D 25v16

ISO 37001 readiness version 2016

Objective of the module: Readiness for implementation, certification, maintenance and improvement of your anti-bribery management system (ISO 37001) in order to:

- understand and identify bribery
- prevent, detect and fight against bribery
- comply with anti-bribery regulations

1 Anti-bribery approach

1.1 History

Those who fulfill some function towards the city must fulfill it without receiving any gift. Plato

Corruption has been known since antiquity.

Corruption is a broader term for misconduct in the workplace. There are many types of corruption in business, and bribery is a form of it.

Bribery is a global scourge, as evidenced by the 2016 European Parliament study which confirms that the annual cost of corruption represents nearly 5% of world GDP (gross domestic product).

The consequences of bribery are always harmful. Some examples:

- criminal prosecution
- bad reputation
- significant fine
- unfair competition
- worsened poverty
- barrier to investment
- unequal distribution of wealth
- increased cost of products and services
- uncertainty in commercial transactions
- obstruction of the fair functioning of markets

According to Transparency International, the list of the ten most corrupt heads of state is led by Mohamed Suharto, who allegedly embezzled between 15 and 35 billion dollars.

The Corruption Perceptions Index (CPI) published in 2021 by Transparency International covers 180 countries and territories. According to this study, the most corrupt country is Somalia (180th place). The least corrupt is New Zealand. France is ranked 22nd.

FCPA (Foreign Corrupt Practices Act) is passed in 1977. It is a US federal law with enormous extraterritorial power to fight against the corruption of foreign officials wanting to gain a commercial advantage.

The forty recommendations of the FATF (Financial Action Task Force on Money Laundering) date from 1989.

French law n° 93-122 of January 29, 1993 relates to the prevention of corruption and the transparency of economic life and public procedures.

The World Bank's anti-corruption plan (Fighting the Cancer of Corruption) dates back to 1996.

The ICC (International Chamber of Commerce) Rules of Conduct for Combating Extortion and Bribery were published in 1997 and have since been revised.

The first edition of the SA8000 standard (Social Responsibility) was published in 1997.

The Twenty Guiding Principles for the Fight against Corruption (Resolution (97) 24) were drawn up by GRECO (Group of States against Corruption) in 1997.

The OECD (Organisation for Economic Co-operation and Development) Convention against Bribery of Foreign Public Officials was signed in 1997.

Two GRECO conventions appeared in 1999:

- Criminal Law Convention on Corruption (ETS 173)
- Civil Law Convention on Corruption (ETS 174)

The Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of OECD Member Countries came into force in 1999.

The Recommendation on codes of conduct for public officials (Recommendation No. R (2000) 10) of GRECO dates from 2000.

The Recommendation on common rules against corruption in the financing of political parties and electoral campaigns (Recommendation Rec(2003)4) of GRECO was published in 2003.

GRECO's Additional Protocol to the Criminal Law Convention on Corruption (ETS 191) appeared in 2003.

The Global Compact, a voluntary framework for corporate social responsibility, included a 10th principle against corruption ("Companies are encouraged to act against corruption in all its forms, including extortion and bribery. "), UN, 2004, cf. § 7.3.

In 2004 the UN adopted the United Nations Convention against Corruption.

The anti-corruption principles of the PACI (Partnership Against Corruption Initiative) date from 2004.

Law no. 2007-1598 on the fight against corruption was adopted in 2007.

The ISO 26000 standard (Guidance on social responsibility) was published in 2010.

The adoption in 2011 of the British standard BS 10500 Anti-bribery management system served as the basis for the creation and publication of the standard ISO 37001 (Anti-bribery management systems — Requirements with guidance for use) in 2016.

The law of December 9, 2016 known as "Sapin 2", relating to transparency, the fight against corruption and the modernization of economic life obliges companies with more than 500 employees and a turnover of more than 100 million euros to fight corruption.

The Opinion on the recommendations of the French Anti-Corruption Agency to prevent and detect acts of corruption, influence peddling, misappropriation, illegal taking of interests, embezzlement of public funds and favoritism is published in the Official Journal, 01/12/2021.

⚠️ A company operating internationally is often exposed to the laws of several countries.

Bribery can take various forms. Some examples of bribery risk situations:

- envelope (under the table)
- gift:
  - o show ticket
  - o sporting event ticket
  - o alcohol
  - o perfume
- tourist trip (presented as a business trip)
- disguised payment:
  - o bill (too high)
  - o consultant fees (not essential)
  - o third party commission (not required)
- facilitating payment:
  - o exit from customs (express)
  - o obtaining a visa or permit (express)
- hospitality:
  - o free tourist visit
  - o hotel offered
  - o invitation to a social reception
- job offer:
  - o hire a parent (without competition)
  - o hire a friend (and receive a favor)
- free service in exchange for tempting promise
- travel expenses (excessive)
- donation (included in the contract)
- free tuition
- acceptance of poor quality products for personal gain
- over-invoicing (liquidation of a stock of obsolete goods at market price with the help of an accomplice)
- attempts to circumvent recourse to a call for tenders (favor a single supplier)
- calls for tenders that do not take into account the technical competence of the candidates
- unnecessary purchases
- ambiguous specifications
- successive orders from the same supplier without a call for tenders
- call for tenders with unrealistic deadline (too short)

The causes of bribery are many and varied:

- general poor governance
- lack of anti-bribery policy
- poorly respected institutions
- low wages (poverty)
- reduced administrative culture
- concealed conflict of interest

Some myths related to bribery:

- it's not me, it's the other – *bribery always involves two guilty actors: the one who offers and the one who receives (active and passive bribery)*
- bribery is a victimless crime, it is just a lubricant to grease the wheels – *bribery undermines trust, it can destroy a reputation, a career, a life*
- bribery is part of life – *bribery can be avoided, in most countries of the world it is a criminal offense*

1.2 Benefits

The value of the company derives from its performance, and its profits are the consequence of our long-term vision. Bernard Arnault

The ISO 37001 standard (Anti-bribery management systems – Requirements with guidance for use) is generic as it can be applied to the management system of any company, without limitations on size, activity or type. It is a voluntary international standard which allows certification by accredited bodies.

The purpose of the third-party audit (by a certification body) is to verify whether the requirements of the ISO 37001 standard are met. It is in no way to seek the existence or not of bribery.

The standard helps to effectively prevent, detect and deal with any risk of bribery.

An anti-bribery management system (ABMS) in place supports the daily fight against statements (apologies) of this kind:

- I didn't know it was forbidden
- I didn't realize it was so serious
- but it's a win-win!
- if I don't do it, someone else will
- but here everyone does it like that!
- the only way to stay in the market is to pay bribes
- but that will make us lose the contract!
- I was really uncomfortable with the amount of money I received
- it is not at all easy to spend large sums of money without being noticed

Expected benefits of implementing an ISO 37001 ABMS:

- bribery risks are identified and dealt with
- improved stakeholder confidence
- consolidation of the company's credibility and reputation
- establishment of a culture of integrity and transparent communication
- obtaining a competitive advantage
- cost reduction
- prerequisites for public tenders for sensitive markets
- prevention of conflicts of interest
- staff aware, consulted, motivated and proud
- opportunities for improvement following the detection of bad practices
- valued best practices for the prevention of bribery
- enhanced stakeholder satisfaction
- prevention of legal and penal risk
- protection of the company's assets
- reduction of operational surprises
- better economic results following the reduction of financial losses

Some essential factors for the success of the implementation of the ABMS:
- main bribery risks identified

- anti-bribery policy promoted and respected
- evaluation of each new customer
- selection and qualification of all suppliers
- raising awareness of the prevention of bribery among all staff
- live alert procedure
- regular due diligence
- effective recruitment process
- controls reasonably applied

1.3 Steps

A well-prepared approach is half successful

The approach to implementing an anti-bribery management system involves several steps. An example of preparation is shown in figure 1-1.
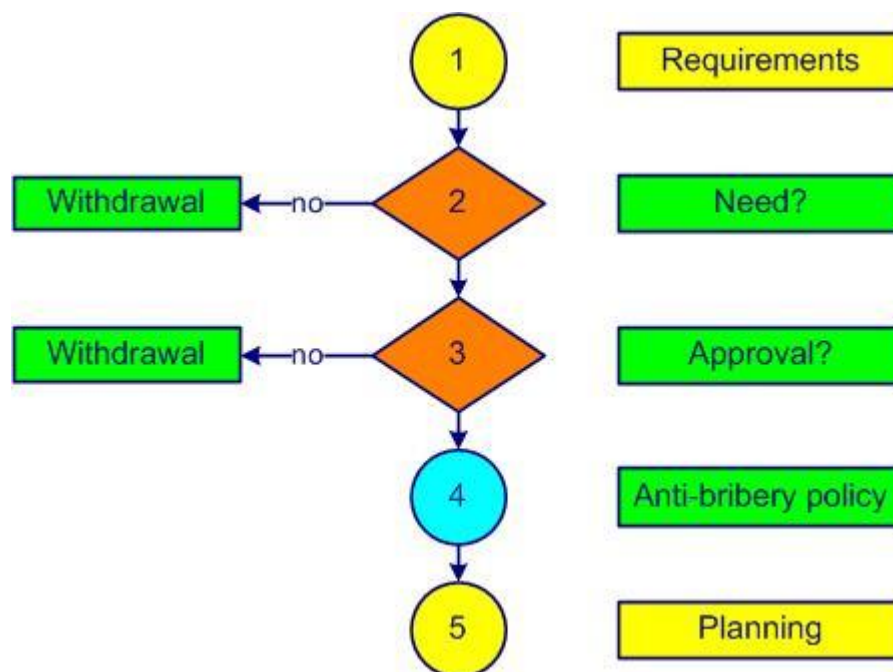

