for example, the recent Directive 2014/95/EU on disclosure of non-financial and diversity information by certain large undertakings and groups as well as EU disclosure requirements for extractive companies. The Dodd-Frank Act of the United States requires reporting of payments to governments by extractive companies on the US stock exchange. (Kowalczyk-Hoyer and Côté-Freeman, 2013: 8)

A study by Transparency International of a hundred major emerging market companies focused on how companies report on their anti-corruption programs, organization and country-by-country reporting (that is, reporting by companies with international operations in each of the countries where they operate). Reporting on anti-corruption programmes was analysed along 13 questions from stated “compliance with laws” (79 out of 100 companies earned a full point on this question) to prohibition of facilitation payments (only 5 companies earned a full point). Organizational transparency was measured with eight questions – from disclosure of the full list of the company's fully consolidated material subsidiaries to the disclosure of countries of operations of its non-fully consolidated material holdings (including associated companies, joint ventures, entities consolidated by equity method). On average the companies scored 4.3 out of possible 8 points (with five companies scoring 100% and eleven companies scoring zero). Country-by-country disclosure was measured with five questions such as whether the company discloses its revenues/sales in each country of the company's operations where the average score was mere 9% (38 companies scored zero). (Kowalczyk-Hoyer and Côté-Freeman, 2013)

Commitment and transparency reports: Numerous companies express their commitment to transparency in various forms. A few of the companies commit to full transparency by claiming to publicize “all the plans and activities” (the company AM4) or ensure full openness and access to information not classified as commercial secret (the company RU10). The AccessBank of Azerbaijan (AZ3) claims to demonstrate its commitment to transparency by “going beyond normal disclosure” and also mentions advantages of transparency – better interest rates for the bank and international recognition. The company UA4 claims to publish full information (performance results, structure of corporate management, owners) about the bank on its website. The company MK1 claims transparency in relations with stakeholders – suppliers, buyers, customers and public institutions.

A couple of international companies with presence in the ACN region publish transparency reports. Grant Thornton International (AM3) disseminates the Transparency Report, which is said to introduce annual accomplishments and areas of interest or concern under chapters titled “Quality control systems”, “Independence practices”, “Quality people” and others. TeliaSonera released its first transparency report in 2014 with “statistics on the number of requests from authorities in Finland and Sweden upon TeliaSonera to hand over personal data, as well as information on unconventional requests and demands throughout the group”. (Telia Sonera, 2015: 76)

There are also companies that refer to stock exchange regulations that require a high level of transparency and publication of business information for shareholders, investors and the business community (the company HR25, also HR24). Kesko reports on its compliance with the Finnish Corporate Governance Code for Listed Companies and annual internet publication of a Corporate Governance Statement and a Remuneration Statement.

Financial disclosure: Some companies report particularly that they ensure transparency of data of financial character. Some of such reports refer to financial information in general, for example, the company GE4 reports that it “has transparent financial management and displays its financial highlights audited by independent international auditors on its website as well as through mass media”. Other reports refer to more specific disclosures. For example, the company BG11 reports to the National Institute of Statistics the actual prices of real estate transactions carried out by the company.

Transparency of donations: A further category of disclosed information is data on donations. There are reports that simply claim full transparency in the area of donating (BG10) or more specific indications that such information is published in press releases, company newsletter and annual activity report (BG4).

Information on violations: A rare description of detected dishonest practice and sanctioning is found in the report by the company RU6: “During the year, the main type of corruption identified within our business was limited to minor fraud instances relating to purchasing, equipment inventory, supplier lobbying and the quality of materials and equipment. Eleven of our managers were dismissed and three were sanctioned for fraudulent activities. None of these cases had a material impact on our financial position or operations, and no court cases relating to corruption were brought against the Company or any of our employees.” (Polymetal International PLC, 2015: 34) TeliaSonera discloses general information about investigations and malpractice in the context of whistleblowing (see Box 7.8). The company HR4 reported that the person for handling irregularity reports received eight reports in 2013, which were followed up according to regulations. The company noted an increase of such reports compared to earlier years.

However, disclosure of information about the practice of internal investigations and detected wrongdoings is rare. The company GE5 reports regarding the provision of information on issues related to the code of conduct, breaches or instances of corruption the following.

Breaches of the code of conduct or instances of corruption are rare, and likely to be highly sensitive or even subject to legal proceedings. As a result, our reporting remains focused on the processes we follow to apply and adhere to the code, rather than on particular cases or examples which are confidential and which might be managed at a regional or group level. We do, however, provide information on issues such as conflicts of interest and gifts and entertainment, and we also indicate whether disciplinary processes, including termination, have occurred. (BP Georgia, 2014: 37)

Communication with customers: A number of companies do not (or do not only) commit to transparency in general but rather emphasise the disclosure of information that is relevant for their customers. The bank AZ3 has reported its interest rates to the online resource MFTransparency allowing the effective rates to be compared with those of local competitors and with international levels. The company has been audited by the SMART Campaign for Client Protection. The company BG17 has developed and disseminated the document “12 Principles of Loyal Communication with our Customers” as part of fulfilling its policy of transparency and achieving customer satisfaction. The company UA18 cites transparent price formation as a means to prevent corruption possibilities among its employees. The bank KZ9 mentions being one of the first active users of online communication and social media in relations with clients in its country.

Communication with the media: Although communication with the media is not a common topic in COPs regarding anti-corruption, a few companies report cooperation with the media as one of the relevant types of activities. For example, the company AM4 mentions organizing press conferences and

issuing press releases. Also the bank KZ9 emphasises effective cooperation with the media, for which it uses the corporate website, newsletters, press conferences and presentations.

Material information: In the context of information management, relevant was the planned action reported by the company HR24 to develop an internal manual on handling material information (defined as yet unpublished or otherwise generally unavailable facts or information) in order to deter improper insider trading and comply with securities legislation and guidelines.

7.2.8. Political contributions

A number of companies have set upon themselves either absolute bans or restrictions on political contributions. Some of the companies with strict no-donation policies even operate in jurisdictions where corporate donations to political parties or individual election candidates are legal.

Moreover a few companies define also other categories of organizations and persons to whom no donations are provided. The principles of the company LT21 do not allow “for the support and funding of political parties, military organizations, organizations representing a single religion and persons who look for individual support.” (Lietuvos Draudimas, 2014: 11) The regulations of the company RS10 require refraining from the provision of donations and sponsorships to political parties and related organizations, political movements and their organizational units, trade union organizations, competent bodies and institutions. The stated reason for the ban is avoidance of a privileged position of the bank or unjust decisions for its benefit. (Banka Intesa, 2014: 19) Another company is even stricter in committing „not to provide any material or non-material support to any political party or candidate, on national or local level” (the company HR25). (Dukat Dairy Industry Inc, 2015: 27) A similar comprehensive commitment is expressed in the policy of TeliaSonera: “According to the sponsoring and donations policy no financial or in-kind support to support political parties, their representatives, or candidates for office is permitted. We are implementing controls for assessing and ensuring that our sponsoring and donations are not used or interpreted as a substitute for political payments or bribery.” (Telia Sonera, 2015: 191) There are also other companies that claim not to provide donations to political parties, for example, the companies BA2, BG12, BG20, and HR13. The company BA2 is not “to be sponsor or donor of any kind of political activity within the country or in the world”. (BH Telecom d.d. Sarajevo, n.d.: 10)

The company MK13 claims generally that it does not participate in the activities of political parties. Similarly the company MK9 claims not to support any ideological propaganda and not to work for any religious or political organizations.

