

Preface

This book is the result of an international research project on the topic of bribery and the private sector, and specifically on the role of compliance programs. The project began in January 2012 under the auspices of the United Nations Office on Drugs and Crime (UNODC), and involved the participation of an international team of prominent academic institutions, working under the coordination of the International Scientific and Professional Advisory Council of the United Nations (ISPAC), and in cooperation with Eni.

The ambitious goal for the project was to design and make available a unique Anti-Bribery Compliance Model (an “ABC Model”), based on the results of a serious effort to integrate international best practice in anti-corruption policy with a new set of maximum standards drawn from a combination of empirical observation, concrete business experience, theoretical research and comparative analysis of legal systems and case law. The ABC Model published in this book has therefore been designed to serve as the most advanced set of guidelines for multinational companies in complying with anti-corruption laws, while also comprising a new benchmark for use by national legislators—endorsed by international institutions, and consistent with the United Nations Convention against Corruption (UNCAC)—in assessing the liability of corporations in the event of corruption.

The aim of this research is to develop and promote new preventive and enforcement strategies against corruption in the context of partnerships between the public and private sectors. To this end, four academic institutions were selected based on their scientific expertise and record of research in the field of corporate criminal liability: Equipe Internormativités dans l’espace pénal, Collège de France, Paris; Centro Studi “Federico Stella” sulla Giustizia penale e la Politica criminale, Università Cattolica del Sacro Cuore di Milano in partnership with LUISS in Rome; the School of Criminology and Criminal Justice, Northeastern University, Boston; and Instituto de Derecho penal Europeo e Internacional, Universidad de Castilla-la-Mancha. Eni then offered its support for this work, through making a contribution to the study based on its expertise in the field of anti-bribery practices.

This challenging research project has offered the unique opportunity for establishing a wider discussion forum focused on the development of innovative

instruments to combat bribery and corruption, whose results were set forth during the Conference on International Strategies Against Corruption held in Courmayeur from the 14th to the 16th of December 2012. The primary outcomes of this lively debate are presented in this volume. Indeed, the present work is divided in five main parts. The first section offers a comprehensive overview of the juridical issues and recent approaches that have led to the conception of the “ABC Model”. Without purporting to be exhaustive, it is sufficient here to highlight some of the contributions included therein. The opening article written by Stefano Manacorda illustrates the aims of the research conducted to draft the ABC model and proposes a complete depiction of the initiatives that have been established at international level to fight corruption. Furthermore, Francesco Centonze analyses the model of public-private partnerships in the prevention of this criminal phenomenon presenting an extensive illustration of a “hybrid governance” system and examining the valuable role that incentives play in the field. From the same perspective, the contribution of Adán Nieto Martín concerns the functions that internal investigations, whistle-blowing and cooperation serve in the criminal proceedings carried out to prosecute wrongdoers for perpetrating bribery or corruption. The second and the third part of this work present respectively the ABC model, at which the ensuing passages of this preface are extensively dedicated, and an analysis of the practical functioning of compliance programs with a focus on the oil and gas sector. The reasons behind the selection of such business sector are clearly illustrated in the article written by Stefania Giavazzi, where it is highlighted that it represents one of the most significant as well as at high risk sectors in relation to corruption. The fourth section of the volume offers a detailed outline of the international legal framework currently adopted in this field that, as it is underlined in the work of Juliette Tricot, presents a two-faced nature. On one hand, the number and diversity of norms, actions and initiatives at global or regional levels are commonly presented as a success story; whilst, on the other, the international legal framework on corruption reveals a complex and evolving picture and several doubts have arisen on its effectiveness. The articles contained in this part of the book concern *inter alia*, the anti-bribery self-regulation instruments adopted by corporations, the function assumed in this field by the G20 Anti-Corruption Working Group, the input into the discussion made by the B20 Task Groups on Anti-Corruption and Transparency and the important role assumed by the World Bank and the International Chamber of Commerce in the fight against corruption. Finally, the last section of the volume is entirely dedicated to the presentation of the contributions focused on the legal instruments developed in several domestic jurisdictions in order to combat such a criminal phenomenon. In particular, it offers an analysis of the US Foreign Corrupt Practices Act 1977, the UK Bribery Act 2010, and the legal framework currently implemented in Italy, Switzerland, France, Canada, Australia and China. Coming back to ABC model, which represents the final output of the research project, it can be defined as an exhaustive, innovative model, drawing on a combination of practical experience and theoretical research, with direct implications for corporate compliance practice.

From a practical perspective, the ABC Model stands out as a forward-looking anti-bribery compliance instrument, incorporating not only a compendium of the

most widely recognized examples of best practice, but also a set of new tools, original solutions and clear stances on some of the most controversial issues in the anti-corruption compliance debate. Its most innovative features include: unambiguous regulation of facilitation payments, political contributions and private commercial bribery; the integration of an ad hoc, dedicated Anti-Corruption Unit within the company structure; the provision of compulsory principles and rules for corporate governance, organizational structures, and decision-making processes; detailed provisions and procedures for the implementation and monitoring of the program; and a clear categorization for violations of the program and the concomitant disciplinary sanctions. All of these will contribute to making the ABC Model one new leading standard in anti-corruption compliance for years to come and an adaptable normative framework as well, being ready to adjust to the changing conditions of a quite complex regulative and economic environment as well as to the inputs which grow from an ever flourishing theoretical debate.

