

OECD Working Group on Bribery



**ANNUAL REPORT OF THE OECD
WORKING GROUP ON BRIBERY 2014**

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The 2014 edition of the Annual Report covers activities undertaken by the OECD Working Group on Bribery in 2013.

MESSAGE FROM THE SECRETARY-GENERAL



Angel Gurría
Secretary-General



In 2013, significant progress was made by the OECD's Working Group on Bribery on implementing the *OECD Anti-Bribery Convention*. Fourteen years after the Convention came into force, the Working Group, which is comprised of the 41 Parties to the Convention, continued to assess the effectiveness of its members' legislative and institutional frameworks for combating the supply-side of bribery of foreign public officials. Over 25 countries underwent monitoring reviews in 2013, as the Group relentlessly pursued its goal to ensure that every Party to the Convention makes best efforts to stop the flow of bribes in cross border business deals, including high risk and big price tag transactions for public procurement infrastructure contracts, oil and gas exploration, and in the pharmaceutical and medical services sectors.

The Phase 3 cycle of reviews, due to be completed by the end of 2015, was in full swing in 2013. The reviews showed progress in a number of areas, including an increased use of corporate fines and improved whistle-blower protections in several jurisdictions. Notably, many Parties have tightened up their provisions for making bribes tax deductible, and improved coordination and communication between tax administrations and law enforcement authorities. The reviews also showed that some Parties continue to face obstacles in detecting and investigating foreign bribery when the offence takes place abroad and involves a corporate affiliate. The Working Group made targeted recommendations to help overcome these obstacles, such as improving the detection by law

enforcement authorities of wrongdoing by parent companies, which may have authorised, directed or turned a blind eye to corrupt conduct by their subsidiaries abroad.

The need to ensure effective enforcement has become even more pressing since the financial crisis. Despite the recovery, much trust still needs to be regained, and effective enforcement against bribery allegations is one of the key ways to rebuild trust. The Working Group recognises that enforcement by its members must be more robust across the board. In 2013, it therefore focused on finding solutions to the main problems facing its members in prosecuting cases, such as improving the cross border sharing of evidence. The Working Group also recognises that it is just as important to rebuild trust in business enterprises in the private and public sectors. For this reason, in 2013, it looked carefully at how well companies implemented the *OECD Good Practice Guidance on Internal Controls, Ethics and Compliance*. In 2013, substantial progress was observed on implementing effective anti-bribery compliance measures, especially in MNEs.

These steps by the Working Group should make an important inroad in building a stronger, more transparent and better coordinated regulatory framework for the global economy. But, the Working Group is aware that its contribution to rebuilding trust requires collective action by all stakeholders. It needs to continue to raise public awareness of the detrimental impact of corruption on sustainable and inclusive economic growth and development. And, to ensure a fully collaborative global effort to stamp out foreign bribery, the Working Group will continue to engage with the major emerging economies that are not yet Party to the Convention – China, India, Indonesia and Saudi Arabia. The G20 reiterated their commitment to combat foreign and domestic bribery in its *2013-2014 Action Plan*. The G20 also explicitly encouraged non-Parties to explore possible adherence to the OECD Anti-Bribery Convention. Collaboration in 2013 continued to involve substantial input by the private sector and civil society, including through regular consultations, and by meeting with their representatives at the on-site visits that comprise a main feature of monitoring reviews. The Working Group also engaged closely with other international organisations committed to the fight against corruption, including the United Nations Office of Drugs and Crime and the World Bank.

At the end of 2012, we said good-bye to Mark Pieth, who was the Chair of the Working Group since before the Convention came into force, and whose leadership and inspiration helped to put the *OECD Anti-Bribery Convention* on the map. In 2013, we welcomed Drago Kos as the new Chair. He faces many challenges as we move forward to the next stage of monitoring, and tackle several difficult cross-cutting issues on effective foreign bribery enforcement. He brings important new perspectives to the job, and is committed to contributing to the OECD's integrated approach to fighting corruption through Organisation-wide initiatives. With our new Chair, and an undiminished commitment to eradicating one of the most insidious forms of corruption, we are confident that the Working Group on Bribery will continue to make the *OECD Anti-Bribery Convention* the most effective global initiative for combating the supply of bribes in international business transactions for years to come.

Angel Gurría
Secretary-General



MESSAGE FROM THE CHAIR, OECD WORKING GROUP ON BRIBERY



Drago Kos
*Chair, OECD Working Group
on Bribery*

In my personal view, as the new Chair of the OECD Working Group on Bribery, the year 2013 was particularly notable for the Working Group on Bribery as it bade farewell to Mark Pieth, the founding father of the OECD Convention against Bribery of Foreign Public Officials in International Business Transactions and of the working group itself. His determined leadership of the Group and uncompromising insistence on the implementation of the Convention were responsible for making the work of the Working Group on Bribery known worldwide as the “golden standard of monitoring”. It is also for his sake that, I believe, the Group will have to make every effort to keep the standards of the Convention alive, to continue issuing targeted and focused recommendations and continue cooperating with other governmental, non-governmental and business partners in order to build a trustworthy platform for global governance and ensure fair conditions in global trade for all countries of the world.

During the past year, the Working Group on Bribery made substantial progress, despite different degrees of implementation of Working Group recommendations. Several Parties are mounting effective prosecutions, while others still are facing the challenge of turning credible allegations into investigations, convictions and meaningful sanctions. For Parties that still have not implemented key recommendations, the Working Group this year in addition to its regular reports also released targeted public statements. The Working Group peer review reports, follow up recommendations, and recent public statements continue to illustrate its collective strong determination to achieve results. While this kind of reporting requires the dedication of adequate resources, including a heavy workload for lead examiners and support from the Secretariat, the Working Group is committed to continuing the fight. The year 2013 was also marked by the entry of a new Member. Latvia became the 41st Party to the Convention on 30 May 2014. The Group adopted its Phase 1 report on Latvia in June 2014.

In the survey conducted among our member states in 2013, we found out that they cannot devote more resources to the work in the Working Group on Bribery and that the majority of them want a more focused and less general monitoring, which means that in addition to the necessary permanent features of all the next evaluation phases – monitoring the enforcement of the Convention and the still-open recommendations from the previous phases – we will have to delve deeper at least in the areas our members considered to be the most problematic ones: increasing awareness on foreign bribery, liability of legal persons, international legal cooperation, application of “effective, proportionate, and dissuasive” sanctions and rigorous use of seizure and confiscation of bribes and the proceeds of bribery.

In 2013, the Working Group on Bribery was faced with quite different levels of activity on the part of delegations and correspondingly an uneven burden borne by some members, very different degrees of willingness of the existing members to implement the Working Group’s recommendations and huge workloads of particularly the Secretariat as well as some members of the Working Group, especially during its sessions. When we plan the next evaluation phases and procedures, solutions will have to be found for these problems as well.

Our Group continued its close cooperation with the G-20 Anti-Corruption Working Group, which is of particular importance for our work since this group can help us enforce the Convention standards in those G-20 members that are not yet members of our Working Group.

Last year, we also amended our criteria and procedure for accession to the Convention and non-member participation in the Group. Recognising the importance of ensuring non-Member participation in OECD bodies (such as the Working Group) on a basis of mutual interest, as well as the need to foster co-operation, and thus, the Group’s capacity to fulfil its mandate, the Group wishes to ensure that potential new members do not postpone indefinitely their decision on membership. Accession and full Working Group membership is of mutual interest if it assists the Working Group in fulfilling its mandate.

The Working Group owes a debt of gratitude to the continued excellent work of its Secretariat, the Anti-Corruption Division of the OECD, which again provided crucial support, and enabled the smooth operation of the Group during its Chair transition.

The Working Group is nearing key decisions, both as regards the contents of the next evaluation phases and the procedures used as well as any future enlargement with countries that are an important part of the global economy. However, with all the work ahead, we must not forget our fundamental goal: to ensure, by means of strict monitoring, a level playing field in international economic cooperation for all our members as well as all the other countries of the world. And this will be achieved only when corruption in international business transactions will really no longer be “business as usual”.

 Drago Kos
Chair

SETTING THE STANDARD: THE ANTI-BRIBERY CONVENTION

The Anti-Bribery Convention

A clean and competitive global economy is impossible if companies and individuals continue to bribe in their international business dealings. Bribery distorts markets and raises the cost of doing business. Today, the vast majority of the world's major exporters and investors have joined the Anti-Bribery Convention and become members of the OECD Working Group on Bribery in order to effectively combat this crime. The Working Group is working hard to convince the remaining major economies that have not yet done so to join the Working Group and accede to the Convention, so that all major exporters and their companies are playing by the same rules to the benefit of all our economies.

