

## **Anforderungen an eine BMZ Antikorruptionsstrategie**

### **Antikorruptionsstrategie zur Entwicklungszusammenarbeit**

Korruption ist eines der wichtigsten Entwicklungshemmnisse. Korruptionsprävention in der Entwicklungszusammenarbeit (EZ) stellt die beteiligten Akteure vor besondere Herausforderungen, da hier Institutionen und Personen sowohl in der Bundesrepublik Deutschland als auch in den Partnerländern betroffen sind.

Die deutschen staatlichen und nicht-staatlichen Entwicklungsinstitutionen tragen eine Mitverantwortung dafür, dass Mittel der Entwicklungszusammenarbeit in den Empfängerländern verantwortungsvoll eingesetzt werden. Sie müssen hohen ethischen Standards entsprechen.

Korruptionsprävention und Korruptionsbekämpfung ist eine Querschnittsaufgabe für alle Institutionen und Bereichen der Entwicklungszusammenarbeit. Eine Antikorruptionsstrategie der Bundesregierung in der Entwicklungspolitik muss daher einen ganzheitlichen Ansatz verfolgen und drei Dimensionen erfassen:

- Transparenz und Integrität der mit der Durchführung betrauten eigenen Institutionen,
- Schutz der eigenen Projekte und Finanzierungsinstrumente vor Zweckentfremdung und Korruption und
- Unterstützung der Partnerstaaten bei der Bekämpfung der Korruption und ihrer Ursachen

(vgl. die auf Anfrage der GTZ erstellte U4 Expert Answer, Anlage 1).

Die skizzierte Mehrdimensionalität macht deutlich, dass eine deutsche Antikorruptionsstrategie eingebettet sein muss in bilaterale und multilaterale Bemühungen um gute Regierungsführung und Festigung rechtstaatlicher Strukturen in den Partnerländern der EZ. Sie darf nicht an Ressortgrenzen enden. Auch muss sie kohärent sein mit den Bestrebungen zu einer effektiveren und zugleich integren Entwicklungspolitik auf der Ebene der Europäischen Gemeinschaft (vgl. Stellungnahme von TI-Deutschland zum Grünbuch „Für eine Entwicklungspolitik mit größerer Wirkung“, Anlage 2).

TI-Deutschland erkennt die bisherigen Bemühungen des BMZ an, wie sie in den 10 Punkten der Veröffentlichung „Korruption vorbeugen – Transparenz fördern: Was tut die deutsche Entwicklungspolitik?“ (Stand August 2010/Auflage 2011) zum Ausdruck kommen. Konkrete Handlungen der Bundesregierung und der mit Entwicklungszusammenarbeit befassten Institutionen bleiben jedoch oft hinter den erklärten guten Absichten zurück.

Das BMZ als Träger der Verantwortung auf Seiten der Bundesregierung sollte deshalb seine Antikorruptionsstrategie mit einem **Aktionsplan** verbinden, der für die relevanten Bereiche klare Ziele, Aktivitäten und Indikatoren enthält, deren Erreichung im Zeitablauf überprüft und bewertet werden.

Hierzu im Einzelnen:

## **A    **Transparenz in der EZ verbessern****

Veröffentlichung von Projektvereinbarungen und Transparenz der Mittelverwendung bei der Planung und Durchführung von Entwicklungsprojekten entsprechend den PWYF (publish what you fund)-Prinzipien gehören zu den Grundvoraussetzungen für eine wirksame Korruptionsbekämpfung

### **1    *IATI-Prozess unterstützen – Hindernisse für die zeitgerechte Umsetzung der Anforderungen einzelner Projektphasen zügig beseitigen***

Daten, die bereits jetzt bei den Geldgebern vorliegen (Informationen zu Projekten sowie Finanzdaten über zugesagte und ausgezahlte Mittel), sollten entsprechend der vom BMZ früher eingegangenen Verpflichtung (vgl.

[http://www.bmz.de/de/was\\_wir\\_machen/themen/goodgovernance/korruption/deutscherbeitrag/index.html](http://www.bmz.de/de/was_wir_machen/themen/goodgovernance/korruption/deutscherbeitrag/index.html) ) zügig veröffentlicht werden. BMZ sollte zu IATI proaktiv informieren..

### **2    *Vergabe von Förderkrediten und Bürgschaften transparent machen***

### **3    *Öffentliche Projektzuschüsse an private Träger nur bei Transparenz in allen Projektphasen***

zu 2 und 3: Informationen über zu fördernde Projekte einschließlich entsprechender finanzieller Transaktionen in Deutschland und im Empfängerland öffentlich zugänglich machen (vgl. Studie von Urgewald .. Was ich nicht weiß, macht mich nicht heiß: Hermes und Korruption, Juli 2010).

### **4    *Außenwirtschaftsförderung und Public Private Partnership mit der Einhaltung der OECD-Leitsätze verbinden (Beispiel Niederlande)***

Nachweisbare schwere Verstöße müssen zum Ausschluss der beteiligten Unternehmen von weiteren Fördermaßnahmen führen

### **5    *Für klare Standards, verbesserte Transparenz und Regulierung bei Kreditvergabe durch multilaterale Entwicklungsbanken eintreten***

Korruptiven Praktiken und Anreizen zur Steuerflucht im Rahmen von multilateral geförderten Großprojekten muss wirksam vorgebeugt werden u.a. durch Einbeziehung gewählter Volksvertreter und zivilgesellschaftlicher Akteure

Die Weltbank hat – ebenso wie die großen Regionalbanken – international anerkannte Vergabestandards. Es muss vermieden werden, dass durch weniger transparente nationale Vergabeverfahren bei zunächst vielleicht nur wenigen „Pilotprojekten“ diese Standards aufgeweicht werden. Die Äquivalenz zwischen nationalem Vergabeverfahren und Weltbankstandards muss gesichert werden. Wir halten es für geboten, dass sich auch das BMZ über den deutschen Exekutivdirektor hierfür energisch einsetzt.

