



**Conference of the States Parties  
to the United Nations  
Convention against Corruption**

Distr.: General  
20 June 2012

Original: English

**Open-ended Intergovernmental Working Group  
on the Prevention of Corruption**

Vienna, 27-29 August 2012

Item 2 (a)(ii) of the provisional agenda\*

**Implementation of Conference resolution 4/3, entitled  
“Marrakech declaration on the prevention of corruption”,  
and of the recommendations made by the Working Group  
at its meeting in August 2011: good practices and  
initiatives in the prevention of corruption; thematic  
discussion on the implementation of article 12 of the  
United Nations Convention against Corruption,  
including the use of public-private partnerships**

**Implementation of article 12 of the United Nations  
Convention against Corruption, including the use of  
public-private partnerships**

**Note by the Secretariat**

**Contents**

	<i>Page</i>
I. Introduction . . . . .	2
II. Analysis of submissions of States parties and signatories . . . . .	3
A. Thematic introduction . . . . .	3
B. Preventive and monitoring measures in the private sector through accounting and auditing standards (paragraphs 1 and 2 (f) of article 12) . . . . .	4
C. Introduction of sanctions for non-compliance and related measures (paragraphs 1, 2 (a), 3 and 4 of article 12) . . . . .	8
D. Prevention of private sector corruption, including codes of conduct and other measures (paragraphs 1 and 2 (b) and (e) of article 12) . . . . .	11
III. Relevant initiatives within the United Nations system and with other organizations . . . . .	16
IV. Conclusions and recommendations . . . . .	18

\* CAC/COSP/WG.4/2012/1.



## I. Introduction

1. In its resolution 3/2 entitled “Preventive measures”, the Conference of the States Parties (hereinafter, the Conference) stressed the importance of implementing articles 5 to 14 of the United Nations Convention against Corruption<sup>1</sup> to prevent and fight corruption. The Conference established an open-ended intergovernmental working group (hereinafter, the Working Group) to advise and assist the Conference in the implementation of its mandate on the prevention of corruption. The Working Group held two intersessional meetings, from 13 to 15 December 2010 and from 22 to 24 August 2011, in Vienna.<sup>2</sup>

2. At its fourth session, held in Marrakech, Morocco from 24 to 28 October 2011, the Conference adopted resolution 4/3 in which it decided that the Working Group should continue its work and should hold at least two meetings prior to the fifth session of the Conference which will be held in 2013. In the same resolution, the Conference noted with appreciation that many States parties had shared information on their initiatives and good practices on the topics considered by the second meeting of the Working Group, and urged States parties to continue to share with the Secretariat and other States parties new as well as updated information on such initiatives and good practices.

3. Furthermore, it was decided that, in advance of each meeting of the Working Group, States parties should be invited to share their experiences of implementing the provisions under consideration, preferably by using the self-assessment checklist and including, where possible, successes, challenges, technical assistance needs, and lessons learned in implementation. Also in advance of each meeting, the Secretariat should prepare background papers for the topics under discussion, based on the input from States parties, in particular if they related to initiatives and good practices.

4. The third meeting of the Working Group will focus its attention on the following topics, which were proposed during the last meeting:

(a) Implementation of article 12 of the Convention, including the use of public-private partnerships; and

(b) Conflicts of interest, reporting acts of corruption and asset declarations, particularly in the context of articles 7-9 of the Convention.

5. In accordance with this request, the present note has been prepared on the basis of information relating to the implementation of article 12 of the Convention provided by Governments in response to the Secretary-General’s note verbale CU 2012/28 (A) of 27 February 2012 and the reminder note verbale CU 2012/82 (A) of 18 April 2012. By 7 June 2012, submissions had been received from the following 27 countries: Argentina, Armenia, Austria, Belarus, Bosnia and Herzegovina, Bulgaria, Burkina Faso, Chile, China, Costa Rica, Czech Republic, France, Germany, Guatemala, Japan, Malaysia, Philippines, Poland, Republic of Korea, Republic of Moldova, Romania, Russian Federation, Switzerland, Thailand, Tunisia, Turkmenistan and the United States of America. Most of them comprised

---

<sup>1</sup> United Nations, *Treaty Series*, vol. 2349, No. 42146.

<sup>2</sup> All documents related to the Working Group meetings are available at [www.unodc.org/unodc/en/treaties/CAC/working-group4.html](http://www.unodc.org/unodc/en/treaties/CAC/working-group4.html).

information on the implementation of article 12 of the Convention. The full text of the submissions will be made available on the website of UNODC, with the agreement of the countries concerned.

6. The present note does not purport to be comprehensive, but rather endeavours to provide a thematic compilation of the information submitted by States parties which is of direct relevance to the thematic focus of the present report. It also includes supplementary information on relevant initiatives within the United Nations system and from other relevant organizations.

7. An account of good practices in preventing corruption in the public sector regarding conflicts of interest, reporting acts of corruption and asset declarations, particularly in the context of articles 7-9 of the Convention, is provided in a separate note by the Secretariat.<sup>3</sup>

8. Two papers submitted to the Working Group at its first session, namely the background paper on methodologies, including evidence-based approaches, for assessing areas of special vulnerability to corruption in the public and private sector<sup>4</sup> and the background paper on good practices in the prevention of corruption and regulation models in the public sector which contains sections on public-private partnerships,<sup>5</sup> are also relevant.

## **II. Analysis of submissions of States parties and signatories**

### **A. Thematic introduction**

9. Article 12 of the Convention addresses the private sector aspects of corruption and aims to stimulate cooperation between the public and the private sector.<sup>6</sup> It requires Governments to take various measures listed in paragraphs 1, 3 and 4 in order to prevent corruption in the private sector and highlights a number of good practices which have shown to be effective in achieving these goals in paragraph 2.

10. Other articles of the Convention also encourage participatory approaches and the engagement of relevant stakeholders outside of the public sector. Therefore article 12 is not the sole entry point for collaboration with the private sector. States parties are free to explore any form of involvement they might find conducive to the purpose of preventing and fighting corruption at large and are invited to explore options which go beyond the requirements of UNCAC and to share their experiences.

