Policy Briefing Note

Fair Market Conditions for Competitiveness in the Adriatic Region

Collective Action and the Fight Against Corruption

OECD

GLOBAL RELATIONS
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Collective Action and the Fight Against Corruption

WHY COLLECTIVE ACTION MATTERS

- Collective action is an important tool in advancing integrity and achieving a level playing field for all actors in the market.
- Collective actions by multiple firms across a given sector have proven effective in promoting rules that companies will actively comply with at both the national and international levels.
- Collective action promotes greater competitiveness among different market players in order to achieve a "level playing field", i.e. a market that allows everyone to participate freely in economic activity.
- Beyond better economic outcomes, collective actions boost the reputation – and thus economic attractiveness – of countries where such initiatives are deployed.

What is the issue?

Corruption, in all its forms, has extremely negative political, social and economic effects. It is a breeding ground for poverty and a real threat to democracy, leading to a loss of citizens' trust in institutions, and is an important factor in undermining peace and endangering stability in the world. It is an obstacle to economic development, and impedes private-sector-led growth, hindering investment and competitiveness. At the global level, several instruments of international law have been adopted to fight corruption more effectively, notably including the OECD Convention on Combating Bribery of Foreign Public Officials (OECD, 1997), which requires signatory countries to criminalise offering bribes to foreign public officials in international business transactions. The OECD Convention complements the United Nations Convention against Corruption (UN, 2013), which contains specific provisions to tackle national and transnational corruption. As part of the implementation of these conventions, many countries have strengthened their legal and institutional frameworks and adopted comprehensive anti-corruption strategies.

Given the scale and complexity of this phenomenon, and in order to achieve a healthier business environment, all actors across society must be involved. Effective co-ordination is required between the public and private sectors, particularly to prevent corruption.

What is collective action?

In practice, the collective action involves bringing together actors in an alliance of organisations from a given industrial, commercial or financial sector, who share the conviction that corruption produces harmful effects in the long term, to define fair rules between competitors to which they adhere globally and individually. Collective action involves pooling efforts through the simultaneous adoption of shared principles and standards, in order to harmonise the rules of the game and complicate any attempt to distort competition rules while guaranteeing equal market access to the greatest possible extent. Collective action tends to promote greater competitiveness among different market players in order to achieve a "level playing field", i.e. a market that allows everyone to participate freely in economic activity. Participation in the action is a tangible proof of a company's commitment to a compliance approach (OECD, 2020).

Why is this important?

In a context of endemic and widespread corruption, individual action by a single company – while important – may have only a limited impact. Collective actions by multiple firms across a given sector have proven much more effective in promoting rules that companies will actively comply with at both the national and international levels. This type of action is thus an important tool in advancing integrity and achieving a level playing field for all actors in the market. Beyond better economic outcomes, collective actions also boost the reputation – and thus economic attractiveness – of countries where such initiatives are deployed. However, collective action requires time, expertise and close collaboration to succeed. Design and implementation are also complex to ensure that the action complies with competition law. Moreover to ensure a successful outcome for all, the process needs to be carefully guided by the competent authority to ensure that the process remains collaborative and facilitates the exchange of ideas on how to concretely improve business practices.

The international community has adopted several conventions to fight corruption at the international level, including the OECD Convention on Combating Bribery of Foreign Public Officials. Accordingly, numerous countries have tightened their legislative arsenals in this area, both in terms of repression and prevention obligations on the part of companies. Many domestic laws now oblige companies to set up a system to prevent both active and passive corruption. In addition, private sector companies – as both actors and victims of corruption – are increasingly realising the adverse effects of corruption on their economic health, viability and long-term stability. In this context, fighting corruption is increasingly becoming a business decision, with companies mobilised to implement actions to strengthen business integrity to complement measures taken by public authorities.

