

Anti-Corruption in Germany

German Anti-Corruption Legislation and Anti-Corruption Compliance in German Companies

**Law Schools Global League
Anti-Corruption and Compliance Research Group**

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A. Overview of Recent Changes in German Anti-Corruption Legislation

I. Introduction

In Germany, bribery is a punishable offense. German law distinguishes between public and private sector bribery, both of which are punishable under German anti-corruption provisions. These are included in the (general) German Criminal Code (Strafgesetzbuch - StGB). Germany has recently been reforming its legislation regarding anti-corruption. Highlights of the reform include the provisions on bribery of elected representatives (Sec. 108e StGB), bribery of public officials (Sec. 331 to 338 StGB), private bribery (Sec. 299 to 301 StGB) and bribery in the health care sector (Sec. 299a to 299b StGB).

Only individuals are subject to *criminal liability* under the German Criminal Code. Companies cannot be held criminally liable under German law. Nevertheless, administrative fines may be imposed on companies under the German Administrative Offence Act (Ordnungswidrigkeitengesetz – OWiG). Under Sec. 30 OWiG, fines may be imposed if a company representative or representative body (e.g., a member of the board of directors, the general manager) commits a criminal or administrative offense, and the company hereby breaches a company duty or profits in an illegal manner. The violation of a company representative's supervisory duty, for example failure to implement adequate safeguards to prevent corruption, can be attributed to the company and a monetary fine can be imposed on the company under Sec. 130 OWiG. These fines can be as high as EUR 10 million.

The implementation of a corporate criminal liability has been subject to debate for several decades. The recent discussion emerged when in November 2013 the State of North Rhine-Westphalia presented a first draft of a Corporate Penal Code.

I. Bribery of Elected Officials

On September 1, 2014 the new Sec. 108e StGB (German Criminal Code) governing the bribery of members of parliament entered into force¹.

The new Sec. 108e StGB reads as follows:

“Corruption and bribery of elected officials

(1) Who as a member of German Federal Parliament or of the German federal states (Länder) demands, allows himself to be promised, or accepts an undue advantage for himself or a third party as a consideration for the performance of an action or omission in relation to his mandate, shall be punished with imprisonment up to five years or a fine.

¹ BGBl. I p. 410 f.; for details see *Michalke, Regina* “Der neue § 108e StGB – „Bestechlichkeit und Bestechung von Mandatsträgern““ in *Compliance-Berater* 2014, p. 215–220; *Braasch, Matthias* „Reichweite der Strafbarkeit politischer Mandatsträger wegen korruptiver Handlungen - Zugleich Anmerkung zur Neuregelung der „Bestechlichkeit und Bestechung von Mandatsträgern“ gemäß § 108e StGB (Teil 1-3)“ in *jurisPR-StrafR* 2015 issues 9 to 11, Anm. 1; *Willems, Heiko*, „Die Neuregelung der Abgeordnetenbestechung und ihre Auswirkungen auf die Praxis“ in *CCZ* 2015, 29-33 .

- (2) Who offers, promises or grants a member of parliament of the Federation or of the federal state (Länder) an undue advantage for that member or a third party as a consideration for an action or omission in relation to that member's mandate shall be punished likewise.
- (3) The following members are equivalent to the members in paragraphs 1 and 2
1. a member of municipal associations,
 2. an elected member by universal and direct suffrage of a committee governing a region within a federal state or an administrative body on municipal level,
 3. a member of the German Federal Assembly (Bundesversammlung),
 4. a member of the European Parliament,
 5. a member of a parliamentary assembly of an international organization and
 6. a member of a legislative body of a foreign state.
- (4) An undue advantage can particularly not be found if the acceptance of the advantage is in line with the legal status of the member and the respective regulations. The following benefits do not represent an undue advantage
1. a political office or a political function as well as
 2. donations that are compliant with the German Political Parties Act (Parteiengesetz) or other applicable laws.
- (5) In addition to imprisonment for at least six months, the court may disqualify the respective person from his capacity to attain public electoral rights and the right to vote in public affairs.”

Under the prior regulation only the buying or selling of votes for an election or ballot in the European Parliament or German Federal Parliament, or in the parliaments of each of the German federal states or municipalities was considered a criminal offense. The amended Section extends the criminal liability to the acceptance of any undue advantage regarding any action or omission in relation to a mandate. This implements requirements imposed by the Council of Europe Criminal Law Convention on Corruption (1999) and by the UN Convention against Corruption (2003).

Both, passive bribery (accepting an undue advantage – Sec. 108e para. 1 StGB) as well as active bribery (offering an undue advantage – Sec. 108e para 2 StGB), are punishable. An undue advantage is seen as any material, immaterial, economic, legal or personal betterment the recipient has no legal entitlement to have². Under Sec. 108e para 4 StGB such an advantage is not given if the acceptance of the advantage is in line with the legal status of the member and the respective regulations. A political office or a political function as well as a donation is permitted according to the German Political Parties Act or by respective laws. The characteristic element of Sec. 108e StGB is a specific agreement of wrongdoing (“Unrechtsvereinbarung”) which constitutes a relationship between the undue advantage granted (offered or promised) to the elected official and the elected official's action or omission in relation to his mandate³. The agreement of wrongdoing applies accordingly to the other German anti-bribery provisions⁴.

Relevant elected officials include not only the members of German Federal Parliament or of the German federal states (Sec. 108e para 1 StGB), but pursuant to Sec. 108e para. 3 StGB

² von Heintschel-Heinegg, Beck'scher Online Kommentar StGB, v. Heintschel-Heinegg, 31. Edition, Stand: 01.06.2016 § 108e StGB Rn. 14.

³ von Heintschel-Heinegg, Beck'scher Online Kommentar StGB, v. Heintschel-Heinegg, 31. Edition, Stand: 01.06.2016 § 108e StGB Rn. 18.

⁴ von Heintschel-Heinegg, Beck'scher Online Kommentar StGB, v. Heintschel-Heinegg, 31. Edition, Stand: 01.06.2016 § 108e StGB Rn. 19; von Heintschel-Heinegg, Beck'scher Online Kommentar StGB, v. Heintschel-Heinegg, 31. Edition, Stand: 01.06.2016 § 331 StGB Rn. 24; Momsen, Beck'scher Online Kommentar StGB, v. Heintschel-Heinegg 31. Edition Stand: 01.06.2016, § 299 Rn. 19 f.; Korte, Münchener Kommentar zum StGB, 2. Auflage 2014, § 331 StGB Rn. 93; Krick, Münchener Kommentar zum StGB, 2. Auflage 2014, § 299 StGB Rn. 24 ff.

also members of municipal associations, elected members by universal and direct suffrage of a committee governing a region within a federal state or an administrative body on municipal level, members of the German Federal Assembly, of the European Parliament, of a parliamentary assembly of an international organization and members of a legislative body of a foreign state.

The threat of punishment pursuant to Sec. 108e StGB is the same for any person taking the active or passive role in the criminal offense: up to five years of prison or a fine. Pursuant to Sec. 108e para. 5 StGB, the offender may be disqualified by court from his capacity to be elected into any public office and the right to vote in public affairs, if he is convicted to a sentence of imprisonment of at least six months.

II. Bribery of Public Officials

On November 26, 2015, the German Law on Combating Corruption (“Gesetz zur Bekämpfung der Korruption”⁵) of the Ministry of Justice and Consumer Protection entered into effect. The law amends the provisions on public bribery.

