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Corruption as a Worldwide Phenomenon – Do Effective Anti-Corruption Measures Exist?

Abstract

The damages caused by corruption are immense (the loss of trust in institutions or administrations, the reduction of stability of law in the public sector; fewer direct investments because of higher, unexpected risks, distortion of competition, the reduction of quality because of the lack of tenders in the private sector and increasing poverty in general).¹⁾ Law as one possible and necessary measure can help prevent white collar crime – but is there more that can be done, especially focusing on corporation strategies?

Key Words: *Corruption, measures (national/international; legal/non-legal), public and private sector, fraud triangle, corporation strategies, Code of Conduct, whistle blowing system, auditing, sensitizing and clarification.*

Introduction

Corruption does not stop at state borders, does not stop at educated and wealthy people – it is a phenomenon almost everyone has to deal with or is at least influenced with around the globe. It can be found in every society, in developed and undeveloped countries, in public or private sectors but also non-governmental organizations. Corruption is not only

1. Also see Thomas Herzfeld, *Corruption begets Corruption*, Peter Lang Verlag, Frankfurt a.M, 2004, 27; Werner Vahlenkamp/Ina Knauß, *Korruption – hinnehmen oder handeln?* BKA Wiesbaden, Reihe 33, 1995, 48pp.

a nowadays phenomenon but exists since humankind exists and has become more attention in the last decades. Its variety is enormous and ranges for example from bribe, grease money, fraud, embezzlement, receiving/requesting advantages of any kind, extortion or nepotism to lobbying.²⁾

Term

Although corruption is a very unclear term certain definitions can be found and general criteria can be derived. "The abuse of public power for private benefit" is a very general and possible description of corruption, used by the Worldbank, Transparency International or other organizations.³⁾ A more precise definition describes corruption as a "behaviour which deviates from the formal rules of conduct governing the actions of someone in a position of public authority because of private-regarding motives such as wealth, power or status."⁴⁾ As mentioned in both definitions an interaction between the public and private sector is necessary. Nonetheless corruption can also take place amongst private agents; therefore a broader definition is necessary. *Herzfeld* mentions the definition of *Reja/Talvitie*, describing corruption as "a contractual relationship between economic agents for the abuse of position for private gains".⁵⁾ Even more precise is Article 2 of the Civil Law Convention on Corruption defining corruption as "requesting, offering, giving or accepting, directly or indirectly, a bribe or any other undue advantage or prospect thereof, which distorts the proper performance of any duty or behaviour required of the recipient of the bribe, the undue advantage or the prospect thereof."⁶⁾ It does not provide a uniform definition either, but bears resemblance to the definition of bribe. Focusing on corporate strategies and measures against corruption in this paper the last definition seems to be best suitable.

Recapitulating following general criteria can be derived:⁷⁾

- abuse of public power, an economic position or a political mandate;
- for private gains (for someone else or for him-/herself⁸⁾);
- with inducement or on one's own initiative;
- with the occurrence of a direct/indirect damage.

