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Integrity, A Valuable Proposition

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PREFACE

Nobody says of themselves that he or she does not act with integrity. However, we have all experienced situations that made us question our integrity. On a national level, some countries struggle with the integrity challenge more than others. In the Netherlands we observe situations are questionable from an ethical point of view.

How to explain this contradiction? The answer lies in the fact that integrity consists of more than just not being corrupt or being compliant. The answer to the question: 'Do you act with integrity?' is often 'Yes, I stuck to the rules and therefore I am compliant'. However, at the heart of integrity and its framework are honesty and sincerity. Every individual, corporation and government should ask itself: 'Am I still honest and sincere? Have I not been involved in corrupt behaviour?' These are questions that a good integrity framework requires.

Repeating these questions over and over has to happen structurally and permanently in order to maintain this integrity framework. It is for this reason that ICC Netherlands initiated the Week of Integrity and the annual ICC International Integrity and Anti-corruption Conference. Both initiatives do not just aim at making individuals and organizations act with integrity, it also strives to create and maintain continuous awareness for integrity.

This booklet contributes to this purpose. Not only do the authors discuss active and passive bribery, but above all the importance of collective action. Public-private cooperation is of vital importance to maintain public awareness.

In addition, this booklet offers practical guidelines. Many authors conclude their essays with suggestions on how to take integrity and accountability to a higher level.

In short, ICC's International Integrity and Anti-corruption Conference 2018 and this booklet aim to contribute to an international level playing field where businesses and governments act with integrity.



Mr. Henk W. Broeders

Chairman, ICC Netherlands





ARE WE REALLY OVERCOMING CORRUPTION?

Prof. Mark Pieth

**Founder and Chair, Basel Institute on Governance
and Professor at the University of Basel**

Mark Pieth has been a Professor of Criminal Law and Criminology at the University of Basel in Switzerland since 1993. As an academic he has published extensively in the areas of economic crime, criminal law, criminal procedure and sanctioning. From 1990 to 2013 he chaired the OECD Working Group on Bribery. He is the founder and Chair of the Basel Institute on Governance (BIG) and has co-initiated several collective actions, including the Wolfsberg Banking Group.

ARE WE REALLY OVERCOMING CORRUPTION?

Over 40 years ago, the ICC Shawcross Committee initiated work on corruption. The ICC Report on Extortion and Bribery goes back to 1977. About 30 years ago the developed states decided to consider a US initiative on transnational bribery and shortly afterwards, now 25 years ago Transparency International was founded. And yet, we know it, corruption is by no means overcome. Maybe we are simply more aware of the phenomenon.

I do not think, though, we should get impatient: Corruption has followed mankind through history for thousands of years and it is a key technique of power management. Overcoming it takes time. So, what have we achieved to date? We have certainly adopted enough conventions, recommendations, action plans etc. Just recently, at the The International Anti-Corruption Conference (IACC) in Copenhagen, Ministers have added another high-level statement.

These international texts have been the blueprint to many new laws. They have very different rationales, though: the OECD Convention is about protecting fair competition, the various EU texts are primarily interested in protecting the budget of the Union, whereas the Council of Europe Convention is about harmonizing laws. The United Nations Convention against Corruption (UNCAC) is a kind of umbrella text. Its main focus is on fostering development and reducing poverty. Multilateral Development Banks are pursuing a similar goal with their sanctioning practice and their increased preventive efforts.

All this regulatory activity has sparked off domestic legislative efforts. Whether these laws are actually applied is less obvious. At least application is patchy. Even in the Global North resources and knowhow with law enforcement and the judiciary is scarce and – it needs to be said – political intervention has blocked implementation of the laws. In particular, when it comes to exporting arms national judiciaries seem to lose interest in prosecution. Typically it is considered bad for one's career to push for prosecution when companies of national interest are concerned (remember BAE and the UK or Saab Gripen and Sweden).

Nevertheless, from an industry perspective risk has risen dramatically as some countries use their extraterritorial jurisdiction to fill their domestic treasury. Therefore, a vibrant compliance industry was able to grow on the basis of these new laws.

So, overall the status is rather mixed; persistent corruption in many areas of the world, inconsistent and politically influenced enforcement. What is more, the vast offshore industry allows potential bribers and bribees to act clandestinely.

Whereas the private sector is struggling with risk management and compliance efforts the public sector is sailing under the radar. Of course, public entities are playing a key role as regulators, but this does not mean that they are extending good governance concepts necessarily to their own sub-entities or State Owned Enterprises (SOEs).

It may be frustrating at times for representatives of the private sector bending over backwards to fulfill the requirements whereas public agencies are far less conscious of the risks they are running. This is again an observation that is not limited to the Global South, but also applies in developed states. One reason may be that typically central government, provinces and communities are not as such held criminally liable. At best, individual officials could be held responsible for acts of bribery. Preventive efforts are no way on the level of the private sector. This may be a source of frustration for business: Just imagine that customs officers or harbor authorities celebrate red tape until one loses patience and attempts to speed up proceedings with an informed overtime payment.

More recently SOEs have moved into the limelight: Some very big players, like the Italian oil and gas company ENI or the Brazilian Petrobras, have demonstrated that being state owned or majority state controlled does not automatically mean that one is more virtuous. Already in earlier days we have learned from the French ELF cases that public officials and politicians may abuse their powers to benefit their personal bank account or their campaign funds: SOEs are in fact particularly vulnerable, both as active bribers and as victims of embezzlement. Different from the actual government agencies they are, however, subject to corporate liability.

State entities and in particular SOEs are in urgent need of upgrading their compliance programs. And why not learn from the experience of the private sector and the compliance industry. It starts with realistic risk-scenarios and training that addresses these risks. Public entities are well advised to involve representatives of the private sector, in particular compliance officers to share their experience in joint seminars.

This may be helpful in overcoming remaining risks. There is more in store, though: In the private sector one has long understood that collective action could be useful in combatting corruption. Increasingly, one is now involving also public entities in public-private-partnerships or in multi-stakeholder-initiatives. One such initiative is the so called High Level Reporting Mechanism:



In order to fend off solicitation and extortion for bribes, countries at risk interested in foreign investment create business ombudsmen who can informally intervene, deblock for instance a procurement process by exchanging officials, but letting the process run on saving the bidder the investment in his bid. Such mechanisms have been created in Colombia, Ukraine, Argentina and they are planned in other countries like Peru.

This example proves that preventing and fighting corruption does not stop with law enforcement: It needs all the creativity one can muster in the private and public sector with the help of civil society.





THE CHALLENGES OF PASSIVE CORRUPTION

Mr. Dominique Lamoureux

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Dominique Lamoureux is the Vice President Ethics and Corporate Responsibility for Thales. He is responsible for defining and monitoring the company's strict policy for compliance with international trade regulations, and more globally, the development of a comprehensive company-wide ethics policy. He represents Thales at the United Nations Global Compact. He is involved in the prevention of corruption within numerous business organisations such as Medef and the International Chamber of Commerce, by participating in committees and working groups. He chairs the Cercle d'Ethique des Affaires.

THE CHALLENGES OF PASSIVE CORRUPTION

The fight against public corruption has become a global objective shared not only by all the so-called industrialized countries but also by a growing number of emerging economies, even if the level of sincerity is not always clear.

In this context, companies, especially those with a multinational dimension, have been strongly encouraged to adopt resilient anti-corruption standards, accompanied by procedures and controls that are as demanding as they are expensive. In addition, a legal arsenal -sometimes extraterritorial- is accompanied by repercussions and financial penalties.

Yet corruption persists throughout the world and costs the state and, therefore, local populations billions of euros each year. While much of the legislation has so far focused on potential bribers, and is directed at large-scale companies, it is urgent that more effort is being put into the fight against so-called passive corruption.

The two sides of the same coin: active and passive corruption

It should be noted that corruption, criminally condemnable in both the public and the private sector, is a double sided coin. From a purely legal point of view, on one side there is the so-called “active” corruption, constituted by the fact of remunerating or granting a benefit in return for the (non-) fulfillment of an act by a public person. On the other side, the so-called “passive” corruption consists of a public person being paid or obtaining benefits to (not) perform an act that falls within the scope of his duties. But it is only when you look at the implementation of anti-corruption policies that the binary of this criminal offense becomes blatant. Indeed, as much as “active” corruption has, both nationally and internationally, without question become “the public enemy No. 1” over the last 20 years, “passive” corruption has clearly remained the “most overlooked part” in the fight against white-collar crime.

A powerful legislative arsenal against active corruption

Many countries, including the United States, have passed tough anti-corruption laws. As early as 1977, the US Congress voted in favor of the Foreign Corrupt Practices Act (FCPA), the first law that made the bribery of a foreign public official a crime. This law provides for the prosecution of any US company or company with interests in the United States. In 1999, the Council of Europe took up this problem and passed two Conventions on Corruption, one criminal and the other civil, signed by fifty states, while at the same time creating the Group of States against Corruption (GRECO) that is responsible for monitoring the implementation of these Conventions. The United Nations followed Europe's lead by drafting not only the United Nations Convention against Corruption (UNCAC) signed in 2003, but also adding a 10th principle to the Global

Compact dedicated to the fight against corruption. In 2010, the UK finally passed a tough law, the UK Bribery Act, which condemns companies guilty of failing to prevent corruption. This innovative idea is also taken up by the law on transparency, the fight against corruption and the modernization of economic life (known as Sapin II) that was enforced in France on June, the 1st in 2017.

