

# Bribes, Crimes and Law Enforcement

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## Abstract

The law enforcement shortcomings in corruption cases are substantial and call for a greater scope of enforcement tools and efficient procedures. Main concerns in reform should include basic criminal law principles, consequences for markets, access to the information necessary for reactions, and value for money in enforcement operations. In this article, we suggest European governments can strengthen the preventive effects of criminal law vis-à-vis corporations by clarifying how various forms of negligence will lead to reactions, request self-assessments of estimated/accepted business risk, apply predictable principles for duty-based sanctions (with strict residual liability), and develop principled rules for negotiated settlements. In addition, for criminal law reactions to incentivize firms to self-police and self-report, we argue that debarment from public contracting and other severe consequences of a criminal-law reaction should be placed under the control of one law enforcement entity. Eventually, due to strict conditions on the use of criminal law reactions, it is also necessary to let civil law reactions better complement the enforcement strategies of criminal justice systems.

## 1. Introduction

Foreign bribery cases challenge criminal justice systems all across Europe. Investigations are tricky, costly and often politically sensitive. Prosecutions are lengthy, and the eventual outcomes are often in tension with fundamental criminal law principles. A recent case from Norway illustrates the point. In 2011, the Norwegian prosecutor started investigating Yara International ASA (a producer of fertilizers) for suspected bribery in Libya, India, and Russia. In 2014, the company accepted the facts and paid a fine of USD 36 million.<sup>1</sup> After the settlement, four former top managers, including a former CEO, were criminally prosecuted in a lower court, and after a three-month-long trial were found criminally responsible for the bribery.<sup>2</sup> The indicted former managers appealed the verdict, and the case was concluded in December 2017 with the firm's former legal counsel being sentenced to prison while the other three were

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<sup>1</sup> The penalty notice included a fine of NOK 270 mill. and a confiscation of NOK 25 mill.

<sup>2</sup> See *Yara International ASA v. Økokrim* [2014] TOSLO-2014-22670, Oslo District Court.

acquitted. A new trial takes place as we write this article, in the fall of 2016, with the option of yet another appeal. The case required comprehensive investigation, including mutual legal assistance from 13 countries, as well as a search through more than 8 million confiscated documents and 2.9 million emails. Government expenses for the trial also included the assistance of many interpreters and expert witnesses from Norway and abroad, as well as a large share of the expenses for defence lawyers. The substantial efforts, time and expenses spent in the law enforcement process were highly needed. For the first time in Norwegian law, there were criminal law consequences for both the corporate management and the corporation itself. If upheld by the higher courts, the cases would have intensified criminal law requirements regulating top management. By sentencing the legal counsel it signals nonetheless a stricter liability for the top leaders with the most direct responsibility a move in the direction of the recently strengthened US tradition of stricter vicarious liability.<sup>3</sup> However, the case also raises questions about the efficiency of such law enforcement processes.

In terms of competence and establishing a platform for acting against bribery, OECD governments can look back on an impressive history of legal harmonization, although the process has been fraught with obstacles. When the United States criminalized foreign bribery in their Foreign Corrupt Practices Act (FCPA), they expected other OECD governments to follow suit. However, it was not until 1997 that governments signed the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, which entered into force in 1999.<sup>4</sup> European governments criminalized corruption through their coordinated approval of the Council of Europe Criminal Law (2002) and Civil Law (2003) Conventions on Corruption, an effort that triggered criminal law reforms throughout the region.<sup>5</sup> In parallel with that process in Europe, governments from all regions were persuaded to approve the United Nations Convention against Corruption (UNCAC) in 2003, and as of now, we have reached substantial global harmonization in the criminalization of corruption, especially regarding individual liability.<sup>6</sup>

For the sake of facilitating enforcement of laws against corruption, financial crime and terrorist financing, the United States approved the Sarbanes Oxley Act in 2002, a law that reinforced private-sector management's responsibility and the role of audi-

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<sup>3</sup> This point was also made by Birthe Eriksen and Tina Søreide, *Zero-tolerance to Corruption? Norway's Role in Petroleum-Related Corruption*, in *Corruption, Natural Resources and Development: From Resource Curse to Political Ecology* (Cheltenham, UK, and Northampton, MA; Edward Elgar Publishing, 2017).

For trends in the United States, see the press release from the US Deputy Attorney General, *Individual Accountability for Corporate Wrongdoing: Six Key Steps to Strengthen the Pursuit of Individual Corporate Wrongdoing* (US Dep. of Justice, 9 September 2015).

<sup>4</sup> The OECD website: <<http://www.oecd.org/corruption/oecdantibriberyconvention.htm>> accessed 22 February 2016.

<sup>5</sup> The Council of Europe and GRECO: <[http://www.coe.int/t/dghl/monitoring/greco/default\\_en.asp](http://www.coe.int/t/dghl/monitoring/greco/default_en.asp)> accessed 22 February 2016.

<sup>6</sup> The United Nations, UNODC: <<https://www.unodc.org/unodc/en/treaties/CAC/>> accessed 22 February 2016.

tors to secure business information that might serve to reveal crime.<sup>7</sup> In the same period, the Financial Action Task Force (FATF) and the OECD strengthened their clout when they secured support for initiatives that would make the financial sector more transparent, fair and accountable. For many years, the FATF, established in 1989, met substantial resistance, including from the most developed countries, and as we see it, it was not until 2012 that they managed to make a difference in favour of integrity in the financial sector, including with a programme designed to evaluate governments' financial sector oversight.<sup>8</sup>

In several other ways too, governments have sought to strengthen the criminalization of corruption. The 2010 Dodd-Frank Wall Street Reform and Consumer Protection Act,<sup>9</sup> a response to the 2008 financial crisis, contributed towards establishing whistleblower protection as a legal norm worldwide. The EU appears to back such steps. In a Resolution adopted on 25 November 2015, the European Parliament called on the European Commission to propose EU legislation to protect whistleblowers, a proposal that also encourages monetary compensation and adequate financial assistance for those who report corporate offences.<sup>10</sup> While many European countries have a way to go before whistleblower protection and rewards are culturally embedded, these recommendations are signs of a political will to fashion strategies that match players' incentives. Moreover, governments want to signal that they do business with honest suppliers only, and as a common rule established and strengthened by EU Procurement Directives, suppliers found guilty of corruption and some other forms of crime can be debarred from bidding on government contracts.<sup>11</sup> Likewise, the World Bank, in collaboration with the four largest regional development banks, debars such suppliers from entering into contracts on any projects that they finance worldwide.<sup>12</sup>

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<sup>7</sup> The US Securities and Exchange Commission <<https://www.sec.gov/about/laws.shtml#sox2002>> with reference to the Act: <<https://www.sec.gov/about/laws/soa2002.pdf>> accessed 22 February 2016.

<sup>8</sup> The Financial Action Task Force: <<http://www.fatf-gafi.org/>> accessed 29 February 2016. The case for financial transparency was given further momentum by the 'Panama papers' – the April 2016 revelations that Panamanian corporate service provider Mossack Fonseca has helped wealthy individuals, politicians and other leaders keep secret funds and ownership: <https://panamapapers.icij.org/> accessed on 19 April 2016.

<sup>9</sup> The US Securities and Exchange Commission <<https://www.sec.gov/about/laws.shtml#sox2002>> with reference to the 848-page-long Act: <<https://www.sec.gov/about/laws/wallstreetreform-cpa.pdf>> accessed 29 February 2016.