Figure 1-1. ABMS preparation

Step 1 involves identifying the needs and expectations (**requirements**) of stakeholders:

- staff, trade unions
- customers, consumers
- external providers (suppliers, subcontractors, partners)
- shareholders, investors, insurers, bankers
- competitors
- branch organizations and associations, communities
- media, neighbors
- legal and regulatory authorities

The involvement of top management at its highest level is truly indispensable. The advice of a consultant is often solicited. Determining the current status of the anti-bribery management system (whole or partial) would be welcome at this stage. An external certification body is chosen.

One of the key questions that arises quickly (**step 2**) is the **need** for this decision. If it is not really necessary (the benefits seem insignificant) or if the estimated costs of the certification approach exceed the available resources, it is better to reject the idea immediately.

ISO 9000 family standards will stop you making promises you can't fulfil and help you keep those you can. David Hoyle

The internalization of the spirit of the principles and requirements of an ISO standard significantly improves the overall performance of your business, especially when it is not considered a constraint.

The **third step** shall determine whether this approach receives the **approval** of the staff. A communication campaign is launched in-houseon on the objectives of an anti-bribery management system (ABMS). The staff is made aware and understands that, without their participation, the project cannot succeed.

Have confidence: success will come with the involvement and effort of all!

The vision (what we want to be), the mission (why we exist) and the business plan of the company are determined. The **following step** (**4**) includes the establishment of an outline of the anti-bribery **policy** and objectives. If you do not have a copy of the ISO 37001 standard, now is the time to get it (cf. sub-clause 2.1 of the present course).

Planning is the last **step** (**5**) of the project preparation for obtaining ISO 37001 certification. A reasonable period is between 5 to 8 months (each company is unique and specific). The financial resources and staff are confirmed by top management. Top management commitment is formalized in a document communicated to all staff. A person is appointed as project leader for obtaining ISO 37001 certification.

The establishment and implementation of an ISO 37001 anti-bribery management system are shown in figure 1-2
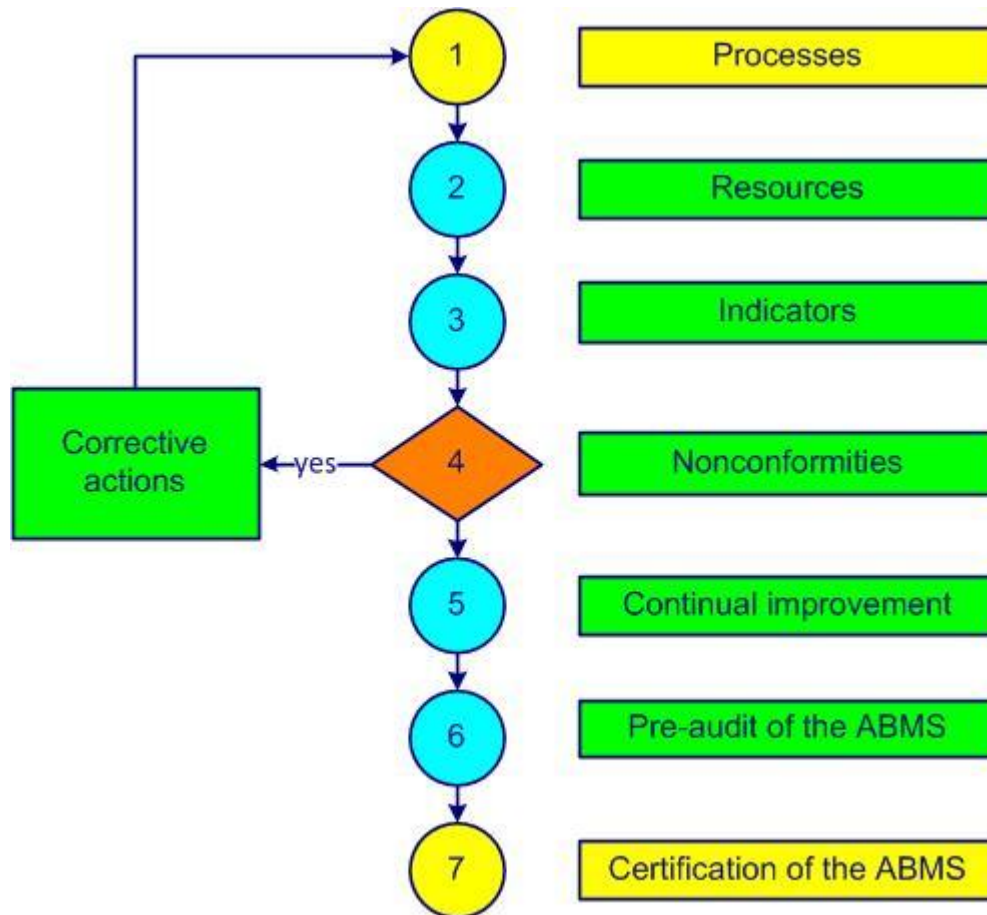
Figure 1-2. ABMS implementation

Step 1 aims to identify and determine the **processes**, interactions, owners, responsibilities and drafts of certain documents. The first versions of process sheets, job descriptions and work instructions are written with the participation of the maximum number of available persons.

The necessary **resources** to achieve the anti-bribery objectives are determined in **step 2**. Planning tasks, responsibilities and time frames are established. Training of internal auditors is taken into account.

Step 3 allows you to set and implement methods for measuring the effectiveness and efficiency of each process (**indicators**). Internal audits help to evaluate the degree of implementation of the system.

Nonconformities of all kinds are listed in **step 4**. A first draft for dealing with waste is established. Corrective actions are implemented and documented.

A first encounter with the tools and application areas of **continual improvement** occurs in **step 5**. Risks are determined, actions are planned and opportunities for improvement are seized. An approach to preventing nonconformities and eliminating causes is established. Internal and external communication is established and formalized.

To conduct the **pre-audit of the ABMS** (**step 6**), documentation is checked and approved by the appropriate people. A management review allows the evaluation of compliance with applicable requirements. The anti-bribery policy and objectives are finalized. An anti-bribery manager from another company or a consultant can provide valuable feedback, suggestions and recommendations.

When the system is accurately implemented and followed, the **certification of the ABMS** by an external body is a breeze and just a formality (**step 7**).

An example of a certification project plan with 26 steps is shown in <u>annex 01</u>.

An appropriate method for evaluating the performance of your anti-bribery management system is the RADAR logic model of excellence <u>EFQM</u> (European Foundation for Quality Management) with its nine criteria and overall score of 1000 points.

