

ANTI-CORRUPTION RESEARCH GROUP – ITALIAN TEAM – ANTI-CORRUPTION POLICIES SURVEY

According to the program established in Cape Town during the 2015 General Academic Conference, the anti-corruption group prepared a general survey about the relevance of compliance programs within the national anti-corruption policies. The aim of the survey, written in first instance by the Brazilian research team, is to assess the impact of company compliance as a means to contrast corruption. Each national research team translated the survey into its national language and adapted some of the questions to the national context. The Italian team was strongly helped in this activity by two students of the third LSGL Summer School, Ilaria Toselli and Biagio Schettino, who proactively participated to all the steps of the research.

The Italian Survey.

a) Methodology

A1) The questionnaire is based upon several multiple choice questions. Only in few cases (and only as a specification of a multiple choice option) companies had the chance for open questions. Questions were divided into nine sections, on the basis of some major topics, touched by the survey. In several cases, companies could rely on multiple answers, while in other cases, the question allowed only one possible answer.

A2) The team firstly worked on the general survey scheme, in order to assess if each of its parts could be adapted to the Italian context. As to this point, only few formal amendments were needed. The group deemed necessary to translate the questionnaire into Italian, in order to circulate it easier through companies (see point b, about companies selection).

A3) The questionnaire was made available on a web page of our Department, with a completely anonymous filling system. Our webmasters worked with our team in order to perform the best technical solutions. Companies were invited to the survey by e-mail: a special web mail address was created, in order to de-personalize the research activity. A short text was written in the e-mail, inviting the companies to click the link to the web page: in attachment, companies could find a word file, introducing the LSGL, the anti-corruption research team, and the survey itself.

A4) The web page was accessible only through the abovementioned link, in order to avoid fake or multiple fillings. It has been available for two months.

A5) The current report is the result of the analysis of the answers given by companies. We counted the number of answers for each choice and reported it into percentage. On the base of percentages, we derived figures, for the majority of the questions. However, some answers could not be reported into figures. In other cases, it was necessary to merge some of the possible multiple choices into groups, in order to have a viable number of options to be reported into a figure.

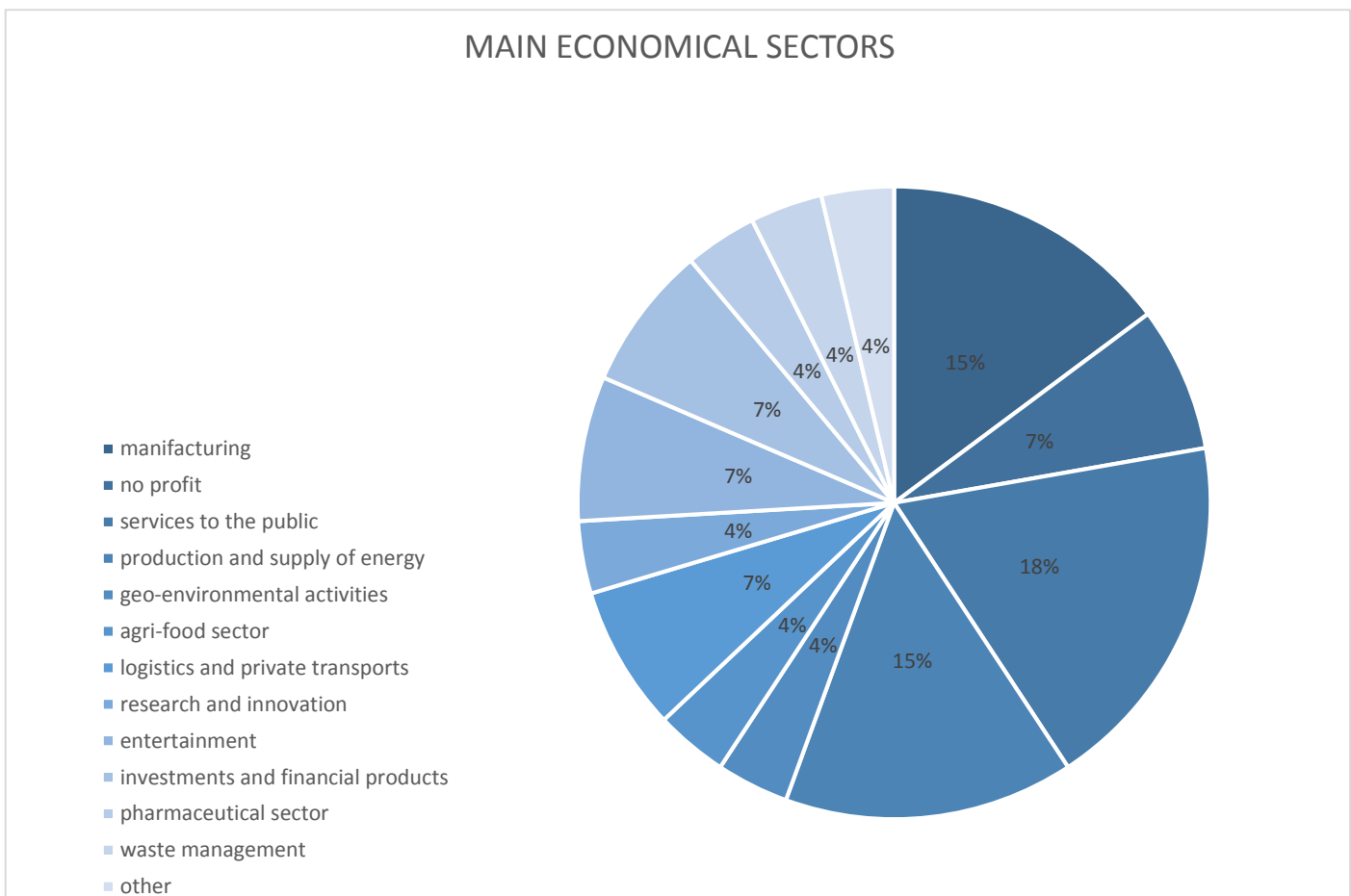
b) Selection of companies. The questionnaire was spread only through companies submitted to the law 231. In fact, the Italian piece of legislation introducing companies compliance programs duties is d.lgs 231/2001. Among the public entities, the Act affects neither the State, the Regions, the Provinces and the other public entities having a territorial standing, nor the public bodies having constitutional relevance (e.g. CSM, *Consiglio superiore della Magistratura*) or public entities without economic relevance

(e.g. tourist offices). Public entities with economic relevance (e.g. ENI, FINMECCANICA) are affected by the 2001 Act. In fact, it is possible to argue that these are very special companies: Even though they are part of the public system and subject to public law rules, they are held in respect of the market criteria. As for private companies, the 2001 Act affects a very large number of these, regardless of legal personality. The only relevant criterion is that they must have an autonomous organisation, albeit embryonic. It must be said that, in the private sector, only individual enterprises are not touched by the 2001 Act (for further information see the Italian report LSGI 2015). So far, the invitation to the survey was circulated both among private enterprises and public companies: being the survey anonymous, we cannot establish the number of private and public companies involved. However, analysing the results of the questionnaire, we can affirm that a quite wide range of different companies participated to it (see figures).

- c) Results. In attachment to this report, the questionnaire and the .ppt presentation can be useful tools to summarise and to clarify the results of the survey. According to the method presented above, this report is the result of the analysis of the answers given to questionnaire.

Section 1 – General information.

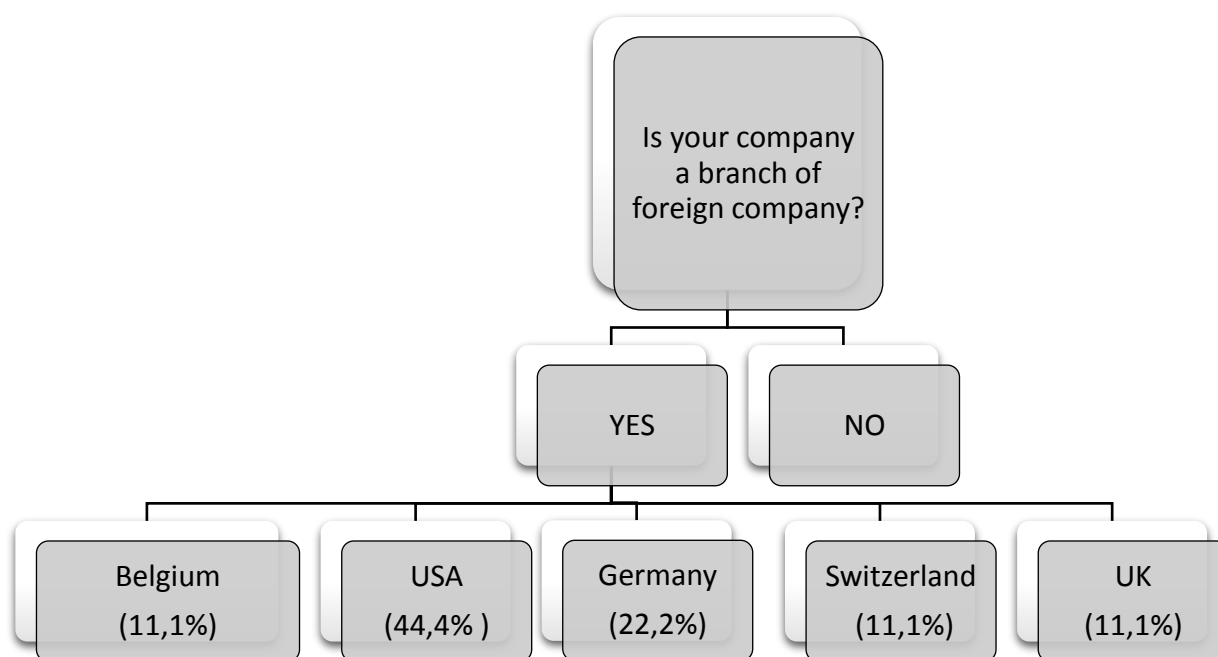
31 Companies took part to the Italian survey. The range of their economical activity is quite wide, covering the major sector of the economical context. (figure 1.1, question 1.2)