<sup>10</sup> See the European Parliament resolution of 25 November 2015 on tax rulings and other measures similar in nature or effect (2015/2066(INI)): <<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP/TEXT+TA+P8-TA-2015-0408+0+DOC+XML+V0//EN>> accessed 28 February 2016. Also the OECD recommends better whistleblower protection, see in particular OECD, *Committing to Effective Whistleblower Protection* (Paris; OECD Publishing, 2016).

<sup>11</sup> Erling Hjelmeng and Tina Soreide, *Debarment in Public Procurement: Rationales and Realization*, in *Integrity and Efficiency in Sustainable Public Contracts* (Brussels; Bruylant 2014).

<sup>12</sup> See Norbert Seiler & Jelena Madir, *Fight Against Corruption: Sanctions Regimes of Multilateral Development Banks* 15 *Journal of International Economic Law* 5–28 (2012). Regarding coordinated debarment (cross-debarment), see Frank A Fariello and Conrad C Daly, *Coordinating the Fight against Corruption among MDBs: The Past, Present, and Future of Sanctions* 45 *George Washington Interna-*

There are few empirical studies on governments' enforcement of their anti-corruption laws, including the enforcement of foreign bribery laws. The most comprehensive information comes from the country evaluation reports of the OECD, which evaluates countries on how well they enforce the OECD Anti-Bribery Convention, and GRECO, which evaluates countries in several "rounds" – focusing on specific parts of their governance integrity system. A review of such reports shows that, despite progress, there are examples of severe law enforcement weaknesses in all countries included.<sup>13</sup> Furthermore, according to the OECD 2014 overview of foreign bribery cases, nearly half the countries that signed the convention in the early 2000s have not yet prosecuted a single foreign bribery case.<sup>14</sup> Meanwhile, we learn from the largest business survey on corruption, the World Bank's Enterprise Surveys, which includes the responses of 130,000 firms in 135 countries, that 35 per cent of firms worldwide consider corruption a major business constraint. Around one in four expects to give gifts to government representatives to secure a government contract. Considering such results, it is hard to believe that a lack of cases to investigate is the reason why countries such as Spain, Russia, Brazil, Turkey, and Japan fail to prosecute cases of foreign bribery.

A range of factors prevent efficient law enforcement. Each investigation requires substantial time and resources, a fact confirmed by the *Yara* case. In 2013, the average number of years from criminal act to sanction was 7.3 years, according to the OECD.<sup>15</sup> As many jurisdictions offer generous appeal options, while the statute of limitations can be short, court systems sometimes have to dismiss cases simply because they have remained in the court system for too long. Other reasons why suspected bribery is not followed up with investigation and/or prosecution include the difficulty of securing evidence, the lack of witnesses willing to report incidents, and political interference with the case as well as direct influence even by the players suspected of bribery.<sup>16</sup> Law enforcement systems are not immune from the governance problems they are expected to address, and those suspected of bribery in busi-

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tional Law Review 253–68 (2012). For a discussion of their efficiency, see Tina Søreide, Linda Gröning and Rasmus Wandall, *An Efficient Anticorruption Sanctions Regime? The Case of the World Bank* 16 Chicago Journal of International Law 523–552 (2015).

<sup>13</sup> See Ch. 3 in Tina Søreide, *Corruption and Criminal Justice: Bridging Economic and Legal Perspectives* (Cheltenham, UK, and Northampton, MA; Edward Elgar Publishing, 2016).

<sup>14</sup> According to the OECD enforcement statistics (see fn 15), 361 individuals and 126 entities had been sanctioned under criminal proceedings for foreign bribery in 17 signatory countries between the time the Convention entered into force in 1999 and the end of 2014. At the time of that report, however, there were over 393 ongoing investigations in 25 countries. Signatories to the Anti-Bribery Convention include the 34 OECD member countries and seven non-member countries (Argentina, Brazil, Bulgaria, Colombia, Latvia, Russia, and South Africa). See the OECD website for enforcement updates.

<sup>15</sup> OECD, *OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials* (Paris; OECD Publishing, 2014).

<sup>16</sup> According to the OECD 2014 report, many actors in a position to observe corruption fail to report incidents, including auditors, procurement officials, and diplomats. The bluntest example of political interference in a foreign bribery investigation is perhaps former UK Prime Minister Tony Blair's decision to stop investigation into the British defense company BAE's systematic use of bribes, a practice which had been going on for decades. According to Blair, the secured contracts were important for British industry and jobs. For details, see <<http://www.theguardian.com/world/bae>> accessed 1 March 2016.

ness may well be inclined to bribe their way out of a law enforcement challenge as well.<sup>17</sup> Given the various law enforcement challenges, managers in the private sector and public administration may perceive that they can operate with nearly complete impunity.

Nonetheless, political leaders do express their ambition to combat corruption. In November 2014 in Brisbane, the G20 leaders endorsed seven statements about how corruption damages societies.<sup>18</sup> They agreed that corruption harms trust in governments, tempts politicians into non-benevolent decisions, distorts markets, hinders investments, prevents the intended effect of financial development support, and facilitates other forms of crime. With these insights, one might assume the leaders will also see the need to consider the efficiency of law enforcement mechanisms, yet solutions are not straightforward. This article discusses options that most governments could use to alleviate apparent shortcomings in the fight against business-related bribery. Section 2 discusses the strengths and shortcomings of criminal law in the fight against bribery. Section 3 addresses the importance of identifying firms' inclination to offer bribes to secure business. Following this section, we present a student experiment to show why we think indicators of firms' risk assessment prior to entry into a market is useful information for law enforcers. Section 5 reviews the relevance and co-existence of available legal tools. Our conclusion follows with a summary of our main points.

## 2. Benefits and Shortcomings of Criminal Law

Countries regulate corruption in their criminal law, and this is where they also define the term. Corruption undermines state institutions and prevents the welfare-enhancing effects of well-functioning markets, and these dangers justify the use of criminal law.<sup>19</sup> Upon the suspicion of a serious crime, investigators have wide access to information and permission to use a broad spectrum of investigative methods. Individuals can be sentenced to prison under criminal law, and this is also where we find the most hard-hitting fines and asset recovery schemes. With these competencies, the criminal justice system can contribute decisively in the control of corruption. By detecting and prosecuting those involved, it contributes to preventing the crime, to securing trust in government institutions, and to upholding other integrity mechanisms in society.<sup>20</sup>

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<sup>17</sup> See among others, Nuno Garoupa and Mohamed Jellal, *Further Notes on Information, Corruption, and Optimal Law Enforcement* 23 *European Journal of Law and Economics* 59–69 (2007).

<sup>18</sup> G20, *High Level Principles on Corruption and Growth* (Brisbane; November 2014): <[http://www.g20australia.org/g20\\_priorities/g20\\_2014\\_agenda/fighting\\_corruption](http://www.g20australia.org/g20_priorities/g20_2014_agenda/fighting_corruption)> accessed 29 February 2016.

<sup>19</sup> For a review of consequences, see OECD, *Consequences of Corruption at the Sector Level and Implications for Economic Growth and Development* (Paris; OECD Publishing, 2015).

<sup>20</sup> The World Justice Project's Rule of Law indicators confirm a strong correlation between the function of criminal justice systems and the absence of corruption. See <<http://worldjusticeproject.org/>> and Søreide (2016), fn 13, for correlations.