Other companies are somewhat more permissive. Thus Carlsberg Group commits not to award political contributions and donations for the obtaining of improper business advantage (LT25), which at least in principle allow for such contributions when not made for improper advantage. Kesko provides equal opportunities for parties and candidates to arrange campaign events in yards and entrance halls of its stores. Kesko may also participate in policy seminars organized by political parties but it has a no-monetary-donations policy with regard to parties. In 2013, Kesko paid approx. EUR 5,000 in seminar attendance fees and advertising in party newspapers. (Kesko, 2014: 212)

7.2.9. Integrity compliance units/ officers

Companies may have dedicated internal units or officers who are in charge of integrity-related issues. These take a great variety. A common option is a **compliance service or department** (for example, at the company RU19). Tasks of such service or department may be monitoring compliance of employees

with the internal rules and legislation (for example, at the company AZ2), handling the settlement of conflicts of interest (for example, at the company RU14), and carrying out internal legal audits (dawn raids) (for example, at the company HR3). Other names can be used as well, for example, the company RU5 has the Commission on Business Ethics with responsibilities including the implementation of rules and standards, checks on their proper implementation, the development of recommendations concerning business ethics, and monitoring the impact of the Code of Business Ethics on the performance of company employees. The Business Compliance Control Service of the company RS19, among other things, also resolves complaints by clients, carries out training of employees, deals with regulation regarding obligations under the U.S. Foreign Account Tax Compliance Act.

Other companies report the existence of **individual compliance officers** (for example, the companies HR4, HR6, RU16). The ethics and compliance officer of the company GE5 reports to a regional team located in another country to maintain independence. The officer oversees the implementation of the code of conduct, supports staff with their queries and “receives questions about what is permissible under the code, covering topics such as whether it is acceptable or not to receive or provide gifts or entertainment, or concerns about potential conflicts of interest”. The Compliance Officer of the company HR6 investigates complaints or anonymous reports on significant irregularities, illegal and/or unethical conduct. He or she shall ensure independent investigation and follow-up activities.

It is also common to refer to **both compliance units and responsible individuals** (HR15, RO1, UA32 group and others), for example, the company RU12 has a compliance service and an appointed responsible person for preventive anti-corruption measures. The company HR3 refers to both the Compliance Legal Department and the chief compliance officer. The company RO1 has local compliance officers and the Corporate Affairs and Compliance Department.

In other companies, a **risk management** department and risk management officers (LT21) may have responsibilities for the elimination of bribery, corruption and fraud (GE1). Another variety is **internal control and/or supervision departments, committees or officers** (KZ7, LT19) with an apparent emphasis on the supervision element in compliance. The names of the relevant units in some companies combine the internal control and audit functions (RU4, RU9), and the security function, for example, the Prevention and Security Department in the company LT23. Security departments are typically responsible not just for handling possible cases of non-compliance of employees but a wider range of threats (including IT, physical security, and theft). The company BG8 has a unit within the process “Security management” – “Countering bad practices”, which monitors compliance with the anti-corruption policy and prevents corrupt practices.

There are instances of **multi-level and multi-unit arrangements**. According to the report of the company HR15, based on the assessment of risks, “the Business Compliance Department develops an annual program and takes appropriate action presented to the Business Compliance Committee, Management, and Audit of the Supervisory Board. The Compliance Officer is responsible for implementing the compliance program.” In the company RU8, “the Finance Controller in collaboration with the Governance, Risk and Assurance Manager is required to ensure that Sakhalin Energy employees are made aware of [the Anti-Bribery and Corruption] Procedure (including through training sessions) and that the [...] Procedure is complied with by all employees. Furthermore, the company Legal Directorate will consult employees on anti-bribery/corruption legal requirements and the legal risks associated with non-compliance.” (Sakhalin Energy Investment Company Ltd., 2014: 38) The Procedure envisages reporting the Business Assurance Committee, which shall, among other things, review monitoring results for compliance with anti-bribery and corruption requirements. At the company UA32 compliance officers report regularly to the Audit Committee and the Ethics Committee (this includes top managers of the company).

TeliaSonera has the Sustainability and Ethics Committee and the Group Ethics and Compliance Office. The Sustainability and Ethics Committee in 2014 carried out the following activities.

- map and review of the status of ongoing ethics, compliance and sustainability initiatives in TeliaSonera
- establish a vision of leadership in sustainability
- review of the development of the group ethics and compliance function, including forensic capabilities
- approval of the sustainability priority action plan and regular follow-up, with special attention on the anticorruption program status and actions, including e.g. corruption risk-assessment by country, instructions and training, whistle-blowing tools, etc.
- reviews of sustainability-related risks in the quarterly risk reports
- follow-up of the compliance with the OECD Guidelines for Multinational Enterprises
- review of TeliaSonera's external sustainability reporting. (Telia Sonera, 2015: 49)

The Group Ethics and Compliance Office (GECO) participates in monitoring the most significant risk areas and “has the overall responsibility of ensuring a systematic and consistent approach to managing ethical and legal requirements, compliance and risks”. The GECO includes the Special Investigations Office “responsible for ensuring that group-wide consistent standards are followed with regards to investigations and disciplinary actions as well as case management and reporting of cases”. In 2014, the GECO “initiated a revision of the Code of Ethics and Conduct and all policies and instructions”. There are also a number of country Ethics and Compliance Officers. The Chief Ethics and Compliance Officer makes an annual plan for the anti-corruption program.

The company RU8 has:

- Governance, Risk and Assurance Manager (ensures among employees ensures awareness about and compliance with the anti-bribery and corruption procedures (together with the Finance Controller))
- Business Assurance Committee (receives reports and reviews monitoring results for compliance)
- Legal Directorate (consults employees on anti-corruption legal requirement and risks of non-compliance as well as monitors changes in standard contract clauses on anti-bribery and corruption requirements)
- Supply Chain manager (ensures that standard company contracts contain anti-bribery and corruption clauses and ensures that anti-corruption controls are integrated into contracting and procurement processes). (Sakhalin Energy Investment Company Ltd., 2014: 38)

One of the companies (KZ3) has created an **anti-corruption council** with tasks to monitor cases of corruption, coordinate anti-corruption actions in the subsidiaries of the company, prepare recommendations for systematic anti-corruption measures, etc. The report of HR1 also mentions the Ethics Council as well as workshops for managers, trade union/Work Council representatives & ethics officers held by the president of the Ethics Council. Another not so common type of institution is **ombudsman** with authority in integrity matters (KZ8).

7.2.10. Monitoring, internal control and investigations

The enforcement of an anti-corruption/ compliance program requires that effort is made to supervise operations where corrupt acts are possible. COPs of some companies describe monitoring activities that can take various forms:

- warning systems of internal violations and monitoring of the so-called red flags (for example, the companies AM4 and RU8)
- cross interviews with employees to make sure corruption is not practiced (for example, the company AZ2)
- independence compliance confirmation that all employees shall complete on-line (BG16 and HR14 – both Deloitte)
- surveys to gauge business practice with regard to ethics, fraud and related issues (BG16 and RS16 – both Deloitte, LT24, UA32)
- verification of compliance with anti-corruption procedures (RU1) or as stated in the COP of the company RS16 (Deloitte): “A practice review program to measure compliance with global ethics policies and encourage collaborative discussions and continuous improvement over time” (Deloitte Serbia, 2015: 10)
- quarterly compliance review boards to discuss compliance, which, according to the COP “result in regular improvements of the processes directed to assure compliant and ethical business” (Siemens d.o.o. Ljubljana, 2014)
- monitoring of media publications on fraud and corruption related to officials and employees of the company and its subsidiaries (KZ4).

The COP of the company HR4 describes the organization of the compliance monitoring function, which is set up in all structural units independently from the business activities where risk is possible. The company has regulations on compliance monitoring, which define duties for all employees as well as persons responsible for compliance with laws, regulations, policies, standards and procedures. Compliance monitoring is carried out by the responsible persons and their deputies, together with expert co-workers in accordance with an annual plan and by order of the board. The compliance monitoring function also participates in adjusting internal documents of the company in line with changes in the regulatory framework and contributes to the assessment of new products and procedures. (Hrvatska banka za obnovu i razvitak, 2014: 37)

The majority of the above measures tend to emphasise the communication aspect of monitoring – conversations and discussions with employees in different formats as well as surveys and commitments (confirmation). However, companies also monitor the internal situation, ensure internal control and carry out investigative actions to identify and remedy particular irregularities.

