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# Anti-Corruption

## Introduction

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# INTRODUCTION

*Contributed by: Kiril Bougartchev and Emmanuel Moyne, Bougartchev Moyne Associés AARPI*

We are truly delighted to introduce the fourth edition of Chambers' Global Anti-Corruption Guide. The purpose of this Guide is to provide an overview of the current state of the anti-bribery and anti-corruption law in 23 countries as well as valuable insights into enforcement policies, trends and likely developments in this area, based on the opinion of leading lawyers in their respective countries.

The gradual shift in repression observed in the global fight anti-corruption over the last ten years, with (i) substantial reforms adopted by several countries aiming to strengthen their anti-corruption legislation and (ii) an increased number of prosecutions and convictions on the grounds of corruption offences, has not prevented the outbreak of new scandals in 2020. One example among others: the former head of a Mexican oil company recently accused a Mexican President and his Minister of Finance of having received bribes of several million dollars from a Brazilian Group in order to finance a presidential campaign in 2012.

The enforcement of anti-bribery laws remains a challenge. First of all, because apparently some companies may still see an interest in engaging in bribery. A study released in July 2020, conducted by three academics from the universities of Cambridge and Hong Kong, covering 195 reported bribery cases in 60 countries between 1975 and 2015, shows that a USD1 increase in the size of a bribe is associated with a USD6-9 increase in the value of the firm, suggesting a correlation between the size of bribes and the size of available benefits.

Moreover, the fight against corruption is not equally intense everywhere. On the occasion of the publication of its annual corruption perception index for 2019, the NGO Transparency International estimated that an "impressive number of countries show little or no sign of improvement in the fight against corruption".

Nonetheless, in the 20th Annual Activity Report published on 25 March 2020 by the Group of States Against Corruption (GRECO), its President welcomed the fact that in the 4th evaluation round, which started in 2012, over 150 concrete legislative, regulatory or institutional reforms have been undertaken by the member states in Europe and in the United States following the GRECO's recommendations.

To strengthen this momentum, the World Bank published on 22 September 2020 a new report entitled "Enhancing Government Effectiveness & Transparency: The Fight Against Corruption" intended to serve as a reference manual for decision-makers. The report focuses on the levers to enhance the effectiveness of anti-corruption strategies in the most affected sectors, describing what challenges Governments are facing in tackling corruption, what instruments tend to work and why, and how incremental progress is being achieved in specific country contexts. It also shows positive examples of how countries are progressing in their fight to end corruption. For instance, Colombia has modernised its dematerialised tendering system in order to publish data transparently in accordance with international criteria. In Ukraine, free access to declarations of assets and interests made by public officials is considered as a major instrument in the fight against corruption. According to Mr Ed Olowo-Okere, Global Director for Governance at the World Bank, "this report shows how important it is to combine traditional methods of fighting corruption with the most modern devices, such as digital government and dematerialised public procurement".

This year has confirmed the two striking moves recently observed in the fight against corruption: on the one hand, the emphasis on preventing the perpetration of corruption offences through the obligation for companies to set up efficient compliance programmes and the use of non-trial instruments to resolve corruption cases, on the other hand.

At the forefront of these moves, national anti-corruption authorities (public bodies with a specific mandate to prevent and combat corruption) have emerged as key players in the global anti-corruption area. In May 2020, the GRECO, the OECD and the Network of Corruption Prevention Authorities (NCPA), a new network aiming to create an international operational platform for the exchange of technical information and the sharing of good practices launched by the French Anti-corruption Agency, the Italian National Anti-corruption Authority and the Serbian Anti-corruption Agency, issued a joint-analysis report entitled "Global Mapping of Anti-Corruption Authorities" based on data provided by 171 national authorities from 114 countries. The report concludes that, in general, a single authority is responsible for combating corruption in a given country. This authority is often endowed with investigative and/

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or prosecution powers. Sanction mechanisms, when available, usually are of an administrative nature. The report also suggests that, globally, the adoption of codes of conduct is more prevalent than risks-mapping and that both are rarely mandatory in the private sector.