The major part of companies in the survey operates in the field of services to the public, under both private and public management. But, no surprise, a big number is involved in manufacturing, that is the most traditional leading sector of the Italian economy, since the II WW aftermaths. A relevant percentage is also engaged in producing and supplying energy, which is an interesting result, in a Country, like Italy, having experienced a long period of nationalization of energy. Logistics and private transport services (public transport services have been considered under 1, it is to say services to the public) are also strongly represented.

According to question 1.3., none of the participating companies has further types of business, other than the principal one.

A minor part (30%) of the companies interviewed are branches of a foreign company (figure 1.2., question 1.4 and 1.5). Of that 30%, 44,4% depends on a company based in the USA, and 22,2 % on a company based in Germany. Switzerland, UK and Belgium are also represented.

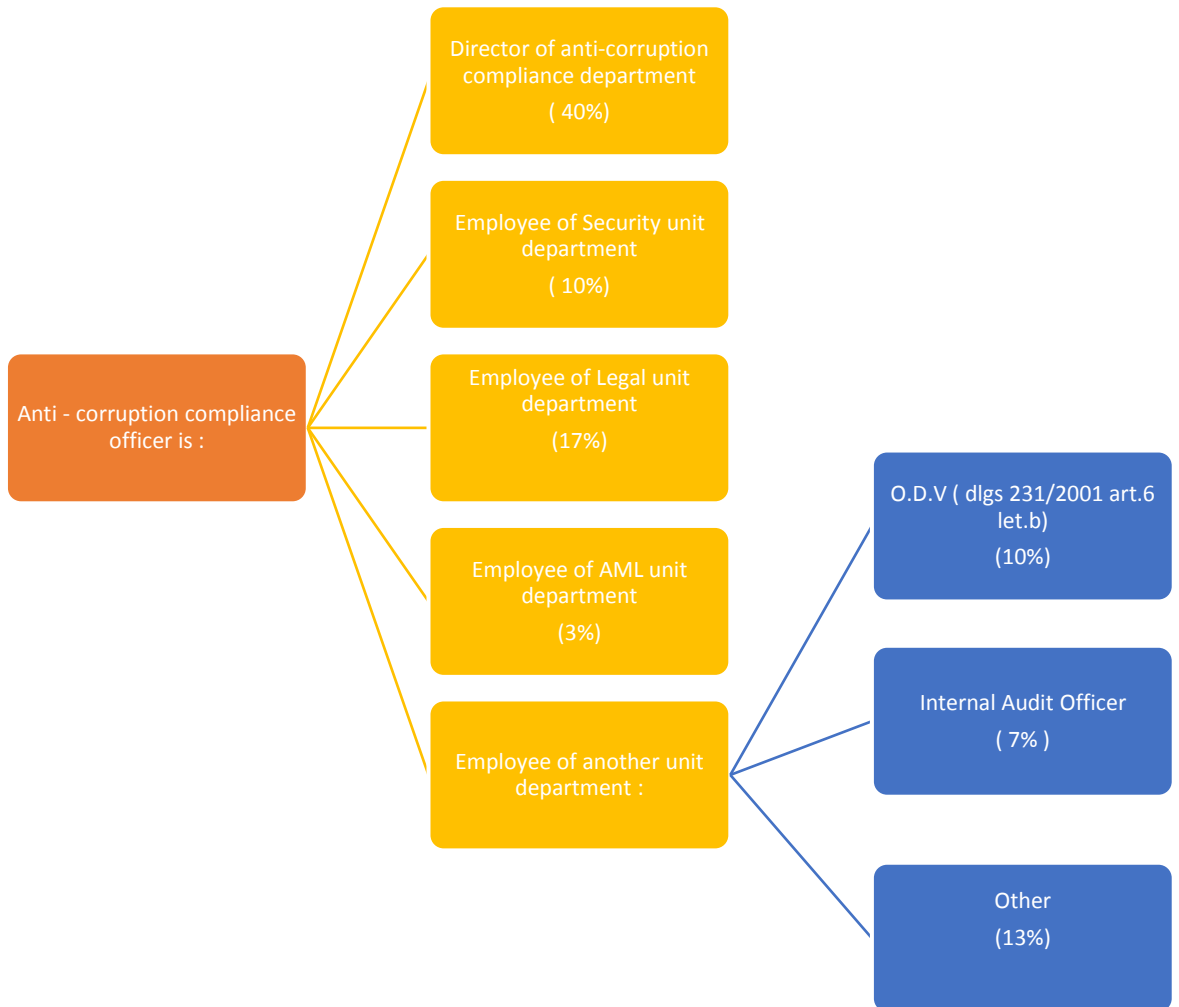


47% Of interviewed companies declare that they are obliged to carry out internal control in accordance with Anti-money laundering law, while 50% deny it. 3% did not answer (question 1.5.).

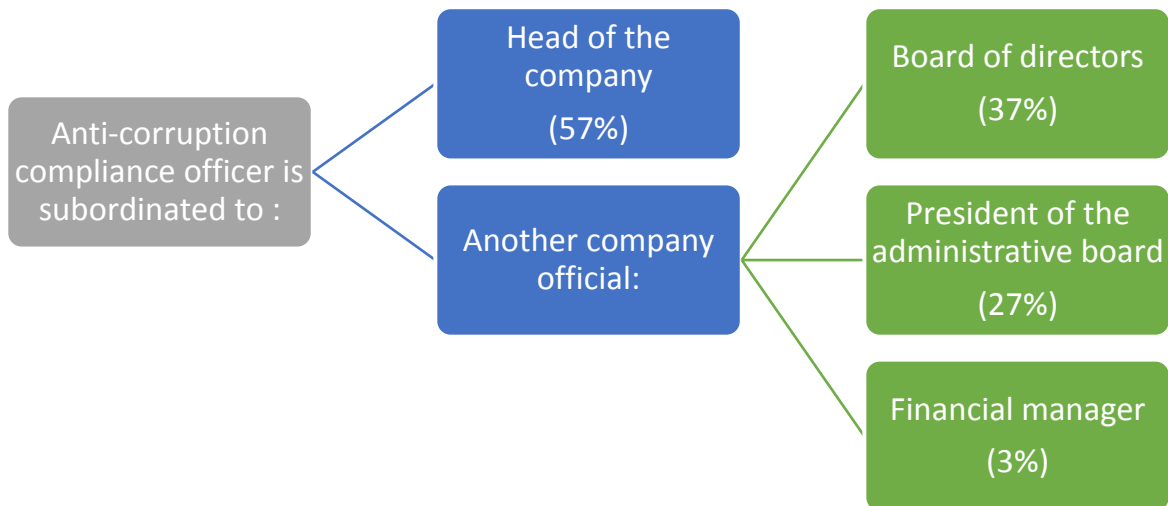
The major part of the companies participates of collective actions of business associations (77%, question 1.6.)

Section 2. Place of anti-corruption compliance control in the structure of the company.