There is no doubt that this legislative hype has pushed the big private sector organizations to adopt anti-corruption programs, repressing the temptations of some unscrupulous employees to break the law in order to obtain benefits on public contracts. But it is clear that the effectiveness of these programs is largely reduced by the exorbitant pressure of some public leaders in this area. Thus, in many markets, exporting companies are victims, if not hostages, of extortion and solicitation attempts that undermine the efforts they have been able to deploy.

While there is a plethora of national laws and international anti-corruption conventions that have been passed or signed, many of them focus on active corruption. But the offense of corruption, when it is committed (and not only attempted), requires a corrupter and a corrupted. It is by no means admitted that only the corrupter is the initiator. The corrupted can be an initiator as well, especially because as a customer, he is the one who holds the power.

Passive corruption, a scourge in the upper echelons of the executives

Needless to say, being only focused on active corruption is to pay attention to only one aspect of the evil. If there are people willing to pay bribes, it is also because others forcefully demand that they receive bribes. A global understanding of the problem of corruption therefore requires us to take an interest in the functioning of public organizations as well.

When looking at the news of the last ten years, it is difficult not to worry about the number of political-financial scandals affecting the highest spheres of states. No countries seem exempt. In Latin America, it is a plague that ravages the public authorities, and whose populations, often poor, remain the first victims. In Mexico, former President Elias Antonio Saca admits to have stolen more than USD 300 million during his tenure. In Argentina, it is also the highest head of state that is indicted since former President Cristina Kirchner was indicted along with seventeen officials for corruption. On the other side of the globe, in South Korea, no less than four former Presidents have been convicted of corruption.

It would be tempting to argue that these are countries in which democracy is not as strong as in other more Western countries, and thus corruption is facilitated. Unfortunately the countries of the European Union, whose anti-corruption legislation is fruitful, are not left out. That same year, Spain was singled

out with the condemnation of the Popular Party and some members for unjust enrichment, corruption and money laundering.

In these scandals, it is difficult to believe that the depositor of the public power was not the initiator of the offense. In each case, what compliance program, no matter how rigorous, could have prevented a senior official, even a head of state, from carrying out his illegal project?

Alert capacity for the company

The High Level Reporting Mechanism, set up under the auspices of the OECD, the Basel Institute and Transparency International, aims to enable private sector actors to report requests for bribes or suspicious behavior at national level. The examples given by the very small number of countries that have implemented it seem positive, but the usage of this new system remains very rare. Fears remain, therefore, for the multinational enterprises, and even more so for the SMEs, to be unable to clearly identify the person or institution capable of effectively supporting the system in a negotiation that would be considered suspicious.

Sectoral initiatives as a rampart

Faced with this observation, private sector players are trying to organize themselves, and thanks to sectoral collective initiatives, they are trying to create a level playing field and to encourage the development of common standards. As such, we can mention the International Forum on Business Ethical Conduct (IFBEC), deployed for over 10 years in the Aeronautics and Defense sector.

In addition, some tools such as the RESIST guide developed by the International Chamber of Commerce (ICC) offer many avenues and ways of thinking to allow companies to arm themselves against such practices. It is, however, harmful that such initiatives remain rare; it is more than desirable that they multiply, and that those already implemented increase their scale.

Necessary awareness

However, it seems urgent that states and communities of states seize these concerns by promoting the implementation of a rigorous public integrity policy. It is high time that the work that has been done by large companies in the field of prevention of corruption is also taken up by all states.

The latter must indeed be aware of the great changes of our time and remember that today, in terms of ethical and responsible conduct, companies are strongly supported by their various stakeholders, primarily shareholders and employees who, like all citizens, benefit from the “empowerment” enabled by new technologies.

Today, the inequality of treatment, faced with the real problem of corruption, between companies, potential corruptors, and public administrations, potential corrupted, give the feeling of a fight to the “David against Goliath”. It is becoming more urgent that international organizations take up this double-sided issue.





MAKING THE EU ADMINISTRATION A STANDARD-BEARER FOR INTEGRITY AND ACCOUNTABILITY

Ms. Emily O'Reilly

European Ombudsman

Emily O'Reilly was elected as the European Ombudsman in July 2013 and took office on 1 October 2013. She was re-elected in December 2014 for a five year term. Previously, she had been Ireland's first female Ombudsman and Information Commissioner, having been appointed in 2003, and Commissioner for Environmental Information from 2007. Ms. O'Reilly is an author and a former journalist and broadcaster, whose career has attracted significant domestic and international recognition.

MAKING THE EU ADMINISTRATION A STANDARD-BEARER FOR INTEGRITY AND ACCOUNTABILITY

As this year's Eurobarometer showed, European citizens are more convinced than ever that the European Union is a good thing. Brexit has refocused minds about the benefits of the European project. However, this does not necessarily imply that citizens are happy with how the EU and its institutions are working, as some prominent EU figures try to spin it. Drawing such equivalency could lead to complacency.

The lazy stereotype of the EU institutions being opaque and unaccountable unfortunately persists. This caricature, which continues to be pushed by Eurosceptics, is misleading at best. Overall, the EU administration has higher ethical and transparency standards than administrations in most EU Member States, and certainly on a global level.

Nonetheless, in order to bolster public trust, the EU administration needs to continue to make itself a flag-bearer for integrity and accountability. As European Ombudsman, my mission is to work with the EU institutions to create a more effective, accountable, transparent and ethical administration.

In terms of ethics in office, one problematic recurring issue is the 'revolving doors' phenomenon, when officials leave the public sector for the private sector (or vice versa) creating a possible conflict of interest. The European institutions have rules and procedures in place to address this, and it is relatively straightforward when it comes to former activities of current officials.

A more particular challenge in this regard is the activities taken up by officials, and particularly ex-European Commissioners, after they have left office. Then, they are bound only by their interpretation of what is ethical, as well that of the private sector organisation they are seeking to join, which may have altogether different standards to the public sector.

Public trust can be undermined by perceptions that senior public officials are influenced by potential future jobs or use inside information and networks to benefit the private interests of a new employer. This was at the heart of the complaints that led to my inquiry into the decision by the former European Commission president José Manuel Barroso to accept a position with Goldman Sachs, after having left office. The decision generated significant public concern at a very challenging time for the EU, in part due to the public image of Goldman Sachs and its perceived role in the financial crisis.

Mr Barroso joined Goldman Sachs shortly after the end of the 'cooling off period' that applies to former Commissioners. During this period, he would have been obliged to notify the Commission of the appointment, so that it could be scrutinised by the Commission's Ad Hoc Ethical Committee. Given the sensitivity of the appointment, the Commission asked the ethics committee to assess it anyway, but it took no follow-up action, notably after a commitment by Mr Barroso not to engage in lobbying activities towards the Commission. Following revelations that Mr Barroso had met with a current Commission vice-president to discuss trade and defence matters, I recommended that the Commission ask the ethics committee to reassess the matter. Regrettably, the Commission has not followed this recommendation. The case has caused unfortunate reputational damage to the EU institutions, at an inopportune moment. This could also have been easily avoided.

Clearly, there is a strong degree of personal responsibility on individuals to continue to respect the same norms concerning ethics and integrity after they have left office. Former Commissioners should thus use good sense and judgement when accepting job offers, even after the notification period expires, and should notify the Commission where any doubt exists. The Commission can then decide whether it is necessary to seek the opinion of the Ethics Committee. Similarly, whenever the Commission becomes aware, from any source, of concerns in relation to a job taken up by a former Commissioner or high-ranking official, it should contact them to obtain further information. It should then, if concerns remain, seek the opinion of the ethics committee. If it decides not to consult the ethics committee, it should explain why.

It can only be hoped that lessons have been learned for the future. Encouragingly, the Commission has announced plans for a much more detailed Code of Conduct for Commissioners, including some of the suggestions I made in the context of the Barroso inquiry and a separate inquiry on another former Commissioner.

We will, of course, assess the effectiveness of these proposals once they are fully operational. We will also continue to draw attention to some of the outstanding issues, most significantly the need for a truly independent ethics committee. However, beyond the limited timeframes set out in the Code of Conduct, it is equally important that both the Commission and former Commissioners recognise the need to uphold these values long after the term of office has ended.

In terms of shoring up public trust, another priority of my work with the EU's administration concerns the transparency of decision-making and how the public can hold the institutions to account for these decisions.

The EU has made considerable progress in improving the accountability of its institutions over the past decade. The institutions and agencies have strengthened rules and procedures with a view to addressing conflicts of interest and improving transparency of decision-making processes and interactions with lobbyists. Some of these improvements have been made in response to recommendations and suggestions made in the context of my inquiries, and it is encouraging that the institutions have taken these on board. However, the progress has not been uniform. Working methods in the Council, where EU governments form their positions on draft legislation, remain insufficiently transparent. My ongoing strategic inquiry into this area is looking at what improvements Council can make to address this.

