

---

# Importance of international and regional cooperation in the fight against corruption and money laundering

– Some perspectives from Transparency International

Dr. Joachim Kaetzler

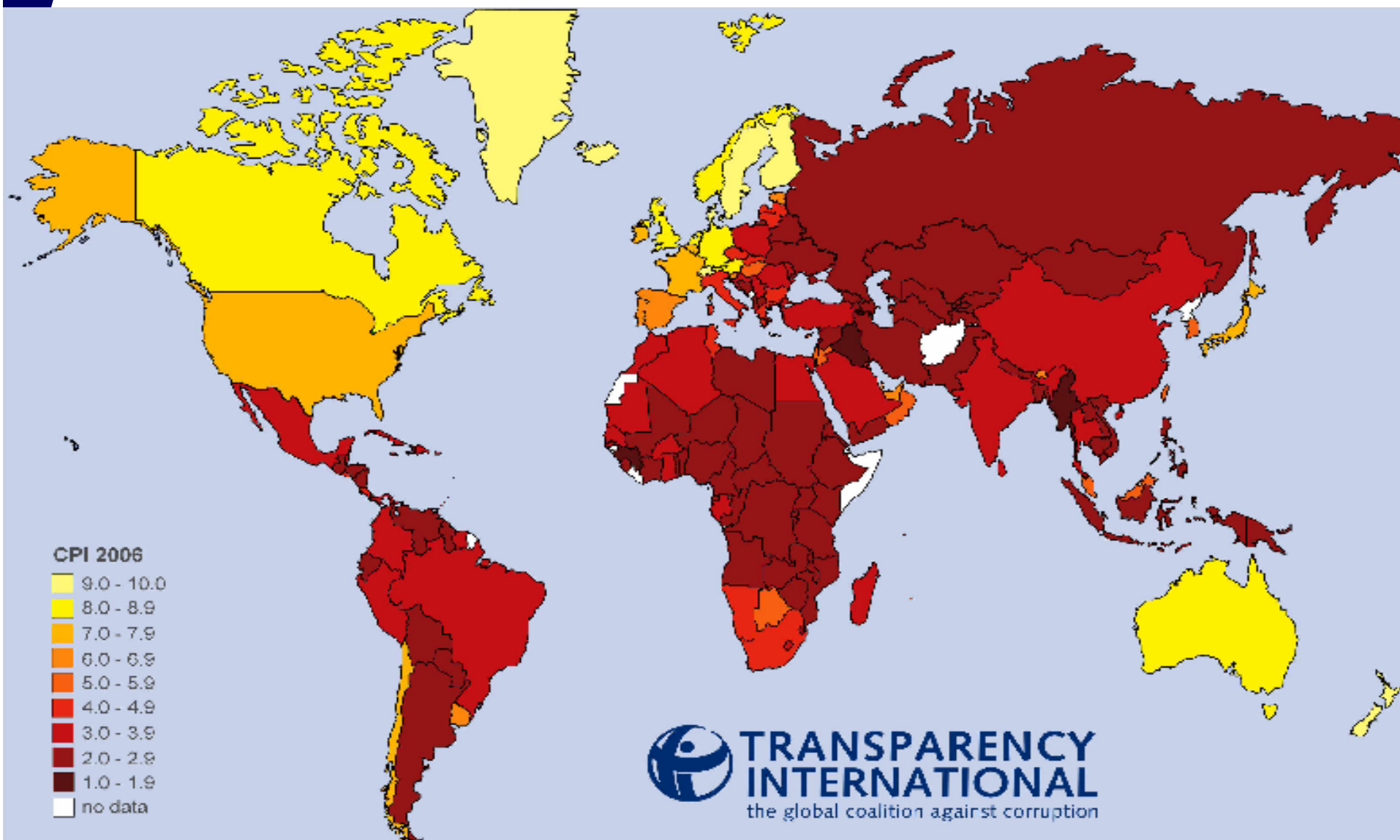
Sharm El Sheik, 22nd October 2007

# Transparency International

---

- Non governmental organisation, active through 90 national chapters
- German chapter: currently 700 individual and 39 corporate members, numbers constantly growing
- No persecution of single cases
- Coalition building (between governmental, economic and civil structures)
- Sharpening public awareness on corruption
- Creation and strengthening of integrity systems

# TI Corruption Perception Index 2006



# Some reasons for trans-national cooperation in the fight against money laundering

---

- Criminals work cross border and instrumentalise lack of co-operation ; "regulatory arbitrage"
  - Financial Institutions and other bodies subject to AML measures work cross-border ("Group Compliance")
  - Regulators work cross border (principle of "home supervision")
  - Some regulatory sanctions may develop extraterritorial effect (SEC rules, OFAC etc.)
- ➔ Investigators same as Institutions must try to provide seamless cross border persecution