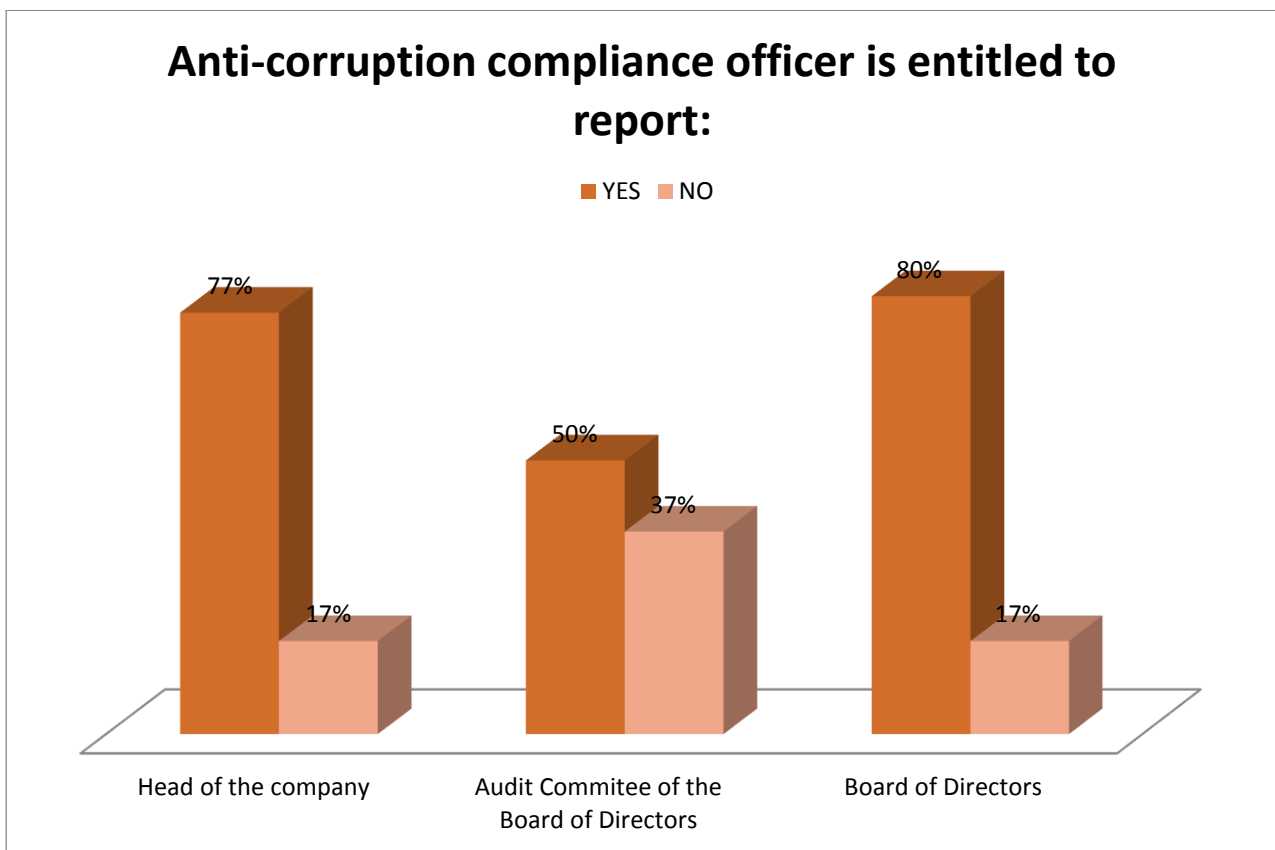
As to the subject in charge of anti-corruption controls (question 2.1. and 2.2., figure 2.1.), companies split into two equal groups: 50% declared having a special unit in charge of anti-corruption program, while the other 50% declared having only an officer in charge of it. As to this last one's position, companies were given multiple choice, which are represented in the following figure:



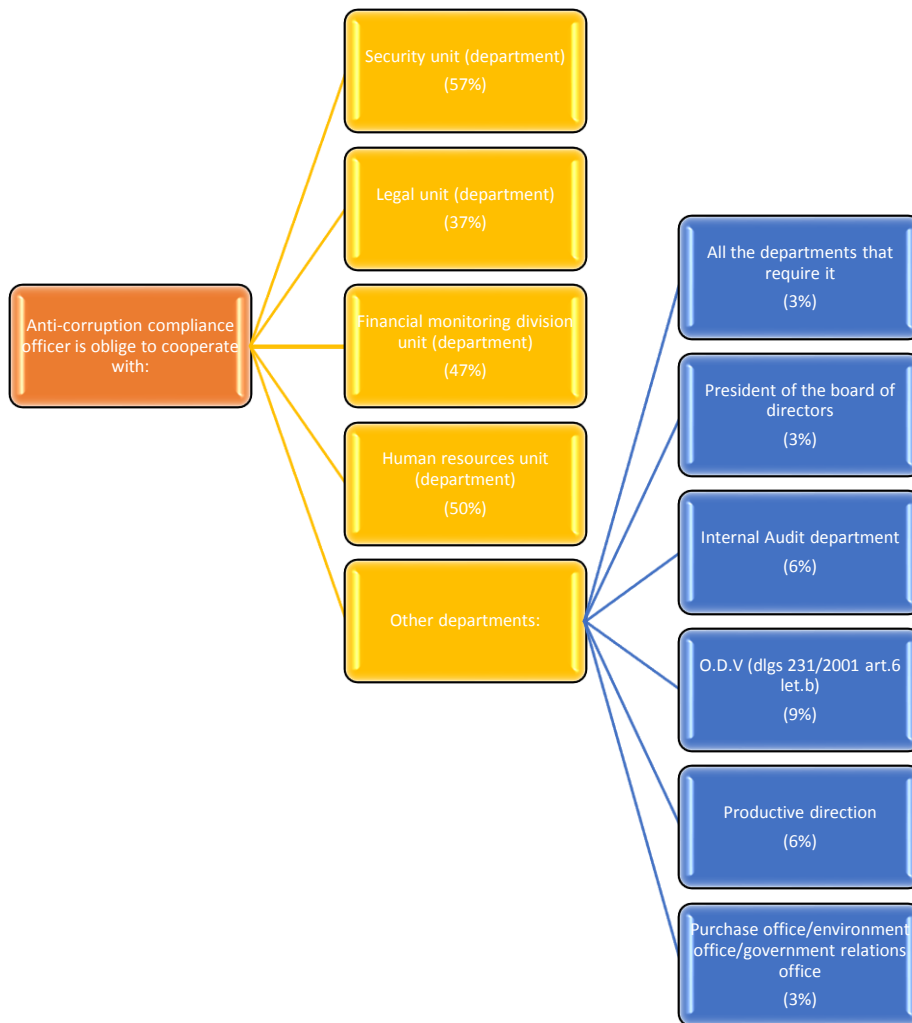
The anti-corruption officer can be submitted to several different controls. In this case (question 2.3), more than one answer was possible:



There are relevant differences also with regard to the subject whom the compliance officer can report to (figure 2.2., question 2.4)



As to the bodies the compliance officer has to cooperate with (question 2.5.), more than one answer was admitted, and the results are quite wide (figure 2.3):



Section 3. Code of Business Conduct

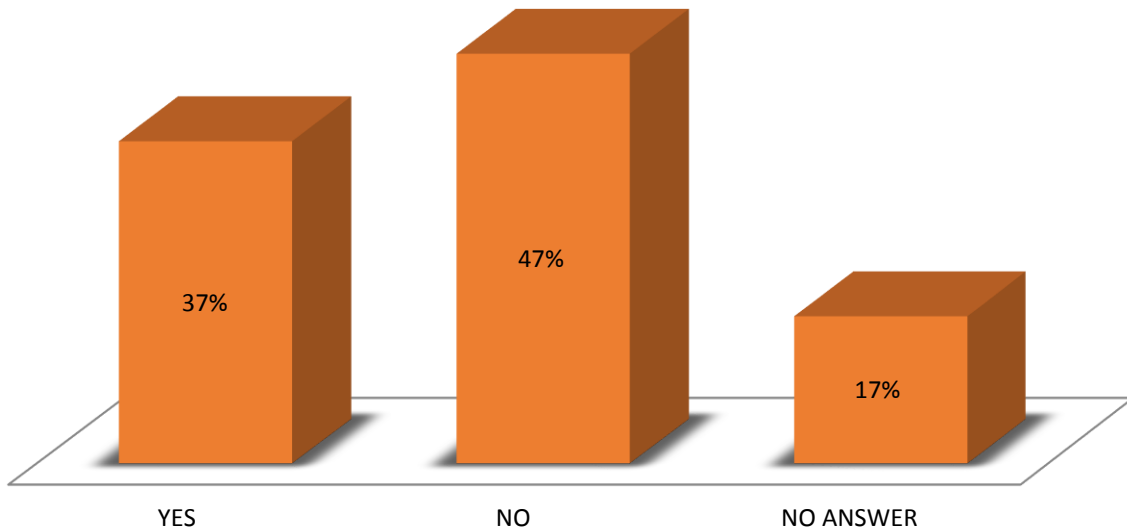
All the companies interviewed admitted to have a code of business conduct (question 3).

Section 4. Anti-corruption policy

Question 4.1.