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2. Wilhelm Korff et al, *Handbuch der Wirtschaftsethik*, Band 4, Gütersloher Verlagshaus, 1999, 310.
 3. Jens Christian Andvig et al, *Research on Corruption. A policy oriented survey*, Michelsen Institute & Norwegian Institute for International Affairs, Stockholm, 2000, 11f; quoted as Florian Neuhann, *Im Schatten der Integration. OLAF und die Bekämpfung von Korruption in der Europäischen Union*, Nomos Verlag, Baden-Baden, 2005, 17. Also see http://info.worldbank.org/etools/library/view_p.asp?lprogram=5&objectid=18142.
 4. Mushtaq Khan, *A Typology of Corrupt Transactions in Developing Countries*, University of Sussex, Institute of Development Studies, *IDS Bulletin*, 1996, 2 (<http://mercury.soas.ac.uk/users/mk17/Docs/Corruption%20IDS%20Journal.pdf>), quoted as Thomas Herzfeld, *Corruption begets Corruption. Zur Dynamik und Persistenz der Korruption*, Peter Lang Verlag, Frankfurt a.M., 2004, 21.
 5. Thomas Herzfeld, *Corruption begets Corruption. Zur Dynamik und Persistenz der Korruption*, Peter Lang Verlag, Frankfurt a.M., 2004, 21.
 6. <http://conventions.coe.int/Treaty/EN/Treaties/Html/174.htm>.
 7. Richtlinie "Korruptionsprävention und Korruptionsbekämpfung in der Landesverwaltung Schleswig-Holstein" http://landesregierung.schleswig-holstein.de/coremedia/generator/Aktueller_20Bestand/IM/Information/Gesetzgebung_2C_20Vermessungswesen/PDF/KorruptionsRiLi.property=pdf.pdf.
 8. For further details dealing with "auto-corruption" see Hans Herbert von Arnim et al, *Korruption. Begriff, Bekämpfungs- und Forschungslücken*, Deutsches Forschungsinstitut für öffentliche Verwaltung Speyer, 2006, 19pp.

Most common the term corruption goes along with the abuse of public power, the reality shows up a broader variety having corruption also take place in the private sector. Legal provisions on an international as well as national basis can give a hint respectively show the overhanging dimension of regulations of corruption in the public sector.

Legal provisions

On an international level corruption for example is dealt in:⁹⁾

- OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions¹⁰⁾
- UN Convention against Corruption¹¹⁾
- Council of Europe – Criminal Law Convention on Corruption¹²⁾
- Council of Europe – Civil Law Convention on Corruption¹³⁾
- EU: Communication from the Commission on a comprehensive EU policy against corruption¹⁴⁾
- EU: Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union¹⁵⁾
- EU: Council Framework Decision on combating corruption in the private sector¹⁶⁾

The Austrian Ministry of Justice is planning to implement parts of these international conventions (UN convention against corruption, EU Council framework decision on combating corruption in the private sector as well as the Council of Europe's criminal law convention on corruption) in Austrian legal provisions in 2007 ("Anticorruption Act 3").¹⁷⁾

Nonetheless corruption is dealt with in different Austrian legal rules already: §§ 304 – 308 StGB¹⁸⁾ (receiving advantages by officials, by managers of public enterprises, by experts, by employees of managers of public enterprises, bribery in the public sector, illegal intervention), § 146 StGB (fraud), § 153 StGB (embezzlement), § 153a StGB (passive bribery in the private sector), § 153b StGB (abuse of furtherance) § 10 UWG¹⁹⁾ (active

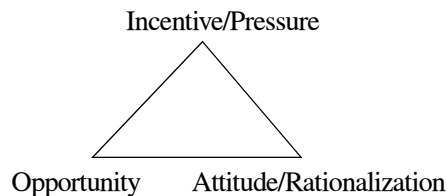
9. The following conventions, drafts can only give an overview, for a more detailed version see Sebastian Wolf, Maßnahmen internationaler Organisationen zur Korruptionsbekämpfung auf nationaler Ebene, German Research Institute for Public Administration Speyer, 2006, 4pp.
10. http://www.oecd.org/document/18/0,2340,en_2649_37447_35029714_1_1_1_37447,00.html; only public sector included. There are further recommendations of the Council dealing with tax deductibility of bribes to foreign public officials, guidelines for managing conflict of interest in the public service or eg improving ethical conduct in the public service including principles for managing ethics.
11. http://www.unodc.org/pdf/crime/convention_corruption/signing/Convention-e.pdf; public and private sector; also see BGBl III Nr 47/2006. Further UN actions are the convention against transnational organized crime or the global programme against corruption.
12. <http://conventions.coe.int/Treaty/EN/Treaties/Html/173.htm>; Art 7 and 8 dealing with active/passive bribery in the private sector; has not been ratified yet in Austria.
13. <http://conventions.coe.int/Treaty/EN/Treaties/Html/174.htm>; no distinction between public and private sector; ratified in Austria in 2006 and in force since December 1st, 2006; BGBl III Nr 155/2006.
14. COM (2003) 317; http://europa.eu.int/eur-lex/en/com/cnc/2003/com2003_0317en01.pdf; (non binding).
15. OJ C 195, 25.6.1997, p. 2-11; only public sector.
16. OJ L 192, 31.7.2003, p. 54-56; only private sector.
17. <http://www.justiz.gv.at/vorhaben/index.php?nav=12&st=0&th=2&sth=1&set=show&pj=270>.
18. Austrian Criminal Code, BGBl I Nr 56/2006.
19. Act against unfair competition, BGBl I Nr 106/2006.

