

The Global Corruption and the Anti-corruption Documents – Few Minds about the OECD’s Anti-bribery Convention and the U.S. Foreign Corrupt Practices Act and Their Impact on the Hungarian Legal System

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Abstract

With this study I would like to present two anti-corruption acts. This documents has a big influence to the European and non-European countries also. In this study I will try to focus to the points of the documents, so we will see the similarities and the differences between these anti-corruption documents. Both of the documents create difficult questions, for instance: how if two countries has jurisdiction to investigate a case at the same time, which sanctions need to use etc. The documents not just influence the countries, but each other’s to.

Keywords: anti-bribery convention, anti-corruption, FCPA, OECD

JEL Classification: K33

1. INTRODUCTION

Corruption is a global problem since the beginning. We have to fight against it, not just because it is bad shape but because it proves the ruin of the society. But how can we do this? Do an independent administrative member which can use sanctions or hope that it will stop of oneself? Maybe the first one, but hoping will not work. We do not have answers to the questions. However, this is our target to find answers to the questions somewhere. However, on the other hand, we also need an act. Some countries have a very strong anti-corruption act. To give you an example, here are U.S. Foreign Corrupt Practices Act and U.K. Bribery act. I think without an act and a strong organisational background the fight against bribery is more difficult because there is nothing in the government’s power.

However, some people do not know that Hungary is part of an anti-corruption convention. Yes, this is a convention and not an own Hungarian legislation. The main aim of this study is to provide insight in this not commonly known convention, by introducing the regulations main aspects through questioning its everyday usability and general usefulness. Firstly, I am going to write about corruption. After that I would like to present the Convention, not the whole, only

its most important parts. Also I would like to present the role and activities of Transparency International in this matter, particularly regarding the fight against the international corruption. Why? Because it is a good initiation that both young and both old people fight together against the corruption all over the world, because they want something impossible: a world without bribery and fraud. In Hungary, the object of the corruption (the U.S. FCPA, OECD, U.K. Bribery Act) is not processed or not known; the literature on it is deficient. I would like to put forward that Hungarian literature and books are few in number and it is especially the internet that helps us to find information. This is the reason that sources were almost without exception retrieved from the internet. This study is a summary to give few ideas to do the system better.

2. WHAT IS CORRUPTION?

The nature of corruption is more or less known for every one of us, someone knows when experiences it, but to give an exact definition of the phenomena turns out to be quite a challenge. On the one hand, there are many useful and interesting definitions which can explain the meaning of corruption. On the other hand, there are so many inaccurate and misleading definitions. Because of this I only want to describe a few of them. Firstly, we can read about corruption on the site of Transparency International U.K.: *“Corruption is the abuse of entrusted power for private gain. It hurts everyone whose life, livelihood or happiness depends on the integrity of people in a position of authority. Corruption holds back economic development, prevents a free market operating for businesses and consumers, and further exploits already marginalised groups.”*¹

The next one is also a definition of Transparency International, which can be found on the global site of T.I.: *„Corruption is the abuse of entrusted power for private gain. Corruption is when a family has to choose between paying a bribe so that a doctor will see its sick child, and putting food on the table. Corruption is when thousands of people die in an earthquake beneath collapsed buildings because safety inspectors were bought off. Corruption is when bureaucrats steal public money to buy mansions and cars instead of investing it in low-cost housing and public transport. Corruption has many forms. It causes sleepless nights for millions of people – but too often not for the corrupt. Transparency International is working to change that.”*² Both of them try to help imagining (with examples) what „corruption” means. I believe that this few instances shows us that the forms of the corruption appear in different way but the essence is the same. We can use examples, we can make a definition with 4-5 sentences but this will be deficient. The area of corruption is too big to be defined and mainly to be controlled. This is not impossible but without the society, the government is helpless.

¹ Transparency International U.K. – Corruption, available at: <http://www.transparency.org.uk/corruption> [cit. 2014-01-31].

² Transparency International – Global coalition against corruption, available at: <http://www.timetowakeup.org/main/home> [cit. 2014-01-31].

However, there is a more serious problem: politicians, the government, doctors and so on. In the beginning my opinion was the main problem in Hungary is that we do not have an anti-corruption act which can help us to fight against corruption. But after I compared the U.S. Foreign Corrupt Practices Act with the Hungarian criminal code I realized that the Hungarian legislation is right and what is more. There were a number of definitions and technical terms which were the same in both act. This means that we have to search the problem not in the legislation but in the lack of the organisation of the Hungarian system. But this object is not this study's topic. Nevertheless, that Hungary is the member of the OECD, so the convention is also in force in Hungary, the practice is not the best, because of the lack of the sufficient organisations.