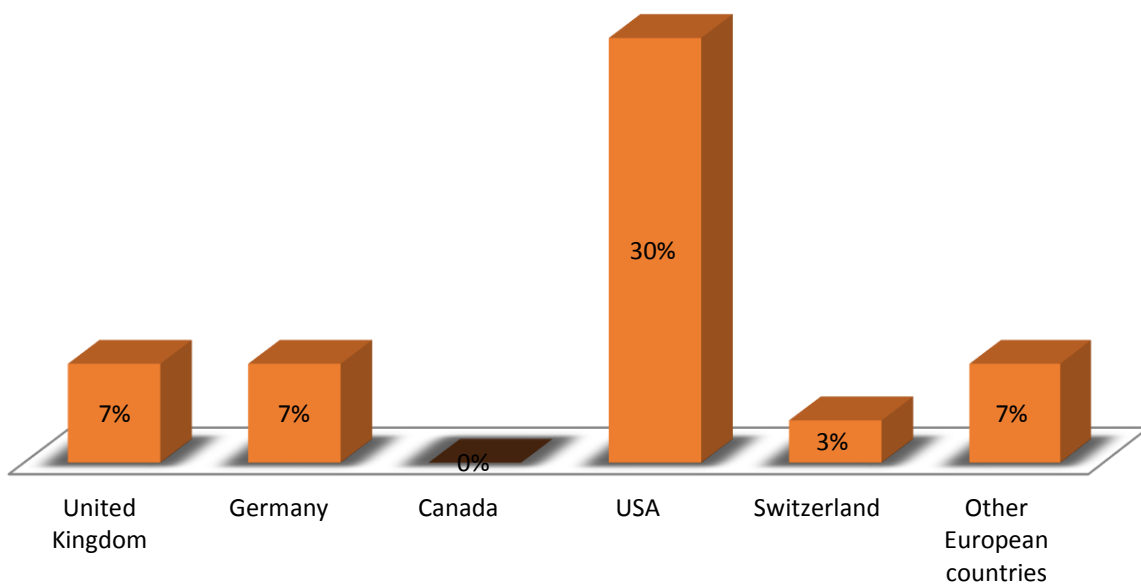
In establishing this anti-corruption policies, many companies took into account foreign legislation (question 4.2.). Figures 4.1. show also which are the foreign countries which the company anti-corruption policies are inspired to, on the basis a a multiple choice offered by the questionnaire:

Did the company take into account foreign anti-corruption law by the drafting of anti-corruption policy?



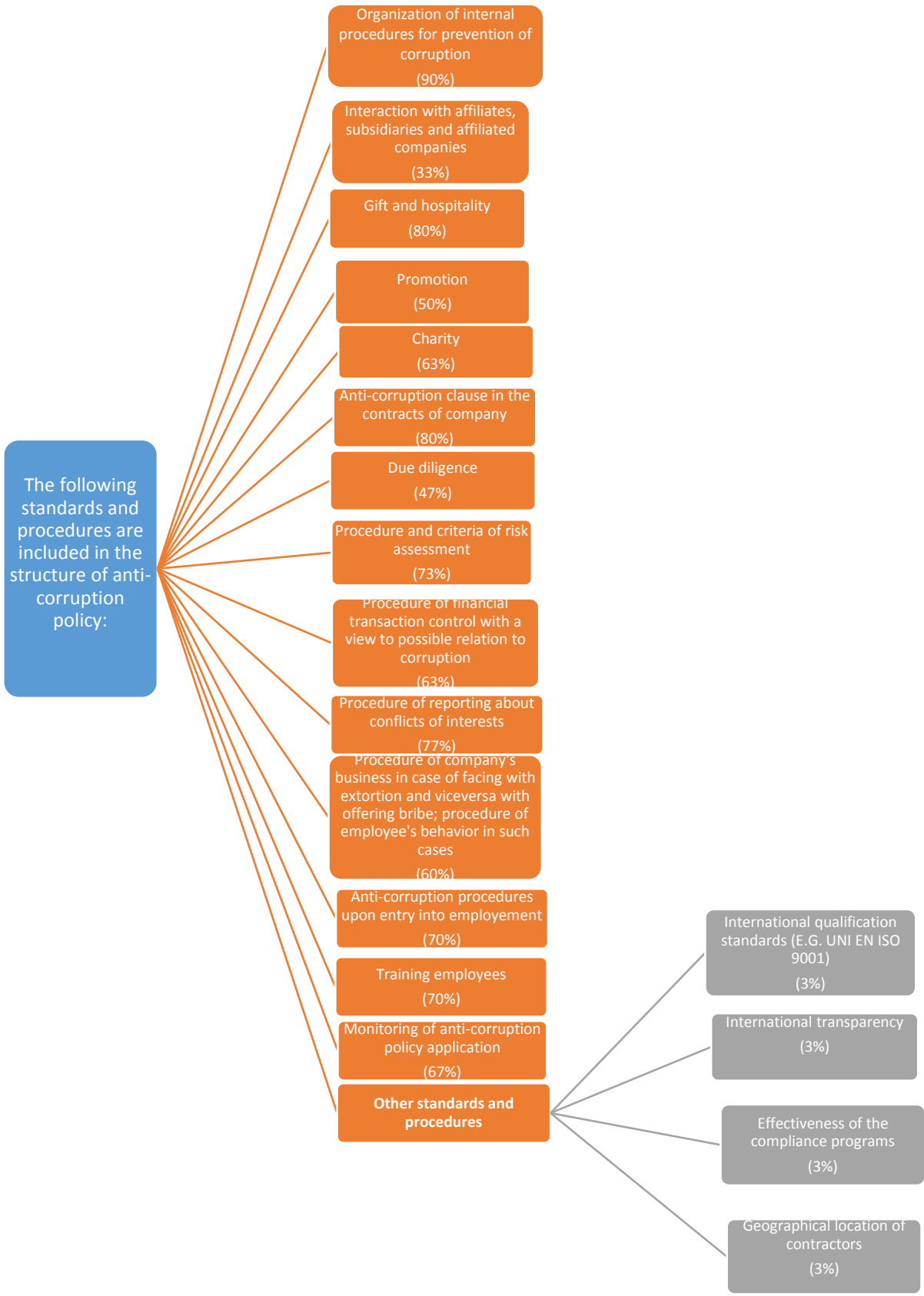
Figures 4.1.

If yes, the legislation of which countries was used?



Question 4.3 deals with the draft the anti-corruption documents. The questionnaire offered three different answers (1. by the employees of the company; 2. With the assistance of external consultants; 3.on the basis of anti-corruption policies of foreign parent companies), more than one was accepted. As a striking result, the majority of the interviewed companies drafted the anti-corruption policy through employees of the company itself, in many cases with the support of foreign parent companies documents. Only 17% of companies interviewed used an external consultant.

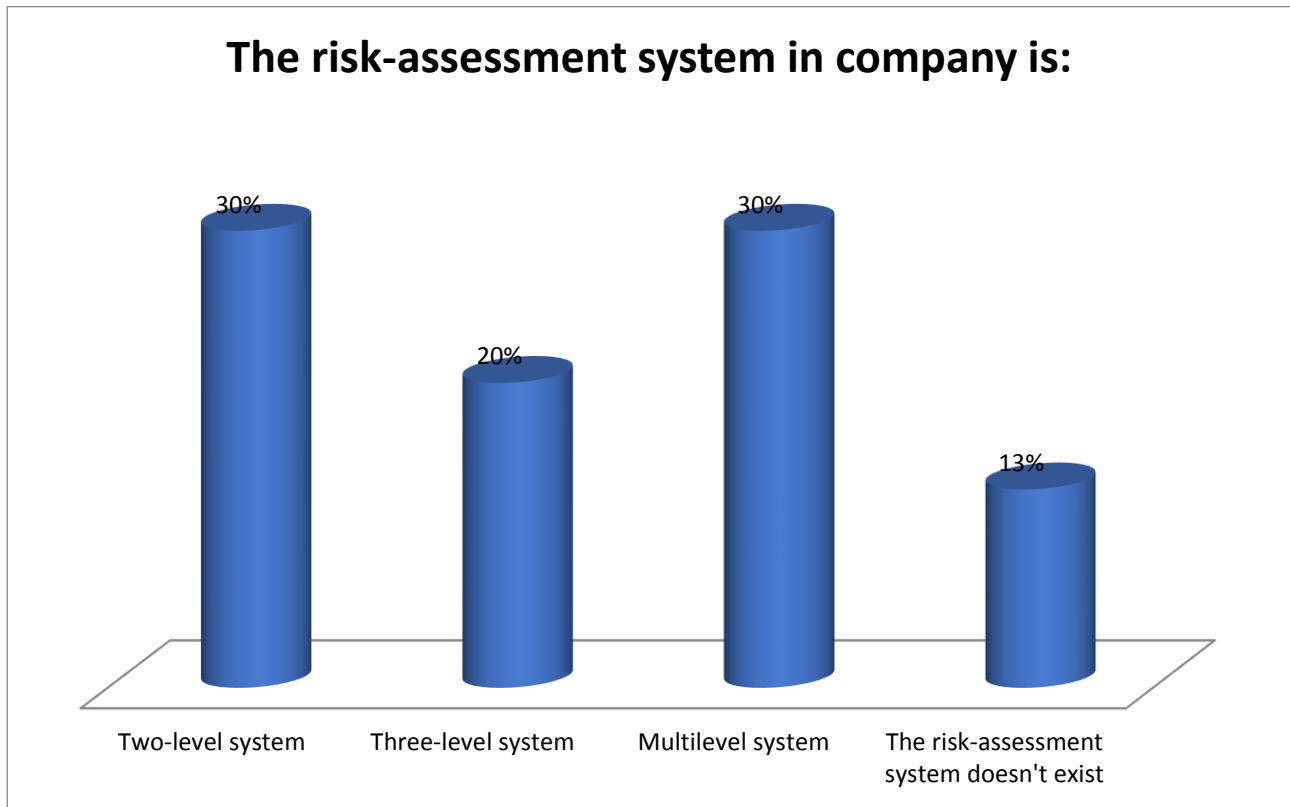
Question 4.4. tries to summarize the main features of anti-corruption policies, by asking the companies to flag one or more options provided by the questionnaire. It is worth to stress that, according to the Italian law regulating the funding of political parties, we decided not to mention this option between the viable answers to question 4.4



