

Anticorruption and emergency situations

Background note

The Covid-19 pandemic has brought about unprecedented challenges of human suffering, uncertainty, and major economic disruption globally. It has shown on a scale never seen before how systemic shocks can challenge the resilience of integrity and anticorruption systems, causing bribery to divert essential resources and corrupt business dealings to endanger vital public services, seriously weakening the effectiveness of and trust in the government action. It has also exacerbated pre-existing integrity challenges - emphasising structural weaknesses of national integrity systems - and added new ones. In particular, the OECD observed three key issues that had and will have high impact on the success or failure of current and future government interventions, as well on the preparedness for future crisis, i) challenges to accountability, control and oversight, ii) increased risks of integrity violations in public organisations and iii) integrity challenges in public procurement. Furthermore, the path to recovery may create new environments ripe for bribery and corruption, as governments pass large stimulus packages to bolster business.

Strengthening integrity and anticorruption systems at the national and international levels to resist and adapt to such shocks is critical to help ensure swifter recovery and minimise the social and economic impact of future crises. The note below builds on experience from the COVID19 Crisis but also past emergencies to identify where countries could better prepare to ensure that integrity and anticorruption systems are equipped and continue to function in times of crisis.

Integrity and corruption risks in emergency situations

The risks for anticorruption enforcement

The first impact of emergency situations on anti-corruption enforcement concerns the **detection of offences**. Certain economic crimes, such as bribery and corruption, are complex and recognised as particularly challenging to detect at any time, but may become even more difficult in emergency situations. For instance, **self-reporting** by defendant companies is a major source of detection of foreign bribery cases,¹ but internal investigations may take longer to come to light in times of crisis. **Whistleblowers, media and investigative journalism** as sources of detection of misconduct may also be under greater threat if attempts are made to silence reports on emergency situations by whistleblowers and journalists.² Fear of retaliation, particularly the loss of employment where emergency situations negatively impact the business environment, could result in even lower whistleblower reports and hence detection. Finally, detection capacities of certain **government agencies** may also be affected: for instance, according to the FATF, although financial intelligence units

¹ OECD (2017), [The Detection of Foreign Bribery](#).

² With respect to the Covid-19 crisis, according to the International Press Institute, almost a third of monitored press freedom violations involved the arrest, detention or charging of journalists reporting on the pandemic. See: <https://ipi.media/covid19-media-freedom-monitoring/>

(FIUs) have overall remained operational there are some reports that suggest that some FIUs are significantly reducing operations or even shutting down completely.³

With respect to the **direct impact on enforcement capacity** in countries, emergency situations can impact many types of law enforcement activity. These include:

- **Investigative capacities:** Some types of evidence gathering may be affected, including search and seizure or interviewing of witnesses and suspects. While some technological tools, such as the use of virtual platforms for interviews, can allow to pursue some of these activities, they also pose practical challenges such as determining which video conferencing platforms are sufficiently secure to use, or how to print and serve summons for witnesses when working remotely.
- **Trials:** Ongoing trials may be adjourned and scheduled trials may be postponed. While virtual trials can be envisaged, they may pose challenges in terms of respecting the rule of law and rights of the defence, and new guarantees may need to be developed.
- **International cooperation:** The impact on investigative capacities may also affect the provision of mutual legal assistance and extradition in transnational corruption cases. Informal cooperation may also be affected, for instance if travel restrictions prevent participation in anti-corruption law enforcement networks.
- **Delays in investigations and prosecutions:** The above-mentioned factors entail delays in ongoing investigations, including as concerns collection of physical evidence or ability to obtain court orders and to confiscate or impose asset recovery measures. These delays may entail loss of existing evidence or expiration of statute of limitations.
- **Allocation of resources:** In the medium to long term, emergency situations may also cause public resources to be reallocated. This could pose a risk if changes in priorities entail significant reallocation of resources away from investigations and prosecutions of serious economic crime, including bribery and corruption.

The risks to accountability, control and oversight

To mitigate the economic recession caused by COVID-19, governments have been approving significant economic stimulus packages. Paradoxically, governments have been relaxing controls in order to urgently spend funds, further amplifying these as well as strategic and operational risks, which can undermine the effectiveness and efficiency of such programmes. Moreover, this situation was exacerbated by disruptions to the institutions that are typically responsible for accountability and oversight in government. Lastly, risks emerged in relation to the integrity of decision-making process of both the emergency and recovery measures. Indeed, lobbying activities by powerful interests, with close connections to policy makers and regulators, can lead to capture and important biases in the design of policy responses and allocation of resources to the detriment of effective public policy making.