Bribery of public officials is regulated by Sec. 331 to 338 StGB. Sec. 331, 333 StGB deal with the acceptance and granting of advantages for discharge of an official duty. This provision requires that an official be promised a benefit for himself or a third person in return for fulfilling his public duty or, respectively, the offering, promising or granting of a benefit to any public official in order to influence the official’s actions. However, the offense is not punishable if the public official’s principal has authorized the advantage before or immediately after its receipt (Sec. 331 para. 3, 333 para. 3 StGB). There is no exception for facilitation payments under German law. Under Sec. 332, 334 StGB taking and giving bribes meant as an incentive to violating one’s official duties is punishable.

The new law extends the scope of the recipients in accordance with international law, mainly the European Bribery Act (EUBestG). Now, not only public officials or persons entrusted with special public service functions (Sec. 331 para. 1 StGB) as well as judges or arbitrators (Sec. 331 para. 2 StGB) can be held criminally liable, but also European public officials and judges of courts of the European Union can be punishable. “Public official” is defined in Sec. 11 para. 2 StGB as a) a civil servant or judge, b) a person who otherwise carries out public official functions or c) a person who has otherwise been appointed to serve with a public authority or other agency or has been commissioned to perform public administrative services regardless of the organizational form chosen to fulfil such duties. Sec. 11 para. 2a StGB defines “European public official” as a) a member of the European Commission, the European Central Bank, the Court of Auditors or any Court of the European Union, b) a civil servant or other servant of the European Union or a body created on the basis of European Union law, or c) a person who is entrusted with the performance of tasks of the European Union or of a body created on the basis of European Union law. The new Sec. 335a StGB transposes international law, such as the Act on Combating International Bribery (IntBestG), into German law⁶. Recipients can now also be judges of foreign or international courts or public servants of international organizations.

⁵ Entwurf eines Gesetzes zur Bekämpfung der Korruption, BT-Drs. 18/4350; Gesetzesbeschluss vom 16.10.2015, BT-Drs. 468/15.

⁶ von Coelln, Sibylle, „Der aktuelle Entwurf eines Gesetzes zur Bekämpfung der Korruption - Erweiterung der Bestechung im geschäftlichen Verkehr und der Amtsträgerbestechung“ in Nietsch, Michael, „Unternehmenssanktionen im Umbruch - Unternehmensstrafrecht, Embargo-Compliance und Korruptionsbekämpfung“, 2016, S. 81, 106.

The consequences of a violation vary from imposing a fine and imprisonment up to three years (Sec. 331 para. 1, 333 para. 1 StGB), up to five years (Sec. 331 para. 2, 333 para. 2 StGB), from three months up to five years (Sec. 334 para. 1, para. 2 StGB), from six months up to five years (Sec. 332 para. 1 StGB) and from one year up to ten years (Sec. 332 para. 2 StGB). In especially grave cases such as acting on a commercial basis the penalty can be increased (Sec. 335 StGB).

III. Private Bribery

The amendment of the provisions on private bribery constitutes the main part of the German Law on Combating Corruption (“Gesetz zur Bekämpfung der Korruption”)⁷. The new regulation shows the effort of the German government to fully transpose and implement the European Council Framework decision on fighting corruption in the private sector⁸.

Private bribery is regulated in Sec. 299 to 301 StGB. So far, only bribes in the context of market competition were covered by Sec. 299 StGB (competition model - “Wettbewerbsmodell”).⁹ Pursuant to the former version of Sec. 299 para. 1 StGB, a person could only be held criminally liable if this person, as an employee or agent of an organization, demanded, allowed oneself to be promised or accepted an advantage for oneself or a third person in a business transaction as consideration for according an unfair preference to another in the competitive purchase of goods or commercial services (passive bribery). Under Sec. 299 para. 2 StGB the same applied to whosoever, for competitive purposes, offered, promised or granted an employee or agent of an organization a benefit for such an unfair competitive advantage (active bribery). The scope of the regulation included acts in competition abroad.

Since the new regulation came into effect on November 26, 2015, the scope of Sec. 299 StGB now extends to such cases, where the employee breaches his duty to his company (the so called employer model - “Geschäftsherrenmodell”)¹⁰. Under Sec 299 para. 1 no. 2 StGB whosoever as an employee or agent of a business shall now be held criminally liable, if this person without the consent of his company demands, allows oneself to be promised or accepts an advantage for oneself or a third person as consideration for performing or refraining from any act in breach of that person's duties in the purchase of goods or commercial services. The same applies to the person disposing such an advantage to the employee or agent (Sec. 299 para 2 StGB). Relevant duties can arise from law or contract. But neither the mere acceptance of an advantage nor a breach of the company’s compliance policies by themselves is regarded as sufficient to constitute a breach of duty¹¹.

⁷ *Kubiciel*, „Bestechung und Bestechlichkeit im geschäftlichen Verkehr“ ZIS 2014, 667, (668); *Dannecker/Schröder*, „Neuregelung der Bestechlichkeit und Bestechung im geschäftlichen Verkehr, Entgrenzte Untreue oder wettbewerbskonforme Stärkung des Geschäftsherrnmodells?“ ZRP 2015, 48, (48).

⁸ Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector ABl. EU Nr. L 192 S. 54.

⁹ *Momsen*, Beck'scher Online Kommentar StGB, v. Heintschel-Heinegg 31. Edition Stand: 01.06.2016, § 299 StGB Rn. 4.

¹⁰ *Momsen*, Beck'scher Online Kommentar StGB, v. Heintschel-Heinegg 31. Edition Stand: 01.06.2016, § 299 StGB Rn.6; *von Coelln, Sibylle*, „Der aktuelle Entwurf eines Gesetzes zur Bekämpfung der Korruption - Erweiterung der Bestechung im geschäftlichen Verkehr und der Amtsträgerbestechung“ in Nietsch, Michael, „Unternehmenssanktionen im Umbruch - Unternehmensstrafrecht, Embargo-Compliance und Korruptionsbekämpfung“, 2016, S. 81, 87.

¹¹ Entwurf eines Gesetzes zur Bekämpfung der Korruption, BT-Drs. 18/4350, S. 21.

The penalty under Sec. 299 StGB both for the donor and the receiver is imprisonment up to three years or a fine. In especially serious cases the threat of imprisonment ranges from three months to five years (Sec. 300 StGB).

IV. Bribery in the Health Care Sector

On June 4, 2016 the new Section 299a, 299b StGB regulating bribery in the healthcare sector came into force. The background of the new provision is a decision of German Federal Court of Justice (“Bundesgerichtshof” - BGH), dating 29 March 2012¹², in which the court declared that neither the provisions on private bribery nor those on public bribery apply to independent health practitioners.

The new Sec. 299a StGB reads as follows:

"Section 299a Passive corruption in the healthcare sector

Whosoever as a member of a healthcare profession for which a state-regulated professional education in order to practice his profession or use his professional title are established requests, allows himself to be promised or accepts an advantage for himself or for a third party whilst practicing that profession, in order to

1 when prescribing pharmaceuticals, remedies, aids or medical devices or

2. at the purchase of pharmaceuticals, remedies, aids or medical devices which are intended for direct application by the member of healthcare profession or its professional assistant or

3. when assigning patients or test materials,

unfairly give preference to another in national or foreign competition or shall be liable to imprisonment of no more than three years or a fine."

The new Sec. 299b StGB covers active bribery under circumstances laid out above. Donor as well as receiver shall be liable to imprisonment of no more than three years or a fine (Sec. 299a, 299b StGB).

B. Evaluation of the Questionnaire “Anti-Corruption Compliance in German Companies”

In 2015, the Working Group on Anti-Corruption of the Law Schools Global League (LSGL) conceived a questionnaire on Anti-Corruption Compliance in German Companies. The questionnaire in place has been answered by 21 German companies in the period from November to December 2015. All but two companies are listed at the Frankfurt Stock Exchange.

