

# **Preventing Corruption in the Public Administration – Shown Using the Example of Switzerland**

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## **Introduction**

According to the Corruption Perceptions Index (CPI)<sup>1</sup> 2015 published by Transparency International, sixty-eight percent of countries worldwide have a serious corruption problem. Corruption not only has negative implications on the economic situation of a country, for example, through less foreign investments and less growth, but it also affects people's lives. While no country in the world is completely free of corruption, there are huge differences in the corruption levels worldwide. In the international ranking, Switzerland ranks on position 7 of 168, meaning that it is one of the cleanest countries in the world in regard to corruption (Transparency International 2016). Higher positions are only achieved by Denmark, Finland, Sweden, New Zealand, The Netherlands and Norway. While Switzerland has an image of a country with very little corruption, no country is free of corruption. One example in Switzerland is the case of garbage collection employees in the town of Biel who disposed of a business's garbage without claiming the necessary vignette in the trade-off for a coffee or similar. Another example is the abusive assignment in procurement in a large IT project called 'Insieme' of the federal administration which was extensively discussed nationwide and cost the director of the correspondent department his job.

This article provides an overview of the Swiss experience in the prevention of corruption. It is structured as follows: in the second section, we discuss the term 'corruption' and try to explain why it is harmful. Section three looks at possible methods of preventing corruption with a special focus on the practice in Switzerland. The final sections contains conclusive statements and some suggestions.

## **Understanding 'corruption' and why it is harmful**

Corruption is a contested concept and is rather an umbrella term than a legal term of art (Rose 2015: 7). Transparency International defines it as 'the abuse of entrusted power for private gain'. By the OECD, it is defined as 'the active or passive misuse of the powers of public officials (appointed or elected) for private financial or other benefits' (Hough 2013: 2). The World Bank defines it as 'the abuse of authority or trust for private benefit', the Council of Europe states that 'no precise definition can be found which applies to all forms, types and degrees of corruption or which would be acceptable universally' (Hough 2013: 2). Finally, the understanding whether something goes under the term 'corruption' differs: while someone

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<sup>1</sup> The CPI measures the perceived level of corruption based on the assessment and opinion of experts.

might think of a 'deal' or a 'corrupt act', someone else might think of a gift while the other sees a 'bribe' as a corrupt behaviour (Hough 2013: 3 et seq.). There are usually at least two culprits, one that corrupts and one that is corruptible who agree on the injustice (Borkenstein 2015: 19).

With the lack of a precise legal definition of corruption, there are many criminal acts which are encompassed by the concept. Types of corruption include bribery, kickback (illegal form of commission), nepotism (i.e. favoritism granted to relatives or friends), extortion (threatening someone in order to obtain money, services or goods), facilitation payments (asking for money for legally free services), fraud, collusion (i.e. secret agreements by at least two parties for illegal gain, embezzlement (misuse of someone else's money), abuse of power and money-laundering (i. e. making illegal money appear legal).

The understanding of corruption is closely related to one's understanding of what politics is or is not, because the understanding of what politics is shapes the understanding of what is acceptable in this process and what is not (Hough 2013: 4). When trying to identify the drivers of corruption and looking for ways to tackle it, a good understanding of the local context is needed as well as of the values and norms in the political process. It is thus not possible to prescribe a one-size-fits-all anti-corruption policy, but it is crucial to have insights in country-specific dynamics before setting a reform agenda (Hough 2013: 7).

Corruption is to be prevented because it is harmful. First, it is unfair and harms those without power. Besides resulting in financial loss, it results in a loss of values and morality and a loss of trust in government, justice and public services. It encourages illegal activities and organized crime and finally creates an inefficient society and a surrounding of fear and insecurity (Steiner 2015). Corruption is a problem that finally affects all and is, thus, a collective problem to be tackled by society (Transparency International 2013).

### **Methods for preventing corruption in Switzerland**

There are many different ways worldwide which help to prevent corruption. These include formal rules like laws and set of rules to prevent corruption and anti-corruption codes of conduct. Furthermore, procedures regarding internal monitoring and evaluation and transparency about decisions and ways in which money is spent and accounted for may help to prevent corruption. Further possibilities are public service quality standards made public, E-Government and new technologies. Another important issue is accountability, which means that the organization demonstrates that it uses its power the right way. This is done by reporting activities, taking responsibility for its actions and being prepared to answer questions, admit error and, where possible, rectify any errors. It is essential that people take responsibility to report corruption, which implies that safe procedures for whistleblowers are

needed within the organization. Last but not least, there is need for adequate sanctions of corruptive activities (Steiner 2015).