However, the criminal justice system's competence to use hard-hitting strategies comes with important restrictions. For governments with an ambition to protect democratic values and human rights, the criminal law's protection of the autonomy of honest citizens and firms is valued at least as highly as its impact on the incidence of offences. This means that the government will be as concerned with imposing a criminal law penalty on an innocent firm or imprisoning an individual as with failing to punish a guilty party. However, for the reasons that follow below, the criminal-law conditions established to prevent unfair treatment are particularly difficult to meet in cases of business-related bribery.

First, consider the condition that a criminal act must in fact have taken place. In everyday parlance, we use the words bribery and corruption as if the acts they describe are obviously understood. In legal practice, however, there is an array of grey-zones, which – irrespective of similar legal definitions across jurisdictions – might be judged as bribery in one jurisdiction, and a legitimate incentive strategy in another.<sup>21</sup> For example, to what extent is a company liable for the bribes paid by sub-sub suppliers in a large and complex project if those bribes in the end benefit the company? At what point does lobbying coupled with financial transactions to bank accounts controlled by the leaders of a political party cross the line of legality and become illegal corruption?<sup>22</sup> While case-law clarifies the definition of bribery as a criminal act, there are still many ways of exerting influence on decision-makers and unduly securing business benefits.

Second, identifying who is responsible for the criminal act is a further difficulty, especially since usually there are many different players complicit in the bribery. By prosecuting those who conducted the transactions, the blame is easily placed on scapegoats, while the powerful managers who tacitly instructed or condoned – and benefited from the payment – are absolved of criminal liability. Vicarious liability is a tempting solution, as that would imply an opportunity for prosecutors to levy a heavy penalty on managers whose involvement in the crime is difficult to prove. Certainly, it would give managers a stronger incentive to prevent crime. The problem with this solution is the added transactions costs – in terms of the insurance and the steps managers would then take to avoid liability for a crime they allegedly did not commit. A certain impact on management recruitment would be likely as well, as honest risk-averse leaders might prefer other jobs. Imposing a penalty that is reduced proportionally to the risk of accusing someone who is honest is not a good option because it would water down the deterrent effect of a sanction, while the problems of placing a burden on the honest individual would still exist. Levying heavy fines on corporations is the most common solution. Although such fines motivate owners to demand corporate compliance, they often fail to have direct or indirect consequences for the managers who made or approved the blameworthy bribery decisions – which

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<sup>21</sup> The degree to which legal definitions of corruption are harmonized is discussed in Radha Ivory, *Corruption, Asset Recovery, and the Protection of Property in Public International Law: The Human Rights of the Bad Guys* (Cambridge; Cambridge University Press, 2014).

<sup>22</sup> Similar points made by Søreide (2016), fn 13.

means that the individuals involved can benefit from the crime and avoid liability if the crime is detected. A further side effect – often ignored in criminal law, yet essential for the underlying goal of securing fair and welfare-enhancing markets – is that heavy corporate fines may harm competition, particularly in oligopolistic markets.

Of course, under criminal law, prosecutors must also provide proof beyond reasonable doubt that the party responsible for the bribery acted in a censurable manner, implying that he, she or it committed the crime meeting the required standard of guilt. This condition is a real barrier to criminal law regulation of corruption, because there are so many ways firms can disguise their bribes as legitimate transactions. For example, firms can hide bribes in manipulated intra-corporate transactions, they can conceal them in payments for projects that never materialize or in transfers to sub-suppliers, whose existence is only a bank account in the Cayman Islands, or they can make payments for social-purpose organizations whose finances are controlled by the government representative they want to bribe. Investigators need to know what to search for to prove the true intent behind the transactions, which in practice is what stops many corruption cases before they lead to prosecution.

Eventually, criminal law also requires the absence of legitimate defence. Upon the reasonable assumption of business leaders as rational decision makers, one may fail to see the potential excuses for their acts. In practice, however, these excuses stop many cases from prosecution or from resulting in a guilty verdict. Of course, bribery in self-defence is not a very relevant excuse in corruption cases, and the defence of necessity, i.e. that bribery was necessary to avoid something worse, rarely hold up in court; not even when the bribery would lead to hundreds of new jobs. There are circumstances where the defence of duress could be relevant, for example, when a local mafia leader has threatened a business leader to make bribe payments. Among the more relevant defences is entrapment, which means the accused paid a bribe because he/she was deceived into doing so. The claim could be made that business partners had convinced or deceived him or her into thinking that what they were doing was legal, yet such defences would normally not be accepted. Likewise, the defence of legitimate purpose may hold in court – for example that the accused made the payment with the intention of contributing to charity (a contribution that was never meant to end up as a personal benefit for a government decision-maker). The defence of double jeopardy is another legitimate excuse. In principle, a person can be tried for an offence only once, whether they were acquitted or convicted at their trial. Considering international players, this defence can be claimed, but will not necessarily be respected if the accused has been tried by a court that condones corruption involving government representatives or punishes corruption very mildly.<sup>23</sup>

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<sup>23</sup> Robert Cryer et al., *An Introduction to International Criminal Law and Procedure* (Cambridge; Cambridge University Press, 2014). Jay Holtmeier, *Cross-Border Corruption Enforcement: A Case for Measured Coordination among Multiple Enforcement Authorities* 84 *Fordham Law Review* 493–524 (2015). Péter Mezei, *Not Twice for the Same: Double Jeopardy Protections Against Multiple Punishments in Fair Trial and Judicial Independence* 197–219 (New York; Springer International Publishing, 2014).

The strict requirements for liability amount to a set of rules that can be very difficult for prosecutors to enforce vis-à-vis corporations with complex company structures and resources to pay for the most clever and creative lawyers. However, governments cannot easily ignore the legal conditions for criminal law sanctions, not even for the sake of prosecuting more firms for bribery and promoting a fair business climate. What one can do, however, is to identify the indicators that can help prosecutors identify blameworthy decisions and clarify what other legal tools can support criminal law in incentivizing firms to comply with anti-bribery principles.

### 3. Risk Trade-Offs for Corporations

Efficient strategies against corruption and other crimes committed with rational intent should emerge from an understanding of the offender's likely decision-making process.<sup>24</sup> Law enforcement responses, including criminal law reaction, tort law and consequences of a criminal act, like debarment, are normally conditional upon a finding of guilt.<sup>25</sup> Within complex corporate structures, it can be difficult to determine individual responsibility, and for now, we address liability, accusations and claims associated with the corporation, not with individuals. For such liability, however, most jurisdictions require that individuals representing the corporation have made culpable decisions on behalf of the corporation, in accordance with corporate liability requirements, yet the identity of the individuals involved can be uncertain.<sup>26</sup> Therefore, individual choices and attitudes toward corruption are at the centre of law enforcement processes, also when considering corporate liability.

The decisions that lead to bribery include the whole range of culpability forms. Some bribes are the result of conscious criminal intent; that is, bribery used as a business strategy – a claim that may fit the Siemens, the Alstom and the VimpelCom cases.<sup>27</sup> However, prosecutors cannot be expected to distinguish such cases from the ones where the corporation's management has consciously accepted the demand for an extortive bribe, that is, they hate to pay the bribe, but they still pay because the demand blocks their path toward business opportunities. There is also a blurred difference between creative bribery and condoning the risk that a transaction may in fact

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<sup>24</sup> Mitchell Polinsky and Steven Shavell, *The Theory of Public Enforcement of Law*, in *Handbook of Law and Economics, Volume 1* 403–454 (Amsterdam; Elsevier, 2007). Richard A Posner, *An Economic Theory of the Criminal Law* 85 *Columbia Law Review* 1193–1231 (1985).