When Council formally adopts EU laws, meetings and discussions by the ministers on the draft laws are public. However, before it reaches a formal position, preparatory discussions will have taken place in some of the more than 150 committees and working parties in Council. It is at this level that much of the nuts and bolts of the legislative work takes place, but where transparency is patchy and often lacking, particularly as regards the positions taken by EU member states.

In order for the public and civil society to be able to hold governments to account for the decisions they make on EU laws, they need to know how their governments positioned themselves in the legislative process. This requires that legislative discussions in preparatory bodies be documented and that such documents are accessible in an easy and timely manner. However, crucially, it also requires the systematic recording of the identity of member states expressing positions in the preparatory bodies, and the proactive disclosure of these records. Doing this will hopefully go some way to addressing the damaging practice by which member state governments criticise decisions taken “in Brussels” towards their domestic audience; decisions that they had supported or shaped in the decision-making process in Council. I referred my findings to the European Parliament, but Council has since indicated a willingness to take up some of my recommendations. This is something I will follow closely.

It is important to reiterate that the standards set by the EU administration go beyond those of most EU member states. My experience as European Ombudsman has also demonstrated that EU officials are determined to act with integrity and in the public interest. For example, it was a group of motivated EU staff that led the calls for action on the Barroso affair. They did so as they recognised that, at a time when the EU is facing so many challenges, notably as regards its credibility in the eyes of the public, it is imperative that those in positions of leadership demonstrate that their primary obligation is to the public interest.

As the EU institutions reflect on two years of the populist surge, and look ahead to the European elections in 2019, it can only be hoped that their response will be to redouble their efforts in the areas of integrity and accountability. Only by doing so will they truly restore public trust in our European democratic process and institutions.





STOP THE KLEPTOCRATS

Mr. Harry Hummel

Senior Policy Advisor, Netherlands Helsinki Committee

Harry Hummel joined the Netherlands Helsinki Committee in 2010 and currently works as a Senior Policy Advisor. The NHC's aim is to structurally strengthen the work of official institutions and civil society for the protection and promotion of human rights in Europe and Eurasia. He works on promoting mainstreaming of human rights in fields such as international commerce, financial relations and rule of law cooperation, and on developing international civil society coalitions. Mr Hummel has been active for human rights since 1972, when he joined Amnesty International.



STOP THE KLEPTOCRATS

The 10th of December has been designated Human Rights Day by the United Nations, commemorating the adoption of the Universal Declaration of Human Rights in 1948. Since 2003, when the UN Convention against Corruption was agreed, International Anti-Corruption Day has taken place on 9 December.

I do not know whether these days were deliberately placed one before the other, but it seems very appropriate. There is a multi-faceted relationship between the creation of a corruption-free economic and governance system and the protection and promotion of human rights. Corruption implies the unfair distribution of resources; it creates inequality and therefore violates human rights. In particular in kleptocracies, where corruption has become a key feature of the political system and is centrally managed by the political leadership, preserving the system requires limiting the rule of law and the suppression of free circulation of information about the mechanisms of corruption.

Kleptocracy, literally rule by thieves, is on the rise. It is not a new phenomenon. In many ways colonial rule by European nations meant installing a government based on systematic stealing from local populations. After these countries had gained independence, dictatorial leaders and the clique around them continued amassing fortunes through illegal means – Mobutu in Congo and Suharto in Indonesia have become famous.

Most writing about the phenomenon in recent years has been on the formerly communist countries of Europe and Eurasia. It is most obvious in a number of countries of the former Soviet Union, in particular those with entrenched one person rule. But it can be observed further west as well; the study *Post-Communist Mafia State* by Hungarian scholar Balint Magyar received acclaim from Russian academics and activists, who recognized much of what they live in their own country.

What would you do if you would be suggested to commission an analytical paper from a consulting agency that seems too expensively priced and that you don't really need anyway, but that would lead the tax authority of the country in question to launch investigations against your competitors? This is what according to media reports, happened in Hungary; the consulting agency was close to the governing party which apparently is why the promise of tax authority action could be made. The companies that were approached with the 'offer' included American ones who then reported the cases to their authorities

who put a visa ban on a number of tax authority officials, which is when the scandal became public.

This seems a pretty simplistic and crude attempt to extract a bribe. But what if the offer would have been to order the overpriced analysis in exchange for winning a government tender? Or if a condition for submitting a tender or obtaining investment or construction permits is to include a local partner? And what if experience shows that the chances to win a tender rise to practically 100 percent by associating with enterprises run by people with direct links to the highest echelons of government? And what if these enterprises consist of an inextricable network of registrations in Cyprus and the British Virgin Islands (and maybe the Netherlands)? And what if these partners tell you to deliberately overprice your bid as it will be awarded anyway?

Is it inevitable to be affected by these practices when doing business in this region? Not all sectors of the economy are equally prone to this type of encounters with kleptocratic practices. And each country has its own peculiarities in its political and governance systems and on whether checks and balances are built-in. An independent judiciary, a strong and critical civil society and free and diverse media can indeed be an important counterbalance to prevent a take-over of power by a distinct political-economic group. Exactly because of this the judiciary, civil society and the media are under attack from government in many places. This is not limited to Central and Eastern Europe and Eurasia but is spreading westward; the same Russian activists that welcomed the analysis of Balint Magyar have also had to conclude that many elements of the analysis may apply to the USA.

Taking a purely risk-averse approach and shunning altogether business in or with the countries in question is not a solution. The number of these countries is on the increase and may include places where you have an established presence. And the population and those in the corporate world who in principle want to operate cleanly are not helped by leaving the market to unscrupulous providers and partners.

Taking a short-term approach in which profit is obtained by adapting to the kleptocratic environment and requirements in ways that may shield you from legal liability is not a solution either. Concepts of legal liability are shifting with legislation and prosecutors and courts are only now becoming really adapted to the relatively new international anti-corruption agreements. Also, in the longer term a level playing field, not influenced by political choices, is better for all involved.

What can companies do? A number of suggestions for further discussion:

- put on record their recognition of the importance of checks and balances on the use of power in the economic and political sphere, making explicit that this includes an independent judiciary, a strong and critical civil society and free and diverse media,
- use this position not just to put it in a far-away corner of their website but use it in a publicly meaningful way in speeches, presentations etc.,
- organize with other companies to achieve joint positions and activities ('Corporations for Human Rights and against Corruption'),
- show appreciation for civil society actors who work to uncover corrupt practices e.g. by referring in internal company communications to the importance of their work, by where possible pro-actively asking them to audit aspects of company activities,
- have an advertising policy that covers a wide range of media including ones that report critically on government operations (an often-used tactic by governments to get rid of media deemed too critical is to not use them for advertising).

Systemic corruption can be considered an engine of human rights abuse, which is why interest of the human rights movement in the phenomenon is bound to increase. Interest of the business community should likewise increase, for the good of an open, fair and equitable society.



FOSTERING INTEGRITY ONLINE: FROM OPEN DATA TO INTERPRETED DATA



Ms. Bárbara Luiza Coutinho do Nascimento

Public Prosecutor, Rio de Janeiro

Bárbara Luiza Coutinho do Nascimento has been a public prosecutor in Rio de Janeiro State, Brazil since 2014, and works on corruption cases and administrative misconduct. From 2016 to 2017 she was a member of the group of specialized activities in the fight against corruption of the Rio de Janeiro State Public Ministry. She has published books and papers about internet access as a human right, the concept of freedom online and the distribution of power on the internet.

FOSTERING INTEGRITY ONLINE: FROM OPEN DATA TO INTERPRETED DATA

The fight against corruption is a recurring theme in Brazilian history. Despite the undeniable recent advances of the judiciary in this area, revealing old multi-million dollar schemes and condemning the guilty, in 2018, Brazil worsened its position in the Corruption Perceptions Index. Therefore, only acting repressively when dealing with the problem has proved insufficient. Repressing acts of corruption will always be a legal and institutional necessity because there will always be those who will choose an illegal path. However, by only acting after public funds are diverted, the public manager is deprived of the possibility of immediately turning those amounts into assets for citizens, and a long and uncertain investigation that may or may not turn into an equally long and uncertain legal process is required.

There should, therefore, also be a focus on preventing acts of corruption. The use of internet applications (apps) to enhance transparency and accountability is intended to contribute to the debate focused on preventing acts of corruption and, as a consequence, may help to avoid the occurrence of damage to public patrimony and reduce the demand for repressive action. It should be noted that apps (short for applications) are computer programs that may be made to run in web browsers, on mobile devices, or both.

What does the internet add to the playing field? How can apps be used for such a purpose? Furthermore, are they effective tools that can help to prevent corruption? The internet democratizes access to information, allowing data to flow further, faster, and cheaply. It has dramatically changed the form of storage, search, acquisition, and distribution of information worldwide.

