



# Making up corruption control: Conducting due diligence in a Danish law firm

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## abstract

Contemporary scholarship on corruption control lacks an analytical focus on anti-corruption in practice. We examine corruption control at the micro-level as exemplified by the use of anti-corruption due diligence in a Danish law firm. Building on concepts from studies of the cultural economy, anti-policy, risk theory and classifications in examination processes, we argue that careful analysis of the subtle processes involved in the conduct of due diligence by professionals provides insights into the ambiguous implications of mobilizing particular forms of knowledge and expertise in practical corruption control work. By providing also an extended view on the operations of due diligence in the wider corruption control regime the paper problematizes clear-cut distinctions and categories used in established literatures.

## Introduction

Since the 1990s, national legislation and international conventions have proliferated in the name of 'anti-corruption'. Citizens and businesses are now part of and often the key drivers in corruption control efforts orchestrated by international organizations, non-governmental organizations and other organizational arrangements. Management consultancies, audit and accounting firms, law firms, investment banks and service providers of corruption control knowledge and technologies make up the commercial side of this transnational regime.

Scholars of international relations and international political economy have addressed the roles of state and non-state actors in corruption control, focusing

on hard and soft regulatory dynamics at the macro level, the efficiency of the regime and its neoliberal underpinnings (e.g. Rose-Ackerman, 2002; Abbot and Snidal, 2002; Wraage and Wraage, 2005; Bukovansky, 2006; Getz, 2006; Hansen, 2011; Jakobi, 2013). Scholars of international business, management and organization have analyzed the multiple causes and consequences of corruption at the organizational level (e.g., Rodríguez et al., 2006; Ashforth et al., 2008; Nichols, 2012). In this spate of research we often find normative ideals about proper organizational practice, including suggestions as to how corruption might be curbed. For example, Luo in a largely theoretical study of the complexity of corruption observes that organizations ‘should have detailed procedures for disseminating their anti-corruption statements to employees in all hierarchies, sub-units and locations’ (2005: 146). However, researchers have rarely explored the meaning nor theorized the significance of the specific governance technologies deployed in practical corruption control work in organizational settings. These technologies include the training of employees, the creation and use of codes of conduct, whistle-blower systems, indicators and metrics, and the deployment of various investigative methodologies aimed at handling corruption risks. This article sets out to analyze one governance technology of growing importance in the emerging corruption control regime: due diligence. We examine the significance of due diligence in terms of its cultural and classificatory logics in corruption control work carried out by professionals in a specific organizational setting, and we relate these logics to the broader corruption control regime.

Although scrutinizing business partners is a practice as old as commerce itself, the term due diligence originates from the US Securities Act of 1933. In essence, due diligence today typically refers to the procedures through which corporations assess the track record of their potential partners before engaging in business with them. Important is the control of the existence of any previous legal disputes or illicit activities before closing a transaction (Maurer, 2005). Due diligence has also entered the statutory books of the US Foreign Corrupt Practices Act and the recent UK Bribery Act as investigations companies must undertake when engaging in mergers and acquisitions (M&A). It is recommended by organizations like the UN Global Compact, World Economic Forum and Transparency International to address the challenges of corruption, not least when encountered in global supply chains (UN Global Compact, 2010).

The information gathered in due diligence investigations is commonly dealt with as if it represents the economic, political and cultural realities of the target(s) of the investigations. For the professionals conducting the investigations – lawyers, compliance officers and consultants – trust in the representational capacities of the information gathered is central to the purpose and success of their work. The

investigations in principle equip corporate actors for targeted practices, such as avoiding the payment of bribes or the acquisition of a firm with a suspicious history.

For researchers interested in the dynamics of corruption and corruption control, this observation could suggest the relevance of proposing a framework for assessing the effectiveness of due diligence as a corruption control technology in corporations. If effective, due diligence should be recommended, and simultaneously help to position corporations using this tool as ‘crucial allies’ against corruption (Álvarez-Arce et al., 2008). Our analytical perspective here is different, however. Instead of searching for causal links between the effectiveness of specific corruption control technologies, corporate self-regulation and social responsibility, or suggesting models for how to get rid of corruption in organizations, we explore the social and cultural processes that go into the conduct of due diligence in the first place. We believe such a critical perspective is important for two main reasons. First, it can help future scholarship as well as practitioners to be more reflective about the taken-for-granted assumptions of much corruption control work, including its blind spots and risks. Second, it provides a bottom up perspective on the broader corruption control regime. Due diligence resembles peer reviewing (Maurer, 2005), which establishes a particular relationship of power between an examiner and an examinee. Due diligence is a technology of governance that might discipline corporate conduct through the examination it undertakes. Whatever the direction, success or failure of this process, due diligence contains its own set of legal, cultural and social assumptions. These are essential to analyze in order to understand not only the meanings of due diligence when carried out within and across specific organizational contexts, but also the increasingly widespread endorsement of this corruption control technology across sectors and its implications for governance more broadly.