I. Section 1: General Information

Under Section 1 companies had to provide general information about their type of business, if they were a branch of a foreign company, if they were subject to explicit legal requirements under anti-money-laundering law and whether or not they are participants of collective actions of business associations.

40% of companies questioned classified their main type of business as Financial Service Industry (e.g. insurance, asset management, consulting). 20% of the participating companies have their main business in the industrial services sector (production, engineering). 15%

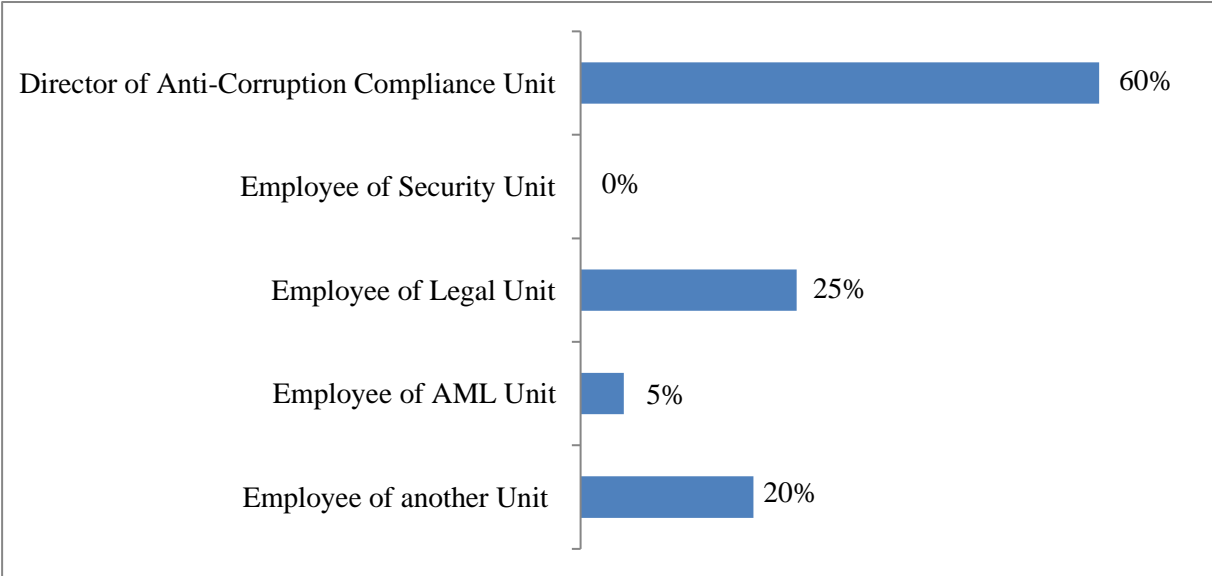
¹² BGH, Beschl. v. 29. 3. 2012 – GSt 2/11 „Kassenarzt kein Amtsträger oder Beauftragter der gesetzlichen Krankenversicherung“, NJW 2012, 2530.

stated their main type of business as each, international commodity/chemicals and transport/logistics. 10% had their main type of business in the automotive sector. 26% of the companies said to be additionally engaged in another type of business. These types of additional business activities mentioned were, e.g., asset management and related services (maintenance, consultancy) or household appliances. None of the companies questioned stated to be a branch of a foreign company.

60% of the companies questioned stated to be obligated to carry out internal control in accordance with Anti-money laundering law. 35% have no such obligation. 5% stated to have such obligation only for parts of their business. 55% of companies stated to be participating in collective actions of business associations. 45% denied this question.

II. Section 2: Anti-Corruption Compliance Control within the Structure of the Company

Section 2 of the questionnaire dealt with the localization of the anti-corruption compliance control function within the company’s structure. The first question concerned the function of anti-corruption compliance control in the company. The options given were (1) „anti-corruption compliance officer“ and (2) „special anti-corruption unit“. 70% of the companies stated that an individual performed the function of in-house anti-corruption compliance control. In 40% of the responses this function was performed by a designated anti-corruption unit. Under Sec. 2.2., companies were asked about the organizational structure of anti-corruption compliance. 60% of companies questioned stated that the anti-corruption officer is the director of an anti-corruption compliance department. A quarter of the companies said the anti-corruption compliance officer was an employee of the legal department. 5% of the companies have an anti-corruption compliance officer who is an employee of the AML department. None of the companies questioned stated that the anti-corruption compliance officer is an employee of the security department. 20% of the companies have an anti-corruption compliance officer that is an employee of another department.



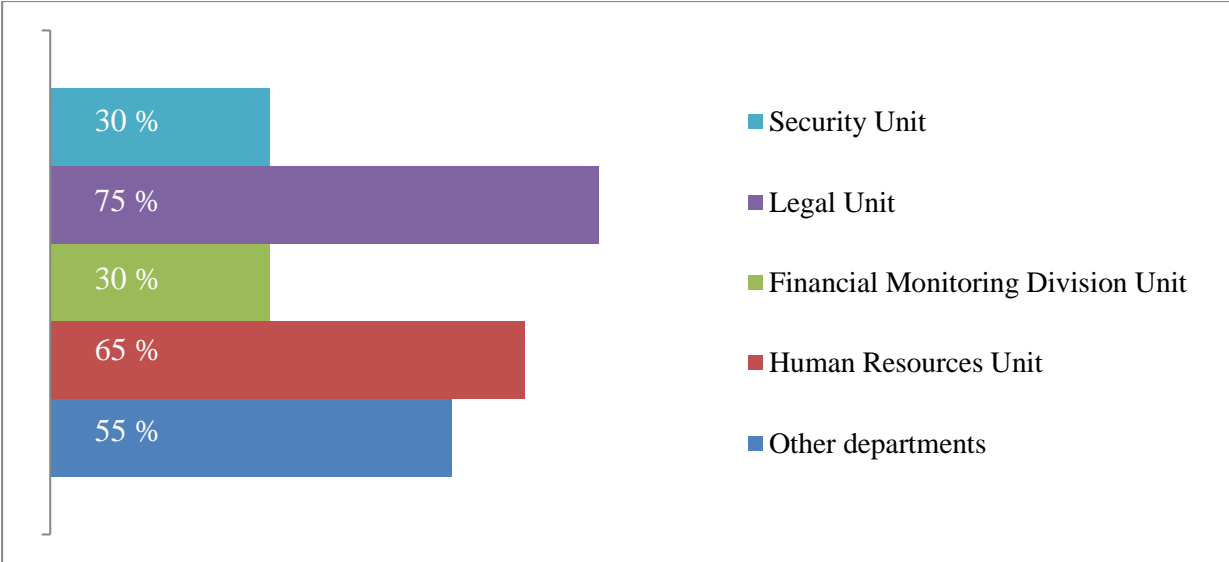
1 Section 2.2. Anti-Corruption Compliance Officer

Under Sec. 2.3., companies were asked to whom the anti-corruption compliance officer is subordinate. 40% of the companies said the anti-corruption compliance officer was subordinate to the head of the company. 55% of the companies questioned stated that the anti-

corruption compliance officer is subordinate to another company official. 5% of the companies did not answer the question.

The next question was about reporting lines to the management board (head of the company/management board, audit committee of the board of directors or board of directors). 90% of the companies questioned stated that the anti-corruption compliance officer is entitled to report to the head of the company or the management board directly. In 75 % of the companies he is entitled to report to the audit committee of the board of directors. In 67 % of the companies he is entitled to report to the board of directors.

