

Compliance & Ethics Professional

August
2017



A PUBLICATION OF THE SOCIETY OF CORPORATE COMPLIANCE AND ETHICS

www.corporatecompliance.org

Meet David S. Huntley

Senior Executive Vice President &
Chief Compliance Officer
AT&T, Dallas, TX

See page 16

29

How to create
a culture of
trust?

William Holzhauser

33

Can
ethics be
monitored?

Robin Singh

39

Bring your compliance
program to life
through technology

Sunil Bheda

41

Built to last: Top 5
reasons your compliance
initiatives fail

Amii Barnard-Bahn



by Barış Kalaycı, Filiz Toprak Esin, and Ömer Bayman

Analysis on the corruption perception in Turkey

- » Common points of criticism about Turkey are mainly lack of significant progress in recent years; poor track record on investigation, prosecution, and conviction; lack of independent anti-corruption body; and undue political influence on judiciary and law enforcement agents.
- » It is believed in Turkey that corruption is widespread; however, people are unaware of corruption's serious effects on society.
- » Lack of enforcement of the relevant rules and low probability to be detected and punished decreases the deterring effect of the legislation on individuals who are prone to commit corruption.
- » Economic tension on both the global and local scale increases the pressure on private entities to reach company goals.
- » The primary measure for protecting companies operating in emerging markets from the risk of corruption is to establish effective ethic and compliance programs.

Turkey is the 75th least corrupt nation out of 176 countries, according to the 2016 Corruption Perception Index published by Transparency International. This index measures perception of corruption in the public sector, and Turkey was placed as the 13th country in the G20. Although the legal landscape in Turkey regarding anti-corruption and anti-bribery has undergone serious changes in the past two decades, and Turkey has shown considerable efforts to comply its local laws with international standards, Turkey's ranking continued to decrease for the third consecutive year.

Dropping 9 places despite losing only 1 point is partially because new countries were added to the list. However, there are serious reasons behind this continuous decrease in points and ranking as well as having a score below the global average,

which is 43 points. In the last three years, Turkey experienced back-to-back elections, serious security problems, high-level corruption scandals, a massive influx of refugees, a couple of international crises, and a coup attempt. Naturally, these extraordinary developments can be seen as a potential cause of the backsliding in the fight against corruption and Turkey's decreasing rank. However, fundamental causes of this backsliding should be questioned in detail in order to reach useful conclusions and find solutions.

Guidance and criticisms

Foreign direct investment inflows are significant for the economy of Turkey, which is known as an



Kalaycı



Toprak Esin



Bayman

emerging market economy. During the last decades, similar to other emerging economies, eagerness to benefit from the international flows of capital created incentives for Turkish policymakers to reform policies and institutions; to fight against corruption; and to be more institutional, transparent, and accountable.

In this direction since the beginning of 2000s, Turkey signed international conventions such as the United Nations Convention against Corruption; the Organisation for Economic Co-operation and Development (OECD) Convention on Combating Bribery of Foreign Public Officials in International Business Transactions; the Council of Europe Criminal Law Convention on Corruption; the United Nations Convention against Transnational Organized Crime; the Council of Europe Civil Law Convention on Corruption; the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism.

Turkey has also showed its commitment to fighting against corruption by becoming a member of international organizations such as the Financial Action Task Force, the Group of States against Corruption (GRECO), the International Anti-Corruption Academy (IACA), and the Open Government Partnership Initiative (OGPI).

Thus, the majority of anti-corruption reforms were adopted with the support of these international organizations and to

comply with obligations undertaken with international conventions and accession talks with the European Union. Yet in recent years, Turkey has been receiving constant criticism from international organizations.

Common points of these criticisms are mainly lack of significant progress in recent years; poor track record on investigation,

prosecution, and conviction; lack of independent anti-corruption body; and undue political influence on judiciary and law enforcement agents. These criticisms are being repeated in recent years as the country continues to decrease in international corruption rankings.

Likewise, actions of the political leaders have significant effects on people's behaviors and values. Politicians must set an example and raise the public awareness about corruption.

Setting a tone at the top

Today, in every compliance training, executives are told that "tone at the top" is the most important component for an internal control of an organization. The term defines management's leadership and commitment toward openness, honesty, integrity, and ethical behavior. Likewise, actions of the political leaders have significant effects on people's behaviors and values. Politicians must set an example and raise the public awareness about corruption.