11. The significance of anti-corruption engagement and the need to invest into related initiatives is also increasingly acknowledged by the private sector. The final

---

<sup>3</sup> CAC/COSP/WG.4/2012/3.

<sup>4</sup> CAC/COSP/WG.4/2010/4.

<sup>5</sup> CAC/COSP/WG.4/2010/2, pp. 11-13.

<sup>6</sup> The title of this note refers to public-private partnership (PPP), a term which is often used for a specific contractual and financial business model between the public and the private sector. This note uses the term in a broader sense and interchangeably with public-private cooperation referring to all forms of cooperation between the public and the private sectors including corporate social responsibility, stakeholder consultations etc.

report of the B20 Business Summit, held in Cannes in November 2011<sup>7</sup> stressed that corruption is an intolerable impediment to the efficiency of the global economy, to fair competition among companies of all sizes and nationalities, and to sustainable global development. In a specific section of the report on anti-corruption, the B20 committed to accelerate private-sector initiatives to establish common rules, to improve compliance, and to eradicate the supply-side of corruption. The final report further emphasized that business and government must work together to raise awareness of the costs and risks of corruption.

12. This commitment and the importance to involve all stakeholders in the fight against corruption was reiterated by the G20 in the Leaders Declaration of the June 2012 Leaders Summit in Los Cabos.<sup>8</sup> In preparation to this meeting the B20 Task Force on Improving Transparency and Anti-Corruption had developed recommendations and identified concrete and achievable measures that both companies and Governments can take to carry the fight against corruption forward.<sup>9</sup> To ensure consistency of G20 and B20 efforts, these recommendations echo the G20 agenda laid out in the Seoul Anti-Corruption Action Plan. They also reflect the work currently being undertaken by the G20 Anti-Corruption Working Group under the leadership of Mexico and the United Kingdom.

13. The submissions of States parties in relation to article 12 fall mainly into three broad categories, which were used for the structure of this note:

- Preventive and monitoring measures in the private sector through accounting and auditing standards, and other regulatory measures;
- Introduction of sanctions for non-compliance; and
- Prevention of private sector corruption including codes of conduct and other measures.

## **B. Preventive and monitoring measures in the private sector through accounting and auditing standards (paragraphs 1 and 2 (f) of article 12)**

### **1. Accounting standards**

14. The introduction of accounting and auditing standards is a fundamental instrument to regulate and monitor the financial side of business activities and therefore to facilitate reporting obligations and controls. Several States parties (e.g. Armenia, Belarus, Bulgaria, Chile, Costa Rica, Germany and the Russian Federation) reported on their national accounting and auditing legislation and also noted that such legislation took international financial reporting standards into account, either fully or in part. Chile also noted that the Securities and Insurance

---

<sup>7</sup> [www.b20businesssummit.com/news/29-b20-final-report](http://www.b20businesssummit.com/news/29-b20-final-report) (pages 5, 6, 16). Also at the G20 level the fight against international corruption has been made a central aspect of the dialogue, as reflected in the submission of France. The G20 Working Group on Anti-Corruption drafted recommendations in the form of an action plan which was adopted in Seoul in November 2010 by the Heads of States. This plan aims among others at more collaboration with the private sector in the fight against corruption.

<sup>8</sup> [www.g20.org](http://www.g20.org).

<sup>9</sup> [www.b20.org/transparency.aspx](http://www.b20.org/transparency.aspx).

Supervisor (SVS)<sup>10</sup> can regulate accounting. The SVS is responsible for the supervision of all activities and entities involved in Chilean securities and insurance markets, including enforcement of compliance with all laws, regulations and by-laws.

15. The most commonly used standards worldwide are the International Financial Reporting Standards (IFRS). Currently more than 120 nations permit or require the IFRS for domestically listed companies.<sup>11</sup> The IFRS are principles-based standards adopted by the International Accounting Standards Board (IASB). Many of the standards forming part of IFRS are known by the older name of International Accounting Standards (IAS) which were issued before 2001 by the Board of the International Accounting Standards Committee (IASC).

16. Since an estimated 95 per cent of all companies that exist around the world fall under the category of small and medium-sized enterprises (SMEs) and there was a high demand for a less complex adaptation of the IFRS, the IASB published special IFRS for SMEs in 2009.<sup>12</sup> A second source, reported by Bulgaria and Germany, is the European Accounting Directives. These standards are currently also under revision to simplify the requirements for SMEs.<sup>13</sup>

17. States Parties provided a number of examples relating to the use of IFRS by listed companies, entities undertaking activities of public interest or socially significant organizations. No practices were shared with regard to standards for smaller enterprises. The specific situation of SMEs and regulation models for their activities may be an area for future exploration.

18. The Russian Federation noted that the IFRS provide for the quality, accuracy and transparency of accounting or financial accountability and that it was therefore engaging in systematic efforts to bring the system of Russian accounting standards fully into line with IFRS by the end of 2015. In this vein, from 2012 onwards, socially significant organizations will be required to compile, submit and publish consolidated financial statements using IFRS.<sup>14</sup> These organizations include private institutions, insurance institutions and other organizations whose securities may be exchanged in organized markets.

19. In Bulgaria, the IFRS are obligatory for all corporate entities undertaking activities of public interest as well as for those entities that meet certain conditions, specified by law.

20. In Germany, the accepted accounting principles are set out in the Commercial Code and comply with the European Accounting Directives. Companies are required to prepare annual financial statements in accordance with the national accounting law for the purposes of profit distribution, taxation, and financial services supervision. Listed companies are required to use the IFRS in their consolidated

---

<sup>10</sup> [www.svs.cl/sitio/english/acerca/quees.php](http://www.svs.cl/sitio/english/acerca/quees.php).

<sup>11</sup> [www.ifrs.com/pdf/IFRSUpdate\\_V8.pdf](http://www.ifrs.com/pdf/IFRSUpdate_V8.pdf).