Under Sec. 2.5., companies were asked about the cooperation between their anti-corruption department and other departments. The companies questioned stated that the anti-corruption compliance officer was obliged to cooperate with the legal department (75%), with the human resources department (65%), with other departments (55%), with the security department and the financial monitoring division (each 30%). 40% of the companies specified the other department as Internal/Corporate Audit. Other specifications were Anti-Financial Crime Division, Data Protection Department, Market Management, Sales and Distribution, Risk Management.



2 Section 2.5. Anti-Corruption Compliance Officer cooperates with

III. Section 3: Code of Business Conduct

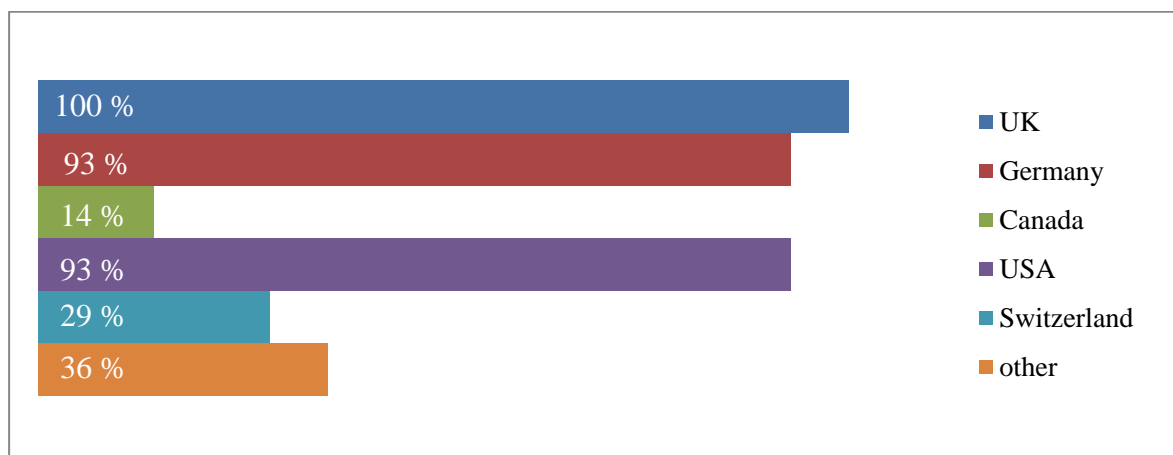
Under Section 3, companies were asked if they had a code of business conduct (business ethics) implemented. 95% of the companies questioned stated to have such a code. The companies without such a code of business conduct said to have a code of conduct under draft, but not yet fully implemented.

IV. Section 4: Anti-Corruption Policy

Section 4 was about the anti-corruption policy. The first question asked if companies have anti-corruption policy as a special internal document. 95% of companies questioned confirmed to have such a special internal document.

Under Sec. 4.2., companies were asked if they took into account foreign anti-corruption law when drafting their anti-corruption policy. 70% said that they did. All companies questioned took into account UK law. 93% of the companies questioned took into account German and US-law while drafting the anti-corruption policy. 29% of the companies considered Swiss

law. Only 14% of the companies considered Canadian law. 36% of the companies took into account other laws. These were the legal systems of e.g. the Asia-Pacific (APAC) region, Spain, Italy, Brazil and other countries the companies questioned do business with.



3 Section 4.2. Foreign anti-corruption law in anti-corruption policy

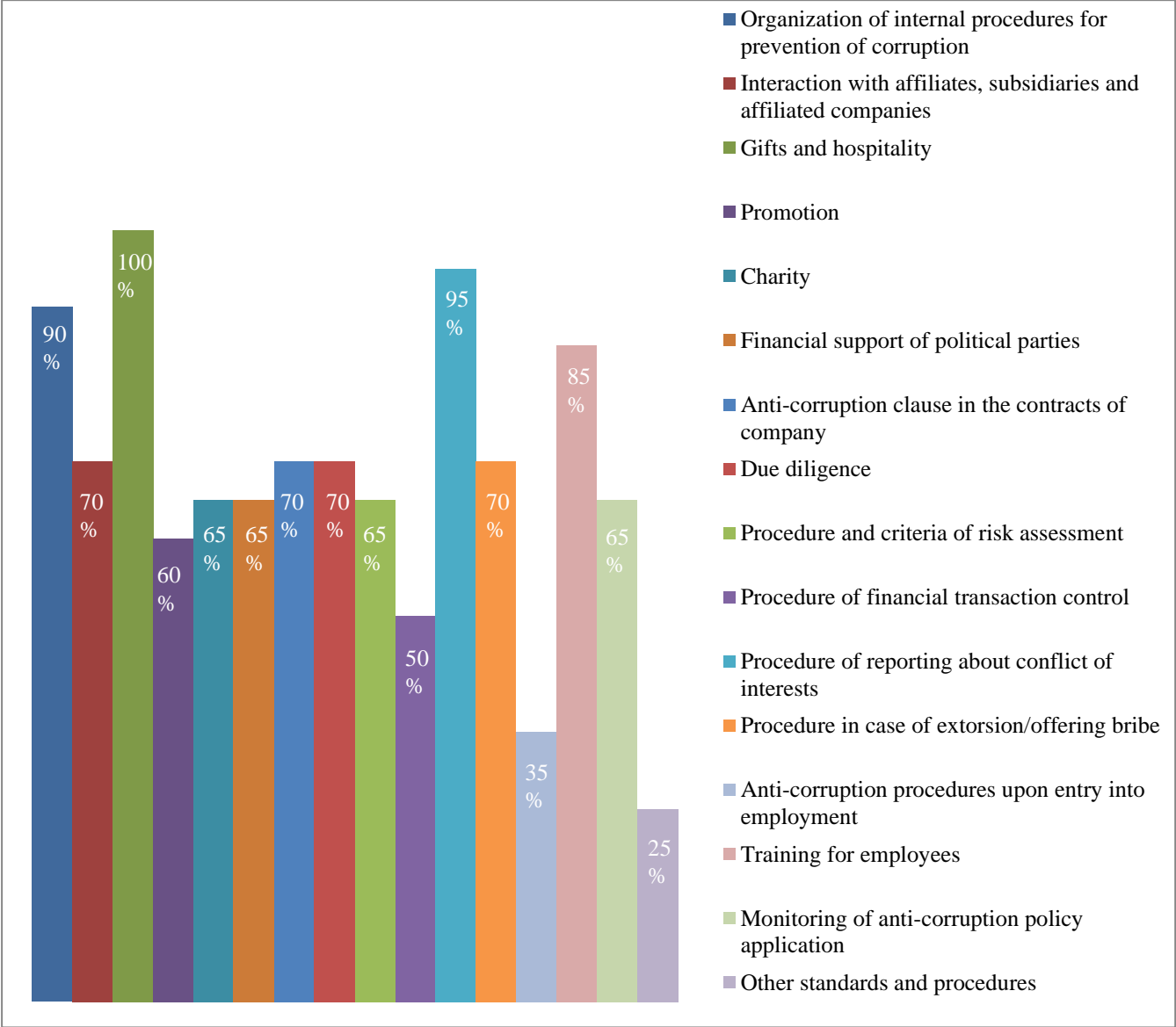
Sec. 4.3. asked for the person or department responsible for drafting the anti-corruption policy. The anti-corruption policy was drafted by the employees of the company according to 95% of the answers provided. 30% of the companies sought the assistance of external consultants. Partially, both options were chosen.

Under Sec. 4.4 the companies were asked which of the following standards and procedures they had implemented in their anti-corruption policy:

- Organization of internal procedures for prevention of corruption,
- Interaction with affiliates, subsidiaries and affiliated companies,
- Gifts and hospitality,
- Promotion,
- Charity,
- Financial support of political parties,
- Anti-corruption clause in the contracts of the companies,
- Due diligence,
- Procedure and criteria of risk assessment,
- Procedure of financial transaction control,
- Procedure of reporting about conflict of interest,
- Procedure in case of extortion/offering bribe,
- Anti-corruption procedures upon entry into employment,
- Training for employees,
- Monitoring of anti-corruption policy application,
- Other standards and procedures.