bribery in the private sector) and the *Verbandsverantwortlichkeitsgesetz*²⁰⁾ (culpability of entities including corrupt actions).²¹⁾

*Gastinger*²²⁾ describes corruption as a "crime of calculation" but not as a "crime of passion" and therefore calls it a State's duty, to implement elements of crime in legal systems for preventing white collar crime. The question that comes up is if law is an adequate measure fighting corruption. Law definitely is one possible and necessary but not the only measure (especially when it comes to corporations more actions can be taken). Before having a closer look at corporation strategies fighting corruption it makes sense analyzing the possible exertion of influence in the field of corruption.

Categories of factors for corruption

The so called "fraud triangle" shows up three categories of factors: pressures and incentives, opportunities, attitudes and rationalization.²³⁾



Offering incentives to employees or managers from firm-external agents can create dependency, influence decisions and actions and pressure can be exerted on them. Intern bonus systems in corporation can cause corruption either by creating an addiction to incentives.

Incentives in relationship with management integrity can create two ways of interaction²⁴⁾: a low level of incentive may result in not responding to such incentives and can increase the integrity. A higher level of incentive may compromise the managers' integrity by being sought actively.

Another interaction can be seen between integrity and opportunities, showing up that managers at a lower level of opportunities may exhibit very high integrity denying or reducing the afforded opportunity; whilst higher levels of opportunities may compromise the integrity and increase the risk of fraud.²⁵⁾

Recapitulatory a situative pressure can be described as instantaneous problems in combination with homemade leverage or financial losses. And the opportunity for commit-

20. Criminal liability of associations act, BGBl I Nr 151/2005.
21. Joseph T. Wells/Matthias Kopetzky, *Handbuch Wirtschaftskriminalität in Unternehmen. Aufklärung und Prävention*, LexisNexis Verlag, Wien, 2006, 387pp.
22. Karin Gastinger, *Strafrecht als Mittel gegen Korruption*, 147, in Martin Kreutner, *The Corruption Monster. Ethik, Politik und Korruption*, Czernin Verlag, 2006.
23. Donald R. Cressey, *Other People's Money*, Patterson Smith, Montclair, 1973, quoted as Joseph T. Wells/Matthias Kopetzky, *Handbuch Wirtschaftskriminalität in Unternehmen. Aufklärung und Prävention*, LexisNexis Verlag, Wien, 2006, 6pp.
24. Jerry L. Turner et al, *An analysis of the fraud triangle*, 2003, 18 (<http://aaahq.org/audit/midyear/03midyear/papers/Research%20Roundtable%203-Turner-Mock-Srivastava.pdf>).
25. Jerry L. Turner et al, *An analysis of the fraud triangle*, 2003, 19 (<http://aaahq.org/audit/midyear/03midyear/papers/Research%20Roundtable%203-Turner-Mock-Srivastava.pdf>).

ting fraud is caused by insufficient monitoring.²⁶⁾ The integrity is characterized by moral, autonomous norms, generated by each individual personally.

