

Progress report on the implementation and enforcement of G20 commitments on foreign bribery

Summary of the G-20 countries' self-assessment questionnaire on foreign bribery

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Introduction and Highlights

While all countries share the responsibility to combat foreign bribery, G20 countries are well positioned to lead by example, considering that the G20 holds 80% of the global GDP and 75% of global exports.¹ For this reason, in the 2020 G20 Leaders Declaration, all G20 Leaders committed to “*demonstrate concrete efforts by 2021 towards criminalizing foreign bribery and enforcing foreign bribery legislation in line with article 16 of UNCAC, and with a view to possible adherence by all G20 countries to the Organisation for Economic Co-operation and Development (OECD) Anti-Bribery Convention.*” Anticorruption Ministers in their October ministerial communiqué further called on the Anticorruption Working Group (ACWG) to “*review and provide an update on this progress in 2021.*” In response to this call, this paper provides an overview of the state of play regarding G20 countries’ efforts to tackle foreign bribery based on a self-assessment questionnaire filled out by members.

Nineteen countries submitted responses to the self-assessment questionnaire², including seventeen G20 members³, one permanent guest⁴ and one guest country⁵. Fifteen of the respondent countries are members of the OECD Working Group on Bribery in International Business Transactions (WGB).⁶ Additional information from respondent countries and information on non-respondent WGB member countries was extracted from publicly available country evaluation reports to complement the analysis in some sections of this report.⁷

Below are the main highlights from the country responses:

- Most G20 countries have reported a robust legislative and institutional frameworks for foreign bribery. However gaps remain either because i) three countries still do not criminalise bribery of foreign public officials, with one reporting being in the process of doing so while the other two committing to doing so, and ii) several countries still need to strengthen their offence and their regime for liability of legal persons.
- While G20 countries are responsible for over 90% of foreign bribery convictions and sanctions reported, enforcement of the foreign bribery offence could be stronger overall. OECD official data shows that from the entry into force of the OECD Anti-Bribery Convention in 1999 to the end of 2019, all 18 WGB member countries that are also G20 countries, have convicted or sanctioned 590 natural persons and 213 legal persons for foreign bribery in criminal proceedings. In addition, 87 natural persons and 115 legal persons were convicted or sanctioned in the same period in administrative or civil proceedings.⁸

¹ G-20 official website. [About G20.](#)

² The countries’ responses to the questionnaire are provided in the Annex to this report.

³ Argentina, Australia, Brazil, China, France, Germany, India, Indonesia, Italy, Japan, Korea, Mexico, Saudi Arabia, South Africa, Russian Federation, United Kingdom, United States.

⁴ Spain.

⁵ The Netherlands.

⁶ Argentina, Australia, Brazil, France, Germany, Italy, Japan, Korea, Mexico, Netherlands, Russian Federation, Spain, South Africa, United Kingdom, United States.

⁷ In particular, information was obtained from WGB country evaluation reports, which are publicly available on the [OECD website.](#)

⁸ See WGB 2019 Enforcement of the Anti-Bribery Convention – Investigations, Prosecutions and Sanctions: <https://www.oecd.org/daf/anti-bribery/OECD-Anti-Bribery-Convention-Enforcement-Data-2020.pdf>

- All but four G20 countries are Parties to the OECD Anti-Bribery Convention and, as such, are subject to peer reviews under the OECD Anti-Bribery Convention. Out of the remaining four, one country officially became a participant to the OECD Working Group on Bribery in 2020 as a first step towards joining the OECD Anti-Bribery Convention. Another country reported that it is considering requesting to join the WGB in 2022 and that it is planning to attend the ACWG/WGB joint session in July 2021 and engage in other meetings promoted by the WGB.

Summary of country responses

A robust legislative framework

Criminalisation of foreign bribery

- All respondent countries, except for two, report that they have criminalised foreign bribery. One country reported its criminalisation of bribery of officials from International organisations.
- The countries that report not having yet criminalised foreign bribery indicate that they plan to do it in the near future. One country indicates that it is currently working to criminalise all forms bribery provided under UNCAC. One country expresses its commitment to criminalise foreign bribery following international standards, including by joining the WGB in 2022. Another country indicates that it plans to criminalise foreign bribery following UNCAC standards.
- All respondent countries that have criminalised foreign bribery report that both natural and legal persons are subject to liability.
- In all countries that are also members of the Working Group on Bribery (WGB), the foreign bribery offence and the regime for liability of legal persons largely comply with the OECD Anti-Bribery Convention. However, 7 of these countries still have outstanding recommendations on the offence and 13 have outstanding recommendations concerning their regime for liability of legal persons.