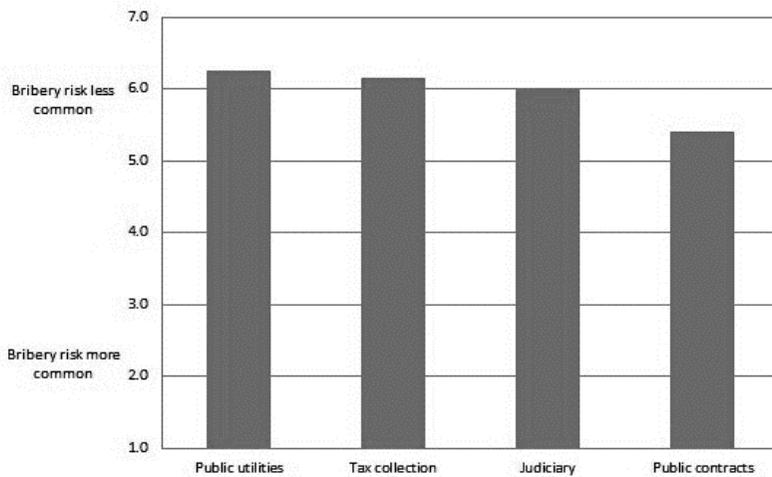


Table 1: Average perceived level of bribery risk in selected government activities in OECD countries (2006).³

In this study I will collect those provisions which in some way still contribute to the fight against corruption. Let us continue the thinking about the meaning of corruption. Therewith, that somewhere the corruption is rise in line with this the public resources from important priorities like as health and education be weaker and do not get enough money to develop. Corruption is bad not just for the society but also bad for businesses. Corruption is anti-competitive, there are so many disadvantages which are caused for the honest businesses whose do not pay bribes. The main problem that if somebody live with the chance and bribe, these shapes will be an unended circle. He will offer money again, and the other party will do his assignments just if he gets money. In the long run, it will not work. If the bribed

³ Source: Integrity in Public Procurement, available at: <http://www.oecd.org/gov/ethics/integrityinpublicprocurement.htm> [cit. 2014-10-25].

people doing his assignments just for more money the honest and poorer people could not race with this.

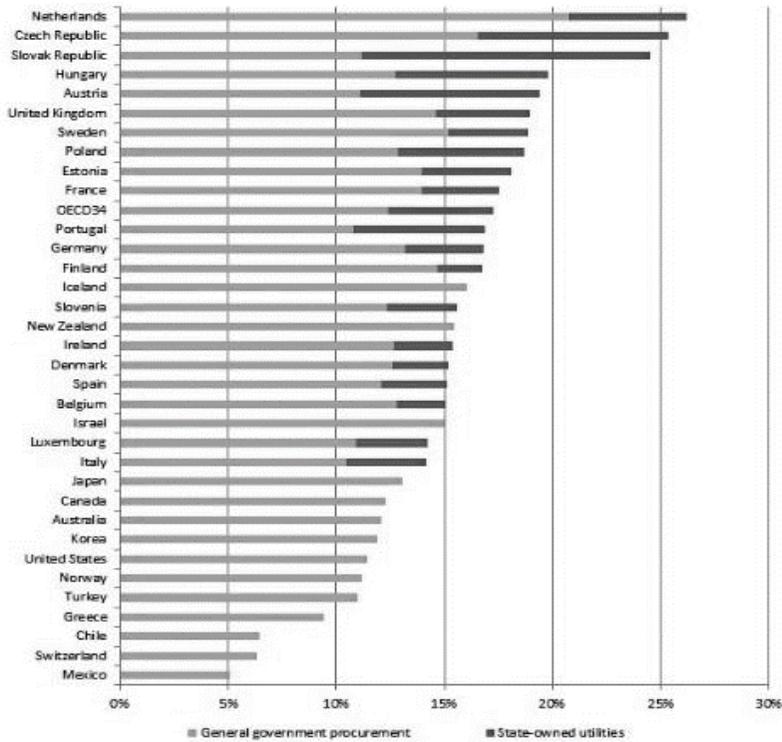


Table 2: General government and state-owned utilities procurement in selected OECD countries as a percentage of GDP (2008).⁴

First of all, I am going to present OECD’s anti-bribery convention and I would also like to present Transparency International.