The Anti-Bribery Convention is the only legally binding instrument globally to focus primarily on the supply of bribes to foreign public officials in international business transactions. All Convention countries must make the bribery of foreign public officials a criminal offence. They are obligated to investigate credible allegations and, where appropriate, to prosecute those who offer, promise or give bribes to foreign public officials and to subject those who bribe to effective, proportionate and dissuasive penalties. At the same time, Parties to the Convention undertake to provide "prompt and effective legal assistance" to other Parties investigating offenses within the scope of the Convention. They are also required to deny the tax deductibility for such bribes.

The Convention requires that Parties implement laws ensuring that individuals and companies can also be prosecuted when third parties are involved in the bribe transaction, such as when someone other than the foreign official receives the illegal benefit on his or her behalf, including a family member, business partner, or a favourite organisation of the official. Foreign bribery is a crime under the Convention even if such corruption is tolerated in the foreign country. If an illegal bribe that meets the definition of Article 1 of the Anti-Bribery Convention has been offered, promised, or given, it also does not matter if the briber was entitled to the business advantage that the bribe was intended to secure.

Fifteen years after the signature of the Convention, 333 individuals and 111 entities have been sanctioned under criminal proceedings for foreign bribery in 17 Parties between the time the Convention entered into force in 1999 and the end of 2013. Of those, at least 87 of the sanctioned individuals were sentenced to prison for foreign bribery.

The Working Group on Bribery in International Business Transactions

Established in 1994, the OECD Working Group on Bribery in International Business Transactions (Working Group) is responsible for monitoring the implementation and enforcement of the OECD Anti-Bribery Convention, the 2009 Recommendation on Further Combating Bribery of Foreign Bribery in International Business Transactions (2009 Anti-Bribery Recommendation), and related instruments. Made up of representatives from the States Parties to the Convention, the Working Group meets four times per year at the OECD in Paris and publishes all of its country monitoring reports on the OECD website: www.oecd.org/daf/anti-bribery.

Working Group on Bribery: Facts and Figures

- There are 41 Parties to the Convention: the 34 OECD Members, plus Argentina, Brazil, Bulgaria, Colombia, Latvia, the Russian Federation, and South Africa.
- Together, the 41 Working Group on Bribery members account for nearly 80 percent of world exports.
- The 41 Working Group on Bribery members also account for nearly 90 percent of global outward flows of foreign direct investment.

The 2009 Recommendation and 2010 Good Practice Guidance

The 2009 Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions (Anti-Bribery Recommendation) provides a series of targeted measures to enhance Parties' implementation of their Convention obligations including to better prevent, detect, investigate and prosecute credible allegations of foreign bribery.

For example, the Anti-Bribery Recommendation calls on Convention countries to establish whistle-blower reporting mechanisms and protections for public and private sector employees, and to periodically review their laws implementing the Convention and their approach to enforcement in order to effectively combat international bribery of foreign public officials, as well as their policies and approaches concerning small facilitation payments. It also recommends that members ensure that companies are held to appropriate accounting and auditing standards, encourage businesses and business organisations to adopt stringent ethics and anti-bribery compliance programmes and measures, and encourage companies to prohibit or discourage the use of small facilitation payments. The new Recommendation also provides guidance on establishing effective corporate liability for foreign bribery. Under the Anti-Bribery Recommendation, Convention countries should also enhance cross-border cooperation on foreign bribery investigations and prosecutions. Importantly, the new Recommendation appeals to non-Member countries that are major exporters and foreign investors to adhere to and implement the OECD Anti-Bribery Convention and the Recommendation and participate in any institutional follow-up or implementation mechanism.

The Anti-Bribery Recommendation also includes important guidance for companies. The 2010 OECD Good Practice Guidance on Internal Controls, Ethics and Compliance contained in Annex 2 of the Recommendation is the only guidance of its kind adopted at the intergovernmental level. The Guidance provides information to companies to prevent and detect foreign bribery in their international business dealings. It includes fundamental elements—that, at a minimum—should make up the heart of any effective foreign bribery compliance programme.

The Good Practice Guidance is meant to be flexible and can be adapted by companies of all sizes, with business in any geographical location and from any industry. It emphasizes that, first and foremost, effective internal controls, ethics and compliance programmes should be based on a risk assessment that is regularly monitored, re-assessed and

adapted according to changing circumstances. It also emphasises the need for strong, explicit and visible support from senior management for the company's ethics and compliance program or measures for detecting and preventing bribery, and the adoption of a clear and visible anti-bribery policy. Effective measures should also instil in all individuals at any level of the company a duty for compliance. To ensure that corporate compliance measures are followed and enforced, managers should also keep up regular communication and training for employees and business partners and introduce disciplinary procedures for addressing violations of these measures, as well as measures for positively reinforcing compliance.

The Good Practice Guidance also calls on business and professional organisations to play an essential role in providing anti-bribery information, general advice on due diligence and support in resisting extortion and solicitation, and training to companies, especially small- and medium-sized enterprises.

FAREWELL INTERVIEW WITH PROF. MARK PIETH



Mark Pieth
Prof.

In December 2013, Prof. Mark Pieth ended his successful tenure as Chair of the Working Group on Bribery. As one of the authors of the Anti-Bribery Convention and the Working Group's first Chair, Prof. Pieth leaves an important legacy in the fight against corruption. The following are his personal reflections on his time as Chair.

How was the Anti-Bribery Convention created?

The history of the Anti-Bribery Convention goes back quite a bit. In 1989 the US suggested to the Council of the OECD that an international instrument against illicit payments should be developed. The Council created an Ad Hoc Group on Illicit Payments which spent most its time discussing the legal form of the instrument. Nevertheless, it came up in 1994 with a first Recommendation. Essential in that Recommendation was a continued soft law process allowing to fill an open "shopping list" of topics with more concrete contents. The result was the 1997 Revised Recommendation. This second Recommendation contained also provisions of criminal law ("Agreed Common Elements"). The states were, however, reluctant to see criminal law go ahead in the form of a Recommendation and asked for a Convention. Since one feared that drafting a Convention in another forum would take a lot of time the OECD decided to do something quite unique: to draft the Convention itself in only half a year. Over the next months, starting with an informal meeting in Lugano, followed by a working group meeting and a high level negotiating conference, and finally the signature by Ministers in December 1997, the Convention was completed.

How/why did you become involved?

From 1989 on, I was Head of Section on Economic and Organized Crime at the Swiss Ministry of Justice. In this role I was also responsible for anti-money laundering legislation and had to attend international meetings of all

kinds, amongst them the Financial Action Task Force on Money Laundering in its first three years. Concurrently to these activities I was also sent to attend the initial work of the OECD on anti-corruption. Apparently I was so “pushy” in the first year chaired by the then Legal Counsel of the OECD that they decided to ask me to preside over the Working Group on Illicit Payments. After the 1994 Recommendation the Group changed its name and its format and became the Working Group on Bribery. I have chaired also the Working Group on Bribery up to the end of 2013.

What was the initial reaction to the Convention?

I still believe that it was fundamental that this Convention was from the outset accompanied by a monitoring procedure. It allowed ensuring implementation of the laws in member states in an extremely short time frame. The remaining challenge of course was to ensure application of the rules, and this is work in progress. We know that roughly half of the countries are intensive to medium enforcers, whereas the other half shows little to hardly any activities.

What gave you the most satisfaction during your tenure?

Even if the Group was sometimes difficult to manage and was at moments slow (as an international body would be), the Group had its absolute highlights. For me it was fundamental that when we went through the Al-Yamamah crisis with the UK the Group stood together and sent a clear message to the UK. Equally a highlight was the way my successor was selected. The Group was able to discuss in the full plenary the shortlisted candidates in a sequence of in-depth discussions over several days, up to the point where we reached unanimity. I still believe this demonstrates how mature this organization really is.

What do you see as the main challenges now?

There is no way around a stern monitoring. The countries that are still inactive need to be motivated to do more, some countries are erratically closing or not picking up cases that should be subjected to investigations. There remains a lot to be done. Linked to the intensive monitoring in many of the international bodies there is a certain risk of monitoring fatigue. We should be very careful not to fall into that trap.

WORKING GROUP DATA ON ENFORCEMENT OF THE ANTI-BRIBERY CONVENTION

Highlights from the Working Group on Bribery Enforcement Data, as of December 2013

- 333 individuals and 111 entities have been sanctioned under criminal proceedings for foreign bribery in 17 Parties between the time the Convention entered into force in 1999 and the end of 2013.
- At least 87 of the sanctioned individuals were sentenced to prison for foreign bribery.
- At least 98 individuals and 132 entities have been sanctioned in criminal, administrative and civil cases for other offences related to foreign bribery, such as money-laundering or accounting, in 7 Parties.
- Approximately 390 investigations are ongoing in 24 Parties to the Anti-Bribery Convention. Prosecutions are ongoing against 130 individuals and 12 entities in 11 Parties for offences under the Convention.