The PDCA cycle or Deming cycle (figure 1-3) is applied to control any process. The PDCA cycles (Plan, Do, Check, Act) are a universal base for continual improvement.
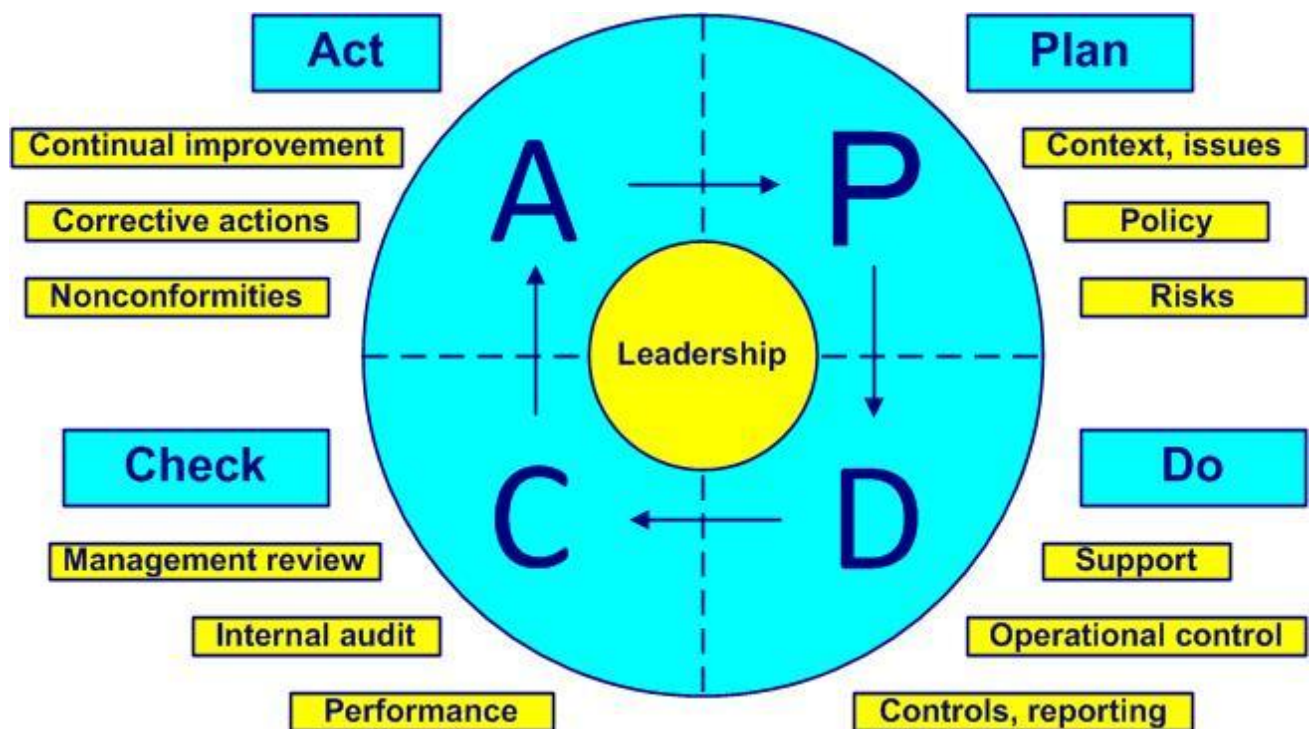
Figure 1-3. The PDCA Deming cycle

- Plan – plan, identify anti-bribery obligations, define context, issues and processes, demonstrate leadership, identify and evaluate risks, establish anti-bribery policy and objectives, action plan (clauses 4, 5, 6 and 7)
- Do – realize, implement and control processes, demonstrate leadership, controls, gifts, raising concerns, dealing (clauses 5, 7 and 8)
- Check – compare, verify, evaluate, inspect, analyze data, conduct audits and management reviews and demonstrate leadership (clauses 5 and 9)
- Act – adapt, demonstrate leadership, treat nonconformities, react with corrective actions and find new improvements (new PDCA cycle), (clauses 5 and 10)

2 Standards, definitions, books

2.1 Standards

There can be no improvements where there are no standards. Masaaki Imai

The main standards related to the prevention of bribery are:

- ISO 26000 (2010): Guidance on social responsibility
- ISO 9000 (2015): Quality management systems — Fundamentals and vocabulary
- ISO 9001 (2015): Quality management systems — Requirements
- ISO 37001 (2016): Anti-bribery management systems — Requirements with guidance for use
- ISO 31000 (2018): Risk management — Guidelines
- ISO 19011 (2018): Guidelines for auditing management systems
- IEC 31010 (2019): Risk management — Risk assessment techniques
- ISO/IEC 17000 (2020): Conformity assessment — Vocabulary and general principles
- ISO 37301 (2021): Compliance management systems — Requirements with guidance for use
- ISO 37002 (2021): Whistleblowing management systems — Guidelines

None of these standards are mandatory, but as Deming said:

It is not necessary to change. Survival is not mandatory

2.2 Definitions

The beginning of wisdom is the definition of terms. Socrates

The verb to corrupt comes from the Latin corrumpere: to break completely, to deteriorate, physically or morally.

There are many definitions of the word corruption (bribery). Some examples:

- a form of dishonesty or a criminal offense which is undertaken by a person or an organization which is entrusted in a position of authority, in order to acquire illicit benefits or abuse power for one's personal gain. Wikipedia
- abuse of delegated power for private purposes. Transparency International
- the use and abuse of public power for private gain. Council of Europe
- offering, promising, giving, accepting or soliciting of an undue advantage of any value (which could be financial or non-financial), directly or indirectly, and irrespective of location(s), in violation of applicable law, as an inducement or reward for a person acting or refraining from acting in relation to the performance of that person's duties. ISO 37001 (2016)
- abuse of public office for personal gain. World Bank
- characterized by improper conduct (such as bribery or the selling of favors). Merriam-Webster dictionary

Our preference:

Bribery: *abuse of power for personal gain*

In order not to confuse hazard and risk, some simple examples are shown in table 2-1:

Table 2-1

Hazard	Risk
slippery ground	broken leg
electricity	electrocution
tobacco	lung cancer
climb a ladder	to break an arm falling

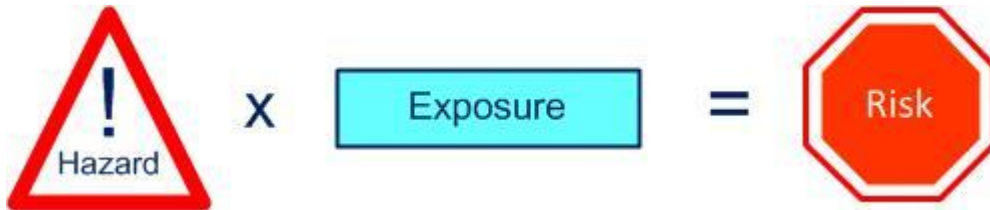As shown in 2-1 the time of exposure to hazard multiplies the risk:

Figure 2-1. Hazard exposure

Risk (and its level) is a function of impact and likelihood (figure 2-2).

Figure 2-2. Risk level

The risk is residual when the impact and likelihood are low, cf. figure 2-3. As soon as the impact and likelihood are high, we approach the critical zone (red).
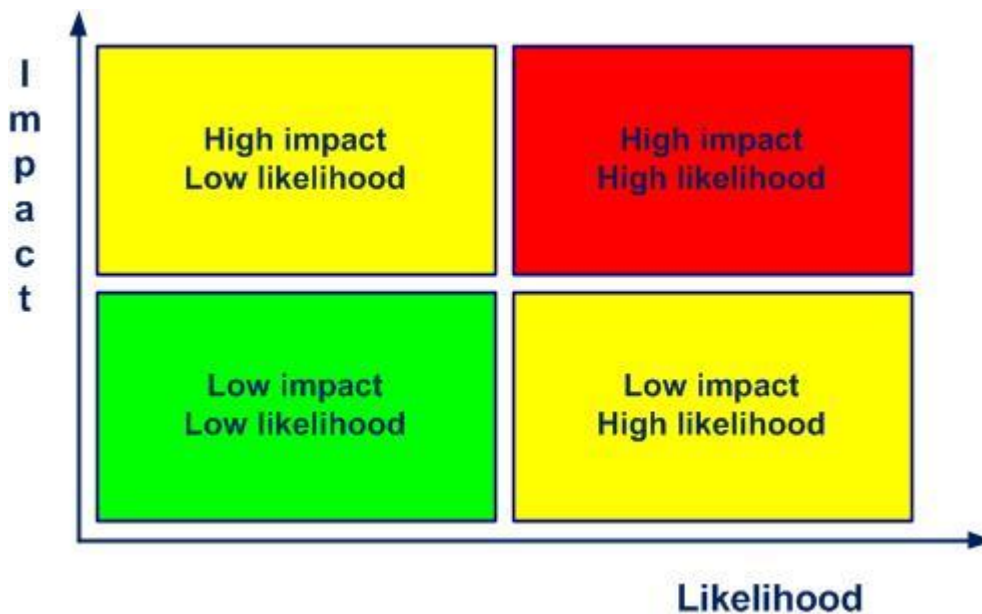
Figure 2-3. Risk criticality

More details on the risk levels are shown in annex 02.