The article is structured as follows. Section I outlines a conceptual framework for analyzing due diligence as a governance technology. We argue that understanding due diligence this way requires insights into the ways cultural perceptions shape governance technologies aimed at curbing ‘bad things’ like corruption. Due diligence represents one such technology, being its key interactional dynamic the examination and its classificatory schemes. Section II sketches the empirical research methodology, which combines the single case study with a mixed method approach. Drawing on this framework, section III analyzes how due diligence is carried out in a Danish law firm providing counselling in mergers and acquisitions (M&A).

The contribution to studies of corruption control is discussed in the concluding section IV. Our conceptually grounded empirical glimpse of due diligence demonstrates that the information gathered by professionals does much more than simply representing people, objects and processes. Due diligence facilitates classification in knowledge hierarchies, which makes control, inclusion and exclusion, and organizational changes possible. Deeper insights into these subtle processes can enhance reflexivity about the ambiguous implications of mobilizing particular forms of knowledge and expertise in corruption control work. Especially some of the taken-for-granted frames and blind spots that particular professions such as lawyers come to apply when operationalizing corruption control technologies, including limited cultural reflexivity, are important. The study also provides an extended view on the operations of due diligence in the wider corruption control regime, problematizing conventional distinctions in much research and suggesting the usefulness in future research to experiment with different conceptual vocabularies.

### **Governing risks: The examination and due diligence**

The expansion of corruption control efforts remains a major international ambition, and scholars continue debating whether such efforts have any bearing on corruption levels, however measured. Some scholars have seen in the emerging corruption control regime the prospect of a 'business case', which is believed to reduce corruption over time. According to Nichols, corporations have come to have strong incentives 'for complying with rules that prohibit the payment of bribes and for developing programs and policies that ensure compliance with laws prohibiting the payment of bribe' (2012: 368). Conversely, critical scholars point to the corrupt role and failed responsibility of the private sector in times of financial crisis. The so-called business case of anti-corruption is illusory since the continuing dominance of neoliberal economic theories leads businesses to focus on profits and growth rather than on societal responsibility (Brown and Cloke, 2011: 118).

While these debates are important, they are often premised on generalizing theoretical and ideological assumptions that make it difficult to really address the multiple forms of knowledge, technologies and practices shaping the regime, which, when studied carefully in empirical settings, might reveal some of its underlying contradictions, limitations and potentials. Thus, our purpose in this section is to offer a framework for theorizing and empirically investigating the classificatory systems, technologies and cultural meanings in practical corruption work. Doing this, however, requires not only a focus on the social creation of corruption control in specific organizational settings, but also on its linkages to

and interdependence with broader institutional processes, in casu the corruption control regime.

A useful starting point for our endeavour can be found in recent studies of the cultural economy, which investigate the heterogeneous ways in which objects and persons are 'made up' by particular cultural frames, classificatory schemes and material technologies (du Gay and Pryke, 2002; Best and Paterson, 2010). Organizations, regimes and markets have traditionally been regarded as existing prior to and hence independently of our vocabularies. The key agents have been framed in terms of rational actors, capable of strategically assessing the costs and benefits of their activities in everyday life. The bulk of research on corruption and corruption control is premised on this view. But a turn to cultural analysis 'instigates a reversal of this perception, by indicating the ways in which objects are constituted through the discourses used to describe them and to act upon them' (du Gay and Pryke, 2002: 2).

The meanings people ascribe to social life and material objects, and the constitutive aspects of the material technologies and objects mobilized, are pivotal (Best and Paterson, 2010: 3). Important cultural dimensions of the economy of corruption control include the webs of meaning that span economic actors, and their relationships and products. These are left out of purview if we restrict our analytical focus to formal and rationalistic models. Politics and power is imbricated in meaning-making processes as well as in economic and material activities and artefacts.

