

Instruments and measures to prevent and fight corruption

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Corruption has many faces. Its cost to international and German companies and the public administration has been in the public eye for many years. Corruption poses a serious problem to government, business and society as a whole. It is responsible for significant material and immaterial damage. Corruption results in substantial financial losses both to the public and private sectors and can prevent government and the economy from operating effectively. Systematic monitoring is urgently required to ensure proper compliance with established standards.



Compliance

Definition: in local government and private business, compliance involves monitoring observance of statutory regulations and ensuring that they are applied, in addition to a voluntary commitment on the part of organisations to observe their own rules. It is intended to prevent the misuse of confidential information and any proceedings for damages that may result, including reputational damage.

Today, most large corporations have their own compliance departments and managers to monitor compliance with all relevant regulations, and fighting corruption is also a top priority in public administration. However, past and present corruption scandals in both the corporate world and the public sector clearly demonstrate that, while businesses and public authorities have indeed made voluntary commitments in this regard, they have not always fully managed to abide by them. For corruption to be curbed effectively, there must be a clear understanding of what precisely it involves.

Corruption

Definition: In criminology, corruption is defined as the abuse of public office, a private sector role or a political mandate to secure a benefit for another, either at their instigation or on one's own initiative, for one's own personal gain or for that of a third party, thereby causing or potentially causing losses or harm to the general public (in the case of public officers and politicians) or to a company (in the case of offenders who have roles in the private sector).

Under this definition, the defining feature of corruption is the receipt or conferral of private gain. This gain may take the form of money, financial assets, material assets, intangible benefits or an act of omission. In economic terms, corruption creates an illegal market based on illicit transactions. Corruption in the corporate world involves either the corruption of government officials perpetrated by corporate interests or the corruption committed by one company on another. The term "corruption" does not appear in German criminal law. However, the phenomenon of corruption is addressed under criminal law through current legislation on offences committed in public office (Section 331 et seqq. of the German Criminal Code - StGB) -

primarily the sections on (the two classic pairs of) acceptance of a benefit/taking a bribe and granting of a benefit/offering a bribe, active and passive bribery in business transactions (Sections 299, 300 StGB), bribery of voters (Section 108b StGB) and bribery of Members of Parliament (Section 108e StGB). It should be pointed out that the latter two categories of bribing voters and Members of Parliament are of little importance in practice. Furthermore, for cases with an international dimension, Germany's Act on Combating International Bribery (IntBestG) and its EU Bribery Act (EUBestG) stipulate that no distinction shall be made between foreign and German officeholders as far as acts of bribery are concerned.

Corruption prevention

Measures that can be taken to start raising awareness include:

- briefings on corruption and corruption monitoring;
- additional training on ethics and conduct in office;
- strategies to improve transparency in public administration;
- strengthening of the function of leaders as role models;
- issuing of ethical rules, e.g. Code of Ethics;
- targeted prevention measures across all levels of an organisation's hierarchy.

These measures should aim to promote self-criticism and self-monitoring among all those involved in the process and encourage them not to give up any room for discretion to which they are not entitled.

Practical approaches and instruments

A transparent organisation must, above all, comply with a set of basic principles, some of which are outlined below:

The four-eyes principle refers to cross-checking. Before a final decision is made or a particular action is definitively implemented, it must first be reviewed and signed off by a second, independent agent. The aim is to reduce errors and prevent individuals from abusing their position and authority. Cross-checking promotes transparency across all parts of a business.

Segregation of duties means that the performance and monitoring of a given duty are separate processes. Meaningful monitoring is only possible if it is carried out by people who are not involved in the process under examination. The aim of segregating duties in this way is to provide distance and objectivity.

The need-to-know principle means that employees should only be given as much information as they need to carry out their day-to-day duties. Detailed job descriptions are one of the key requirements for implementing this principle, since an employee's authority to award contracts is frequently based on his or her job description. The aim of this principle is to reduce the number of corrupt transactions.