The company UA32 analyses data on incoming reports to its Trust Line in order to monitor the efficiency of anti-corruption processes. The Box 7.8 shows how TeliaSonera uses information reported by whistleblowers for investigative follow-up. Internal investigations and procedures thereof are commonly mentioned in those COPs that provide rather detailed information. An example of such information is found in the COP by the company GE5: “Investigations into potential breaches of the code take place when necessary, conducted by [human resources], security or ethics and compliance officers as appropriate. A range of actions can result from these, such as changes to procedures and practices, disciplinary action up to and including dismissal, or termination of a supplier’s contract.” (BP Georgia, 2014: 19) The company AM4 mentions a process regulation “Implementation of Official Investigations” with a purpose to establish a unified procedure for the investigation of events, conditions and persons in breach of laws and company norms.

However, companies rarely publish quantitative or qualitative data on the internal investigations and their results. Information of internally detected irregularities is usually considered sensitive and its disclosure risky or outright damaging.

7.2.11. The role of audit in preventing corruption

Information of any specificity regarding how audit helps in preventing corruption is scarce. In a lot of cases companies merely note **the role of internal and/or external (international) audit** for financial transparency/ reporting (BG17, GE4, RU15), identification of suspicious (possibly corrupt) payments (UA3), transparency of activities (LT15), countering corruption (BA3, BG7, BG15, GE3, LV3, UA5, UA20), performance measurement (RU6), implementation of company policies (RO2) or other purposes. // or various violations more generally (RS2).

The companies also commonly describe the **units** that carry out audit internally. The company RU4 has created the Centre of Control and Internal Audit, which together with the Security Department carry out verifications of the financial-economic activity of branches, structural units and offices of the company and implement measures to prevent and detect facts of damage to the economic interests of the company.

In a few COPs, more specific descriptions of the role of audit in promoting integrity or countering corruption are found. A few companies describe the role of audit in **detecting violations**. The company HR3 reports about the Compliance Legal Department having conducted “125 internal legal audits (dawn raids) directed to executives of sensitive business areas in numerous countries in 2013. The audits addressed compliance matters including corruption and antitrust, among other topics.” (CEMEX, 2014: 75) Also the company UA12 reports that authorised employees of the internal audit department of the group (Carlsberg Group) review reports on violations and abuse. At TeliaSonera the Audit Committee is one of the units that receive consolidated case reports summarizing “matters relating to internal investigations, including whistleblowing cases registered for investigation, investigations requested by managers, and incidents investigated by Group Security. The reports included allegations of certain significance, progress on investigations and the final results of the investigations.” (Telia Sonera, 2015: 68, 69)

Another possibility to use audit is to **identify and assess risks**. The company BG8 has introduced maps of internal audit results, which include a section “Countering bad practices” with a system of indicators to measure the level of risk of 20 corrupt actions. At the company RS10, the internal audit monitors the adequacy of rules and compliance therewith. Upon identification of critical issues, the internal audit reports to respective units and supreme bodies of the bank in order to set measures to mitigate risks and ways of their materialization.

Another aspect of auditing reflected in some of the COPs is **auditing of compliance and ethics systems**. At the company RO1, KPMG audited and accredited the Compliance Management System, which was found “suitable to detect potential and actual compliance violations”. The company “carried out 13 internal compliance audits across the full range of business ethics issues. The internal audit team investigated several cases of suspected misconduct that were either detected via audits or reported to us directly.” (OMV Petrom, 2013: 76) The company UA12 reports having successfully undergone business ethics audit initiated by the headquarters of the group (Carlsberg Group). At Kesko the internal audit focuses on the efficiency of controls against malpractice and its “Board's Audit Committee evaluates the efficiency of Kesko's internal risk management system and, at its meetings, reviews the risk reports drawn up by the Group's risk management function. Kesko's internal audit function annually assesses the efficiency and effectiveness of Kesko's risk management system and reports that to the Board's Audit Committee.” (Kesko, 2014: 127) Also at TeliaSonera audit findings are one of the sources that inform what remedial actions are needed to fulfil the company's anti-corruption policy.

An interesting example is the company LT21, which has set a goal not to gain remarks by supervision institutions and/or auditors related to the management or any activity areas of the company.

7.2.12. Internal reporting

Internal reporting channels are essential to ensure monitoring of compliance within a company. Violations by company employees or by outside parties are often most visible to individuals who work near to the site of the event. In many cases compliance officers or managers would not learn about violations without receiving information from the employees who have been involved or near to those involved. For certain types of companies the law requires installing reporting procedures, for example, the Directive 2014/65/EU of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU obliges member states to “require investment firms, market operators, data reporting services providers, credit institutions in relation to investment services or activities and ancillary services, and branches of third-country firms to have in place appropriate procedures for their employees to report potential or actual infringements internally through a specific, independent and autonomous channel. (European Parliament and the Council, 2014)

Companies often want their employees to discuss existing or potential problems with line managers, human resource, legal or compliance units or officers. There can be dedicated officers and rules, for example, the company HR4 has an **authorized person** for handling irregularity reports and **regulations** on handling irregularity reports.

According to COPs the minimum policy on reporting that companies commonly employ is making reporting of corruption an **obligation** for the staff. For example, the company LT21 obliges employees to report to the Legal and Risk Management Department and to their management any attempts to bribe them. The company UA11 requires reporting any planned or executed corruption activity directly to the immediate superior or to higher leadership. With a different approach, the company UA25 defines reporting of a violation or suspected violation of company regulations as well as about suspicious accounts as a **right** of every employee.

For internal reporting of breaches of integrity requirements and other standards (for example, fraud – in the company LT25) **hotlines** are common. The UA32 group has introduced a single Trust Line for all companies of the group to collect reports by employees, suppliers and partners on violations of corporate ethics, abuse, fraud and corruption. Some companies have also **e-mail** addresses and other means for addressing the management (GE3 and UA25), for example, a form on the **intranet/ website** (RU19, UA25), or special **boxes** (UA25, UA32). Kesko reported the following.

Through Kesko's intranet, employees in all operating countries, except for Belarus, can give feedback and ask questions concerning operations not only in their own units but also directly to top management. Feedback can be given openly or anonymously. Through the intranet or by e-mail at IA (at) kesko.fi, employees can also contact Kesko's Internal Audit in confidence. In 2014, a new channel for reporting suspected malpractice will be taken in use in Kesko's Russian subsidiaries. The channel for suspected malpractice is a Russian-language channel through which the partners and employees of Kesko's Russian subsidiaries can report in confidence any suspicions of malpractice in Kesko's Russian subsidiaries. (Kesko, 2014: 142)

The company RU19 forwards information on “confirmed cases of corruption, findings and recommendations on each such case [...] to the Chairman of the Board”. (International Investment Bank, 2014: 15) Some companies also claim to encourage reporting by outside individuals (clients). For example, the company LT31 describes its website used to express “the company’s attitude to corruptive actions and provide contact information to be used in case of noticing any such actions of our employees”. (PakMarkas, UAB, 2014: 21)

Fewer companies report having **explicit procedures** on reporting, for example, in 2013 the company RU14 approved the Procedure for Notification of the Employer on Attempts to Involve Employees in Corruption, and Registration and Verification of Such Notices. Also the company LT24 mentions a procedure for notifications on conflicts of interest or ethics infringements.

Some companies tie the issue of reporting with **complaints** mechanisms, thus ostensibly expecting notices of corrupt practices from client. For example, the company BG13 reports having implemented a special procedure for dealing with complaints and installed a “24-hours call centre for questions, complaints and possible signals for corruption”. Also the company BG8 cites its mechanisms for proposals, signals and complaints as means to implement anti-corruption policies (dispatchers’ centre with an emergency phone, the single information centre and customer centres as well as the company’s procedure for the consideration and resolution of claims, complaints and proposals from physical and legal persons). The provided information does not tell how much of anti-corruption relevance these customer service arrangements possess in practice. It is also harder to say how strictly the companies adhere to the principle of anonymousness of the reports unless they have explicit whistleblower policies. The companies KZ1 and KZ2 report having hotlines through which everyone (apparently regardless of insider or outsider status) can report acts of corruption.

