

Fair Market Conditions for
Competitiveness in the Adriatic Region

High Level Reporting Mechanism (HLRM)¹



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Policy Briefing Note

HIGH LEVEL REPORTING MECHANISM (HLRM)¹

WHY HLRM MATTERS

- ✓ The High Level Reporting Mechanism (HLRM) enables alerts about suspected bribery or unfair business practices in public tenders to be raised and quickly resolved.
- ✓ An HLRM is independent yet authoritative in nature. It acts like an escape valve, defusing potential corruption-related issues before they cause damage.
- ✓ HLRM is used to receive complaints, serve as an alternative dispute resolution mechanism and to identify systemic issues arising from widespread corruption especially because of the enhanced independence of the mechanism.

What is the issue?

Corruption poses a serious challenge to companies doing business in many countries, including those of the Adriatic region where corruption is reported to be a substantial challenge impacting all economic actors (Transparency International, 2017). Bribery is a widespread phenomenon in international business transactions, including trade and investment². Companies may also have to contend with unfair treatment creating uncertainty in the business context that could lead to a situation in which a bribe might be paid. What type of actions should a company adopt if faced with legal consequences due to bribery resort? What type of risks business face if they refuse to pay bribes?

¹ The HLRM concept was originally developed by the OECD, Basel Institute on Governance and Transparency International together with a group of international companies seeking alternatives to cumbersome and slow judicial processes: The HLRM is not a legal mechanism, and functions alongside law enforcement institutions

² OECD Anti-Bribery Convention, www.oecd.org/corruption/oecdantibriberyconvention.htm.

The High Level Reporting Mechanism (HLRM) seeks to address these concerns and provide answers to these questions.

In the analyses produced by the OECD and the Basel Institute on Governance, *Designing a High-Level Reporting Mechanism for Business – A Guidance Note for Governments* (2015), stakeholders can find possible solutions for situations where local and foreign companies will disengage from government business, or leave a country entirely where lack of transparency and corruption levels make acting with integrity too difficult. The authors propose a solution that allows companies to make complaints safely through a dedicated channel that does not involve the agency that is the subject of the complaint, and obtain swift remedial action address (OECD & Basel Institute on Governance, 2015).

In the *Designing a High-Level Reporting Mechanism for Business – A Guidance Note for Governments* (2015), the authors prove that the HLRM is all the more critical in countries with weak governance structures, and or, an inadequate judiciary due to concerns about the efficiency or independence of these institutions, and where existing reporting mechanisms have failed to provide rapid, impartial and constructive responses that are needed by businesses when faced with extortion or they are treated unfairly.

According to the Basel Institute on Governance and the OECD, the HLRM can be defined “as a pragmatic not legal tool, which facilitates early reporting of potential cases of corruption or similar issues in order to find fast, cost effective and practical solutions. The mechanism would allow the private sector to raise issues with a high level office that is external to the public entity where the problem has occurred” (Silva, V., Aiolfi, G., 2018). The HLRM is a reporting mechanism combined with an alternative system for dispute resolution that is designed to achieve the following aims:

- ✓ Receiving complaints of bribery requests or suspicious behavior in interactions between businesses and governments – such as in the context of public procurement, issuance of commercial licenses, customs clearance or tax-related issues, among many other potential applications as determined by each country;
- ✓ Functioning as an alternative dispute resolution mechanism, with the advantage of not incurring operation costs to complainants that resort to it;
- ✓ Identifying systemic issues arising from recurring corruption claims and propose reforms to the government (Basel Institute on Governance website 2020);

The context in which an HLRM is used is also meant to be broad. Examples of situations or systemic problems in which an HLRM could be useful include:

- ✓ Restrictive terms of reference that in practice lead to the participation of a single competitor in a public tender, beyond what would be reasonably required from a technical perspective;
- ✓ Request for a bribe as a precondition for participation or selection in a public tender;
- ✓ Undue delay in customs clearance of perishable and other goods;
- ✓ Obstacles imposed for the concession of technical certificates and other documents required to participate in tender procedures;
- ✓ Uneven interpretation of regulations, leading to unreasonable difficulties for the attainment or renewal of commercial licenses or the fulfilment of other rights;
- ✓ Requests for overpayment of governmental fees;
- ✓ Denial or unreasonable delay of value-added tax (VAT) refunds (OECD & Basel Institute on Governance, 2015).