In Brazil, the right to information is ensured among others, in Article 5, items XIV and XXXIII of the Constitution of the Federative Republic, which guarantees everyone access to information, protects the confidentiality of the source when necessary for professional exercise, ensures everyone the right to receive information from public agencies of their particular interest or information of collective or general interest (except those whose secrecy is indispensable to the security of society and the State), and establishes an obligation of public officials to provide such information or they will be subject to administrative misconduct sanctions.

Brazil is a civil-law system with a detailed Constitution and an extensive amount of ordinary laws. In 2011, the Law on Access to Information (Ordinary Law 12.527/2011) was published. It regulates the fulfilment of this duty by the government and, among many other obligations, in Article 8, caput, concur-

rently with paragraph 2 of that Article, establishes the responsibility of public agencies and entities to promote the dissemination of information of collective or general interest that they produce or custody on official websites on the internet. The law also states that such websites must meet specific requirements, among them, the requirement to contain content search tools that allow access to information in a manner that is objective, transparent, clear, and easy to understand (art. 8, paragraph 3, I). Thereby emphasizing that information should not only be made available but that this should be done in a manner that makes the information broadly and easily accessible for all. Based on this law, several public agency websites now have a specific link to “access to information”, which provides the legally required data.

The underlying principle of this legal standard is clear: the relationship between information and democracy is essential. Democracy fades when the truth is hidden. A system in which democratic decisions are based on misleading data is an imperfect democracy. Enhancing transparency and providing information of better quality to citizens improves the quality of decisions and contributes to a better-informed society and to the construction of a full democracy.

The Federalists Papers (USA) already highlighted how vital the distribution of knowledge of and information on political dealings is to the health of democracies. Disclosing data concerning public officials and affairs is fundamental to allow social control, without which there is no truly democratic regime. Hence, a digital archive of official data empowers citizens, facilitating their access to information of public interest.

However, even though disclosure of data is required to establish a means of communication between the public sector and the citizens, it is not enough. The virtualization of the world has overwhelmed us with an incredible volume of raw information. The internet is the most extensive collection of knowledge ever developed by humanity. In this context, just disclosing the data is not sufficient. In an ocean of information, developing methods to process and interpret records is also essential. In order to be truly transparent, the disclosed data must be processed: it must be read, analyzed and interpreted.

The use of internet apps can be helpful in the processing of the disclosed data. In Brazil, many initiatives have emerged. For the 2018 general elections, a website for consumer complaints called “Complaint Here” (Reclame Aqui) developed an app called “corruption detector”. The app uses facial-recognition technology to cross photos of candidates and politicians with official information about them available on the webpages of the Courts of Justice, indicating both whether they are subject to lawsuits and the type of lawsuit. It is interesting that although it is a private sector initiative, it “crawls” through open data from the public sector websites but adds a user-friendly interface to deliver the result in an easily understandable manner.

The Rio de Janeiro State Public Ministry has been developing a network of apps for such a purpose. Two examples of the first generation are Citizen Manager and Building Internal Control. The first app lists lawsuits by municipality and calculates the total amount of money currently claimed in court by local prosecutors against public and private agents accused of corruption or damaging the treasury. The app allows citizens to simulate how that money could be spent on public policies such as building schools or hospitals, thereby revealing the true cost of corruption. The second app ranks municipalities by their level of internal control maturity, which is calculated on the basis of elements such as audit, internal affairs, transparency, budget, and planning. By choosing these as the elements to demand, the project aims to fortify integrity, since governments will try to comply with the standards to avoid the embarrassment of having their images linked to poor governance. Therefore, they will work to enhance internal control according to these criteria, in order to minimize bad publicity.

Together, these two apps work to increase publicity, transparency, and accountability in the public sector, acting as mechanisms to prevent corruption because both the parties and contracts questioned in court, as well as the damage caused by them are exposed. Governmental authorities are also exposed since the comparison reveals the deficiencies of each municipality, outlining risks to integrity. It is expected that these apps will enhance citizenship, public trust, and good governance while decreasing litigation, misuse and misappropriation of public resources, resulting in less corruption.

However, there is no miracle here. These apps are a contribution to the fight against corruption, but not a silver bullet. Digitalization is a necessary evolution due to the volume of information available nowadays. Institutions that remain restricted to analogue data processing tend to be left behind as they will fail to keep pace with the technological evolution of society. However, without the effective use of these tools by citizens and public servants, no change will come.

The effectiveness of these tools lies especially in raising awareness and facilitating, each one a little, social control. When anti-corruption bodies do their work, but do not show it to the citizens, a false perception of widespread corruption can be generated among the people. Therefore, facilitating the interpretation of the data disclosed and displaying the results of the actions taken by the public sector are essential to reduce the general sense of impunity and vital to foster public trust.

The effectivity of such apps may be reduced if, for example, the app interprets the data in a misleading way or if they are being used in a country with scarce internet accessibility. What if the interpretation of the information by the app seems misleading? A possible solution might lie in providing the code of the

app to allow auditing by the people, which will then be responsible for quality control. It is worth remembering that the capacity to produce collective knowledge on the internet is based mainly on peer review.

As to the question whether such apps are still effective if, in a certain country, access to the internet is scarce. The answer could be: For this proposal to be effective, the percentage of the population with access to the internet is irrelevant. If only 10% of the people are connected, it is for this 10% that the data should be disclosed and interpreted. In other words, regardless of the percentage of people who have online access, if those who have access to the internet are better supplied with information about their government affairs and public expenses, the prospect will be better than having no information online. They are the ones who will exercise social control online and will have the social responsibility to disclose this information through other media, such as radio, newspapers or television.

It is expected that the increasing development and use of artificial intelligence, blockchain, and big data analytics will open more possibilities in the future, reshaping anti-corruption tools, updating traditional methods, and reaffirming the idea presented in this essay, that is: internet apps can and must be used to promote integrity.





FOSTERING THE NEXT LEVEL OF INDUSTRY-LED COMPLIANCE

Ms. Pascale H el ene Dubois

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Pascale Dubois has been the World Bank Group's Integrity Vice President since July 1, 2017. Ms. Dubois has played a leading role in the World Bank's anti-corruption efforts for close to two decades. She previously served as the World Bank's first Chief Suspension and Debarment Officer. Since 2009, she has been an Adjunct Professor at Georgetown University Law Center, where she teaches a course on international anti-corruption. She also is a Senior Advisor to the American Bar Association Section of International Law's Anti-Corruption Committee.

FOSTERING THE NEXT LEVEL OF INDUSTRY-LED COMPLIANCE

In 2010, the World Bank Group (WBG) made debarment with conditional release its default or "baseline" sanction for companies and individuals found to have engaged in sanctionable practices under the WBG sanctions procedures. Previously companies typically would be debarred by the WBG for a fixed period of time and then the sanction simply would expire. But since 2010, sanctioned companies generally are required to meet specified conditions before being released from WBG sanction.

In most cases, as a condition of release, sanctioned companies now must demonstrate that they have implemented a satisfactory integrity compliance program (ICP) that reflects the principles set out in the WBG Integrity Compliance Guidelines (WBG Integrity Guidelines). The WBG Integrity Guidelines set out core principles that characterize the elements of most effective compliance programs and are consistent with globally recognized best practices. Together with the change in the default sanction, the WBG also created the Integrity Compliance Office (ICO), an independent unit within the WBG Integrity Vice Presidency that engages with companies sanctioned with conditions for release, evaluates their ICPs against the WBG Integrity Guidelines, and ultimately determines whether the companies have satisfactorily met their conditions for release. The express purpose of these innovations was to emphasize rehabilitation over punishment and encourage the development of more – and more effective – ICPs among private sector actors.

Roughly eight years later, the results are becoming clear. With the ICO's help, companies are increasingly taking the lead in the development of a more compliance-conscious business climate worldwide. This is the "next level" of integrity compliance: moving from a top-down model of enforcement based on the threat of punishment, to a bottom-up, industry-led environment in which strong compliance programs are seen as a competitive advantage and a source of reputation and pride.

The Work of the ICO: From 'Paper Programs' to On-the-ground Implementation

For a company to successfully lead on compliance, it must not only adopt comprehensive policies, but also engrain a compliance-focused mindset in its top leadership, middle management, and staff. Accordingly, the ICO's evaluation process goes well beyond the particulars of a company's written policies. The ICO must also see that the ICP has been understood, accepted, and incorporated, over a period of time, into the company's day-to-day operations.

When engaging with a sanctioned company, the ICO first seeks to understand matters such as the company's size, structure, geographic reach, sectors of operation, risk profile, and existing integrity-related controls. It is also important for the company to conduct (or to have conducted) a comprehensive risk assessment that can inform the continuing improvement and implementation of its internal controls, including the ICP. The ICO then will evaluate the design of the company's ICP, as well as the structure of its compliance function, in consideration of the company's risk profile and other circumstances. The ICO also will evaluate the extent to which the ICP has been implemented throughout the company, including relevant affiliates, considering factors such as:

- The appointment of suitable compliance staff, including (where appropriate) local integrity focal points across global organizations, in addition to regional compliance officers. Such focal points can be valuable resources and champions for integrity at the local level.
- Whether the company has ever declined to hire a prospective employee, engage a potential business partner, or pursue a business opportunity because of integrity concerns that were uncovered through the company's due diligence processes.
- Demonstrated use of electronic request, approval, and tracking tools (where appropriate) for matters such as gifts, hospitality, political contributions, deviations from standard contractual terms, etc.
- The extent to which a company's mechanisms for seeking integrity advice and reporting integrity concerns have actually been used, which often indicates how well such mechanisms have been communicated within the company; whether employees trust that they can report confidentially and without fear of retaliation; and whether employees have confidence that the company will take appropriate action.
- Effective investigations and subsequent remediation, not only in terms of discipline, but also with respect to program improvements such as clarifying or revising misunderstood policies; incorporating real-life lessons into compliance trainings; or adding relevant safeguards to existing controls.