7.2.13. Whistleblower protection

Laws usually do not make it mandatory for companies to adopt policies to protect employees who report corruption or other malpractices. The Directive 2014/65/EU of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU requires that competent authorities establish effective mechanisms to enable reporting of potential or actual infringements, which shall include, among other things, secure communication channels for such reports, appropriate protection for employees who report at least against retaliation, discrimination or other types of unfair treatment and protection of the identity of both the person who reports and the natural person who is allegedly responsible for an infringement (unless such disclosure is required by national law in the context of further investigation or subsequent administrative or judicial proceedings. (European Parliament and the Council, 2014)

Within companies, the introduction of reporting channels is not always accompanied by explicit measures to protect those who report. At the most basic level protection is ensured by the guarantee of **confidentiality** (for example, the companies Kesko, RU1, UA11, UA25). However, some companies explicitly prohibit retaliation against employees who report (in good faith) suspected violations and envisage sanctions against those who retaliate (for example, the company KZ3). Another option is outsourcing the reporting channel to an outside company (for example, the company GE5) thus probably making it more immune against interference from the management. A few companies provide detailed information on solutions that they use for whistleblower protection.

Carlsberg Group, which is active in some ACN countries, for example, in Lithuania, Serbia and Ukraine, encourages employees and business partners who observe or suspect misconduct to speak up and choose the most appropriate channel depending on the circumstances: “First of all we encourage you to address this directly with the person involved. If this would not be appropriate, please Speak Up to your line manager, your HR representative, your local Legal Counsel, your compliance representative or your business partner. In case you believe that the matter cannot be dealt with through the normal channels, you are encouraged to use the Carlsberg Group Whistleblower System.” (EthicsPoint, n.d.) The whistleblower system is run by an independent company. The person who reports receives a “report key”, which allows him/her to access the report repeatedly to check if there is feedback or additional

questions without revealing his/her identity. The website provides the reporter with an online form depending on the type of violation to be reported, which guides the reporter to provide such data that allows for the proper review of the case.

TeliaSonera provides a similar whistleblowing solution, which can be accessed through a telephone line or website: “All reports submitted through the SpeakUp Line are directed to the Special Investigations Office, which consists of specially trained employees responsible for assessing and potentially initiating an investigation. The Special Investigations Office was established in 2014 as part of the Group Ethics and Compliance Office and is responsible for ensuring that group-wide consistent standards are followed with regards to investigations and disciplinary actions as well as case management and reporting of cases. Employees who file a report or raise a concern in good faith are protected by the non-retaliation instruction.” (Telia Sonera, 2015: 68) Also the company GE5 provides, among other channels, a possibility to report to the confidential 24-hours helpline “OpenTalk” operated by an independent company.

Box 7.8. TeliaSonera: whistle-blowing cases in 2014

During the year, cases were reported from almost all business units. The peak period in reporting was during the second and third quarter, most likely a result of the roll-out and local implementation schedule of the Speak-Up Line. The Speak-Up Line reports concerned HR related matters and breaches of the Code of Ethics and Conduct. Suspected incidents of conflict of interest, corruption, embezzlement, procurement fraud or other fraud were reported through the Speak-Up Line but also via e-mail or personally to managers or the Group Ethics and Compliance Office. Of the suspected incidents, 42 whistle-blowing cases were registered for investigation by the Special Investigations Office. Additionally, 19 investigations were requested by managers that came through normal, non-anonymous channels of reporting. The majority of cases investigated concerned region Eurasia.

Most cases were closed within the year. Disciplinary actions were decided by the ethics forum concerning seven employees in four business units following investigations into breaches of the Code of Ethics and Conduct and retaliation. One internal investigation conducted at Kcell in Kazakhstan required public announcement of the investigation as it involved senior level employees having engaged in potentially fraudulent actions. The employees are no longer with the company and the investigation has been handed over to the local general prosecutor.

Consolidated case reports were presented to the Audit Committee and Sustainability and Ethics Committee throughout the year. These case reports summarized matters relating to internal investigations, including whistleblowing cases registered for investigation, investigations requested by managers, and incidents investigated by Group Security. The reports included allegations of certain significance, progress on investigations and the final results of the investigations.

In parallel to investigating current alleged malpractice, there is ongoing work with reviewing historical reports and investigations from previous years.

We have identified patterns of fraudulent behavior which have been developed over several years in our operations in region Eurasia. Fraudulent schemes, with common methodology, were present at several region Eurasia business units. In particular we have noted frequent contracting of third parties in breach of standard processes, suspectedly to support embezzlement of funds. The ongoing focus is to review third party relationships in the group, and strengthen processes to prevent such breaches.

In 2015, employees and managers will be trained in correctly registering case reports and escalating the reports so that the Special Investigations Office can ensure a consistent investigation process and implementation of disciplinary actions. We will further develop the gathering of analytics for reporting and communication purposes, both internally and externally.

Source: Quoted from:
Telia Sonera, 2015;

https://www.unglobalcompact.org/system/attachments/cop_2015/146661/original/TeliaSonera_Annual_and_Sustainability_Report_2014_eng.pdf?1426709109.

It appears that only large multinational companies employ advanced mechanisms for the protection of whistleblowers. Relatively limited possibilities may exist to effectively protect reporting individuals in small and medium enterprises where circumstances of many matters become visible and identities of apparent reporters could be guessed because of small environments. Moreover in such enterprises managers themselves should be in a better position to monitor the business practices. However, the broader use of in-house and outsourced whistleblower protection mechanisms seems to be an appropriate recommendation at least for larger companies. None of the COPs contained information on any company policy regarding whistleblowers who would choose to disclose irregularities directly to the public.

7.2.14. Training

Training is a commonly reported integrity measure. Training may consist of seminars or similar events **targeted** to managers (for example, in the companies HR26, KZ5, Kesko), new employees (GE5, RS18), personnel in high-risk positions (for example, LT21, RU8, TeliaSonera) or countries (TeliaSonera), security specialists (RU9), front-desk employees (HR6), or to employees more generally (AM2, KZ7) on bribery and corruption. The company HR15 reports on training that targeted three categories of employees in 2013: training program for managerial staff of business areas of human resources, sales, procurement, internal audit, finances and technology; special training on anti-corruption for the employees in business areas of sales and procurement according to risk assessment for the said positions; and education on Policy for Preventing Corruption and other Conflicts of Interest for new employees as part of the standard training program for new recruits. Meanwhile the company reports also on learning activities aimed at all employees. (Hrvatski Telekom D.D., 2014: 51) Kesko uses induction surveys after the first months that employees have started new duties “in Finland, Sweden, Norway, Estonia, Latvia, Lithuania and Russia. The purpose of the survey is to review the success of the induction and establish how to further improve related practices.” (Kesko, 2014: 63, 64)

TeliaSonera states that training is a vital part of the anti-corruption programme.

During 2014, trainings for employees working in areas exposed to corruption risk was emphasized. Reaching out to all employees in high-risk functions or countries, over 5,500 employees were trained in face-to-face training workshops during the year, including almost all employees in region Eurasia. Additionally, key employees in functions such as finance, legal and procurement have all participated in trainings. The face-to-face trainings will continue during 2015. An effective form of anti-corruption training is group face-to-face training based on ethical dilemmas. These training sessions will be rolled out in 2015 and will initially focus on high-risk employees working in sales, procurement and finance, as well as people dealing with government officials. An anti-corruption e-learning provided by TRACE International will be available to all employees. Our goal is that every employee should increase their knowledge of what corruption is, how we fight it and how they should act. Each manager has a vital role in ensuring that the commitment and “tone from the top” from the Board and CEO permeate the entire organization. All employees should be knowledgeable about the resources and tools available to them, for example the Speak-Up Line. (Telia Sonera, 2015: 75)

There are companies that have a requirement for existing employees to complete **regular** computer-based training (for example, once in three years in GE5). The company RU1 describes the practice of near **comprehensive coverage** of their employees.