Some definitions and acronyms related to bribery, risk and the management system:

ABMS: *anti-bribery management system*
Active bribery: *the corruptor's proposal of an unfair advantage*
Anti-bribery management system (ABMS): *set of processes to reduce bribery*
Benchmarking: *comparative analysis method in connection with one or more competitors*
Brainstorming: *team approach to developing ideas and finding solutions*
Bribe (bakchich): *payment to a civil servant so that he acts more favorably*
Bribery risk management: *refers to the aspects of the policies and practices of an institution (public or private) which define, make it possible to assess and aim to mitigate the internal and external risks of corruption present in the context of its activities (OECD)*
Business risk management: *global approach to controlling uncertainties and their interactions in business*
Cf.: *confer (from Latin), compare, see*
Control: *see inspection*
Customer: *the person who receives a product*
Due diligence: *assessment of the risk of bribery and actions to reduce this risk*
Fraud: *falsification of data, invoices and other administrative documents*
Grand corruption: *high and very high level corruption (policy makers)*
Hazard: *situation that could lead to an incident*
Identify the hazard: *ask yourself what could go wrong*
Impact: *consequence of an event affecting the objectives*
Inspection: *the actions of measuring, testing and examining a process, product or material to establish whether requirements are met*
Likelihood: *possibility that something happens*
Management system: *set of processes allowing objectives to be achieved*
Misappropriation of funds: *theft of public resources by an official*
MS: *management system*
Nonconformity: *non-fulfillment of a specified requirement*
Non-quality: *gap between expected quality and perceived quality*
Opportunity: *uncertain event that could have a favorable impact*
Organization (company): *structure that satisfies a need*
Passive bribery: *the acceptance of the corrupted of an unfair advantage*
Petty bribery: *bribery in public administration*
Quality: *aptitude to fulfill requirements*
Requirement: *implicit or explicit need or expectation*
Responsibility: *capacity to make a decision alone*
Risk analysis: *activity to understand the nature of a risk and determine its impact*
Risk assessment: *process for identifying, analyzing and evaluating risk*
Risk factor (peril, danger): *element likely to cause a risk*
Risk identification: *assessment activity to find and describe risks*
Risk level: *criticality of the risk according to the impact and likelihood*
Risk management plan: *risk management planning including approach, steps, methods, resources*
Risk management: *activities to restrict the possibility that something goes wrong*
Risk manager: *person with the responsibility and authority to manage risk*
Risk prevention: *activities based on decreasing risk likelihood of occurrence*
Risk protection: *activities based on reducing risk impacts*
Risk severity: *measurement of risk impact*
Risk threshold: *acceptance limit (below) or non-tolerance limit (above)*
Risk treatment: *risk modification activities*
Risk: *likelihood of occurrence of a threat or an opportunity*

Safety*: absence of unacceptable risk*
Strategy*: total approach to achieve objectives*
System*: set of interactive processes*
Threat*: uncertain event that could have a negative impact on the objectives*
Uncertainty*: existence of more than one possibility*

In the terminology of management systems, do not confuse:

- accident and incident
    - an accident is an unexpected serious event
    - an incident is an event that can lead to an accident
- anomaly, defect, dysfunction, failure, nonconformity, reject and waste:
    - an anomaly is a deviation from what is expected
    - a defect is the non-fulfillment of a requirement related to an intended use
    - a dysfunction is a degraded function that can lead to a failure
    - a failure is when a function has become unfit
    - a nonconformity is the non-fulfillment of a requirement in production
    - a reject is a nonconforming product that will be destroyed
    - a waste is when there are added costs but no value
- audit, inspection, auditee and auditor
    - an audit is the process of obtaining audit evidence
    - an inspection is the conformity verification of a process or product
    - an auditee is the one who is audited
    - an auditor is the one who conducts the audit
- control and optimize
    - control is meeting the objectives
    - optimize is searching for the best possible results
- customer, external provider and subcontractor
    - a customer receives a product
    - an external provider provides a product on which specific work is done
    - a subcontractor provides a service or product on which specific work is done
- effectiveness and efficiency
    - effectiveness is the level of achievement of planned results
    - efficiency is the ratio between results and resources
- follow-up and review
    - follow-up is the verification of the obtained results of an action
    - review is the analysis of the effectiveness in achieving objectives
- hazard, problem and risk
    - hazard is the state, the situation, the source which can lead to an accident
    - the problem is the gap between the actual situation and the desired situation
    - risk is the measure, the consequence of a hazard and it is always a potential problem
- inform and communicate
    - to inform is to give someone meaningful data
    - to communicate is to pass on a message, to listen to the reaction and discuss
- mapping and organization chart
    - mapping is the graphical presentation of processes and their interactions in a company
    - the organizational chart is the graphic presentation of the departments and their links in a company
- objective and indicator
    - an objective is a sought after commitment
    - an indicator is the information on the difference between the pre-set objective and the achieved result

- organization and enterprise, society, company
  - o organization is the term used by the ISO 9001 standard as the entity between the supplier and the customer
  - o an enterprise, society and company are examples of organizations
- prevention and protection, cf. figure 2-4
  - o prevention is the means to reduce the likelihood and frequency of occurrence of a risk (check tire pressure)
  - o protection is the means to limit the impact of a risk (fasten your seat belt)
- probability, uncertainty and likelihood
  - o the probability expresses the quantitative analysis of the uncertainty
  - o uncertainty is the inaccuracy of predicting
  - o the likelihood expresses the qualitative analysis of the uncertainty
- process, procedure, product, activity and task
  - o a process is how we satisfy the customer using people to achieve the objectives
  - o a procedure is the description of how we should conform to the rules
  - o a product is the result of a process
  - o an activity is a set of tasks
  - o a task is a sequence of simple operations
- safety and security
  - o safety is prevention against malicious risks
  - o security is prevention against risks of unintentional origin
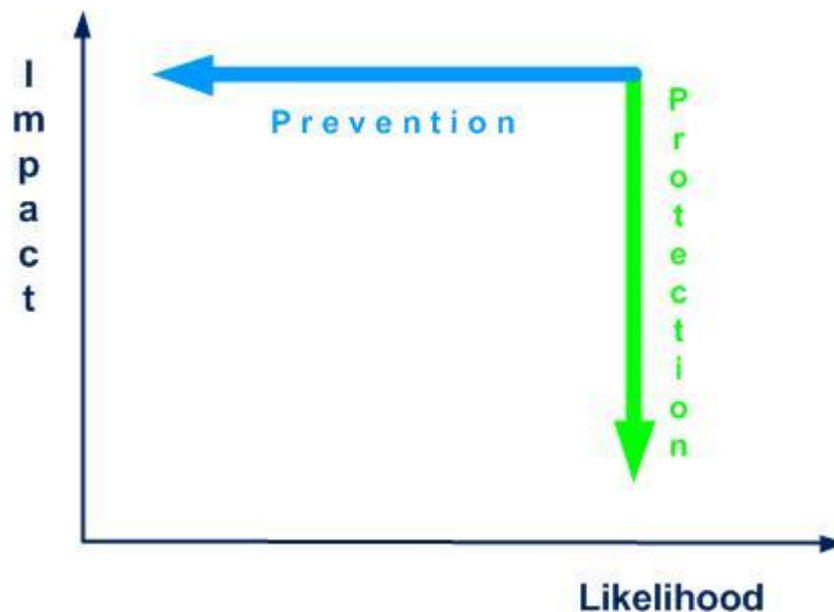
Figure 2-4 Prevention and protection

Remark 1: *between stakeholders and interested parties our preference is for stakeholders*

Remark 2: *between impact, gravity, consequence and severity our preference is for impact*

Remark 3: *between anti-bribery manager and anti-corruption compliance or anti-corruption officer our preference is for anti-bribery manager*

Remark 4: *between likelihood and probability our preference is for likelihood (of occurrence)*

Remark 5: *a risk can have negative impacts (we speak of threats) or positive impacts (we speak of opportunities), cf. ISO 21500, 4.3.28. Seizing an opportunity is taking risks, but not*

seizing an opportunity can put us at risk. Often risk is equated with hazard (danger) and commonly used instead of threat

Remark 6: each time you use the expression "opportunity for improvement" instead of nonconformity, malfunction or failure, you will gain a little more trust from your interlocutor (external or internal customer)

For other definitions, comments, explanations and interpretations that you cannot find in

this module and annex 06, you can consult:

- ISO Online Browsing Platform (OBP)
- IEC Electropedia

The icons used in the module:
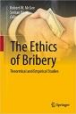
- explanation, example, detail, rule
- process
- procedure (documented)
- record
- joke
- game
- trap to avoid

2.3 Books

**When I think of all the books still left for me to read, I'm certain of further happiness.
Jules Renard**

To go further, some books, listed in chronological order:

- Eoin O'Shea, The Bribery Act 2010: A Practical Guide, Jordan Publishing, 2011

- Leslie Holmes, Corruption: A Very Short Introduction, OUP Oxford, 2015

- Monty Raphael, Bribery: Law and practice, Oxford University Press, 2016

- Alan Field, ISO 37001: An Introduction to Anti-Bribery Management Systems, ITGP, 2017

- , Joe Khamisi , [The Bribery Syndrome](): How Multinational Corporations Collude with Dictators to Raid Africa's Natural Resources, Jodey Book Publishers, 2019

- Team, [ISO 37001 A Complete Guide]() - 2021 Edition, The Art of Service, 2020

- Régis Bismouth et al, [The Transnationalization of Anticorruption Law](), Routledge, 2021

- Team, [Compliance ISO 37001]() A Complete Guide - 2021 Edition

- Shaomin Li, [Bribery and Corruption in Weak Institutional Environments](), Cambridge University Press, 2022

- Alexei Maksurov, [Bribery](): Investigative and qualification issues, Our Knowledge Publishing, 2023

- Robert W. McGee at al, [The Ethics of Bribery](): Theoretical and Empirical Studies, Springer International Publishing, 2023

Some sites, rich in documents on the prevention of bribery:

- the hundred UN guides: [unglobalcompact.org/library]()
- dozens of documents from the NGO: [Transparency International]()
- the guides, charters, studies and others of the French [Anti-Corruption Agency]()
- numerous documents from the [International Chamber of Commerce]()
- the wide variety of documents on corruption from the [Partnership Against Corruption Initiative]() (PACI)

And free online training from the UN: [http://thefightagainstcorruption.org/]():

"This e-learning tool is a joint product of the UN Global Compact and the UN Office on Drugs and Crime. It uses six interactive learning modules to further the audience's understanding of the [UN Global Compact's 10th principle]() against corruption and the [UN Convention against Corruption]() as it applies to the private sector. The tool is targeted at everyone who acts on behalf of a company. Each module only lasts about five minutes, providing a quick and effective way of learning. And it is fun too!"