Section 5. Risk assessment

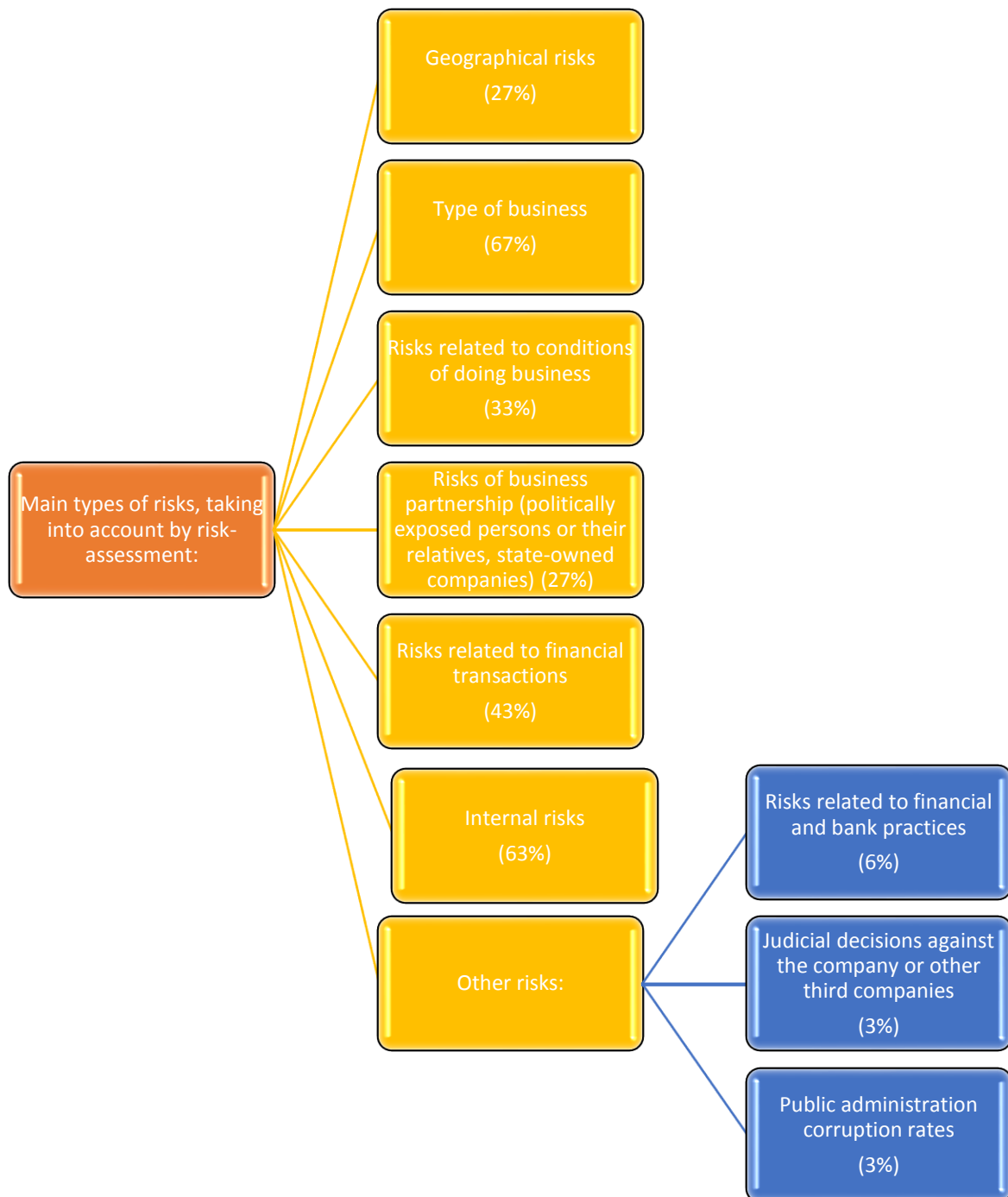
Section 5 deals with a crucial aspect of the effectiveness of anti-corruption policies. Irrespectively to national regulations, the risk assessment turns out to be one of the most difficult steps in drafting and preparing an effective anti-corruption program. The section looks both at organizational aspects and theoretical aspects.

Question 5.1. focuses the structure of the risk-assessment mechanism, within each company



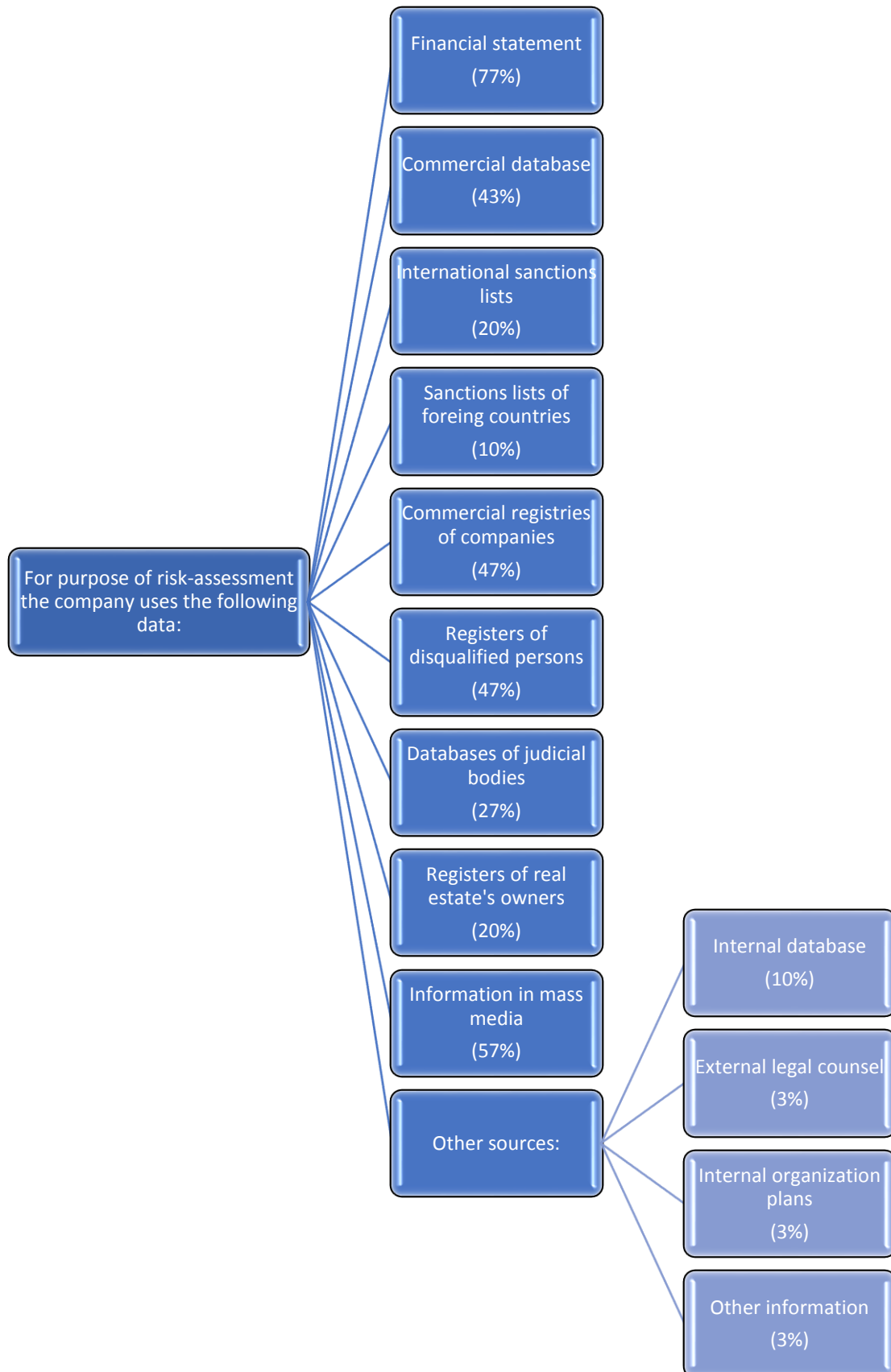
It is worth underlining that 13% of companies does not provide for a risk assessment system. However, this outcome is quite understandable in the light of the Italian economical system, in which the major number of economical subjects are medium-small, small or eve micro activities. As said, even though small companies represent the majority of economical subjects, the regulation about compliance is common and general (d.lgs. 231/2001). In big companies, the risk assessment should be constantly monitored, through a permanent system, while in small or micro activities it is not viable. In such realities, the risk assessment is done by an external consultant, whom is normally asked to prepare the compliance program.

