

C20 TURKEY
POLICY PAPERS

**GOVERNANCE
(ANTI-CORRUPTION)**



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Worldwide, procurement spending averages

13%-20% of

GDP. Every year an estimated US\$9.5tn of public money is spent on public procurement. Corruption drains

20%-25%

national public procurement budgets (OECD estimates).

Based on the G20 countries' aggregate share of global GDP, the potential value of open data to the G20 would be around

US\$2.6tn per

annum (Omidyar Network).

C20 ANTI-CORRUPTION POLICY PAPER

BACKGROUND

Corruption impacts societies in a multitude of ways. Corruption not only costs individuals their freedom, health and money, it also corrodes the social fabric and erodes people's trust in the governance system, its institutions and its principles. Corruption is a major obstacle to democracy and the rule of law. Economically speaking, the world loses at least \$1 trillion each year to corruption in public and private sectors. Both sectors take advantage of layers of secrecy in the governance system to siphon off cash through money laundering, illegal tax evasion and embezzlement. Hindering the development of fair market structures and distorting competition, corruption affects millions of people all around the world, from the financial sector to ordinary people on the street.

As stated in Goal 16 of the proposed UN Sustainable Development Goals, "substantially reducing corruption and bribery in all their forms" and "developing effective, accountable and transparent institutions at all levels" are key to enabling the effective, efficient and transparent mobilization and use of public resources. The achievement of inclusive and sustainable development in a world free of corruption will depend on the active engagement of the public, private, and non-governmental sectors, including but not limited to the increasing number of actors signing on to the UN Global Compact and UN Principles for Responsible Investments (UNPRI). Good governance and responsible behavior by all actors should be established by creating a regulatory environment where transparency in public and private sectors is the norm. The G20, as the world's twenty most important economies, is perfectly placed to lead by example through compliance with the highest standards of accountability and transparency.

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SUMMARY OF POLICY RECOMMENDATIONS

In order to achieve the G20's stated aim of achieving sustainable and inclusive growth in a world free of corruption, in 2015 the C20 is calling on the G20 to:

- **Promote transparency in beneficial ownership**, starting with a unified and adequate definition of beneficial ownership in the national legislations of all G20 countries, ensuring timely access to adequate, accurate and current information regarding the beneficial owners of legal entities through central registries, and empowering companies to request information from shareholders who are obligated to provide updates.
- **Promote transparency throughout the procurement cycle** by developing online application tools for transparency at every stage of public procurement processes including selection criteria and clear justification against the agreed criteria, and ensuring independent monitoring of the procurement process by civil actors.
- **Develop open government standards and tools to engage citizens in fighting corruption** by taking the necessary legislative actions for open government data and government-mandated private sector data, and releasing key data-sets that are crucial to tackling corruption in open data formats.

- **Make “no impunity” the rule for corrupt politicians, public servants and corporations** by adopting and implementing a commonly agreed set of **asset recovery** actions, recognizing the exercise of extraterritorial **jurisdiction** for the prosecution against the serious crime of high-level corruption, ensuring that **domestic immunities** for public officials are strictly limited, and establishing a common set of criteria enabling the creation of a list of individuals denied entry across all G20 jurisdictions.

DEVELOP A UNIFIED AND ADEQUATE DEFINITION OF BENEFICIAL OWNERSHIP IN THE NATIONAL LEGISLATIONS OF ALL G20 COUNTRIES

POLICY RECOMMENDATIONS

1. Promote Transparency in Beneficial Ownership

In 2014, the G20 endorsed High Level Principles on Beneficial Ownership Transparency and committed to implement them through concrete actions, to be shared in writing¹. The Financial Action Task Force (FATF) guidance on transparency and beneficial ownership² highlights a series of issues to ensure that companies can effectively maintain beneficial ownership information.

We note the overall positive statements by the G20 and OECD about the importance of addressing the global problem of hidden ownership structures. However, compliance with such global instruments requires the obligation for companies to maintain a list of shareholders, which provide information on both legal and beneficial ownership that are also accessible to the public and/or competent authorities.

The G20 should:

- Define ‘beneficial owner’ as the natural person(s) who ultimately own(s) or control(s) the legal person or arrangement.
- Ensure that competent authorities have access to beneficial ownership information. Immediate access should be ensured by the establishment of a central (unified) registry.
- Ensure that companies have powers to request information from stakeholders on the beneficial ownership of shares. They should also have the authority to apply incentives (e.g. suspension of dividends) against shareholders if they fail to provide beneficial ownership information.
- Establish requirements for shareholders to report on changes to beneficial ownership of their companies when they administer shares on behalf of a third person.

1. G20 High-Level Principles on Beneficial Ownership Transparency , http://www.g20australia.org/official_resources/g20_high_level_principles_beneficial_ownership_transparency

2. FATF Guidance On Transparency And Beneficial Ownership, <http://www.fatf-gafi.org/media/fatf/documents/reports/Guidance-transparency-beneficial-ownership.pdf>

- Publish a plan of action on how the G20 Countries will implement the Beneficial Ownership Transparency Principles, and report back on progress at regular intervals.

2. Promote Transparency throughout the Procurement Cycle

The full procurement cycle should be fully transparent, from the earliest decisions on needs assessments to the development of procurement plans and budget allocations, from bid evaluations and implementation of the contracts (and any contract amendments), to the auditing of performance³.