The risks of integrity violations in public organisations

Evidence from past recessions has shown that economic downturns lead to increased occupational fraud, embezzlement, bribery of public officials, and other integrity violations within public entities. Such risks increase when the following three factors are at play, which is particularly the case in sudden economic downturns:

³ FATF (May 2020) [COVID-19-related Money Laundering and Terrorist Financing-Risks and Policy Responses](#), p.12.

- **Financial pressure:** As an immediate and longer term consequence of the COVID-19, many individuals and especially small and medium enterprises have been facing increased financial shortcomings which in turn may trigger corrupt behaviour or fraud;
- **Opportunity:** mass redundancies that are especially pervasive during a recession create gaps in organisations' internal control and audit systems, leaving them more vulnerable to internal fraud and corrupt practices;
- **Rationalisation:** Given the pressures, individuals may also rationalise wrongdoing through justifications such as “everybody does it” or “if I don’t take the opportunity, others will”.

The risks to integrity in public procurement

The COVID-19 crisis has created three main integrity challenges for governments in relation to public procurement. First, governments have been urgently procuring large quantities of goods and services, such as hospital equipment, medical ventilators, hand sanitisers, face masks, and health services, in order to meet the immediate needs of the health sector and affected communities. A second integrity consideration that has been emerging from the COVID-19 crisis is the lack of stockpile preparedness across many OECD countries, leading to increased competition for necessary supplies globally. Thirdly, besides the procurement of goods and services required to directly address the current COVID-19 crisis, governments also had to continue managing ongoing public contracts.

Building the resilience of anticorruption and integrity systems to shocks

Based on the G20 compendium of good practices developed last year in the context of the COVID-19 as well as additional experience collected in previous emergency situations, this section proposes actions that countries could take both ex ante and during a crisis to ensure their systems are equipped in times of crisis.

Ensuring effective enforcement in times of crisis

- **Strengthen detection capacities of corruption and bribery cases:** Upholding capacities for early detection is key to minimising the damage caused by corruption in the efforts to mitigate the impact of emergency situations and assisting economic recovery. Particular attention may need to be paid to key vulnerable sectors of the economy that are particularly at risk of corruption in emergency situations, such as the healthcare sector, but also food supply, transport and storage, and communications.
- **Facilitate the use of new technologies for law enforcement:** complex economic crime already largely occurs largely online, with the result that cyber-criminality is rising.⁴ Emergency situations such as pandemics are likely to further accelerate the move to online communications and payments. Ensuring that law enforcement authorities are adequately equipped and trained in digital investigations, including for evidence gathering capacities, is therefore key to the effective detection and investigation of corruption and bribery offences. In addition, **new technologies can ensure continuity in criminal proceedings.** This can be achieved by inter alia, increased digitalised filing and evidence systems, allowing prosecutors

⁴ INTERPOL (April 2020), [Global landscape on Covid-19 cyberthreat](#).

to carry out remotely interviews of suspects and witnesses or other investigative techniques, and considering the possibility of virtual trial proceedings and digitisation of court procedures.

- **Ensure adequate enforcement resources:** Adequate resources should be maintained including during emergency situations to permit effective detection, investigation and prosecution of bribery and corruption. In addition to investigative and prosecutorial authorities, countries should also ensure that FIUs are adequately resourced to effectively detect money-laundering cases predicated on corruption and bribery offences. Adequate resources should also include awareness-raising and training on the particular complexities of corruption offences under the circumstances specific to the emergency situation.
- **Extend limitation periods for the enforcement of corruption and bribery cases:** Since emergency situations are likely to cause delays in investigations and prosecutions, consideration should be given to possibilities to suspend or extend limitation periods where necessary. This could include adoption of legislative measures which could apply to statutes of limitations as well as limitation periods for investigation where relevant.
- **Continue engaging in formal and informal international cooperation:** Although emergency situations may cause delays, international cooperation should continue to ensure transnational economic crime cases – often the most serious ones – can be effectively investigated and prosecuted. The use of new technologies can also assist in this respect to facilitate engagement with foreign counterparts. With a view to facilitating informal cooperation and sharing good practices, including on dealing with specific corruption and bribery risks in emergency situations, investigative and prosecutorial authorities should also continue to make use of international and regional anti-corruption law enforcement networks such as the Global Operational Network of Anti-Corruption Law Enforcement Authorities, the OECD Global Law Enforcement Network (GLEN), the OECD Working Group on Bribery Law Enforcement Officials (LEOs) and the INTERPOL/StAR Global Focal Point Network.