However advanced and ingenious any compliance model may be devised, and vitally needed for the prevention of corruption in the private sector and in society as a whole, it must account for the sheer reality that any actor, private or public, is no more living in a Newtonian era, namely expecting to solve or alleviate the problem of corruption in the corporate world single-acting solely on the political, administrative, economic, financial or market environments. Due to the intertwined causal chains and feedbacks which make corruption so complex a phenomenon to deal with at any level, the most suitable strategy must target it through a multiple approach, where private and public sectors act and regulate according to the firm awareness that any lack of integrity, any patent and undue inequality and any conflict of interest growing in one of them is bound to permanently damage the other. As Michael Sandel (Justice 2009) puts it, our societies suffer from a dearth of attention to inequality (and, we could also say, to one of its most powerful preparatory steps: conflict of interest) and one very important reason to worry about this neglectfulness is that the yawning of a huge gap between rich and poor (as confirmed for various European countries by recent data developed from the Gini coefficient, used as a measure of inequality of income or wealth) undermines the solidarity required by democratic citizenship, bringing to the secession by the privileged from public institutions and facilities, and thus to a kind of cultural and human desertification of those institutions that once gathered people together and served as informal schools of civic virtue. In few words: in the (not so) long run, it brings to what has been aptly called the hollowing out of the public realm and, we could add, the hollowing out of any persistent rule of law, as applied to public as well as private actors.

Inequality and conflict of interest being the most powerful breeding grounds of corruption (besides being conversely its further damaging outcomes), targeting them at any level, in the public as well as in the private sector, should be the primary way to break the vicious circles of the ever expanding corrupt flow. A serious crack-down on conflicts of interest appears to be the primary step towards prevention of State capture, the most noxious kind of corruption from which a large part of administrative, political and private corruptions ‘trickle down’. Albeit difficult, this

is not a mission impossible, and in any case it is an inescapable one for any anticorruption policy bent on achieving good integrity standards and not merely interested in exhibiting its self-righteousness or in selling junk reforms to easily distracted (or contented) audiences.

In this direction the ABC Model sounds as a quite promising step, being bent on preventing, among many other generative forces of corruption, corporate conflicts of interest (B.2.2) and thus countering the blurring of any divide between public and private sectors, which marks the extreme evolutionary stage of illicit practices—where the same distinction of roles between briber and bribee is dissolved—and the almost irreversible planting of the ‘cancer’ of corruption in the pith and marrow of society.

Due to the unique methodology adopted for this volume, the ABC Model is immediately applicable, anywhere, and by any company operating at the multinational level—since it stems from the business experience of a prominent multinational corporation and takes advantage of the empirical studies and surveys conducted during the preliminary stage of the project.

At the same time, the ABC Model is an instrument with global reach and multiple potential applications: on one hand, there is scope for implementing its policies in companies from all nations and in all industries, since those policies are based on a comprehensive and transversal risk analysis, are consistent with the UNCAC and are endorsed by UNODC; in addition, the model is intended to serve as a tool of harmonization among States, by establishing a new standard for the legal requirements and judicial criteria in assessing companies’ liability in cases of bribery.

The project would not have been possible without the support of many institutions and the dedication of some extraordinary people. As editors, we wish to express our warm gratitude to Dimitri Vlassis, chief of the Corruption and Economic Crime Branch of UNODC, who initially discussed this initiative with Professor Stefano Manacorda, as well as to Camilla Beria di Argentine, Director General of CNPDS/ISPAC, who enthusiastically agreed to undertake this work. The research program, and the present publication, would have never come into being without the invaluable support of Johanna Caputi-Mallmann at the secretariat of CNPDS/ISPAC, who assisted the whole group with great patience and competence. We also owe sincere thanks to Ben Young and his team at Babel Editing for their careful work in reviewing the manuscript and to Costantino Grasso for his assistance in reviewing the whole manuscript. We also wish to thank Eni for its material support, which in our view itself represents an example of best practice in public–private partnerships in the area of anti-corruption policies. The Courmayeur Mont Blanc Foundation and its chairman, Lodovico Passerin d’Entrèves, also deserve special thanks for having hosted and sponsored the International Conference on *International Strategies Against Corruption: Public–Private Partnership and Criminal Policy*.

Last, but not least, we express our appreciation to Springer, our publisher.

19th November 2013

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Preventing Corporate Corruption

The Anti-Bribery Compliance Model

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2014, XIV, 533 p. 2 illus., Hardcover

ISBN: 978-3-319-04479-8