Thus, collective action consists of collaboration based on short-term agreements or more sustainable initiatives, between competing but individually vulnerable actors who form an

alliance to define and implement fair rules for all in order to eliminate the risk of corruption in a given sector (UNODC, 2014).
Collective action is often initiated due to the necessity to overcome the "prisoner's dilemma", i.e. situations in which non-co-ordinated participants will seek to maximise their individual advantage, even if everyone would benefit from co-operation in the sense of complying with the rule of law. For example, this dynamic might prevent operators from seeking to adopt higher social standards because their competitive position could be compromised by less scrupulous competitors. A collective action strategy can help level the playing field by ensuring that all participants adopt the necessary standards at the same time. By co-operating and monitoring each other, companies may aim to comply with the law, for example by introducing stricter standards or jointly requiring greater integrity in the business environment. Thus, the grouping of companies within a collective action makes it possible to limit the risk that an individual company may be outperformed in the market by a less scrupulous company.

Forms and types of collective action

When put into practice, the concept of collective action is polymorphic. Its use may vary according to the specific needs identified or the circumstances faced by the stakeholders who wish to act collectively. Collective action can take many forms, which vary in the binding nature of their commitments. They might involve a statement or declaration condemning corruption, an integrity pact, an initiative to develop common standards and principles, or a certification process:

1) A statement or declaration condemning corruption

An anti-corruption statement (or declaration) is an ethical public commitment covering a well-defined project or transaction, in which stakeholders agree to cooperate to achieve certain goals. The aim is to prevent corruption in individual projects and business transactions It specifies that managers and employees of the companies signing up to the action—or potential contractors, subcontractors and other service providers—refuse to take part in and do not solicit corruption. This form of collective action is not subject to external monitoring. This is a voluntary agreement, which relies on self-enforcement and a good level of commitment by participants.

2) An Integrity Pact

Integrity pacts (previously referred to as "isles of integrity"), just like anti-corruption statements, relate to a specific project or transaction. However, unlike anti-corruption statements, integrity pacts always take the form of a formal contract that specifies the rights and obligations of the principal and each of the bidders in the context of public procurement contracts. Besides, it is subject to external monitoring. As such, integrity pacts are the most binding level of Collective Action (Pieth, 2012). The financing of these pacts may be shared between the company serving as tenderer, allocated project funds, and the resources of the contracting authority itself. Generally, these costs represent only a small percentage of the total cost of the project.

To succeed the integrity pacts should be designed in a flexible way, in order to be able to adapt to the local context in which they operate, and to have an effective supervisory system.

3) An initiative to develop common standards and principles

Unlike integrity pacts, this form of collective action – also known as "standard setting initiatives" – is part of a long-term vision. The action is initiated by a group of stakeholders who wish to combat corruption by combining their efforts to promote transparency in the business world. This type of action mainly aims at encouraging governments to modify their anti-corruption policies and to promote efforts to combat this serious problem. In practice, it can take the form of codes of conduct in a given sector or industry.

4) Certification business coalition or labelling

Certifying business coalition or "labelling" is also a way of voluntarily agreeing to comply with certain standards and involves long-term goals. This type of collective action consists of creating a coalition responsible for ensuring the respect of obligations and certifying that members of the coalition adhere to shared common principles in the fight against corruption. It is subject to regular independent audits and external monitoring processes in order to ensure compliance and enforcement. Given that one of the main pitfalls of collective action is the informal nature that it can take, certification can be a good way to remedy this problem of informality.

These different forms stand out through their binding nature of the joint commitments, as well as the nature of the objectives pursued.

What can policy makers in the Adriatic region do?

Despite the variety of collective actions, they share some common characteristics. The OECD (2020), *Global Lessons on Collective Action against Corruption* report has identified the following key success factors, illustrated with case study examples from around the world and offers a useful guide for other groups planning similar actions.

1) Bringing together multiple actors led by "champion" companies

By definition, collective action must bring together a number of companies, directly or indirectly (through organisations or federations for example), in order to be considered sufficiently representative of the industrial or financial sector, or the profession to which they belong. This plurality of participants prevents collective action from being "monopolised" by a single company and thus being treated as a form of lobbying.

2) Including small and medium-sized enterprises as well as micro-enterprises

Collective action against corruption often involves very large multinational companies. However, such initiatives are also very useful, if not indispensable, for national or regional companies, small and medium-sized enterprises (SMEs) or even micro-enterprises, often grouped together in employers' organisations or professional associations. However, involving large groups in collective action may present some difficulties. It can be more difficult to reach consensus on the activities to be carried out.