Question 5.2., on the other hand, deals with the matters considered by companies in establishing a risk rank. Many options were admitted.



These results are very interesting, under different points of view. First, the survey confirms that the type of business is always the most relevant criterion in assessing the risk of corruption. This outcome is strictly related to the conditions in which companies do business: it is well-known that in some economic sectors, bids in public calls for tenders are the major (if not the only) way to get contracts... Nonetheless, one striking result is the 63% rate of companies deeming that one of the major risk for corruption derives from the internal structure of the company itself. It is worth reminding that, analysing these results, we are sure that some interviewed companies are public, or partially participated by public bodies. Nonetheless, the result is of great impact, demonstrating that the strategy to prevent

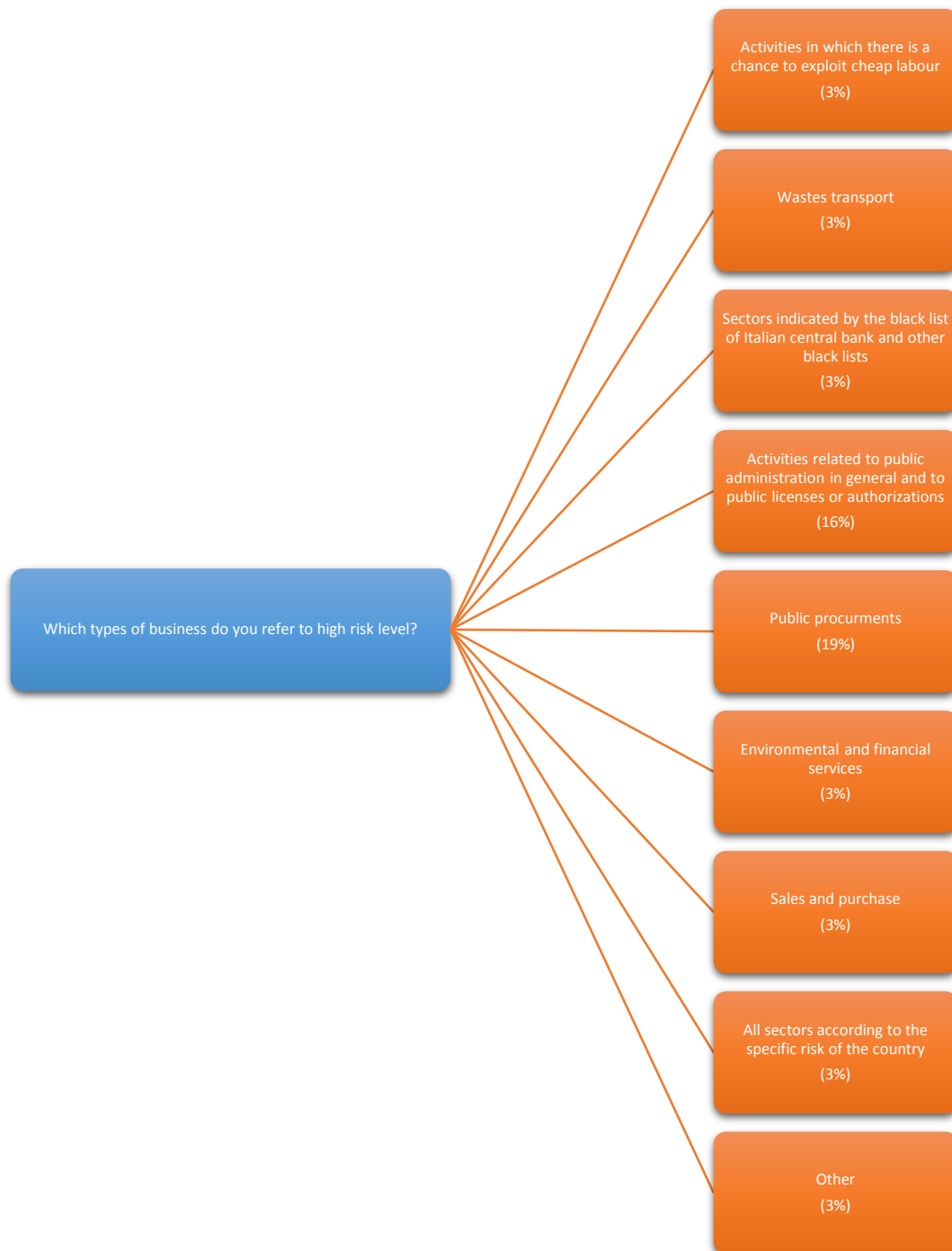
corruption by urging companies to organize themselves properly *is* useful: companies are aware that, within their structure, there is a risk for corruptive misconducts. Question 5.3 deals with documents and data used by the companies in order to assess the risk.



Question 5.4 is very meaningful. Companies were asked to declare which countries and geographical regions they consider having a high rate of corruption.

Some interviewed companies mentioned expressly countries that are considered highly corrupted; not surprisingly, 27% indicated Italy as a risky area, while 3% mentioned Spain, Uzbekistan, Syria and Somalia. Within Italy, the regions considered to be highly corrupted are: Puglia, Campagna and Sicily. In 13% of cases, companies rely, in general, on international black lists, while only 3% of companies rely specifically on Transparency International reports.

Question 5.5, related to 5.3, focuses on the economic activities deemed to be risky:



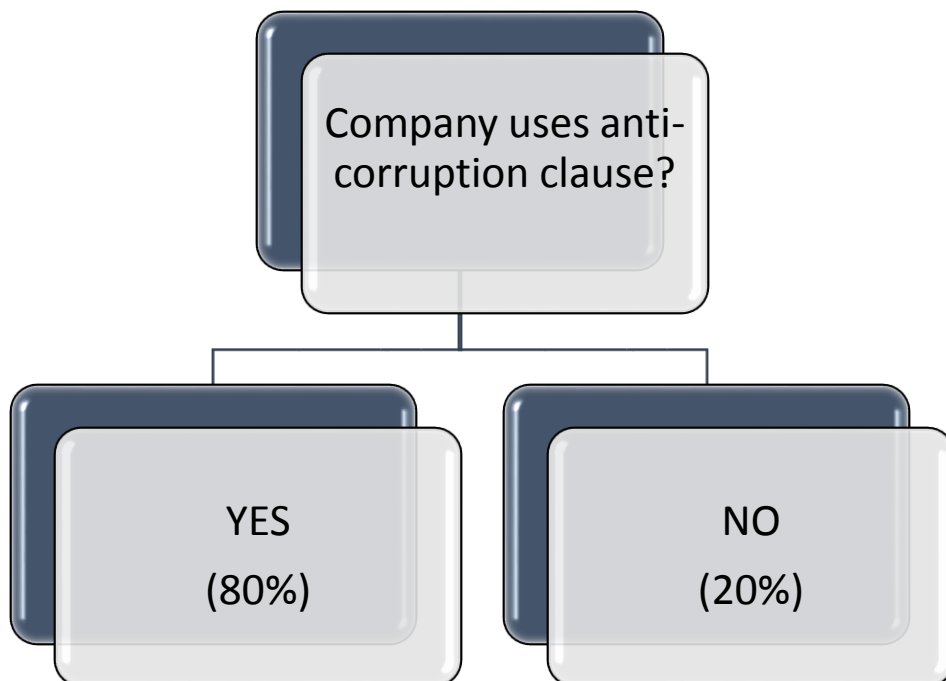
Section 6. Identification of beneficial owners of companies – business partners

One relevant aspect in anti-corruption strategies is the clear identification of business partners. The interviewed companies were asked (question 6.1.) to explain how identification of beneficial owners is made. The proposed options were: according to oral information provided by other business partners (20%); by virtue of personal identity document of final beneficial owner (63%); by virtue of statutory documents of all the companies in a chain, which allows to show who the final beneficiary is (33%). More than one option was admitted. These results confirm that the Italian economic context is still strongly based on individual relationships. As the majority of the economic subjects are small and micro companies, business partners, first, have similar features, second, are identified on the basis of personal contact. At the same time, the unofficial information gathered through third business partners is always considered a reliable basis to identify the final beneficial owner.