Within this context, the government has prepared two strategies on anti-corruption and anti-bribery in the past decade. The first one was published on February 22, 2010, with the title "The Strategy of The Government on Increasing Transparency and Strengthening the Fight against Corruption for 2010-2014." This

strategy was important as a commission and an executive council on Increasing Transparency and Strengthening the Fight against Corruption have been established for the implementation of the strategy. Within the scope of this strategy, some progress was made, such as the establishment of the ombudsman institution, the finalization of the Law on the Supreme Court of Public Accounts. Unfortunately most of the measures foreseen in the first strategy were not implemented, and Turkey was widely criticized on this issue.

On April 30, 2016, the action plan titled “Action Plan on Increasing Transparency and Strengthening the Fight against Corruption (2016-2019)” was published for the years 2016–2019 by the prime minister’s office. This was basically an update to the above-mentioned strategy for the years 2010–2014. However, as stated by the Transparency International as well as the European Commission in their Turkey 2016 Progress Report, this action plan is limited in scope—almost a backstep, as the scope is almost narrower than that of the previous strategy, considering that it omits the item regarding state and trade secrets as well as the item regarding the increase of transparency and prevention of corruption in the private sector.

One must add that it is believed in Turkey that corruption is widespread; however, people are unaware of corruption’s

serious effects on society. Therefore, public reaction against corruption is relatively weak, and this results in lack of domestic motivation to fight against corruption. Needless to say, Turkish politicians should focus on raising public awareness on corruption in order to create domestic reaction against it and change the perception

in people’s minds. A broad political consensus is by far the best asset on fighting against corruption.

Lack of effective, proportionate, and dissuasive penalties; low enforcement

Beyond any doubt, implementing legislation is not enough for addressing the challenges presented by

corruption, especially when the track record on investigation, prosecution, and conviction is poor.

Although there is no “umbrella” corruption law in force, it is fair to say that there are several pieces of legislation that cover most of the anti-corruption issues; however, lack of enforcement of the relevant rules and low probability to be detected and punished decrease the deterring effect of the legislation on individuals who are prone to commit corruption.

On the other hand, the existing practice is also insufficient to impose corporate liability effectively. This issue was highlighted by OECD in its Phase 3 Report, which highly criticized Turkey

On April 30, 2016, the action plan titled “Action Plan on Increasing Transparency and Strengthening the Fight against Corruption (2016-2019)” was published for the years 2016–2019 by the prime minister’s office.

for low enforcement and absence of sufficiently effective, proportionate, and dissuasive penalties for companies.

Therefore, the practitioners and judiciary must show to individuals and companies that they can also suffer from the consequences of the corruption.

Protection for whistleblowers is insufficient

Reporting is perhaps the key element for detecting corrupt activities, and it can be facilitated with accessible mechanisms where the identity and safety of a whistleblower is protected. It is of critical importance, especially in high-profile cases where powerful people are involved in corruption. Both in private and public sectors, only a safe and legally secured environment can encourage potential whistleblowers to report corrupt activities and provide evidence to law enforcement bodies.

The Witness Protection Law has some important flaws and therefore fails to provide adequate and sufficient protection in relation to anti-corruption legislation. Whistleblowers cannot remain anonymous or benefit from witness protection programs because the scope of the Witness Protection Law (numbered 5726 published in the *Official Gazette* dated January 5, 2008, numbered 26747) is limited with the crimes punishable by solitary confinement for life, life imprisonment, and imprisonment for 10 years or more, as well as crimes committed as part of a criminal

organization as defined in the penal code and other laws with criminal provisions. (Article 3 of the Witness Protection Law).

As the lower limit of prison sentences imposed for corruption-related offenses such as bribery, embezzlement, money laundering, and extortion are all below the

10-year threshold, whistleblowers who wish to disclose information cannot benefit from witness protection. This is a significant problem, especially considering the statistics according to which only around 2% of corrupt practices in the private sector

Therefore, the practitioners and judiciary must show to individuals and companies that they can also suffer from the consequences of the corruption.

in Turkey are identified through internal or external auditing. Corruption cases are mostly detected thanks to whistleblowers or mere coincidences. Therefore, it is really important that whistleblowers are granted anonymity and protection.

Anti-corruption bodies remained underused

The Prime Minister Communications Centre (BIMER), which is the main body for reporting on corruption, and the Prime Ministry Inspection Board are not independent bodies, and anonymity of the reporters is not guaranteed. This limits their use, especially in reporting of high-profile corruption.