About the Working Group on Bribery Enforcement Data

Official data on the enforcement efforts of the Parties to the Anti-Bribery Convention were made public for the first time in the 2009 Annual Report of the Working Group. Again this year, the Parties have agreed to publish official data for the Annual Report.

As part of this effort, the Working Group has been collecting data from its members on investigations, proceedings, and sanctions, distinguishing sanctions upon conviction (or a similar finding of culpability for administrative and civil proceedings, where applicable) from agreements to resolve proceedings without a conviction (or a similar finding of culpability for administrative and civil proceedings, where applicable) with or without court approval. The data collected distinguishes foreign bribery misconduct from other related offences—in particular accounting misconduct related to the bribery of foreign public officials or concealing bribery—and, where relevant, tracks enforcement data related to cases against individuals and entities separately.

This data has been divided into two categories: information provided by Parties on a *mandatory* basis and a *voluntary* basis. The mandatory data consists of the number of criminal, administrative and civil cases of foreign bribery that have resulted in a final disposition, such as a criminal conviction or acquittal, or similar findings under an administrative or civil procedure. The voluntary data includes: 1) data on investigations (*e.g.* ongoing investigations, investigations that have been discontinued, investigations that have led to criminal prosecutions or administrative proceedings); 2) data on criminal, administrative and civil proceedings that have not resulted in a final court disposition (*e.g.* ongoing court proceedings, proceedings that have been discontinued, and out-of-court settlements); and 3) data on sanctions (*e.g.* prison sentences, monetary penalties including fines, confiscation and forfeiture, and collateral consequences such as debarment from public procurement). The enforcement data provided on a voluntary basis and published in the annual report also includes data on concluded criminal, administrative and civil proceedings for other offences related to foreign bribery, such as accounting and money laundering offences.

In Short: Working Group on Bribery Enforcement Data¹

To date, almost all Parties to the Convention have provided enforcement data. According to data as of December 2013, 333 individuals and 111 entities have been sanctioned under criminal proceedings for foreign bribery in 17 Parties between the time the Convention entered into force in 1999 and the end of 2013. Out of these 17 Parties, 9 have sanctioned both companies and individuals, and 5 have sanctioned only individuals.

According to voluntarily provided data, at least 87 of the sanctioned individuals were sentenced to prison for foreign bribery. Seven Parties have also sanctioned individuals or legal persons for other offences related to foreign bribery in international business transactions (*e.g.* offences under Articles 7 and 8 of the Anti-Bribery Convention, such as accounting offences, breach of trust, or money laundering).

Approximately 390 investigations are ongoing in 24 Parties to the Anti-Bribery Convention.

1. The WGB enforcement data represents data collected from 40 Parties to the OECD Anti-bribery Convention.

**Methodology and Content of the Comparative Table
of Enforcement Data Collected from the 40 Parties to the
Anti-Bribery Convention – Decisions on Foreign Bribery Cases
from 1999 to December 2013**

What the Table includes

The Table below contains all data that the Parties to the Anti-Bribery Convention have agreed to provide on a *mandatory* basis as part of the data-collection exercise described above (*i.e.* the number of criminal, administrative and civil cases of foreign bribery that have resulted in a final disposition, such as a criminal conviction or acquittal, or similar findings under an administrative procedure). It records the number of sanctions that have been imposed on individuals and entities in criminal, administrative and civil proceedings for foreign bribery and for failures to prevent a proven case of foreign bribery (Articles 1 and 2 of the Anti-Bribery Convention) in the 40 Parties to the Anti-Bribery Convention from its entry into force to December 2013. Latvia became a State Party to the Anti-Bribery Convention on 30 May 2014 and is therefore not included in this year's WGB enforcement data.

Additionally, the Table includes data provided on a *voluntary* basis by certain countries concerning the number of foreign bribery cases that have been resolved through an agreement between the law enforcement authorities and the accused person or entity, with or without court approval. In some cases the proceedings may have been terminated or deferred for a certain period on condition that the accused agrees to certain conditions, such as implementation of corporate reforms, the payment of fines, restitution, and/or full co-operation in the investigation of others allegedly involved in the same case.

What the Table does not include

It should be underlined that the Table shows the number of sanctions for foreign bribery and for failures to prevent foreign bribery. It does *not* include other offences that might also apply to this form of conduct in certain circumstances, such as trading in influence, United Nations embargo violations, or bribery to obtain a benefit outside of an international business transaction. The Table also does not record the number of sanctions that may have been ordered in the 40 Parties to the Convention against foreign public officials for receiving bribes, as this offence is not covered by the Convention.

Methodology used and limits

For the purposes of completing the Table below, cases have been counted per person. This methodology implies that several sanctions recorded by the same Party may concern one "case" (*e.g.* in one case, a parent company, its subsidiary and a manager may have been sanctioned) or one person (*e.g.* one person may have been subject to, and sanctioned

in, both criminal and civil proceedings). In addition, several sanctions recorded by several countries may concern the same person or entity, where they all had jurisdiction

The Table includes data on foreign bribery cases that have resulted in a final disposition, such as a criminal conviction or acquittal, or similar findings under an administrative procedure. The data does not identify cases that might be under appeal. This implies that the numbers could change depending on the outcome of possible appeals against the decisions reported in the Table.

While the Table tracks data back to 1999—the year the Convention entered into force—a number of Parties joined the Convention and started enforcement against foreign bribery offences later. In addition, data is not included from before 1999 on enforcement of the United States' Foreign Corrupt Practices Act (FCPA), which came into force in 1977.

**Comparative Table of Enforcement Data Collected from 40 Parties to the Anti-Bribery Convention
Decisions on Foreign Bribery Cases from 1999 to December 2013¹**

| Country | Date of latest information supplied | % share of world exports (2013) ² | Number of individuals (I) and legal persons (LP) sanctioned or acquitted/found not liable | | | |
|--|-------------------------------------|--|---|--|------------------|----------|
| | | | Sanctioned | | Acquitted | |
| CRIMINAL CASES | | | I | LP | I | LP |
| Argentina | December 2013 | 0.4 | 0 | 0 | 0 | 0 |
| Australia | December 2013 | 1.3 | 0 | 0 | 0 | 0 |
| Austria | December 2012 | 1.0 | 0 | 0 | 0 | 0 |
| Belgium | December 2013 | 1.9 | 4 | 2 | 4 | 0 |
| Brazil | December 2012 | 1.2 | 0 | 0 | 0 | 0 |
| Bulgaria | December 2013 | 0.1 | 1 | 0 | 0 | 0 |
| Canada | December 2013 | 2.4 | 0 | 3 | 0 | 0 |
| Chile | December 2013 | 0.4 | 0 | 0 | 0 | 0 |
| Colombia | - | 0.3 | 0 | 0 | 0 | 0 |
| Czech Republic | December 2013 | 0.7 | 0 | 0 | 1 | 0 |
| Denmark | December 2013 | 0.8 | 0 | 0 | 0 | 0 |
| Estonia | December 2012 | 0.1 | 0 | 0 | 0 | 0 |
| Finland | December 2012 | 0.5 | 0 | 0 | 0 | 0 |
| France | December 2013 | 3.3 | 7 | 0 | 23 | 0 |
| Germany | December 2013 | 8.1 | 40 (+150 agreed sanctions) ⁴ | 75 | 1 | 0 |
| Greece | December 2011 | 0.3 | 0 | 0 | 0 | 0 |
| Hungary | December 2013 | 0.5 | 26 | 0 | 2 | 0 |
| Iceland | December 2012 | 0.0 | 0 | 0 | 0 | 0 |
| Ireland | December 2013 | 1.0 | 0 | 0 | 0 | 0 |
| Israel ⁶ | December 2012 | 0.4 | 0 | 0 | 0 | 0 |
| Italy | December 2013 | 2.8 | 8, including plea agreements ⁷ | 2, including plea agreements ⁷ | 2 | 0 |
| Japan | December 2013 | 3.5 | 7 | 1 | 0 | 0 |
| Korea | December 2013 | 3.1 | 16 | 4 | 0 | 0 |
| Latvia | N/A | | N/A | N/A | N/A | N/A |
| Luxembourg | December 2013 | 0.5 | 1 | 0 | 0 | 0 |
| Mexico | December 2013 | 1.8 | 0 | 0 | 0 | 0 |
| Netherlands | December 2013 | 3.1 | 0 | 0 (+1 agreed sanction) | 1 | 0 |
| New Zealand | December 2013 | 0.2 | 0 | 0 | 0 | 0 |
| Norway | December 2012 | 0.9 | 2 | 1 | 2 | 0 |
| Poland | December 2013 | 1.1 | 1 | 0 | 0 | 0 |
| Portugal | December 2013 | 0.4 | 0 | 0 | 0 | 0 |
| Russian Federation | - | 2.6 | 0 | 0 | 0 | 0 |
| Slovak Republic | December 2013 | 0.4 | 0 | 0 | 0 | 0 |
| Slovenia | December 2013 | 0.2 | 0 | 0 | 0 | 0 |
| South Africa | December 2013 | 0.5 | 0 | 0 | 0 | 0 |
| Spain | December 2013 | 2.0 | 0 | 0 | 0 | 0 |
| Sweden | December 2013 | 1.1 | 2 | 0 | 0 | 0 |
| Switzerland ⁸ | December 2013 | 1.5 | 1 (+3 reparation procedures ⁹) | 1(+1 reparation procedure ⁹) | 0 | 1 |
| Turkey | December 2013 | 0.9 | 0 | 0 | 2 | 0 |
| United Kingdom | December 2013 | 3.5 | 6 | 2 | 2 | 0 |
| United States ¹⁰ | December 2013 | 9.9 | 58, including plea agreements | 32, including plea agreements (+54 DPAs/NPAs ¹¹) | 4 | 0 |
| TOTAL | | 64.7 | 333 persons sanctioned, including plea agreements and agreed sanctions | 111 legal persons sanctioned, including plea agreements and DPAs/NPAs | 23 | 1 |
| ADMINISTRATIVE AND CIVIL CASES ¹² | | | Sanctioned | | Found Not Liable | |
| | | | I | LP | I | LP |
| Germany | December 2013 | 8.1 | 1 | 0 | 0 | 0 |
| Japan | December 2013 | 3.5 | 0 | 1 | 0 | 0 |
| United States ¹³ | December 2013 | 9.9 | 42, including settlements ¹⁴ | 59, including settlements ¹⁴ | 0 | 0 |
| TOTAL | | | 43, including settlements | 60, including settlements | 0 | 0 |