Why is HLRM important?

Corruption is reported to remain substantial in the region of South East Europe (SEE) and imposes a variety of costs on society and can diminish the competitiveness of an economy. Governments in the region have undertaken many reforms to tackle corruption. However, empirical data and perception surveys show a poor enforcement track record and that the economies have not fully aligned their laws with the international standards (OECD, 2020b). Over recent years, the SEE economies have reportedly made only minor progress in reducing corruption. The widely cited Corruption Perceptions Index ranks Croatia on 66th position, Serbia 94th, and Bosnia and Herzegovina 104th out of 183 countries and territories (Transparency International, 2019). The OECD Competitiveness in South East Europe Outlook 2018 depicts that on a scale from 0 (highly corrupt) to 100 (very clean), the SEE economies scored an average of 40 in 2016, marking almost no improvement in comparison to the 2012 average score of 39. Hence, despite the numerous, and often successful, reforms designed to prevent and punish corrupt practices, the economies still struggle with corrupt behaviour in the public and private sectors.

Preventing corruption in the public sector is essential to ensuring the efficient allocation of public investments and delivery of priority services to citizens. Accusations of corruption in public works projects lead to delays, costly legal actions and a loss of credibility – not just for those involved in the project but for the government as a whole. Corruption risks need to be anticipated and addressed at an early stage to ensure that the whole government does not become tainted by isolated practices or is held back in achieving policy goals.

HLRM is linked to the 2030 Agenda for Sustainable Development and its 17 Sustainable Development Goals (SDGs). SDG 16 specifically deals with “Peace, Justice and Strong Institutions,” and target 16.5 of this goal is “Substantially reduce corruption and bribery in all their forms.” In particular, the target seeks to decrease the “proportion of businesses that had at least one contact with a public official and that paid a bribe to a public official, or were asked for a bribe by those public officials during the previous 12 months” (OECD, 2020). This target and indicator recognise that the private sector is a primary actor in the supply side of corruption. Tools such as the HLRM may reduce bribe solicitation and thereby strengthen transition economies institutions, and promote their sustainable development.

Policy makers from the Adriatic region who would like to implement the HLRM can turn for practical guidance towards the *OECD Recommendation of the Council on Public Integrity (2017)*, which is also closely aligned with the mechanism. The Recommendation invites governments to promote a systemic approach to counter corruption and foster public integrity systems through the engagement of relevant stakeholders from civil society and the private sector, which is at the core of the HLRM. It also emphasises the importance of involving the highest political and management levels of the public sector in the fight against corruption.

As explained in the *Designing a High-Level Reporting Mechanism for Business – A Guidance Note for Governments* (OECD, 2015), upon receipt of a complaint, the HLRM triggers a process of rapid analysis and pragmatic response on the part of a government. Examples of different contexts can include public procurement, the issuance of commercial licenses, tax refunds and the release of goods by customs authorities. The goal is to restore the status quo before a reported problem escalates further and to allow interactions between public and private stakeholders to proceed smoothly. While this is

the basic framework for an HLRM, the features of a deployed mechanism in practice are supposed to be flexible. An HLRM is meant to take into account the legal and political framework from the country. Every country, which aims to adopt the mechanism, it is important to underline that there is no “one solution fits all”. Therefore, the HLRM is adapted according to the institutions existing within a country and the objectives pursued (OECD & Basel Institute on Governance, 2019).