Turning a particular social practice like corruption into a problem is thus linked to cultural perceptions of what counts as good or bad practices. Indeed, such problematizations inform the design of specific governance technologies to control and handle such practices. Recent studies of anti-policy (Walters, 2008) and risk management (Power, 2007) provide a conceptual terrain for understanding how the alignment of cultural perceptions and governance technologies can take place. The concept of anti-policy unpacks how organizations come to identify, problematize and govern 'bad things.' It focuses on the policies and strategies that name themselves explicitly as 'anti-', the kinds of legitimacy these might enjoy, the forms of resistance they might face and, not least, the productive processes such anti-policies can entail in terms of spurring socio-technical networks of people and objects around the problem to be governed. Anti-policies can mobilize particular professions, refine knowledge and provide the occasion for creating new institutions and technologies to address the undesirable things. This includes the formation of industries and markets where relevant 'anti-' knowledge and social technologies are produced and consumed.

Anti-policies intersect with the increasing focus on risk management and surveillance in organizations (Brivot and Gendron, 2011). Considering something a risk constitutes not only one of the primary ways in which a bad thing becomes visible and governable, it also presupposes expectations about actor and management responsibility (Power, 2007). Governments have conventionally been regarded as responsible for the control of bad things. But today the notion of risk management places a particular emphasis on corporate self-regulation to avoid liabilities. Corporations have come under pressure to act as socially responsible market agents and to make their anti-policies visible (Barry, 2004; Shamir, 2008; Scherer and Palazzo, 2011).

International anti-corruption efforts provide an apt illustration of these dynamics. Alongside international and national legal efforts governments have come to rely on an expanding number of governance arrangements in which corporations, industries, NGOs and other actors, including professions and experts operating across all these sectors, play a key role in the identification of 'bad things'. Neoliberal orientations and practices, however defined (Bukovansky, 2006; Everett et al., 2007; Ericson, 2007; Shamir, 2008), have induced regulatory changes and shaped corporations and other actors. The result is a fundamental diversity of corruption control practices, penetrated by commercial logics, technologies and devices, and socio-technical networks for 'control of the bad'. An 'anti-corruption industry' (Sampson, 2010), or adapting insights from Haggerty and Ericson (2000), an 'anti-corruption assemblage', is in the making, which in various ways connect state and non-state actors, including commercial actors, research institutions, NGOs and other experts and bodies of knowledge. Conceptually, an assemblage refers to the entanglement of heterogeneous human and non-human elements – people, objects and networks – and their formation into a field of thought and action. Conventional *a priori* distinctions dominating extant research on corruption and corruption, including between the 'national' and 'international', the 'public' and 'private', 'hard' and 'soft' law, might usefully be reconsidered against this background (e.g., Abbott and Snidal, 2000; 2002). The anti-corruption assemblage cuts across these conventional distinctions and can be articulated in specific contexts and situations, defining discursive and material relationships. It is with this in mind that the following sections highlight the role of due diligence as an ascendant corruption risk technology in the emerging corruption control regime. We begin our exploration by scrutinizing analytically some important components of this technology before turning to a study of its practice.

*The examination and dynamic nominalism*

Similar to other types of risk technologies due diligence involves examination. Whatever the particular methods enacted by the examiner, the examination reflects certain knowledge and expectations about the ideal conduct to strive for on the part of the examinee. By marking up appropriate conduct it operates with a model of deviant, or risky, behaviour. Thus, the examination always rests on hierarchy of knowledge, being its aim to shape the conduct of the examinee based on the 'truth' established through the investigation and questioning. This shaping can take place through training, surveillance or punishment, suggesting also that the examinee can be deemed responsible for both its own negative classification in the examination as well as for future improvement (Löwenheim, 2008: 259). Of course, the examinee may be listened to, but it is the examiner who decides which sources of information about the examinee will be included, what specific aspects will be focused on in the examination, and how to balance the different kinds of information retrieved for the final decision-making.

Scholars have begun to investigate the various forms of examination deployed in the emerging corruption control regime. This includes the peer review process undertaken by the OECD whereby officials from member state carry out missions to other member states to examine the degree to which the examined state has adopted the anti-corruption practices suggested by the OECD. Scholars have also explored the development of performance measurements in the area of corruption and anti-corruption, which relies on examination and surveillance of risky countries, sectors and businesses (Hansen, 2012). As a form of examination due diligence is much like qualitative peer reviewing, although quantitative assessments can clearly form part of it (Maurer, 2005).