<sup>12</sup> [www.ifrs.org/Current+Projects/IASB+Projects/Small+and+Medium-sized+Entities/Small+and+Medium-sized+Entities.htm](http://www.ifrs.org/Current+Projects/IASB+Projects/Small+and+Medium-sized+Entities/Small+and+Medium-sized+Entities.htm).

<sup>13</sup> [http://ec.europa.eu/internal\\_market/accounting/sme\\_accounting/review\\_directives\\_en.htm](http://ec.europa.eu/internal_market/accounting/sme_accounting/review_directives_en.htm).

<sup>14</sup> Under the Federal Consolidated Financial Statements Act No. 208-FZ of 27 July 2010 and in accordance with the requirements of the Ministry of Finance Order No. 160n of 25 November 2011.

accounts. In addition, the German Accounting Standards Committee issues detailed standards on consolidated accounting in areas not governed by IFRS.

21. A further important aspect is the control and correction of accounting (supplementary to internal audits). In the Russian Federation, a regulation on accounting, entitled “Correction of errors in accounting reports and financial statements” sets out the rules and procedures for correcting and disclosing mistakes in accounting reports.

22. Since 2005, the accounting practices of listed companies in Germany have been subject to an external control by the privately organized Financial Reporting Enforcement Panel (FREP)<sup>15</sup> and the Federal Financial Supervisory Authority (BaFin) according to the Commercial Code and the Securities Trading Act. This financial reporting enforcement supplements the internal audit. The majority of companies examined are randomly selected, while others are chosen on the basis of an indication that standards are not respected. In 2011, 25 per cent of the financial statements in 110 cases were found to be erroneous.<sup>16</sup> The main causes of these errors were insufficient disclosures in the management report and a number of challenges in applying certain IFRS standards. If an infringement of financial reporting requirements is identified, BaFin takes administrative measures and generally orders the company to publish the errors identified. A new preventive tool of the FREP provides for systematic discussion with audit firms in order to prevent future errors.

23. Specific awareness-raising and capacity-building efforts in regard to the IFRS and ISO 26000 standards on social responsibility<sup>17</sup> were carried out in Korea. The Korean Policy Council for a Transparent Society together with the Korean Institute of Certified Public Accountants sought to enhance transparency in the economic sector through educational measures and co-hosted a “Symposium for Transparent Accounting to Realize Fair Taxation” and a “Symposium to Evaluate Accounting Transparency in Private and Public Sector”.

## **2. Audit standards (internal and external audits)**

24. The Bulgarian registered auditors apply the International Standards on Auditing. It is common practice while effecting an audit engagement to include the procedures of testing the internal control systems and identify the components of the systems that pose risks. If fraud is detected, the registered auditor is obliged to discuss the case with the management or a representative of the owner. If the fraud is substantial, the registered auditor usually discusses the case with legal advisors to decide how to inform the respective authorities.

25. Auditors are generally required to take multiple laws into account when conducting controls. In Armenia and Bulgaria, for example, registered auditors are required in accordance with anti-money-laundering legislation to pay a special attention to certain types of transactions or those which seem suspicious.

---

<sup>15</sup> [www.frep.info/index\\_en.php](http://www.frep.info/index_en.php).

<sup>16</sup> Reports and key topics are available on their webpage also in English language: [www.frep.info/presse/taetigkeitsberichte\\_en.php](http://www.frep.info/presse/taetigkeitsberichte_en.php).

<sup>17</sup> [www.iso.org/iso/social\\_responsibility](http://www.iso.org/iso/social_responsibility).

26. In the Russian Federation, the Ministry of Finance has established federal standards for the work of auditors in line with international audit standards, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the OECD Recommendations for Further Combating Bribery of Foreign Public Officials in International Business Transactions.<sup>18</sup> According to these auditing standards, an auditor who uncovers or suspects a dishonest action, for example, information concerning the laundering of the proceeds of crime or the financing of terrorism in relation to corruption offences, must determine whether he or she is required to report this to an external party, including an authorized State body.

27. Germany regulates audits in the Commercial Code whose provisions are based on the European Directive on statutory audit that is currently under revision. The revision by the EU Commission is designed to create a higher quality audit market. In order to support national auditors, the German Institute of Public Auditors (IDW) issues German auditing standards that transpose the International Standards on Auditing.<sup>19</sup> The professional rules of auditors are regulated in the Public Accountants Act<sup>20</sup> which was reformed in 2005 in order to reinforce the responsibilities of auditors in detecting material misstatements due to fraud and in communicating identified fraud or indications of fraud to management on a timely basis. Listed companies that have no supervisory body are required to establish an audit committee to safeguard the supervision of the company's internal control, internal risk management system and compliance programme. At least one member of the audit committee or the supervisory body must be an independent financial expert.

28. In Chile, the Securities and Insurance Supervisor regulates external audit companies, companies classifying risks, and others companies certifying models of prevention. These entities must have internal regulations that guarantee that persons entrusted with the certification process will carry out their tasks and that potential conflicts of interest are sufficiently addressed. The external audit is subjected to the "Generally Accepted Auditing Norms". The Securities and Insurance Supervisor is allowed to review the financial state of monitored firms and to require the rectification of the books. The Supervisor published a circular to request information on actions aimed at enhancing the knowledge of the role of the external audits in the prevention of bribery. Auditing companies are requested to provide updated information on a number of topics, including training of external audit firms to detect crimes, good practices, existence of textbooks and procedures for reporting and any other relevant measures.

---

<sup>18</sup> See article 8, paragraph 1 of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions of the OECD, and section X, paragraph B (v), of the OECD Recommendations for Further Combating Bribery of Foreign Public Officials in International Business Transactions, which provides that States parties "should consider requiring the external auditor to report suspected acts of bribery of foreign public officials to competent authorities."

<sup>19</sup> [www.idw.de/idw/portal/d589242/index.jsp](http://www.idw.de/idw/portal/d589242/index.jsp).

<sup>20</sup> [www.apak-aoc.de/english/statutory\\_provisions/statutory\\_provisions.asp](http://www.apak-aoc.de/english/statutory_provisions/statutory_provisions.asp).