1 The OECD Secretariat has endeavoured to verify the accuracy of this information, including through the Phase 3 evaluations completed to date. This verification has resulted in corrections for some data since the publication of the 2010 Annual Report. Most of these corrections reflect the erroneous inclusion of sanctions based on offences that do not fall within the Convention or a miscategorisation of certain offences. The number of convictions and sanctions may decrease from previous years due to appeals and other challenges. However, the responsibility for the provision and accuracy of information rests solely with the individual Parties.

2 Export data provided by the OECD Economics Directorate and includes data for 2013, except for Argentina and Colombia for which data are for 2012.

3 In these two cases, the individuals were acquitted of the offence of foreign bribery, but were sanctioned for other offences.

4 Sanctions ordered by the application of paragraph 153a of the German Code of Criminal Procedure.

5 In Germany, the liability of legal persons is an administrative liability but legal persons are sanctioned in connection with a criminal offence in the context of a criminal case.

6 The statistical data for Israel are supplied by and under the responsibility of the relevant Israeli authorities. The use of such data by the OECD is without prejudice to the status of the Golan Heights, East Jerusalem and Israeli settlements in the West Bank under the terms of international law.

7 The applicable procedure is called *patteggiamento*.

8 In Switzerland, data is not collected at the federal level, and the Office of the Attorney General of Switzerland (OAG) does not have the authority to require the cantons to report the relevant data to the OAG. The number of sanctions relates to cantonal foreign bribery cases as far as reported by the competent cantonal authorities (and therefore known at the federal level). There may be other investigations underway, which the cantons have not reported following a survey conducted in 2011.

9 Article 53CC provides that when the defendant has compensated the damage or taken all efforts that could be reasonably expected to rectify the wrong that he or she has caused, the competent authority will desist from prosecution, from bringing the matter to a trial or from punishment: a) if the conditions for suspension sentence are satisfied (article 42) and b) if the public interest and the interest of the victim in a criminal prosecution of the defendant are insignificant.

10 This row records the number of criminal cases prosecuted by the US Department of Justice (DoJ) either for violations of the anti-bribery provisions of the FCPA, or for violations of both the anti-bribery provisions and the books and records and internal controls provisions of the FCPA. Therefore, criminal sanctions that have been imposed exclusively for violations of the books and records and internal controls provisions of the FCPA are not captured by the Table.

11 "DPAs" and "NPAs" are "Deferred Prosecution Agreements" and "Non Prosecution Agreements" that have been entered into between the US DoJ and the persons sanctioned.

12 Only those countries that have reported additional sanctions ordered under administrative and/or civil procedures have been listed under the "Administrative and Civil Cases".

13 This row records the number of administrative and civil actions of the US Department of Justice and the US Securities and Exchange Commission (SEC) that have led to sanctions either for violations of the anti-bribery provisions of the FCPA, or for violations of both the anti-bribery provisions and the books and records and internal controls provisions of the FCPA. Therefore, civil sanctions that have been imposed exclusively for violations of the books and records and internal controls provisions of the FCPA are not captured by the Table.

14A number of persons that have been sanctioned in civil proceedings have also been sanctioned in criminal proceedings.

Tables with Voluntary Data on Cases for Other Offences Related to Foreign Bribery

What the data includes

For the second time, the Working Group's enforcement data includes information provided on a *voluntary* basis by certain countries regarding sanctions in criminal, administrative and civil cases for other offences related to foreign bribery (i.e. Articles 7 (Money Laundering) and 8 (Accounting) of the Convention). The specific offences vary by jurisdiction, but are based on misconduct underlying foreign bribery in international business transactions, such as books and records violations, failure to implement internal controls, *abus de biens sociaux* (misuse of company assets), and breach of trust based on a failure to supervise. As with the data above, it does *not* include other offences that fall outside the Convention, such as trading in influence, United Nations embargo violations, or bribery to obtain a benefit outside of an international business transaction. The Working Group chose to include this information for the first time last year in order to reflect Parties' efforts to fight the crime of foreign bribery with as wide an array of legal means as possible.

Methodology used and limits

Similar to the data related to the foreign bribery offence above, the cases have been counted per person in the voluntary data tables below. This methodology implies that several sanctions recorded by the same State Party may concern one "case" (e.g. in one case, a parent company, its subsidiary and a manager may have been sanctioned) or one person (e.g. one person may have been subject to, and sanctioned in, both criminal and civil proceedings). In addition, several sanctions recorded by several countries may concern the same person or entity, where they all had jurisdiction. Readers should note individuals and legal persons could be sanctioned for multiple offences and thus the number of persons sanctioned in the voluntary data cannot be aggregated with the mandatory enforcement data included above. Finally, as noted above, cases included in this report could be under appeal. Therefore, the numbers could change, depending on the outcome of possible appeals against the decisions reported in the following tables.

| CRIMINAL SANCTIONS FOR OTHER OFFENCES RELATED TO FOREIGN BRIBERY ¹ | | | Sanctioned | | Found Not Liable | |
|---|---------------|-----|----------------------------------|--|------------------|----------|
| | | | I | LP | I | LP |
| Australia | December 2013 | 1.3 | 1 | 0 | 0 | 0 |
| France | December 2013 | 3.3 | 4 | 0 | 0 | 0 |
| Germany | December 2013 | 8.1 | 20 (+9 agreed sanctions) | 3 | 1 | 0 |
| Netherlands | December 2013 | 3.1 | 0 | 0 (+1 agreed sanction) | | |
| Switzerland | December 2013 | 1.5 | 0 (+11 reparation procedures) | 0 | | |
| United Kingdom | December 2013 | 3.5 | 0 | 1 | 0 | 0 |
| United States | December 2013 | 9.9 | 4, including plea agreements | 17, including plea agreements (+53 DPAs/NPA) | 2 | 0 |
| TOTAL | | | 49, including settlements | 22, including settlements | 3 | 0 |

| ADMINISTRATIVE/CIVIL SANCTIONS FOR OTHER OFFENCES RELATED TO FOREIGN BRIBERY ² | | | Sanctioned | | Found Not Liable | |
|---|---------------|-----|----------------------------------|-----------------------------------|------------------|----------|
| | | | I | LP | I | LP |
| Germany | December 2013 | 8.1 | 4 | 0 | 0 | 0 |
| United Kingdom | December 2013 | 3.5 | 0 | 8 | | |
| United States | December 2013 | 9.9 | 45, including settlements | 102, including settlements | 0 | 0 |
| TOTAL | | | 49, including settlements | 110, including settlements | 0 | 0 |

1. Only those countries that have reported criminal sanctions for offences related to foreign bribery have been listed under the "Criminal Convictions for Other Offences Related to Foreign Bribery". This information was voluntarily provided by Member Countries. "Other offences related to foreign bribery" include offences falling under Articles 7 (Money Laundering) and Article 8 (Accounting) of the Convention. Examples include books and records violations, failure to implement sufficient internal controls, *abus de biens sociaux* (misuse of company assets), and *Untreue* (breach of trust based on a failure to supervise).

2. Only those countries that have reported administrative/civil sanctions for offences related to foreign bribery have been listed under the "Administrative/Civil Sanctions for Other Offences Related to Foreign Bribery". This information was voluntarily provided by Member Countries. "Other offences related to foreign bribery" include offences falling under Articles 7 (Money Laundering) and Article 8 (Accounting) of the Convention. Examples include books and records violations, failure to implement sufficient internal controls, *abus de biens sociaux* (misuse of company assets), and *Untreue* (breach of trust based on a failure to supervise).