Having a closer look at possible motives for committing white collar crime *Albrecht*²⁷⁾ mentions nine types: an extravagant lifestyle over its financial limits, a constant pursuit of personal benefit, a high level of debt, a close relationship with customers, the believe of an unbalance between salary and responsibility, an attitude doing business at all costs, to outsmart the system, compulsive gambling and pressure from family/friends.

Sociological perspective on the perpetrators

The 2006 ACFE²⁸⁾ Report to the Nation on Occupational Fraud and Abuse²⁹⁾ examines the effect of the perpetrator's position such as gender, age, education, collusion or criminal history. Corresponding to this study fraud is committed by 39,5% of employees, 41,2% of managers and 19,3% of owners. A positive correlation between the annual income and the size of fraud losses was found, the higher the income the higher the loss was.³⁰⁾ Another correlation between an employee's time working for the company and the size of loss could be made. The longer a perpetrator had been working for the company the bigger the harm was. Another interesting fact is that 61% of the cases are committed by men and 39% by women. A possible reason therefore can be that men tend to hold more management and executive-level positions.³¹⁾

The age of the perpetrator is also correlated to the size of the loss, reflecting the position and tenure of the person. Although very few cases were committed by employees over 60 years of age the median loss was the highest (\$713.000). Over two thirds of the reported frauds were committed by employees in the 31-50 age group (\$ 134.000). The median age of perpetrators was 42.

With the rise of education the losses from their frauds rose too. The highest losses were caused by employees with a post graduate degree being endowed with higher levels of authority.³²⁾

Measures fighting corruption

Having had a look at the motives and sociological perspective on perpetrators the next step is to take a look on corporate strategies and measures fighting corruption:³³⁾

26. Therefor see the so called "Fraud-Maßstab", W. Steve Albrecht et al, *Deterring Fraud: The Internal Auditor's Perspective*, 1984, quoted as Joseph T. Wells/Matthias Kopetzky, *Handbuch Wirtschaftskriminalität in Unternehmen. Aufklärung und Prävention*, LexisNexis Verlag, Wien, 2006, 17pp.
27. W. Steve Albrecht et al, *Deterring Fraud: The Internal Auditor's Perspective*, 1984, quoted as Joseph T. Wells/Matthias Kopetzky, *Handbuch Wirtschaftskriminalität in Unternehmen. Aufklärung und Prävention*, LexisNexis Verlag, Wien, 2006, 17.
28. Association of Certified Fraud Examiners, <http://www.acfe.com/>.
29. This study is based on investigations between January 2004 and January 2006 in the USA. For further information on white-collar crime in Austria see http://www.kpmg.at/de/files/kpmg_report_2003.pdf.
30. <http://www.acfe.com/documents/2006-rtn.pdf>, 43.
31. <http://www.acfe.com/documents/2006-rtn.pdf>, 44.
32. The effect of age and education on fraud as part of the ACFE Report, therefore see <http://www.acfe.com/documents/2006-rtn.pdf>, 45.

- Code of Conduct/Code of Ethic
- Anti-corruption service center – Whistle-blowing
- Intern monitoring systems (rotation, recruitment of personnel)
- Employee training

Codes of Conduct³⁴⁾ can be used as penalizing measures becoming part of labor agreements or additional causes of dismissal. Therefore these codes can provide guidelines for employees by giving extra information (besides legal regulation) on sensitive fields (repertory of distributors, confidentiality of information, insider information), in case of conflicts of interest (such as receiving/demanding advantages of any kind, secondary employment, participation in nominal capital, occupation of family members)³⁵⁾, showing up moral minimum standards (eg how to deal with employees preventing mobbing or other discriminating actions) and creating more transparency in business transactions. In general Codes of Conduct can be seen as an orientation guide including company values. The usefulness of these codes depends on various factors, for example incorporating management and/or employees creating such a code, the intelligibility of phrases, the balance between clear rules and an area of discretion preventing a total paternalism of employees.³⁶⁾ Although Codes of Conduct can be used only for marketing reasons with an empty shell construction these codes can also influence the strategic orientation of corporations fighting corruption. As mentioned in the study of *Heinzel*³⁷⁾ those corporation with guidelines dealing with corruption seem to be less corrupt than those without.