All of the companies questioned stated to have a policy or procedure regarding gifts and hospitality. Almost all have implemented internal procedures to ensure the prevention of corruption, procedures of reporting about conflicts of interest that may arise and training-routines for employees. 70% of the companies questioned stated that their anti-corruption policy included policies and procedures regarding the interaction with affiliates, subsidiaries and affiliated companies, anti-corruption clauses in the relevant contracts, due diligence and standard-procedures dealing with a possible extortion or the offering of bribe-money. 65%

have procedures for charity, financial support of political parties, the monitoring of anti-corruption policies and criteria for general risk assessment. About half of the companies have standards on product promotion and procedures regarding financial transaction control. Only a third of the companies have implemented anti-corruption procedures upon entry into employment (HR-Due Diligence). A quarter of the companies stated to have included other standards and procedures in their anti-corruption policy.



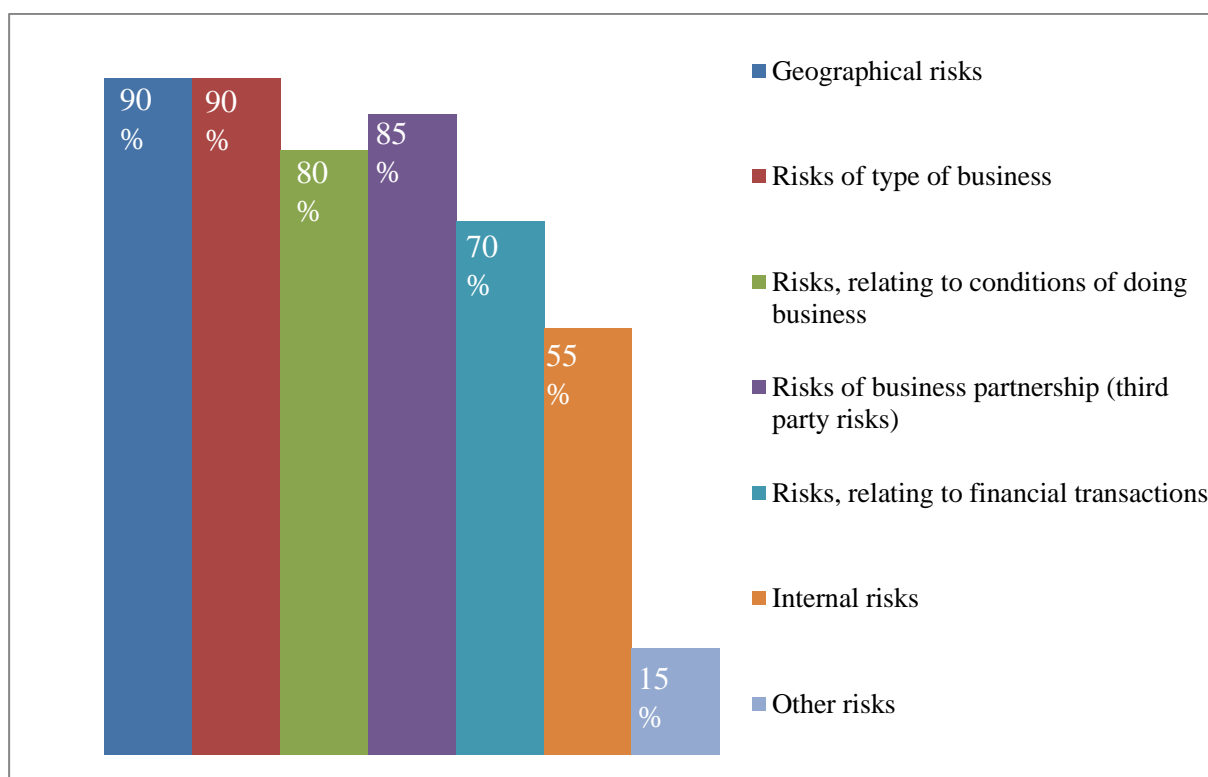
4 Section 4.4. Standards and Procedures

V. Section 5: Risk Assessment

Section 5 was about risk assessment. Under Sec. 5.1, companies were asked if they had a two-level, three-level or multi-level risk assessment or none at all. 25% of the companies questioned had difficulties understanding this question. Over half of the companies stated to have a three-level system. 29% stated to have a two-level system, 12% a multi-level system. Only 6 % of the companies had no risk assessment system regarding corruption as such. The companies were asked which of the following types of risks they were taking into account in their risk assessment procedures:

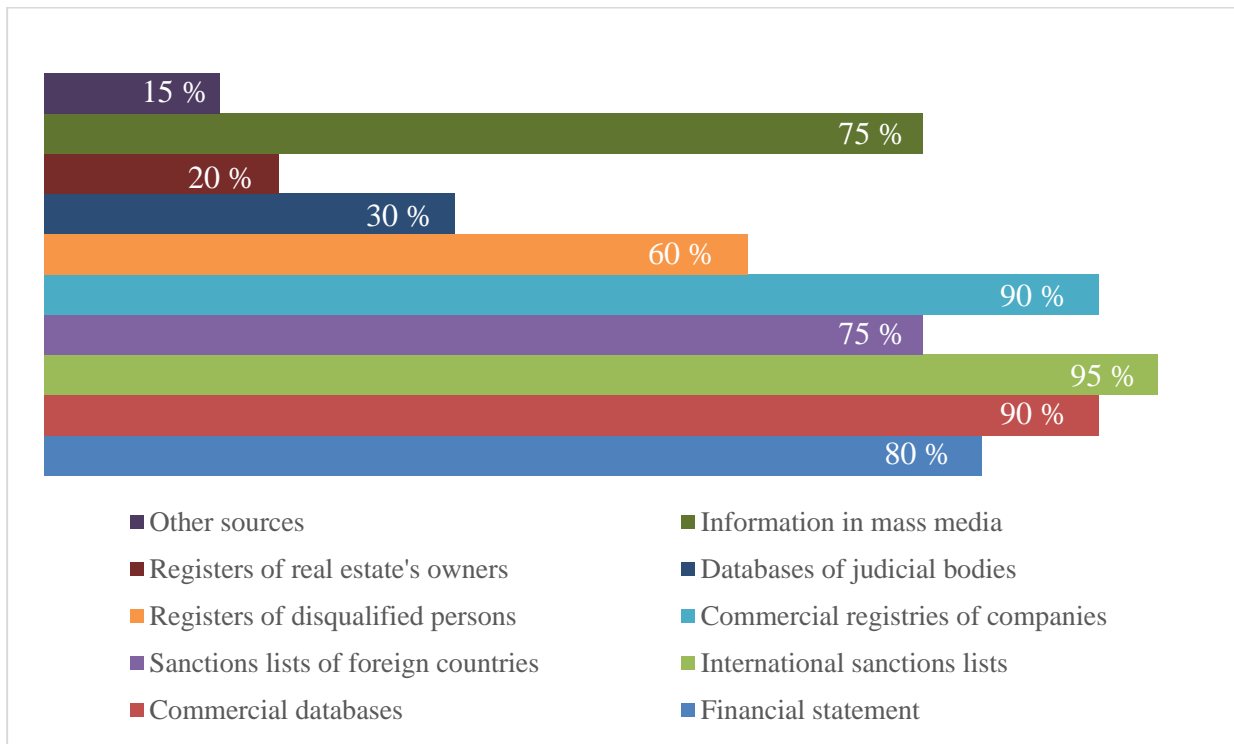
- Geographical risks,
- Risks of type of business,
- Risks relating to conditions of doing business,
- Risks of business partnership,
- Risks relating to financial transactions,
- Internal risks,
- Other risks.

