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# **Exporting Corruption Progress Report 2013: Assessing Enforcement of the OECD Convention on Combating Foreign Bribery**

**By Transparency International**

**An input to the UNCAC Implementation Review Mechanism on foreign bribery and related offences**

## **– Executive Summary –**

This is the executive summary of Transparency International's ninth annual progress report on OECD Anti-Bribery Convention enforcement.<sup>1</sup> The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention), adopted in 1997, requires each signatory country to make foreign bribery a crime for which individuals and enterprises are responsible. The Convention is a key instrument for curbing the export of corruption globally because the 40 signatory countries are responsible for approximately two-thirds of world exports and almost 90 per cent of total foreign direct investment outflows.

As provisions of the OECD Anti-Bribery Convention overlap with the UNCAC in several areas and the OECD Anti-Bribery Convention countries are also States Parties to the UNCAC with the exception of Czech Republic, Germany, Japan and New Zealand, the findings of the report are highly relevant for the UNCAC review mechanism.

## **Findings**

30 of the 40 countries signed up to the convention are barely investigating and prosecuting foreign bribery. Only eight countries have met their commitments under the Convention.

## **Organisation of the report**

The report contains overall conclusions on foreign bribery enforcement and includes a chart providing detailed statistical data of the States Parties enforcement activities i.e. foreign bribery investigations and court cases initiated and concluded by their national authorities. The data is based on the responses from national experts in all the OECD signatory countries. The country reports cover recent foreign bribery cases and investigations, and deal with such issues as access to information on enforcement and inadequacies in the legal framework and enforcement system. Case

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<sup>1</sup> The full report is available at [http://www.transparency.org/whatwedo/pub/exporting\\_corruption\\_progress\\_report\\_2013\\_assessing\\_enforcement\\_of\\_the\\_oecd](http://www.transparency.org/whatwedo/pub/exporting_corruption_progress_report_2013_assessing_enforcement_of_the_oecd) . Its authors are Fritz Heimann, Sophia Coles, Gillian Dell, Ádám Földes, Kelly McCarthy and Angela Reitmaier. The full report will be used for continuing dialogue and engagement with key stakeholders, including the 40 signatory governments.

studies in four important sectors: energy, health, defence and telecommunications are also part of the report.

## **Recommendations**

Recommendations build on findings in 40 countries, call for actions by the OECD Working Group on Bribery and by the governments, and should be supported by the private sector and civil society organisations.

### **High-Level Advocacy in Countries with Lagging Enforcement**

The challenge ahead is to build political support in the countries with lagging enforcement, and also to prevent weakening of support in countries where there is enforcement. This should be considered as a priority programme for 2014 and should involve the following:

- **Visits with government leaders by the OECD secretary general and the chair of the Working Group on Bribery.** Government leaders should be asked to commit the resources necessary to combat foreign bribery. These visits should be accompanied by meetings with representatives of the private sector, civil society and the media.
- **The OECD Ministerial Meeting in the second quarter of 2014 should include a review of the status of enforcement** of the Convention and should call for prompt action to enable the Convention to reach the tipping point (active enforcement in countries with over half of world exports) where its success is assured.
- **A meeting should be held with leaders of multinational enterprises and civil society organisations** to enlist their support to overcome lagging enforcement. Such a meeting could be scheduled in connection with the OECD Ministerial Meeting in the second quarter of 2014.

### **Continuation of rigorous follow-up monitoring programme**

Since the Convention is still far from achieving its objective of overcoming foreign bribery, continuation of a rigorous monitoring programme is essential. After the conclusion of the present round of Phase 3 reviews in 2014, monitoring must continue to ensure that weaknesses identified in prior reviews are corrected.

### **Recommendations on organisational matters**

- **Provide adequate funding and staffing for enforcement activities.**

In more than half of the Parties there are insufficient resources available to investigate and prosecute foreign bribery: Argentina, Austria, Belgium, Brazil, Bulgaria, Chile, Denmark, France, Greece, Iceland, Ireland, Italy, Japan, Netherlands, Portugal, Slovak Republic, Slovenia, South Korea, Spain, Turkey and United Kingdom.

- **Set up a specialised entity for foreign bribery enforcement and protect the entity and its activities from political interference.**

Foreign bribery investigations and prosecutions are difficult, time-consuming and require specialised expertise, such as knowledge of mutual legal assistance procedures. Regular prosecutors are overloaded with domestic cases and are reluctant to take on foreign bribery cases.

