

THE ROLE OF ENTREPRENEURS IN COMBATING INTERNATIONAL CORRUPTION

Every Estonian entrepreneur active on international markets can list countries where it is not possible to do business without offering a little something extra. However, this type of “business culture” is relatively costly and also dangerous for an entrepreneur. For an official of whichever country, the payment of a bribe is actually a crime identical to robbery, for example, or to any other crime.

A lot of attention is devoted to combating against the payment of bribes to foreign public officials in international business transactions. A respective convention has been created for this purpose and an institution (the OECD Working Group on Bribery) monitors the fulfillment of this convention. The Republic of Estonia has been a member of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions since 2005.

In terms of the fight against corruption, it is extremely dangerous to see corruption being treated with indifference or to see the problem being denied. OECD has found that the Estonian entrepreneurs and the wider public have a low level of awareness concerning this convention. While corruption is generally considered to be a vice, the problem arises in the fact that the Estonian officials and representatives of the business sector are not aware of the ban on offering or paying bribes to foreign public officials. People are not aware that paying a bribe to a foreign public official is a crime punishable in Estonia even when the country where the bribe was paid lacks the respective regulation or does not impose it.

It is not impossible to arrive at a situation where the entrepreneurs who lack the means to support honest and ethical business transactions will be unable to participate in state procurements or receive state aid. This is

why this document provides instructions to implement anti-corruption activities in companies.

Instructions for entrepreneurs and diplomats in combating corruption

1. When one interacts with company representatives and employees, it is necessary to direct attention to the illegality of bribery outside Estonia (*eg. training courses, informing people when hiring or sending them abroad etc*).
2. Interaction both in and between companies must be based on ethical and honest business practices and implement means that would enhance these practices (*eg. codes of ethic with their implementation mechanisms, protection of whistleblowers etc*).
3. When corruption cases are discovered, the respective info must be forwarded to the police or prosecuting authority. Everyone is obliged to notify the authorities about a first-degree crime committed by another person and not to cover up such incidents. According to the Penal Code paragraphs 306 and 307, failure to fulfill these obligations will result in a fine or even a 5-year prison sentence.

Comprehensive info about corruption and anti-corruption methods is displayed at the web page www.korruptsioon.ee of the Ministry of Justice. The role of diplomats in combating corruption is included in a separate [info sheet](#).

The Estonian Chamber of Commerce and Industry, the Ministry of Justice and the association TI-Estonia organize annual [seminars on honest entrepreneurship](#) that also discuss bribing foreign public officials. In addition, there are other seminars and conferences on honest business that disseminate respective experiences and discuss problems. All entrepreneurs are welcome to offer active participation.

Corruption, its causes and results

Corruption is the abuse of one's position for personal purpose. In a wider sense, corruption also includes cases of appropriation, extortion and fraud.

Corruption does not affect just the public sector: an example of private sector corruption would be when an employee responsible for purchasing raw materials comes to an agreement with the raw material producer without the knowledge of the management board or owners and receives personal gain from this. Private sector corruption also appears through the so-called active corruption (bribery) in vying for more favorable business circumstances.

The causes of corruption might lie in poor management organization, including the lack of transparency and responsibility, but also in the local cultural or political situation that accepts the use of power for personal purpose.

In addition to the fact that corruption is unfair and damaging to competition, in the end it is also damaging to the economy. Costs on corruption make up around three percent of the global economic turnover. Countries with poorly organized state apparatus are especially affected by corruption: scientists estimate that the corruptive income set aside in African countries has exceeded the foreign debt of these countries. Corruption is dangerous – it is used to hide other crimes (from traffic violations to terrorist acts, slavery and drug trafficking) and it enables money laundering and hiding illicit resources. In the public sector, corruptive preferences could jeopardize construction, healthcare and the environment – when the people do not prefer the best tender, but the one that provides a service in return. Political corruption endangers democracy and the rule of law. A corrupt government is also called a *cleptocracy* – the government of the thieves.