### **3. Codes of conduct for accountants and auditors**

29. An additional tool used by Bulgaria and the Russian Federation are specific codes of conduct for accountants and/or auditors corresponding to the Code of Ethics adopted by the International Federation of Accountants (IFAC). The codes set out the basic principles of conduct that must be observed by a professional accountant: honesty, objectivity, professional competence and the requisite care, confidentiality and professionalism of conduct. The codes also contain provisions relating to the various circumstances that might put a professional accountant's ability to comply with the main principles of conduct at risk.

### **4. Disciplinary oversight of the audit profession**

30. The disciplinary oversight of the audit profession in Germany is complemented by a system of regular inspections and quality assurance executed by oversight bodies.<sup>21</sup> Minor violations of professional rules are investigated and sanctioned by the chamber of auditors which functions under an oversight board. Severe violations of professional rules are sanctioned by special divisions of criminal courts on the basis of a charge brought to court by the chief public prosecutor's office at the Berlin District Court after its own investigations.

31. Bulgaria reports as a good example the creation of a Professional Ethics Committee, a Disciplinary Committee and a Committee for Control over the Quality of Audit Services at the Institute of Certified Public Accountants. These bodies control the observance of professional and ethical norms and encourage companies to provide mechanisms for communication by and protection of persons willing to report breaches of law or professional standards or ethics.

32. Although the Bulgarian legislation respects the anonymity of the reporting registered auditor, Bulgaria considers that the legislative requirements are not sufficient in respect of auditors' protection.

33. The Convention against Corruption addresses the protection of witnesses, experts and victims in its article 32 and 33. Due to their role as experts, auditors may be in need of special support and protection mechanisms. Further exchange on the experiences of other States in this regard would be useful.

## **C. Introduction of sanctions for non-compliance and related measures (paragraphs 1, 2 (a), 3 and 4 of article 12)**

34. The establishment of certain standards should go hand in hand with systems to sanction non-compliance depending on the severity of the act. Collaboration between the private sector and law enforcement agencies becomes important in this regard to support detection of criminal conduct.

### **1. Prohibited acts and sanctions for non-compliance**

35. Several States reported that it was important to fight corruption in the private sector by ensuring that national legislation criminalizes active as well as passive

---

<sup>21</sup> [www.apak-aoc.de/english/home/home.asp](http://www.apak-aoc.de/english/home/home.asp) and <http://www.wpk.de/english/home/home.asp>.



bribery, thus addressing the supply side of corruption. Bulgaria and Switzerland, for instance, also reported having criminalized bribery in the private sector.<sup>22</sup> It should be noted that of the States parties under review so far, less than half had adopted measures to fully criminalize bribery in the private sector, whereas all had criminalized embezzlement in the private sector.<sup>23</sup>

36. Further steps should be taken in order to ensure compliance with accounting and auditing standards and to deter persons from engaging in corrupt activities in the future. Some States parties (Bulgaria and the Russian Federation) reported that their national laws on accounting and financial statements set out the necessary conditions for compliance, including rules for using primary accounting documents for business transactions, systematizing information in accounting registers, carrying out inventories and retaining accounting documents and drawing up financial statements. In Chile and Costa Rica, the Commercial Code sets out the main obligations with regards to bookkeeping.<sup>24</sup> Such laws also foresee the minimum time limits for which books must be preserved, which, for example, is four years in Costa Rica and five years in the Russian Federation.

37. In general, accounting and auditing misconduct is addressed in minor cases by civil or administrative sanctions such as fines, prescribed under the laws on accounting, on financial audit, and on administrative offences and sanctions (Belarus, Bulgaria, Germany, Philippines, Republic of Moldova and the Russian Federation). Some accounting laws establish obligations and standards to be followed and then include a provision which foresees sanctions in case of violation of these provisions. In the Philippines, for example, the Corporation Code and the Insurance Code for insurance companies set out specific requirements for bookkeeping and accounting and also foresee penalties in the case of violations which range from fines to the revocation of the license to do business.

38. Serious violations are generally criminalized under Criminal Codes. In Bulgaria, for instance, “false accounting” could fall under one of several articles of the Criminal Code.<sup>25</sup> The offence of false accounting may be accomplished through fraud when using an untrue or falsified document with the aim of obtaining movable or immovable property without legal grounds. Similar provisions are set out under the law of the Russian Federation.<sup>26</sup> The German Transparency Directive Implementation Act of 2007 amended the criminal offence on false accounting, including the falsification of accounting documents. False statements regarding bookkeeping and accounting are now subject to a custodial sentence of up to three years or a monetary administrative fine.

---

<sup>22</sup> Article 225 c Criminal Code of Bulgaria, Article 4 a of the federal law against disloyal forms of competition of Switzerland.

<sup>23</sup> Implementation of Chapter III — Thematic Report, [www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/18-22June2012/V1254039.pdf](http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/18-22June2012/V1254039.pdf), page 10.

<sup>24</sup> Among others, articles 25, 27 and 28 of the Commercial Code of Chile and articles 251-271 of the Commercial Code of Costa Rica.

<sup>25</sup> Art. 209-212, 255, 255a, 256, 258, 260 and 313.

<sup>26</sup> Articles 159 (“Fraud”), 165 (“Infliction of material damage by deceit or breach of trust”) and 201 (“Abuse of authority”) of the Criminal Code of the Russian Federation.

39. Criminal sanctions related to non-compliance with accounting and auditing requirements are incorporated in national tax laws (Bulgaria, Chile, Costa Rica and the Russian Federation) or addressed in cases of bankruptcy.

40. The Criminal Code of Russian Federation, for example, provides for criminal liability for the concealment, destruction or falsification of accounting or other registration documents relating to the economic activity of a legal entity or an individual entrepreneur, if such actions are committed in expectation of bankruptcy or have caused significant damage. Criminal liability for evasion of taxation is established by the failure to submit a declaration of income or other documents, the submission of which is compulsory under the legislation of the Russian Federation, or the inclusion in the taxation declaration or other document of information known to be false. The Criminal Code of Bulgaria goes further and foresees criminal liability for an auditor who knowingly certifies an untrue annual accounting report of a merchant. In Chile, Book II of the Tax Code regulates infractions and sanctions under tax law in relation to false documents, omissions in the books, parallel registers, with the objective of altering the truth. The internal tax service has wide monitoring possibilities and the ability to impose sanctions.

