Anticorruption compliance: an important decision

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Key takeaways

- **A robust internal anticorruption policy and close monitoring of intermediaries are necessary conditions for avoiding corporate criminal liability when a company operates in a high-risk sector and/or country of operation.**
- **The January 2025 judgment of the Federal Criminal Court (published in December 2025) illustrates what Swiss authorities expect in terms of organizational compliance measures.**
- **Companies must adopt best practices from recognized Swiss and international anticorruption standards.**

Introduction

A recent judgment of the Swiss Federal Criminal Court (January 2025, published at the end of December 2025) provides important guidance to avoid a corporate criminal liability for corruption. The Court convicted the Dutch subsidiary of a Swiss group active in commodity trading for failing to take all reasonable and necessary organizational measures to prevent corruption. According to Article 102(2) of the Swiss Criminal Code, a company can be held liable if an act of corruption committed by an employee was foreseeable and could have been prevented through appropriate internal measures.

The judgment emphasizes that corporations must understand and adequately address corruption risks inherent in their business activities, including their sector and country of operation, corporate size, business structure, and the use of intermediaries.

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Applicable standards for anticorruption compliance

In determining which organizational measures should have been regarded as reasonable and necessary during the relevant period (2009–2011), the Court relied on recognized Swiss and international standards developed by international bodies and professional associations.

International standards

- OECD Good Practice Guidance on Internal Controls, Ethics and Compliance[1]
- Transparency International – Business Principles for Countering Bribery[2]
- ICC – Rules on Combating Corruption[3]

Swiss standards

- SECO – Preventing corruption: Information for Swiss companies operating abroad[4]

In addition, the Court notes that according to Swiss legal doctrine, in light of these standards, companies are required to implement anticorruption mechanisms, including:

- A corruption-risk assessment based on the nature of activities, context (including country risk) and company size
- The adoption of an appropriate and proportionate compliance programme
- A policy, code of conduct, internal guidelines and procedures relating to the fight against corruption
- Internal awareness-raising initiatives and training programmes
- Internal controls ensuring compliance with anticorruption rules and corresponding disciplinary measures
- Processes ensuring regular evaluation and continuous improvement of the anticorruption system
- An internal reporting or whistleblowing mechanism

Findings of the Federal Criminal Court

Regarding the specific case, the Court found that supervision exercised by a company operating in a high-risk sector or country (here: oil trading/Angola) must be rigorous, especially when intermediaries are used. Beyond verifying the relationship between the intermediary and the public entity awarding the contract, the Court held that companies must verify how intermediaries use the funds paid to them.

This represents a very demanding standard in the Swiss corporate context, where a culture of commercial discretion traditionally prevails.

Conclusion

An internal corruption-prevention system must be designed and implemented based on relevant criteria: sector and country of operation, company size, business nature and structure, and use of third parties (intermediaries/consultants/suppliers/distributors). Best practices must be adopted from recognized sources and implemented in a tailored manner.

An appeal has been filed against the judgment. It remains to be seen whether the Federal Criminal Court of Appeal will confirm the above strict approach.

Next steps

Companies should:

- Update their corruption-prevention policies, risk assessments and due-diligence processes
- Benchmark their compliance system against OECD, TI, ICC and SECO guidance
- Strengthen internal monitoring of intermediaries and document verification of the use of funds
- Ensure ongoing training and strengthening internal controls

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[1] Annex II to the Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions. Actual version amended on 26.11.2021: https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0378

[2] Actual version dated 10.2013:
https://files.transparencycdn.org/images/2013_Business-Principles_EN.pdf

[3] Actual version dated 11.12.2023:
https://iccwbo.org/news-publications/policies-reports/icc-rules-on-combating-corruption/

[4] Actual version revised in 2017:
file:///C:/Users/284/Downloads/korruption_vermeiden_en.pdf
To be noted that the SECO now also refers to an online learning tool for the private sector launched by the United Nations Global Compact at the following address:
https://thefightagainstcorruption.org/