The HLRM can be customised according to the needs and reality of different countries in the Adriatic region. Representatives of the public sector, business, civil society and other stakeholders participate in its design and implementation. The HLRM anticipates a whole-of-a-society approach to tackling corruption and enhancing public integrity as described in the 2017 *OECD Recommendation of the Council on Public Integrity*. Customised models are already being used by two countries namely Colombia and Ukraine (OECD & Basel Institute on Governance, 2015).

What are the benefits?

The benefits High Level Reporting Mechanism are threefold, since they relate to governments, citizens and businesses. The OECD and the Basel Institute on Governance (OECD & Basel Institute on Governance, 2015), depict the following benefits for companies and governments:

Stop solicitation promptly and without prolonged delays to the concerned process.

Where other accountability mechanisms are slow or untrusted, a mechanism that is tasked with responding swiftly and impartially to cases of solicitation or extortion should satisfy business expectations for a ‘quick fix’. For example swift response to extortion when it occurs in the context of obtaining customs clearance is critical for businesses.

Demonstrate that a government is concerned about reducing bribery and a well-functioning business related services sector.

A HLRM can play a role in creating an environment conducive to investment. Businesses may have greater confidence in investing in a country if they know that, when solicited to pay bribes, they will be able to take their grievances to a dedicated body for quick resolution. A HLRM can also help create a “level-playing field for commerce”, as unscrupulous competitors who act unfairly will ultimately be held accountable.

Mitigate or prevent adverse impacts on public projects and processes caused by corruption.

For example in the context of procurement, a prompt response may prevent financial damages linked to early repair costs to maintain corrupt investments or adverse environmental impacts. In the context of tax inspections, a quick fix may prevent reputational damage to tax authorities that could be caused by lingering suspicions of impropriety.

Improving investor climate and credit rating.

For a country considering a HLRM, the incentives for so doing include the likelihood of favourable responses by country credit rating agencies as well as international companies considering direct investments, and positive reputation repercussions.

Provide valuable feedback to governments

A HLRM can serve as an early warning system for wider problems; yield insights from individual complaints that spotlight changes that might be needed to the concerned agency's operations or management systems; or indicate possible systematic changes that may be required.

BENEFITS FROM HLRM		
Government	Business	Citizens
Demonstrates high-level political commitment to fight corruption	Fast, effective way to raise concerns	Gives confidence that public resources are being used responsibly
Sends a strong message that public procurement processes will be clean and fair	Levels the playing field in public procurement processes	Public works contracts are more likely to be awarded to the bidder offering the best value for money
Flexible and easy to set up within existing institutions	Gives new players the confidence to bid for public projects, boosting competition and innovation	Smooth procurement process means projects should start on schedule
Reinforces existing anti-corruption measures	Greater peace of mind regarding compliance	If appropriate, HLRMs can allow for citizens or civil society groups to raise alerts
Deterrent effect makes bribery less likely and helps avoid damaging accusations and investigations	Cuts delays in the procurement process and final awarding of the contract	Less likely that public funds will be needed to pay for lengthy legal investigations into corruption

Figure 1 Benefits from HLRM (OECD & Basel Institute on Governance, 2015)

What can policy makers in the Adriatic region do?

Despite the variety of HLRM, they share some common characteristics. The OECD report *Tackling Bribe Solicitation Using the High-Level Reporting Mechanism for Preventing Bribery* (2020) has identified the following key success factors, illustrated with case study examples from around the world and can serve as a useful guide for other groups from the Adriatic region planning similar actions:

a A genuine policy gap which HLRM should fill

For an HLRM to be effective there must be an “empirical gap” in the existing framework and measures in a country. For example, a criminal justice system may exist in theory to address corruption complaints, but in practice the judiciary may be ineffective or too slow. There may be administrative channels for complaints, but they may not be trusted by companies, or they may not have the high-level clout to produce results. The current means of recourse may also not have the expertise to address complaints of a technical nature that can arise in some procurements, for example in infrastructure.