This year has also seen further steps in the use of co-ordinated multi-jurisdictional tools for bribery cases. The co-ordination between the French National Financial Prosecutor's Office, the British Serious Fraud Office (SFO) and the Department of Justice (DOJ) of the United States in connection with acts of bribery that would have been committed by a major European aircraft manufacturer between 2004 and 2016 is a particularly striking illustration. It is the first joint tripartite agreement between these authorities, where the co-operation covers not only the sharing of information but also the sharing of jurisdiction and the distribution of the fine. In parallel with the public-interest judicial convention concluded with the French Financial National Prosecutor's Office on 29 January 2020 for a fine of EUR2,083,137,455, the company committed to pay a fine of EUR983,974,311 to the UK authorities and a fine of EUR525,655,000 to the United States Treasury.

Finally, the year 2020 cannot be evoked without mentioning the health crisis currently affecting all countries in the world, which could have unexpected consequences on the anti-corruption area. Indeed, as emphasised by Mr Ed Olowo-Okere, the Governments' responses to the Covid-19 pandemic, including the emergency purchase of medical equipment, sometimes through intermediaries, and the release of massive funds to deal with the economic and social consequences of the crisis, are likely to increase the risks of corruption. The quarantine rules instituted in many countries could also be used by their enforcers as an opportunity to require bribes from those who do not respect them.

Such potential corruption cases could be part of the challenges to be faced by the new European Public Prosecutor's Office (EPPO), composed of 22 Prosecutors from 22 countries in charge of investigating and prosecuting, notably, offences of active and passive bribery which affect the financial interests of the European Union (typically, if European officials would be involved in a corruption case), that held an installation session on 28 September 2020 to mark officially the start of its work.

In the wave of these introductory remarks, which are inevitably made from a continental European perspective, the expert contributions in the following pages constitute an essential resource, as they give precise insights about what is going on in each country.

We express our deep gratitude to all authors for their valuable work.

May practitioners find in this Guide all helpful information to capture and manage better legal risks arising from anti-corruption rules globally.

**Bougartchev Moyne Associés AARPI** was formed in January 2017, when Kiril Bougartchev and Emmanuel Moyne joined forces to create a law firm combining all the disciplines of business litigation, and specialising in criminal law. They are supported by a team of around ten lawyers. As litigators recognised throughout their profession, the founders and their team assist public and private enterprises such as banks, financial institutions, insurance companies and their executives as well as prominent figures in all disputes to which they are a party,

whether involving white-collar crime, civil and commercial law or regulatory matters. With wide experience of emergency, complex, cross-border and multi-jurisdictional proceedings, Bougartchev Moyne Associés' lawyers assist their clients both in France and internationally, and with the benefit of privileged relations with counterpart law firms on all continents. Primary practice areas are white-collar crime, compliance, investigations, regulatory disputes, civil and commercial litigation as well as crisis and reputational injury management.

## Contributing Editors



**Kiril Bougartchev** began his career in 1988 as an auditor at Arthur Andersen, and after admission to the French Bar, he joined Gide, where he became a partner in 1999, then moved to Linklaters LLP in 2007, where he would become co-head of the dispute resolution practice of the Paris

office and lead the Linklaters LLP global white-collar crime group. Kiril has been and is still involved in many notorious white-collar crime cases, including sensitive political and financial matters, both in France and internationally. He is also involved in regulatory disputes (including before the French Financial Markets Authority, the French Anti-corruption Agency and the French Prudential Supervisory Authority) as well as in complex civil and commercial litigation. Kiril was a Secrétaire de la Conférence des Avocats of the Paris Bar.



**Emmanuel Moyne** began his career in 1997 as in-house counsel within asset management company White Gestion SARL, a subsidiary of Goldman Sachs, and was admitted to the Paris Bar in the same year. He then practised for ten years in Gide's litigation and white-collar crime

department before joining the dispute resolution practice at Linklaters LLP in Paris in 2007 as a counsel. Emmanuel has acted in numerous white-collar crime cases, in regulatory, civil and commercial disputes as well as in industrial and environmental accident claims. He advises his clients on complex proceedings, often involving several foreign jurisdictions, as well as on compliance programmes, anti-corruption due diligence and internal investigations. Emmanuel was a Secrétaire de la Conférence des Avocats of the Paris Bar.

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