In addition to looking for a demonstrated track record of on-the-ground implementation, the ICO seeks assurances that the company intends to carry the ICP forward after release, often through management commitments and forward-looking action plans.

To date, the ICO has released more than 65 parties from sanction, with many more being actively engaged with the ICO in the development and implementation of their ICPs. Many of these companies occupy positions of leadership in their respective industries, which means their vocal support for compliance can reach a wide audience. Significant impacts also can be had across supply chains.

Towards the Next Level of Industry-led Compliance

As more companies engage with the ICO process and are released from sanction having met their respective conditions for such release, many of them continue to promote integrity across industries and sectors. A well-known example is Siemens, whose 2009 settlement with the WBG Group included a \$100 million commitment to support anti-corruption work going forward. Through this years-long process, Siemens has become a prominent advocate for integrity worldwide. As expressed by Siemens' General Counsel:

For companies, corruption impedes business growth, escalates costs and poses serious legal and reputational risks. It also raises transaction costs, undermines fair competition and impedes long-term foreign and domestic investment... [W]hat is important is that our management and our employees have made their stance against corruption also clear to the external world and actively try to contribute to changing the business environment to be more transparent through our Collective Action efforts and our Siemens Integrity Initiative. Today's business leaders have an unprecedented opportunity, and responsibility, to show that companies can do well by doing good... What we need are more companies all around the world implementing proper effective compliance systems and stable, transparent, predictable and efficient legal frameworks.

Likewise, a partially state-owned company in Serbia called Energoprojekt, which was released from WBG sanction in 2015, has taken an active role in promoting integrity compliance. The company's integrity compliance officer described successes in terms of "raising awareness about corruption and how to fight it, as well as in promoting ethical standards and compliant behavior among Energoprojekt's employees and through collective action taken in the Republic of Serbia in cooperation with the National Alliance for Local Economic Development (NALED)." Other state-owned enterprises, including several in China, similarly have become advocates for the promotion of integrity standards following their own release from WBG sanction.

Even small companies are taking the opportunity to promote compliance in their spheres of influence. For instance, according to the Managing Director of Babcon Uganda Limited, a small Ugandan company that was released from WBG sanction in 2014:

We have published anti-corruption messages that are posted on our office gate and other sites. When visitors come in, they have often expressed gratitude and are actually pleasantly surprised, as this is not common in many businesses in Uganda. Corruption gives unfair advan-

tage to those practicing it and therefore undermines fair competition and access to business opportunities. It undermines service delivery and does not give value for money, both in terms of quality and cost, when businesses and public servants connive in corrupt activities. This affects everyone. It is everybody's wish to do business in a good environment, and if I can be part of the team to create this environment, I will gladly participate. We insist on working with businesses with whom we share the same values. This seems to be paying dividend.

Relatedly, the ICO has developed a mentorship program that pairs sanctioned companies with companies that have been released from sanction or are well on their way to being released. A number of companies have been paired to date, and feedback on the program indicates that both mentor and mentee companies find the experience beneficial. For example, both mentor and mentee companies have expressed how participating in the program could help to improve their competitive advantage, and larger companies have noted how the initiative can create a pre-vetted pool of downstream business partners, thus helping to reduce the time and money required for due diligence and monitoring. In these ways, companies are helping each other to implement effective compliance programs, advancing global integrity compliance principles even further.

Companies are also partnering with governments and international organizations in integrity promotion efforts. Here, too, the ICO is helping to facilitate cooperation by working with companies, governments, and other groups to organize local and regional workshops where companies and compliance experts share their experiences and learn from one another. The ICO has found that these workshops can be particularly useful for smaller firms that may have fewer compliance resources. Companies often share "lessons learned" and discuss challenges they have faced, while experts and other practitioners contribute their insights as well. Often, companies that are engaging with the ICO and companies have been released from WBG sanction participate in such workshops, including as presenters.

All of these efforts work toward the same goal: a global business environment in which fraud, corruption, collusion, coercion, and obstructive practices are simply untenable propositions for companies that want to be successful in their respective spheres. While there always will be risks and challenges, the growing leadership role of companies, facilitated by the work of the ICO along with many other private and public sector initiatives, is helping to take the worldwide integrity compliance initiative to the "next level."

This essay was co-authored by World Bank Group colleagues, Ms. Lisa Miller, Integrity Compliance Officer and Head of the Integrity Compliance Unit, and Mr. Joseph Mauro, Integrity Compliance Specialist.





THE ROLE OF CULTURE AND BEHAVIOUR IN CORPORATE GOVERNANCE CODES

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THE ROLE OF CULTURE AND BEHAVIOUR IN CORPORATE GOVERNANCE CODES

After the corporate scandals in the 90s of Enron, WorldCom, Ahold and others, corporate governance codes were drafted and implemented in national laws and regulations. Unfortunately, these corporate governance codes did not result in a society where companies, directors and their relevant stakeholders lived happily ever after. On the contrary, due to an on-going supply of new financial scandals and societal deceptions, also with integrity issues, our society increasingly distrusts executive and non-executive directors, as they often appeared to play a significant role in these scandals. Directors are often accused of having overlooked the important issues or having failed to intervene in company decision-making.

Also in the United Kingdom a Corporate Governance Code was introduced in 1992. According to the Financial Reporting Council (FRC) it especially 'placed great importance on clarity of roles and responsibilities, and on accountability and transparency. However in 2011 the FRC stated that "it has become increasingly clear in the intervening period that, while these are necessary for good governance, they are not sufficient on their own. Boards need to think deeply about the way in which they carry out their role and the behaviours that they display, not just about the structures and processes that they put in place."

Codes of conduct in the Boardroom

Indeed corporate governance codes put more emphasis on structures and processes, and less on behaviour. Already in 2009, Professor De Bos and I published a Code of Conduct for Non-executive directors in a.o. the Journal of Ethics. At that time this initiative came too soon, directors weren't ready yet to look into their own behaviour and argued that they all knew what good behaviour and moral standards meant, and no code could change that.

Besides society's growing disapproval of the role of directors in our society, our motivation to formulate a code of conduct came from the results of the annual Dutch Non-Executive Directors Survey in 2008. This survey showed that directors often act on the basis of unwritten rules and had different opinions on their role and tasks.

But also scholars in (corporate) governance research have different views on the role of directors with respect to their task of supervising the management of an organization. For example, agency theory, stewardship theory and resource dependency theory have different opinions on the role and tasks of directors. According to the agency theory, directors are independent supervisors who should serve shareholder interests by restraining management from

pursuing their own interests. On the other hand, proponents of the stewardship theory argue that directors will have more added value in a supportive, service role and that management can be trusted. Resource dependency theory regards corporate boards as an essential link between their company, its environment and the external resources on which it depends. From the perspective of resource dependence theory, the board of directors is a/the? primary linkage mechanism for connecting a company with external resources and such linkage has, among other purposes, a value in legitimizing organizations. Legitimacy and conformity to societal expectations are considered key components of organizational survival.

Furthermore, there is very little legislation in the Dutch Civil Code concerning directors. Although it describes the tasks of the supervisory board as monitoring and advice, it gives no further explanation of how these tasks must be fulfilled. The judiciary is increasingly using the Dutch corporate governance code(s) to fill in the vague standards of mismanagement and tort. For instance, the recommendations in the governance code are used as a means to give shape to the concepts of "basic principles of sound business practice" and "reasonable grounds to doubt the correctness of a policy". The governance code thus provides a way to determine what is meant by general principles of good corporate governance.

Do we then need an additional Code of Conduct for directors, that focuses on culture, integrity and behaviour? Schwartz argues that in order to develop and to evaluate a code of moral standards, we must first know what the universal moral standards are. He identified six universal moral standards, being:

- Trustworthiness, including concepts such as honesty, integrity, reliability and loyalty;
- Respect, including respect for human rights;
- Responsibility, including accountability;
- Fairness, including notions of process, impartiality and equity;
- Caring, including prevention of unnecessary suffering and injury;
- Citizenship, including concepts such as obeying the law and protecting the environment and society.

Although one could argue that these are indeed normal and general accepted principles you do not have to write down, we believe that a code of conduct could at least provide guidance to directors on three key issues.

First, a code of conduct would compel the board to reflect on its own values. This is essential for the entire organization because the board is seen by society and stakeholders as a representative of the organization, and as such provides legitimacy to the values of the organization.