Sanctions and confiscation

- All respondent countries where foreign bribery is an offence provide for a variety of sanctions against natural and legal persons who commit foreign bribery.
- Imprisonment is available as a sanction against natural persons in all countries where foreign bribery is an offence. Imprisonment sentences range from no minimum time to life imprisonment. Fines are available in all, except for two countries; methods to calculate the amount of the fines vary from country to country. Nine countries report having additional sanctions such as debarment, prohibition to hold public office, forfeiture, and suspension of political rights against natural persons who commit foreign bribery.
- In all countries where foreign bribery is an offence, monetary sanctions are available against legal persons. Methods to calculate fines differ from country to country. In some countries, the fine is a percentage of the gross revenue of the legal person at the time of the conviction or in the financial year preceding the judgment or punishment. In other countries, fines are calculated based on the amount of the bribes and/or the profits obtained with the tainted transaction, when this is possible to determine. Twelve responding countries have additional sanctions such as debarment, dissolution of the legal person, and imposition of compliance monitors against legal persons that commit foreign bribery.

- Confiscation of the bribe and the proceeds of the bribery of a foreign public official, or monetary sanctions of comparable effect, are available in all countries, except one for which information is not available. One country reports that although it does not criminalise foreign bribery, it is able to confiscate foreign bribery proceeds upon request from other countries.

Enforcement of the foreign bribery offence

- The enforcement of the foreign bribery offence could be stronger, considering that the G20 holds 80% of the global GDP and 75% of global exports.⁹
- Data from the OECD WGB [2019 Enforcement of the Anti-Bribery Convention](#) report shows that from the entry into force of the OECD Anti-Bribery Convention in 1999 to the end of 2019, all 18 WGB member countries that are also G20 countries, have convicted or sanctioned 590 natural persons and 213 legal persons for foreign bribery in criminal proceedings. In addition, 87 natural persons and 115 legal persons were convicted or sanctioned in the same period in administrative or civil proceedings.
- With respect to administrative or civil proceedings in particular, G20 countries were responsible for 100% of convictions or sanctions of natural and legal persons among WGB member countries. In criminal proceedings, these countries accounted for 90,63% and 92,61% of convictions or sanctions of natural and legal persons respectively.
- Two respondent countries where foreign bribery is an offence have not reported their enforcement figures.
- Only six countries report in their responses the use of non-trial resolutions (NTRs) to resolve foreign bribery cases. NTRs are however available in all, except for two G20 countries that are also WGB member countries. Data from the 2019 OECD [Resolving Foreign Bribery Cases with Non-Trial Resolutions: Settlements and Non-Trial Agreements by Parties to the Anti-Bribery Convention](#) report indicates that NTRs have become a prominent enforcement vehicle of anti-foreign bribery laws. The report shows that NTRs were used to resolve approximately 80% of all foreign bribery cases in WGB countries from 1997 to 2019.
- Only one country specifies that it has co-ordinated with other countries to resolve multijurisdictional bribery cases. Law enforcement in many other WGB member countries, however, have successfully cooperated in proceedings to resolve complex multijurisdictional foreign bribery cases. (see Box 1 below)

⁹ G-20 official website. [About G20.](#)

Box 1 – Recent examples of resolution of multijurisdictional cases in WGB member countries**Airbus (2020)**

“Airbus SE (Airbus or the Company), a global provider of civilian and military aircraft based in France, has agreed to pay combined penalties of more than \$3.9 billion to resolve foreign bribery charges with authorities in the United States, France and the United Kingdom arising out of the Company’s scheme to use third-party business partners to bribe government officials, as well as non-governmental airline executives, around the world and to resolve the Company’s violation of the Arms Export Control Act (AECA) and its implementing regulations, the International Traffic in Arms Regulations (ITAR), in the United States. This is the largest global foreign bribery resolution to date.”