b The belief that the HLRM will indeed fill a genuine policy gap

Political will is a necessary but not sufficient condition for successfully implementing the HLRM. It is vital that the authorities implementing an HLRM have a genuine belief that the concept will work, or at least are willing to give it a try. Even if the HLRM is not the total solution to end all corruption in a particular context, the authorities in charge need to believe that the HLRM is sufficiently effective to justify the investment in time, resources and energy in the implementation of this mechanism. Before embarking on an HLRM, it is therefore important to also devote time and effort to convince the officials implementing the mechanism of the HLRM’s effectiveness.

c A reporting mechanism that is genuinely high level

Confidence in national government is inversely proportional to the level of corruption in government. Choosing the right body to lead an HLRM may not be a simple task. Such body overseeing the HLRM must be at the highest levels of government by imposing authority while remaining relatively flexible. Without the involvement of a high-level official, an HLRM may also not be used frequently.

d Objectivity, fairness and integrity, real and perceived

One obvious criterion is that the authority or agency in charge has to be a respected one with low levels of corruption and conflicts of interest. HLRM would not be feasible if the high-level authorities in charge of the mechanism are themselves corrupt. The private sector will be unlikely to make any bona fide reports of corruption issues to such an HLRM. In a country with pervasive corruption at the highest levels of government, there may simply not be any authority suitable for overseeing an HLRM.

e Sufficient expertise to assess reports

Subject areas such as public procurement require a number of specific skills and expertise for which the HLRM authority might not be equipped to deal with. Relying on in-house experts besides may lead to conflicts of interest. External experts outside of government can be very costly depending on the nature of the expertise in question. The price can further increase because the experts may be needed on very short notice, since the HLRM is required to resolve issues very quickly.

f Confidentiality at a minimum, if not also anonymity

One of the essential requirements is to protect the reporting person from reprisal. Protection can be enhanced by ensuring the confidentiality of the report. The identity of the entity making the report should not be made public, and the institution in charge of the reporting mechanism must ensure his/her name will remain secret. A further option is to allow “anonymous” reporting. An anonymous

report does not require the individual making the report to identify him/herself. The institution in charge of the channel would receive a report without any information at all on who the sender was. If the HLRM is intended for countries where the level of trust in institutions is very low, then allowing anonymous reporting will likely result in more reports.

g Transparency and publicity

Raising the profile of an HLRM is vital as its success is linked to its visibility among government officials and the private sector. Raising awareness of the HLRM is also an opportunity for the government to engage in a dialogue with the private sector on fighting corruption. The communication should include not only the existence of an HLRM but also how the mechanism operates especially as regards its confidentiality and anonymity. Equally important is publicising information on who and how the HLRM assesses the reports that it receives and involving high level officials has a particularly positive effect. Finally, it is important to publicise the work and outcomes of the HLRM in order to create confidence and trust in the mechanism. This can be done by engaging all stakeholders in its design and implementation and through a robust communication plan to raise awareness about HLRM.

h Sufficient resources while still maintaining cost-effectiveness

The various elements discussed above require resources. The amount needed differs for each HLRM, since it is meant to be adapted to the institutions existing within a country, the objectives pursued, and the types of corruption-related problems that the HLRM is to solve. An HLRM would need to be cost-effective if it is to receive sustained support for its continued operation. A project is said to be evaluated on its net benefits (i.e. total benefits minus costs) and whether it is a potential improvement.

i Complaints management process

A HLRM should have a robust process in place for addressing complaints. Although the detail of actual processes for complaints resolution may vary from one country to another according to national context, it should include in its simplest form four steps:

1. Receiving and screening the complaint;
2. Assessing the complaint;
3. Selecting a resolution approach and;
4. Settling the issue.

In order for the complaints to get accepted, there is a set admissibility criteria that needs to be strictly followed because not all stakeholders can raise complaints. Below the note depicts the complaints management process.

Admissibility criteria:

A HLRM may consider complaints from directly affected companies only or from third parties such as business associations, NGOs or individuals who may be aware of improprieties. In all cases, the HLRM should be available to all businesses, domestic and foreign.