Although money-laundering legislation is detailed and comprehensive enough and the Financial Crimes Investigation Board (MASAK)¹ increased its institutional capacity, its operations are currently focused on fighting against terrorist

activities. Under current circumstances, it would not be wrong to say that private sector is not being monitored enough with regard to money laundering, and therefore, MASAK's support to other bodies fighting corruption has remained limited.

There are no specialized public prosecution offices or courts exclusively dealing with corruption investigations. In addition to that, many judges, prosecutors, and police officers have been dismissed in recent years due to several big investigations that Turkey has undergone. Eventually, this also reduced the human resources of public and judicial institutions that are expected to fight against corruption.

Under these circumstances, establishment of an independent anti-corruption body in line with the United Nation's Anti-Corruption Convention can be of great use for effectively implementing and coordinating the anti-corruption policies and increasing the knowledge about the prevention of corruption, which would hopefully lead to effective enforcement of anti-corruption rules.

It takes two to make a corrupt deal

The Corruption Perception Index addresses corruption in the public sector; however, corruptive activities often involve a party from the private sector. For example, bribery is a reciprocal

crime that requires an agreement with a public official. Another problematic area that damages both private sector and public interest is public procurement. As stated by the European Commission's Turkey 2016 Progress Report, the Public Procurement Law numbered 4734

(published in the *Official Gazette* dated January 22, 2002, numbered 24648)

is particularly vulnerable to corruption.

The exceptions provided under the law are very wide, and the law is frequently amended, which raises doubts regarding the purpose of the amendments and impairs the concept of legal

security. Therefore, in order to find the root causes of the corruption in the public sector, the private sector should also be examined as a part of the equation.

Economic tension on both the global and local scale increases the pressure on private entities to reach company goals, and this makes employees and executives more prone to corruption and white-collar crimes. This can also increase the corruption in certain sectors where relations with public institutions are decisive on companies' performance, such as construction, pharmaceuticals, energy, or public procurement. Executives are struggling between their companies' financial objectives and economic realities in the world. Therefore, setting realistic company goals may also be an

Economic tension on both the global and local scale increases the pressure on private entities to reach company goals, and this makes employees and executives more prone to corruption and white-collar crimes.

effective measure against corruption in private sectors.

Last but not least

According to the Corruption Perceptions Survey prepared by Turkish Ethics and Reputations Society, 43% of the participants think that corruption is common in the Turkish private sector, whereas this rate was 35% in 2015. There is no doubt that there is a correlation between the increase of corruption perception in public and private sectors. Therefore, motivation in the private sector is equally important on fighting against corruption. Unfortunately, there is no appetite for policy making against corruption in the private sector. The latest report of Transparency International Turkey, Business Integrity Country Agenda—Turkey published in March 2017, demonstrated that among the companies listed on BIST²-50 and BIST Sustainability Index, only 13 companies have declarations from executives that they stand against corrupt behavior. In other words, the biggest companies in Turkey fail to show tone at the top and strong leadership support in this fight against corruption.

The primary measure for protecting companies, especially the ones operating in emerging markets, from the risk of corruption is to establish effective ethics and compliance programs and build a corruption-free company culture.

Extensive and effective use of anti-corruption programs is critical to prevent the spread of corruption culture.

Looking at the Corruption Perception Index 2016, one may conclude that Turkey's place can be explained by the addition of new countries to the list and several

countries having the same score.

However, it is clear that there is more behind this ranking. The brighter perspective will show us that the anti-corruption legislation in force is here to contribute to this fight. Now, it is up to the politicians, practitioners, and

Looking at the Corruption Perception Index 2016, one may conclude that Turkey's place can be explained by the addition of new countries to the list and several countries having the same score.

judiciary to attest willingness in order to honor this cause and show everyone that corruption is illegal and punished. Eventually, this determined enforcement regarding corruption will increase the perception in Turkish people and prevent Turkey's continued fall in the Corruption Perception Index. *

1. MASAK, which is directly attached to Ministry of Finance, was established in 1996. Its main purpose is to address corruption, and it is authorized to collect data, request documents from other institutions, conduct investigations, and convey investigation files to the competent public authorities for the prosecution of money-laundering cases. MASAK is also authorized to establish policies, prepare draft laws, bylaws and regulations.
2. Istanbul Stock Exchange

Barış Kalaycı (baris.kalayci@gun.av.tr) is a Partner at Gün + Partners in Istanbul, Turkey.

Filiz Toprak Esin (filiz.toprak@gun.av.tr) is a Managing Associate at Gün + Partners in Istanbul, Turkey.

Ömer Bayman (omer.bayman@gun.av.tr) is an Associate at Gün + Partners in Istanbul, Turkey.