Anti-corruption (service) center can provide useful information and give support on any aspects of corruption for employees and managers being in dilemma situations. The likeliness of detection could be reached and increased by granting protection for whistle-blowers (giving information anonymous on corruption or other illegal acts to a contact point without fearing consequences corresponding to labor law). Transparency International³⁸⁾ defines whistle blowing as an employees' act of selfish motive, having watched cases of corruption or other illegal acts and passing these information on.³⁹⁾ Those autonomous contact points, also named as ethic offices, ethic hotlines or **whistle-blowing hotlines**, are a

33. The listed measures only represent a small part of possibilities fighting corruption. For an overview of intern/extern measures fighting corruption see Werner Vahlenkamp/Ina Knauß, *Korruption – hinnehmen oder handeln?* BKA Wiesbaden, Reihe 33, 1995, 52pp.
34. There exist different types of codes, focusing on restrictions or preferences. For more details see Till Talaulicar, *Unternehmenskodizes. Typen und Normierungsstrategien zur Implementierung einer Unternehmensethik*, DU-Verlag, Wiesbaden, 2006, 537ff.
35. Roger Odenthal, *Kriminalität am Arbeitsplatz. Korruption und Unterschlagung durch Mitarbeiter erkennen und verhindern*, Gabler Verlag, Wiesbaden, 2005, 47.
36. Bettina Palazzo, *Interkulturelle Unternehmensethik. Deutsche und amerikanische Modelle im Vergleich*, DU-Verlag, Wiesbaden, 2001, 212pp.
37. Sebastian Heinzel, *Die mit den Wölfen heulen. Österreichische Unternehmen und Korruption in Osteuropa*, LIT Verlag, Wien, 2006, 108.
38. Transparency International is a civil society fighting corruption nationally and internationally. Remarkable is the annual Corruption Perceptions Index (CPI), first released in 1995, which ranks more than 150 countries by their perceived levels of corruption, as determined by expert assessments and opinion surveys. For further details see Fredrik Galtung, *Transparency International's Network to Curb Global Corruption*, in Gerald E. Caiden et al, *Where Corruption Lives*, Kumarian Press, Bloomfield, 2001, 203pp and http://www.transparency.org/policy_research/surveys_indices/cpi/2006; Michael H. Wiehen, *Citizens against corruption: calling governments to account*, in OECD, *No longer business as usual. Fighting bribery and corruption*, 2000, 210pp.
39. <http://www.transparency.de/Whistleblowing.60.0.html>; also see <http://www.whistleblower.org>.

very new US-American construction⁴⁰⁾ raising lots of (legal) questions.⁴¹⁾ Focusing on more transparency these hotlines could help raise awareness and set a step into the right direction but from a European legal point of view they seem to be more than doubtful (the risk of defamation because of anonymous complaints, disproportionality).⁴²⁾ Under certain conditions – such as the principle of subsidiary, a legal basis for whistle blowing systems in combination with data protection, no anonymous complaints, data integrity and confidentiality⁴³⁾ – whistle-blowing hotlines could be implemented.

Furthermore can the likeliness of detection be increased by an **intern monitoring system** including the editorial principle according to which texts are proofread by a second set of eyes, by the separation of functions including a two way of checks and balances or paperwork of working processes.⁴⁴⁾

Measures in the area of human resources can be seen in the **rotation of employees** preventing dependent relationship. Nonetheless this measure does not seem to be an effective instrument because of the period of vocational adjustment.⁴⁵⁾ **Background checks** on newly hired employees (check of the original certificates, a consistent CV, information on criminal records or asking for references)⁴⁶⁾ can be a valuable anti-fraud tool but does not seem to be as effective as expected either.⁴⁷⁾

Sensitizing and clarification⁴⁸⁾ through workshops or special trainings can create awareness for the different varieties of corruption, illustrate the situation by demonstrating the interaction of opportunity, pressure and attitude and may prevent white collar crime in advance whilst the other measures can be taken only afterwards. Nonetheless fighting corruption will always be a step behind committing crimes/corruption and as long as bribe money is tax deductible⁴⁹⁾ the wrong incentives are given. I think it's time for a change!