The majority considers geographical risks and risks relating to their specific type of business to be most important. 85% of companies questioned took into account third party risks. 80% stated to assess risks relating to conditions of doing business. About two third of the companies include risks relating to financial transactions in their anti-corruption risk assessment. Only about half of the companies stated to take into account internal risks.



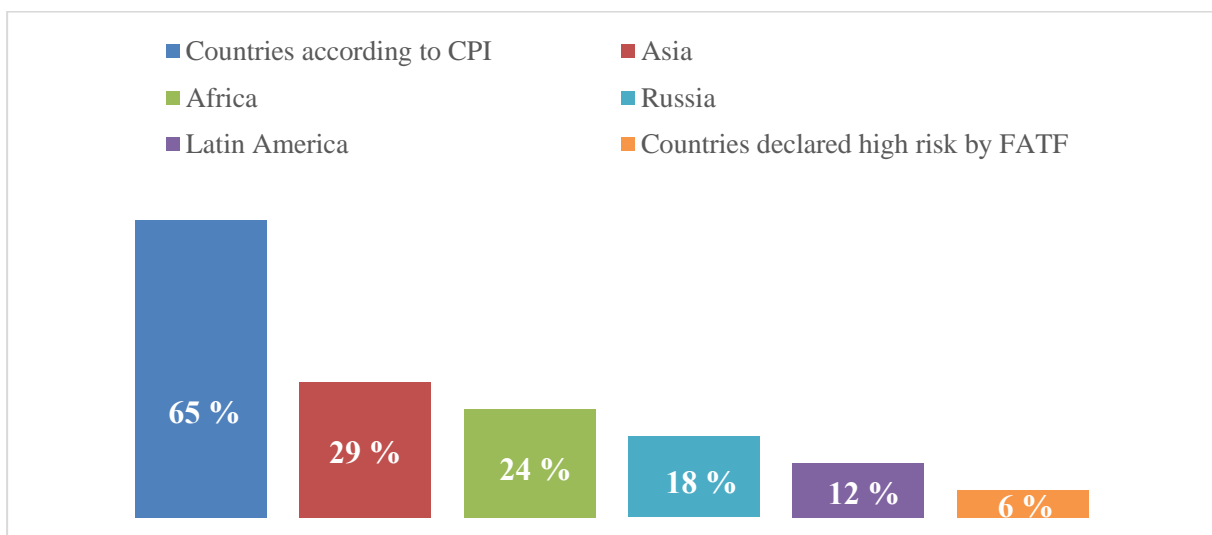
5 Section 5.2. Main type of risks

Under Sec. 5.3., companies were asked on which kind of data they rely for purposes of their anti-corruption risk assessment. More than 85% said they used commercial registries of companies, international sanctions lists and commercial databases. About three quarter rely on information in mass media, sanctions lists of foreign countries and financial statements. More than half of the companies use registers of disqualified persons. Less than a third use databases of judicial bodies. 20 % of the companies rely on cadastral registers. 15% of companies questioned mentioned other sources, like for example internet research engines, specific databases (Dow Jones, etc.) and internal preventative crime databases.



6 Section 5.3. Data for risk assessment

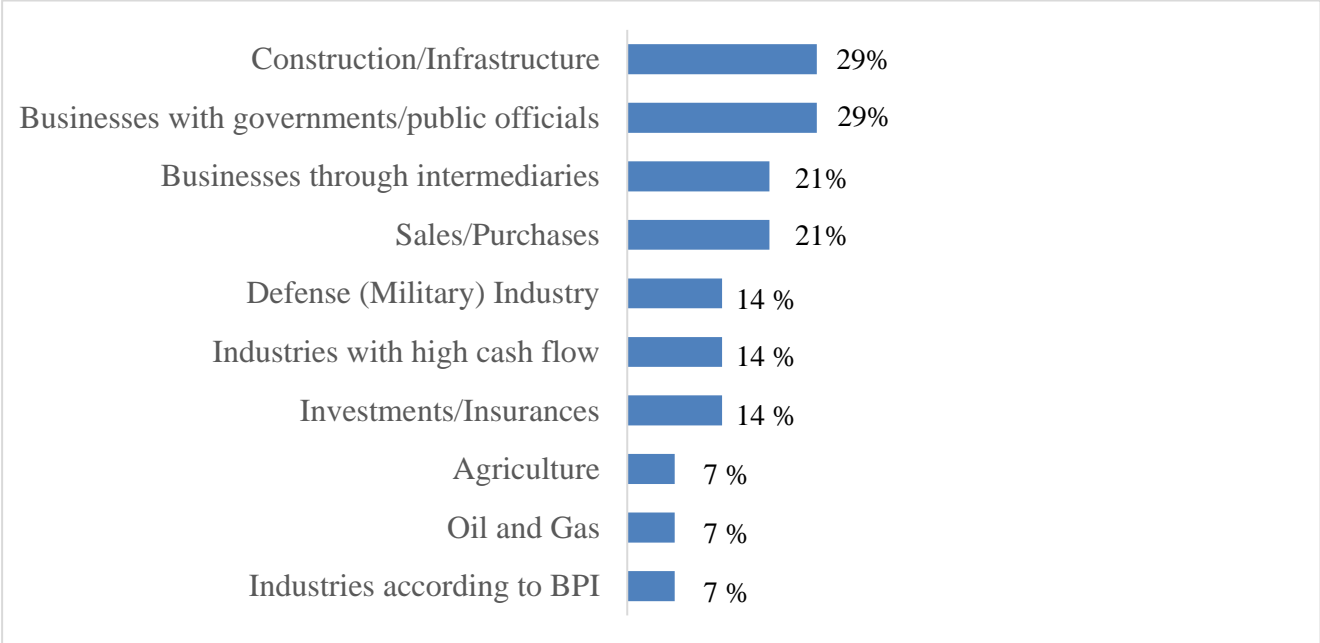
Under Sec. 5.4 companies were supposed to name countries or regions they refer to as high risk areas. 15% of companies questioned did not answer that question. In part, companies named more than one region/country. Most companies based their answer on the Corruption Perception Index published by Transparency International. 29% of companies referred to Asia as a high risk region. Other high risks regions and countries mentioned were Africa (24%), Russia (18%) and Latin America (12%). 6% of the companies base their assessment of high risk on the recommendations by the Financial Action Task Force (FATF).



7 Section 5.4. High risk countries/regions

Companies also were asked to name which types of businesses they refer to as high risk. 30% of companies questioned did not respond to that question. 29% of the companies named construction/infrastructure and business with governments or public officials as high risk type of business. About a fifth found business through intermediaries and sales/purchases to be high risk types of business. Military/Defense Industry were also referred to as high risk types

of business. So were industries with high cash flow and investments and insurances (by 14% of the companies). Other high risk types of business mentioned were agriculture, oil and gas as well as industries rated as high risk according to the Bribe Payers Index (BPI) by Transparency International.