### **6    *Einsatz der Budgethilfen wirksam kontrollieren***

für *transparente Geldflüsse* zum Empfänger eintreten, dabei Erfahrungen der Public Expenditure Tracking Surveys (PETS) auswerten und nutzen

**7 *Künftige Budgethilfen von Entwicklung partizipativer Elemente und demokratischer Kontrolle abhängig machen***

Vereinbarungen mit Behörden des Empfängerstaates zur *Einbeziehung der Zivilgesellschaft* anstreben (Informationsrechte, -zugang und Konsultation)

**B *Bewusstsein für anstehende Aufgaben schärfen -***

**1 *Formulierung und Umsetzung von „Codes of Conduct“ für Mitarbeiter von Organisationen der Entwicklungszusammenarbeit***

**2 *Schulung der in deutsche Vertretungen zu entsendenden Mitarbeiter***

**3 *Integritätsvereinbarungen mit Vertragspartnern schließen***

Ombudsmannsystem bei den Organisationen der Entwicklungszusammenarbeit einrichten und Kontrollmöglichkeiten der Zivilgesellschaft vor Ort eröffnen

**4 *Systemische Schwächen in den Empfängerländern (z.B. durch National Integrity System Assessments) aufdecken***

**5 *Einbeziehung der Zivilgesellschaft vor Ort, Förderung einer nachhaltigen und alle Bevölkerungsgruppen einbeziehenden Entwicklung (Art 13 der UN-Konvention gegen Korruption (UNCAC))***

Maßnahmen unterstützen, die Begünstigte in den Partnerländern befähigen, an den sie betreffenden Angelegenheiten mitzuwirken und mit auszuwerten.

**6 *„Runde Tische“ beteiligter Institutionen (Botschaft, Wirtschaftsvertreter, Partnerinstitutionen, Zivilgesellschaft) zur Bewusstseinschärfung in Sachen Korruption und zur verbesserten Umsetzung der OECD Leitsätze für multinationale Unternehmen erproben***

**C *Fehlverhalten aufdecken und sanktionieren***

**1 *Etablierung von Hinweisgebersystemen und Schutz von Hinweisgebern***

**2 *Nutzung elektronischer Systeme, die anonyme Hinweise im Rahmen der EZ zur Korruptionsbekämpfung ermöglichen***

**3 *Instrumentarium zur Aufdeckung von Fehlverhalten (Korruption, Geldwäsche, Steuerflucht) verbessern und erweitern: Auswertung weiterer vorhandener Hinweisgeber-Plattformen im Internet***

**4 *Etablierung der nach Art. 6 UNCAC geforderten unabhängige Stelle zur Korruptionsbekämpfung***

**5 *Schwarze Listen – Ausschluss korrupter Auftragnehmer von künftigen EZ-Projekten***

- 6 *Beschwerdeverfahren bei Verletzung multilateraler Standards (z.B. OECD-Leitsätze) verbessern*
- 7 *Klare Regelungen für die Sanktionierung von Fehlverhalten*
- 8 *Strafverfolgung korruptiver Praktiken auf nationaler und internationaler Ebene noch aktiver unterstützen*

#### **D Projekte und Entscheidungsprozesse evaluieren**

- 1 *Korruption und ihre Bekämpfung zum Thema der Evaluierungskriterien des BMZ machen*  
  
Probleme mit Korruption und ihre Bewältigung veröffentlichen
- 2 *Projekte der Durchführungsorganisationen nach einheitlichen Prinzipien evaluieren*
- 3 *Für transparente und vergleichbare Evaluierungen von multilateralen Projekten eintreten*

#### **E UN-Konvention gegen Korruption (UNCAC) endlich ratifizieren**

*Um im Rahmen internationaler Bemühungen zur Korruptionsbekämpfung glaubwürdig zu bleiben, muss Deutschland endlich die UNCAC ratifizieren.*

#### **Schlussbemerkung**

Die Entwicklung in der arabischen Welt hat gezeigt, dass Korruption und illegitime Bereicherung der Herrscher und ihrer Familien wichtige Triebfedern der allgemeinen Empörung der Bevölkerung sind. Bestrebungen zur Durchsetzung demokratischer Strukturen und Achtung der Menschenrechte müssen eng verbunden werden mit der Schärfung des Bewusstseins für integriertes Verhalten in Wirtschaft und Verwaltung. Wir begrüßen die von Bundesminister Niebel bereits in Interviews geäußerte Bereitschaft (z.B. Hannoversche Allgemeine Zeitung vom 16. Februar 2011\*) ) solche Prozesse zu fördern. Hierzu erscheint es wichtig, die in die dortigen Gesellschaften hinein reichenden Verbindungen (staatliche Träger der EZ und Stiftungen) zu aktivieren und mit den notwendigen Mitteln auszustatten, um Bildungsarbeit zu leisten und den Partnern vor Ort zu signalisieren, dass Beratungsleistungen zur Reform der Verwaltung erbracht werden können.

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\*) <http://www.dirk-niebel.de/Interviews/5635b1315/>

# U4 Expert Answer



## Anti-corruption through the North

### Query

***We are interested in measures and approaches that fall under the category of "anticorruption through the North", i.e. actions developed countries like Germany could/should take in their own country to reduce the likelihood of corruption occurring in partner countries. How well is Germany doing?***

### Purpose

The German Government is seeking to update the anticorruption strategy for German aid.

### Content

1. Addressing the supply side of corruption through international instruments
2. Preventing illicit financial flows and facilitate asset recovery
3. Safeguarding aid from corruption and promoting aid transparency
4. References

### Summary

In an increasingly globalised world, there is a broad consensus that developed countries have a key responsibility to prevent international corruption and promote better use of resources. Three major levels of interventions can be envisaged in this regard.

The first level of intervention consists of addressing the supply side of corruption by combating bribery and corruption in the private sector as well as addressing mechanisms in international trade and credit that may facilitate corruption. This can be done by supporting the

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ratification and full implementation of legally binding international anti-corruption instruments or supporting voluntary initiatives such as the OECD guidelines for multinational enterprises, the UN Global Compact or the Extractive Industries Transparency Initiative (EITI) While Germany is an active enforcer of the OECD convention on Bribery of Foreign Public Officials in International Business Transactions, it is one of the only two G8 countries that has not yet ratified the UN convention against corruption (UNCAC).