Events are held in the form of information-training web presentation with a series of test questions and answers and scoring system. In 2012, 310 employees of the AFK “System” of

all levels (98.5% of the total) passed anti-corruption training, the average score of correct answers to test questions was 88%, indicating a high degree of understanding among employees of the importance of this subject, applicable rules and principles. Upon hiring, new employees of the AFK “System” are required to familiarize themselves with key anti-corruption documents and, in the first month of work, pass information-learning web training, which covers the basic requirements of applicable anti-corruption laws and corresponding internal principles, rules and procedures of the Corporation. (Система, 2014: 40)

Training activities can be related to the **development of new rules**. For example, the company HR15 reports workshops in 2012 in all relevant business areas, which served as basis for the revised anti-corruption policy adopted at the end of the year. The company BG17 used training in an explanatory in-house campaign accompanying a project for the implementation of the compliance management system (89 trainings attended by 2372 employees – 99% of all staff).

Some companies carry out **training on specific thematic aspects of compliance**, for example, the report for the year 2013 of the company RS17 mentions training primarily on the application of the list of “undesirable” customers – mainly criminal offenders or suspects of such acts which may damage the bank or compromise its reputation. In 2013 the company HR6 provided training on anti money laundering, combating of terrorism and embargo issues, new and changed in-house applications, dealing with conflicts of interest and personal transactions (including personal transactions in financial instruments), non armament policy, off-shore policy. At the company RS16 (Deloitte) the Confidentiality & Insider Trading E-learning Course and anti money laundering training is obligatory for all employees. The company RS18 introduced an e-learning program on awareness of fraud risks and the mechanisms of prevention and early detection of fraudulent activities and corruption (counter fraud training).

It is common to use **online** trainings, sometimes in a combination with more traditional training involving physical presence. For example, in 2013 the company HR6 provided e-learning course to 1122 employees and classroom training to 1678 employees. One of the advantages of online training is better possibilities to cover all employees of the company. For example, the company BG16 (Deloitte) reports that the educational programme on the Ethical Principles of the Member Firms of Deloitte is mandatory for all employees (described also in the COPs of the companies HR14 and RS16). The program is provided on-line based on real-life examples and scenarios. Where training is provided in physical presence, electronic means can be used for testing. For example, the company BG17, after running an extensive training campaign, used an interactive test „How Well Do You Know Compliance?“ on the company’s intranet. Taking into account traditions of gift giving in the Christmas and New Year’s time, the company also developed a Christmas test guiding employees on conduct according the company’s code of conduct. Online tests also facilitate summarising and analysing of the results. A not so common form of training is value **discussions** on responsible working principles ensured by Kesko in various divisions in Finland, Sweden, Norway, Estonia and Russia (plus the company provides on-line training on the responsibility concept). (Kesko, 2014: 5, 39, 132, 211)

7.2.15. Participation in business integrity activities jointly with the government

Companies are not only business operators but also corporate citizens who often cooperate with governments to promote own interests (lobby) or engage in tackling broader social issues. With regard to anti-corruption and business integrity policies, the knowledge and support by companies is essential for their success. Companies can share relevant experience and provide opinions within the framework of consultative arrangements (councils, working groups etc.) or in ad hoc consultative activities regarding particular draft policies, legislation or projects. The Romanian example of consultative activities has

been described in the subchapter 5.3 “State policy to promote business integrity”. The National Integrity System assessment of Moldova by Transparency International described the involvement of business people as members of the working group on regulating entrepreneurial activity under the Ministry of the Economy in the examination of draft regulatory acts that have an impact on entrepreneurial activity. Meetings of the working group are broadcast online. (Ciubotaru et al., 2014: 234)

COPs quite rarely provide information on such involvement of companies in the context of integrity issues. The company BG14 mentions holding monthly **meetings** with representatives of the Ministry of Interior regarding possible reports by third parties against the company’s employees (no such reports up to present date) and about changes in legislation and regulations. The company LT12 mentions offering **proposals** to competent bodies for the transparency of public procurement and speaking out against non-transparent procurement. The company UA2 reports **cooperation with higher education institutions** that have declared themselves to be bribe-free. The cooperation includes lectures and teaching by partners and experts of the company.

Some of the companies describe their involvement in providing **services for projects** with anti-corruption impact. For example, in 2012 the company UA22 jointly with the state enterprise “Odessa Commercial Sea Port

... initiated a project to introduce the technology “Single Window - a local solution” in the area of the Southern customs and ports of Odessa region. The project is aimed at the prevention of corruption, limiting bureaucratic procedures, security of the supply chain, standardization and computerization of international trade procedures in the context of Ukraine's integration into European and world markets. At the same time an Interagency Working Group composed of representatives of public authorities, law enforcement agencies, business associations and unions - participants of the transport process was established in order to coordinate and control the course of the project, identify areas of its implementation.²⁶ ... Implementation of the project included the creation of a single port community information system (PCS) in ports located in the Odessa region. (Plaske, 2015: 63)

The company reports that paperless processing of containers proved, among other things, to be effective in reducing corruption factors in the activities of regulatory bodies by eliminating direct contact with the officials. Also the company MK3 describes its assistance to the government, parliament and other public bodies in introducing IT solutions that facilitate accountability, efficiency, transparency and accessibility for citizens, for example, the Apply Online system that allows applying online for civil service vacancies and the system for automatic distribution of transport licences in the Ministry of Transport and Communication. The company UA2 has acted as a consultant for the implementation of the system of key performance indicators in Lviv City Council.

7.2.16. Other activities

Companies often mention also other measures believed to have an anti-corruption impact. Some of the companies report placing **anti-corruption billboards and posters** either in the public space or on company premises. The company MD1 mentions its billboard in Chisinau with a slogan “Corruption destroys the future. Do not tolerate corruption”. The company UA12 has posters on all production sites, which remind employees of the necessity to comply with the principles of business ethics in everyday work. A few COPs mention participation of companies in **public discussions** on corruption-related

²⁶ In 2014, transformed into the Interagency Working Group on International Trade and Logistics Facilitation.

issues (for example, the companies BG8 and RS15). Other measures with expected anti-corruption effects found in COPs include fair hiring, promotion and dismissal practices, counselling and advice for employees, avoiding cash payments, systems for the monitoring of transactions or sponsorships, transparent accounting systems, performance indicators, transparent and competitive remuneration systems, electronic communication with customers and other parties.

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Chapter 8. Recommendations for further promotion of business integrity

8.1. Recommendations for governments

- 8.1.1. Governments must set and effectively enforce clear anti-corruption rules for all players – including both public officials and business.
- 8.1.2. Governments should strive to ensure fair and predictable legal environment including accessible, competent and independent courts.
- 8.1.3. Governments should provide guidance for good corporate governance and business integrity standards expected from companies and increase incentives for business integrity.
- 8.1.4. Countries should consider legislation that requires companies to make sure that no bribes are promised, offered and given on behalf of or in the interest of the companies. When an entity can demonstrate that it had implemented measures to prevent corruption, it should be considered at least as a mitigating factor for the legal entity and its management unless the management was personally involved in the offence. The same should apply when private persons voluntarily report engagement in corruption (effective regret).
- 8.1.5. Private sector corruption should be given higher priority in national anti-corruption strategies and plans. Measures should be developed in consultations with the business sector and NGOs.
- 8.1.6. In the area of lobbying, at least the status of lobbyist should be defined and persons with this status should be known to the public. Countries should give due consideration to the adequate types and amount of information about lobbyists' activities that should be subject to disclosure and introduce respective transparency rules.
- 8.1.7. Governments should pay special attention to integrity risks in state-owned enterprises. Where it is not the case, countries should consider applying freedom of information legislation to state-owned companies to strengthen accountability for the use of invested public assets. Exceptions to disclosure should be permitted as far as needed for normal business operation in market conditions. Corruption risk assessments of state-owned enterprises should be carried out in order to determine what anti-corruption measures are needed.
- 8.1.8. Burdens and challenges of ensuring compliance and upholding business integrity faced by small and medium enterprises should be assessed in order to identify adequate measures for assistance, for example, training.
- 8.1.9. Governments should use online tools to ensure as much transparency as possible regarding the implementation of regulatory policies that place burden on the private sector – inspections, requests for information from private-sector entities, rules and practice of sanctioning. Governments should strive for mandatory on-line publication of procurement notices and on-line access to tender documents.
- 8.1.10. Efforts to increase the use of e-tools in business-official contacts and simplify common business procedures such as tax payment should be continued.
- 8.1.11. Countries should require the registration of data on beneficial ownership and control of legal persons and consider providing access to this information to everyone with legitimate interest.
- 8.1.12. Government should consider possibilities of providing preferences based on integrity and trustworthiness in public procurement (for example, white lists).
- 8.1.13. Protection and encouragement of whistleblowing needs to be strengthened in most countries. ACN countries should study the experience of countries that provide awards to private-sector whistleblowers who report corruption and other offences. Taking into account risks, opportunities and the national context, countries should consider possibilities to introduce such rewards.
- 8.1.14. Governments should analyse the role of audit in preventing and detecting corrupt practices in companies and consider strengthening requirements for the role and independence of internal and external audit.