<sup>25</sup> Debated by Søreide (2016) ch. 4, *supra* n 13.

<sup>26</sup> See Mark Pieth and Radha Ivory (eds), *Corporate Criminal Liability: Emergence, Convergence, and Risk* 3–62 (New York; Springer 2011).

<sup>27</sup> US Securities and Exchange Commission, *VimpelCom to Pay \$795 Million in Global Settlement for FCPA Violations* (Washington D.C.; Feb. 18, 2016): <<https://www.sec.gov/news/pressrelease/2016-34.html>> accessed 1 March 2016. *Alstom v. United States of America* Case 3:14-cr-00247-JBA <[https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2014/12/29/alstom\\_grid\\_dpa.pdf](https://www.justice.gov/sites/default/files/opa/press-releases/attachments/2014/12/29/alstom_grid_dpa.pdf)> *Siemens v. United States of America: Statement Offence* <<https://www.justice.gov/sites/default/files/opa/legacy/2008/12/16/siemens-ag-stmt-offense.pdf>> accessed 1 March 2016.



be a bribe. With bribes disguised as legitimate business deals, as discussed above, the managers with the relevant oversight responsibility may convince themselves that what they do is not so bad after all – or that it is even a legal strategy.<sup>28</sup> Such subjective interpretations should not reduce the liability in cases of corporate crime, even though they challenge prosecutors' attempts at inferring criminal intent.

These individual/subjective assessments of right and wrong are what explains why moral costs fail to prevent managers from participating in bribery; that is, the inclination to condone corruption, accept grey-zone practices or even make clear-cut bribe payments. Therefore, in order to place the blame correctly, we need to know how managers *think about* corruption. Hence, while the legal evolution has gone in the direction of assessing the quality of corporations' compliance systems (i.e. internal organization for self-policing) – to assess whether companies have in place sufficient safety measures against corruption<sup>29</sup> – it would facilitate law enforcement if regulators could assess more directly corporate management's attitude toward corruption risks.

We can expect managers to be rational players. We can also assume that most managers have an opinion about how often they will face the risk of various forms of corruption, especially if they operate in or enter high-risk markets. In addition, we can expect them to be informed. Until the late 1990s, neither managers nor researchers had much information about the magnitude of corruption in various countries and sectors. Since then, we have seen an upsurge of information – including corruption estimates, governance indicators, facts about law enforcement, business surveys, household surveys, detailed information about business regulation, evaluations of countries' integrity systems, as well as nuanced accounts of political risks and informal power networks' influence in industry regulation. Nobody in the top management of an international corporation can claim to be unaware of corruption risks.

Consequently, for answers to the question of blameworthiness, law enforcers would benefit from information about weaknesses in a corporation's compliance systems. What would be even more helpful, we will argue, is information about how managers adapt to available knowledge and information about corruption risks; that is, the extent to which they condone corruption.

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<sup>28</sup> The offender rationalizes the crime decisions; described by sociologists as neutralization or normalization. See Michael L Benson and Sally S Simpson, *Understanding White-Collar Crime* (Oxford: Routledge, 2015).

<sup>29</sup> Florence Thépot explains a noteworthy difference between the regulation of antitrust and the regulation of corruption when it comes to the relevance of compliance systems. While the offences in their profit-seeking form are similar, a firm's compliance system is largely ignored in the enforcement of competition law. See Florence Thépot, *Antitrust v. Anti-Corruption Policy Approaches to Compliance: Why Such a Gap?* 2 CPI Antitrust Chronicle (June 2015) <<https://www.competitionpolicyinternational.com/assets/Uploads/ThepotJUN-152.pdf>> accessed 2 March 2016.

See debates around the proposal of a new ISO standard on bribery (the 37001 anti-bribery management system), especially Matthew Stephenson, *More on Compliance Program Certification/Verification: The Proposed ISO Standard* The Global Anticorruption Blog (7 August 2014) <<http://globalanticorruptionblog.com/2014/08/07/more-on-compliance-program-certification-verification-the-proposed-iso-standard/>> accessed 1 March 2016.

#### 4. A Business School Experiment

For the sake of better understanding what risk assessment information is obtainable from managers, we did a simple experiment among Norwegian business school students. Sixty-five master-level students at the Norwegian School of Economics (NHH), all with some knowledge of corruption and awareness of sources of information about the magnitude of the problem, were given the task of assessing corruption risks prior to a fictitious company's decision to enter the market in a new country.<sup>30</sup> The imagined case was a large international OECD-based electricity company that was about to expand operations with investments for production to a new market. The students could choose between three countries, Kyrgyzstan, Bangladesh, and Nicaragua, and the assignment was to advise the CEO of the company about the corruption risks, and, on that basis, make a recommendation whether the company should go ahead or stay away from the market. Each student submitted a five-page report describing the most important areas of corruption risks, their importance for entry and operations, and the company's probable ability to evade the different forms of corruption. The report included a risk assessment form (see the appendix). Filling out the form, students had to consider and estimate the corruption risks, and for each risk area, they had to evaluate their (imagined) firm's ability to avoid involvement.<sup>31</sup>

Across the countries, we find that students searched different sources for their assignment, but still, they came up with quite similar (objective) risk assessments. Across the different risks considered, the standard deviation in risk estimates is low (see the appendix for details). This means that students come to similar conclusions regarding the magnitude of corruption problems, even though they cite different references and data sources. Apparently, there is a certain correlation between different data-based estimates on the same corruption problems.

Table 1 illustrates the results for Bangladesh, the country chosen by nearly half the group of students.

For Bangladesh, the students' total risk estimates, within a range of 1 to 10 (where 10 is maximum corruption), amount to an average of 6.77 with a standard deviation of 1.03.<sup>32</sup> On average, the "advisers" (i.e. the students) expect their firms to be able to reduce the risk by 1.49 points, which means that most of them find their (imagined) corporate anticorruption strategies important, yet they also seem to realize that they will make little difference for the total assessment of corruption risks in the market. This means that the students – having considered the specific corruption risks – find it difficult to believe that company strategies are sufficient to avoid the problem.<sup>33</sup>

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<sup>30</sup> The students attended a course on corruption (for details, see <[http://www.nhh.no/no/studentsider/faginformatjon/studier-ved-nhh-\(studiehåndboken\)/studiehåndboken.aspx?Kurs=BUS452](http://www.nhh.no/no/studentsider/faginformatjon/studier-ved-nhh-(studiehåndboken)/studiehåndboken.aspx?Kurs=BUS452)> accessed 1 March 2016.

<sup>31</sup> For this discussion, we report results on aggregated/total risk, and leave out results on specific risk areas.

<sup>32</sup> For the other two countries, the standard deviations are slightly smaller.

<sup>33</sup> Clarification regarding Table 1: The two bars with the blue area below zero reflects the fact that two students considered the risk to be higher when they took their company's risk mitigating strategies into account.