# Means of International co-operation (I) – Harmonisation of AML and corruption rules

---

- Harmonisation = smallest common denominator ?
  - United Nations (Conventions and Initiatives)
  - OECD (Conventions)
  - Financial Action Task Force (FATF 40ies, Typology)
  - Regional FATF Bodies (Regional best practises)
  - World Bank and IMF initiatives
  - EGMONT-Group (Cooperation of FIUs)
  - Wolfsberg Group (Industry standards for FIs)
  - CESR, CEBS and other regulatory initiatives

# Means of international cooperation (II) – Information gathering for investigations

---

- Formal criminal law instruments
  - Mutual legal assistance
- Informal mutual assistance
- Formal regulatory instruments

Information requests by stock exchanges, Securities exchange commissions, bank regulators or others

- Semi-formal networks  
(Inter-)National working groups, e.g. EGMONT
- Informal industry networks

# Mutual legal assistance

---

- Different legal basis (UN Conventions, bi- and multilateral agreements, EU-Rules, "Soft Law" e.g. FATF 40ies)
- Problems of jurisdiction and venue
- Formal vs. informal requests – which instrument to be applied in which case ?
- The form of a letter of request
- Content of a letter of request
- Practical problems: language, counterparts, ordre public, fiscal matters, banking secrecy, time, costs, national data protection laws

# Mutual legal assistance in corruption and money laundering cases / UNCAC

---

- UNCAC elaborating on measures rooted in former UN Conventions, EU Joint Actions and FATF 40ies
- Subsidiary (!) rules for mutual legal assistance procedures not covered in agreements or local law
- Measures provided for in UNCAC: art. 46 UNCAC:  
*"taking evidence or statements from person, effecting service of judicial documents, executing searches, seizures and freezing, examination of objects and sites, information, evidentiary items and expert evaluations, asset identification and asset tracing, facilitating voluntary appearance of persons, other type of assistance not violating ordre public"*

# Mutual legal assistance in corruption and money laundering cases / UNCAC (II)

---

- Cross border information transmission (subject to domestic data protection laws) without prior request
- dual criminality: requirement vs. recommendations ?
- one central authority for mutual legal assistance
- written form and "acceptable" language
- costs borne by requested state unless agreed upon
- speedy service

# Mutual legal assistance in corruption and money laundering cases / UNCAC (III)

---

- Formal requirements of the request:
  - request issued in compliance with domestic law
  - identity of authority making request
  - subject matter and nature of investigation
  - summary of relevant facts
  - description of the assistance sought and details of any particular procedures wished to be followed
  - if possible, identity, location of person concerned
  - purpose for which information or action is sought

# Mutual legal assistance in corruption and money laundering cases / UNCAC (IV)

---

- Request may be refused (reasons !) on grounds that
  - request not in accordance with art. 46 UNCAC
  - "essential interest" of requested state violated (including ordre public, security interests, sovereignty)
  - no instrument available for similar offence
  - "contrary to the legal system" to grant request
- Mutual legal assistance may not be refused
  - on grounds of bank secrecy
  - because of fiscal interests of requested state

# Mutual legal assistance in corruption and money laundering cases / UNCAC (V)

---

- Modern means of criminal investigation not explicitly covered, e.g.
  - Obtaining and analysing DNA
  - Video conference interrogations
- De facto cross border investigations
  - (Mobile) phones
- Agents provocateurs / covered agents
- Cross-border admissability of evidence

# Regional experiences (and difficulties) in the fight against money laundering

---

- Transnational persecution of money laundering often hindered by differences in predicate offences
  - Example: Germany / Switzerland:  
Tax circumvention / tax fraud – ML cases
  - "All crimes approach" vs. "serious crimes"
  - International scope of application / Jurisdiction
  - Severe regional gaps: corruption in private businesses as a necessary predicate offence
  - Different standards as to the necessary proof of predicate offence also need to be harmonised
-

# Regional experiences (and difficulties) in the fight against money laundering (II)

---

- Appropriateness of AML control measures might be different in other parts of the world:
  - KYC inappropriate in many countries
  - "Financial exclusion"
- How to handle the informal banking sector ?
- Data storage and sharing in respect to control lists, PEP – lists etc. are an obvious violation of data protection laws of most European jurisdictions  
(Decisions of European Court of HR 2007 on CTF)

# Regional experiences (and difficulties) in the fight against corruption

---

- Different density of rules
- Collision with state interests / matters of national concern
- Involvement of (formerly) state- owned enterprises
- Understanding of what is socially adequate differs substantially from region to region

# Importance of cross-border know-how-sharing and transnational training systems

---

- Constant change in ML techniques
- Criminals react on changes of regulations and of industry standards
- ML and corruption persecution requires special know-how in banking & finance instruments, accounting laws and standards, industry knowledge etc. – usually not limited to one jurisdiction
- Importance of typology papers (e.g. FATF Money Laundering typologies, EGMONT exchange between FIUs )

---

Thank You !

[www.transparency.org](http://www.transparency.org)

[Joachim.kaetzler@cms-hs.com](mailto:Joachim.kaetzler@cms-hs.com)