8.2. Recommendations for the private sector

- 8.2.1. Business associations should make efforts to help tackle corruption risks in relations between the public and private sector as well as between private sector entities. They should use their resources and credibility to study corruption risks, present the results to all stakeholders and advocate improvements.
- 8.2.2. Business associations have the advantage of broad connections with business operators and access to practical knowledge about business activity. They should continue and strengthen the use of this resource to raise public awareness on these issues and practically assist companies through training and guidance, for example, on good corporate governance and the development and implementation of company integrity policies.
- 8.2.3. Business associations should continue and expand activities to link the business sector and governments in efforts to tackle corruption. The many effective tools in this area include assisting companies in addressing violations of their rights and legitimate interests by public bodies as well as presenting business views in consultations with governments. Together with governments, associations should explore possibilities to expand the use of high level reporting mechanisms to address the demand side of corruption.
- 8.2.4. Business associations and companies should explore successful examples of collective actions such as business certification or labelling initiatives and integrity pacts. Good practices found in some countries (and on a broader international level) should be considered for adaptation in other ACN countries.
- 8.2.5. All companies should assess their integrity risks, develop and implement measures to minimize the risks. All companies should not strive to implement the same set of integrity measures. Rather the measures should reflect the size of the company, characteristics of the sector/s and country/ies of its operation.
- 8.2.6. Companies should better utilize available compliance mechanisms. They should not approach compliance only formally but rather strive for effective enforcement proactively.
- 8.2.7. In developing integrity measures companies should consider elements recommended by international guidances and governments. Respective company policies should include a commitment to reject any involvement in corrupt practices. With due consideration for the local context and business environment, the policies should also include rules on conflict of interest and gifts, rules on due diligence and managing of other aspects of relations with partners, principles of procurement for company needs, internal channels for reporting irregularities, etc.
- 8.2.8. Larger companies should establish compliance function implemented by dedicated officers or units, invest into integrity training of their personnel and introduce in-house and outsourced whistleblower policies.
- 8.2.9. Companies should commit to transparency and disclose, among other things, information on the implementation of their integrity policies (at least a general description of enforcement efforts), provided donations and political contributions. Disclosure of such information should be viewed as a means to strengthen a company's reputation.
- 8.2.10. Companies shall observe applicable legal standards regarding political contributions and avoid situations where political contributions can be perceived as a means of securing inappropriate advantages in access to public resources.
- 8.2.11. Companies that engage in corporate social responsibility activities should consider including anti-corruption as one of priority areas.

Annex. International business integrity standards and key players

International standards

UN Convention against Corruption: Being the most important international anti-corruption standard, the UN Convention against Corruption (UNCAC) obliges state parties to take measures “to prevent corruption involving the private sector, enhance accounting and auditing standards in the private sector and, where appropriate, provide effective, proportionate and dissuasive civil, administrative or criminal penalties for failure to comply with such measures” (Article 12). With this the UNCAC combines both the preventive and enforcement approaches.

Further the UNCAC provides a non-exhaustive list of suggested albeit not mandatory measures:

- a) promoting cooperation between law enforcement agencies and relevant private entities;
- b) promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities, including codes of conduct for the correct, honourable and proper performance of the activities of business and all relevant professions and the prevention of conflicts of interest, and for the promotion of the use of good commercial practices among businesses and in the contractual relations of businesses with the State;
- c) promoting transparency among private entities, including, where appropriate, measures regarding the identity of legal and natural persons involved in the establishment and management of corporate entities;
- d) preventing the misuse of procedures regulating private entities, including procedures regarding subsidies and licences granted by public authorities for commercial activities;
- e) preventing conflicts of interest by imposing restrictions, as appropriate and for a reasonable period of time, on the professional activities of former public officials or on the employment of public officials by the private sector after their resignation or retirement, where such activities or employment relate directly to the functions held or supervised by those public officials during their tenure;
- f) ensuring that private enterprises, taking into account their structure and size, have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.

Paragraph 3 of Article 12 obliges state parties to take measures against a number of bookkeeping-related offences carried out for the purpose of committing any of the offences established in accordance with the UNCAC. Article 12 also obliges state parties to disallow the tax deductibility of expenses that constitute bribes and, where appropriate, other expenses incurred in furtherance of corrupt conduct.

Article 33 obliges state parties to consider “appropriate measures to provide protection against any unjustified treatment for any person who reports in good faith and on reasonable grounds to the competent authorities any facts concerning offences established in accordance with this Convention”. The reporting person may work in public or private sector and thus the scope of the article covers both of them.

The standard of the UNCAC amounts only to the obligation to consider regarding the criminalization of active and passive private sector bribery, that is when the “passive” party in a bribery situation “directs or works, in any capacity, for a private sector entity” (Article 21) and embezzlement of property, private funds or securities or any other thing of value in the private sector (Article 22). A number of articles address aspects of private sector corruption indirectly, for example, Article 18 on trading in influence or Article 23 on laundering of proceeds of crime. Article 26 extends liability for offences outlined in the

UNCAC to legal persons thus directly addressing corrupt conduct by companies and other private-sector entities.

Several other articles address liability issues applicable to business entities. Article 34 addresses dealing with consequences of corruption and suggests that state parties “consider corruption a relevant factor in legal proceedings to annul or rescind a contract, withdraw a concession or other similar instrument or take any other remedial action”, which may affect heavily the involved business entities. Article 35 requires taking measures that allow those who have suffered damage from corruption to initiate legal proceedings to obtain compensations from those responsible for the damage. Article 37 requires considering incentives (mitigating punishment or immunity from prosecution) to persons who participate or have participated in the commission of offences outlined in the UNCAC and who cooperate with law enforcement authorities.

Last but not least Article 39 obliges state parties to take measures to encourage “cooperation between national investigating and prosecuting authorities and entities of the private sector, in particular financial institutions, relating to matters involving the commission of offences established in accordance with this Convention”. The article also obliges states to consider encouraging reporting to authorities of offences established in accordance with the Convention.¹

The Council of Europe Criminal Law Convention on Corruption and Additional Protocol: The convention contains stricter obligations for the criminalization of private sector bribery. Articles 7 and 8 require that countries establish as criminal offences, when committed intentionally in the course of business activity

... the promising, offering or giving, directly or indirectly, of any undue advantage to any persons who direct or work for, in any capacity, private sector entities, for themselves or for anyone else, for them to act, or refrain from acting, in breach of their duties.

[...]

... the request or receipt, directly or indirectly, by any persons who direct or work for, in any capacity, private sector entities, of any undue advantage or the promise thereof for themselves or for anyone else, or the acceptance of an offer or a promise of such an advantage, to act or refrain from acting in breach of their duties.