Our country reports revealed examples of political interference with anti-corruption agencies and prosecutorial bodies in the Czech Republic, Estonia, Hungary, South Africa and South Korea. In Argentina there are serious allegations that some judges in bribery cases lack independence and it is probable that problem is more widespread.

- **Improve statistical data collection and establish easy access to statistics on enforcement. If needed, seek opportunities for technical co-operation and capacity development with help from the OECD.**

To assess implementation of the Convention and to make sound policy decisions on enforcement, it is a prerequisite that statistics on investigations and prosecutions are collected and that such information is provided proactively and on request by responsible authorities.

In almost half of the Parties there are shortcomings in the availability of statistical information: Argentina, Austria, Belgium, Bulgaria, Canada, Colombia, Estonia, Greece, Ireland, Italy, Japan, Luxembourg, Mexico, Portugal, Slovenia, Spain and United Kingdom. The extent of these shortcomings varies; in some cases, the collection of information remains on the provincial level or domestic and foreign bribery cases cannot be disaggregated, while in other instances statistics are not available at all.

## **Recommendations on substantive issues**

- **Establish effective reporting channels and procedures for protection of whistleblowers both in private and public sectors in all the Parties to the Convention. Provide for independent reporting channels to build enough trust to receive reports from whistleblowers and from companies that have been victims of extortion and solicitation of bribes.**

Recently, several Parties to the Convention have taken meaningful steps to improve reporting channels and whistleblower protection (such as Australia, Italy, Netherlands and South Korea). The implementation of these new laws is yet to be seen. In the following countries there is a lack of adequate rules or practice either in the public or private sector, or in both: Australia, Brazil, Bulgaria, Chile, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Mexico, Netherlands, New Zealand, Portugal, Russia, Slovak Republic, South Africa, Spain, Sweden, Switzerland and Turkey.

- **The OECD Working Group should conduct and publish a systematic review of sentencing practices, identifying where they are not ‘effective, proportionate and dissuasive’ as required by Article 3 of the Convention.**

### **Governments should modify their sanctions as necessary to conform with Article 3.**

The report reveals large disparities in the level of sanctions imposed for foreign bribery offences in OECD countries. In numerous countries, sanctions are inadequate to be effective deterrents for companies engaging in corrupt acts, including: Argentina, Austria, Colombia, Denmark, Finland, France, Germany, Italy, Japan, Mexico, Netherlands, Norway, Poland, Portugal, Russia, South Korea, Sweden and Switzerland.

- **Ensure that corporations are held responsible for actions of their employees, agents, and foreign subsidiaries and for lack of adequate supervision of compliance programmes.**

There has been substantial progress by many of the States Parties in establishing liability of corporations for foreign bribery, but corporate liability still has shortcomings in: Austria, Denmark, Finland, Germany, Greece, Hungary, Ireland, Israel, Mexico, Poland, Russia, Slovak Republic, Sweden and Turkey.

- **Ensure the fairness and public credibility of settlements. Make all settlements subject to court approval, publish their terms and abstain from inhibiting prosecution in other jurisdictions.<sup>2</sup>**

A substantial number of foreign bribery cases are settled through negotiations between prosecutors and the accused companies and individuals. This is an understandable development in view of the complexity, cost, delays and uncertainties of litigation.

### **Major exporters should join the OECD Anti-bribery convention**

The G20 has repeatedly recommended that all G20 states adhere to the OECD Anti-Bribery Convention. China, India, Indonesia and Saudi Arabia have not yet done so. In view of their growing role in international business, they should do so promptly. We also encourage Hong Kong, Malaysia, Singapore and Thailand to join the Convention.

### **Overlapping areas**

Although the OECD Anti-Bribery Convention focuses on foreign bribery offences, when domestic legislation is brought in line with its provisions commonly this legislation will cover other corruption offences too. Some of the overlapping areas are:

- Bribery of foreign public officials (OECD Article 1, UNCAC Article 16)
- Liability of legal persons (OECD Article 2, UNCAC Article 26)
- Laundering of proceeds of crime (OECD Article 7, UNCAC Article 23)

<sup>2</sup> See Transparency International Guidance Document for Acceptable Settlements, [http://archive.transparency.org/policy\\_research/policy\\_and\\_working\\_papers/guidance\\_documents](http://archive.transparency.org/policy_research/policy_and_working_papers/guidance_documents)

- Protection of reporting persons (OECD Recommendation of 2009, UNCAC Article 33)
  - Public procurement and management of public finances (OECD Recommendation of 2009, UNCAC Article 9)
  - Private sector (OECD Recommendation of 2009, UNCAC Article 12)
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