- ✓ Screening. Clear eligibility criteria should be established

Eligible complaints may include those where the complaint pertains to the project; the complainant has standing to file; the complaint falls within the scope of issues the HLRM has authority to address. To be most effective, the Mechanism should be open to a broad range of concerns, as solicitation encompasses many situations. For example, if a company questions whether the fees it is asked to pay to secure a sanitation clearance upon application for business permit are legitimate, the HLRM should address these concerns given that they may be disguised bribe payments.

✓ Reviewing, investigating and settling complaints

For a HLRM to work, complaints should be promptly handled. For example, in the case of bidding, the timing of the Mechanism should allow resolution prior to the awarding of the tender. Process should also focus on dialogue and engagement. Specifically, in order to inform the process, HLRM staff responsible for handling complaints should involve managers from the departments/agencies whose activities have resulted in claims. Such inclusion may serve as a basis for the concerned agency's prompt response, or for a set of recommendations or a decision – which can be binding or non-binding- issued by HLRM senior managers. Recommendations or non-binding decisions can be both powerful and compelling, especially if the Mechanism benefits from top political commitment and relies on a transparent process that allows for the possibility of social pressure for voluntary compliance with its outcome.

✓ Specific case where there are reasonable grounds to suspect a violation of the law

In such situations, deferral to competent enforcement authorities is likely to be necessary. Wherever possible, the entity whose employees have allegedly committed unlawful acts should be expected to take temporary corrective actions (e.g. suspending the effect of the decision taken by its staff) until a thorough assessment is received from the competent authorities. If it appears that suspicion persists, they will decide what subsequent action should be taken. Wherever possible, the identity of the complainants – if known –should be made anonymous in the report filed with the authorities, provided that they will be able to contact them without delay. In any event, complainants should have an opportunity to make an informed decision about how they wish to proceed.

[What kind of response companies can expect from the Mechanism?](#)

One of the potential advantages of a HLRM is its flexibility. As such, it should provide a set of possible remedies appropriate for different types of complaints. Remedies may include altering or halting harmful activities through, for example, moving the public official whose behaviour is suspicious, delaying the awarding of a public contract, amending the requirements for customs clearance, or revising the concerned agency's policy (OECD & Basel Institute on Governance 2015).