Table 1. Student evaluations are presented horizontally. The vertical axis shows perceived risk level. The red/lower areas on the bars reflect mitigated risk estimate (after the company’s risk reduction strategies are taken into account) while the blue/higher areas reflect the risk reduction (i.e. the difference between estimated risk mitigation and neutral market risk). Hence, the total size of a bar reflects the total market risk.

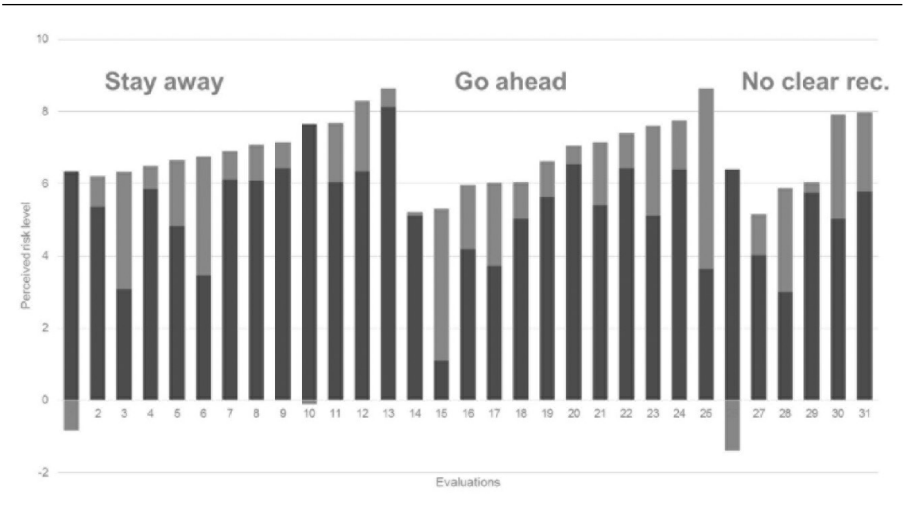
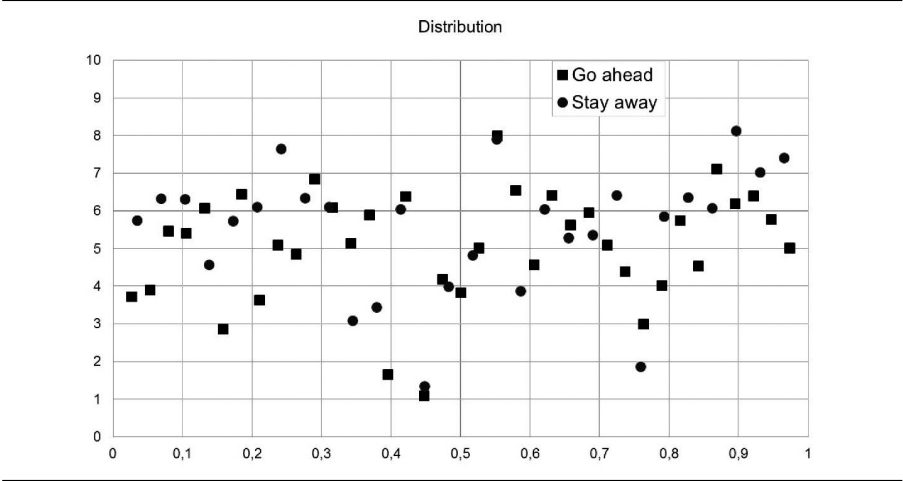


Table 2. Risk estimates weighted to rank between 0 and 1 to better illustrate them in one graph. Square symbols reflect go ahead while the dots reflect stay away. There are no clear, systematic differences in risk estimates between “go ahead” risk assessments and “stay away” risk assessments.



The pattern we see with reference to Bangladesh in Table 1 is similar to what we found for Nicaragua and Kyrgyzstan (see the appendix): there are very small risk assessment differences between those who recommend “go ahead” and those who recommend “stay away.” As illustrated in Table 2, which compiles the results for all

Table 3. Average estimates for all the three countries for different recommendations: “Risk neutral” is the risk estimate before the company’s ability to reduce the risk is considered; “mitigated risk” is the risk estimate after the company’s risk reduction strategies are taken into account, while “risk difference” is the difference between the two.

Recommendation	Risk Neutral	Mitigated Risk	Risk Difference
<i>No conclusion</i>	6.62	5.22	1.39
<i>Entry</i>	6.73	5.03	1.69
<i>No entry</i>	7.11	5.54	1.72
<b>Total</b>	<b>6.87</b>	<b>5.28</b>	<b>1.66</b>

the three countries, those who recommend ‘go ahead’ do not have systematically lower risk estimates compared to ‘stay away’.

Table 3 describes the values behind the plotted results in Table 2. The average mitigated risk estimate (i.e. after the firm’s risk reduction strategies are taken into account) for “no entry” is 0.51 ranking point (on the 1–10 scale) higher than for “go ahead”.

One might assume that the main factor distinguishing students in their recommendations is their attitude towards corruption: the extent to which they recommend that managers ignore such risks for the sake of profitable business. The students could have other aspects in mind, however, including a higher willingness to accept extra expenses associated with an honest business strategy, or different grade of severity associated with the different corruption risks, although very few mention such concerns explicitly.

In any case, a management’s assessment of corruption risks prior to detected corruption would be useful information for law enforcers who seek to infer the degree of culpability when they suspect a case of corruption. Considering such information, they might find that the company has either (a) operated with an assessment of risks that is too optimistic (which is no legitimate excuse due to the large, available and consistent information about corruption risks); (b) condoned/ignored the risk, or (c) accepted the extra expenses associated with an honest business strategy – a fact that should be reflected in budgets and audit information. In the case of (b) above, in our view there is a need both to clarify the law at the level of norms, as well as to develop the principles of guilt (e.g. the borderline between *dolus eventualis* and negligence).

While there are clear limits to how far we can draw conclusions based on these 65 student assignments, the experiment tells us that managers’ estimates of risk and their capacity to avoid risks are available information. Such information could feed into the amount of information that prosecutors consider before they determine their charges or propose a settlement with a corporation. Similar to the regulation on other areas where business operates with a risk of harming society, the government can request managers to self-assess their risk-reduction strategies – by filling out and signing a form of the sort applied in this study. Given the relevance of such information for efficiently determining blameworthiness, such regulation could perhaps release firms from some of their other reporting requirements.

5. Expanding the Law Enforcement Toolkit

Although many countries only define the term corruption in their criminal law, making criminal law a natural starting point for a law enforcement debate, there is a range of other tools available for law enforcers. The different forms of enforcement, the remedies and sanctions applicable, and their respective functions can be depicted as follows in Table 4.

Table 4. Enforcement tools available in OECD jurisdictions.

	Public Enforcement	Private Enforcement
Desistance/termination	Investigative powers, incentive mechanisms, complaints	Contractual nullity
Deterrence	Fines, imprisonment, confiscation, debarment, civil law forfeiture	Liability in tort
Prevention of repeat infringements	Debarment & self-cleaning incentives, negotiated settlements	Labour law (e.g. termination of employment)
Compensation	Debarment & self-cleaning incentives	Liability in tort

This way of systematizing the various tools highlights the different roles allocated to private and public enforcement, as well as how different tools serve distinct functions within a coherent enforcement system. Furthermore, it may give rise to a discussion about the interrelationship between different sanctions and remedies, across the border between public and private enforcement.