Considered a type of examination the conduct of due diligence relies on the use of language. However, for our analytical purpose here, focusing only on language use does not do justice to the complexity of the matter. To understand the project of 'making up people', as Hacking (2007) notes, several interacting elements must be taken into account. Thus, it is not only the 'names' used in the work of classifications that should be taken into account

but also the people classified, the experts who classify, study and help them, the institutions within which the experts and their subjects interact, and through which authorities control [as well as] the evolving body of knowledge about the people in question – both expert knowledge and popular science. (*ibid.*: 295)

Hacking proposes the concept of 'dynamic nominalism' to capture the interaction between classificatory and non-classificatory elements in social processes. Much like conceptions of reactivity (Espeland and Sauder, 2007) and

performativity (e.g., MacKenzie, 2006), dynamic nominalism includes 'looping effects', which refer to the ways in which classifications interact with the people or objects classified. Such looping effects and their classificatory logics typically unfold at micro- and macro-levels. Goffman's (1959) concepts of schemata, frames and impression management can help us to capture some of the ways in which people in due diligence processes in micro-setting can play strategically with particular representations of themselves, drawing on both expert and popular discursive repertoires. Additionally, concepts from Bourdieu's (1987) reflexive sociology of law, including legal habitus and field (Dezalay and Madsen, 2012), serve to address the broader legal reasoning, which is applied in anti-corruption due diligence. Such reasoning typically comes about as classificatory schemes anchored on specialized repertoires of knowledge and expertise circulating at the macro-level. Before we investigate these processes in relation to the conduct of anti-corruption due diligence in a Danish law firm, for which this service has become a cornerstone, we sketch the methodology of the study.

## **Methodologies**

The law firm under scrutiny is among the largest law firms in Denmark. It is specialized in providing advice on M&As, which makes up its largest business area in terms of revenue and number of lawyers, and it has several times been recognized for its services through third-party awards. In 2013 it provided due diligence investigation on more than thirty M&As. Importantly, the firm was also a first mover on the Danish market in providing anti-corruption services. These include the drafting of codes of conduct, e-learning programmes, training, whistleblower schemes and, what is especially interesting here, due diligence on anti-corruption in an M&A context. It was on this issue the firm gave us access to confidential empirical data that otherwise would have been hard to retrieve. All this material has been anonymized.

Our approach is a single case study combined with a mixed method approach. The small sample research is appropriate to understand the peculiarities and the determinants of a phenomenon at an early stage of knowledge (Eisenhardt, 1989). Here it is complemented by a mixed method approach (Patton, 2002) with interviews, observations and documents. Twelve interviews were carried out with lawyers engaged in anti-corruption due diligence investigations. The documents include requests lists and questions sent to target companies, mail correspondence, meeting synopses and descriptions of standard operating procedures in the law firm. Observations were conducted in the Virtual Data Room (VDR, more on this below) and through participation in kick-off and ongoing meetings concerning anti-corruption due diligence.

In recent years anti-corruption due diligence has gained ground in M&A globally as a result of new legislation, increased liability, increasing legal enforcement and the pursuit of new revenue sources in the repercussions of the financial crises. Analyzing the Danish case is interesting for several reasons. Since the mid-1990s, Denmark has been on top of Transparency International's Corruption Perception Index (TI CPI), which measures the perceived level of corruption in 180 nations. This low level of perceived corruption combined with a limited enforcement<sup>1</sup> might explain why Danish enterprises seem to be lacking behind the emergent wave of anti-corruption compliance, in contrast to the Anglo-Saxon anti-corruption tradition. Nonetheless, anti-corruption services in the Danish law industry have undergone a significant expansion. Nowadays the largest Danish law firms provide services on anti-corruption as an independent business area, or explicitly, as part of a broader compliance or legal risk management service. Just half a decade ago dedicated anti-corruption services in Danish law firms were a rare sight.

A focus on the Danish case provides us with insights into logics that are likely to be found elsewhere as well. As an interesting comparison, in the UK, the growth in anti-corruption services has been even more evident following the introduction of the UK Bribery Act. Today the five leading law firms having the highest earnings per-partner and earnings per-lawyer among UK-headquartered law firms promote specific anti-corruption business services. This growing trend is evident in law firm Allen and Overy's M&A Index that highlights the number of anti-corruption measures in joint venture transactions. In 2013, 54 % of the joint venture deals included such measures, compared with 45 % the year before. And, further, 18 % of the transactions also dealt with wider corporate responsibility issues (Allen and Overy, 2014).