Combating money laundering and closing international loopholes that facilitate illicit flows is another important dimension of developed countries' efforts against corruption. While Germany is committed to strengthen its anti-money laundering framework, it is not fully in line with the FATF recommendations, especially with regard to sanctioning for non-compliance with anti-money laundering requirements.

Aid can also contribute to support the fight against corruption in developing countries by creating positive incentives for change, promoting the policy dialogue on governance and supporting recipient countries' efforts against corruption. Germany could strengthen its efforts in terms of aid transparency which emerges as a fundamental element of aid related anti-corruption interventions.

## Introduction: Anti-corruption as an international issue

The reduction of trade barriers that is part and parcel of the globalisation process and the related free flow of goods, people, and money have created new incentives and means for worldwide corruption, with a devastating impact on emerging economies. As developing countries become more involved in the world economy, multinational firms can threaten the integrity of global markets and undermine governance and corruption within developing countries by engaging in large scale bribery in international transactions. Corrupt leaders can also use the international financial system to divert national wealth for their own benefit as well as conceal the proceeds of corruption and illicit gains in financial centres around the world.

At the same time, globalisation has also contributed to expose the extent to which corruption is embedded in international economic exchanges. Given the transnational nature of bribery and corruption in the global economy, there is a growing awareness of the necessity to fight corruption on a global scale. Subsequently, a number of international instruments have been adopted by the international community to address both the supply and demand side of corruption through international cooperation.

There is a broad consensus that developed countries have a key responsibility to prevent international corruption and promote better use of resources. A report issued by the UK All Party Parliamentary Group reflect this concern by making recommendations on how the UK could improve efforts to prevent and combat corruption in Africa (Africa All Party Parliamentary Group, 2006). The report envisages three major areas of intervention:

- 1) Tackling the supply side of corruption;
- 2) Tackling the laundering of the proceed of corruption;
- 3) Safeguarding aid from corruption to make sure that it is not lost to corruption or does not inadvertently support corrupt leaders.

Among other recommended measures, the report recommends taking appropriate measures to reduce the risk of UK businesses engaging in bribery in developing countries, strengthening the ability of the UK and its Dependencies and Overseas Territories to return assets taken from developing countries and

coordinating in a better way the anti-corruption activities undertaken by different government department and enforcement agencies.

The G20 anti-corruption action plan agreed upon in Seoul in 2010 echoes these concerns and calls for adoption and enforcement of laws against foreign bribery, international cooperation in preventing illicit flows into G20 financial markets, tracing and recovering stolen assets and for the protection of whistleblowers (G20, 2010). Building on existing international instruments, the action plan contains a commitment to ratify and fully implement the United Nations Convention against Corruption (UNCAC), including its provisions on foreign bribery, anti-money laundering, asset recovery, extradition, access to information, civil society participation and whistle-blower protection.

## 1 Addressing the supply side through international instruments

For developed countries, addressing the supply side of corruption involves combating bribery and corruption in the private sector as well as addressing mechanisms in international trade and credit that may facilitate corruption. It also involves making sure that domestic institutions meet international standards with regard to addressing corruption at home, either through prevention or enforcement.

The OECD acknowledges this in its second principle for donor action in anti-corruption: *“Donors recognise that corruption is a two-way street. Action is needed in donor countries to bear down on corrupt practices by home-based companies doing business internationally. (...) Donors need to work more effectively within their own domestic environments with key relevant departments responsible for trade, export credit, international legal cooperation and diplomatic representation, as well as with the private sector”.* (OECD,2006).

A number of international instruments – both legally binding and voluntary – have been developed in recent years to promote a common approach to anti-corruption at the global level.

### Legally binding International anti-corruption conventions

By setting out an international framework of internationally agreed rules and standards, anti-corruption conventions provide useful tools for development assistance agencies concerned about corruption, providing guidance for anti-corruption work at country level as well as facilitating international cooperation in the control and sanctioning of corruption (U4, No date). Donor agencies can use international agreements to check the performance and raise the standards of domestic institutions by making sure that they are fulfilling their obligations under the various conventions they are party to. This can increase donors' credibility when requiring effective action against corruption in recipient countries. Conventions can also provide relevant standards for their own work, including by taking into account provisions on procurement, public finance management, civil society participation, codes of conducts, the hiring of public officials, etc.

#### *OECD convention on Bribery of Foreign Public Officials in International Business Transactions*

The OECD Convention is the most focused of the major anti-corruption conventions, aiming addressing the supply side of bribery by covering a group of countries accounting for the majority of global exports and foreign investment. It obligates signatory states to define foreign bribery as a crime and to punish acts of bribery in international business. The convention also requires state parties to establish the liability of companies and to prohibit accounting practices used in order to bribe foreign public officials or to hide such bribery. Finally, it contains provisions on anti-money laundering and international cooperation. A follow-up review process has been established to monitor and promote the full implementation of the Convention.

The convention was ratified by the Germany in 1998 and came into force in 1999. In Transparency International's 2010 sixth annual Progress Report on Enforcement of the OECD Convention, Germany performs very well, being one of the only seven "active enforcers" of the convention, with 117 major cases (on a cumulative basis), of which 93 have been concluded and 30 led to convictions (Transparency International, 2010). The report identifies areas of improvement, including:

- Significant inadequacies in legal framework, including lack of criminal liability for corporations lack

of criminal liability of corporations and inadequate sanctions;

- Some (not significant) inadequacies in enforcement system;
- Access to information about cases and investigations, as neither the federal government nor individual *Bundesländer* report on foreign bribery cases and allegations;
- Facilitation payments: These are not prohibited by law for foreign bribery, only for domestic bribery.

The report concludes by a set of key recommendations, including the ratification and implementation of UNAC and the two Council of Europe Conventions on corruption, the introduction of criminal liability of legal Persons, strengthening the rules of export credit insurance as to bribery and foreign bribery and establishing a Central Register for the purpose of debarring corrupt companies from public contracts.