3) Pursuing multisectoral and multipartite collective action

Collective action initially brings together private sector actors and individual enterprises grouped into industrial organisations or professional associations. However, depending on the goal pursued, these actions may also involve public, national, regional or local authorities, as well as non-government organisations. In other words, they can involve representatives of civil society and experts from the sectors concerned.

4) Ensuring that collective effort does not replace individual action

Collective action against corruption must rely primarily on the individual ethical values of the various stakeholders. Thus, it is preferable and beneficial for each company wishing to participate in collective action to ensure they have their own effective integrity policies highlighting the values and procedures of their anti-corruption approach and attesting to their full respect of these procedures. This helps to ensure that companies cannot use their membership of collective action to neglect their individual responsibility and to avoid putting in place their own integrity mechanism.

5) Sustaining collective action

Collective action must be sustainable. It does not involve a single, isolated event. In fact, a certain period of development and maturation is required, during which the various aspects of improving business integrity can be addressed. Without this effort to mature, collective action will not be able to produce the expected results over time. However, if stakeholders judge that the goal of the specific action has been achieved, they may terminate it or focus on another programme or topic.

6) Keeping structures light

Collective action should not involve creating cumbersome administration. It can be limited to a very light structure, with a modest budget, allowing for greater flexibility. Indeed, due to the importance of fixed costs, some companies might be reluctant to finance an additional structure. In the interests of cutting costs and remaining flexible, their preference may be to absorb their own costs and to jointly finance only the costs incurred by people outside their payrolls, such as the facilitator.

7) Offering "win-win" benefits

Members of a collective action frequently belong to large international groups operating abroad. Collective action implemented overseas must show sensitivity towards the sociocultural context in which the activity occurs. It must also contain demonstrated and demonstrable benefits for the sector, region or country in which it is to be established. In practice, this means that by improving stakeholders' integrity and reputation the country can increase its attractiveness for direct foreign investment. In this way, the collective action offers a "win-win" for all the stakeholders involved.

8) Assigning a neutral facilitator

For greater efficiency and to reduce the risk of free riders, collective action should involve one or (in rare cases) more facilitators from outside the circle of stakeholders. It should be a neutral party with a strong knowledge of the economic area concerned yet without necessarily being part of it. The facilitator can get involved at the outset of the collective action or take part in collective action that is already up and running.

9) Establishing a core document

The parties involved in collective action are encouraged to formalise their action in a document, such as a charter. This should include some basic principles to help frame their decision-making process and the organisation of their work. It is important to avoid unnecessarily long or complicated documents and to favour those that can help the stakeholders proceed in a practical and organised manner, ensuring their activities run smoothly.

10) Fostering a zone of confidence for the free and secure exchange of ideas

In order to build trust, experience shows that it is preferable to ask candidates for a collective action to submit their ethics and compliance documents for confidential review by the facilitator or another person or organisation. This allows the candidate's ethical sincerity and aspirations to be assessed. When collective action involves SMEs or micro-enterprises, which are generally less structured due to lack of resources, the evaluator may also be able to help them upgrade their ethical and compliance framework if he or she feels they are strongly committed to engaging in collective action.

This preliminary analysis of the candidate companies' ethics and compliance framework nevertheless helps to create a zone of trust between stakeholders. As such, all members are comfortable to speak about their concerns and dilemmas freely and without fear, as they are aware that their peers share their concerns, even if an incident or accident could potentially damage the reputation of one or the other party.

11) Guaranteeing confidentiality

The discussions between participants or in the presence of the facilitator must be realistic with regard to the practices of the companies involved in the collective action, in order to be able to confront and improve their practices. If participants are required to share confidential data, they must be careful to avoid violating provisions protecting free competition. They must also ensure that any discussions between stakeholders are kept confidential. Provisions for the protection of confidentiality of the exchanges may be provided for in the charter linking the various stakeholders, or in any other document used to set up the collective action.

12) Adopting a "small steps" policy approach

The World Bank Institute report on collective action concludes by noting that "collective action is not easy and requires patience", while adding that considering certain factors may increase the likelihood of success (World Bank Institute, 2008). Therefore, it is important not to undertake projects on too large a scale and to exercise caution, adhering to a “small steps” approach. Indeed, the ultimate result is to help companies give up certain bad practices that have grown into automatic reflexes over time. Therefore, it is highly advisable to approach this endeavour tactfully, with an initial approach that will not come across as overly restrictive, prior to addressing challenges that may be perceived as more sensitive and difficult to overcome.