Additional Global Enforcement Data

As explained above, the enforcement data table includes information on the number of sanctions that have been imposed on individuals and entities in criminal, administrative and civil proceedings for the offence of foreign bribery and for failures to prevent foreign bribery as well as other offences related to foreign bribery. Parties to the Convention have also *voluntarily provided additional information* not included in the table, including: the number of ongoing investigations, ongoing criminal proceedings, and exclusions or limitations on access to public procurement contracts or benefits.

► ***Ongoing Investigations on Foreign Bribery Cases***

There are over 390 ongoing investigations in 24 Parties to the Anti-Bribery Convention. No investigation is ongoing in 5 other Parties. The 11 remaining States Parties have not provided information. It should be noted that each country has its own definition of what constitutes an investigation.

► ***Ongoing Criminal Proceedings on the Grounds of Foreign Bribery Charges***

According to the data submitted, over 142 criminal proceedings (against 130 individuals and 12 entities) are ongoing in 11 Parties. Eleven Parties have reported that no criminal proceedings are ongoing. The 18 remaining States have not provided information.

► ***Prison Sentences for Foreign Bribery***

Out of the 333 individuals sanctioned for foreign bribery under criminal proceedings, at least 87 individuals have been sentenced to prison terms in 13 Parties.

MONITORING COMPLIANCE AND IMPLEMENTATION OF THE CONVENTION

The Phase 3 Evaluation Process

In 2010, the Working Group began a new, third cycle of peer review. The Phase 3 evaluation process concentrates on the following pillars: progress made by Parties on weaknesses identified in Phase 2; issues raised by changes in domestic legislative or institutional frameworks since Phase 2; enforcement efforts and results; implementation of the new 2009 Recommendation for further Combating Foreign Bribery; and as well as other Group-wide, cross-cutting issues, such as corporate liability and mutual legal assistance (which are of course also required by the Convention). The Phase 3 round of evaluations will take five years, with all States Parties to the Convention evaluated by the mid-2015 with the exception of Latvia. As a new Party to the Convention, Latvia underwent Phase 1 Review in June 2014.

Elements of a Phase 3 Evaluation

The Phase 3 round of country monitoring evaluations focuses closely on enforcement of the Convention, the 2009 Anti-Bribery Recommendation and related instruments, as well as outstanding recommendations made during previous rounds of monitoring. A typical Phase 3 evaluation includes:

- the appointment of two countries to act as lead examiners;
- an assessment of replies by the country being evaluated to an evaluation questionnaire and supplementary questions targeting country-specific issues;
- a three-day, on-site visit by the lead examiners and members of the Secretariat to the country being evaluated;
- consideration of the examiners' draft report by the Working Group on Bribery;
- adoption by the Working Group of the evaluation report, including recommendations, on country performance, which is then published in its entirety online; and at least two follow-up stages – an oral progress report on implementing the Working Group's recommendations one year after adoption of the Phase 3 Report, and a written progress report two years after adoption of the Report. The Working Group may also determine if further steps are necessary in the event of continued non implementation.

The purpose of Phase 3 is to ensure Parties' compliance with the Convention and implementation of the 2009 Recommendation and other related instruments. Monitoring also provides an opportunity to consult on difficulties in implementation and learn from the experiences and best practices of other Parties. It should improve Parties' undertakings in this field using a dynamic process of mutual evaluation and peer pressure.

Key Monitoring Actions in 2013

In 2013, the Working Group on Bribery reached its halfway point in its Phase 3 round of evaluations. Each of the countries that underwent a Phase 3 evaluation will provide a written follow-up report in two years' time to report on steps taken to implement recommendations made by the Working Group in the evaluation reports. Summaries of the reports adopted on Belgium Czech Republic, Denmark, Ireland, New Zealand, Poland, and Portugal are included in Annex 2. Russia underwent Phase 2 monitoring in 2013. The Report revealed that Russia has yet to address key provisions of the OECD Anti-Bribery Convention, which entered into force in Russia in April 2012. It has not yet fully implemented Phase 1 recommendations for strengthening its framework for combating foreign bribery and should be more proactive in detecting, investigating and prosecuting foreign bribery cases.

**OECD Working Group on Bribery:
Phase 1, 2 & 3 Reviews and Related Regular Follow-up Reports in 2013**

| | |
|---|--|
| Phase 3 evaluations | <ul style="list-style-type: none"> • Czech Republic (March) • Denmark (March) • Poland (June) • Portugal (June) • Belgium (October) • New Zealand (October) • Ireland (December) |
| Regular one-year Phase 3 oral follow-up reports ³ | <ul style="list-style-type: none"> • United Kingdom (March) • Hungary (March) • Slovak Republic (June) • Greece (June) • France (October) • Australia (December) • Austria (December) |
| Regular two-year Phase 3 written follow-up reports ⁴ | <ul style="list-style-type: none"> • Bulgaria (March) • Canada (March) • Germany (March) • Luxembourg (June) • Norway (June) • Japan (December) |
| Exceptional Phase 3 additional report ⁵ | <ul style="list-style-type: none"> • Sweden: One-year written follow-up report (June) • Iceland: Post-written follow-up eighteen months [oral/written] report (June) • Italy: Six-month written report [on statute of limitations] (June) • Finland: Post-written follow-up one-year written report (October) • The Netherlands: One-year written follow-up report (December) • Spain: One-year written follow-up report |
| Phase 2 evaluation | <ul style="list-style-type: none"> • Russia (October) |

3. Under the Phase 3 Monitoring Information Resources, "the Working Group may determine that the evaluated country should be required to report orally in 12 months on any specific recommendation(s) or follow-up issue(s)."

4. Under the Phase 3 Monitoring Information Resources, "within 24 months of the adoption of the [Phase 3] report, the evaluated country will submit a written report explaining the steps it has taken concerning the Phase 3 recommendations and follow-up issues." For further information on the Phase Reviews, and conclusions of the Working Group on implementation of the see www.oecd.org/bribery.

5. The Working Group may require an evaluated country to take additional steps, which include (i) submitting a follow-up report six months after its Phase 3; (ii) submitting its regular one-year follow-up in writing instead of orally; or (iii) submitting an additional oral or written report six months or a year after its regular two-year Phase 3 written follow-up report, and regularly thereafter.

| Working Group on Bribery Phase 3 Evaluation Schedule | |
|---|--|
| Country Evaluated | Phase 3 Review by the Working Group |
| Finland | October 2010 |
| United States | October 2010 |
| Iceland | December 2010 |
| Germany | March 2011 |
| Bulgaria | March 2011 |
| Canada | March 2011 |
| Norway | June 2011 |
| Luxembourg | June 2011 |
| Mexico | October 2011 |
| Korea | October 2011 |
| Switzerland | December 2011 |
| Italy | December 2011 |
| Japan | December 2011 |
| United Kingdom | March 2012 |
| Hungary | March 2012 |
| Greece | June 2012 |
| Sweden | June 2012 |
| Slovak Republic | June 2012 |
| France | October 2012 |
| Australia | October 2012 |
| Austria | December 2012 |
| Spain | December 2012 |
| Netherlands | December 2012 |
| Czech Republic | March 2013 |

| | |
|--------------|---------------|
| Denmark | March 2013 |
| Poland | June 2013 |
| Portugal | June 2013 |
| Belgium | October 2013 |
| New Zealand | October 2013 |
| Ireland | December 2013 |
| Slovenia | June 2014 |
| South Africa | March 2014 |
| Chile | March 2014 |
| Turkey | October 2014 |
| Brazil | October 2014 |
| Estonia | June 2014 |
| Argentina | December 2014 |
| Israel | June 2015 |

THE GLOBAL FIGHT AGAINST FOREIGN BRIBERY

Strengthening Global Relations

The strength of the Anti-Bribery Convention rests on the engagement with major economic players to create a fair, level playing field. In 2013, the Working Group adopted an updated global relations strategy which identifies not only countries for potential accession to the Convention; but also, countries with which working relations would be mutually beneficial. The revised strategy includes provisions for countries of interest that partially meet the criteria for accession to attend WGB meetings as “participants”. The category of “invitee” granted on an ad hoc basis continues as in previous years although on a more limited basis. By working with countries on different levels, the WGB helps non Parties to understand the benefits of joining the Working Group, adherence to the Convention and the reforms and measures needed for eventual accession.

The Minister of Justice and Human Rights of Peru, the Honourable Daniel Augusto Figallo Rivadeneyra, attended the plenary meeting of the WGB in October 2013 to describe efforts by Peru to fight corruption, and steps taken to accede to the Convention based upon recommendations from the Working Group. These steps, clear indications of Peru’s commitment to meet the requirements for eventual accession, contributed to the WGB inviting Peru to become the first Participant country as described under the WGB’s new criteria (regular observer) in the Working Group in March 2014.

