

Contribution to the Consultation Process in Preparation of the UN General Assembly Special Session against Corruption 2021

23 April 2020

The Basel Institute on Governance welcomes the UNGASS against corruption scheduled to take place between 26-28 April 2021. We appreciate the broad and inclusive preparatory process that enables us to submit our proposals for key topics for consideration and inclusion in the political declaration, and we look forward to contributing to the UNGASS.

During the initial round of consultations, the Basel Institute is submitting three proposals for consideration, building on our first-hand experience working with actors from the public and private sector in a wide range of countries from around the world. **This submission** focuses on the **private sector**, while submissions 2 and 3 (separate documents) focus on enforcement and the recovery of stolen assets.

Submission 1: Private sector engagement through anti-corruption Collective Action

Recommended references for the UNGASS political statement:

Member States should put measures in place to promote the inclusion of anti-corruption Collective Action¹ by the private sector as part of a risk-based approach to prevent corruption (in line with Article 5, UN Convention against Corruption (UNCAC)).

Explanatory note:

Well implemented anti-corruption compliance programmes are increasingly acknowledged as essential for the private sector in order to address their corruption risks. Member States, international organizations, multi-lateral development banks, private sector stakeholders as well as the private sector itself, have all recognised this responsibility (see, for example, Article 12 UNCAC). Private sector anti-corruption compliance programmes are often modelled on guidance issued by these various bodies,² as well as other sources such as judicial rulings and non-conviction based resolutions issued by law enforcement authorities.

¹ For more information on Collective Action and examples of initiatives see <https://www.baselgovernance.org/collective-action>.

² Examples include: OECD Good Practice Guidance on Internal Controls, Ethics and Compliance at: <https://www.oecd.org/investment/anti-bribery/anti-briberyconvention/44884389.pdf> US Sentencing Guidelines at: <https://www.ussc.gov/guidelines/2018-guidelines-manual>, UK Ministry of Justice Guidance on the UK Bribery Act at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/832011/bribery-act-2010-guidance.pdf.

Anti-corruption compliance programmes - no matter how well implemented - may however have limited effects on the corruption risks in certain markets and environments. where corruption is systemic. In these markets, not only individual companies but entire sectors are challenged to conduct business with integrity, which results in a so-called traditional prisoners' dilemma.

Anti-corruption Collective Action has the potential to transform this limitation, and is increasingly recognised by Member States in policy and law enforcement guidance, and standards set by a range of international initiatives.³ Much more needs to be done, however, in order to galvanize the potential of Collective Action to make business integrity programmes more effective.

Member States can incentivise the private sector to integrate Collective Action into their compliance programmes to address systemic corruption risks. This can be achieved through its inclusion in national and sectoral strategies, guidance and other relevant policy standard setting documents.

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³ Selected examples include: OECD Good Practice Guidance, Note X C.(ii) at: <https://www.oecd.org/corruption/anti-bribery/OECD-Anti-Bribery-Recommendation-ENG.pdf> and Annex II B at: <https://www.oecd.org/daf/anti-bribery/44884389.pdf> World Bank Group Integrity Compliance Guidelines, §11, p.14 at <https://wallensteinlawgroup.com/wp-content/uploads/2017/12/WBG-Integrity-Compliance-Guidelines-full.pdf>. Principle 2 at 2.3 (p.23), UK Ministry of Justice Guidance on the UK Bribery Act at: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/832011/bribery-act-2010-guidance.pdf.