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40. With the Sarbanes-Oxley Act American concerns are forced to implement a whistle-blowing hotline. Furthermore see Joseph T. Wells/Matthias Kopetzky, Handbuch Wirtschaftskriminalität in Unternehmen. Aufklärung und Prävention, LexisNexis Verlag, Wien, 2006, 317; Rainer Knyrim et al, Whistleblowing-Hotlines: Mitarbeiter "verpfeifen" zulässig?, ARD 5681/5/2006.
 41. More information on Ethic Hotlines see Bettina Palazzo, Interkulturelle Unternehmensethik. Deutsche und amerikanische Modelle im Vergleich, DU-Verlag, Wiesbaden, 2001, 217pp.
 42. As a role model can be seen the "Guidelines for the implementation of Whistleblowing-Systems" from the French Commission nationale de l'informatique et de libertés (CNIL) from 2005, <http://www.cnil.fr/fileadmin/documents/uk/CNIL-recommandations-whistleblowing-VA.pdf>.
 43. Rainer Knyrim et al, Whistleblowing-Hotlines: Mitarbeiter "verpfeifen" zulässig?, ARD 5681/5/2006.
 44. Werner Vahlenkamp/Ina Knauß, Korruption – hinnehmen oder handeln? BKA Wiesbaden, Reihe 33, 1995, 53pp.
 45. Roger Odenthal, Kriminalität am Arbeitsplatz. Korruption und Unterschlagung durch Mitarbeiter erkennen und verhindern, Gabler Verlag, Wiesbaden, 2005, 55.
 46. Roger Odenthal, Kriminalität am Arbeitsplatz. Korruption und Unterschlagung durch Mitarbeiter erkennen und verhindern, Gabler Verlag, Wiesbaden, 2005, 41pp.
 47. Corresponding to the study of the National Fraud Survey 2006 only 7.7% of perpetrators had prior convictions; therefore most of the occupational fraudsters are not career criminals. <http://www.acfe.com/documents/2006-rtnn.pdf>, 55.
 48. Werner Vahlenkamp/Ina Knauß, Korruption – hinnehmen oder handeln? BKA Wiesbaden, Reihe 33, 1995, 356.
 49. Martine Millet-Einbinder, No more tax breaks for bribes, in OECD, No longer business as usual. Fighting bribery and corruption, 2000, 67pp.

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КОРУПЦИЈА КАО ГЛОБАЛНИ ФЕНОМЕН ДА ЛИ ПОСТОЈЕ ЕФИКАСНЕ АНТИ-КОРУПЦИЈСКЕ МЕРЕ?

Резиме

Штетиња која настаје као резултат корупције је ненадокнадива (губитак поверења у институције и администрацију, смањење правне сигурности у јавном сектору, смањење директних страних инвестиција због већег, неочекиваног ризика, нарушавање конкуренције, смањење квалитета због недостигака трансаренних процедура у приватном сектору и повећање сиромаштва уопште. Право као једна од могућих и неопходних мера заштите може помоћи у сиречавању привредног криминала – али, поставља се питање шта је још могуће предузети, нарочито у контексту корпоративних стратегија?

Кључне речи: *корупција, мере (унутрашње/међународне, правне/неправне), јавни и приватни сектор, проузго превара, корпоративне стратегије, Етички кодекси, систем узбуне и уозорења, ревизорство, разјашњење.*