Second, it would compel directors to verbalize their unwritten rules. An annual evaluation of their performance, preferably with an external facilitator, on the basis of ten themes (such as independency, integrity, responsibility, et cetera) would reveal any misunderstanding between the unwritten rules of one director in relation to that of another.

Third, it could assist in breaking ‘groupthink’ and group behaviour, one danger of which is the aim for unanimity in decision-making.

The UK Guidance on Board Effectiveness

In 2011 the FRC introduced their Guidance on Board Effectiveness (Guidance). The FRC stated that boards need to think deeply about the way in which they carry out their role and the behaviours that they display, not just about the structures and processes that they put in place. The FRC argues that, “the new guidance is not intended to be prescriptive. It does not set out “the right way” to apply the Code. Rather it is intended to stimulate boards’ thinking on how they can carry out their role most effectively. Ultimately it is for individual boards to decide on the governance arrangements most appropriate to their circumstances, and interpret the Code and Guidance accordingly”.

The Guidance is composed by many principles of which we again might say that there’s no need to write them down. For example, the principle that “Good boards are created by good chairmen” explained by “while the chairman creates the conditions for overall board and individual director effectiveness”. However, again by explicitly mentioning what is required of a chairman, we could address such a theme in board evaluations. The Guidance requires, for example, that the chairman “demonstrates the highest standards of integrity and probity, and set clear expectations concerning the company’s culture, values and behaviours, and the style and tone of board discussions.” Also, according to the Guidance, non-executive directors “have a responsibility to uphold high standards of integrity and probity”. They should support the chairman and executive directors in instilling the appropriate culture, values and behaviours in the boardroom and beyond. Furthermore, “boards should be aware of factors which can limit effective decision making, such as: failure to recognise the value implications of running the business on the basis of self-interest and other poor ethical standards”.

Culture and behaviour in the Dutch Code

In 2016 the Monitoring Committee Corporate Governance (Committee), responsible for the revision of the Dutch Code, introduced a proposal to include a chapter on culture in the Dutch Code. The revised Code now focusses on long-term value creation. And in the Committee’s opinion, “culture plays an important role in the enterprise’s functioning and the degree to which it contributes to creating long-term value for the company and its affiliated enterprise”. The chapter on culture is predominantly about the culture within

the company, and of course to some extent it includes tone at the top. However, it scarcely refers to behaviour of the board itself, or how directors interact with each other.

The principle addresses five key points, being:

- The management board and the supervisory board should promote a culture of openness and approachability within the company.
- The management board should inform the chairman of the supervisory board on signs and actual or suspected material misconduct.
- The management board should be responsible for embedding the culture in the enterprise, including adopting common values for the company and for establishing a code of conduct, It should endeavour to ensure that all employees and other stakeholders of the company support this code, propagate the culture by setting the right ‘tone at the top’ and displaying model behaviour, assure itself of the effect of the measures taken to embed the culture, draw up a scheme for reporting actual or suspected misconduct within the company and post this scheme on the website.
- If the company has established an employee participation body, the conduct and culture should also be discussed in the consultations between the management board and such employee participation body.
- Finally in the management report, the management board should explain the manner in which a culture, that is aimed at long-term value creation, is shaped within the company.

These principles specifically address the fact and the way that the management board should promote a certain culture within the company, thereby facilitating an open dialog between the management and the supervisory board on this issue, but they do not really address the behaviour, culture or integrity in the boardroom itself.

Conclusion

In my opinion, the limited attention for boardroom behaviour is a missed opportunity. The Committee should have addressed boardroom behaviour more explicitly as well. Especially, the behaviour in confidentiality of the boardroom. A culture of integrity in the boardroom, is essential for good governance. The UK Guidance of Board Effectiveness was able to capture this kind of behaviour as well, even though one could argue that it should be self-evident.

I understand, and even support, the goal to have a short and efficient governance code. However, boardroom behaviour needs additional and explicit attention, and therefore my proposal would be to have a more comprehensive Guidance of Board Effectiveness attached to the Dutch Code as well.





WHY INTEGRITY AND ACCOUNTABILITY SOUND LOUDER THROUGH THE VOICE OF BUSINESS

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Richard Bistrong is a former international sales executive. In 2012, Mr. Bistrong was sentenced for violating the FCPA, and served fourteen-and-a-half months at a Federal Prison Camp. He currently consults and speaks on bribery, ethics and compliance issues from a front-line perspective at institutions such as the World Bank, the International Anti-Corruption Academy and global multinationals. Mr. Bistrong is a Contributing Editor of the FCPA Blog. In 2018, Mr. Bistrong was named by Thomson Reuters as one of the top 50 social influencers in risk and compliance.

WHY INTEGRITY AND ACCOUNTABILITY SOUND LOUDER THROUGH THE VOICE OF BUSINESS

When we look at our global integrity, anti-corruption and accountability programs, be they an anti-bribery and/or ethics initiative, a compliance manual, or even a code-of-conduct, many of those plans were initially developed through a criminal law lens. And there's nothing wrong or peculiar about those efforts. For example, many of our anti-bribery laws, including Canada's Corruption of Foreign Public Official Act, and France's Sapin II, were recent developments, so it's natural that compliance leaders would look to develop a framework that intertwines with such regulatory requirements. That's certainly a legal, compliance and internal-control challenge for today's multinationals, operating in multiple jurisdictions, where extra-territorial and local laws are not necessarily homogenized.

When I first started consulting and writing about ethics, compliance and integrity challenges (in 2014), most of the discourse was around and about "what do the regulators want," where corporations were very focused on the foundational components of a "defensible program." And that's when I started to ponder, "Does a program that might satisfy the regulators automatically translate into one where ethics, integrity and accountability are embraced by a commercial workforce as a partner to success?" In other words, is a compliance program, which is pointed towards fulfilling regulatory requirements if there's ever a problem (either self-reported or discovered), mean that it's equally understood by the workforce?

The more I started working with organizations and interacting with compliance and commercial leaders, the more I started to see that ethics, integrity and accountability as only articulated through compliance leaders, with a focus on policies, rules and procedures, sounded very much like a support function. Where that occurs, the lack of a rule might lead one to believe that a particular action or interaction is permissible. As Max Bazerman and Ann Tenbrunsel share in *Blind Spots*, "the primary danger of compliance systems lies in their contortion of the decision-making process. Suddenly, instead of doing the right thing, employees focus on calculating the costs and benefits of compliance and non-compliance," unaware of "what ethical implications might arise from this decision."

But just like our external environment and risk profiles evolve, so does our compliance world. A few years ago I started to notice a certain amount of compliance fatigue, and that wasn't fatigue among the commercial workforce, as expressing exhaustion with compliance training and initiatives. Rather, it was among compliance leaders conveying frustration with commercial leadership as not taking ethics, integrity and accountability as seriously as they were, but still thinking of it as a "a support function." And then, as those 'defensible programs' started to evolve, I started to see first-hand where compliance leaders started to become a major part of the discourse at business leadership meetings. Where among the usual topics of forecasting, planning, and strategy, was a robust discussion around the importance of "how we are going to achieve those objectives and execute on strategy, in a way that aligns with our goals" with engaging and thought provoking exchanges between compliance and business leadership.

But is such a shift really a necessary and significant one? I would argue yes, if our goal is to reduce the gap between integrity, accountability, and business practices.

In any organization that is committed to top line growth, values are going to get challenged. Especially where some of that growth is expected in emerging markets, where we know that lucrative business opportunities and corruption risk is intertwined. Those are the places where ethics and integrity can look complex and gray- where tension can develop between the pressure to comply and the pressure to succeed. And that's a normal, healthy and inherent part of any organization committed to growth. In other words, there's nothing wrong with such tension. But it's who people are turning to, and who they shouldn't be turning to, when they encounter an ethical struggle, that matters.

In dealing with such complexities, I now see business leaders, including those with P & L responsibility, as well as those in middle-level management, embracing how we can be both competent and confused in our pursuit of commercial objectives. They do this by keeping the volume up as to the importance of "how business gets done," even when facing the challenges of "getting the business done." While we often speak of tone at the top, for those who work remotely in disbursed parts of a global organization, that business leader, is the tone at the top, as representing the voice of management. And I didn't invent this rule, but we tend to listen a bit closer to those who have a voice in our objectives and performance evaluations.

So when those commercial leaders, especially in mid-level management, through dialog and action, as opposed to intranet messages and fancy wall-posters, are making it clear that ethics, integrity and accountability are not a support function, but a vital part of how business is conducted through ethical and sustainable business practices, then those stated values become operationalized. Not only through the voice of compliance, but through the corporate and commercial narrative. That's turning principles into practice. When that happens, ethics, integrity and accountability sound a lot louder, as anchored and intertwined to daily operations, through the impact of business leadership.