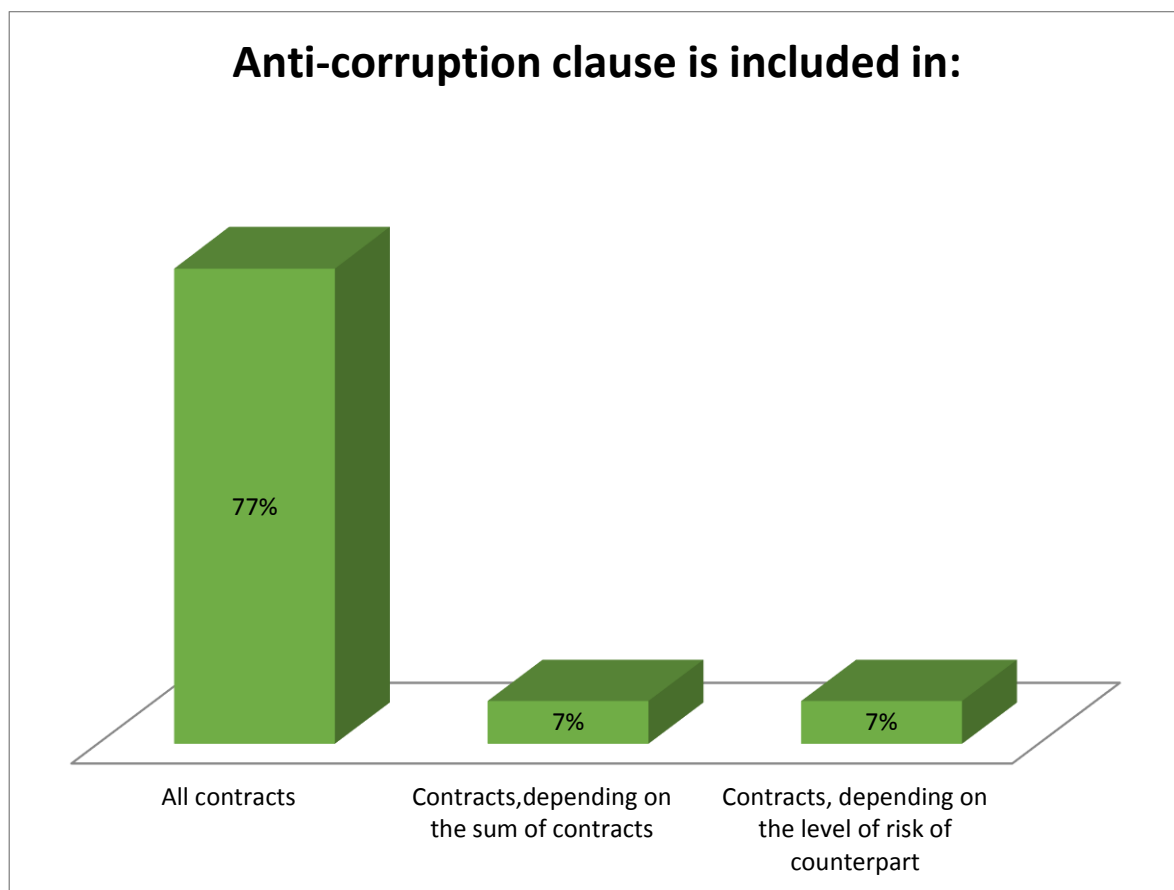
Section 7. Anti-corruption clause

This section is dedicated to a very important aspect. The presence of anti-corruption clauses in contracts gives the measure of how companies are familiar to anti-corruption strategies. It is important to assess whether they use it in all their professional activities, if they are used to pretend transparency from their day-by-day business partners.

Question 7.1. investigates it.



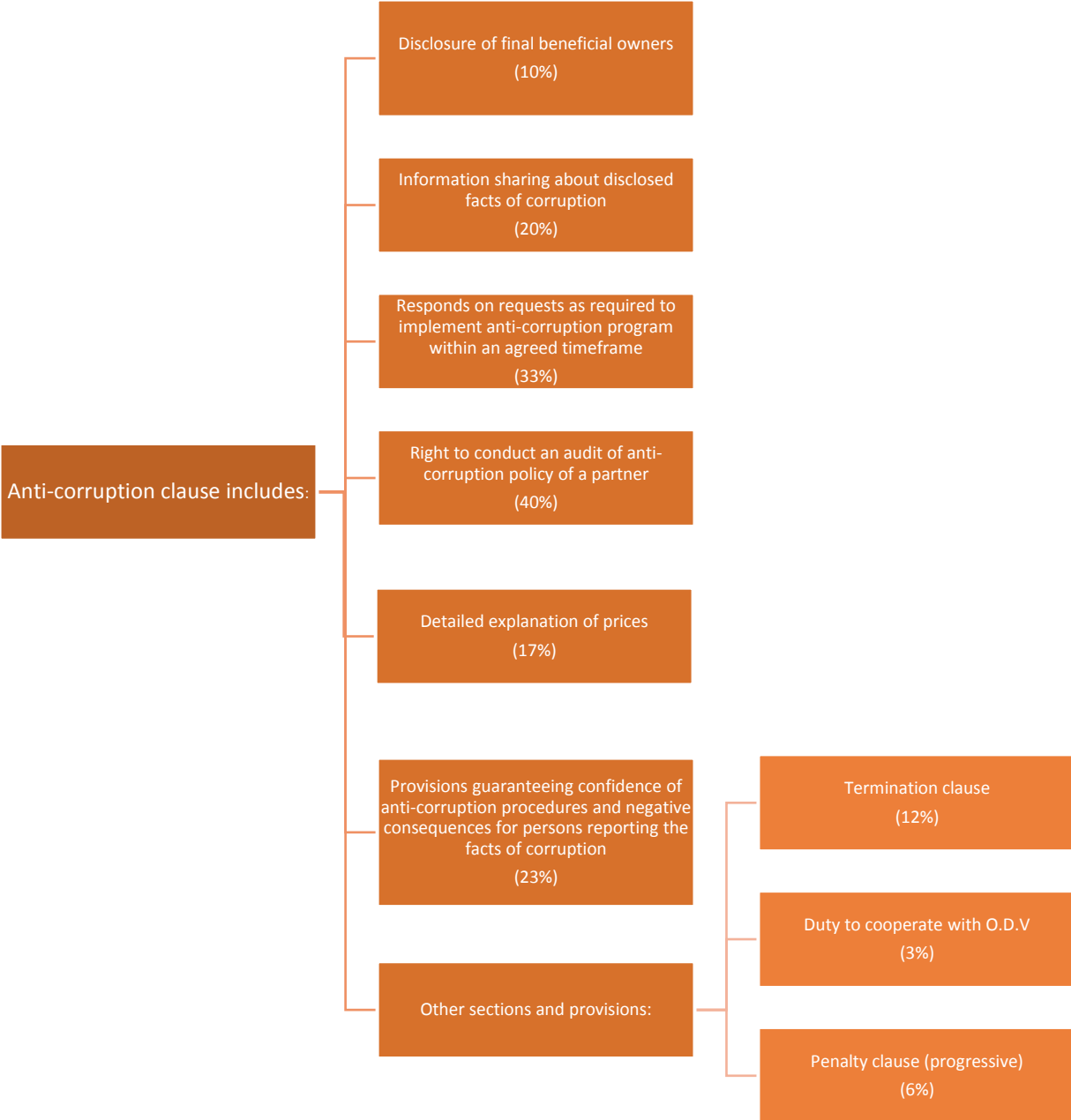
Question 7.2. asked the companies to specify when they use it: it is important to know if it is a common clause, or, rather, it is used only with some counterparts. In this case, it is worth to know which kind of business partners are asked to subscribe an anti-corruption clause.