In this section, we briefly point out the relevance of some of these sanctions and remedies, with a view to strengthening the enforcement system for more efficient law enforcement in corruption cases.

*Concerns about Efficiency*

Reform initiatives must rest on several considerations. First, as discussed in the introduction, there are clear and known shortcomings in governments’ ability to enforce the law vis-à-vis the biggest private-sector players. The strong conservative forces in criminal law should not block reformist attempts to make improvements. However, instead of jumping to quick solutions for speedier law enforcement processes, law enforcers must encourage and enter into the debate about how incentive-based strategies and fairness concerns go together. Second, efficiency gains in law enforcement must be considered to mitigate the risk of unintended consequences. Very large fines placed on corporations may harm competition more than they reduce corruption. An

expanded use of vicarious liability will affect firms' choices and investment patterns and must be weighed against the need to protect markets, jobs, and the development of society as a whole, and thus, the need to protect the "human rights of corporations"<sup>34</sup> has an economic justification.

The difficulty of penalizing corporate misconduct in line with criminal justice principles, led to the suggestion of using information about managements' corruption risk decisions for more efficient law enforcement, as this would speed up law enforcement processes while keeping the focus on the core question of criminal negligence. In what follows, we will address how "more efficient law enforcement" entails strategies for incentivizing corporate compliance, strategies for better applications of tort law, clearer rules regarding debarment in public procurement, and, eventually, civil law forfeiture.

### *Incentivizing Compliance*

Across the globe, we see principles of corporate criminal liability and sanctioning taking clearer shape, yet different jurisdictions apply different rules and justify such sanctions differently.<sup>35</sup> From an economic perspective, it makes sense to exploit the fact that firms are in the best position to monitor their organization and prevent their own crimes, and thus apply legal tools for incentivizing compliance.<sup>36</sup> Firms are hydra-headed creatures, and if one part of the corporation commits a crime, another part may well report it (as seen in the Ralph Lauren case).<sup>37</sup> The more a firm is found to self-regulate, self-monitor, secure whistleblower channels, and self-report its offences, the lower penalties should be imposed on it; a concept often referred to as the principle of "duty-based sanctions" or "compliance-based defence". The problem with this concept is that compliance systems are costly for companies, and instead of serving their intended crime-preventing purpose, they may become window-dressing facilities for managers who seek primarily to avoid personal liability as well as heavy corporate fines in the event their involvement in corruption is revealed. Information about managers' true intentions is not available for law enforcers, and for the sake of motivating firms to operate functional compliance systems, economists have proposed that at least some penalty is imposed on offenders in all cases where a corporation evidently is involved in corruption, regardless of what compliance systems it had in place before the offence. A minimum penalty – also called a "strict residual liability" – should exceed the firm's expenses of operating an apparently compliance system, and thus, motivate managers to make their system work.<sup>38</sup> For a more efficient law

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<sup>34</sup> See for a general treatment Marius Emberland, *The Human Rights of Companies: Exploring the Structure of ECHR Protection* (Oxford; Oxford University Press, 2006).

<sup>35</sup> Pieth and Ryadh, fn 26.

<sup>36</sup> Jennifer Arlen, *Corporate Criminal Liability: Theory and Evidence*, in *Research Handbook on the Economics of Criminal Law* (Cheltenham, UK, and Northampton, MA; Edward Elgar, 2012).

<sup>37</sup> Securities and Exchange Commission Press Release, *SEC Announces Non-Prosecution Agreement with Ralph Lauren Corporation Involving FCPA Misconduct* (Washington, D.C.; 22 April 2013).

<sup>38</sup> Arlen, fn 36.

enforcement system, however, it is also necessary to combine policies for self-monitoring with procedures that incentivize collaboration with investigators when a case of bribery has occurred.

### *Negotiated Settlements*<sup>39</sup>

When criminal activity is suspected (suspicions deriving, for example, from employees, business partners or journalists), firms can be rewarded for providing evidence of their own offences. Under some circumstances, however, managers might be suspected of merely *pretending* to cooperate in such respects, while in practice they do what they can to prevent the disclosure of evidence. If corporations under such circumstances are penalized more heavily for each day of investigation that passes, or if the managers know they will receive milder treatment the more evidence they place on the table, they may see a real value in putting forward evidence of bribery.

While in all countries there is a certain dialogue between investigators and company representatives during such processes, the extent to which prosecutors can offer legally binding promises in exchange for evidence and confessions varies substantially. The benefits that can be traded – whether they be the degree of confidentiality of the crime, contents of the charge, severity of the sentencing, imprisonment versus corporate fine, information about other players' crime, confession of the crime etc. – differ significantly across countries, as does the court's control of such deals and the public's opportunity to stay informed. As pointed out by Abiola Makinwa and participants in a study where eight European countries are compared based on their rules regarding negotiated settlements in cases of corporate criminal misconduct, there is substantial variation in principles and practices, yet in some countries, the settlements happen in a rather unregulated manner.<sup>40</sup>

The aim for governments that explicitly seek to encourage self-reporting and voluntary disclosure of the facts, is to “lessen the information asymmetry faced by prosecutors”,<sup>41</sup> cut law enforcement expenses and allow prosecutors to process more cases with the same resources and time, and therefore, raise detection rates. For these strategies to work for firms operating in international markets, clear guidelines for prosecutors are necessary in order to balance quick enforcement gains against fair-

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<sup>39</sup> Understood as follows: “A negotiated settlement is an agreed resolution between law enforcement authorities and alleged wrongdoers regarding alleged violations of anti-corruption laws resulting in sanctions or other legal measures”. Abiola O Makinwa (ed), *Negotiated Settlements for Corruption Offences, A European Perspective* (The Hague; Eleven Publishing, 2015).

<sup>40</sup> Project titled “Negotiated Settlements for Corruption Offences: A European Perspective” – and headed by Abiola O Makinwa, The Hague University of Applied Sciences (International and European Law Program, Academy of Public Management, Safety and Law). The countries included in the study were Germany, France, Italy, Poland, Sweden, the United Kingdom, the Netherlands and Norway. For discussion about principles and practices in negotiated settlements, see also Nuno Garoupa and Frank H Stephen, *Why Plea-Bargaining Fails to Achieve Results in so Many Criminal Justice Systems: A New Framework for Assessment* 15 *Maastricht Journal of European and Comparative Law* 323 (2008).

<sup>41</sup> Explained by Makinwa (2015:9), *supra* n 39.

ness, transparency and justice. In this respect, the growing use of cartel settlements and commitment decisions by European competition authorities represents an important benchmark.<sup>42</sup>

### *Compensation / Tort Law*

At least in a European perspective, the public prosecutor mainly enforces the rules on corruption, while private enforcement is less common. Private remedies essentially serve two purposes: that of compensating victims (in the form of damages and restitution), and that of terminating infringements (e.g. contractual nullity of offensive agreements as foreseen by the 2003 Council of Europe Civil Law Convention on Corruption). As there is no compensatory function in public enforcement, private enforcement may consequently fill a gap left in public remedies.<sup>43</sup> In addition, the involvement of private parties may influence public enforcement, because of incentives to release information to the authorities. Finally, private enforcement may serve as a deterrent factor supplementing public enforcement.