So, what can your organization do to turn the volume up on Integrity and Accountability? A few suggestions:

- At the next meeting where a compliance leader(s) is presenting to the commercial workforce, try an introduction by someone in business leadership, even the CEO, or as I have recently observed, by someone on the Board. Imagine the spoken and unspoken messages to attendees when a compliance leader is introduced by someone with significant managerial and commercial responsibility.
- Most organizations have very outward facing messages of ethics, integrity, compliance and sustainability on their website. Many multinationals are very focused on sharing their values with external stakeholders, yet when I put those messages up on my presentations and ask attendees if they know where they came from, many don't. Accordingly, spend some time with your marketing department and focus on an initiative on how important those values are internally. That's the why of compliance, as going beyond policies, rules and procedures, as to avoid the peril described by Bazerman and Tenbrunsel. And have those values shared in a campaign that's not launched only by compliance leaders, but in combination with compliance and business leaders.
- Take your ethical and integrity success, as well as failures, and turn them into workshops across the enterprise. Think of them as "growth-shops." In addressing failures or lapses, compliance and commercial leaders can talk about what happened, how it could have been avoided before it started, and how it could have been corrected and addressed earlier. What were the root causes, and what are the lessons learned? Turn those successes and failures into actionable items across functions.

- Bring in your support functions when you are addressing ethics and integrity. It takes a village to do something right, and to do something wrong. Do the teams in those support functions, including sales order processing, finance, manufacturing, logistics, etc., think of themselves as ethics and integrity ambassadors, or just small gears in a large organizational operation? When functions are not collaborating, cooperating and communicating, integrity and ethics can slip between the organizational gaps. Always make sure that everyone in the organization is empowered as an important voice and member of the ethics, compliance and integrity team!

These are all initiatives that don't require an outside consultant or third party to lead. It's about using the internal resources you have, and to make everyone aware that compliance isn't a support function or team, but that everyone in the organization, no matter where on the organizational chart, is a compliance ambassador. It's about everyone leaning in together to make sure that what you want to happen on the front-lines of operations actually happens, and that no one is alone when struggling with an ethical decision!

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TAKING INTEGRITY TO THE NEXT LEVEL WITH THE ISO 37001 STANDARD

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TAKING INTEGRITY TO THE NEXT LEVEL WITH THE ISO 37001 STANDARD

Released in 2016 with a focus on anti-bribery management systems, the ISO 37001 standard is an obvious place to start when reviewing ways to strengthen integrity in the private and public sector. As an emanation of internationally recognized best practices in the fight against corruption, the new ISO norm is designed to help organizations set an efficient compliance program to prevent, detect and remedy bribery risks. As a result, it will not come as a surprise that the norm requires the implementation of well-known compliance measures, such as having an anti-corruption policy in place, a dedicated compliance staffing, periodic risk-based assessment, due diligence and investigation methods, as well as an auditing and control plan.

Considering, though, that anti-bribery laws or agencies in charge of their enforcement usually give relevant guidance about the expected contents of a compliance program, one may wonder what the ISO 37001 certification process may bring as added value to entities desiring to enhance their anticorruption management system. In fact, we believe that the new norm brings substantial advantages for corporations when implementing their compliance program (I) and it can also constitute a powerful compliance evaluation tool for public entities when assessing the level of ethical conduct of their bidders in public tendering procedures (II).

Using the ISO 37001 standard to enhance compliance programs

There are numerous reasons why the ISO 37001 certification provides a suitable platform for any corporation to boost its existing compliance program. We will focus on the most important ones.

First, the certification constitutes a form of self-discipline tool: once certified, it becomes critical for the relevant entity to maintain its certification. To a large extent, losing a certification is worse than not having one in the first place. This is especially true in the launching phase of a new standard. This means that the certification is not the end of the process, but the beginning of a recurrent yearly audit plan designed to maintain and renew the initial certification. From this perspective, the new norm surely supports entities in the early stage of developing an integrity program. But it equally provides a logical next step for corporations with more mature systems in search of new initiatives to generate an additional level of sophistication in their compliance approach.

Another precious advantage is derived from the continuous improvement methodology applied as part of the certification process. Many corpora-

tions consider that their compliance program works well since it is made of a comprehensive range of instructions and directives covering in details key corruption risks for their daily activities (bribery, conflict of interest, facilitation payments, commercial agents, etc.). These corporations may run the risk of overly focusing on the deployment of their program without paying sufficient attention to the performance element. Through the auditing process combined with the establishment of key performance indicators specifically designed to measure the efficiency of compliance systems, the ISO 37001 standard places the emphasis on performance and not just deployment, and this is at the heart of integrity program improvement opportunities. By setting goals and lining-up actions at regular intervals to permanently improve the efficiency of the anti-bribery management system, the ISO certification clearly offers a strong continuous improvement methodology and is far from representing a pure rubber stamp exercise.

Finally, since the ISO 37001 standard is an external certification system, it provides the usual credibility attributes that come with a third-party certification. There are numerous organizations that can provide ISO 37001 certification and, as a result, concerns are sometimes expressed about the potential lack of uniformity in the auditing methodology to be applied. We believe that these concerns should not be overemphasized since agencies offering certification services are expected to have adequate expertise and track record to perform these tasks, and this can easily be verified.

Using the ISO 37001 standard to assess compliance programs

The ISO 37001 certification is suitable for entities regardless of whether they belong to the private or public sector. That said, for public bodies involved in public tendering as adjudicating authorities, the ISO 37001 standard offers another advantage, namely the possibility to refer to the certification as a powerful tool to assess the level of ethical conduct of the various bidders submitting offers for public works.

Clearly, there is a growing and welcome trend in public tendering activities to request from bidders the production of ethics and compliance questionnaires. These questionnaires, which vary in their level of details, are designed to help public bodies with the review of the culture of integrity and the degree of anticorruption awareness from contractors with whom they may enter into contract. These integrity questionnaires are therefore required as an integral part of the bidders' documentation. Bidders who fail to submit these questionnaires are obviously exposed to the risk of disqualification. When performing the evaluation of the quality of the bidders' offers, depending on the nature of the integrity questions raised and the answers given, public bodies rely on these questionnaires to either allocate negative points to the relevant offer or, in more serious cases, to disqualify a bidder on the basis of poor ethical conduct.

In a globalized economy, the ISO 37001 certification can provide a standardized tool for public bodies to assess the quality of the anti-bribery programs of their bidders. As more companies get certified, we can expect to see in the near future questions in public procurement ethics and compliance questionnaires about the availability of ISO 37001 certificates. Mid- to long-term, we could also anticipate seeing the certification process being placed as a compulsory requirement for pre-qualification and qualification rounds in public tendering. This scenario is especially conceivable if the certification becomes a widespread international standard for companies advocating compliance as a top priority of their business conduct. This would be the most prominent future we can wish for the 37001 standard as a way to foster integrity and accountability in the private and public sector at large.

As a matter of transparency and proper disclosure, the author wishes to outline that Alstom is certified under the 37001 norm and was the first company to achieve this certification in France in 2017.





HOW CORRUPTED ARE YOU?

Prof. Marc Le Menestrel

**Associate Professor at the University Pompey Fabra and
Visiting Professor at INSEAD**

Marc Le Menestrel is a decision scientist and advisor to the World Economic Forum on its Partnering for Anti-Corruption Initiative. His research is focused on the theory of choice, the confluence of rational thinking and ethical values in decision making and the use of mathematical theories of measurement to articulate the subjectivity of human behaviour. He teaches and coaches senior executives and board directors on high level performance and leadership as well as the exercise of wise power in governance, sustainability, anti-corruption and risk management.



HOW CORRUPTED ARE YOU?

After a couple of decades teaching business executives and directors about corruption, I felt honored when I started to be asked to teach judges, police officers and military investigators. But I needed to establish some connection with their side of the issue. When I am teaching business actors, the primary concern is resisting the temptation to corrupt public officials. When I am teaching public officials, it is about resisting the temptation of being corrupted. The truth is that I am more familiar with the feeling of being corrupted than that of corrupting. Although it sounds strange to say, I am somehow corrupted myself, and I sometimes begin my classes by stating: I am corrupted too.

Corruption, like all ethical vulnerabilities, has always existed and exists everywhere. It is indeed very likely that it will always exist. Why not also in myself? Of course, I can prevent myself from thinking about it. Even more convenient, I can choose or invent a definition of corruption that does not include me. After all, accepting that I am corrupted could open the door for a fatalism that may hinder my fight against corruption. And corruption is bad. So it has to be fought against. Always?

Most of us are very uncomfortable when confronted with the truth of our unethical behaviors. And because we tend to think in exclusive categories, we fear being bad because we think it implies we are not good. However, the truth is that ethics is a grey zone. Each one of us is both good and bad. Hence, if I could put in place a series of principles designed to make sure that I am on the right side, it would be an illusion. I am both intellectually honest and intellectually corrupted, and need to both fight and embrace this contradiction.

In my experience, the more I know the extent to which I am corrupted, the better I am at navigating the grey zone of my own ethics. Finding moral orientation in the grey zone sometimes entails resisting my own imperfections and striving for something higher. At other times, it is a matter of accepting some of my own “badness”. It can be difficult to determine what to resist, and what to accept. Here are three ideas that I have found useful in my moral and ethical decision making.