The convention requires that sanctions be effective, proportionate and dissuasive, including “penalties involving deprivation of liberty which can give rise to extradition”.² However, in difference from bribery in the public sector, concerning bribery in the private sector the standard of the convention requires proving that the advantage was meant for inducing action or refraining from action “in breach of duties” of the recipient. Article 18 of the Convention requires ensuring that legal persons can be held liable for criminal offences established in accordance with the Convention. The Additional Protocol of the Convention covers bribery of domestic and foreign arbitrators and jurors.³

The Council of Europe Civil Law Convention on Corruption: A key principle of the convention is the possibility of persons to claim compensation for damage that they have suffered as a result of corruption. Three conditions shall be fulfilled in order for the damage to be compensated:

- i. the defendant has committed or authorised the act of corruption, or failed to take reasonable steps to prevent the act of corruption;
- ii. the plaintiff has suffered damage; and
- iii. there is a causal link between the act of corruption and the damage.

Other highlights of this convention include the nullity of contracts providing for corruption, the possibility for parties to apply for avoidance of a contract if their consent has been undermined by an act of corruption, and protection for employees who report in good faith suspected corruption.⁴

Instruments of the European Union: The Convention on the Protection of the European Communities' Financial Interests (1995) requires that fraud affecting the financial interests of the European Communities is punishable by effective, proportionate and dissuasive criminal penalties. European Union (EU) countries “must also take the necessary measures to allow heads of businesses or any persons having power to take decisions or exercise control within a business to be declared criminally liable” in cases of such fraud.⁵ The Convention against Corruption Involving European Officials or Officials of Member States of the European Union (1997) also require measures to allow heads of business and persons with decision-making or control power to be “liable in cases of active corruption by a person under their authority acting on behalf of the business”.⁶

The criminalization of active and passive corruption in the private sector is further required by the European Union in the Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector. The criminalization should apply to both profit and non-profit entities. However, the convention allows member states to limit the scope “to such conduct which involves, or could involve, a distortion of competition in relation to the purchase of goods or commercial services”. The standard of “effective, proportionate and dissuasive” penalty is complimented with a specific limit “of a maximum of at least one to three years of imprisonment”. With regard to natural persons, it shall be ensured “that person may, where appropriate, at least in cases where he or she had a leading position in a company within the business concerned, be temporarily prohibited from carrying on this particular or comparable business activity in a similar position or capacity, if the facts established give reason to believe there to be a clear risk of abuse of position or of office by active or passive corruption.”⁷

For the purposes of this study, of importance are also several EU directives, for example, the Directive 2014/95/EU on disclosure of non-financial and diversity information by certain large undertakings and groups. The directive “requires companies concerned to disclose in their management report, information on policies, risks and outcomes as regards environmental matters, social and employee aspects, respect for human rights, anticorruption and bribery issues, and diversity in their board of directors.”⁸ The requirement applies to large undertakings which are public-interest entities exceeding on their balance sheet dates the criterion of the average number of 500 employees during the financial year. “This includes listed companies as well as other public-interest entities, such as banks, insurance companies, and other companies that are so designated by Member States because of their activities, size or number of employees. The scope includes approx. 6 000 large companies and groups across the EU.”⁹ Companies have flexibility to choose how to report and follow international, European or national guidelines such as, for example, the UN Global Compact or the OECD Guidelines for Multinational Enterprises.

The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions: This convention requires establishing the liability of legal persons for the bribery of a foreign public official (Article 2) and taking measures “to prohibit the establishment of off-the-books accounts, the making of off-the-books or inadequately identified transactions, the recording of non-existent expenditures, the entry of liabilities with incorrect identification of their object, as well as the use of false documents, by companies subject to those laws and regulations, for the purpose of bribing foreign public officials or of hiding such bribery” (Article 8). Parties to the convention shall also accept the Recommendation on the Tax Deductibility of Bribes of Foreign Public Officials (1996), which requires explicitly disallowing the tax deductibility of bribes to foreign public officials.¹⁰

Recommendations, explanatory and support materials of international governmental organizations

OECD is a major source of recommendations and guidance in the area of business integrity. The OECD Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions (2009) addresses numerous prevention and enforcement aspects related to the private sector. The recommendation asks states to examine such areas as, for example, awareness raising in the public and private sector; accounting, external audit, internal control, ethics, and compliance requirements and practices; laws and regulations to ensure keeping of adequate records and making them available for inspections and investigation; denial of public advantages (for example, procurement contracts) as a sanction for bribery. Detailed recommendations further explore these areas asking member countries to, for example, encourage “companies to develop and adopt adequate internal controls, ethics and compliance programmes or measures for the purpose of preventing and detecting foreign bribery”. Particular elements are further refined in the OECD Good Practice Guidance on Internal Controls, Ethics and Compliance (2010).¹¹ Other relevant OECD documents are the Guidelines for Multinational Enterprises (2011)¹², Recommendation on Fighting Bid Rigging in Public Procurement (2012),¹³ Principles of Corporate Governance (endorsed at the G20 summit, 2015)¹⁴, and Guidelines on Corporate Governance of State-Owned Enterprises (2015)¹⁵. In 2013, the OECD, UNODC, and the World Bank published the Anti-Corruption Ethics and Compliance Handbook for Business (2013).¹⁶

Recommendations of Council of Europe are another relevant source. For example, the Recommendation No R (81)12 of the Committee of Ministers to member states on economic crime recommends paying greater attention regarding conditions and particulars to be supplied for the entry of commercial entities in state registers, book keeping, inspection of companies by government authorities, etc. The recommendations include an ombudsman for the protection of the public against abuses and malpractices in the business world as well as the encouragement of trade associations and other groups to draw up codes of business ethics.¹⁷ The Recommendation No R (88) 18 of the Committee of Ministers to member states concerning liability of enterprises having legal personality for offences committed in the exercise of their activities addressed a number of key aspects of the liability of enterprises, for example, the principle that the enterprise should be liable “whether a natural person who committed the acts or omissions constituting the offence can be identified or not” and exoneration from liability where the “management is not implicated in the offence and has taken all the necessary steps to prevent its commission”.¹⁸ A number of other recommendations address issues covered by this study:

- Recommendation Rec(2003)4 of the Committee of Ministers to member states on common rules against corruption in the funding of political parties and electoral campaigns,
- Recommendation Rec(2004)20 of the Committee of Ministers to member states on judicial review of administrative acts,
- Recommendation CM/Rec(2014)7 of the Committee of Ministers to member states on the protection of whistleblowers,
- Recommendation 1908 (2010) of the Parliamentary Assembly of the Council of Europe “Lobbying in a democratic society (European code of good conduct on lobbying)”.

Last but not least certain aspects of business integrity are touched also by the [Resolution \(97\) 24 on the twenty Guiding Principles for the fight against corruption](#). For example, the Principle 5 envisages providing appropriate measures to prevent legal persons being used to shield corruption offences.¹⁹

The UN Office on Drugs and Crime has published a Resource Guide on State Measures for Strengthening Corporate Integrity, which describes how the UNCAC frames the interaction of the state and private sector, what business practices can strengthen corporate integrity, and what sanctions and incentives can be provided.²⁰ In addition, there is a practical guide for an Anti-Corruption Ethics and Compliance Programme for Business with detailed suggestions for risk assessment, developing and

implementing the programme.²¹ Prevention of corruption in the private sector is addressed also in the Strategy for Safeguarding against Corruption in Major Public Events.²²

Other sources of guidance include the World Bank Group Integrity Compliance Guidelines and the Asia-Pacific Economic Cooperation (APEC) Anti-Corruption Code of Conduct for Business.²³ G20 prepared its Guiding Principles to Combat Solicitation²⁴ and has been considering draft high-level principles on private sector transparency and integrity.

International private sector guidance and recommendations

There are several international private sector actors setting guidance and/or running practical arrangements to strengthen business integrity.