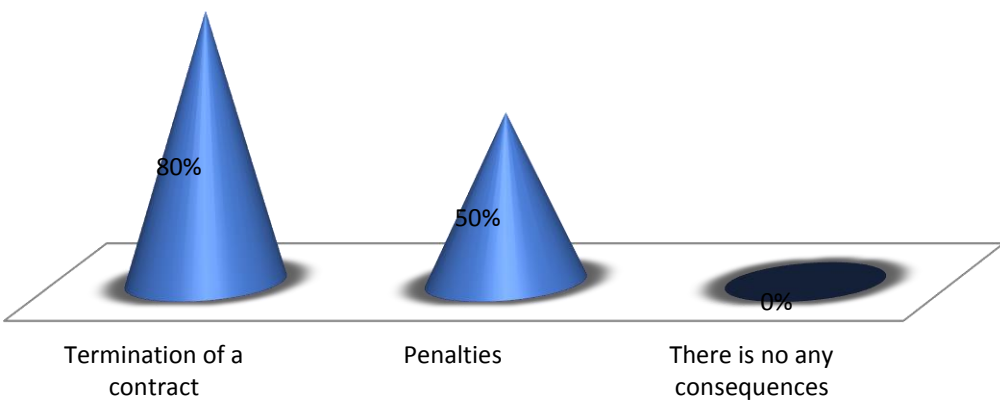
Hopefully, the majority of the companies use anti-corruption clauses in all contracts. For those that do not apply it in any case, the criterion to distinguish is either the value of the contract itself, or the features of the counterpart. In this case, the level of risk is established on the basis of the outcome in question 5.5.

However, if the constant or frequent use of anti-corruption clauses is a positive outcome, it is worth to consider which is content of this clause. In fact, very generic statements can have a negative effect, trivializing the relevance of a transparency engagement.

Question 7.3 deals with the content of the clause:



Breach of anti-corruption clause is a reason for:



As to the consequences, the termination of the contract is the most frequent outcome of a breach of the anti-corruption clause. As to several options were admitted, half the interviewed companies declared that the breach is also considered justification for penalties. Thus, there is an area in which, the breach of the clause has a double negative effect: the termination of the contract *and* the application of penalties.

Section 8. Internal investigations

This section is dedicated to one of the most interesting aspect of companies compliance as an anti-corruption tool. As our research already demonstrated, internal investigations upon corruption are a “mysterious realm”, in which investigating acts – that could be used in criminal proceedings, also – are held out of the general principles of fair criminal trials and proceedings.

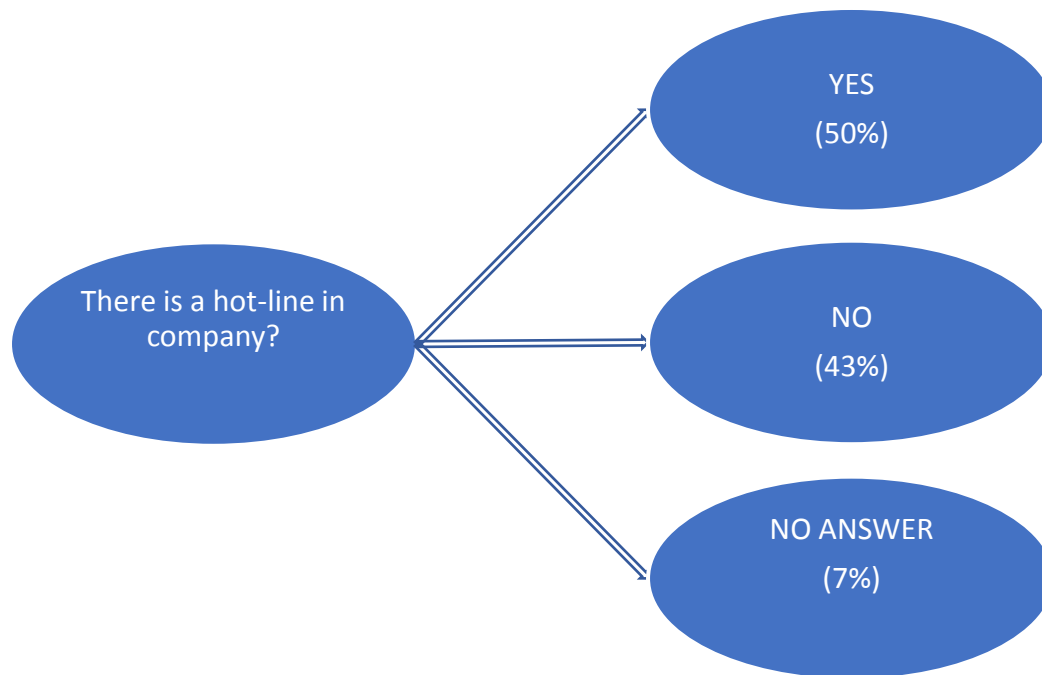
Question 8.1 asked if the company, getting information about perpetrated (or planned) corruption offence, company will conduct an investigation. 100% of interviewed companies answered yes. So far, it is interesting to assess how this investigation is held and by whom. Question 8.2 asked about it. The options were three and more than one choice was admitted: 1) by employees entrusted of anti-corruption compliance control (60%); 2) a security department (40%); 3) an external organization (23%). It is clear that the investigation is normally an “internal affair”, in which sometimes, employees or investigating department are helped by external experts. The reason is, of course, the will to preserve the reputation of the company and it is somehow comprehensible and acceptable. What is crucial, at this point, is to understand what happens in this chain, when the internal investigation has shown that, probably, some corruptive misconduct was really perpetrated.

Question 8.3. asked if, in such a case, the company will report the facts to the judicial authority or not. In 63,3% of cases, companies said that they would report in any case, irrespectively to the seriousness of the fact. 20% would report only serious facts, while 16,6% did not answer to the question. It is worth to remember that the Italian criminal code sets forth the duty, for some groups of subjects, to report facts to the judicial authority. These subjects are normally civil servants (a professor, who observes a crime occurred during his class), or professionals offering a service of public relevance (doctors, nurses, other professional and practitioners in health care sector).

9. Hot lines

This section is dedicated to whistleblowing, which is a crucial aspect of any anti-corruption policy.

Question 9.1. asked if the companies provide for a “hot line” to report corruptive facts or suspects:



Question 9.2. asked how the hot-line, if present, is run. In 27% of cases, it is held by employees of the company itself; in other 27% the service is provided by an external provider. Many companies did not answer to the question. In 47% of cases, the hot line is anonymous, in 3% it requires personal data; in 50% of cases, the companies interviewed did non answer.

Section 10. Cooperation with affiliates and subsidiary companies

Question 10.1 deals with the cooperation with affiliates and other companies in anti-corruption policies. In 17% of cases, affiliates have their own anti-corruption policies. In 40% of cases, policies are based on parent companies documents. 43% of interviewed did not answer.

Section 11. Main problems in the sphere of anti-corruption compliance control and conclusions

The section deals with the major problems that companies have in enhancing anti-corruption policies.

Question 11.1 asks which main problems keeping down anti-corruption compliance control does exist? The options were: 1) underdeveloped regulatory legislation, insufficiency in subordinated legislation (26,6%); lack of information about the need of anti-corruption compliance control in companies (46,6%); lack of stimulating measures (33,3%); lack of administrative liability for deficiencies of anti-corruption compliance control (16,6%); lack of a special supervisory board (16,6%); high costs of anti-corruption compliance for companies (26,6%), other problems (6,6%). More than one option was admitted.

In 20% of cases there was no answer.

Once more, these data demonstrate that the existence of rules is not enough to achieve the result. The Italian example is very clear: even though the anti-corruption compliance regulation was adopted in 2001, the lack of information about it determined a high rate of non-compliance to it. Only after 15 years, the regulation is now becoming familiar to companies, that start to get organized to comply with it. Nonetheless, the lack of stimulating

measures is felt as a big problem by companies, that are urged to invest much money and energy and to spend big amounts of money pursuing a task they don't completely understand. Preventing corruption is, of course, a public task and function, that compliance models tend to move to privatize. For this reason, compliant companies should be rewarded with some economic advantage (tax, e.g.), to feel more directly involved in the aim of preventing corruption. It is clear that compliance should prevent the risk of, first, perpetration of crimes and, second, from regulatory liability. But this is probably not enough, in itself, to urge companies to be totally and proactively compliant.

Further developments

The survey gave some interesting general data. According to the discussion that will take place during the annual conference in Chicago, the Italian research team is ready to modify the questionnaire in order to focus on some specific aspect. One possible interesting area of research could deal with foreign investors, trying to show which are the major problems they have to face to comply with the Italian anti-corruption policies. Another possible area of interest is point 8, Internal investigations. It would be very stimulating to enlarge that part of the questionnaire, in order to assess and compare our different legal orders under the viewpoint of the duty to disclosure to the company, the internal privilege against self incrimination, the duty to report to the judicial authority, the presumption of innocence...

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