The G20 should:

- Publish selection criteria and details of the method of award in a timely manner before the procurement process commences. Upon award, governments should publish a clear justification against the agreed criteria, and collect and disclose the identity and beneficial ownership of all bidders following the closure of the tender.
- Disclose awarded contracts, including any annexes, schedules or reference documents and information on the execution, performance, and completion of the contract in a timely and routine manner. Any contract alterations or sanctions, including debarment from future tenders must be disclosed. Information on public procurement should be freely available in machine-readable open data formats.
- Ensure independent monitoring by non-governmental actors at all stages of the procurement process. Robust, independent and effective appeals processes should be available and accessible for aggrieved bidders.

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SUPPORT DEVELOPMENT OF ONLINE APPLICATION TOOLS FOR TRANSPARENCY AT EVERY STAGE OF PUBLIC PROCUREMENT PROCESSES INCLUDING SELECTION CRITERIA

3. Develop Open Government Tools to Engage Citizens in Fighting Corruption

Open governance is the concept that citizens have a right to information and participation. In line with the obligations and responsibilities of governments to respect, promote and fulfil citizen's rights, governments should strive to have in place the institutions and policies that will advance the promotion of transparency, accountability and participation, and the appropriate tools and investments should be made to enable the implementation and enforcement of these policies.

Data is considered open when governments do not place any restrictions on its use, re-use and redistribution, in machine readable formats. Therefore, open data is a key element for enhancing transparency and anti-corruption initiatives.

3. Transparency International G20 Position Paper, "Transparency in Public Procurement", http://www.transparency.org/files/content/activity/2015_TI_G20PositionPaper_PublicProcurement.pdf

The G20 should:

- Take concrete steps to ensure the increased availability of high quality, timely and open government data, as well as mandate that private sector data that has consequences for the public interest, such as beneficial ownership information and regulatory impact assessments, are made publicly available.
- Release key data-sets that are crucial in tackling corruption including but not limited to data for extractives payments, government procurement, and construction and infrastructure projects, in open data formats.
- Establish independent national supervisory institutions which strongly collaborate with the private sector and civil society.
- Implement the Los Cabos High Level Principles on Asset Disclosure by Public Officials⁴. In particular, governments must require disclosure of assets by officials; especially of the officials who hold decision-making positions in government and are involved in procurement processes. Make national income and asset disclosure (IAD) registries publicly available and harmonized across G20 countries.
- Ensure all court decisions at all levels are published as granted in the official web-pages of courts at all levels and/or ministries of justice.

4. Make “No Impunity for high-level corruption⁵” the Rule without any exception including for politicians, public servants and corporations

Obstacles that prevent criminal prosecution of high-level corruption create impunity, which deepens and exacerbates corruption, and further entrenches a social, economic and political environment that is conducive to the gross violation of human rights. Prosecution of high-level officials and companies creates a strong deterrent effect and helps to rebuild society’s confidence and trust in government. A forum such as the G20 provides an ideal platform from which to step up joint efforts in ensuring adequate criminal and/or civil prosecution of high-level officials and companies involved.

TAKE THE NECESSARY LEGISLATIVE ACTIONS FOR OPEN GOVERNMENT AND PRIVATE SECTOR DATA

The G20 should:

- Provide technical and financial support for the creation of specialised anti-corruption units to investigate and prosecute high-level corruption⁶, and ensure that such units have a clear mandate, autonomy to conduct investigations, and access to a wide range of techniques, resources and adequate technical capacity.

4. G20 High Level Principles on Asset Disclosure, <http://star.worldbank.org/star/resource/g20-high-level-principles-asset-disclosure-mexico-2012>

5. UN Anti-Corruption Toolkit: http://www.unodc.org/pdf/crime/corruption/toolkit/corruption_un_anti_corruption_toolkit_sep04.pdf

6. Transparency International, “Fighting High-level corruption: Challenges And Successes,” http://www.transparency.org/files/content/corruptionqas/Fighting_grand_corruption_challenges_and_successes_2015.pdf

- Develop domestic asset recovery legislation in accordance with international principles and standards. Adopt and implement a commonly agreed set of asset recovery actions and guiding principles based on best practice examples with respect to the identification, quantification and reparation of the damage caused by corruption.
- Permit citizens as victims of high-level corruption to have better access to civil measures to seek and receive restitution from perpetrators of such crimes; enable financial institutions to co-operate more easily and identify, freeze, and return the proceeds of high-level corruption more effectively, as supported by the United Nations Convention against Corruption (UNCAC).

TAKE ACTION TO END IMPUNITY FROM ALL ACTS OF CORRUPTION REGARDLESS OF THE PERPETRATOR

- Establish a common, clear and publicly available set of criteria for denying entry to suspected corrupt individuals, as well as establishing a common set of guidelines to prevent abuse, in the function of the national level Denial of Entry Experts' Network, as initiated at the G20 Los Cabos Summit and confirmed at the 2013 St Petersburg Summit.
- Ensure that domestic immunities for public officials are strictly limited and that there are transparent and effective procedures for suspending immunities for public officials where and when credible allegations against high-level officials have been substantiated by law enforcement⁷.
- Recognize and take effective action against the serious crime of high-level corruption and encourage the exercise of extraterritorial jurisdiction for prosecution by regional or national courts.

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7. UNCAC Coalition, "MAKING UNCAC WORK: COALITION STATEMENT AHEAD OF THE 5th CONFERENCE OF STATES PARTIES IN PANAMA", <http://uncaccoalition.org/files/Coalition-Statement-for-COSP-English.pdf>

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- KAL-Der
- Argüden Yönetişim Akademisi
- Kalite Derneği
- Suistimal Derneği
- TIDE
- Financial Transparency
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