## **2. Cooperation between law enforcement agencies and private entities**

41. Paragraph 2 (a) of Article 12 of the Convention against Corruption highlights the importance of promoting cooperation between law enforcement agencies and private entities. The purpose of the provision is to support effective identification and detection of irregularities which could be indicative of corrupt conduct.

42. The role of the private sector in preventing, detecting and prosecuting corrupt practices cannot be underestimated. It is often competitors who observe irregularities and suspicious transactions in the course of their routine financial and commercial activities. People specializing in specific contexts or operations are well placed to identify vulnerabilities or uncommon patterns that may serve as indicators of abuse. Authorities in charge of anti-corruption activities would benefit from such insights and could direct their attention to areas and sectors of priority more easily. Actors in the private sector may also be in a position to play a vital role in the identification of criminal proceeds and their return to legitimate owners.

43. In order to support this collaboration, law enforcement agencies could offer awareness-raising and advice to support enterprises in regard to conflicts they may face, related to issues such as privacy, confidentiality or bank secrecy rules. The identification of single points of contact at law enforcement institutions as well as focal points at financial institutions or more institutionalized forms of cooperation are further possibilities. In the Philippines, the Ombudsman concluded a memorandum of understanding with two business groups in 2011, which provides for collaboration and information sharing in investigation of cases. Furthermore, the Federation of Philippine Industries submitted reports on irregularities in the Bureau of Customs and conducted an Anti-Smuggling Summit in order to support the collaboration.

44. A practice adopted by many States is the creation of a duty for certain private entities to report suspicious transactions to appropriate authorities. This duty generally applies to formal and informal financial institutions and to businesses in

specific sectors and is closely linked to requirements related to anti-money-laundering under article 14 of the Convention.

45. As noted above in regard to accounting and auditing standards, several countries (e.g. Armenia, Bulgaria) require that accounting also follows specific legislative requirements relating to combating money-laundering and terrorist financing. The Central Bank of the Republic of Armenia is an authorized body entitled to convey information on possible obstacles and risks to the enforcement of the law against money-laundering.

### **3. Prohibition of tax deductibility of expenses that constitute bribes**

46. The criminalization of bribery is a key aim of the Convention. In line with this, States parties should not provide any incentives for corrupt behaviour such as the possibility to deduct payments of bribes as business expenses from taxation. Chile, Bulgaria and Germany reported that under their legislation tax deductibility of expenses that constitute bribes is disallowed.

47. In Chile, the tax law grants tax authorities sufficient faculties to prevent tax deduction of expenses considered as bribes. Art 31 of the income tax law states that bribes or similar expenses cannot, under any circumstances, be deductible. According to an interpretation of the Director of the Income Tax Direction who has the power to interpret these provisions, this is a general principle with regards to taxes in Chile.

48. In Bulgaria the disallowance of tax deductibility of bribes originates from the provisions of article 10 and 26 of the Law on corporate income taxation (LCIT), which introduces a general prohibition for certain types of expenses to be recognized for tax purposes by the tax authorities. Among other aspects, the law is also regulating situations where a bribe or other corruption-related crime could be masked as a donation. In this regard article 31, paragraph 6 prescribes that: “the entire expense on a donation shall not be recognized for tax purposes where the donation benefits, whether directly or indirectly, the managers who make it or those who dispose of the said donation, or where there is evidence that the gift has not been received”.

### **D. Prevention of private sector corruption, including codes of conduct and other measures (paragraphs 1 and 2 (b) and (e) of article 12)**

49. Paragraph 2 of Article 12 of the Convention highlights further measures for the prevention of corruption in the private sector. Moreover, paragraph 1, requires a general commitment to take measures aimed at preventing corruption involving the private sector. This broad terminology can be considered as an entry point for any additional innovative form of collaboration with the private sector. This breadth allows for flexibility, but may also pose a challenge in regard to identifying the minimal requirements in order to be in compliance with the provision. States parties presented different approaches with most of them reflecting the promotion of voluntary self-regulating mechanisms, capacity-building and the establishment of more systematic collaboration with the private sector.

## 1. Codes of conduct and similar measures

50. Codes of conduct are already broadly used in the public sector and are beginning to be recognized as a valuable tool in the private sector to guide the ethical business conduct of company employees and management. This shift is largely due to the fact that business organizations increasingly have obligations imposed on them by stakeholders such as regulators, suppliers, buyers, and the public at large, that seek to go beyond solely the profit motive. In Switzerland, the number of the top 100 leading Swiss enterprises listed in the market that have professional ethical principles in place increased by 27 per cent in the period of 2006 to 2008. In France, the majority of large companies and companies active in exports have elaborated ethics charters in order to prevent corruption and anticipate risks. Nevertheless, research such as the 11th Global Fraud Survey carried out by Ernst & Young, report that management of companies fraud and corruption risks still needs improvement.<sup>27</sup>

51. Codes of conduct are, in principle, self-regulatory measures and establish rules and responsibilities, e.g. in regard to professionalism, integrity, etc. They may be developed through specific industry or even single company initiatives. In several cases, they were introduced under government sponsorship in consultation with the private sector. The joint development of these codes to make them understandable and user-friendly seems to be the most conducive means of ensuring their effective implementation. The examples which were reported by States parties include clarifications about legal responsibilities, practical examples of frequent issues faced by private officials and good professional practices relating to issues such as contract design and the choice of intermediaries.

52. Some States parties such as Armenia and Bulgaria referred to the use of guides and rules developed by international organizations such as the OECD's "Good practice guide on internal controls, ethics and compliance" and "Principles on Corporate Governance",<sup>28</sup> the International Chamber of Commerce (ICC)'s "Rules of Conduct and Recommendations on Combating extortion and bribery" and the Principles for Countering Bribery of the Partnering against Corruption Initiative (PACI) of the World Economic Forum<sup>29</sup> in developing internal codes of conduct.