8 Section 5.5. High risk type of business

VI. Section 6: Identification of Beneficial Owners of Companies – Business Partners

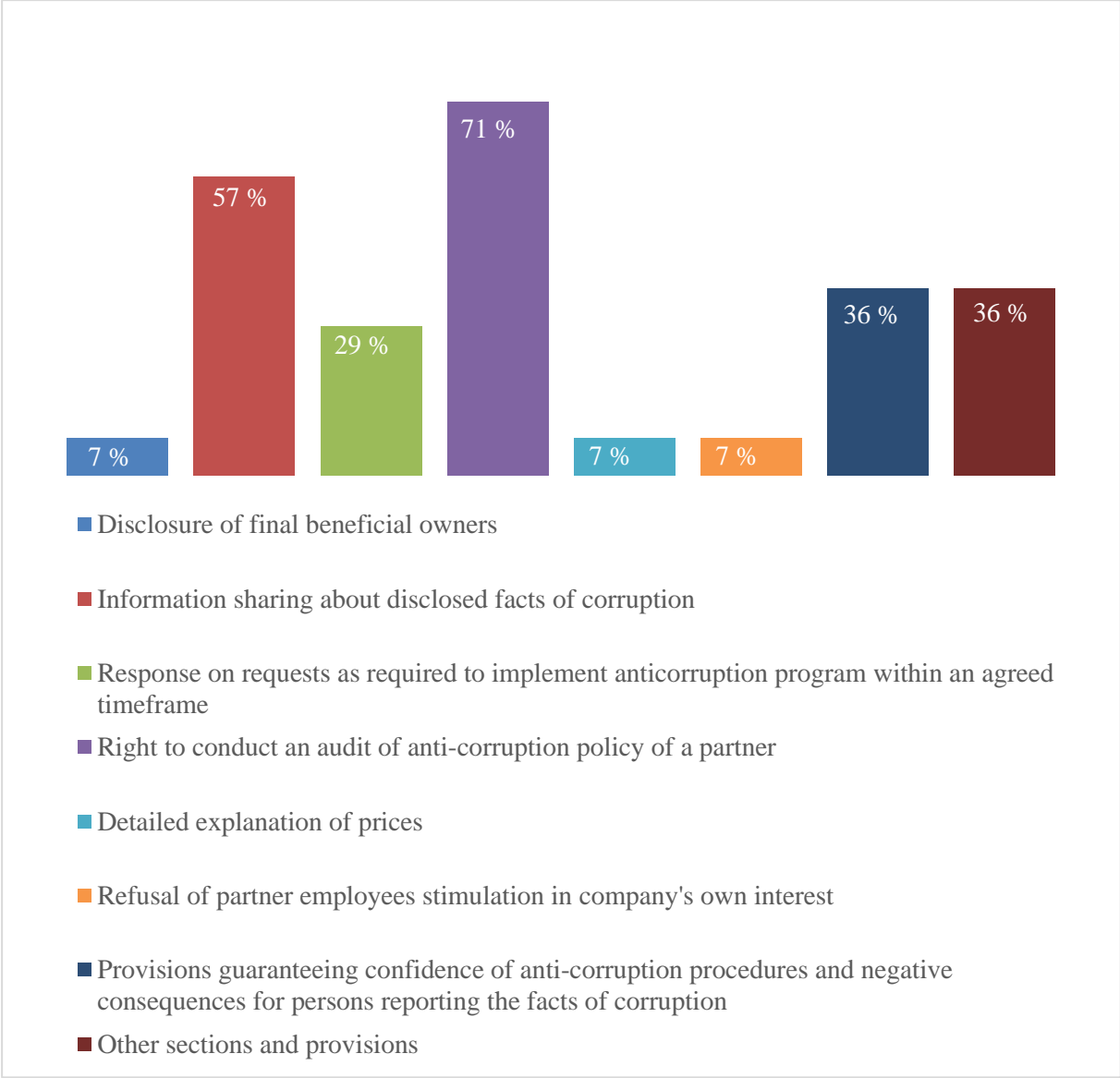
Under Section 6 companies were asked how they identify a beneficial owner. 70 % stated to identify the beneficial owner by virtue of statutory documents of all companies in a chain, which show who is a beneficiary. 50% identify the beneficiary by virtue of a personal identity document of the last beneficial owner in the chain. 45% rely on oral information provided by their business partners. Most companies rely on more than one method of identification.

VII. Section 7: Anti-Corruption Clause

Section 7 asked for the use of anti-corruption clauses in contracts. 70% of the companies confirmed to use such clauses. Sec. 7.2. asked, in which contracts the anti-corruption clause is included in. Half of the companies use the anti-corruption clause in all contracts. 43% include the clause in contracts depending on the level of risk of the counterparty. Only for 7%, including the anti-corruption clause depends on the monetary value of the contract.

Under Sec 7.3., companies were asked to provide details of their anti-corruption clauses in use. Almost three quarters of the answers stated that the anti-corruption clause includes a right to conduct an audit of the anti-corruption policy of a business partner. More than half of the anti-corruption clauses include the obligation to share information about disclosed facts of corruption. About a third includes provisions guaranteeing confidentiality of anti-corruption procedures and protective measures for persons reporting the facts of corruption (Whistleblower). 7% stated that their anti-corruption clauses include disclosure of final beneficial owners, refusal of partner employees’ stimulation in company’s own interest and a detailed explanation of prices. 36% of the companies said to have other sections and

provisions. They specified these as anti-bribery provisions, monthly reports required in case of high risk contracts, obligation to train officers and employees, obligation to keep books and records, obligation to render proof of services, right to audit relevant transactions in case of possible violations of anti-corruption laws (through a third party), duty to implement anti-corruption policy and the obligation to ensure compliance of subcontractors. One company mentioned the OECD clauses “Avoid breaches of laws”.



9 7.3. Content of Anti-Corruption Clause

Under Sec. 7.4., companies were asked about the consequences of a breach of the anti-corruption clause. According to all companies using such clauses, a breach of an anti-corruption clause always entails consequences. All companies stated to assess termination of contract on a routine basis. For 43% of the companies a violation is also a reason for penalties.

VIII. Section 8: Internal investigations

Section 8 concerned internal investigations. In the first question, companies were asked if they would conduct an investigation, should they become aware of the existence or possibility

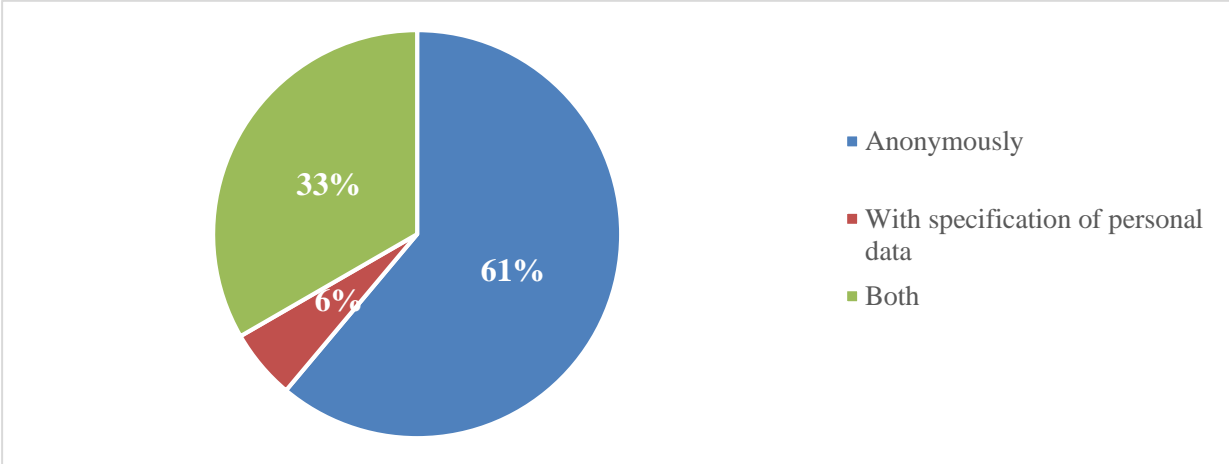
of a (commenced or planned) corruption offence. All companies confirmed that question (100%).