### **Anti-corruption due diligence services in a Danish law firm**

In this section we analyze the Danish law firm providing advice to companies on due diligence in corporate M&A, looking mainly into the micro-dynamics of corruption control. However, it will also be clear that the due diligence conducted has threads to macro-classifying institutions defining the legal reach of

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<sup>1</sup> Until 1998 bribery was deductible on equal terms to ordinary operating expenses in Denmark. At request of the OECD Denmark enacted an amendment to section 8 in the Danish Tax Assessment in 1998, which abrogated bribery as tax-deductible. However, for the bribe to be deductible it had to be a 'standard practice necessity' in the country where it was taking place. In 2013, OCED criticized the Danish fraud team (bagmandspolititet) for lack of enforcement and resources to combat bribery in Denmark (OECD, 2013).

corruption control, as well as to the expertise and information provided by the key professionals and other commercial and civil society actors involved.

We can distil four interactive elements that this particular kind of examination puts into motion: (1) *Classifications of activity* – i.e. the examiner's (the buying company and its lawyers) classifications of the examinee's (the target company) business activity in terms of compliance with the examiner's minimum standards; (2) *Classifications of people and markets* – i.e. the classifications of the examinee and connected partners, networks, territories and jurisdictions of operation, etc.; (3) *Institutions* – i.e. the key regulatory actors, institutions and standards that provide the conceptual and classificatory canvas from which the examiner operates and makes decisions in matters of corruption risks; (4) *Knowledge and experts* – i.e. the forms of expertise and popular knowledge that inform corruption risk diagnoses. We first describe how the law firm organizes its anti-corruption services in matters of due diligence with respect to M&A. We then analyze the classificatory practices undertaken and point to some of their implications.

Organizationally, anti-corruption due diligence is caught between different lawyers and consultants covering different areas of expertise, but orchestrated by the responsible project group in the M&A department. External accounting firms, specialized in forensic investigations, are contracted to validate information. In addition, partners and departments are in a constant battle for resources and billable hours. A senior M&A lawyer states:

M&A due diligence lives its own life. You work under accelerated timetables collecting and analyzing data under confidential and complex conditions.

That conducting due diligence on anti-corruption requires a lot of work has also be documented in US cases (FCPA, 2004).

In simple terms, an M&A consists of an acquirer and a target company. The acquirer seeks professional legal assistance to examine potential corruption issues in the target company. The most predominant classification variables are the type of transaction, markets, industry, geography, size and characteristics of the acquirer and target. Each of these variables has a significant impact on the extent and scope of the anti-corruption due diligence, which can range from all-encompassing to very limited.

This is why a preliminary screening of prospective targets and a macro risk assessment in the preparatory phase precede any specific anti-corruption due diligence investigation. The risk assessment typically examines the level of corruption in the relevant jurisdictions through a review of case law material. It

is also based on indexes like the TI CPI, MapleCrott, a commercial risk management tool combining analysis of corruption risks at local, country, issue, and sector level, as well on Getting The Deal Through, which summarizes anti-corruption laws and enforcement policies in 44 countries. This illustrates how legal institutions and procedures, driven by classificatory systems, are combined with quantitative metrical systems provided by NGOs and firms, to make up a knowledge hierarchy for later decision-making. This preliminary screening and risk assessment typically reduce the number of potential target companies from several to between one and five.

Next, the acquirer makes an initial anonymous approach to the shortlisted targets. Negotiations are then initiated and the shortlisted company (the final target company) is scrutinized in the anti-corruption due diligence alongside more conventional due diligence investigations. In larger transactions in the Western world the target company and its consultants upload data to a virtual data room (VDR). The VDR allows exchange of information and follow-up-questions in a Q and A forum. The investigation can hereafter be divided into the following eight phases (the sections italicized will be elaborated further throughout the analysis): (1) *Request list sent to target*; (2) Setting-up of VDR; (3) Admission to VDR; (4) *Review of information in the VDR*; (5) *Q and A in the VDR*; (6) *Q and A session with top management*; (7) Closing of VDR; (8) Final due diligence report delivered to the client.

The request list (1) is issued by the acquirer and its consultants, primarily the lawyers and is the starting point of the formalized anti-corruption due diligence. As such, it aligns with the hard law features of the emergent anti-corruption regime. The request list demand information on a variety of issues, the level of details being dependent on the initial screening and risk assessment. As an M&A project coordinator explains:

For every transaction the request list is adjusted to fit the particular target company and reflects the compliance level demanded by the client.

In essence, the list is a classificatory system aiming to feature and isolate any information relevant to anti-corruption, but it also serves to facilitate communication among lawyers and consultants of the target and the acquirer. The framing of the request list together with the VDR enables lawyers to process large amounts of information rapidly and to share information with the acquirer and the target company. Conceptually, the request list works as a ‘schemata of interpretation’, i.e. ‘frames’ that enable individuals ‘to locate, perceive, identify, and label’ (Goffman, 1974: 24) corruption issues and information. Below is an

example of the anti-corruption section of the request list from a particular transaction.