In the following paragraph, we present methods of preventing corruption with a special focus on the Swiss case. These methods may be categorized into three main groups: clear rules and regulations, control institutions and trust.

## ***I. Clear rules and regulations***

### ***a) International anti-corruption conventions***

Switzerland is signatory to different international anti-corruption conventions. One is the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime of 8 November 1990, another is the Council of Europe Corruption Treaty and its Additional Protocol (some rights reserved). Furthermore, Switzerland is a party to the OECD Anti-Bribery Convention, the United Nations Convention against Transnational Organized Crime, and the United Nations Convention against Corruption. Furthermore, Switzerland has signed a number of bilateral treaties regarding these issues (Bruckhardt et al. 2014).

### ***b) National laws and regulations***

The Swiss Criminal Code criminalises bribery under the sections 322ter to 322octies. According to this regulations, bribery of Swiss public officials is an offense. This is, offering, promising or giving a member of a judicial or other authority, a public official, an officially-appointed expert, translator or interpreter, an arbitrator, or a member of the armed forces an undue advantage, or offering, promising or giving such an advantage to a third party, in order to cause that public official to carry out or to fail to carry out an act in connection with his official activity which is contrary to his duty or dependent on his discretion (section 322ter). Accordingly, also the acceptance of such bribes is an offense (section 322quater). Granting an advantage to public officials inducing or rewarding actions consistent with the public duties (also so called 'grease' payments) as well as accepting these advantages are also offenses (sections 322quinquies and 322sexies). Bribery of foreign public officials is criminalised under section 322septies of the Swiss Criminal Code. While the legal framework criminalises unlawful payment or advantage determining or inducing foreign public officials to act in breach of their public duties or exercising discretion in favour of the corruptive party, 'grease' payments or bribes paid which are in accordance with the foreign official's public duties are not punishable under section 322septies (Bruckhardt et al. 2014).

### ***c) Public procurement regulations***

Other than private enterprises, public authorities at the federal, cantonal and local level have to consider procurement law when buying goods and services. Public contracts regarding procurement may be distinguished into construction contracts, supply contracts and service

contracts. The aim of the public procurement regulations is an economic allocation of public resources, transparency in the procurement procedures, equal treatment among the providers as well as facilitating an effective competition and – what is most important for this article – acting as a measure against corruption.

#### ***d) Rules regarding acceptance of gifts, travel expenses, meals or entertainment***

Undue advantages not only occur in the form of monetary payments, but they may be of different nature, for example in the form of a valuable gift, payment for luxury travelling or meals or invitations or offering tickets for entertaining events. While there are no generally applicable regulations in Switzerland, public employment regulations usually define the extent to which such gifts may be accepted by public officials. As long as they are of minor value and in accordance with social conventions they are usually not unlawful (Bruckhardt et al. 2014). Employees of the Federal Administration, for example, are allowed to accept gifts which do not exceed a value of CHF 200 (section 93 of the Ordinance of Federal Employees). They are obliged to turn down invitations if they affect their independence. Accepting invitations abroad requires a written acceptance by the superior.

#### ***e) Principle of Freedom of Information in the Administration***

Transparency is an important instrument in the fight against corruption (Transparency International 2013). The principle of freedom of information is a fundamental decision of the community to lay open documents of the administration to the public, enabling more transparency in the administration. In Switzerland, the Federal Act of Freedom of Information in the Administration (Freedom of Information Act (FOIA)) aims to promote transparency regarding the mandate, organisation and activities of the administration. It ensures information of the public by ensuring access to official documents. Any person has the right to inspect official documents or obtain information about their content. They may be inspected on site or a copy can be requested (section 6 of the Freedom of Information Act). There are exceptions where the right to access may be limited, deferred or refused, for example, when it significantly impairs the free opinion-forming and decision-making processes of an authority, when it compromises the domestic or international security of Switzerland or when it is likely to affect the interests of Switzerland in matters of foreign policy and international relations (section 7 of the Freedom of Information Act).

## ***II. Control institutions***

### ***a) Control Committees (CC) ('Geschäftsprüfungskommission (GPK)')***

Control Committees are permanent parliamentary commissions formed by members of parliament. Their task is the political superintendence (*'Oberaufsicht'*) of the executive authority and the administration at federal, cantonal and communal level. The Control

Committees scrutinize the conduct of business by reviewing annual and management reports and carrying out inspections and investigations. The scope of the Control Committees is, thus, quite wide. (The Federal Assembly 2016). Their function is to detect irregularities and undesirable development.