#### *The Council of Europe (CoE)'s anti-corruption instruments*

The Council of Europe has developed several anti-corruption related instruments for its member states. The CoE Criminal Law Convention lays out what States Parties should do with respect to corruption in the areas of criminalisation and international cooperation. The Council of Europe Civil Law Convention on Corruption is the first attempt to define common international rules in the field of civil law and corruption. In particular, it requires states to provide legal remedies, including compensation for damages, for persons who have suffered damage as a result of acts of corruption. Other anti-corruption related instruments include the Twenty Guiding Principles in the Fight against Corruption, the Recommendation on Codes of Conduct for Public Officials and the Recommendation on Common Rules against Corruption in the Funding of Political Parties. The Group of States against corruption, GRECO, was conceived as a flexible and efficient follow-up mechanism, called to monitor, through a process of mutual evaluation and peer pressure, the observance of these various instruments against corruption<sup>1</sup>.

Germany signed the 1999 Council of Europe Criminal Law Convention on Corruption in 1999. In December 2009 GRECO published its *Third Evaluation Round*

<sup>1</sup> Full membership of the GRECO is reserved for those who participate fully in the mutual evaluation process and accept to be evaluated.



*Report on Germany, which criticised the fact that most German bribery offences (including foreign bribery offences) are too narrowly defined and should be expanded. The GRECO report also indicated that "a particular source of concern is the fact that certain categories of persons (including members of parliament and local council members who are not officials) are subject to limited anti-corruption provisions. This could generate the impression, within the wider public, that parts of German society are not subject to the same rules as the rest of the population, when it comes to the preservation of integrity in social, political and business relations" (GRECO, 2009).*

As part of a total of 20 recommendations, GRECO urges Germany to broaden the incrimination of active and passive bribery of parliamentarians, foreign public officials and persons employed at international level. It also calls on the German authorities to broaden the incrimination of bribery in the private sector, criminalise trading in influence and harmonise and extend the rules on the jurisdiction of Germany for corruption offences. The implementation of these recommendations will be assessed by GRECO in the second half of 2011, through its specific compliance procedure.

### UNCAC

UNCAC provides a global framework to criminalise and prosecute corruption and to enable countries to help each other with asset recovery. It is to date the most promising anti-corruption instrument at international level, comprehensive in its coverage and detailed in its measures. The convention obliges States Parties to implement a wide and unique range of anti-corruption measures affecting their laws, institutions and practices. These measures aim to promote the prevention, detection and sanctioning of corruption, as well as the cooperation between State Parties on these matters. Of all existing anti-corruption Conventions, the UNCAC has the most extensive provisions on the ways, means and standards for preventive measures in the public and private sectors.

As such, UNCAC provides a model anti-corruption framework, a framework for mutual assistance and information exchange, as well as international benchmark to help advance domestic reforms. As UNCAC contains standards that were negotiated and agreed upon by a vast number of nations, it sets global rules and standards and help foster better coordination and increased policy coherence of anticorruption strategies both at national and international levels. By

taking into consideration the responsibilities of both partner and donor countries and calling to address both the demand and supply side of corruption, it can be used as a useful common reference in donor/partner policy dialogue and give more legitimacy to the policy dialogue on aid and corruption.

Germany signed UNCAC in 2003 but has not yet been ratified the convention. Of G20 countries, all but Germany, India, Japan and Saudi Arabia have fully ratified UNCAC. Germany and Japan are the only G8 countries not to have ratified UNCAC.

### *The UN Convention against Transnational Organised Crime (UNTOC)*

Adopted in November 2000, UNTOC recognises that corruption is an integral component of transnational organised crime and must be addressed as part of efforts to combat organised crime. In terms of prevention, the Convention calls for effective measures to promote integrity and prevent the corruption of public officials and calls for public authorities to be provided with adequate independence. It also requires States Parties to criminalise corruption and implement effective measures to detect and punish the corruption of public officials. UNTOC also requires criminalisation of money laundering and the establishment of a domestic regulatory and supervisory regime for banks and other financial institutions to combat money laundering. States are also called on to fight corruption in the private sector. Finally, to address cross-border aspects of organised crime, UNTOC provides for a broad framework for mutual legal assistance, extradition, law-enforcement cooperation and technical assistance and training. Germany signed the convention in 2000 and ratified it in 2006.

### *Monitoring anti-corruption conventions*

Beyond ratification, anti-corruption conventions can only be effective if the states parties translate their commitment into actual implementation and enforcement at the national level. For this, it is necessary to have an institutionalised system of follow up. Donor support for monitoring mechanisms, including international or regional peer monitoring mechanisms and civil society monitoring efforts, is very important once conventions have entered into force<sup>2</sup>.

<sup>2</sup> A U4 expert answer has more specifically dealt with anti-corruption conventions' review mechanisms (Chêne, M., 2008).



## Examples of voluntary commitments

### *The OECD guidelines for multinational enterprises*

The OECD guidelines for multinational enterprises set out what companies can do to meet standards on human rights, labour conditions, environment and anti-corruption. They define standards of responsible business conduct that include recommendations on information disclosure, employment and industrial relations, competition, taxation, bribery, etc. Chapter VI on combating bribery states that enterprise “*should not directly or indirectly offer, promise, give or demand a bribe or other undue advantage to obtain or retain business or other improper advantage*” (OECD, 2000). While voluntary, the guidelines have proved useful in promoting corporate accountability related issues, as they cover issues such as private-to-private bribery that are not typically covered by international anti-corruption conventions (Transparency International, 2008).

A total of 40 nations – 30 OECD government (including Germany) and 10 non-member states - have endorsed these guidelines as a basic component of corporate conduct. Signatory governments are obliged to set up a “National Contact Point” (NCP) whose function is to promote, publicise and monitor adherence to the standards as well as mediate solutions between parties in case of allegations of company misconducts. According to Transparency International, in spite of their potential for positive impact, the guidelines are not yet widely used as a tool for tackling corrupt business practices and face serious implementation challenges, due to the relatively limited awareness by companies of their existence, the uneven performances of many NCPs and confusion over their scope and applicability (Transparency International, 2008).

Germany has been criticised for its weak implementation of the guidelines. The national contact point, located at the ministry of economics, is considered to be very restrictive in applying the guidelines: during the past ten years, 16 cases were submitted to the German NCP, yet, 10 cases were rejected (OECD Watch, 2010).