Maintaining accountability, control and oversight

A number of measures by governments have been identified to strengthen accountability mechanisms and oversight of economic stimulus packages in times of crisis. These include:

- On the accountability of the decision-making processes:
 - Raising awareness of integrity standards covering interactions between public officials and private sector representatives in times of crisis to ensure that all public sector employee and lobbyists continue to abide these standards. For institutions or functions in charge of overseeing the implementation of online reporting requirements for public officials and lobbyists, such as lobbying registers, this includes avoiding any extension of reporting deadlines. If circumstances caused by crisis prevent lobbyists to file reports on time, entities could provide guidance or ensure that a contact point is available to provide advice about applying standards and on what is acceptable in specific circumstances. For example, during the Covid-19 crisis, the California Fair Political Practices Commission published a statement offering guidance on lobbying filing deadlines in wake of COVID-19. The Office of the Commissioner of Lobbying of Canada continued to communicate on registration deadlines during the pandemic, including through social media, emphasising that “Canadians have the right to know who was communicating with the country’s decision-makers about what subjects during these unprecedented times”.

- Developing detailed guidelines, at the government or organisational level, for policy makers and relevant authorities on decision-making in times of crisis. During the Covid-19 crisis, for example the Irish Department of Health published an “Ethical framework for decision-making in a pandemic”, which includes ethical principles and procedural values to be applied in decision-making processes during a pandemic. The Scottish Government published a “COVID-19 Framework for Decision-Making”, reviewed every three weeks, which details the approach of the government response and provides information for interested stakeholders concerning the opportunity to participate in policy-making, through a list of contact points across the Government.
- Including conflict-of-interest provisions in the stimulus packages following a crisis that prohibit funds from being allocated to businesses controlled or owned by senior public officials. For example, the Coronavirus Aid, Relief and Economic Security (CARES) Act in the United States included conflict-of-interest rules to ensure that companies in which high-level public officials⁵ have an equity interest may not be eligible for any emergency relief.
- From the control/oversight perspective:
 - Ensuring that Supreme Audit Institutions and internal audit functions have the resources they need to perform their audit function of the economic stimulus packages. For instance, the United States' stimulus package related to the Covid-19 crisis also allocated funding to the Government Accountability Office (GAO), the SAI, enabling it to assist Congress in conducting oversight of overspending in relation to the crisis.
 - Plan for the possibility specialised oversight bodies to be set up temporarily when emergency occurs, while ensuring they have a clear and coherent mandate relative to existing accountability actors. For instance, the Pandemic Response Accountability Committee was established to ensure oversight of the economic stimulus package in the United States. To avoid duplication and draw on existing capacities, the Committee was made up of independent Inspectors General with responsibilities for conducting and co-ordinating audits and investigations to provide accountability and identify waste, fraud, and abuse in crisis-related spending.
 - Ensuring that minimum integrity risk assessments are carried out. Given the rapid pace at which economic stimulus programmes are required to be rolled out, it may not be feasible to conduct a comprehensive integrity risk assessment. Public officials can, at the very minimum, be encouraged to document and report any obstacles and workarounds as they arise. This can include documenting changes to control activities in order to accommodate short-term objectives.
 - Ensuring that adequate procedures are in place to design, review and approve programmes urgently. For example, in order to ensure efficient yet accountable implementation of the 2008 Economic Action Plan, the Privy Council Office and Treasury Board Secretariat in Canada established an accelerated process for financial and policy approvals, reducing the timeframe from 6 months to 2 months.

⁵ Officials covered by the provision include the president of the United States, the vice president, a head of an executive department or a member of Congress, as well as their spouse, child, son- or daughter-in-law.