13) Communicating the results to the public

The confidentiality necessary for these exchanges should not hold back any publicity and awareness as part of the collective action. Stakeholders often wish to share their message and their conviction outside the company. They might target a sector, a region or a country in which their experience can be beneficial and improve the climate for integrity whilst protecting the companies’ interests. The results obtained on a legislative or regulatory level or concerning the practices of the administration and the companies involved can be disseminated. This can help build public awareness of and support for strengthening integrity. The publicity can help boost the reputation of a sector, or an entire country, involved in fighting corruption.

14) Applying a certification process

If a collective action has made significant progress in improving integrity, the next step might be to certify those companies involved. Certification may occur prior to or after official membership in the collective action. It is also worth considering applying it following the adoption of new rules or practices. In the latter case, it is necessary to ascertain whether the participants in the collective action have adhered to the new standards; if not, sanctions should apply. On the other hand, certification can be used in some cases as a defence in the case of prosecution. Obtaining certification can attest to the establishment of appropriate procedures by the company, and thus reduce its risk of being prosecuted for acts of corruption. Certification can boost both the image and the credibility of companies that undergo such a process.

The table below summarises the main characteristics as well as pitfalls to avoid when setting up a collective action:

DO's of Collective Action	DO Nots of Collective Action
Place the project under the leadership of one or more "champion" companies (phases of analysis, development, maturation)	Establish a disproportionate organisation approach
Ensure the sustainable nature of the approach	Allow the action to be developed in ways that weaken the effectiveness of the institutions meant to fight corruption
Bring together a diversified range of companies (micro-enterprises, SMEs, larger companies) in line with the aim of the action	Replace individual action
Formalise the framework of the action by establishing founding documents on a case to case basis	Undertake projects that are not practically achievable
Guarantee the confidentiality of debates	
Publicise the results achieved by the collective action	
Build a zone of confidence that allows stakeholders to have free and uninhibited exchanges	
Make use of a facilitator	
Consider certification	
Adopt a "small steps" approach	
Consider associating the private sector and civil society	

Where do we go from here?

In the Adriatic region, businesses continue to identify high levels of corruption and lack of transparency as a key constraint to economies' growth and competitiveness. According to the 2019 Corruption Perception Index of Transparency International for Eastern Europe and Central Asia, despite aspirations to join the European Union a lack of political will and a decline in implementation of laws and regulations are real challenges (TI, 2019). Despite the practical difficulties in set-up and the need for continuous monitoring, collective action offers one of the most effective solutions for combating corruption. In addition to reducing the risk of corruption, collective action can offer additional guarantees to consumers, in particular where certification is in place, and creates incentives for competing companies to comply with the ethical standards to which the committed companies subscribe.

In the long run, by allowing intervention at several levels and across different fields—while bringing together public, private and civil society sectors—collective action allows to fight effectively against the multifaceted expressions of corruption.

Sources

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POLICY BRIEFING NOTES

FAIR MARKET CONDITIONS FOR COMPETITIVENESS IN THE ADRIATIC REGION PROJECT

High levels of corruption and lack of transparency are key constraints to economic growth and competitiveness in many countries worldwide. The Policy Briefing Notes, designed for stakeholders from the Adriatic Region, aim to provide practical guidance to tackle corruption, foster integrity and level the playing field for all firms. They draw on OECD guideliness, legal instruments and good practices and are tailored to the region's circumstances.

The Policy Briefing Notes are one output of the three-year OECD project to promote fair market conditions for competitiveness in Bosnia and Herzegovina, Croatia, and Serbia, supported by the Siemens Integrity Initiative. Through Collective Action, government officials from the region along business leaders, anti-corruption experts and practitioners, civil society representatives and academics have engaged to jointly identify country-specific challenges to integrity and foster fair market competition.

These efforts are part of the engagement of the OECD South East Europe Regional Programme, which collaborates with the region since 2000 to foster private sector development and competitiveness, improve the investment climate and raise living standards for an inclusive and sustainable future for the people of South East Europe.

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