3 Process approach

3.1 Processes

If you can't describe what you're doing as a process, you don't know what you're doing. Edwards Deming

The word process comes from the Latin root procedere = go, development, progress (Pro = forward, cedere = go). Each process transforms inputs into outputs, creating added value and potential nuisances.

A process has three basic elements: inputs, activities and outputs.

Process: *activities that transform inputs into outputs*

A process can be very complex (launch a rocket) or relatively simple (audit a product). A process is:

- repeatable
- foreseeable
- measurable
- definable
- dependent on its context
- responsible for its external providers

A process is, among other things, determined by its:

- title and type
- purpose (why?)
- beneficiary (for whom?)
- scope and activities
- initiators
- documentation
- inputs
- outputs (intentional and not intentional)
- restraints
- people
- material resources
- objectives and indicators
- person in charge (owner) and actors (participants)
- means of inspection (monitoring, measurement)
- mapping
- interaction with other processes
- risks and potential deviations
- opportunities for continual improvement

A process review is conducted periodically by the process owner (cf. annex 03).

The components of a process are shown in figure 3-1:
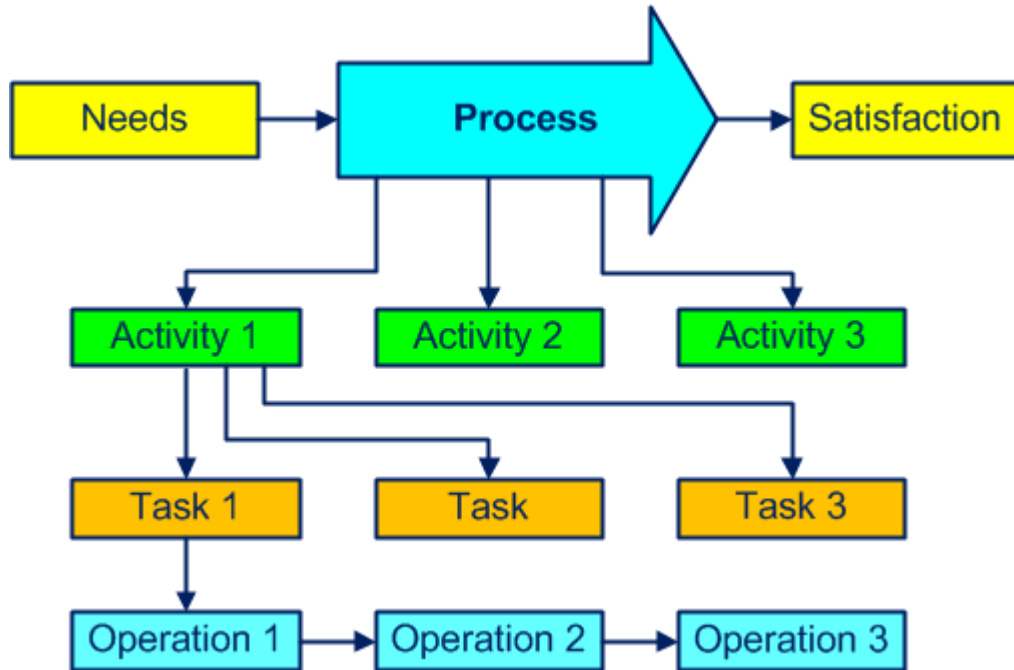
Figure 3-1. Components of a process

Figure 3-2 shows an example that helps to answer some questions:

- which materials, which documents, which tooling? (inputs)
- which title, what objective, which activities, requirements, constraints? (process)
- which products, which documents? (outputs)
- how, which inspections? (methods)
- what is the level of performance? (indicators)
- who, with what competence? (people)
- with what, which machines, which equipment? (material resources)

Figure 3-2. Some elements of a process

Often the output of a process is the input of the next process.

You can find some examples of process sheets in the document pack D 02 and a list of processes in annex 04.

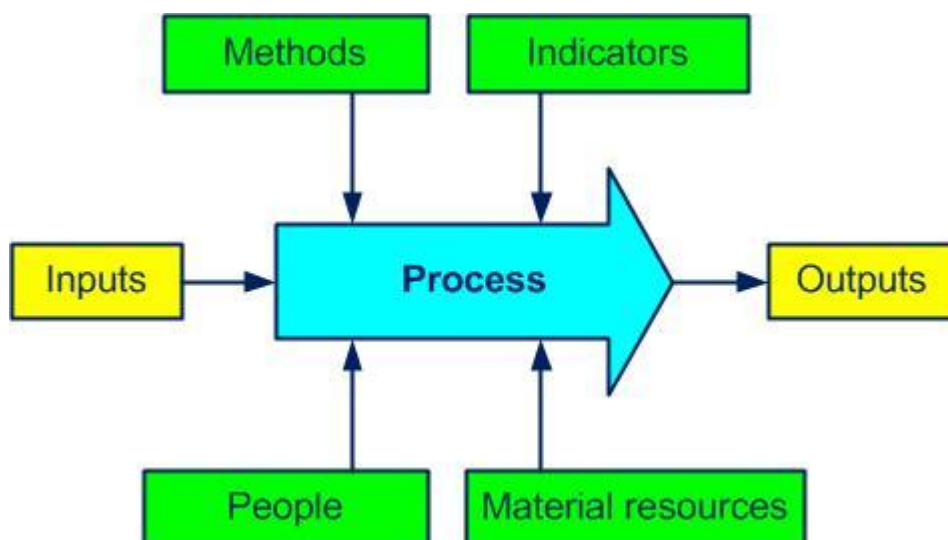Any organization (company) can be considered to be a macro process, with a purpose, inputs (customer needs and expectations) and outputs (products/services to meet customer requirements).

Our preference is to identify a process using a verb (buy, produce, sell) instead of a noun (purchases, production, sales) to differentiate the process from the company's department or procedure and recall the purpose of the process.

The processes are (as we shall see in the following paragraphs) of management, realization and support types. Do not attach too much importance to process categorizing (sometimes it's very relative) but ensure that all the company's activities at least fall into one process

3.1.1 Management processes

Management processes are also known as piloting, decision, key or major processes. They take part in the overall organization and include elaboration of the policy, deployment of the objectives and all needed checks. They are the glue of all the realization and support processes.

The following processes can be part of this family:

- develop strategy
- address risks
- develop policy
- establish process ownership
- improve
- audit internally (mandatory), cf. annex 04
- delegate decision-making (mandatory), cf. annex 04
- communicate
- plan the MS (management system)
- acquire resources
- conduct management review
- deploy objectives

3.1.2 Realization processes

The realization (operational) processes are related to the product, increase the added value and contribute directly to customer satisfaction.

They are mainly:

- manage operational requirements (mandatory), cf. annex 04
- purchase
- sell
- produce
- inspect
- receive, store and deliver
- control nonconformities (NC)
- carry out corrective actions

3.1.3 Support processes

The support processes provide the resources necessary for the proper functioning of all other processes. They are not directly related to a contribution of the product's added value, but are still essential.

The support processes are often:

- control documentation
- provide information
- acquire and maintain infrastructure
- provide training
- manage inspection means
- keep accountability
- manage personnel

3.2 Process mapping

Without mapping it is difficult to have a global vision of the company

Par excellence process "mapping" is a multidisciplinary work. This is not a formal requirement of ISO 37001 or ISO 9001 but is always welcome.