Maintaining integrity standards in public organisations

Countries could take action to ensure that public sector organisations can proactively improve controls that would prevent and detect corruption and occupational fraud in public organisations during critical times by:

- Articulating clear responsibilities and lines of communication to ensure that all public officials are accountable for their actions. Crisis and economic downturn situations create risks for the public financial management system, and the standard policies and processes for internal control and risk management. While some controls may be relaxed to meet immediate needs, managers remain a critical “first line” of assurance and such responsibility should be reinforced together with communication about expectations to all staff.
- Reviewing and strengthening existing public integrity systems, including the adoption of risk-based approach to identify which public organisation employees may be at higher risk and identify targeted mitigation measures.
- Increasing their data analytics capabilities and systems to make sure that automated systems effectively identify fraudulent patterns and actors. This could help institutions undertake historical analyses to identify fraudulent practices during the COVID-19 crisis and learn lessons from the crisis. For example, following the 2008 financial crisis, the Recovery Accountability and Transparency Board in the United States, which co-ordinated the work of the inspectors general monitoring the implementation of the American Recovery and Reinvestment Act of 2009, created an analytical platform that could identify recipient anomalies, and then tasked the inspector general for the particular programme to address issues..

Strengthening integrity of emergency public procurement

To address integrity risks in times of crisis and prevent them in future crisis in relation to public procurement, a comprehensive procurement strategy could consist in the following mitigating measures:

- Using or expanding existing e-procurement platforms to record transactional information on the procurement of emergency items.
- Allowing remote access by auditors and oversight bodies to all procurement records, to ensure that audits can continue despite restrictions on carrying out physical inspections and paper-based reviews.
- Ensuring that procurement entities have appropriate human resources and trained public officials who have the skills to carry out an emergency procurement procedure.
- Preparing mechanisms to address future supply-chain disruptions for critical goods or services that are becoming evident in the crisis, for example the provision of personal protection equipment, since a shortage in supply is creating more potential for corruption.
- Providing clear guidelines on emergency procurements.
- Setting up a central price and supplier tracking.
- Relying on co-operative and collaborative approaches.

Engaging with the private sector to maintain high level of compliance in times of crisis

As noted by the G20, “the private sector is an essential partner of governments in the fight against corruption, and its commitment to transparency and integrity plays an integral role in achieving anti-corruption goals.”⁶ In this respect, the implementation by companies of effective internal controls, ethics and compliance programmes or measures to prevent and detect corruption is a key component to effectively combating corruption and bribery. The challenges that emergency situations can pose to governments will also be faced by companies, in particular in the following areas:

- **Adjusting to the risks during the crisis:** Effective anti-corruption compliance relies on an assessment of the risks specific to the company, including its size and geographical and industrial area of operation. It is a continuously evolving exercise at any time, and one that may need to be carried out more urgently and with more limited resources in emergency situations. Adjusting corporate compliance to the risks is all the more crucial as corruption and bribery risks often occur in sectors of the economy that are key to an effective response to emergency situations and recovery, including healthcare, transport and communications.⁷ The urgent need for medical equipment, for instance, may result in the simplification or even suspension of procurement rules under emergency conditions, a situation presenting heightened risks of corruption in light of the fact that over half of foreign bribery cases involve obtaining public procurement contracts.⁸
- **Adjusting to the medium to long term risks:** Shifts in regional risks may also emerge. As foreign direct investment flows may evolve towards new destinations,⁹ new country risks may emerge for transnational corruption, including through intermediaries as companies establish subsidiaries in new destination countries. Additional fraud and corruption risks may also increase in the medium to long term when large stimulus packages are adopted by governments to boost the economy post-crisis.¹⁰ As companies seek to restart business in an increasingly competitive environment, risks of corruption and bribery may become more prevalent.
- **Adequate resources for anti-corruption compliance:** Adequate resources are critical to the effectiveness of anti-corruption compliance, but compliance is still often viewed as a cost centre within the company, rather than a valuable investment, and the pressure to make profits can sometimes be perceived as fundamentally at odds with the importance of a compliance programme.¹¹ Emergency situations, and the economic crisis and the strain on company resources they entail, are likely to exacerbate this situation. In times of economic duress, companies may perceive the risks of corruption only as a potential threat, in comparison with the more immediate and concrete risk of losing business, and may therefore be reluctant to spend resources on compliance.

⁶ G20 High-Level Principles on Private Sector Transparency and Integrity.

⁷ OECD (2014), [OECD Foreign Bribery Report: An analysis of the crime of bribery of foreign public officials](#).

⁸ See *supra*, p. 22.

⁹ See, e.g. OECD, [Foreign direct investment flows in the time of COVID-19](#), p. 2.

¹⁰ The Head of the EU’s Public Prosecutor’s Office warned that the EU’s Covid-19 stimulus package to affected countries could lead to a surge of fraud and corruption. See Reuters (12 May 2020) [“Virus response opens way for corruption: EU chief prosecutor”](#).