The meaning that the lawyer attributes to the information provided to the request list is pivotal in terms of next steps in the due diligence. The findings from this review are categorized into (4) a 'traffic light arrangement' consisting of green (no or minor issues), yellow (issues for further investigation) or red (red flag issues that need to be addressed in further detail). The process for deciding what constitutes a red flag in the due diligence investigation involves a gap analysis of legislation and the performance of the target company.

#### **Example of request list on anti-corruption matters (not complete)**

- Compliance management system incl. programs, policies, procedures, training materials, and internal and external audit processes.
- Code of conduct.
- List of responsibilities of each person and management group involved.
- Provide a risk assessment carried out on corruption and bribery risks.
- List of accept and granting of donations, sponsorships, corporate hospitality, events and gifts in the current calendar year and preceding six calendar years.
- List of all intermediaries (in the broadest sense), incl.: name, type of service provided, country where service is provided, interaction with public officials, remuneration, whether agreements contain anti-corruption provisions.
- List of business relationship with public officials.
- List of conviction for criminal conduct covering all company and group, subsidiary etc., employees and owners incl. type of crime, department, date, status in the current calendar year and preceding six calendar years.
- List of training activities carried out incl. type, frequency, participation rate, questions and coverage in the current calendar year and preceding six calendar years.
- List of facilitation payments incl. type, amount, country, date in the current calendar year and preceding six calendar years.
- Information on whistle-blower scheme, ethics hotline and other compliant channels.

- Any information and documentation, which has not been listed in the Request List, but might be relevant to a potential buyer's assessment of the company, should also be provided.

On surface, these vocabularies appear as 'neutral' and objective. Nonetheless, according to one lawyer there is an underlying assumption of mistrust to the point where aspiration of control exceeds trust:

Trust is okay but control and guarantees are better.

These categories of mistrust, framed by a classification *by* some people *of* other people, are determined by a group of experts who classify others, i.e. those described by them. In other words, the acquirer and its lawyers label the categories of mistrust and suspiciousness through the request list, whereas the examinee become subject to these categories. This accession and implicit labeling of mistrust by the buyer towards the target company and their advisors might accommodate or change their behavior as a matter of defense mechanism as people classified often end to conform to or grow into the ways that they are described (Hacking, 2007). In all, we see here how the request list (1) and the ensuing review (4) are basically a classificatory system, which helps to assess whether adequate measures are in place in terms of mechanisms of prevention (screening, risk assessment, training, policies), detection (whistleblower, audit) and responding (dismissal, settlement and handling of cases) in relation to potential breaches of corruption in the target company.

In many cases the information provided prompts more questions than answers, and these new questions are then addressed in an ongoing Q and A session in the VDR (5), or in the face-to-face Q and A (6) which also forms part of a due diligence investigation. Impression management (Goffman, 1959) plays a key role in these Q and A sessions. The target company will attempt to gain an advantageous first-impression to influence the acquirer's perceptions of the company by providing self-assessed beneficial information within social interactions – both online and in face-to-face Q and A sessions. For the target company, the fear of being perceived in certain ways can naturally translate into strategic impression management whereby the target and its consultants purposively seek to promote certain representations of the company. The sense of impression management spurs skepticism among the lawyers representing the acquirer. The lawyers need to gain a true and fair picture of the target's anti-corruption performance in contrast to the target company's self-portrait. At this stage, the lawyers are not instructed in detail on how to conduct the due diligence or what questions to ask in the Q and A, instead, they are given a 'few cues,

hints, and stage directions' (Goffman, 1959: 72) by the client. As one lawyer explains:

It is the risk appetite of the client that decides if we are to wear both belt and braches when conducting the due diligence investigation.

And it is assumed that the acquirer's lawyers through prior experience and specialization in anti-corruption have accumulated the necessary knowledge to identify material findings. The Q and A takes place on the VDR platform. With all of this information in place, the investigation can continue to the next stage, which typically includes more detailed interviews with key personal at the target, face-to-face. It is the acquirer who weighs all the information and makes the final decision whether to close the deal or not.

An example will illustrate how the Q and A can carry along unintended consequences in an anti-corruption context. In one case, the review of an employee handbook of the target company revealed the existence of a corporate social policy promoting employment of individuals with a criminal record. While the policy exhibited social responsibility on the part of the target company, which could in principle signal good corporate reputation, it posed a red flag to the buyer as the risk of engagement in bribery was believed to be more likely among employees with a criminal record. The issue prompted the following Q and A in the VDR:

Question by the acquirer:

It appears that employees convicted under section 122 in the Danish Penal Code, can be approved for work by the local head of staff. Has this been the case? And/or have you hired any employees convicted of fraud, embezzlement or bribery? If so please provide a list that includes the crime, the date, the department that hired the respective offender and the reason for hiring the respective offender

Answer by the target:

According to our best knowledge no one has been convicted.