A zero-tolerance stance toward corruption is neither necessarily honest nor desirable

I am trying to embrace the fact that I am not perfect. And that includes that I sometimes behave in ways that are not in full accordance with my integrity. As a Western male individual, my thinking is biased by an education, a culture,

social norms and habits that constitute my identity. This has both good and bad ramifications. Teaching all over the world, I have come to realize that some of my attitudes could be perceived as discriminatory, even racist sometimes.

To some extent, if I accept it, I have more clarity about these negative aspects of my behavior. Knowing that I am partly corrupted, I can better adjust and try to be less biased. I would try, for instance, resisting any feelings of moral superiority and self-righteousness, an attitude that is somehow quite pervasive in my own culture and that I am ashamed of. But I know that even if I fight my intellectual corruption, I will not become perfect. So what I can do is to accept it and make peace. This does not mean that I become inured to my own corruption. Rather, making peace nurtures my emotional maturity. When a student points out some hidden negative bias in my teaching, I strive to show interest and curiosity. And then I can learn, instead of pushing away any information that contradicts my temptation for self-conferred sainthood.

So overall, I have very good reasons to have some tolerance about my ethical vulnerabilities. As I am intolerant with the aspects of myself that I really want to fight, I can be tolerant with the aspects that I accept as part of my fallible humanity, and bring those aspects to a clearer and more peaceful conscience.

Abandon the business case...to invent it progressively

To try to minimize my own corruption, I had to abandon the business case. I needed to be prepared to teach outside of the comfort zone of my students and not telling them what they prefer to hear. Sincerely, I don't believe it is possible to teach about corruption while always being comfortable and successful.

From time to time, I have indeed lost clients. And still today, I must be prepared to be less famous or have fewer clients if I really want to maintain or develop my intellectual honesty. Otherwise, I feel I am going down a slippery slope where I progressively corrupt my teaching in order to succeed. There have been assignments after which it was clear that they would never hire me again. It is not healthy for me to be appreciated by everyone.

After years of teaching, I have developed my expertise precisely because I have accepted not to profit from each assignment. I have now developed sustained and profitable relationships but it took more time and I was not as profitable as I could have been. In fact, I continue to navigate the grey zone between my intellectual honesty and my own success. It is only because I am not constrained to the business case that I can progressively invent mine. It takes time and the road is uphill. Some days am proud of the journey. Some days I doubt very much.



I believe that an insistence on the business case contains fatal contradictions. The search for profits -- i.e. the core cause of corruption -- cannot also be the core of anti-corruption. Treating anti-corruption like a strategy that must yield financial returns is like treating a disease with the very cause of that disease. It almost ensures that we will miss the most meaningful opportunities for positive change. Yet this is the situation we face today, in which anti-corruption itself risks becoming corrupted. If we accept to question our way of thinking, positive change can be the catalyst for improving all stakeholder relationships, and ultimately achieving sustainable and meaningful business success.

Corruption begins with temptation, and it is important to promote anti-corruption for moral reasons, not just self-serving ones. It is only to the devil that ethics can be sold.

At the individual level, altruism is not always ethically superior

To promote anticorruption, I am also empowering my students to be more selfish. In fact, it is interesting to note that we live in a world where companies are supposed to act according to their own business interest while individuals are accused of being too selfish.

On the one hand, there is this dogma that business organizations should be motivated by their self-interest. As I said, I believe this is precisely that way of thinking that corrupts them. As business organizations are increasingly powerful and operate globally, their responsibility does extend much beyond that. If it is not, it should be common sense that an exclusive orientation towards their self-interest is leading to negative consequences.

On the other hand, we hear all the time that business actors should be more altruistic. In my experience, it seems that my students are spending a great deal of their time and effort solving for goals or constraints other than their own. In many occasions, their unethical behavior serves the interests of their company. It may also stems from deference to authority, blinding them to the risks they personally incur by engaging in such behavior. Hence, paradoxically, a deeper anchoring in their own “self” can indeed promotes more ethical behavior.

Sometimes, it can be ethically preferable to pursue our own happiness but not others, rather than the reverse. That the contrary of any truth may be as true as the truth itself seems to be a defining characteristic of ethical thinking. It is difficult to embrace and requires a new way of thinking. But it allows us to navigate the grey zone of ethics in a way that beware of categorical judgments while acknowledging that some behaviors are more ethical than others.

No one is a saint and when I declare that I am corrupted, I reveal my ethical vulnerabilities and strive to create sincerity and promote intellectual honesty. It also clears the ground for more adult conversations about ethics and especially about corruption. These conversations are urgently necessary today, as anti-corruption is in increasing danger of itself being co-opted by forces concealing power-seeking motives behind high-minded rhetoric. In business, government or academia, frequent encounters with the reality outside our comfort zone train us to both fight and embrace our shadows.



ICC AND ITS LEGACY ON BUSINESS INTEGRITY

ICC The world business organization

Corruption threatens the integrity of the market, disturbs public trust, increases inequalities in income and wealth and is a burden to society. Bribery in business transactions distorts fair competition, leads to great loss of transparency and increases the costs of business dramatically. Only systems that require integrity from their participants will allow all businesses to compete under equal conditions.

For decades, ICC has taken the lead in denouncing corruption and in developing measures and tools to combat it. In 1977, ICC was the first organization to create via self regulation the ICC Rules to combat Extortion and Bribery. Since then ICC has released numerous publications that contribute to the enhancement of integrity, such as, among others, the ICC Guidelines on Conflicts of Interest in Enterprises, the ICC Guidelines on Gifts and Hospitality and an ICC Anti-corruption clause. In cooperation with Transparency International, the United Nations Global Compact and the World Economic Forum/Partnering Against Corruption Initiative ICC prepared 27 scenarios in the Resisting Extortion and Solicitation in International Transactions document.

The ICC Commission on Corporate Responsibility and Anti-corruption has collected standards and tools in the ICC Business Integrity Compendium in order to enhance ethical corporate conduct and responsibility. These publications all contribute to a strong organizational integrity framework that promotes ethical behaviour in the work place.

Because the fight against corruption is not one ICC can win alone, ICC cooperates with organizations and governments worldwide. Collective action plays a crucial part in winning this fight. ICC played an important role in establishing the OECD Convention on combating bribery of foreign public officials in international business transactions and the UN Convention on Anti-corruption. ICC wants to turn words into action by concretely responding to global goals and efforts by G20 leaders to eliminate this scourge on lives around the world.

For more information on ICC and its global work on business integrity, visit iccwbo.org



ICC NETHERLANDS BUSINESS INTEGRITY INITIATIVES

ICC The world business organization

Business integrity and fighting corruption is high on the agenda of ICC Netherlands. The Netherlands being a trading nation, makes it important that integrity is not just a topic of continuous dialogue within the Dutch borders, but also in an international context. ICC Netherlands promotes this message by organizing workshops and training for the public and private sector, both in the Netherlands and abroad. An active CR and Anti-corruption Commission contributes to the publication of practical guidelines on integrity and anti-corruption. In addition to this, ICC Netherlands has taken the initiative to prepare, in cooperation with the Dutch Ministries of Economic Affairs, Foreign Affairs and Justice and the Dutch Employers organizations (VNO-NCW and MKB), the brochure "Doing Business Honestly without Corruption".

Since 2016, ICC organizes the Week of Integrity and ICC's International Integrity and Anti-corruption Conference. This Conference welcomes experts from the public and private sector from around the globe to exchange thoughts and ideas on solutions and innovations regarding integrity. The Week of Integrity takes place from 1 to 9 December, the week prior to the UN Anti-corruption day. Multi-stakeholder initiatives are key in fighting corruption and promoting integrity. The Week of Integrity fosters public-private cooperation and raises awareness for ethical business throughout the Netherlands. Consequently, the first week of December is dedicated to initiatives that help reach the goal of an honest and sincere society.

It is not a coincidence that this Conference is being held at the iconic Peace Palace as it is internationally known for its efforts on peace and justice. ICC Netherlands believes that integrity and anti-corruption efforts are vital in contributing to the mission of securing justice and peace worldwide.

Are you interested in joining the work of ICC Netherlands on integrity and anti-corruption, contact the ICC Netherlands office through info@icc.nl or visit the website, www.icc.nl



ICC Business Integrity Compendium



Doing Business Honestly without Corruption



»Our company's active ownership culture makes the difference. Above and beyond ingenuity, people rightly associate Siemens with reliability, fairness and integrity.«

————— JOE KAESER —————
President and CEO of Siemens AG

INTEGRITY, A VALUABLE PROPOSITION

**Integrity and Accountability in the Private and Public Sector.
Taking it to a Higher Level.**

Integrity is about ethical behaviour, not about rules. Integrity should be topic of continuous dialogue and development. Ten thought leaders -from a governmental, business or academic background- share their thoughts and ideas on how to take integrity to a higher level. This booklet aims to promote further thinking and invites you to assess your own role in promoting integrity wherever you go.

Contributions of: Mark Pieth | Dominique Lamoureux | Emily O'Reilly | Harry Hummel | Bárbara Luiza Coutinho do Nascimento | Pascale Hélène Dubois | Mijntje Lückerath-Rovers | Richard Bistrong | Pierrick Le Goff | Marc Le Menestrel | Henk Broeders |

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