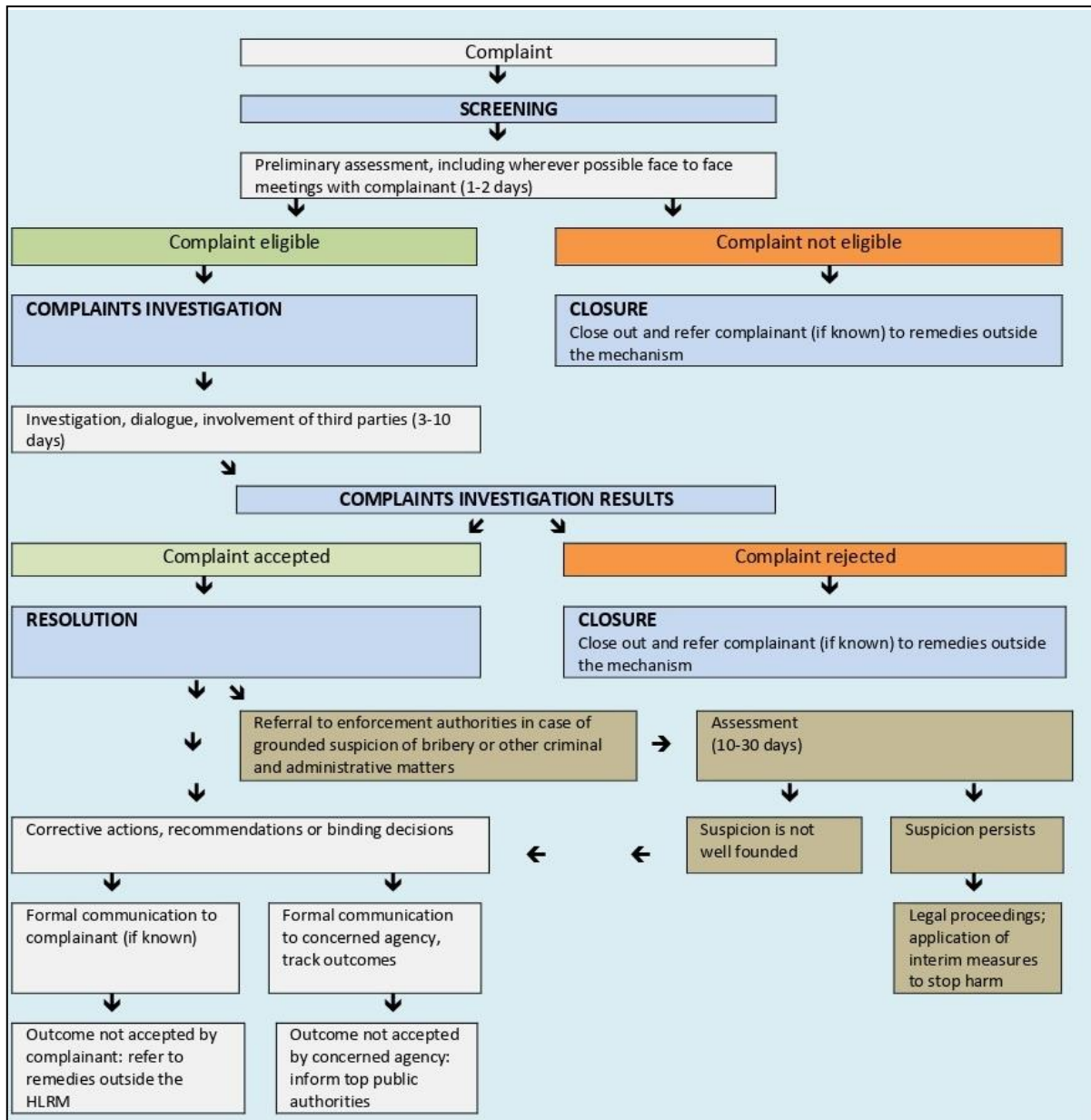


Figure 2 Basic High Level Reporting Mechanism Process (OECD & Basel Institute on Governance, 2015)

Where do we go from here?

As mentioned earlier, the HLRM is a relatively new concept and “as useful as the HLRM concept may be, it is not and was never meant to be the solution to all types of corruption” (OECD, 2020). Nevertheless, some early lessons can already be learned and taken into consideration by countries in the Adriatic region, which debate whether to replicate an HLRM.

The *Designing a High-Level Reporting Mechanism for Business – A Guidance Note for Governments* (2015), produced by the OECD and the Basel Institute of Governance, has identified several ingredients that are essential for a successful implementation of the HLRM. Some elements, such as transparency,

the need for an HLRM to fill a genuine gap and a belief that it will in fact do so, may seem obvious. Other elements, such as resources and expertise, may be less obvious. For all of these elements, reflection on and planning for these elements from the beginning of the process would be well-advised.

One common theme, however, runs through many of these elements: the importance of building trust in the HLRM. Leaders and analysts have increasingly identified trust as the potentially missing element for better crisis management and better public policies. Like the majority of reporting channels created around the globe, the HLRM can only be successful if people and companies trust it and therefore use it. This is the underlying reason why the essential elements of a successful HLRM include matters such as impartiality and objectivity of the mechanism, a guarantee of confidentiality in reports, and transparency in the mechanism. It is also why properly communicating these features of an HLRM to the private sector and the public so as to instil trust is essential.

A final point is that as the mechanism continues to be deployed in more projects and the economies of the Adriatic Region, it will be further tested in new contexts. New challenges will come up and new lessons will be learned that will shed more light on the essential ingredients for a successful HLRM.

