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**Transparency International Submission
to the 14th Session of the UNCAC Implementation Review Group**

Major exporting countries must enforce against foreign bribery

Twenty-five years after the adoption of the OECD Anti-Bribery Convention and nineteen years after adoption of the UN Convention against Corruption, Transparency International's Exporting Corruption 2022 report found that major exporting countries were still falling far short on their convention obligations under to enforce against foreign bribery.¹ The TI report surveyed 47 countries that account for 83 per cent of global exports and classified them into one of four enforcement categories: active, moderate, limited, and little or no enforcement.

The 2022 report found a continued decline in enforcement against foreign bribery in many of the surveyed countries, including in some major exporters that were previously active enforcers. While the COVID-19 pandemic during two years of the reporting period undoubtedly posed a major hindrance to every stage of enforcement, in many countries the downward trend predated the pandemic.

Together with a decline in enforcement, the report showed continued weaknesses in legal frameworks and enforcement systems in the countries surveyed.

The Exporting Corruption Report 2022 made the following key findings and recommendations:

Key findings

1. Enforcement continues to decline significantly. Of the 47 countries covered in the report, only two (11.8 per cent of global exports) were classified as active enforcers. This was down from four countries in 2020 (16.5 per cent), and seven countries in 2018 (27 per cent). Since 2020, nine countries dropped in enforcement level and only two moved up. Major non-OECD Convention countries remained in the little to no enforcement category.

2. No country is exempt from bribery by its nationals and related money laundering. In the countries enforcing, the cases revealed that companies, company employees, agents and facilitators involved in foreign bribery transactions came from almost every country assessed in the report.

3. Weaknesses remain in legal frameworks and enforcement systems in the countries surveyed. Despite some improvements, nearly every country was found to have serious inadequacies in foreign bribery-related laws and institutions. Problems were identified in relation to whistleblower protection, the level of sanctions, the capacity and resources of key enforcement agencies, inter-agency coordination, and – in some countries – the insufficient autonomy of prosecution services and the courts. The persistence of these problems over successive reports points to insufficient prioritisation of foreign bribery enforcement.

4. Most of the countries surveyed fail to publish adequate enforcement information. In most countries, there continued to be a lack of transparency in data and case outcomes. By and large, statistics on foreign bribery enforcement were not publicly available, and not enough information was published on court judgements and non-trial resolutions. Moreover, the OECD Working Group on Bribery (WGB) publishes only very limited country enforcement data (sanctions or acquittals) in its annual enforcement reports, and the data is aggregated over the period since 1999.

¹ Gillian Dell and Andrew McDevitt, Exporting Corruption 2022: Assessing Enforcement of the OECD Anti-Bribery Convention (Transparency International, 2022) <https://www.transparency.org/en/publications/exporting-corruption-2022>

5. Victims' compensation is rare but there are a few positive developments. In the countries that enforce against foreign bribery, compensation is seldom made to the states, populations, groups, companies or individuals harmed by the bribery. As a general rule, any confiscated proceeds of corruption and disgorged profits in foreign bribery cases go into the treasuries of the host states of multinationals. In a few recent cases, however, the payment of compensation has been ordered or is under consideration.

6. International cooperation is increasing but still faces significant obstacles. Foreign bribery cases are complex and often require extensive cross-border cooperation among national enforcement agencies. However, there are often challenges to international cooperation. The problems include insufficient or incompatible legal frameworks, limited resources and know-how, a lack of coordination, and long delays. There is also a lack of published statistics on mutual legal assistance requests made and received, which would be helpful for the analysis of country-level challenges.