► **China**

China attended one of the four meetings of the Working Group on Bribery in March 2013. The Chinese delegation was led by the Ministry of Supervision, which plays a key role in China on matters concerning bribery and corruption, and also often includes representatives from the Ministry of Foreign Affairs.

The OECD and members of the Working Group on Bribery have worked with China in planning a high-level anti-corruption workshop planned for 2014 in the context of China’s presidency of APEC. The workshop will include exchange of knowledge and expertise between the WGB and China on combating foreign bribery. In February 2011, China amended its Criminal Law to establish a criminal offence of bribing non-PRC

government officials and officials of international public organisations. The new offence came into force on 1 May 2011.

► **India**

India continued the dialogue with the Working Group on Bribery and participated in three WGB meetings in 2013. Representatives of the Ministry of Personnel, Central Vigilance Commission and Central Bureau of Investigation highlighted the benefits of India's engagement with the OECD, and thanked the OECD for its comments on India's foreign bribery bill. At each meeting, India presented its recent developments in combating foreign bribery, including the status of the Prevention of Bribery of Foreign Public Officials and Officials of International Organisations Bill (2011). While this Bill lapsed in Parliament in early 2014, a new Bill is currently being drafted and is expected to be re-introduced to Parliament as soon as possible. The OECD is continuing to provide assistance to India in this regard. India attended the meeting and seminar of the ADB/OECD Anti-Corruption Initiative in July 2013.

► **Indonesia**

Indonesia attended three of the WGB's four meetings in 2013. Representatives from the Indonesian Corruption Eradication Commission (KPK) provided updates to the Group on progress drafting a bill to make the bribery of foreign public officials a criminal offence under Indonesian law. KPK officials also participated in the December 2012 meeting of law enforcement officials. (For more information on WGB law enforcement official meetings, see page 30.) In April 2013, the Secretariat of the WGB held an informal meeting in Jakarta with the KPK and the Ministry of Foreign Affairs to discuss Indonesia's progress in enacting a foreign bribery offence.

Indonesia attended the meeting and seminar of the ADB/OECD Anti-Corruption Initiative in July 2013.

► **Malaysia**

Malaysia has attended WGB meetings since 2010 and attended one of the four meetings of the WGB in 2013. Led by the Malaysian Anti-Corruption Commission (MACC), the Malaysian delegation provided an update on the implementation of its foreign bribery offence, which came into force in 2009, and other anti-corruption activities.

Malaysia attended the meeting and seminar of the ADB/OECD Anti-Corruption Initiative in July 2013.

► **Thailand**

Thailand maintained its close working relationship with the WGB in 2013. Thailand attended two of the WGB's four meetings in 2013 where it was represented by the Thai National-Anti-Corruption Commission (NACC).

In March 2013, Thailand hosted meetings between officials of the NACC, Ministry of Foreign Affairs, Ministry of Justice, Thai Research Study Commission and the OECD Anti-Corruption Division. The meetings were to provide technical assistance to Thailand in drafting legislation that would criminalise foreign bribery. A seminar for the private-sector organised jointly by the NACC and the OECD was run concurrently. The seminar raised awareness of the risks of foreign bribery and highlighted the need for a foreign bribery offence.

Thailand attended the meeting and seminar of the ADB/OECD Anti-Corruption Initiative in July 2013.

► **G20 Support on Fighting Foreign Bribery**

The 2010 Seoul G20 Anti-Corruption Action Plan called on G20 countries to strengthen their laws and measures for fighting foreign bribery and, for those G20 countries not Party to the Convention, to engage with the OECD Working Group on Bribery or to ratify the Convention. The G20's focus on foreign bribery in the 2013-2014 Action Plan has helped to strengthen this call for action on foreign bribery and also add impetus to the WGB's ongoing engagement with China, India, and Indonesia. Specifically, the 2013-2014 G20 Anti-Corruption Action Plan calls on G20 governments to:

Recognising the importance of our commitments to tackle foreign bribery, we will continue in our efforts to adopt and enforce laws and other measures against foreign bribery, which will include establishing the liability of legal persons. We will continue our active engagement on a voluntary basis with the OECD Working Group on Bribery with a view to ensuring the high standards of criminalisation and enforcement of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and exploring adherence to the Convention.

The OECD and the Working Group on Bribery actively contribute to and support the work of the G20 Anti-Corruption Working Group and are encouraged by the adoption in 2013 by G20 Leaders in St. Petersburg G20 Guiding Principles on Enforcement of the Foreign Bribery Offence, as well as G20 Guiding Principles to Combat Solicitation.

Recognising the necessity of a strong partnership among government, business and civil society to fight corruption, the OECD and the G20 Russian Presidency, along with support from the UN Office on Drugs and Crime (UNODC) organised a high level conference in April 2013 at the OECD headquarters in Paris. Participants from G20 governments, business and civil society groups examined best practices for combating corruption, with a particular focus on: promoting transparency and integrity in organising sport and other major events and on cutting-edge measures for governments and business to combat corruption.

GLOBAL RELATIONS ACTIVITIES: REGIONAL PROGRAMMES

Foreign bribery is an international problem that needs international co-operation if it is ever to be eradicated. This is why the WGB engages in an ongoing dialogue with a wide range of non-members around the world both bilaterally and through regional anti-corruption initiatives. This co-operation is guided by the principle of dissemination and promotion of the values contained in the Anti-Bribery Convention and the WGB's experience in peer review evaluation.

The Anti-Corruption Network for Eastern Europe and Central Asia

Established in 1998, the main objective of the Anti-Corruption Network for Eastern Europe and Central Asia (ACN) is to support its member countries in their efforts to prevent and fight corruption. It provides a regional forum for the promotion of anti-corruption activities, the exchange of information, elaboration of best practices and donor coordination via regional meetings and seminars, peer-learning programmes, and thematic projects.

► ***Istanbul Anti-Corruption Action Plan: third round of monitoring***

The Istanbul Action Plan (IAP) is a sub-regional peer-review programme launched in 2003 in the framework of the ACN. It supports anti-corruption reforms in Armenia, Azerbaijan, Georgia, the Kyrgyz Republic, Kazakhstan, Mongolia, Tajikistan, Ukraine and Uzbekistan through country reviews and continuous monitoring of implementation of recommendations. IAP supports the implementation of the UN Convention against Corruption (UNCAC) and other international standards and best practice.

In 2013 began a new, third round of monitoring under this programme. It takes a comprehensive approach covering anti-corruption policies, criminalisation, and the prevention of corruption and focuses closely on practical implementation, enforcement and effectiveness of anti-corruption measures. In December 2012, the ACN Steering Group adopted the methodology and the schedule for the third round of monitoring as part of the ACN Work Programme 2013–2015.

► *Monitoring of Azerbaijan and Georgia*

Azerbaijan and Georgia were the first countries to undergo the third round of monitoring. Their reports were adopted at the ACN meeting in Paris in September 2013.

- The IAP report on Azerbaijan commends the Government for introducing important reforms since the last review in 2010, including the adoption of several laws against corruption and the strengthening of the Anti-Corruption Prosecution Department. The report also highlights positive aspects of Azerbaijan's efforts to fight corruption, such as the simplification and modernisation of administrative procedures. To build on this progress, the report recommends that the Azerbaijan Government improve its capacity to enforce the new anti-corruption laws, and ensure law enforcement has the resources to prosecute complex corruption crimes.
- The IAP report on Georgia highlights positive aspects of Georgia's efforts to fight corruption and the significant progress achieved over the past decade. Georgia was the first IAP country to introduce liability of legal persons for corruption in 2006 and its legislation has mostly been aligned with international standards. To further strengthen Georgia's capacity to combat corruption, the report calls on the Georgian Government to reform civil service regulations and take measures to avoid political influence on civil servants; to reinforce the Anti-Corruption Council to ensure effective implementation of the Anti-Corruption Strategy and Action Plan.



Participants of the ACN Plenary Meeting, Paris, September 2013

► ***Cross-country Thematic Studies***

ACN thematic studies under its Work Programme for 2013-2015 provide analytical support to the ACN countries in addressing common challenges and developing best practices to guide countries in their anti-corruption reforms in three thematic areas: prevention of corruption in public sector; criminalisation of corruption; and business integrity. Thematic studies will result in comparative cross-country reports and seminars.

In 2013, an expert seminar was held on “Prevention of Corruption: Effective Measures and their Practical Implementation: Institutional and Sectoral Approaches” on 26-27 June 2013 in Jurmala, Latvia. The seminar brought together 65 participants representing 23 countries. ACN co-organised the meeting with the OSCE and the UNDP.