Job rotation involves moving employees around between different areas of activity during the course of their employment. It is important to differentiate between job rotation and the rotation of responsibilities. Job rotation means changing the field in which an employee works, whereas rotation of responsibilities involves changing their duties. There is a greater chance of uncovering any wrongdoing if a person's work is supervised by another employee.

Staff development is yet another goal. Organisations carry out internal audits in order to check their own system's procedural rules and the extent to which they are being used. This allows them to establish whether actions and their results meet the requirements set out in the organisation's plans. In the case of prevention, this involves checking whether corruption prevention measures have been properly implemented and whether they have achieved the desired outcomes. The aim is to verify that measures have been applied correctly and to evaluate their results.

There would appear to be an urgent need to **establish points of contact** for employees and members of the public in the person of **anti-corruption officers** whose role is to make it easier for employees to report cases of corruption. Anti-corruption officers generally work independently and report directly to management. They also make it possible for people to provide information anonymously without fear of reprisals. In other words, anti-corruption officers act as go-betweens between whistleblowers and law enforcement agencies.

The term “**whistleblower**” refers to employees who, for reasons unrelated to personal gain, decide to speak out against cases of corruption or illegal, dishonest or ethically questionable practices that they have witnessed in their workplace and supply relevant information.

A code of ethics provides a framework for combating corruption. It sets out the overall values and standards that should guide the actions of everyone within the organisation. The way the code of ethics is worded and its visual presentation should link the organisation’s ethical standards to its day-to-day business. A code of ethics should communicate its message to employees and management in a direct and forthright manner and, equally importantly, act as an informal source of strategies for preventing corruption.

In contrast to codes of ethics, **codes of conduct** contain a series of formal, written directives and rules setting out guidelines to best practice. They are binding on the organisation’s workforce. Codes of conduct usually come in **four parts**: a *preamble*, a *list of responsibilities*, a section on *sanctions* and a written *declaration of consent* for employees to confirm acceptance of these rules. They also include descriptions of the commonest forms of unlawful activity to heighten awareness of these offences.

The offering and granting of benefits generally has detrimental effects. Promotional gifts unconnected with a specific promotion should be reported and authorised in advance. Acceptable limits for hospitality should be clearly regulated. Employees must not be allowed to use their positions to ask for or receive benefits. The acceptance of gifts should be explicitly defined and regulated. *Gifts* include gratuities of any kind, ranging from material assets and financial payments to discounts and favours. Invitations may only be accepted providing that they remain within the bounds of common business practice and are appropriate in scope. Donations must be transparent, i.e. both the donor and the recipient have to be clearly identified. *Sponsorship* can also be problematic, since in practice people often fail to draw a distinction between donations (unilateral financial payments) and sponsorship (where a benefit is received in return). It is also important to make sure that employees are not exposed to conflicts of interest. Private and commercial interests should be kept clearly separate right from the outset. Pre-existing sanctions should be applied in case of doubt. They may include action under employment, civil or criminal law.

Fighting corruption

The truism that punishment is a means of prevention also applies to the fight against corruption. Criminal law, which is the most powerful weapon against corruption, falls under the jurisdiction of national governments. In the Convention Against Corruption Involving Officials of the European Communities or the Member States of the European Union (Official Journal No C 195/1997), which came into force on 30 June 2005, EU Member States undertake to criminalise passive and active corruption. The Member States must do this for cases of passive or active corruption where the offence is committed within their territory or by one of their nationals. This includes government ministers, representatives of parliamentary assemblies, high-ranking judges, members of the Court of Auditors and members of EU institutions. The enactment of criminal legislation at national level is of fundamental importance to the fight against corruption. In cases of active corruption, the Convention also establishes a limited degree of criminal liability for heads of businesses or any persons having power to take decisions. However, wider criminal liability in the private sector was only introduced through Council Framework Decision 2003/568/JI on combating corruption in the private sector, which decrees that legal persons may also be held liable. While the Framework Decision’s goals are binding, some flexibility is provided for in its actual implementation. Consequently, although international agreements and monitoring mechanisms undoubtedly have a key role to play, society as a whole must con-

tinue to insist that they are properly implemented and ensure that sufficient resources, especially well-trained investigators, are made available.

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