Recommendations

The signatories to the OECD Anti-Bribery Convention and the four non-OECD Convention countries surveyed in the report must increase their enforcement against foreign bribery. Key measures to improve enforcement include:

1. Address weaknesses in laws and enforcement systems, and continue to publicly criticise

ongoing non-compliance. OECD Convention signatories and other leading exporting countries should address weaknesses in their legal frameworks and enforcement systems and give higher priority to enforcement against foreign bribery, related money-laundering offences and accounting violations. They should hold public meetings to discuss the results of OECD WGB reviews and explain country plans to address recommendations. In addition, the OECD WGB should:

- + invite government and civil society representatives from the countries most harmed by foreign bribery to discuss how to tackle the problem.
- + continue to make public statements and conduct technical and high-level missions to express its concern as well as offer assistance when country enforcement is weak.
- + encourage the four non-OECD Convention countries covered in the report to enforce against foreign bribery and join the OECD Anti-Bribery Convention. OECD WGB countries should also raise their lack of enforcement in forums of the UN Convention against Corruption (UNCAC).

2. Ensure transparency of enforcement information. OECD WGB member states should implement the 2021 Anti-Bribery Recommendation transparency provisions regarding court judgements and non-trial resolutions – and go beyond those requirements.² Up-to-date statistical data should also be published covering every stage of the foreign bribery enforcement process, in line with the data required in the OECD WGB Phase 4 review questionnaire. This information is essential for accountability, awareness-raising, public debate and policy-making.

- + Court judgements should be published in full – and at a minimum should include the names of the defendants, the facts, the legal basis, the sanctions and the reasoning.
- + Extensive information should also be published about non-trial resolutions, including the terms of the agreement, the reasons for the agreement, a statement of the facts, the persons concerned, and any sanctions and remediation measures.

² 2021 OECD Anti-Bribery Recommendation <https://www.oecd.org/corruption/2021-oecd-anti-bribery-recommendation.htm>

- + The OECD WGB should carry out a horizontal assessment of enforcement transparency across all countries party to the Convention, develop guidance and provide technical assistance to members in this area.

3. Expand the OECD WGB's annual report on enforcement and create a public database of foreign bribery investigations and cases. The OECD WGB's annual foreign bribery enforcement report should contain updated year-on-year data on foreign bribery enforcement, providing greater detail than current reports and covering new developments and challenges. In addition, the OECD WGB should create a publicly accessible database of international corruption cases and statistics, drawing on information provided by OECD Convention parties, media reports and other public information.

4. Introduce victims' compensation as a standard practice. OECD Convention signatories should ensure that the harm to victims is compensated in foreign bribery proceedings. The OECD WGB and member countries should develop and apply guidelines for granting compensation to victims in those cases. The guidelines should provide for timely notice to the affected parties; confiscation of bribery proceeds for the benefit of victim populations; methods for determining compensation in cases of large-scale harm; and standing for victims' representatives.

- + OECD WGB country reviews should evaluate the status of country arrangements for using confiscated proceeds of foreign bribery and for the compensation of victims. The planned guidelines to be developed on confiscation of bribes and proceeds of bribery should include guidance on the disposition of confiscated amounts.
- + In making compensation payments, countries should follow global standards on the return of assets, such as the 2017 Global Forum on Asset Recovery Principles for Disposition and Return of Confiscated Stolen Assets in Corruption Cases (GFAR Principles).³

5. Closely monitor the use of non-trial resolutions. The use of non-trial resolutions is often opaque and unaccountable across member countries, inconsistent with the rule of law and public trust in the legal system. The 2021 Anti-Bribery Recommendation requires countries to provide greater transparency and accountability. The OECD WGB should closely monitor the adequacy of national frameworks and practice applying the new standards set out in the 2021 Recommendation. Monitoring should include assessments of transparency and the adequacy of oversight arrangements.

6. Support stronger national systems for cross-border cooperation and explore the expansion of international structures. The OECD WGB should continue discussions on potential avenues to improve international cooperation.

- + It should survey its members about which countries fail to cooperate in international enforcement efforts and enter into discussions with those countries.
- + Its members should explore increased use of joint investigation teams in foreign bribery cases.
- + In addition, the OECD WGB should discuss the possible expansion of existing international cooperation bodies and the creation of new regional and international coordination structures. Such structures can enable the pooling of resources and know-how among countries, help achieve economies of scale, and provide a basis for targeted technical assistance to national agencies.

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³ <https://star.worldbank.org/sites/star/files/the-gfar-principles.pdf>