Under Sec. 8.2., the companies were supposed to answer if the internal investigation would be conducted by employees responsible for anti-corruption compliance control, the security department or an external organization (external advisors, e.g., law firms or consultants). There were difficulties with the phrasing of response option 1 „Employees responsible for anti-corruption compliance control in company“. 10% of the companies questioned said that their internal audit/corporate audit function was involved in anti-corruption compliance control. A quarter stated that the internal investigation was conducted by an external organization. The security department conducted internal investigations in 15% of the companies. 90% answered that the investigation is conducted by employees responsible for anti-corruption compliance control. Sec. 8.3. asked, if in case a company had information about a corruption offence, this information would be transferred to a law enforcement agency in any case or only in respect of grave cases and especially grave crime. 15% of the companies gave no response. 10% stated to transfer information in any case. Three quarter will transfer information only in respect of grave and especially grave crime.

IX. Section 9: Hotline

Section 9 asked about an anti-corruption hotline in the company. 85% of the companies questioned stated there was a hotline in place. 5% indicated that a Whistleblower hotline is under construction. 10% have no hotline. In 11% of the companies the hotline is operated both by employees of the company and a third party operator. In 72 % the hotline is carried out by a third party only, in 17% internally only.

Under Sec. 9.3., companies were asked if the hotline can be used anonymously or if it does require the specification of personal data. Only 6% of the companies stated that the hotline can only be used with specification of personal data. In over 60 % of the companies the hotline is fully anonymous. In a third of the cases both options are possible.



10 Section 9.3. Hotline

X. Section 10: Cooperation with Affiliates and Subsidiary Companies

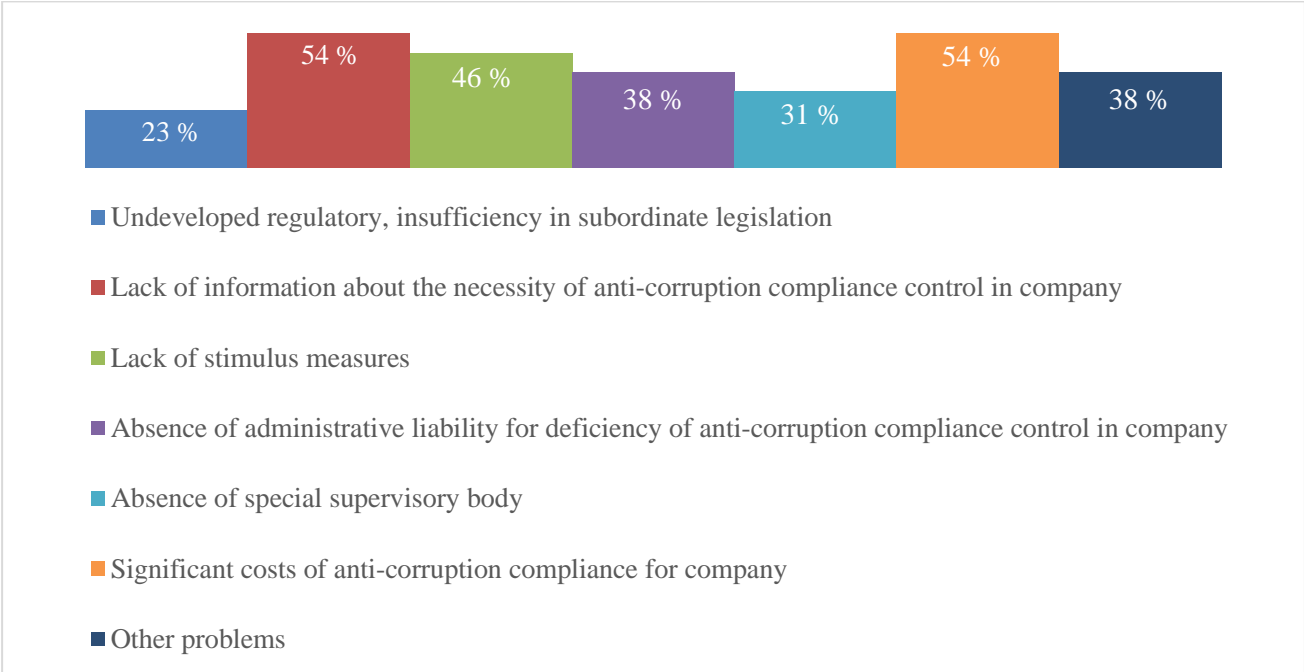
Companies were asked about their cooperation with affiliates and subsidiary companies. The question was, if the affiliates and subsidiary companies have their own anti-corruption policies or anti-corruption measures based on the anti-corruption policy of their parent company. 5% of the companies did not respond. Over 80% stated that the affiliates and

subsidiary companies have anti-corruption measures based on anti-corruption policy of the parent company. 10% said that affiliates and subsidiary companies had their own anti-corruption policies. 50% qualified their statement that the affiliates and subsidiary companies have their own policies only to some extent. They expressed that anti-corruption compliance was implemented on a coordinated basis with both parent and subsidiary sharing roles.

XI. Section 11: Main Problems in the Sphere of Anti-Corruption Compliance Control

Under Sec. 11.1., companies were asked which main problems in their opinion placed hurdles to their anti-corruption compliance. 75 % of the companies responded. The main problems for over 50% of these are a lack of information about the necessity of anti-corruption compliance control in their company and the significant costs of anti-corruption compliance. 46% stated that the main problem was a lack of stimulus measures. The problem was identified as the absence of administrative liability for deficiencies of the anti-corruption compliance control structures in the company by 38%. Around 30% thought the problem was the absence of a special supervisory body. Around a quarter of the answering companies saw the problem in underdeveloped regulatory or insufficient subordinate legislation. 38% specified other problems as follows:

- Fear of creating too much “red tape” for management and board of chairmen.
- Lack of knowledge with regards to the benefits of appropriate anti-corruption measures in the company.
- The problem is not the control but awareness and understanding. Understanding the topic is not trivial, it needs training and communication.
- Mainly working in developing countries and having competitors worldwide, the different culture and the different understanding about the necessity of prevention or at least reducing corruption is one of the biggest challenges.
- Implementation shortfalls of anti-corruption legislation in many countries.
- Anti-bribery and anti-corruption are not always embedded in everyone’s daily activities.



11 Section 11.1. Main problems

Under Sec. 11.2., companies were asked if they had recommendations on improvements of regulatory and other measures regarding anti-corruption compliance. Only 30% answered that question. The companies who did came up with the following ideas:

- To create state supported incentives, e.g. tax relief measures, monetary provisions or a bonus or leniency regime.
- To offer better protection for whistleblowers under German employment law.
- To strengthen the job image and job description of anti-corruption personnel, such as compliance officers, and enhance their importance for the branches and companies among stakeholders and in the public view.
- To strengthen the appraisal through public authorities.
- To improve the enforcement of anti-corruption legislation.
- To form international and domestic cooperation.
- To work on cross-border enforcement

C. Conclusions

The results presented here aim to give an overview of anti-corruption compliance among German corporations. What is shown is that the material changes of the anti-corruption laws in substance are reflected in corporate compliance. The general rise in awareness for the necessity of anti-corruption compliance provides an incentive for a more elaborate risk assessment and prevention system. Methods in place still vary, though. Common techniques of risk assessment rely on external sources, mainly Transparency International. Whistleblowing seems relatively undeveloped still. The intensity of anti-corruption compliance measures varies according to the industry sectors. Use of anti-corruption clauses is surprisingly wide spread. Future developments should include a positive incentive for the implementation, maintenance and use of anti-corruption compliance functions across all industry-sectors in order to level the playing field for all companies.