In 2013, the ACN Secretariat, in co-operation with the OECD Public Integrity Network, developed a study on ethics training for public officials. This study identifies the main trends in how ethics training is currently provided in ACN countries and in several OECD countries. In March 2013, the Regional School for Public Administration - a regional

institution for the Western Balkans - organised training for its target countries using this ACN study.

The ACN also published the second edition of the report "Specialised Anti-Corruption Institutions: Review of Models". The updated report contains an overview of international standards and common features and trends in anti-corruption institutions. It also includes 19 case studies.

Another report, "Anti-Corruption Reforms in Eastern Europe and Central Asia: Progress and Challenges, 2009-2013" analyses the progress and challenges in fighting corruption in Eastern Europe and Central Asia during the second round of monitoring, in 2008-2012. The report provides an in-depth analysis of anti-corruption policies and institutions, criminalisation of corruption and measures to prevent corruption, highlights best practice cases and provides recommendations for future action.

► **ACN Law Enforcement Network**

The ACN Law Enforcement Network provides a framework for investigators, prosecutors and other law-enforcement practitioners to meet and to discuss practical questions related to investigation and prosecution of corruption offences, to learn from each other about modern investigation and prosecution methods, and to establish professional contacts. It is drawing on the experience of the OECD Working Group on Bribery. The Law Enforcement Network operates through regular seminars (at least once a year). The thematic study on criminalisation of corruption will be developed in coordination with this Network.

► **Evaluation of ACN activities**

The evaluation of the ACN activities is a new element of the ACN Work Programme for 2013–2015 and will consist of two parts: (1) an internal evaluation by the Steering Group, including questionnaires from the Secretariat sent to National Coordinators, experts and partners which was launched in 2013; and (2) a mid-term external evaluation, to be conducted by external consultants in the second half of 2014. The evaluation report with the recommendations for improvements should be ready for the second half of the ACN Work Programme for 2013-2015.

ADB/OECD Anti-Corruption Initiative for Asia and the Pacific

Launched in 1999, the Asian Development Bank / OECD Anti-Corruption Initiative for Asia and the Pacific serves as a regional forum for supporting national and multilateral efforts to reduce corruption in Asia and the Pacific. The Initiative focuses on assisting its 31 member countries and jurisdictions with the proper implementation of the UN Convention against Corruption.

► *Afghanistan joins the Initiative*

In May 2013, Afghanistan became the 31st member of the ADB/OECD Initiative after endorsing the Initiative's Anti-Corruption Action Plan for Asia and the Pacific. As a Member of the Initiative, Afghanistan has agreed to recognise the need for action against corruption and the benefits of sharing knowledge and experience across borders; to take steps to implement anti-corruption measures; to commit to undertake reforms to implement the Initiative's "Strategic Principles", which focus on implementation of the UNCAC; and to participate in the Initiative's review mechanisms.

► *ADB/OECD Initiative 18th Steering Group Meeting and 12th Regional Seminar*

The Anti-Corruption Commission of Timor-Leste hosted the 18th Steering Group meeting and the 12th Regional Seminar of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific from 23-25 July 2013. The Initiative's Steering Group comprise representatives of the Initiative's member governments and defines the Initiative's priorities and activities to support the members' anti-corruption reforms. From 23-24 July, the Steering Group meeting included reports by ADB/OECD Initiative countries and organisations involved in anti-corruption on their progress in combating corruption, as well as a meeting with representatives from the private sector and civil society in the region. Members considered a Secretariat discussion paper assessing the Initiative's implementation of the Strategic Principles in 2010-2013, highlighting issues for consideration by the members, and proposing improvements moving forward. In particular, the Initiative will explore alternatives to self-reporting and better mechanisms to disseminate the expertise of the Initiative.

The 12th Regional Seminar of the ADB/OECD Initiative followed in Dili, Timor-Leste on 24-25 July 2013. The event was hosted by the Government of Timor-Leste. The first part of the seminar addressed

whistleblowing and whistleblower protection in light of recent international attention, and the remainder of the seminar focused on strengthening anti-corruption authorities.

Joint OECD/AfDB Initiative to Support Business Integrity and Anti-Bribery Efforts in Africa

The OECD/AfDB Initiative to Support Business Integrity and Anti-Bribery Efforts in Africa aims to work with African countries to strengthen their efforts to fight the bribery of public officials in business transactions and to improve corporate integrity and accountability. In support of these objectives, the Initiative in 2013 worked to raise awareness of the Initiative's Course of Action for business Integrity and Anti-Bribery Efforts in Africa among partner governments and organizations in the region and internationally, such as Interpol and the European Commission's European Anti-Fraud Office, OLAF. The Course of Action sets out a number of specific and concrete steps that the Initiative countries have agreed to undertake in their anti-bribery and business integrity efforts.

The Joint Initiative is now working on an Anti-Bribery Guidance & Compliance Handbook aimed at preventing bribery of public officials in business transactions. This will be the first ever anti-bribery practical guidance of its kind tailored specifically to the corruption risk profiles of participating countries as a whole. It will draw on best practices from the OECD, the AfDB, Joint Initiative member countries, business associations and civil society, as well as from OECD Working Group on Bribery countries.

OECD – Latin American Anti-Corruption Programme

The OECD-Latin America Anti-Corruption Programme, with the Organisation of American States (OAS) and WGB members from the region (Argentina, Brazil, Chile, Colombia and Mexico), aims to strengthen the implementation and enforcement of international and regional anti-corruption conventions in Latin America, including the OAS Inter-American Convention against Corruption, the UN Convention against Corruption, and the OECD Anti-Bribery Convention. The Programme provides an opportunity to share with Latin American countries best practices that emerged in the framework of the Working Group on Bribery. In return, the experience of the Latin American countries enriches the policy debate in the OECD.

► **Ninth Latin American Regional Conference**

From 7 to 8 March 2013, the *Regional Meeting on the Responsibility of the Private Sector in the Fight against Corruption* was held in Bogotá, Colombia. The event was the product of collaboration between Colombia's Transparency Secretariat, InterAmerican Development Bank (IDB), OAS, OECD, Program for Social Cohesion in Latin America (EUROSociAL) and UN Development Program (UNDP). The conference brought together participants and experts from over 20 countries and focused on four main issues: i) the liability of legal persons, ii) whistleblowing and whistleblower protection, particularly in the private sector; iii) international standards and instruments to promote corporate ethics and compliance programmes, and iv) listings and registers (ethical conduct and integrity).



Colombian Secretary of Transparency, Rafael Merchán, opening the Ninth Latin American Regional Conference, Bogotá, March 2013.

| Participants in Regional Anti-Corruption Initiatives | |
|---|---|
| Anti-Corruption Network for Eastern Europe and Central Asia ⁶ | ADB/OECD Anti-Corruption Initiative for Asia-Pacific |
| <ul style="list-style-type: none"> • Albania • Armenia • Azerbaijan • Belarus • Bosnia and Herzegovina • Bulgaria • Croatia • Estonia • Georgia • Kazakhstan • Kyrgyz Republic • Latvia • Lithuania • Liechtenstein • Former Yugoslav Republic of Macedonia • Moldova • Mongolia • Montenegro • Romania • Russian Federation • Serbia • Slovenia • Switzerland • Tajikistan • Turkey • Turkmenistan • Ukraine • United Kingdom • United States • Uzbekistan | <ul style="list-style-type: none"> • Afghanistan • Australia • Bangladesh • Bhutan • Cambodia • People's Republic of China • Cook Islands • Fiji Islands • Hong Kong, China • India • Indonesia • Japan • Republic of Kazakhstan • Republic of Korea • Kyrgyz Republic • Macao, China • Malaysia • Mongolia • Nepal • Pakistan • Republic of Palau • Papua New Guinea • Philippines • Samoa • Singapore • Solomon Islands • Sri Lanka • Thailand • Timor Leste • Vanuatu • Vietnam |

6. Bulgaria, Estonia, Liechtenstein, Slovenia, Switzerland, Turkey, United Kingdom, United States participate in their capacity as donors.

| OECD/AfDB Initiative to Support Business Integrity and Anti-bribery Efforts in Africa ⁷ | OECD-Latin America Anti-Corruption Programme |
|--|---|
| <ul style="list-style-type: none"> • Benin • Burkina Faso • Cameroon • Ethiopia • Ghana • Kenya • Madagascar • Malawi • Mali • Mauritania • Mozambique • Niger • Nigeria • Rwanda • Senegal • Sierra Leone • South Africa • Tanzania • Uganda • Zambia | <ul style="list-style-type: none"> • Argentina • Antigua & Barbuda • Bahamas (Commonwealth) • Barbados • Belize • Bolivia • Brazil • Canada • Chile • Colombia • Costa Rica • Dominica • Dominican Republic • Ecuador • El Salvador • Grenada • Guatemala • Guyana • Haiti • Honduras • Jamaica • Mexico • Nicaragua • Panama • Paraguay • Peru • St Kitts & Nevis • St Lucia • St. Vincent & Grenadines • Suriname • Trinidad and Tobago • United States • Uruguay • Venezuela |

7. Initial membership, which reflects the 20 countries studied in the *Stocktaking Report of Business Integrity and Anti-Bribery Legislation, Policies and Practices in Twenty African Countries*.