The International Chamber of Commerce (ICC) has been a pioneering private guidance setter.²⁵ The first version of the ICC Rules of Conduct to combat Extortion and Bribery was issued in 1977.²⁶ Current documents of the ICC include the ICC Rules on Combating Corruption, which assists enterprises by providing not only anti-corruption rules as such but also recommending policies to support compliance with the anti-corruption rules and elements of an efficient corporate compliance programme.²⁷ Another ICC document is the Guidelines on Gifts and Hospitality, which “provide guidance for companies on how to establish and maintain a policy relating to Gifts and Hospitality, based on the most recent international, regional and national rules, as well as on commercial best practice”.²⁸ Other guiding standards of ICC cover choosing and managing third parties, responsible sourcing (supply chain responsibility), and whistleblowing. The latest ICC guidance relevant for this study is the “ICC Anti-Corruption Third Party Due Diligence: A Guide for Small and Medium Size Enterprises” published in 2015.²⁹ Among ICC tools is the ICC Anti-corruption Clause, which represents several options of anti-corruption clauses to be included in contracts³⁰ and the training tool RESIST “Resisting Extortion and Solicitation in International Transactions” to provide guidance for how to prevent and/or respond to inappropriate demands (developed jointly with Transparency International, the United Nations Global Compact, and the World Economic Forum).³¹

Transparency International: Another important non-governmental international standard is the Business Principles for Countering Bribery by Transparency International (TI), published first in 2003 with the current latest revised version of 2013.³² Developed in a multi-stakeholder process, they recommend enterprises to develop a programme that “clearly and in reasonable detail, articulates values, policies and procedures to be used to prevent bribery from occurring in all activities under its effective control”. The programme should be based on continuous risk assessment and address a broader set of matters than just bribery in the narrow sense. It is recommended to cover at least the following six areas:

- conflicts of interest
- bribes
- political contributions
- charitable contributions and sponsorships
- facilitation payments
- gifts, hospitality and expenses.

The document outlines also a set of implementation requirements of the programme.

The World Economic Forum is a not-for-profit foundation and runs the Partnering Against Corruption Initiative (PACI), which was launched as a peer-exchange platform in Davos in 2004. PACI had Business Principles for Countering Bribery³³ formulated in 2004 by a group of chief executive officers, revised, updated and retitled as the PACI Principles for Countering Corruption in 2013. The six principles are:

- Set the “tone at the top” through a visible and active leadership commitment to zero tolerance of corruption in all its forms.
- Build an internal culture of integrity that encourages, recognizes and provides positive support for ethical conduct.
- Foster transparency throughout our organization and in our interactions with our stakeholders.
- Comply with applicable laws and regulations in the jurisdictions where we operate and transact our business.
- Encourage our business partners to uphold the same ethical standards that we observe.
- Engage in PACI and other collective action initiatives to bring a coordinated response to the challenge of corruption, whether in specific geographies or industry sectors.³⁴

The principles are accompanied with guidelines for the development of an effective anti-corruption program. Companies that participate are requested to make confidential disclosure of certain information such as convictions and current investigations in relation to bribery or corruption. They also commit to complete the Implementation Survey assessing the adherence of the company’s compliance program to the PACI principles.

A detailed comparison of most of these instruments is found in the Anti-Corruption Ethics and Compliance Handbook for Business by the OECD, UNODC, and the World Bank.³⁵ Since 2013, the International Organization for Standardization (ISO) has been working on anti-bribery management systems standard ISO 37001 for private- and public-sector organizations. The standard would cover anti-bribery measures and controls including implementation guidance.³⁶

International projects

In addition to international guidance, a number of applied international projects address business integrity. Some of them have been covered in the report, for example, the Wolfsberg Group in the subchapter 6.6 on the development and promotion of standards as well as the Extractive Industries Transparency Initiative (EITI) and the Construction Sector Transparency Initiative (CoST) in the subchapter 6.7 on collective actions.

International assistance for business: A number of organizations operate internationally to assist business in compliance and integrity matters. For example, the Basel Institute on Governance serves as a compliance advisor or monitor for a variety of industries and companies.³⁷ The Basel Institute also established the International Centre for Collective Action (ICCA) in 2012 with the aim to “assist companies and other concerned stakeholders in enhancing their ability to reduce the risk of corruption through Collective Action”.³⁸ In partnership with the UN Global Compact, ICCA developed and maintains the B20 Collective Action Hub, a platform that “offers tools and a forum for businesses to take concrete steps to jointly step up against corruption and strengthen good business practice”.³⁹

The International Compliance Association is a professional membership body, which provides “professional certificated qualifications and training in anti money laundering (AML), compliance and fraud/financial crime prevention”.⁴⁰ The International Compliance Association is present also in the ACN region (in Russia through partnership with the International Compliance Services). Business organizations engage in the area to provide professional services, for example, the advisory company CEB runs a program called CEB Compliance & Ethics Leadership Council, which is a membership organization, serves compliance professionals, identifies successful ideas tested by members and offers services to leaders of companies.⁴¹

The Foreign Trade Association created the Business Social Compliance Initiative (BSCI) in 2003 to provide a system that companies can use to improve social compliance in supply chains.⁴² The BSCI has

a Code of Conduct, which includes a provision on ethical business behaviour: “Our enterprise does not tolerate any acts of corruption, extortion, embezzlement or bribery.”⁴³ The Code has an implementation system, which is based on due diligence (systematic risk-based approach) and the cascade effect (engagement with business partners at each level to maximize social change).⁴⁴

There are also international online resources available to help businesses ensure compliance, for example, the Business Anti-corruption Portal (<http://www.business-anti-corruption.com/>), which contains compliance systems guidance, due diligence tools and training resources.

The Ethisphere® Institute is a private independent institution that explores and circulates best practices in corporate governance, risk, sustainability regulatory, anti-corruption, compliance and social responsibility. Among other activities, the institution derives “Ethics Quotients” for companies and publishes a list of top scoring companies the “World’s Most Ethical Companies”. From among companies that operate in ACN countries and are described in Chapter 7, only the Finnish company Kesko, which operates, among other places, in Lithuania and Russia, was honoured as one of the most ethical companies during the last five years.⁴⁵

Reporting initiatives represent a particular type of international projects. Two prominent examples are the Global Reporting Initiative (GRI) and the United Nations Global Compact (GC). GRI is older of the two and represents an international non-profit organization founded in 1997 in the United States. The organization has developed and maintains a Sustainability Reporting Framework within which companies or organizations publish sustainability reports about the economic, environmental and social impacts caused by their everyday activities.⁴⁶ Under the topic ethics and integrity, participants shall:

- describe the organization’s values, principles, standards and norms of behaviour such as codes of conduct and codes of ethics
- report the internal and external mechanisms for seeking advice on ethical and lawful behaviour, and matters related to organizational integrity, such as helplines or advice lines
- report the internal and external mechanisms for reporting concerns about unethical or unlawful behaviour, and matters related to organizational integrity, such as escalation through line management, whistleblowing mechanisms or hotlines.⁴⁷

Under the aspect “Anti-Corruption”, the reporting categories are:

- total number and percentage of operations assessed for risks related to corruption and the significant risks identified
- communication and training on anti-corruption policies and procedures for governance body members, employees, and business partners
- confirmed incidents of corruption and actions taken (dismissals, disciplining, terminated or not renewed contracts, public legal cases and outcomes of such cases).⁴⁸

Under all of the categories, specified quantitative data on the number of activities are expected together with the description of the nature of activities or occurrences (for example, risks and incidents).

Under the Global Compact, companies that have committed to the initiative are required to submit annual communication on progress (COP), which shall include a statement expressing continued support and commitment to the GC, a description of actions taken or planned to implement the ten principles of the GC, and a measurement of outcomes. The ten principles form the substantive core of corporate sustainability. Along with human rights, labour, and environment, anti-corruption imperative is expressed in the Principle 10 – “Businesses should work against corruption in all its forms, including extortion and bribery”.⁴⁹ Communications on progress are published online and this study uses them extensively in Chapter 7.

Notes

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