How to implement the HLRM?

The OECD and the Basel Institute of Governance can offer support to governments in the Adriatic region that facilitates the efficient development of a customised HLRM. Both institutions can help to identify relevant domestic stakeholders or evaluate different institutional and legal options in a given jurisdiction. In addition, the OECD and the Basel Institute of Governance, work already with governments in Eastern Europe to accompany the development, implementation and monitoring of the HLRM.

Sources:

OECD (2020a), Tackling bribe solicitation with the High-Level Reporting Mechanism for preventing bribery, OECD Publishing, Paris.

OECD (2020b), Anti-Corruption Reforms in Eastern Europe and Central Asia. Progress and Challenges 2016-2019 <http://www.oecd.org/corruption/acn/Anti-Corruption-Reforms-Eastern-Europe-Central-Asia-2016-2019-ENG.pdf>

OECD (2018), Competitiveness in South East Europe: A Policy Outlook 2018, Competitiveness and Private Sector Development, OECD Publishing, Paris. <http://dx.doi.org/10.1787/9789264298576-en>

Silva, V. and Aiolfi, G. (2018), "Working Paper No. 25: High-Level Reporting Mechanisms: A Comparative Analysis", Basel Institute on Governance, www.collective-action.com/sites/collective.localhost/files/publications/180928_hlrm_working_paper_no_25_v2.pdf

OECD & Basel Institute on Governance (2017), The High Level Reporting Mechanism (HLRM) A tool to help prevent bribery and related practices, OECD Publishing, Paris.

Transparency International (2019), Corruption Perceptions Index 2019, Transparency International website, <https://www.transparency.org/en/cpi/2019/results>.

Transparency International (2017), Corruption Perceptions Index 2016, Transparency International website, www.transparency.org/news/feature/corruption_perceptions_index_2016

OECD & Basel Institute on Governance (2015) Designing a High Level Reporting Mechanism for Business - A Guidance Note for Governments, Basel.

OECD Anti-Bribery Convention, www.oecd.org/corruption/oecdantibriberyconvention.htm.

OECD HLRM website (2020) <https://www.oecd.org/corruption/hlrm.htm>

Basel Institute on Governance website (2020) <https://baselgovernance.org/b20-collective-action-hub/hlrm>

Working Paper No. 19: High-Level Reporting Mechanisms in Colombia and Ukraine, <https://www.collectiveaction.com/publications/674>

Working Paper No. 25: High-Level Reporting Mechanisms: A Comparative Analysis, https://www.collectiveaction.com/sites/collective.localhost/files/publications/180928_hlrm_working_paper_no_25_v2.pdf



POLICY BRIEFING NOTES
**FAIR MARKET CONDITIONS FOR COMPETITIVENESS
IN THE ADRIATIC REGION PROJECT**

High levels of corruption and lack of transparency are key constraints to economic growth and competitiveness in many countries worldwide. The Policy Briefing Notes, designed for stakeholders from the Adriatic Region, aim to provide practical guidance to tackle corruption, foster integrity and level the playing field for all firms. They draw on OECD guidelines, legal instruments and good practices and are tailored to the region's circumstances.

The Policy Briefing Notes are one output of the three-year OECD project to promote fair market conditions for competitiveness in Bosnia and Herzegovina, Croatia, and Serbia, supported by the Siemens Integrity Initiative. Through Collective Action, government officials from the region along business leaders, anti-corruption experts and practitioners, civil society representatives and academics have engaged to jointly identify country-specific challenges to integrity and foster fair market competition.

These efforts are part of the engagement of the OECD South East Europe Regional Programme, which collaborates with the region since 2000 to foster private sector development and competitiveness, improve the investment climate and raise living standards for an inclusive and sustainable future for the people of South East Europe.

**www.oecd.org/south-east-europe
oe.cd/fair-market-conditions**