The three types of processes and some interactions are shown in figure 3-3.
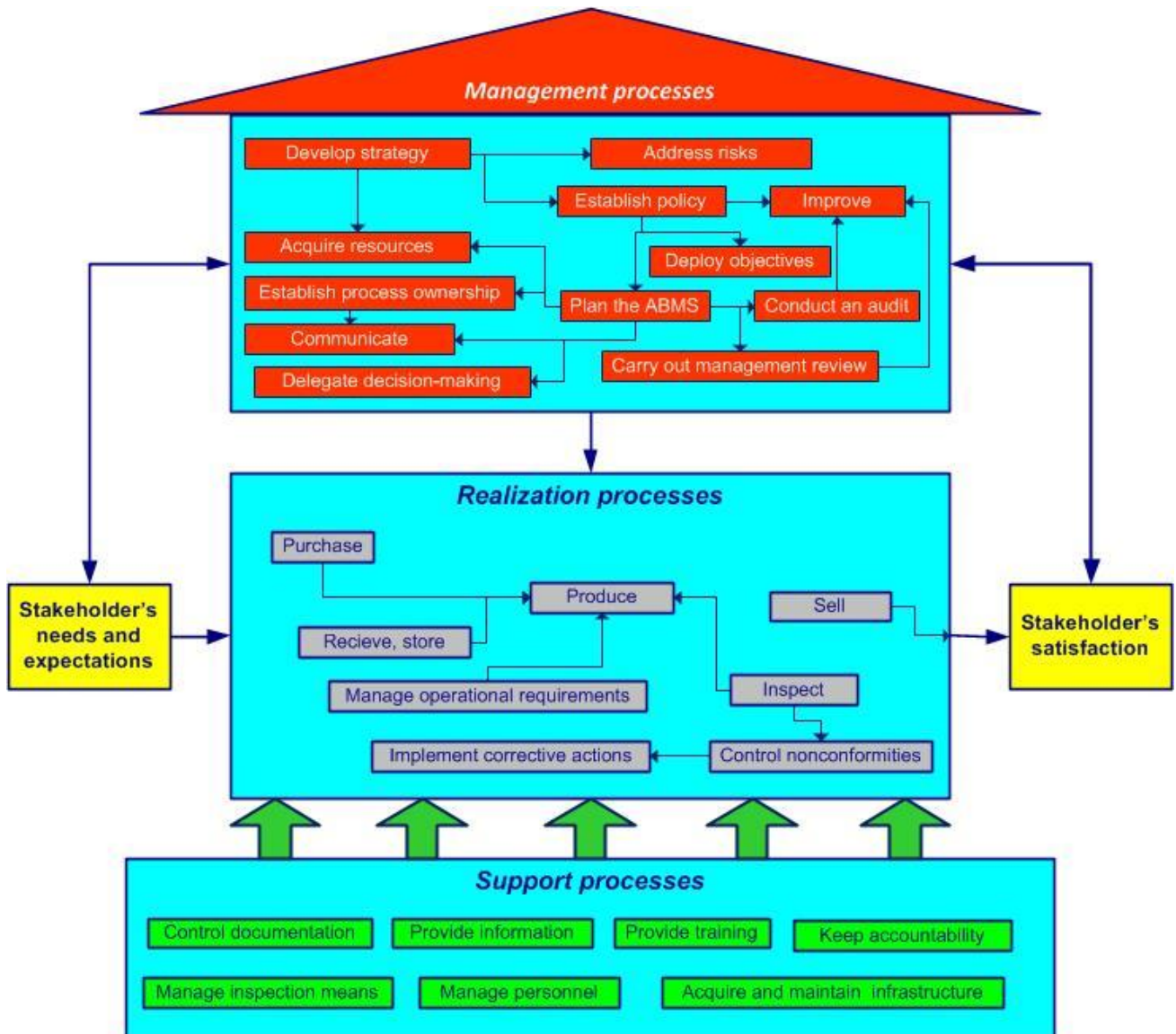
Figure 3-3. Process house

Mapping, among other things, allows you to:

- obtain a global vision of the company
- identify the beneficiaries (customers), flows and interactions
- define rules (simple) for communication between processes

To obtain a clearer picture, you can simplify by using a total of about 15 core processes. A core process can contain several sub-processes: for example, the process "develop the

ABMS" can involve:

- plan the ABMS
- develop strategy
- prevent bribery risks
- identify bribery risks
- establish anti-bribery policy
- deploy objectives
- deal bribery risks
- improve

3.3 Process approach

Simple solutions for now, perfection for later

The fourth principle of quality management is "Process approach", cf. ISO 9000, 2.3.4. Some benefits:

- obtain a global vision of the company thanks to the mapping
- identify and manage responsibilities and resources
- achieve effective management of the company based on process indicators
- manage the risks that may affect the objectives

Process approach: *management by the processes to better satisfy customers, improve the effectiveness of all processes and increase global efficiency*

When the process approach is integrated during the development, implementation and continual improvement of a management system, it allows one to achieve objectives that are related to stakeholder satisfaction, as is shown in figure 3-4.
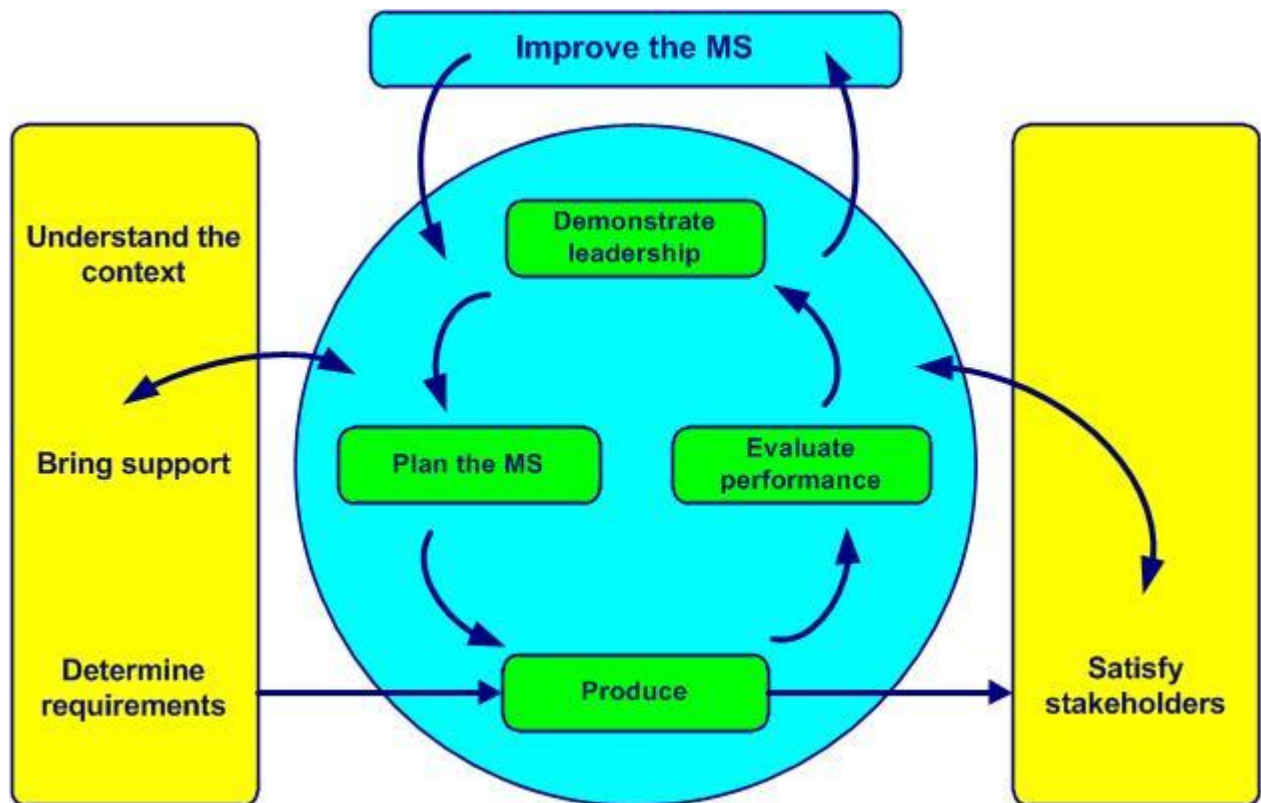
Figure 3-4. Model of a MS based on process approach and continual improvement

The process approach (cf. annex 05):

- emphasizes the importance of:
  - understanding and complying with stakeholder requirements
  - prevention so as to react to unwanted elements such as:
    - proven bribery
    - suspected bribery
  - measuring process performance, effectiveness and efficiency
  - permanently improving objectives based on pertinent measurements
  - process added value

- relies on:
    - methical identification
    - interactions
    - the sequence and
    - process management, which consists of:
        - determining objectives and their indicators
        - piloting related activities
        - analyzing obtained results
        - permanently undertaking improvements
- allows one to:
    - better view inputs and outputs and their relationship
    - clarify roles and responsibilities
    - judiciously assign necessary resources
    - break down barriers between departments
    - decrease costs, delays and waste
- and ensures in the long run:
    - control
    - monitoring and
    - continual improvement of processes

The process approach **is not**:

- crisis management ("You will not solve the problems by addressing the effects")
- blaming people ("Poor quality is the result of poor management." Masaaki Imai)
- prioritizing investments ("Use your brain, not your money." Taiichi Ohno)

4 Context

4.1 Issues *(Requirement 1)*

The two most important things in a company do not appear in its balance sheet: its reputation and its people. Henry Ford

To successfully implement an anti-bribery management system, it is necessary to understand and assess everything that can influence the purpose and performance of the organization. It is advisable to engage in in-depth reflection after a few essential activities:

- draw up an in-depth diagnosis of the unique context in which the organization finds itself, taking into account:
    - external issues such as the environment like:
        - social
        - regulatory
        - economical (partners)
        - technological
        - entities that exercise control over the organization
    - internal issues like:
        - specific aspects of corporate culture:
            - vision
            - reason to exist, purpose, mission
            - core values
        - staff
        - complexity of activities
        - products and services
        - infrastructure
        - entities over which the organization exercises control
- monitor and regularly review all information relating to external and internal issues
- analyze the factors that may influence the achievement of the organization's objectives

PESTEL and SWOT analyses can be useful for a relevant analysis of the context of the organization. Annex 07 shows the SWOT analysis tool (Strengths and Weaknesses, Opportunities and Threats).