53. The German Good Corporate Governance Code presents essential statutory regulations law for German listed companies and contains internationally and nationally recognized standards for good and responsible governance. While companies may deviate from the Code's recommendations, they must generally disclose any such deviations annually and this contributes to a reflection of sector- and company-specific requirements and self-regulation, while allowing for flexibility.

54. The Malaysian Anti-Corruption Commission also reported on a tool entitled Corporate Integrity Pledge. Signing the pledge and being listed in the register of signatories<sup>30</sup> allows a company to make a unilateral commitment to uphold the

---

<sup>27</sup> [www.ey.com/GL/en/Services/Assurance/Fraud-Investigation---Dispute-Services/11th-Global-Fraud-Survey---Fraud-survey-findings](http://www.ey.com/GL/en/Services/Assurance/Fraud-Investigation---Dispute-Services/11th-Global-Fraud-Survey---Fraud-survey-findings).

<sup>28</sup> [www.oecd.org/document/49/0,3343,en\\_2649\\_34813\\_31530865\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/49/0,3343,en_2649_34813_31530865_1_1_1_1,00.html).

<sup>29</sup> [https://members.weforum.org/pdf/paci/principles\\_short.pdf](https://members.weforum.org/pdf/paci/principles_short.pdf).

<sup>30</sup> 53 Companies as of 30 November 2011. Available through the website of the Malaysian Integrity Institute.

anti-corruption principles for corporations in Malaysia and to demonstrate to stakeholders that its business operations do not include any hidden risks or costs that are associated with corrupt activities. It is not a regulatory instrument and does not carry sanctions in case of misconduct. Instead, the pledge works through self-reporting by the company, to meet the demands of its stakeholders, in line with the model adopted under the 10th Principle of the United Nations Global Compact. Adherence to the Pledge is therefore monitored to the same extent that other non-mandated disclosures by any company to its stakeholders are monitored — through scrutiny and demands of the stakeholders.

## **2. Sector and SME-specific support**

55. Intense global competition and the development of new markets may increase the risk of encountering corrupt practices for international corporations but also for upcoming SMEs. In efforts to adapt to local business practices, companies might enter a high-risk zone for their reputation and business and reinforce the negative impact of the supply-side of corruption. France, Germany, Malaysia, Philippines and Switzerland reported on specific conferences or awareness-raising initiatives in support of SMEs and the risks of bribery of foreign public officials. In France, a second edition of the guide “Veiller futé à l’international” was developed by the national committee of advisors in external trade together with the Central Service for the Prevention of Corruption. It provides guidance to companies on how to prevent practices which are contrary to ethical standards and the rules of free trade. The Malaysian Anti-Corruption Commission collaborated with SMEs to develop a code of ethics for businesses.

56. In addition, certain high-risk industries such as extractive industries, arms industry or big pharmaceutical companies might require specific focus. In France, for example, the Central Service for the Prevention of Corruption has established close links with the professional association of medical enterprises. Burkina Faso and Guatemala reported on the Extractive Industries Integrity Initiative (EITI)<sup>31</sup> which aims to create maximum transparency and better communication between different stakeholders such as extractive industry unions and civil society. Guatemala also promotes public-private collaboration through the Construction Sector Transparency Initiative.

57. In Chile, specific codes of conduct were established for different sectors, such as the “Code of Good Practices in the Construction industry” and the code of conduct of the Barrister’s college. In addition, a public-private alliance was created with NGOs such as “Chile Transparente” to promote ethics codes for private companies that receive public funds in order to integrate the concept of accountability in their management.

## **3. Capacity-building and guidance material**

58. Apart from codes of conduct, many States parties highlighted efforts to develop guidance material to be shared with enterprises. In general, it is clear that States have an important role in providing proactive information sharing and support based on the needs and questions of the different private sector industries. The translation of international standards and guidance documents on the prevention

<sup>31</sup> <http://eiti.org>.

of corruption into the local language and their publication via internet is an example reported by Bulgaria, which can improve awareness of national enterprises and their access to information. The Korean Anti-Corruption and Civil Rights Commission publishes a web-magazine, "Corporate Ethics Brief" which deals with the latest trends, best practices, and articles of prominent figures regarding ethical management. Argentina's Anti-Corruption Bureau publishes a monthly electronic newsletter that summarizes activities of the Bureau including its initiatives aimed at the private sector and is drafting a publication about corporate responsibility in promoting transparency and fighting corruption.

59. A collaborative approach e.g. through round-table discussions or working groups in the design and dissemination phase of codes of conduct and guidance materials aimed at the private sector can help to improve the quality and use of the material.

60. An information leaflet highlighting warning signs in regard to the employment of intermediaries in international commercial operations was prepared by the French Central Service for the Prevention of Corruption together with ADIT — Business Integrity Services. The Committee of national advisors in external business relations together with MEDEF, a union of employers, worked together to prepare a methodological guide for self-diagnostics of enterprises on their conformity to legal requirements.

61. In Poland, the elaboration of an Anti-Corruption Handbook for Entrepreneurs<sup>32</sup> by the Central Anti-Corruption Bureau was accompanied by practical training courses. Training courses were also reported from Bulgaria, Malaysia and the Republic of Korea and seem a good practice to support implementation. The use of pilot trainings (reported by Korea) may help to ensure that all key aspects for the private sector are covered as needed.

#### **4. Establishment of long-term collaboration**

62. A number of exchange meetings or conferences were reported by several States parties (Argentina, Austria, Burkina Faso, Germany, Poland and Switzerland).<sup>33</sup> Meetings can be useful to address specific topics of concern for the private sector. Additionally, more systematic collaboration could be a good practice in order to create trustful collaboration and a more systematic partnership and joint projects. Examples of initiatives with a more long-term orientation were reported by the Philippines, the Republic of Korea, the Republic of Moldova and Thailand. In Thailand, for instance, an Anti-Corruption Network had been established to campaign against corruption with 39 organizations as active members, representing the public and private sectors, civil society and media. The Anti-Corruption Network has initiated the Corruption Situation Index to assess the corruption situation in Thailand every three months and acts as a corruption watchdog with the participation of volunteers, as an agent to effect change and as a coordinator in the field.