However, experience from other fields of law, in particular competition law, indicates that a compensation-based system does not yield optimal solutions with regard to deterrence and incentives to sue. Further, there is a need to develop a coherent policy regarding the role of private enforcement as a supplement to public enforcement. For example, liability in tort may adversely affect incentive mechanisms designed to promote reporting (as reporting may expose the undertakings to damages claims). As a general observation, there may be a need to specify the criteria for both remedies in tort and contractual nullity, instead of leaving this to the general principles of tort and contract law.<sup>44</sup>

### *Debarment*

Debarment from public procurement has the potential to become an important weapon in the fight against corruption and other forms of business-related crime. While EU Member States are obliged to implement such rules, it is up to each state to consider

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<sup>42</sup> See Erling Hjelmeng, *Competition Law Remedies – Striving for Coherence or Finding New Ways?* 50 Common Market Law Review 1007–1037 (2013).

<sup>43</sup> Art. 57 (6) of the EU Public Procurement Directive (2014/24/EU) provides an example of how public enforcement mechanisms may promote compensation to victims, as successful self-cleaning is made conditional upon the payment of compensation.

<sup>44</sup> As discussed, corporations can avoid liability and claims for compensation if it can be proven that steps were taken to avoid the specific criminal incidents, that is, a sufficient compliance system. However, as a step in the direction of using private law solutions for deterrent purposes, the compensation for incidents of corruption – once claims are found valid, the rewards could exceed victims' actual loss. This begs the question whether antitrust-styled remedies like treble damages should be introduced in the anti-corruption scene as well. For relevant discussion, see also Jennifer Arlen (ed), *Research Handbook on the Economics of Torts* (Cheltenham, UK, and Northampton, MA; Edward Elgar Publishing, 2013), and especially, chapter 9: Reinier Kraakman, *Economic Policy and the Vicarious Liability of Firms*.



nuances, enforcement and ways by which to avoid “unnecessary” harmful consequences. While debarment is supposed to promote trust in public procurement, there are trade-offs associated with this trust. Our initiatives to fight crime must match our attempts to protect competition. Governments are not only trusted to react against crime, but also to secure ‘value for money’ in their allocations.

Even suppliers who have been found guilty of the listed offences are market players, often large employers too, and they should not be excluded from public procurement to any greater extent than is deemed “necessary” for them to regain trust. For these reasons, there is a need to develop clearer ideas of what is required for these players to regain trustworthiness. The most important suppliers are organizations with owners, a management and an administration, rarely individuals with incorrigible integrity flaws. Under external monitoring, these organizations can implement convincing and assessed measures that compel them to act honestly and responsibly.

The Public Procurement Directive addresses firms’ opportunity to avoid or reduce debarment through self-cleaning initiatives. However, there are no official policy principles for the relationship between such initiatives and the debarment period, and hardly any literature exists on how these rules can incentivize compliance with the law.<sup>45</sup>

### *Securing Efficient Co-Existence between Criminal Procedural Rules and Civil Law Approaches*

The use of more flexible instruments, for example, in the form of negotiated settlements, as discussed above, begs the question of amendments to the criminal procedural legislation. Such negotiations are conducted in a legal vacuum in many jurisdictions today, with undefined roles for the prosecutor, regulator and negotiator, in addition to the classic investigator. Trust and predictability are crucial elements of such a system, and we submit that this role of the prosecutors represents a considerably underdeveloped tool. However, the increasing emphasis on the quality of compliance systems within corporations as a basis for criminal law or civil law liabilities leaves investigators with a regulatory function that they are not necessarily equipped to exercise. Regulatory control of compliance systems could be outsourced to safety oversight bodies or even private sector certificate providers, arrangements similar to how certification firms assess safety and security measures in other areas of private sector production. Outsourcing comes, however, with the inherent problem that industry challenges are internalised, i.e. that the standard of scrutiny falls short of the legal rules. We do, however, suggest that such regimes be implemented under close scrutiny by public authorities. Any such options can be combined with the suggestion made in Section 3, that firms should make and report corruption risk assessments and a strategy for alleviating the challenges that do exist. Of course, firms should not ben-

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<sup>45</sup> See further Erling Hjelmeng and Tina Søreide, *Debarment in Public Procurement: Rationales and Realization*, in *Integrity and Efficiency in Sustainable Public Contracts* (Brussels; Bruylant, 2014).

efit from an apparently unconscious attitude toward corruption problems, and especially not those that are well confirmed by multiple data sources and surveys.

In addition, when it comes to the aim of incentivizing firms to self-report and collaborate with prosecutors, it is important to rethink the organization and allocation of legal tools. If a criminal law sanction has serious consequences for corporations beyond what prosecutors can control, it is difficult for them to encourage firms to come forward with evidence of their crime. For this reason, we think it is wise to let the decision to debar suppliers found guilty of corruption be subject to one and the same law enforcement process, either in terms of a criminal law process or placed under some civil law authority with broad competence to regulate and react upon various forms of corporate misconduct. Hence, while the quality of compliance systems may well be evaluated by regulators outside these processes, the law enforcement entity responsible for corporate offences should have the competence to control the full scope of sanctions.<sup>46</sup>

A final area where enforcement mechanisms can be allocated differently relates to asset recovery and confiscation of benefits. Confiscation of benefits obtained through bribery forms part of the criminal law system. However, one may also consider whether to introduce a similar mechanism under an administrative system. The introduction of an administrative enforcement system does, however, raise a difficult question that space constraints prevent us from exploring further here. We submit that the experience from the co-existence of criminal law sanctions and an administrative enforcement system under competition law, as well as in financial regulation, provides an important benchmark and a starting point for discussion.

## 6. Conclusions

The law enforcement shortcomings in corruption cases are substantial, and call for a greater scope of enforcement tools and efficient procedures. Main concerns in reform should include basic criminal law principles, consequences for markets, access to the information necessary for reactions, and value for money in enforcement operations. Smart sanctions are better than large sanctions. There is a value for law enforcers to demonstrate authority if that increases trust in their capacity to enforce the law. However, if the imposition of large fines is not what prevents firms from taking part in corruption, we need to consider if criminal justice systems exploit all the tools available for incentivizing firms to operate honestly.

In this article, we have argued that European governments can strengthen the preventive effects of criminal law vis-à-vis corporations by clarifying how various forms of negligence will lead to reactions, requesting self-assessments of estimated/accepted business risk, applying predictable principles for duty-based sanctions (with strict

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<sup>46</sup> For further discussion about the need for coherent law enforcement in cases when corporations are involved in corruption, see E Auriol, EJ Hjelmeng and T Søreide. *Deterring Corruption and Cartels: In Search of a Coherent Approach in Concurrences* (forthcoming, 2017).

residual liability), and developing principled rules for negotiated settlements. Across Europe, there is a clear trend towards applying plea-bargaining-inspired negotiated settlements. This is a sign of progress toward the goal of more efficient solutions. There are important lessons to be learned from the enforcement of competition law in this respect. However, it is essential that such practices do not evolve out of very narrow efficiency aims – which easily lead to non-transparent and unpredictable settlement solutions. They should develop in acknowledgment of criminal law principles established to ensure fair solutions and protect the autonomy of those who have not committed any offences/crimes. It may be tempting to jeopardize such values for the sake of quick law enforcement gains, but in the longer run, this may damage trust in government systems and thus reduce governments' ability to control the problem.