### *UN Global Compact*

The UN Global Compact is also a voluntary initiative that aims at encouraging responsible corporate behaviours in the areas of human right, labour and anti-corruption. The Global Compact approach is based on

the understanding that businesses, as primary drivers of globalisation, can help ensure that markets, commerce, and finance advance in ways that benefit economies and societies everywhere. Business participants in the UN Global Compact make a commitment to make the Global Compact’s ten principles part of their business strategies and their day-to-day operations. There are currently 201 participating German companies, who committed to align their operations and strategies with the 10 Global Compact principles. Governments in developed countries can encourage businesses to take an active role in the UN Global Compact and other voluntary initiatives and support companies in implementation their commitments throughout their operations.

### *Multi-stakeholder transparency initiatives*

An emerging trend is to address global corruption challenges in sectors that are traditionally particularly vulnerable to corruption and mismanagement through the constitution of global coalitions involving governments, the private sector and civil society organisations. The **Extractive Industries Transparency Initiative (EITI)** provides a good example of this approach. It is a global initiative established in 2002 to promote and support improved governance in resource-rich countries through the full publication and verification of company payments and government revenues from oil, gas, and mining. Since then several countries have committed to the Initiative, many of these have produced and published their EITI reports (27 countries are “candidate” countries and 5 have become “compliant” countries).

Germany supports the EITI by providing political, technical and financial support to the initiative. The initiative suggests different ways in which supporting countries can support the initiative such as encouraging domestic companies to support the initiative, encouraging resource-rich countries, through diplomatic and commercial channels, to implement the EITI, committing to high standards of transparency in domestic extractive sector, providing technical support in resource management to implementing countries which have low technical capacity, etc. Last but not least, Northern based corporations should have to report their country-to-country financials, including their payments to local governments.

Based on a similar model, international multi-stakeholder initiative have been designed to increase transparency and accountability in other sectors such

as the **Medicine Transparency Alliance (MeTA)** or the **Construction Sector Transparency Initiative (CoST)**.

#### *Other potential measures beyond legislation*

Governments often promote the exports and investments of domestic businesses by providing them with financial support in the form of credit or insurance for export or investment activities. As some companies that are supported by their home governments can resort to bribery of foreign officials to secure their businesses abroad, these trade support mechanisms can also play an important role in exporting corruption (or anti-corruption).

For example, export credit agencies (ECAs)<sup>3</sup> are the largest source of public funds for private sector projects in the world and it is important to ensure that they are not supporting companies that are paying bribes. The OECD Working Party on Export Credits and Credit Guarantees (ECG) agreed on an Action Statement in December 2000 and adopted detailed measures in 2006 to address this issue, urging ECAs to inform exporters of the legal consequences of bribery, requiring exporters to guarantee that the contract has not been obtained through bribery and threatening with effective sanctions in case of violations. However, while most ECAs have now formal anti-bribery policies in place, there are significant differences in implementation and approaches across countries and agencies, as reflected by the findings of a recently published TI report on *Export Credit Agencies Anti-Bribery Practices 2010* (Transparency International, 2010).

To address these and related issues, the above mentioned UK All Party Parliamentary Group's report calls for requiring companies receiving trade support or seeking government funded contracts to sign a no bribe warrantee. It also recommends barring those convicted of corruption offences from receiving government trade assistance, including participation in trade missions (UK All Party Parliamentary Group, 2006).

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<sup>3</sup> Export Credit Agencies" (ECAs) are publicly financed corporations that subsidise the exports and foreign investments of their countries' corporations.

## 2 Preventing illicit financial flows and facilitating asset recovery

### Tackling Money laundering

#### *The potential of Anti-money laundering for fighting corruption*

Corrupt regimes use the international financial system both to divert national wealth for their private gains and to conceal the proceeds of corruption and illicit gains through money laundering techniques. Illicit flows are facilitated by loopholes in the international financial system, global financial opacity and the lack of enforcement of due diligence requirements both in secrecy jurisdictions and in major financial centres. In March 2009, Global Witness published a report exposing how some of the world's largest Banks have facilitated corruption and the looting of state assets in resource rich countries (Global Witness, 2009). The report concludes that without access to the international financial system, corrupt leaders wouldn't have the means and incentives to loot state's assets and launder the proceeds of corruption.

Anti-money laundering systems that have been developed throughout the world can play an important role in denying corrupt officials access to the global financial system to launder ill-gotten gains. Reflecting this concern, the above mentioned G 20 anti – corruption plan contains a commitment to strengthen efforts to prevent and combat money laundering and encourage the Financial Action Task Force (FATF) to emphasise the anti-corruption agenda, as well as a promise to develop a cooperative framework to deny entry and safe haven in its jurisdictions to corrupt officials.

At the international level, AML regimes can also provide an external system of checks and balance to hold corrupt leaders and politically exposed persons – who, often enjoy impunity for their corrupt behaviours in their home jurisdiction due to weak law enforcement - accountable. While international AML regimes can potentially be used to prosecute corrupt politicians in foreign countries as well as freeze and return illicit assets to the victim country, their full potential as an anti-corruption tool has not yet been fully realised. For developed countries, this involves strengthening their AML systems by encouraging collaboration between financial intelligence units and anti-corruption agencies,

harmonising laws on predicate offences to treat corruption as a predicate offence for money laundering and improving access to information on beneficiary ownership (Chaikin, D., 2010).

### *Anti money laundering laws (AML)*

The FATF was established by the G-7 in 1989 as one of the major initiative launched to address mounting concerns over money laundering. It is an inter-governmental body whose mandate is to develop and promote national and international policies to combat money laundering and terrorist financing. Its 40 recommendations, adopted in 2003, provide a complete set of counter-measures against money laundering (ML) covering the criminal justice system and law enforcement, the financial system and its regulation, and international co-operation (FATF, 2003). They include provisions for the criminalisation of ML, freezing and confiscation of the proceeds of crime, Know-your-customer rules and procedures, monitoring procedures to detect suspicious transactions, reporting on suspicious transactions, etc. Although the FATF standards are not legally binding, they can be instrumental in influencing the enactment of domestic laws and practices of states.