A list of external and internal issues is compiled by a multidisciplinary team. Each issue is identified by its level of influence and control. Priority is given to issues that are very influential and not at all mastered.

<table>
<tr><td align="center">*Good practices*</td></tr>
</table>

- *diagnosis of the context includes the main external and internal issues*
- *the list of external and internal issues is exhaustive*
- *the core values as part of the corporate culture are taken into account in the context of the company*
- *the results of the context analysis are widely diffused*
- *the SWOT analysis includes many relevant examples*
- *the SWOT analysis is a powerful tool for identifying the main threats and opportunities*

Bad practices

- *the issues of the context of the company, such as the competitive environment, are not taken into account*
- *in some cases, the corporate culture is not taken into account*
- *the analysis of issues does not take into account strategic issues*
- *no clear link between the SWOT analysis and the actions undertaken*
- *the threats and weaknesses identified in the SWOT analysis remain without action*

4.2 Stakeholders *(Requirements 2 to 3)*

The purpose of business is to improve our lives and to create value for stakeholders. John Mackey

To fully understand the needs and expectations of stakeholders, it is necessary to start by determining all those who may be affected by the anti-bribery management system, for example:

- employees
- top management
- customers
- external providers (suppliers, subcontractors, consultants)
- owners
- shareholders
- bankers
- distributors
- competitors
- social and political organizations

True story

"In a typical company, if you have a meeting, no matter how important, there is always a part that is not represented: the customer. It is very easy within the company to forget the customer." Jeff Bezos.

To address this concern, it became customary to place an empty chair at every meeting.

The list of stakeholders is created by a multidisciplinary team. Every stakeholder is identified by its bribery risk level. Priority is given to stakeholders with the highest bribery risk level.

Stakeholder: *person, group or organization that can affect or be affected by an organization*

Anticipating the needs and expectations or in other words the requirements of stakeholders means:

- preparing to address bribery risks
- seizing improvement opportunities of the ABMS

True story

The signature of the contract was delayed for a few weeks because we had forgotten to translate part of the documentation into the local language.

Forgetting a stakeholder (and their specific need) can create a lot of worries!

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Good practices

</div>

- *the list of stakeholders is updated*
- *the needs and expectations of stakeholders are established through meetings on-site, surveys, roundtables and meetings (monthly or frequent)*
- *the application of statutory and regulatory requirements is a prevention approach and not a constraint*

<div align="center">

Bad practices

</div>

- *statutory and regulatory requirements are not taken into account*
- *the expectations of stakeholders are not determined*
- *the list of stakeholders does not contain their area of activity*

4.3 Scope *(Requirements 4 to 8)*

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No area is immune to the risk of bribery

</div>

The scope (or in other words the perimeter) of the ABMS delimits what enters and what does not enter the system. The ABMS takes into account:

- the purpose of the organization
- internal and external issues, cf. sub-clause 4.1
- stakeholder expectations, cf. sub-clause 4.2
- the conclusions of the bribery risk assessment, cf. sub-clause 4.5

The processes, functions and departments most at risk are specifically targeted, such as purchasing, sales and personnel management.

<div align="center">

True story

</div>

For a new market, a mining company carried out an inventory of the permits and licenses required to exercise its activities. In total, it turned out that nearly 20 permits and licenses were needed, involving several central and local agencies.

This knowledge has enabled the company to effectively manage its bribery prevention actions.

Fraud, agreements between companies, money laundering, influence peddling and other crimes are not directly addressed by ISO 37001, but may be included in your ABMS.

The scope is available internally and to stakeholders as a record, cf. § 7.5.

<div align="center">

Good practices

</div>

- *all group subsidiaries are included in the scope of the ABMS*
- *the scope is relevant and available upon request*

<div align="center">

Bad practices

</div>

- *a subsidiary of the group does not fall within the scope of the ABMS*

- *the subsidiary does not have its own anti-bribery controls*
- *certain activities are outside the scope of the ABMS without justification*

4.4 ABMS *(Requirements 9 to 12)*

Quality management, in its essence, concerns the description of processes, then their improvement. Isaac Getz

The requirements of the ISO 37001 standard are related to:

- the anti-bribery management system and
- necessary processes

To do this:

- the anti-bribery management system (ABMS) is:
  - reasonable and appropriate
  - established
  - documented (a simple and sufficient documentary system is in place)
  - set up and
  - continually improved
- the ABMS takes into account:
  - internal and external issues (cf. sub-clause 4.1)
  - stakeholder's needs and expectations (cf. sub-clause 4.2)
  - identified bribery risks (cf. sub-clause 4.5)
- the anti-bribery policy, objectives, indicators and resources are determined
- threats are determined and actions to reduce them are established (cf. sub-clauses 4.5 and 6.1)
- the essential processes necessary for the ABMS are controlled:
  - the owners are assigned
  - the corresponding resources are assured
  - the inputs and outputs are identified
  - the necessary information is available
  - the sequences and interactions are established
  - each process is measured and monitored (criteria established), objectives are established and performance indicators analyzed
  - actions to obtain the continual improvement of processes are established
- the strict minimum necessary ("as much as necessary") of process documents is maintained and retained ( )

The anti-bribery manual is not a requirement of the ISO 37001 standard version 2016, but it is always a possible method to present the organization, its ABMS and its procedures, policies and processes (see annex 08).

The ISO guide "The integrated use of management system standards" of 2018, contains relevant recommendations on the integration of management systems.

⚠ Pitfalls to avoid:

- going overboard on quality: 🎓

- o a useless operation is performed without adding value and without the customer asking for it - it is a waste, cf. quality tools D 12

- having all procedures written by the anti-bribery manager: 🎓
  - o bribery prevention is everybody's business, "the staff is conscious of the relevance and importance of each to the contribution to anti-bribery objectives", which is even more true for department heads and process owners

- forgetting to take into account the specificities related to the corporate culture: 🎓
  - o innovation, luxury, secret, authoritarian management (Apple)
  - o strong culture related to ecology, action and struggle, while cultivating secrecy (Greenpeace)
  - o fun and quirky corporate culture (Michel & Augustin)
  - o liberated company, the man is good, love your customer, shared dream (Favi)