Question by the acquirer:

What are the reasons for your best knowledge qualification?

Answer by the target:

We are not aware of any such hiring.

Not satisfied with the answer provided by the target company in the VDR, the lawyer representing the acquirer decided to raise the issue in a face-to-face

meeting with the target company executives, who proved unable to elaborate on the answers given in the VDR. Ultimately the buyer decided to erase the referred section in the employee handbook after takeover of the targeted company. This illustrates how the classificatory system involved in this anti-corruption due diligence led the lawyer to advise the acquirer to put an end to a practice, which from a different point of view could be perceived as good corporate social responsibility: re-integrating previously criminalized and punished subjects into work. Moreover, when the lawyers classify the activity – the hiring of former convicted employees as incompliant with the institutional expectation – it has the side effect of classifying the people – the convicted employees – as less legitimate than conventional employees. Ultimately, this counteracts societal norms of treating subjects who have served their time equally worthy to others. Finally, when the acquirer – post-acquisition – deletes the section on hiring former convicts in the employee handbook it becomes evident to the employees that the acquirer has changed the social practices of the target company.

The process illustrates the interrelation between the interactive elements of classification of activity, people and markets, and how the established hierarchy of knowledge comes to produce externalities. A conflict of anti-corruption compliance and promotion of social responsibility can thus exist in an M&A context: The aspiration of governing the ‘bad’ of corruption produces a blind spot for promoting potentially ‘good’. More generally, the level of risk appetite in the due diligence process is a balancing act. If numerous uncertainties are highlighted and proclaimed risks repeatedly turn out to be minimal or even non-existing, the enacting of the institutional classification is close to amount to scaremongering. On the other hand, if a risk is underestimated it can have severe commercial consequences. In practice, the level of certainty is established in a dialogue between the client and the lawyers, while keeping in mind that risk-taking can be a potential source of income for the lawyer.

The processes of establishing such an acceptable level of certainty obviously raises the broader question as to what counts as ‘certainty’ for the professions involved in the anti-corruption due diligence process. Whereas lawyers are specialized in giving advice on legal requirements in corruption control regarding M&A, they normally are not trained for cultural analysis. They thus lack a deeper understanding of the cultural, institutional and social mechanisms involved in corruption, but potentially also a broader reflexivity around their own role in due diligence processes and corruption control (Angwin, 2001; Hines, 2007). When the various classifications based overwhelmingly on the language of law and risk management are rolled out it is difficult to capture and understand the variations and social dynamics of corruption. Nonetheless, in the Danish firm under consideration several of the lawyers emphasize that ‘informal’

cultural considerations are applied. This happens especially during the initial screening and risk assessment. For example, the Chinese practice of *guanxi* (networking) and gift giving is taken into consideration as specific cultural traditions that can collide with western anti-corruption policies. This issue is on the table when advice is given to Chinese clients making acquisitions in Denmark or vice versa. However, this also illustrates the static approaches to culture taken by lawyers. Culture is implicitly defined by nation and market assumptions, and such rather simplified 'cultural data' often come to shape the risk assessment process.

More generally, the practical difficulty of introducing an informed cultural awareness of the target's social and cultural circumstances in anti-corruption due diligence can be related to certain characteristics of legal professions and their thinking. For example, Bourdieu (1987) has convincingly argued that the autonomy of legal thinking is based on a number of features of the juridical field. Legal traditions, education and professional experiences mobilize a legal habitus, which becomes applied to legal reasoning. This legal habitus is dominated by juridical and economic capital, which leaves a blind spot for other considerations such as human recourses, social responsibilities and cultural concerns. This can explain why deeper cultural considerations in terms of customs, norms and beliefs often not are prioritized in anti-corruption due diligence investigations. As an M&A lawyer from the Danish law firm expressed it in an interview:

What is not in the statutory books doesn't count much.

So-called 'softer issues' like cultural values are often treated more as a token gesture than leading to a thorough attempt to understand the risk profile of the target company. However, as lawyers are increasingly confronted with growing cultural complexity in terms of decoding corruption, it becomes of pivotal importance, not least from an instrumental perspective, to be able to decode, understand and provide service in proportion to this complexity.