In addition, for criminal law reactions to incentivize firms to self-police and self-report, we have argued that debarment from public contracting and other severe consequences of a criminal law reaction be placed under the control of criminal justice systems. Eventually, due to strict conditions on the use of criminal law reactions, it is important to let civil law reactions better complement the enforcement strategies of criminal justice systems. In this respect, the role of private enforcement should be streamlined to function as a supplement to public enforcement.

We have considered whether corruption detection strategies can be moved from the crime scene to questions about the persons condoning an unacceptable level of risk. The access to information about corruption risks, which managers must be assumed/expected to take into account when they make their business decisions, presents an opportunity to impose new risk prevention requirements on firms. This is similar to the evolution in other areas of safety-relevant science; firms must be expected to adapt to new knowledge about explosion risks or pollution risks, and regulatory agencies can request information about risk-mitigation strategies. While policy debates have centred on the question of how corporations' compliance systems should be taken into account, we argue that the key information for investigators – the degree of corruption risks accepted in operations – is available – and is at least as relevant for law enforcement as the quality of whistleblower channels and ethical guidelines. With the aid of a business school experiment, we conducted a simple test to find out whether such information can be requested. While this experiment is too simple for drawing large conclusions, we think it signals a promising direction for developing new regulatory tools for monitoring firms' security measures with respect to corruption.

## Appendix

### *Risk Assessment Form*

Below follows the risk assessment table as part of the student assignment. Students could fill out the columns titled Relevance operations (scaled so that numbers would make sense in relation to each other), Risk estimate (on a 1–10 scale where 1 is no

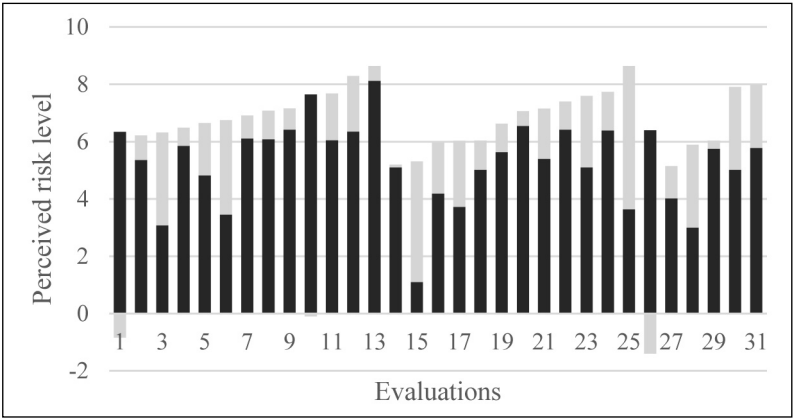
STUDENT NUMBER:		RISK ASSESSMENT TABLE			SECTOR:		COUNTRY:	
Risk scale (0-10): 10=extreme, 5=significant, 0=zero Risk implications: 0-2.5: go ahead; 2.5-5: awareness and precautions needed; 5-7.5: high risk, due diligence and substantial self-policing (if entry); 7.5-10: show stopper?								
RISK FACTOR OR CIRCUMSTANCE	Relevance operations weight	MARKET RISK			COMPANY RISK MITIGATION			
		Risk estimate scale 0-10	Risk contribution	Sources abbreviations	Mitigated risk estimate scale 0-10	Mitigated risk contribution	Comments mitigation strategy	
License for operations	0	0	0,00		0	0,00		
Government contracting	0	0	0,00		0	0,00		
Sector regulation and control	0	0	0,00		0	0,00		
Construction permits	0	0	0,00		0	0,00		
Acquisitions (upstreams)	0	0	0,00		0	0,00		
Customs/Imports	0	0	0,00		0	0,00		
<your choice>	0	0	0,00		0	0,00		
<your choice>	0	0	0,00		0	0,00		
<your choice>	0	0	0,00		0	0,00		
<your choice>	0	0	0,00		0	0,00		
<your choice>	0	0	0,00		0	0,00		
Summary	0		0,00			0,00		
Description	Total weight		Risk level			Mitigated risk level		

corruption) and Mitigated risk estimate (the same 1–10 scale). In addition, in the first column, they could add other risk factors – and many did. Risk contribution and Mitigated risk contribution were filled out automatically from figures in the other columns.

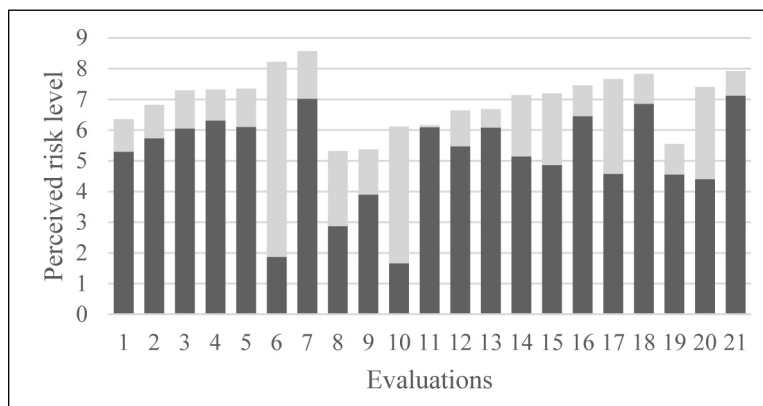
*Results: The Three Case Countries*

Student evaluations are presented horizontally. The vertical axis shows perceived risk level. The red/lower areas on the bars reflect mitigated risk estimate (after the company’s risk reduction strategies are taken into account) while the blue/higher areas reflect the risk reduction (i.e. the difference between estimated risk mitigation and neutral market risk). Hence, the total size of a bar reflects the total market risk.

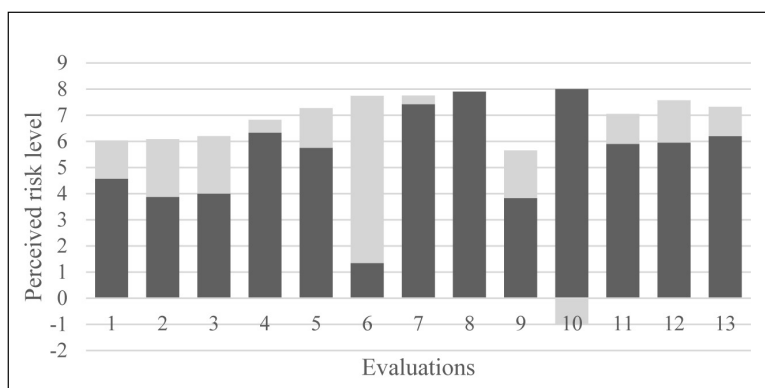
*Bangladesh*



Statistics	Bangladesh	Risk neutral	Constr. perm	Gvm. contr	Risk comp. dep.	Risk difference
Averages		6.77	6.37	6.47	5.29	1.49
Standard deviation		1.03	1.80	2.14	1.47	1.38

*Kyrgyzstan*

Statistics Kyrgyzstan	Risk neutral	Constr. Perm	Gvm. contr	Risk comp. dep.	Risk difference
Averages	6.97	5.52	7.00	5.16	1.81
Standard deviation	0.91	2.12	1.38	1,55	1.45

*Nicaragua*

Statistics Nicaragua	Risk neutral	Constr. perm	Gvm. contr	Risk comp. dep.	Risk difference
Averages	6.95	7.62	7.31	5.47	1.49
Standard deviation	0.75	1.50	1.60	1.90	1.74