### *The German AML system*

As part of the FATF peer review procedures, Germany's compliance with the FATF standards was evaluated in 2009. The mutual evaluation report suggests that Germany is susceptible to money laundering because of its large economy and financial centres as well as its strategic location in Europe and strong international linkages (FATF, 2010). As one of the core elements of the German AML regime, the Money Laundering Act, recently amended in August 2008 to transpose the third European Union Money Laundering Directive, established Germany's financial intelligence unit (FIU), imposes customer due diligence obligations on a wide range of financial institutions, and requires these financial institutions to submit suspicious transaction reports to the competent authorities.

The FATF report concludes that, although Germany has introduced a number of measures in recent years to strengthen its anti-money laundering, the German ML framework is still not fully in line with the FATF recommendations, with weaknesses in the legal framework and in sanctioning for non-compliance with anti-money laundering requirements. Despite AML laws, there is evidence that some German banks have

continued to do business with corrupt regimes. Global Witness for example has exposed the opaque relationships between the Deutsche Bank and Turkmenistan's late dictator and president-for-life, Saparmurat Niyazov, which reportedly allowed the regime to keep the country's oil revenue offshore and off the national budget (Global Witness, 2009).

## Facilitating international asset recovery

### *Background*

According to the World Bank, corrupt leaders of poor countries steal as much as US \$40 billion each year, looted funds they then stash overseas (World Bank, 2007). As stolen assets are often hidden by private and offshore banking centres in developed countries, both developed and developing countries have a shared responsibility in stealing assets and sidelining initiatives to repatriate them to the countries from which they were stolen. Chapter V of the UNCAC provides the first global framework to address the issue of asset recovery in both developed and developing countries, calling states to take appropriate measures to recover property that has been acquired through corrupt means. In line with UNCAC provisions, the G 20 anti-corruption plan also calls G 20 countries to put in place mechanisms for the recovery of property from corrupt officials through international cooperation in tracing, freezing and confiscating assets.

There are considerable challenges involved in recovering stolen assets, including locating stolen funds, sovereignty issues, wavering political will, lack of cooperation between national and international agencies, patchy mutual legal assistance (MLA) provisions between requesting and requested states, etc (Transparency International, 2009). In addition, limited legal, investigative and judicial capacity as well as inadequate financial resources in developing countries can hamper the recovery process.

### *Current efforts*

Several initiatives have been launched to overcome these numerous challenges in various areas:

**Enacting adequate legislation:** UNCAC provides a legal framework to facilitate the process of asset recovery and developed countries should enact laws that are conforming to UNCAC provisions. At the national level, countries such as the UK have passed legislation to provide effective and comprehensive

powers to restrain, confiscate and recover the proceeds of crimes and to permit the civil recovery of the proceeds of unlawful conduct in the absence of a criminal conviction<sup>4</sup> (Transparency International-UK, 2009).

**Freezing assets:** In many countries, overly burdensome procedures impose delays on the freezing of assets which allow corrupt funds to disappear before the order is issued. In addition, when orders are issued, they are not always enforced. In Germany, for example, German authorities regularly use a broad range of legal procedures to seize, confiscate, and forfeit property, but they confiscate and forfeit a lot less property than the courts issue orders for (FATF, 2010).

**Providing technical assistance and capacity building:** Technical assistance and capacity building for both requesting and requested states are key areas of needed support that can contribute to build an international network of asset recovery specialists. A number of initiatives are under way in this area. The Stolen Asset Recovery Initiative (StAR) for example aims to address capacity challenges. Similarly, some bilateral donors such as the UK, Switzerland and Liechtenstein, fund training programmes for Southern law enforcement agencies. In the EU, law enforcement bodies have organised themselves informally as the Camden Asset Recovery Inter-Agency Network to improve international cooperation in tracking and repatriating the proceeds of crime. The International Centre for Asset Recovery (ICAR) based at the Basel Institute for Governance also support developing countries by facilitating training and information sharing (Transparency International, 2009).

**Internal cooperation:** Underlying both money laundering and asset recovery initiatives is the need for international cooperation and mutual legal assistance (MLA) in corruption cases that involved a cross-border element. Above mentioned international instruments including the UNCAC reflect this need by providing a broad framework for mutual legal assistance, extradition, law-enforcement cooperation and technical assistance and training. In practice however, factors such as procedural delays, lack of training on effective

means to request cooperation and difficulties relating to differences between legal systems may affect the effectiveness of formal legal assistance, revealing the need for alternative and more informal forms of assistance and cooperation (Chêne, M., 2008).

In Germany, according to the FATF mutual evaluation report, the framework in place enables the provision of comprehensive and timely mutual legal assistance and extradition. While no material obstacles were identified in this area, assessors were unable to establish fully whether MLA is being provided in an effective manner due to the absence of statistics. However, Germany has a solid system in place for extradition and grants a high percentage of requests in a timely manner. In addition, the authorities appear to be providing a wide range of international administrative cooperation with their foreign counterparts except in relation to nonfinancial businesses and professions (FATF; 2010).

### 3 Safeguarding aid from corruption and promoting aid transparency<sup>5</sup>

#### Safeguarding Aid from corruption and supporting recipients' countries anti-corruption efforts

Aid can also contribute to support the fight against corruption in developing countries and create positive incentives for change. The Millennium Challenge Corporation (MCC) - which provides substantial new resources to a carefully selected group of countries - illustrates this approach by using control of corruption as one of the indicators that must be met in order for a country to become eligible to receive MCC compact assistance (Millennium Challenge Corporation, 2009).

Aid can also be used as a tool to promote the policy dialogue on governance and corruption related issues as well as to strengthen recipient countries' accountability mechanisms. Donors are increasingly integrating governance and anti-corruption concerns into their programmes and policies to achieve better development outcomes. Donors' efforts to

<sup>4</sup> Many countries require requesting countries to prove that assets were not obtained lawfully before the freezing or confiscation of assets can be considered, which can considerably hamper the recovery process.

<sup>5</sup> At the request of the enquirer, this answer will only briefly address this area of potential intervention for developed countries, as a number of other U4 expert answers have extensively dealt with this issue.



mainstreaming anti-corruption in their projects and programmes have typically focused on three major dimensions: 1) putting in place mechanisms to ensure transparency, accountability and integrity of their operations and staff; 2) protecting their projects and loans from corruption/ensuring that aid programmes themselves do not foster corruption.; and 3) supporting country-led anti-corruption strategies and recipient countries' efforts to effectively address corruption and the underlying causes of corruption.