Source: US Department of Justice, [Airbus Agrees to Pay over \\$3.9 Billion in Global Penalties to Resolve Foreign Bribery and ITAR Case.](#)

Samsung Heavy Industries (2019)

“Samsung Heavy Industries entered into a deferred prosecution agreement with the Department in connection with a criminal information filed today in the Eastern District of Virginia charging the company with conspiracy to violate the anti-bribery provisions of the FCPA. The case is assigned to Senior U.S. District Judge T.S. Ellis III of the Eastern District of Virginia. Pursuant to its agreement with the Department, Samsung Heavy Industries has committed to pay a total criminal penalty of \$75,481,600 – 50 percent (\$37,740,800) of which will be paid to the United States within 10 business days of the deferred prosecution agreement and the remaining 50 percent (\$37,740,800) of which will either be paid to Brazilian authorities pursuant to agreements between Samsung Heavy Industries and the Controladoria-Geral da União (CGU), Advogado-Geral da União (AGU) and Ministério Público Federal (MPF), or will be paid to the United States if at least \$37,740,800 in payments are not made to the Brazilian authorities on or before Nov. 25, 2020. In related proceedings in Brazil, Samsung Heavy Industries entered into a memorandum of understanding with the CGU and AGU and a complementary agreement for the negotiation of a leniency agreement with the MPF.”

Source: US Department of Justice, [Samsung Heavy Industries Company Ltd Agrees to Pay \\$75 Million in Global Penalties to Resolve Foreign Bribery Case.](#)

Odebrecht (2016)

“In December 2016, Odebrecht agreed to pay a combined fine of USD 4.5 billion as part of a coordinated resolution between Brazil, Switzerland and the United States. The United States and Switzerland received 10% each of the total criminal fine and Brazil received the remaining 80%. In addition, Braskem S.A., a subsidiary of Odebrecht, agreed to pay a criminal penalty of approximately USD 632 million and disgorgement of USD 325 million. The United States and Switzerland received 15% each of the criminal penalty and Brazil received the remaining 70%.”

Source: OECD (2019), [Resolving Foreign Bribery Cases with Non-Trial Resolutions: Settlements and Non-Trial Agreements by Parties to the Anti-Bribery Convention.](#)

Effective investigation and prosecution of foreign bribery**Institutional framework**

- All respondent countries where foreign bribery is an offence report robust institutional frameworks to enforce their anti- foreign bribery laws.
- Eleven respondent countries report that foreign bribery investigations and prosecutions are conducted by specialised organs or units on anti-corruption or financial and economic crimes. Of these countries, 10 are WGB member countries (see table 1 below). These organs or units are located within the police, prosecution service, and/or in an administrative enforcement authority.

International cooperation

- All but one respondent countries report that they provide MLA in foreign bribery cases.¹⁰
- Seventeen countries confirm having central authorities for executing MLA requests in foreign bribery cases.¹¹
- Nine countries specify that they are able to grant international legal cooperation either on the basis of a treaty or based on reciprocity.
- Sixteen countries report that they encourage informal cooperation. Six countries mention explicitly the participation of their law enforcement officials in networks such as Interpol, the OECD WGB Law Enforcement Officials network (LEO), the OECD Global Law Enforcement Network, the UNODC Global Operational Network of Anti-Corruption Law Enforcement Authorities (GlobE), and regional initiatives.¹²

Engagement with the OECD Working Group on Bribery and adherence to the Anti-Bribery Convention

WGB member countries – phase of the evaluation process

- All but four G20 countries are Parties to the OECD Anti-Bribery Convention and, as such, are subject to peer reviews under the OECD Anti-Bribery Convention.

Non WGB member countries - steps taken or under consideration to engage with the OECD Working Group on Bribery (WGB)

- Four G20 countries are currently not Party to the OECD Anti-Bribery Convention.
- One country reports that it is considering requesting to join the WGB in 2022. It states that this “will be a strong signal to the world of its seriousness to develop a legal framework on foreign bribery offences.” This country also indicates that it is planning to attend the ACWG/WGB joint session in July 2021 and engage in other meetings promoted by the WGB.
- Another non WGB member country reports that it has recently taken a first step towards joining the OECD Anti-Bribery Convention by officially requesting to join the OECD Working Group on Bribery as an observer country, in 2020. In early 2021, this country officially became a participant to the WGB.
- A third country reports that it has maintained close cooperation with the OECD Working Group on Bribery. This country further informs that it has participated in law enforcement cooperation conferences held by OECD and co-hosted with OECD several workshops on topics of mutual interests.
- A fourth country reports that it is already a signatory to UNCAC and in the process of implementing its provisions. It considers that it would be premature to commit to joining the WGB without first implementing the relevant UNCAC provisions.

¹⁰ One country did not respond to this question.

¹¹ Two countries did not respond to this part of the question.

¹² Two countries did not respond to this part of the question.