63. Another example of this kind of initiative is the Korean Policy Council for Transparent Society which brings together 26 organizations and groups in nine sectors

---

<sup>32</sup> <http://antykorpucja.edu.pl/index.php?mnu=12&app=docs&action=get&iid=14236>.

<sup>33</sup> [www.antykorpucja.edu.pl](http://www.antykorpucja.edu.pl).

such as public service, politics, economy, civil society, state-owned companies, academia, and media. The Council develops policies and facilitates cooperation among various sectors by sharing project plans by sector and by disseminating best practices. At the beginning of each year, each sector makes presentations on their project plans so that contents can be shared. Each sector can then jointly carry forward the projects after collecting opinions from other related sectors. The Council also supports legislative and regulatory amendments and institutional improvements necessary to ensure transparency. The Republic of Korea noted that it had been difficult to ensure the participation of sufficient civil society groups to be able to raise anti-corruption awareness among the public. To this end, policy and financial support are needed for the Council to be able to establish a secretariat and invite various anti-corruption civil groups to participate in the Council.

## **5. Promotion of the use of good commercial practices in contractual relations**

64. Paragraph 2 (b) of Article 12 encourages the promotion of good standards and practices. While the use of codes of conduct is common, there are also other initiatives which address specific contractual relations either among businesses or between businesses and the government.

65. Malaysia reported two tools, the Integrity Pact and the Mega Project Monitoring by an Integrity Governance Committee, which are used in regard to contractual relations between the private sector and the government. The Integrity Pact is used in the implementation and execution of a project and foresees that the owner and the contractor agree to introduce appropriate measures to create awareness among their employees, to introduce compliance programmes and to establish an independent monitoring system.

66. In case of government projects worth RM500 million<sup>34</sup> and above, an Integrity Governance Committee for a Mega Project<sup>35</sup> is responsible for monitoring the implementation of the project. This committee works to ensure that the project is implemented properly without any problems of corruption, abuse of power or malpractices. Its functions include the identification of weaknesses in policies, laws, regulations and procedures related to the government mega project in order to identify corruption risks, the monitoring of compliance with contractual agreements (cost, time, quality and quantity), and the dissemination of information and receiving of complaints related to corruption.

67. Although procurement systems are mainly addressed by article 9 of the Convention, several States parties made reference to the creation of transparent procurement systems (Bulgaria, Burkina Faso, Malaysia and Switzerland) as they can improve the contractual relations and increase transparency in relation to the private sector. An initiative of the Malaysian Anti-Corruption Commission which is identified as a “big win” is the improved disclosure of procurement information through an online portal called MyProcurement. The MyPartnership portal discloses information on privatization projects.

---

<sup>34</sup> Approx. 125 Mio EUR (at June 2012).

<sup>35</sup> The Malaysian Anti-Corruption Commission (MACC) is the secretariat for such committee.

#### **6. Restrictions on the professional activities of former public officials (paragraph 2 (e) of article 12)**

68. Regulations dealing with the professional activities of public officials while being in service are generally captured under conflict of interest regulations of the public sector. The provision of article 12, paragraph 2 (e) goes further and specifically addresses the situation of such persons after termination of their employment in the public sector.

69. Several States parties highlighted their post-employment restrictions (Bulgaria, Chile, China, France, Japan, the Russian Federation and Switzerland). The reported regulations are sometimes limited to particular positions (e.g. procurement officer, director, civil servants or authorities from a monitoring institution) or if the private company was affected by any related decision during the last years of employment. Restriction times generally vary from six months to five years.

70. According to the Civil Servant Law of China, where a civil servant who is a leader resigns from his post or retires, he shall not take any post in any profit-making organization which is directly related to his original post, or engage in any profit-making activity directly related to his original work within three years after he leaves his post. For any other civil servant, the time limit is two years.

71. In France, civil servants who are temporarily or definitely leaving public service are prohibited from working for or taking or receiving interests from firms that have been either supervised, controlled, or contracting with the office where the civil servant was working or had worked in the last three years. This approach which extends the restriction from employment to other forms of benefit such as receiving interests, can be seen as a good example.

72. In Germany, all civil servants, including retired officials, have to indicate a gainful employment or another occupation outside the public service before admission if it is connected with his or her official activity in the last five years and can be impaired by interests.<sup>36</sup> A general prohibition of the acceptance of rewards, gifts and other advantages regarding the office is valid even after retirement.<sup>37</sup>

### **III. Relevant initiatives within the United Nations system and with other organizations**

73. The International Scientific and Professional Advisory Council of the United Nations (PSPAC) reported on its coordinating role in a research programme jointly conducted by several universities entitled “Bribery and the private sector: The role of compliance programs” which is studying rules of self-regulations and discipline adopted by multinational companies in the field of international corruption and their efficacy. The research will also analyse different international guidelines, e.g. from ICC, OECD, and PACI, to assess, for instance, in what terms they develop homogeneously and harmonized inter se. The respective publication, which is

---

<sup>36</sup> Paragraph 41 BeamtStG and 105 BBG.

<sup>37</sup> 42 BeamtStG and 71 BBG.



expected in mid-2013, might provide useful insights in regard to the impact of compliance programmes and establishment of benchmarks.

74. UNODC maintains a close partnership with the United Nations Global Compact with a view to promoting the implementation of the Tenth Principle of the Global Compact that “Businesses should work against corruption in all its forms, including extortion and bribery”. UNODC and the Global Compact have produced an e-learning tool for the private sector on the Tenth Principle and UNCAC. The tool is available on the Internet<sup>38</sup> and receives about 30,000 hits per month.