### Promoting aid transparency

Within this framework, aid transparency is emerging as a fundamental issue to improve governance and accountability and increase the effectiveness of aid. More and better information about aid can help better track what aid is being used for and what it is achieving as well as support governments in developing countries to manage aid more effectively. Research also suggests that more transparent aid is correlated to lower levels of corruption in recipient countries (Christensen, Z. et al, 2011).

To address these concerns, the International Aid Transparency Initiative (IATI), IATI was launched in September 2008 in Accra as a voluntary multi-donor initiative aiming at making information about aid spending easier to access, use and understand. Although IATI does not refer specifically to reducing corruption, it can contribute to the debate and add value by agreeing on standards for sharing information that can be useful to all stakeholders, particularly those in developing countries. By making information simpler and easier to understand, to compare, and to use, IATI can help anti-corruption fighters monitor the allocation and budgeting of official ODA.

Germany is one of 18 signatories to the IATI. At present, Germany is struggling with some of the technical changes that are required in order to implement the IATI Standard which set out what information should be made available and how. According to the Publish What You Fund's 2010 Aid Transparency Assessment report, Germany belong to the group of donors who show an explicit commitment to aid transparency but are inconsistent in their current levels of performance on the availability of information (Publish What You Fund, 2010).

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**Stellungnahme von Transparency Deutschland zum Grünbuch:  
Für eine Entwicklungspolitik mit größerer Wirkung - KOM(2010)629 endgültig**

Sehr geehrte Damen und Herren,

Zum oben angegebenen Kommissionsdokuments nehmen wir in Bezug auf Transparenz, Integrität und Korruptionsprävention wie folgt Stellung.

Korruption betrifft weltweite sowohl Nehmer- als auch Geberländer. Das Vertrauen in die Integrität von Wirtschaftsunternehmen, Politik und Verwaltung wurde in den letzten Jahren wiederholt durch Korruptionsfälle stark erschüttert. Im Bereich der Entwicklungspolitik wirkt sich Korruption verheerend aus.

Die Schäden durch Korruption erreichen in einigen Nehmerländern die Größenordnung der ODA. Korruption gefährdet auch die Einhaltung wichtiger Millenium-Entwicklungsziele (MDG).

Eine wirksame und angemessene Entwicklungshilfe braucht die Akzeptanz der Steuerzahler. Diese Akzeptanz wird durch Fälle von Fehlallokationen wie umweltschädliche Projekte, Selbstbereicherung von Eliten. Investitionsruinen, Zweckentfremdung und Veruntreuung von Mitteln schwer belastet.

Folgenden Erwägungen und Maßnahmen sind uns deshalb zu den genannten Themen besonders wichtig:

*1. Wie könnten die EU und ihre Mitgliedstaaten Leitlinien für die Programmierung und Mittelverwendung entwickeln, in denen bestimmte Bedingungen gestellt werden, die bei allen Programmen und Projekten und bei jeglicher Unterstützung erfüllt werden müssen?*

Um die Mittel der Entwicklungszusammenarbeit zweckmäßig wirksam werden zu lassen dürfen diese nicht bei den Regierungen hängenbleiben. Alle für die Maßnahmen relevanten gesellschaftliche Strukturen sollten von Anfang an einbezogen werden.

Regierungen sollten deshalb zu Transparenz und friedlicher, fairer Zusammenarbeit mit Medien (Informationsfreiheit), Zivilgesellschaft und Opposition verpflichtet werden.

Oft sind gerade die Teile der Gesellschaft am bedürftigsten, die zu den Ausschreibungen der EU keinen Zugang haben. Dieses sollte bei allen Maßnahmen der EU bedacht und bei der Durchführung berücksichtigt werden werden.

Aus diesem Grunde, sollte bei Entwurf, Umsetzung und Evaluierung der Programme sehr sorgfältig eine Armutsorientierung angestrebt und die Wirkung auf lokale Strukturen berücksichtigt werden.

Der Komplexität und Vielfalt der Empfängerländer sollten besser Rechnung getragen werden, um eine Exekutivlastigkeit der Maßnahmen und eine klientelistische Verteilungspolitik zu vermeiden. Das muss von den Handelnden dokumentiert und von unabhängiger Stelle unter Einbindung der Zielgruppen überprüft werden.

*2. Welche bewährten Methoden gibt es gegenwärtig auf EU-Ebene und auf Ebene der Mitgliedstaaten, an die angeknüpft werden könnte?*

Die EU sollte Vorreiter bei der Transparenz sein. Dieses gilt für Vergabekriterien, die Mittelplanung und Mittelverwendung sowie für die Monitoring- und Evaluierungsergebnisse. IATI, Publish what you fund/pay und Public Expenditure Tracking System (PETS) sind hier bereits gute Initiativen. Gleiches gilt auch für die jährliche Veröffentlichung der Ergebnisse von OLAF.

Durch wenige Mausclicks sollten auch in den Empfängerländern Informationen des internen Anti-Korruptions-Managementssystems zugänglich sein. Dieses beinhaltet Informationen über die Ansprechpartner wie z.B. Ombudspersonen, Verfahren der Antikorruption sowie die Konsequenzen von Korruption, also Verhaltensregeln für Programmbeteiligte, z.B. bei Interessenskonflikten und Ausschreibungen. Aufklärung des ausreisenden Personals über Korruptionsrisiken im Empfängerland sollte Standardbestandteil der Vorbereitungen sein. Ein offener Umgang mit Misserfolgen und ein transparentes Verfahren bei der Mittelumsteuerung, eine Evaluierung unter Einbindung die Zielgruppen verschafft zusätzliche Glaubwürdigkeit.