In all, we have seen how the various classificatory logics at play in due diligence investigations establish a knowledge hierarchy, which essentially serves to discipline and provides mechanisms for inclusion and exclusion. We focused on the construction and use of procedures, templates and databases, the attribution of identities and the prescription of correct behaviour through classifications anchored in particular bodies of knowledge, including legal regulations, case law material on anti-corruption as well as free-of-charge and subscription indexes. Throughout, the *classifications of activity, people and markets* are shaped by the *institutional* benchmark set by the increasingly strict anti-corruption regulation. Specialized *knowledge and expertise* provided particularly by lawyers authorizes the

classificatory endeavour, which can lead to organizational practices being modified or stopped. In this way, the information achieved through the examination, however fragile, does more than simply representing people and objects – it also ‘orders’. From the initial screening to the final decision, due diligence has threads to macro-classifying institutions defining the legal reach of corruption control, but also to the expertise and information provided by commercial and civil society actors. By its very selectivity and foundation in classificatory schemes of corruption control enacted by particular professions, due diligence conducted at the micro-level obscures other aspects, which might have produced more nuanced accounts of the target.

## Conclusions

As we noted in the beginning of this article, much research on corruption and corruption control has been focusing on macro-level dynamics. When studied at the micro level, there has mainly been focus on the development of conceptual explanatory models and/or strategies for how to curb corruption in organizations. Researching corruption control empirically in organizational settings has not been a major main scholarly concern. Against this backdrop, we suggested the relevance of taking a deep empirical look into such corruption control practices in organizational settings, and this precisely at a time when stakeholders at large – ranging from governments and businesses to civil society organizations – seem to converge around the recommendation of a particular set of tools to tackle corruption. Our objective, however, was not to assess the effectiveness of specific corruption control technologies, but rather, by means of a conceptually grounded single case study of anti-corruption due diligence, to understand the underlying assumptions and effects related to the use of a specific technology, as well as its linkages to the corruption control regime. While the Danish case is unique, we believe our conceptual focus on the dynamics of the examination in the broader context of anti-policy and risk, including aspirations of doing away with ‘bad things’, the operation of classificatory logics, schemata and impression management as professionals negotiate the meaning of their endeavours, coupled to the conceptualizations of the corruption control regime as a blend of legal, political, commercial and material logics, an assemblage, applies much broader than the Danish setting.

First, the study provides detailed insights into the micro operations of corruption control technologies. By also illuminating the role of professional cultures, especially legal experts, in deploying particular control technologies it suggests some of the cultural blind spots, hidden assumptions and risks that corruption control involves. The professionals in corruption control work develop a

consensus of meaning for certain actions based on their broader legal habitus, which is played out at the interactional level. The language and methods used by anti-corruption lawyers and other professionals are reproduced in a process involving institutions and classificatory logics adopting the same languages and devices to exhibit an alignment with the values of the corruption control regime. We might expect that the more due diligence procedures becomes standardized, the more examinees will eventually learn what the examiners are *not* focusing on, spurring strategies and practices at odds with the spirit of the corruption control regime. In this vein future research might analyze in more detail the mobilization of other corruption control technologies, for instance the training of employees and whistle-blower systems; their shaping by particular professional cultures, the mechanisms of inclusions and exclusions that are at stake, including various forms of strategic behaviour. Such research may not only provide a more nuanced picture of how corruption control works in practice, but also about its underlying premises, potentialities and risks. This would be of relevance for researchers and practitioners alike, and provide a basis for critique and reflexivity around corruption control and its technologies.

Second, while we have focused on the practice of due diligence mostly from a bottom-up perspective we still believe there is also contribution to research focusing mainly on corruption control from a macro perspective, or to research that aims to bridge the two perspectives. Our study clearly suggests that the due diligence investigations observed interact and are assembled with socio-technical networks that extends well beyond the examiner and the examined within the setting in question. Those networks enrol not only the key classificatory institutions of the state and inter-state regime in corruption control, but also a whole raft of commercial actors and NGOs and other bodies of knowledge, specifically professions, which operate at various levels and across established distinctions, providing material services and 'moral guidance' to the control work on the ground. It is worthwhile to take a closer look this *anti-corruption assemblage*, its organizational features and tensions in future research. Besides crossing micro-macro divides, the term suggests the usefulness of engaging more systematically with conceptual vocabularies that question or at least consider reflexively the *a priori* distinctions such as 'national' and 'international', 'public' and 'private', and 'hard' and 'soft' law, all of which have been so common in much academic and practitioner work on corruption control.

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