3. THE OECD

The OECD is very important in the process of fighting against corruption. In this organization there are lots of members who accepted the Convention, so in these countries the Convention has a very strong power. Otherwise, in the majority of the countries the Convention is the only legislation connected to bribery. Now, let us see how the organization was created. The OECD’s forbear was the Organisation for European Economic Cooperation (OEEC) which was established

⁴ Source: fighting corruption in the public sector, <http://www.oecd.org/gov/ethics/integrityinpublicprocurement.htm> [cit. 2014-10-25].

in 1948. During the years the cases showed the organisation is work. A few years later Canada and the US joined OEEC members in signing the new OECD Convention on 14 December 1960. On 30 September 1961, the Organisation for Economic Co-operation and Development (OECD) was born when the Convention came into force. At the beginning of the study I mentioned U.S. FCPA. Not by accident. The Convention created it because of the American Congress. This was a very important moment, because both of these documents impress each other during the years, so we can see many similar, or same ideas, definitions and technical terms in these documents.

In 1988, the American Congress suggested that the President negotiate an international treaty with members of the Organisations for Economic Co-operation and Development to make an anti-bribery convention to stop the bribe in the international business transactions by many of the United States' partners. The negotiations was successful so the Convention on Combating Bribery for Foreign Officials in International Business Transactions (Anti-Bribery Convention) was born, which put a very important require for the parties: to make it a crime to bribe foreign officials.

The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions was signed in December 1997 and came into force in February 1999. It has since been ratified by all 30 OECD member countries and by seven non-member States (Argentina, Brazil, Bulgaria, Chile, Estonia, Slovenia and South Africa). Both the Convention and FCPA were modified many times. They influenced each other's development. This is why it is important to know about the „acts“. However, the relationship between the Convention and FCPA will be elaborated on in another study.

4. THE ANTI-BRIBERY CONVENTION

The Anti-Bribery Convention consists of 18 parts:

- *Preamble;*
- *Article 1 The Offence of Bribery of Foreign Public Officials;*
- *Article 2 Responsibility of Legal Persons;*
- *Article 3 Sanctions;*
- *Article 4 Jurisdiction;*
- *Article 5 Enforcement;*
- *Article 6 Statute of Limitations;*
- *Article 7 Money Laundering;*
- *Article 8 Accounting;*
- *Article 9 Mutual Legal Assistance;*
- *Article 10 Extradition;*
- *Article 11 Responsible Authorities;*
- *Article 12 Monitoring and Follow-up;*
- *Article 13 Signature and Accession;*
- *Article 14 Ratification and Depositary;*

- *Article 15 Entry into Force;*
- *Article 16 Amendment;*
- *Article 17 Withdrawal.*

Before we discuss the main articles in detail, let us see some information on the OECD Working Group on Bribery. This Group has an outstanding role. This Group monitors the members and also tries to enforce the Convention. The 34 OECD member countries (including the United States) and five non-OECD member countries (Argentina, Brazil, Bulgaria, the Russian Federation, and South Africa) are members of the OECD Working Group on Bribery (Working Group). Its members meet quarterly to review and monitor implementation of the Anti-Bribery Convention by member states around the world. Periodically each party undergoes a monitoring system. *This monitoring system is consist of three phases. “The Phase 1 review includes an in-depth assessment of each country’s domestic laws implementing the Convention. The Phase 2 review examines the effectiveness of each country’s laws and anti-bribery efforts. The final phase is a permanent cycle of peer review (the first cycle of which is referred to as the Phase 3 review) that evaluates a country’s enforcement actions and results, as well as the country’s efforts to address weaknesses identified during the Phase 2 review.”*⁵

5. SEVERAL ARTICLES IN GENERAL FROM THE ANTI-BRIBERY CONVENTION

5.1. Article 1 The Offence of Bribery of Foreign Public Officials

In the first article, the Convention declares as we talked about it, that each party have to make it a crime to bribe foreign officials. Furthermore, the Convention defines a few terms for us. Firstly, *„foreign public official” means any person holding a legislative, administrative or judicial office in a foreign country, whether appointed or elected.*⁶ *The next term is „foreign country” which „includes all levels and subdivisions of government, from national to local.”*⁷ This article is traditional because it clarifies the basic concepts.

5.2. Article 3 Sanctions

When there is a crime, we also need sanctions to react to it. The Convention declares the requirements for the penalties: effective, proportionate and dissuasive criminal penalties. The penalties have to be comparable to that applicable to the bribery of the Party's own public officials The Convention gives guidelines and leaves it to the members how they want to punish. This is not necessarily good. The legal systems in Europe and in the other countries of the world is very

⁵ A Resource Guide to the U.S. Foreign Corrupt Practices Act – By the Criminal Division of the U.S. Department of Justice and the Enforcement Division of the U.S. Securities and Exchange Commission, available at: <http://www.justice.gov/criminal/fraud/fcpa/guide.pdf> [cit. 2014-02-14].