*6. Wie kann die EU ihr Konzept, ihre Instrumente und ihre Indikatoren anpassen, so dass die Governance-Reformen in Entwicklungsländern/-regionen unterstützt werden?*

Wir teilen die in 2.3 zum Ausdruck kommende Auffassung, was die Voraussetzungen für eine wirksame Regierungsführung angeht. Wir begrüßen auch die Absicht der KOM, sich für wirksame Präventions-, Kontroll-, Sanktions- und Abhilfemechanismen zur Bekämpfung von Korruption und Betrug im Nehmerland einzusetzen. Wir sind der Ansicht, dass auch in einigen Mitgliedstaaten der EU noch Verbesserungen möglich sind und dass Forderungen an gute Regierungsführung in Nehmerländern noch überzeugender sind, wenn auch in allen Mitgliedstaaten eine vorbildlich korruptionsfreie öffentliche Verwaltung etabliert ist.

Um Korruption vorzubeugen, sollte die Möglichkeit geprüft werden, Aufträge im Rahmen von Entwicklungsprojekten an Integritätsvereinbarungen zu binden (vgl. den hierzu von Transparency International entwickelten „Integritätspakt“).

Neben der in auf dem HLF in Accra vereinbarten Verbesserung der Transparenz sollte die Arbeit der International Aid Transparency Initiative (IATI) hierzu noch stärker auch von der EU unterstützt werden. Die Europäische Kommission sollter intern auf eine zügige Implementierung des IATI Standards drängen und alle Mitgliederstaaten ermutigen, dieser Initiative beizutreten.

Die EU sollte sich auch dafür einsetzen, dass die Transparenz der Geldgeber und die Zugänglichkeit von Informationen als Kriterien in das DAC Peer Review aufgenommen werden.

Um Entwicklungsprogramme effizienter zu gestalten, sollten in allen Phasen der Zusammenarbeit die Mitwirkungsrechte der Betroffenen verankert und gestärkt werden, um damit gleichzeitig Governance-Reformen zu unterstützen. Beim wichtigen Dialog mit allen

relevanten Teilen der Zivilgesellschaft ist darauf zu achten, dass nicht nur von Regierungen extra hierfür gesponsorte „Regierungs-NGOs“ einbezogen werden.

*8. Wie sollte die EU solide Rahmen für die Bewertung und Überwachung von Entwicklungsergebnissen der Empfängerländer fördern?*

Wir stimmen der in 2.1 des Grünbuchs geäußerten Auffassung zu, dass die Anstrengungen zur Verbesserung der Monitoring- und Evaluierungssysteme verstärkt werden müssen. Dabei ist es erforderlich, dass diese Systeme international vergleichbar sind und auch korruptive Praktiken aufdecken.

Alle Maßnahmen der Entwicklungszusammenarbeit sollten in Geber- wie Empfängerländern gut bekannt und jederzeit niedrigschwellig zugänglich sein. Die Bürger auf beiden Seiten brauchen technisch unkomplizierten, offenen und verständlichen Zugang. Das erhöht die Akzeptanz und die Nachhaltigkeit der Maßnahmen.

*15. Wie kann die EU sicherstellen, dass die Förderung der wirtschaftlichen Entwicklung eine faire Teilhabe aller an ihrem Nutzen garantiert, für einen besseren Schutz der sozialen und wirtschaftlichen Rechte, einschließlich der Durchsetzung der Kernarbeitsnormen, sorgt und die Rechenschaftspflicht der Unternehmen stärkt?*

Die KOM sollte sich aktiv an den Konsultationen zur Revision der OECD-Leitsätze für multinationale Unternehmen beteiligen und darauf hinwirken, dass ihre Anwendung in der Praxis zukünftig nicht länger auf Direktinvestitionen eingeschränkt werden kann. Vielmehr müssen die aktualisierten Texte zu den einzelnen Themenfeldern und den prozeduralen Erläuterungen gewährleisten, dass die Leitsätze auf alle Geschäftsaktivitäten inklusive Handel und Finanzdienstleistungen und auf alle Glieder der Wertschöpfungskette als Maßstab für gesellschaftlich verantwortungsvolles Verhalten von multinationalen Unternehmen gelten.

In Regionen und Ländern in denen örtliche Regierungen oder Verwaltungen zu schwach oder unwillig sind die Einhaltung der Standards der OECD-Leitsätze einzufordern sollte die KOM darauf hinwirken, dass die revidierten Leitsätze multinationale Unternehmen dazu verpflichten, eine erhöhte Sorgfaltspflicht („Due Diligence“) bei allen ihren Planungen, Entscheidungen und Aktivitäten walten zu lassen, um sicherzustellen, dass ihr Verhalten die OECD-Leitsätze beachtet. Die KOM sollte die Mitgliedstaaten auffordern, die in den Leitsätzen vorgesehenen Nationalen Kontaktstellen als politisch unabhängige Institutionen zu etablieren, gemeinsame Mindeststandards für deren personelle und finanzielle Ausstattung sowie deren Befugnisse und Arbeitsweise vorgeben und mit einem nationalen und internationalen Monitoring begleiten. Diese gemeinsamen institutionellen und operationalen Mindeststandards der EU Mitgliedstaaten sollen die Einhaltung der Leitsätze durch deren aktive Bekanntmachung und Verbreitung fördern und durch stringentes Nachgehen von Beschwerden gegen multinationale Unternehmen, die auf oder von ihrem Hoheitsgebiet die Leitsätze verletzt haben sollten, zu angemessenerem Verhalten zu veranlassen.

*16. Welche Maßnahmen sollten ergriffen werden – und wie sollten sie am besten differenziert werden –, um den Entwicklungsländern bei der Schaffung eines wirtschaftlichen Umfelds zu helfen, mit dem das Unternehmertum und vor allem KMU gefördert werden können?*

Die EU sollte sich im Dialog mit Partnerländern dafür einsetzen, dass KMU ohne hohe bürokratische Hindernisse in den Entwicklungsländern tätig werden können und dafür sorgen, dass integrale Formen der Auftragsvergabe geschaffen werden, dass insbesondere Aufträge nicht durch Bestechung der Amtsträger erkaufte werden, was kleine und noch nicht

im Markt etablierte Unternehmen besonders benachteiligt. Whistleblowing sollte nicht nur in den Geberländern sondern auch am Zielort der Maßnahmen erleichtert werden

Wir würden es begrüßen, wenn unsere Stellungnahme in dem weiteren Gesetzgebungsprozess berücksichtigt werden könnte.

Mit freundlichen Grüßen



Dr. Wolfgang Wodarg