¹¹ OECD (2020), Corporate Anti-Corruption Compliance Drivers, Mechanisms, and Ideas for Change.

- **Conducting effective internal investigations:** One in three foreign bribery cases came to the attention of authorities through self-reporting by defendant companies or individuals.¹² Given the challenges facing companies in emergency situations, internal investigations may take longer to bring to light corruption and bribery incidents. In particular, if companies reduce their internal compliance and audit functions due to a strain on resources, these cases may never be detected or, if they are, take much longer to investigate. As noted above, whistleblowers may also be less prone to coming forward due to heightened fears of loss of employment.
- **Rooting anti-corruption compliance worldwide:** Emergency situations may also impact the practical implementation of compliance programmes across an organisation. For a compliance programme to be effective in a company, it is key to adapt it to local needs and meet with people on the ground, including to overcome possible cultural hurdles, not only within the organisation but also when it comes to conveying the programme effectively to third parties. Emergency situations such as the one caused by the Covid-19 pandemic or any other crisis implying significant travel restrictions will therefore make it more difficult for large companies to root their anti-corruption compliance programme worldwide, including through their supply chain.

In this context, it is critical to maintain communication with the private sector on internal controls, ethics and compliance transparency and integrity. Companies need to ensure that internal controls, ethics and compliance programmes and measures to prevent and detect corruption are maintained using a risk-based approach. These risks are likely to differ depending on the nature of the emergency situation and to evolve over time. In spite of the tightening of the economy that may be caused by emergency situations, compliance resources in companies should remain stable to allow for compliance programmes to adapt and continue to be implemented rigorously.

Countries may need to remind actors of their legal obligations and the consequences of not complying with the law. They could also facilitate companies' adaptation by raising awareness on companies' specific risk exposure in time of crisis, including risks relative to government aid and the use of high-risk intermediaries.

Law enforcement authorities should also keep communication lines open with companies with a view to encouraging them to be transparent if they are facing difficulties conducting internal investigations or facing other compliance challenges during and after the crisis.

¹² OECD (2017), [The Detection of Foreign Bribery](#).

References:

- OECD (2020), Public Integrity for an Effective COVID-19 Response and Recovery, <https://www.oecd.org/coronavirus/policy-responses/public-integrity-for-an-effective-covid-19-response-and-recovery-a5c35d8c/>
- OECD (2020), Safeguarding COVID-19 social benefit programmes from fraud and error, <http://www.oecd.org/coronavirus/policy-responses/safeguarding-covid-19-social-benefit-programmes-from-fraud-and-error-4e21c80e/>.
- OECD (2020), *Countering Fraud in Social Benefit Programmes: Taking Stock of Current Measures and Future Directions*, OECD Publishing, Paris, <https://doi.org/10.1787/71df2657-en>.
- OECD (2020), *OECD Public Integrity Handbook*, OECD Publishing, Paris, <https://doi.org/10.1787/ac8ed8e8-en>.
- OECD (2017), OECD Recommendation of the Council on Public Integrity, <https://www.oecd.org/gov/ethics/OECD-Recommendation-Public-Integrity.pdf>.
- European Ombudsman (2020), Letter to the President of the European Commission concerning transparency of the EU Covid-19 crisis response (SI/1/2020/TE), <https://www.ombudsman.europa.eu/en/correspondence/en/127057> (FPPC, 2020[20]).
- FPPC (2020), State of California Fair Political Practices Commission. FPPC offers guidance on Lobbying Filing Deadlines in wake of COVID-19, <http://www.fppc.ca.gov/content/dam/fppc/NS-Documents/MediaCenter/2020/FPPC%20Guidance%20on%20Lobbying%20Filing%20Deadlines.pdf>.
- Government of Ireland Department of Health (2020), Ethical Framework for Decision-Making in a Pandemic, <https://www.gov.ie/en/publication/dbf3fb-ethical-framework-for-decision-making-in-a-pandemic/>
- Office of the Commissioner of Lobbying of Canada (2020), Annual Report 2019-20, <https://lobbycanada.gc.ca/en/reports-and-publications/annual-report-2019-20/>
- Scottish Government (2020), Coronavirus (COVID-19): framework for decision making, <https://www.gov.scot/publications/coronavirus-covid-19-framework-decision-making/pages/1/>.