Corruption types include, for example, the preference of friends and family in filling positions (nepotism), biased preference (patronage), conflict of interests, insider trading, trading with influence, appropriation, bribes *etc.*

Bribe in the Estonian legislation means both a financial and other bonus (gifts, training trips, discounts *etc*) that an official or a third person receives in return for the public official committing an illegal act (or fails to commit an act required by law) through the use or abuse of the official's power. A bribe is a bribe regardless of whether the official merely agreed with the offered bonus, accepted it, asked for it or extorted the bonus. A **gratuity** is any bonus for committing a legal act. The gratuity is presumably paid to the official for fulfilling his/her role by the person who is served by the official: an additional fee received from clients through gifts or goodies creates doubt about the official's honesty and impartiality.

Corruption in Estonia and anti-corruption activities

About 300 official crimes are registered annually in Estonia, but these have never included a single case of international bribery. About 14% of the population has witnessed corruption. According to the results of the survey "Corruption in Estonia in 2006. A study of three target groups", the Estonian entrepreneurs do not consider corruption to be a particularly important obstacle to business (27% think otherwise), but corruption is considered to be a bigger problem by heads of companies with foreign capital. 12% of entrepreneurs have paid bribes. 15% claim they have been asked for bribes. Entrepreneurs have most often bribed local administration (8%), notaries and court bailiffs (4%) and legal protection bodies (2%) and auditing companies (2%).

According to the [Transparency International](#) Corruption Perceptions Index, Estonia was 13th among the EU Member States in 2008. Corruption was least perceived in Sweden, Denmark and New Zealand.

In order to combat corruption, the Estonian government has passed the [anti-corruption strategy](#) and Estonia also has the [Anti-Corruption Act](#).

In addition to the anti-corruption NGOs of which the most famous is Transparency International, represented in Estonia by the

[NGO TI-Estonia](#), other important international anti-corruption organizations include:

- The European Council (GRECO – Group of States against Corruption). GRECO carries out [periodic evaluations](#) of the anti-corruption activities of the Member States and has passed two anti-corruption conventions and also instructions for fighting political corruption.
- The European Union has passed the convention concerning the anti-corruption activities in relation to the officials of the European communities and the EU
- The United Nations (UN) has also passed an anti-corruption convention. The UN convention differs from the others by being broader in terms of issues.
- The Organization for Economic Co-operation and Development (OECD) includes the Working Group on Bribery (WGB) with the main goal of combating corruption in international transactions. WGB, like GRECO, performs [periodic evaluations](#) of member states to determine their capabilities in combating international corruption.

More on the OECD* convention

The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions deals with the member state obligations in banning, punishing and processing the incidents where a foreign public official is bribed in an international business transaction. The convention demands that the member states declare illegal the deliberate offer, promise or direct or mediated provision of any financial or other bonus to a foreign public official or third person when the official is asked to perform an act or refrain from such act that would provide or maintain illegal advantages in international business to the person who paid the bribe. It must also be a crime to participate in such an incident, including when the person incites, enables and aids or permits such an act. Both natural and legal persons bear responsibility for these crimes. The bribes and the income they generated will be confiscated. Hiding and distorting the origin of this income (including by other persons) is an incident of criminal money laundering and carries its own penalties.

The convention forbids the use of shadow accounting, performing transactions outside accounting or with insufficient proofs, entering non-existent expenses or obligations with incorrectly proven objects, and the use of false documents with the goal of bribing a foreign public official or hiding such bribes. Failure to organize accounting and the forgery of documents must be punishable acts. The organization demands that the accountants, auditors and tax authorities be vigilant to be able to notice cases of international corruption in their main line of work and to direct the attention of the respective bodies to suspicious transactions that might be a case of international bribery.

The OECD also demands vigilance from the organizers of state procurements and the authorities deciding over state aid provision. The state should not prefer or promote corrupt entrepreneurs. The member states undertake to provide mutual assistance (including through informal communication) in processing cases of international corruption.

The OECD WGB continuously checks the fulfillment of member state obligations and develops a [uniform understanding](#) of the convention, its annexes and practices.

* In addition to the so-called Old Europe, the OECD (that Estonia tries to join) unites also the economically successful countries of other continents: the investors of those countries need to know that all OECD member states share the same values. One such value is the joint opposition to corruption, especially to the bribing of foreign public officials in international business transactions that is discussed in the convention. The entrepreneurs and investors of the OECD member states want to be certain that competing even in third countries does not include unfair practices concerning competition – primarily through getting an upper hand by corruptive payments or other unfair advantages.