75. In partnership with UNIDO, UNODC has drafted a report entitled, “Corruption prevention to foster small and medium sized enterprise development, Volume 2”.<sup>39</sup> Developed through a series of meetings of experts, business representatives and staff of relevant institutions, this publication seeks to address the knowledge gap that still exists with regard to the dynamics of corruption in smaller businesses and to identify the tools needed by SMEs to successfully defend themselves in a corrupt business environment.

76. In 2011, UNODC co-sponsored and sent representatives to the conference “Joining Forces against Corruption: G20 Business and Government”, organized jointly by the French presidency of the Group of Twenty and the OECD. UNODC has participated as an observer to the G20 Anti-Corruption Working Group since it was established. In 2012, UNODC was also invited to participate in the Task Force on Improving Transparency and Anti-Corruption of the Business 20 (B20), an offshoot of the G20 and a forum for the world’s largest companies to share views and define a joint strategy to move G20 nations forward on global issues. UNODC has been actively involved in the discussions on the scope and objectives of what the B20 can pledge to deliver to the G20 and in developing the private sector-led policy recommendations, which were presented to the G20 leaders at the B20 and G20 Summits in Los Cabos, Mexico, on 17-18 June 2012.

77. In January 2012, at the WEF annual meeting in Davos, Switzerland, the Executive Director of UNODC discussed an initiative entitled “Integrity IPO”, aimed at forging partnerships between UNODC with the private sector based on the Convention against Corruption. Contributions provided to the Integrity IPO would be used to help develop and strengthen the public anti-corruption infrastructure of the countries where international business is conducted, thereby creating a potent insurance policy for protecting private sector assets. The Executive Director formally launched the Integrity IPO initiative on the margins of the annual session of the Commission on Crime Prevention and Criminal Justice on the 24 April 2012.

78. The Siemens Integrity Initiative finances three UNODC projects aimed at strengthening partnerships between the public and private sectors through creating systems of legal incentives for integrity, reducing vulnerabilities to corruption in public procurement systems, and educating present and future generations of business and public leaders on the Convention. The “Incentives for Corporate Integrity and Cooperation” project seeks to create systems of legal incentives for individuals and companies to come forward and report instances of corruption.

---

<sup>38</sup> <http://thefightagainstcorruption.unodc.org>.

<sup>39</sup> [www.unido.org/fileadmin/user\\_media/Services/PSD/CSR/UNIDO-UNODC\\_Publication\\_on\\_Small\\_Business\\_Development\\_and\\_Corruption.pdf](http://www.unido.org/fileadmin/user_media/Services/PSD/CSR/UNIDO-UNODC_Publication_on_Small_Business_Development_and_Corruption.pdf).

Technical working groups will review government legislation, policy and practices in relation to a number of provisions in the Convention against Corruption, including articles 26, 32, 37 and 39. The “Public - Private Partnership for Probity in Public Procurement” project strives to reduce vulnerabilities to corruption in public procurement systems and to bridge knowledge and communication gaps between public procurement administrations and the private sector. Both of these projects will focus on the experience in Mexico and India and will also bring together other international experts to establish good practices. The third project seeks to enhance the private sector’s knowledge of how the Convention is relevant and applicable to their work, and to encourage that their anti-corruption commitments be turned into action by bringing their integrity programmes in line with the principles of the Convention.

79. UNODC is currently working to develop a number of other concrete tools. UNODC, together with OECD and the World Bank, has begun to develop a practical handbook for businesses to bring together guidelines and related material on private sector anti-corruption compliance. UNODC has also launched a project to identify good practices for preventing corruption in the organization of major public events, such as the Olympic Games or other major sports or political events.

80. UNODC, as part of its Outreach and Communication Programme, is developing a one-semester academic learning course on UNCAC and its implications for both the public and private sectors. It is intended to promote the course to a wide range of academic institutions including business, law and public administration schools for incorporation into their existing academic programmes and curricula. By producing the learning course, UNODC seeks to support the efforts of learning institutions in preparing the next generation of public and business leaders for the challenge of making right and ethical decisions. This course, which is planned to be finalized in late 2012, is part of the wider Anti-Corruption Academic Initiative (ACAD) of UNODC. ACAD is a collaborative academic project which aims to produce a menu of individual academic modules, syllabi, case studies, educational tools and reference materials that may be integrated by universities and other academic institutions into their existing academic programmes and should be available through a platform.

#### **IV. Conclusions and recommendations**

81. The overview of practices provided by States parties shows that many public and private sector initiatives are already being carried out and that the significant role of the private sector in the prevention of corruption is increasingly considered by Governments as well as by the private sector entities themselves. Most of the current experience in regard to article 12 seems to exist in the field of legal regulations of accounting and auditing standards. Further support may be required for capacity-building for accountants and auditors in the private sector and should go hand in hand with strategies to address gaps in legislation and organizational capacities.

82. Nevertheless, several States parties stated that the area of anti-corruption in the private sector still needs to be explored further and that cooperation between the public and the private sector is still only at an early stage. Technical assistance in

this regard was requested by several States parties, particularly relating to legislative drafting or model legislation, support in awareness-raising campaigns for sectors with a high risk of corruption, and the sharing of summaries of good practices and lessons learned.

83. In order to effectively address such requests, the continued collection of information with a very clear focus on lessons learnt could support the discussion and peer-learning function of the Working Group. In particular, information on experiences provided by States parties could highlight the initial challenges faced, an evaluation of particularly effective aspects of the approach adopted, a description of both expected and unexpected consequences and suggested improvements for future related initiatives.

84. The Working Group may also wish to underline the importance of the sharing of knowledge products specifically for high risk sectors or SMEs which might benefit from more specific guidance which takes into consideration their capacities and size.

85. The Working Group may wish to consider further strengthening the exchange and sharing of experiences in the field of research. Efforts might be more useful and necessary in some areas than in others. Lessons learnt could be drawn from public sector experiences such as integrity assessments, and from private sector sources such as “Doing Business Assessments”, which assess cost reductions when bribes do not need to be paid, from technical assistance programmes and from academic research projects and think tanks.

---