⁶ Ibid. 7.

⁷ Ibid. 7.

different. Some are stricter and some are simply weak. For example in the United States, the FCPA working good, but it can because the Act declares the penalties and the definitions concretely. On the other way, for instance, in an African country, where is a totalitarian system, this never going to work.

5.3. Article 4 Jurisdiction

Jurisdiction is always an interesting part of the acts. Maybe, this is the most important part of the Convention because this article helps members to know who has the right to conduct proceedings. The territorial basis of jurisdiction should be interpreted broadly so that an extensive physical connection with bribery act is not required. The conflict of jurisdiction used to be a problem but the Convention helps members to decide on jurisdiction.

5.4. Article 9 Mutual Legal Assistance

The Convention very nicely and specifically describes mutual legal assistance. *“Each Party shall, to the fullest extent possible under its laws and relevant treaties and arrangements, provide prompt and effective legal assistance to another Party for the purpose of criminal investigations and proceedings brought by a Party concerning offences within the scope of this Convention and for non-criminal proceedings within the scope of this Convention brought by a Party against a legal person.”*⁸

5.5. Article 10 Extradition

Regarding extradition, the Convention mentions it simply. It does not declare the exact process but leaves it to the parties, especially to the extradition treaties between them.

5.6. Article 12 Monitoring and Follow-up

As I have already said, the OECD Working Group on Bribery’s work is very important. This Group has an outstanding role. This Group monitors members and also tries to enforce the Convention. Monitoring is one of the most significant parts in the fight against corruption. None of the laws can prevail if organizations or people do not monitor the compliance of the law. This helps us to understand that Transparency International is good for the society and also for the government and in any case should be supported. In the next part of the study, I am going to present Transparency International.

6. THE GOALS OF THE TRANSPARENCY INTERNATIONAL CONNECTION WITH THE OECD

The dream is a world without corruption. A world, where governments, businesses,

⁸ Convention on combating bribery of foreign public officials in international business transactions and Related Documents, available at: http://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf 7 [cit. 2014-02-15].

civil societies and the daily life of people are free from corruption. Transparency International was created in 1993. There are 100 countries in the coalition. Much remains to be done to stop corruption, but much has also been achieved, including for instance the creation of international anti-corruption conventions. Transparency International is a politically non-partisan organisation. T.I. have more than 60 national organisations around the world, which have formed TI National Chapters. The National Chapters are a clustering of leading citizens in private and public life. TI has campaigned for international action to put off foreign bribery – and not just the criminalisation of bribery. *“The drama unfolding in the OECD framework is an important element, but only one element, on the broad global anti-corruption stage.”*⁹

7. CONCLUSION

As we have seen, there is a very complex system against corruption. We have a Convention, which is a contract between the parties. We also have a Group, which continuously monitors the countries in order that they shall enforce the Convention. In my opinion, the most successful initiative is Transparency International. They make regular reports, investigations. Let us not forget that we also have a criminal law book which harshly punishes corruption, but the main problem is that this is not detailed enough. I will continue to urge the creation of an anti-corruption law. But maybe we are not prepared for this. We have to search the solution in people and in the society. There are many possibilities to make a country without corruption. But this is a different case. The corruption, the bad is root in the society, in every people. There is not enough the legislation. This is why I presented the T.I., this organisation working for a better world more than 20 years, and he can reached very important results. The cases of the corruption is all-important the publicity. Perhaps, the T.I. has not got the scope to judge, but it has got the society’s attention, and those whose want a world without bribe and fraud. Until people do not say that corruption „is bad”, anti-corruption acts will not work.

With this study I wanted to make a short summary the two, maybe the most important documents about the anti-corruption. These have a big influence to the European and to the non-European countries legal systems also. As we saw, both the OECD’s Convent, both the U.S. FCPA were influenced to the Hungarian legislation, which caused that Hungary have a strong anti-corruption part in the Hungarian criminal code (2011. C.), but it will never work, if the organisational background inadequate.

⁹ OECD Anti-Corruption Convention leaves critical questions still open, available at: http://www.transparency.org/news/pressrelease/oecd_anti_corruption_convention_leaves_critical_questions_still_open [cit. 2014-02-10].

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