**b) Swiss Federal Audit Office (SFAO) ('Eidgenössische Finanzkontrolle (EFK)')**

Employees of the Federal Administration are obliged to report prosecutable violations or wrongdoing to the prosecution authority, superiors or the Swiss Federal Audit Office (SFAO). They are also entitled to report other irregularities that they discover in the course of their official duties to the SFAO. Private individuals may also submit reports to the SFAO. Whistleblowing means that a person 'raises a concern with the competent office about non-compliant behaviour, wrongdoing, illegal activity (e.g. corruption, insider trading) or general dangers he or she heard of' (SFAO 2016). It is, thus, a method for preventing corruption.

**c) Supervisory authorities**

Supervisory authorities are commissions or organizations that have a supervision function over private or public institutions. Examples are the Swiss Financial Market Supervisory Authority (FINMA) that is responsible for financial regulation including supervision of banks, insurance companies and stock exchange. Another important example is the Swiss Federal Nuclear Safety Inspectorate (ENSI) which is the supervisory authority for nuclear safety.

**d) Fourth Estate by the media**

Media is often referred to as the 'Fourth Estate' (besides the executive, legislative and judicative). Even though the media does not have the power to make political decisions, legislative power or prosecute misuse of power and are thus not a political institution in the classical sense, they have the possibility to influence the political happening through public discussion. In media science, the term 'watchdog' is used for the role of the media as a watchdog in politics and society that scrutinizes existing power structures, uncovers scandals and informs the public about it. In this role, the media is also able to uncover corruption and report about it. Prerequisite is, however, a certain dimension of political and economic independence of the single media institutions. The media do, however, not always take in a watchdog role, but sometimes also act as the speaking tube of existing power structures by the market and/or the state (Knüpfer 2016).

**III. Trust between citizens and authorities**

**a) Laymen system ('Milizsystem')**

The political system in Switzerland is historically characterized by the laymen principle, meaning that public duties are often executed as part-time jobs. For example, most members of the Swiss federal, cantonal and local parliaments also have another job besides their council

membership and also most executive member at the communal level (Linder 1999). The same applies to members of the Swiss army, who pursue a civil profession and are only called up for military service during a couple of week a year. This laymen system enables a tight connection between the civil society and the state and can help to increase trust between them. There is, however, also a risk to this connection due to possible cases of nepotism (Transparency International 2013). For example, when a relative of a member of the municipal executive is the owner of a local construction company that is favoured when construction contracts are assigned.

#### ***b) Ethical tenor***

Last but not least the ethical tenor in a country is probably important when discussing corruption. It is, for example, commonly accepted that extra money is paid to doctors if patients wish urgencies wish for priority treatment or is it unusual that people accept to pay extra money? Even though this is not easily measurable, there is generally an ethical tenor in the Swiss community that corruption is not a good solution. Besides many of the above-mentioned factors this is probably also influenced by the high salaries in Switzerland: an official that earns enough money to make his or her living has less need of gaining extra money by corruptive actions and has more to lose in the case of being caught.

### **Conclusions**

Even though Switzerland ranks among the least corruptive countries worldwide, it is not yet completely free of corruption. There are only few convictions due to corruption, however, the real number of corruptive actions is probably higher than the statistics show. The reason is that there is no direct victim-offender relation, but there are (at least) two culprits in corruptive actions. Furthermore, it is often difficult to find the necessary evidence for a trial (Transparency International 2013).

In order to find adequate measures against corruption it is crucial to know about the causes of corruption. According to the model of 'fraud triangle', corruption is enabled by three factors: opportunity, pressure and rationalization. First, a person must have an opportunity to abuse his or her position. Second, there is pressure, for example, a financial problem the person is unable to solve by legitimate means. Third, rationalisation means that the person does not see himself or herself as a criminal but as a person with a bad set of circumstances (Fraudtriangle 2016). Methods cannot simply be transferred from one country to another, but country-specific circumstances must be considered.

Even though corruption is a collective problem, it is – finally – the responsibility of each individual to value personal integrity and to refuse any form of corruption (Transparency International 2013). However, in the international fight against corruption, a framework of

measures with clear rules and regulations, control institutions and finally trust among the actors surely help to prosecute culprits and finally prevent corruption actions.

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