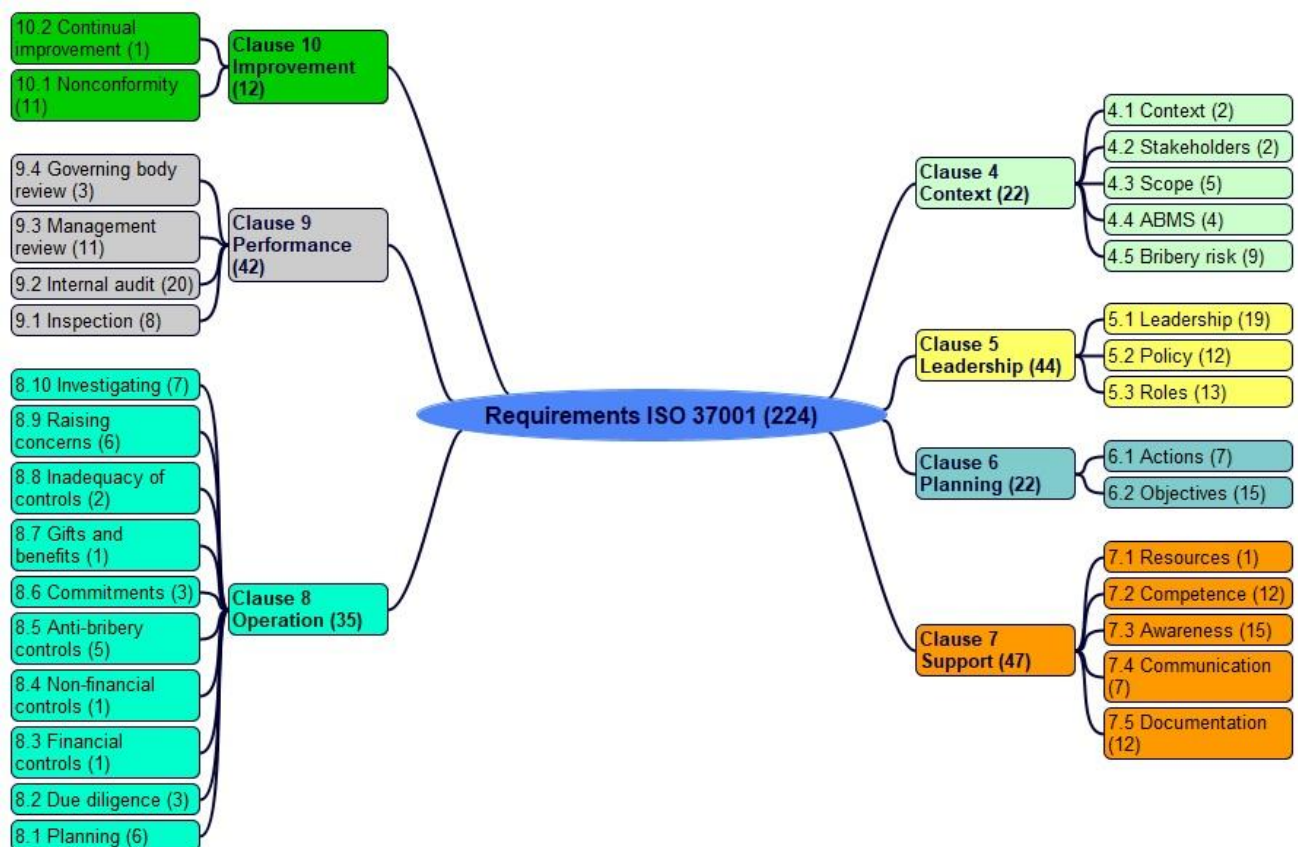The requirements of the ISO 37001 standard are shown in figures 4-1:

Figure 4-1. The requirements of the ISO 37001 standard (2016)

The implementation of the ABMS and good practices are verified by a pre-audit.

Good practices

- *the process map has enough arrows to show who is the customer (internal or external)*
- *for a process, it is better to use a lot of arrows (several customers) rather than to forget one*
- *reveal the added value of the process during the process review*

- *the analysis of processes performance is an example of continual improvement evidence of the effectiveness of the ABMS*
- *top management regularly monitors the objectives and action plans*
- *top management commitments to continual improvement are widely communicated*
- *the purpose of each process is clearly defined*

<div style="background-color:orange; text-align:center;">*Bad practices*</div>

- *some process outputs are not set correctly (customers not considered)*
- *the process owner is not formalized*
- *outsourced processes are not determined*
- *real activities are not identified in any process*
- *sequences and interactions of certain processes are not determined*
- *monitoring the effectiveness of certain processes are not established*
- *the ABMS is not updated (new processes are not determined)*

4.5 Bribery risks *(Requirements 13 to 21)*

Any decision involves a risk. Peter Barge

Risk management has in the past been viewed by some managers as superfluous. These people believed that the main objective was to avoid risk. Many have since understood that risk is inevitable and intrinsic to any activity but must be reduced to an acceptable level.

To identify and limit the bribery risks, an anti-bribery management system based on risk assessment and treatment should be established. A few steps:

- identify situations at risk of bribery
- review all:
    - trades
    - high-risk positions
    - past incidents
    - audit results
- analyze the impact and the likelihood of the risk appearing
- assess the risks by prioritizing the risks of the most critical situations
- put in place an action plan to act on priority situations
- determine the acceptable threshold of residual risk
- strengthen accounting controls for risky situations
- assess the controls put in place
- update the action plan regularly
- raise staff awareness and training, cf. sub-clause 7.3
- carry out due diligence on partners, cf. sub-clause 8.2
- set up the reporting mechanism, cf. sub-clause 8.9

The criteria for assessing the level of bribery risk are defined and take into account the anti-bribery policy and the objectives to be achieved.

"Risk positions" are those with:

- regular contacts with customers
- regular contacts with suppliers
- conflicts of interest
- the company's decision-making responsibilities
- financial responsibilities

> • budget management facilities for distributing gifts, making discounts, sponsorship

A risk map is shown in annex 02.

A risk can be classified as:

- negligible
- low (limited)
- moderate
- high (significant)
- critical

In annex 09 you can find 19 PRS tools (problem, risk, safety). For more tools please see the D 12 Quality tools set.

The Excel file (annex 10) allows risk management with spreadsheets:

- identify
- analyze
- assess
- treat and
- monitor

For more information on risk assessment and treatment, see training T 51 Risk management.

<div align="center">

True story

</div>

In company ABC, each batch is validated by a quality operator. One batch was refused (the sample taken exceeded the authorized threshold of nonconformities). The production manager, in order not to lose his monthly bonus, asked the operator to close his eyes and validate the batch in exchange for an envelope with a few notes. The quality operator refused the envelope and reported the attempted bribery to his manager, who informed the anti-bribery manager.

The director demanded an exemplary sanction and asked to update the risk map, which was mainly oriented towards risky positions in purchasing, sales and recruiting.

Risk management tools are used for all stages of the "Manage risk" process, cf. annex 11.

The ISO 31010 standard describes the most widely used risk assessment tools or techniques.

A risk can have negative impacts (we talk about threats) or positive impacts (we talk about opportunities).

Often risk is equated with hazard and commonly used in place of threat.

Any threat that can disrupt normal business operations is:

- determined
- analyzed

- assessed and
- appropriate actions are taken to prevent or reduce adverse effects

The risk-based approach allows us to prepare the action to be taken if an output element of the process does not meet a requirement. In other words, be ready in case something does not work out (well).

Any opportunity that can increase desirable effects on the anti-bribery management system is supported with continual improvement actions.

The nature of actions is proportional to the potential impact of threats and opportunities. Some examples of risks are listed in annex 12.

An example of a "Risk Management" procedure is shown in annex 13.

Records of the results of the risk assessment are kept.

The risk reduction action plan, cf. annex 14, includes the following options:

- avoid the risk (refuse the risky activity)
- accept risk to gain an opportunity
- eliminate the source of the risk
- modify the likelihood of occurrence of the risk
- react to the consequences of the risk
- share the risk with other stakeholders
- maintain the residual risk (acceptable level)

Example of an unidentified risk:
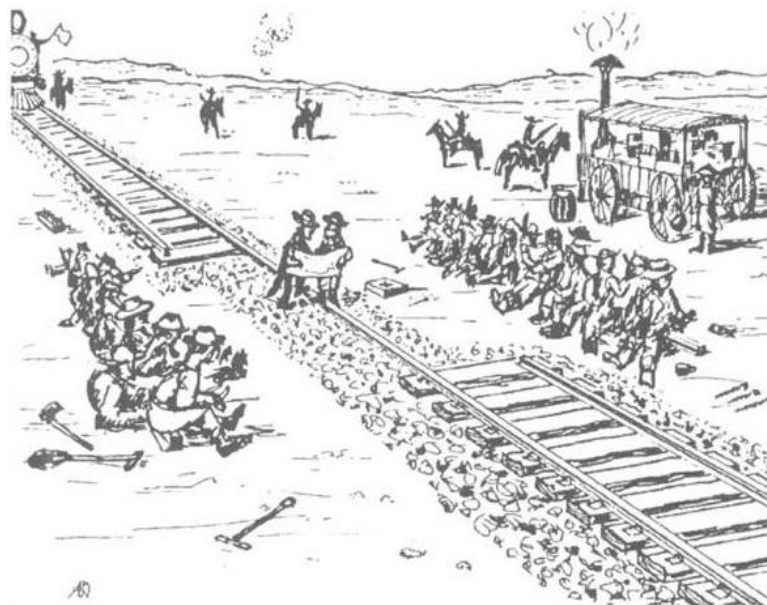
Good practices

- *the list of risks taken into account is exhaustive and up-to-date*
- *the list of risks is communicated to all staff*

- *bribery risks are prioritized in an updated list*
- *the action plan to fight priority risks is implemented*
- *the effectiveness of preventive actions has been assessed*
- *the new level of residual risk is updated*
- *actions to reduce certain risks are integrated into key processes*
- *the action plan includes a column used for monitoring the effectiveness of actions*
- *the action plan takes into account the results of internal audits*

Bad practices

- *some stakeholder requirements are not taken into account when planning actions to address risks*
- *some bribery risks are not identified*
- *risks are not prioritized*
- *the risks of salespeople are not a priority*
- *no preventive action has been implemented*
- *the residual risk level is not updated*
- *no planning of actions to reduce negative impacts*
- *no opportunity to increase desirable effects*
- *threats and opportunities are not identified and assessed for certain processes*
- *the list of risks has not changed since its creation*