MAKING THE FIGHT AGAINST FOREIGN BRIBERY INCLUSIVE: WORKING GROUP ON BRIBERY'S ENGAGEMENT WITH PARTNERS

Work with partner International Organizations

The Anti-Bribery Convention is the only international instrument primarily focusing on the supply side of the bribery of foreign public officials in international business transactions. The OECD is the logical venue for such a focus, given that its members comprise most of the world's largest economies. However, to effectively reduce foreign bribery, the demand for bribes must also be addressed. Certain other multilateral instruments support and complement the implementation of the Anti-Bribery Convention by including bribe-taking in their scope. The OECD and the Working Group collaborate regularly with these multilateral organisations that are involved in fighting the demand side of foreign bribery, in particular the UN Office on Drugs and Crime (UNODC) and the World Bank. The World Bank and the UNODC are essential partners in all of the WGB regional initiatives (see page 24) which cover 80 countries not Party to the Convention.

An example of this co-operation between the OECD and other organisations is the Anti-Corruption Ethics and Compliance Handbook developed by companies, for companies, with assistance from the OECD, the United Nations Office on Drugs and Crime (UNODC), and the World Bank. The handbook serves as a useful, practical tool for companies seeking compliance advice. It brings together, in one reference resource, the major international business guidance instruments and provides real-life case studies from companies on the application of these instruments in practice.

OECD Anti-Bribery Convention and the United Nations Convention against Corruption

The UNCAC has provided significant momentum to the global anti-corruption movement. It is open for signature to all States, covers a wide range of corrupt conduct, including the bribery of foreign public officials, and addresses important issues in addition to the criminalisation of bribery, such as prevention and asset recovery. The OECD Anti-Bribery Convention and the UNCAC are complementary and mutually supportive instruments. OECD regional initiatives support the implementation of UNCAC by sharing expertise and providing technical assistance in

its review mechanism, drafting legislation, identifying best practices. The secretariats to these two instruments met in 2013, in order to keep abreast of relevant developments and UNODC representatives participated in meetings of the Working Group.

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

The OECD Secretariat attended the 5th Conference of States Parties to the United Nations Convention against Corruption in Panama in November 2013. The OECD organised, chaired, or participated as moderators or speakers in 10 side events on a wide range of topics such as whistleblower protection; public-private partnerships to prevent bribery solicitation; and safeguarding against corruption in sporting and major events; as well as a launch event for the Anti-Corruption Ethics and Compliance Handbook for Business mentioned earlier. The UNCAC agreed to work more closely with the OECD on monitoring countries' implementation of laws criminalizing foreign bribery.

Furthermore, in all the initiatives, the World Bank and the UNODC are essential partners. Overall, the WGB regional anti-corruption initiatives, which cover 80 countries not Party to the Convention, support the implementation of UNCAC by sharing expertise and providing technical assistance in its review mechanism, drafting legislation, identifying best practices.

Ensuring the Continued Effectiveness of the Convention

The effectiveness of the Convention relies on a strong engagement with colleagues in law enforcement, the private sector and civil society.

► ***Meetings of Law Enforcement Officials***

The 2009 Anti-Bribery Recommendation instructs the Working Group to include voluntary meetings of law enforcement officials in its programme of systematic follow-up, to discuss best practices and horizontal issues relating to investigation and prosecution of the bribery of foreign public officials.

In 2013, the Working Group hosted two such meetings. The first, which took place on 10 June, included 46 officials from 26 Parties to the Convention. Six officials from three invited countries and the World Bank

Integrity Vice-Presidency participated in a part of the meeting that was open to non-Parties to the Convention. The meeting focused on two broad themes: corporate disclosure and cooperation in multijurisdictional foreign bribery cases. The impact of disclosures on multi-jurisdictional cases was discussed, including benefits and drawbacks for national investigations and the challenges that the law enforcement authorities face in obtaining cooperation from corporations in other jurisdictions, as well as possible solutions.

The second meeting of law enforcement officials was held on 9 December (International Anti-Corruption Day) and brought together 48 law enforcement officials from 25 Parties to the Convention. It focused on the topic of Article 5 of the Convention. During the meeting, law enforcement officials discussed rules and principles that apply to investigation and prosecution of foreign bribery cases, including differences in national regimes of prosecutorial discretion, various safeguards of prosecutorial independence from improper influence by concerns of a political nature, as well as other factors that contribute to the success of the enforcement efforts. In addition, a portion of the meeting was open to officials from invitee countries and international organisations and was attended by officials from India and Indonesia, and an official from the World Bank Integrity Vice-Presidency.

► ***Engagement with the Private Sector and Civil Society***

Under the 2009 Anti-Bribery Recommendation, the Working Group has a mandate to engage more closely with the private sector in the fight against foreign bribery. To this end, the private sector and civil society have continued to play an integral role in the Working Group's activities. This included continuing input to the Phase 3 evaluation on-site visits. These informal exchanges with numerous representatives of the private sector and civil society contributed to determining the impact national anti-bribery laws and enforcement actions have on behaviour.

A conference was also held at the OECD concurrent with the Working Group's December meeting in 2013 as part of a wider awareness raising initiative "Roundtable on the Impact of the OECD Anti-Bribery Convention 15 Years On", (see page 32). This event provided an opportunity to reflect on the role of the Anti-Bribery Convention and the leadership of the Working Group on Bribery, under Professor Pieth's Chairmanship while considering how to build on experiences to date for future work.

► ***Initiative to Raise Awareness of Foreign Bribery***

Launched on International Anti-Corruption Day, 9 December 2009, the Initiative came to the end of its initial three-year mandate in December 2012. However, Phase 3 has shown that the lack of awareness of the risks of foreign bribery remains a challenge to the effective implementation and enforcement of the Anti-Bribery Convention. At the Working Group meeting in December 2012, the Group renewed its commitment to raising awareness of the Convention and the crime of foreign bribery by adopting a plan of activities for 2013-2015. These activities will cover four main areas: media and public affairs activities, academic outreach, private sector outreach, and foreign bribery analysis.

The Initiative focussed on five main areas of activity in 2013:

• *Building and strengthening partnerships*

Transparency International remains a key, and much valued, partner of the Working Group on Bribery. The joint editorial “Making Sure That Bribes Don’t Pay” by Ms. Huguette Labelle and Prof. Mark Pieth commemorating the 15th Anniversary of the Convention provides a succinct history of the Convention while proposing actions to end foreign bribery by the Convention’s 20th anniversary. The editorial is available on the OECD website. Transparency International-Canada also hosted a 15th Anniversary event focusing on Canada’s implementation of the Convention.

As the International Anti-Corruption Academy matures, the Anti-Bribery Convention has become an important element in the curriculum. The OECD Secretariat gave several presentations and seminars including at the 2013 IACA Summer Academy which brought together representatives from government, civil society and the private sector of over 50 countries from all regions of the world, including countries with which the Working Group on Bribery seeks to develop stronger relations.

In 2013, the International Bar Association released its study undertaken in partnership with the OECD and the UNODC on “Anti-corruption compliance and the legal profession: The client perspective” which surveys in-house legal and compliance officers on managing the corruption risks posed by engaging external legal counsel and recommendations to help legal practitioners understand the compliance challenge brought by their clients. The OECD Secretariat also provided input to training sessions hosted by the International Bar Association on the IBA/OECD/UNODC Anti-Corruption Strategy for the Legal Profession, for example in Indonesia (www.anticorruptionstrategy.org).

- *Engaging the Private Sector*

Early in 2014, the World Economic Forum launched a community of top business leaders across industry — named the Partnering against Corruption Initiative (PACI) Vanguard — committed to being the premier global business voice advocating for a more robust anti-corruption agenda. This group of 20 CEOs builds on the more than 100 leading companies that are PACI members and have signed on to the PACI Principles for Countering Corruption. Vanguard CEOs in collaboration with the OECD, will work to support the implementation of the Anti-Bribery Convention with G20 countries and others.

Other initiatives by the Secretariat to engage a wide range of private sector stakeholders include providing a foreword in the report on a survey by the Association of Chartered Certified Accountants (ACCA) on bribery in the SME sector; input to the International Ethics Standards Board for Accountants (IESBA) guidance on reporting fraudulent acts; contribution to the UN Global Compact's Guidance on Anti-Corruption Risk Assessment.

- *Academic Engagement and Presentations*

The OECD Secretariat responded actively to over 100 requests for presentations to academia, research institutions, public officials, private sector and professional associations around the world. Contributions to support teaching about the Anti-Bribery Convention occurred either in partnership with other initiatives such as the Anti-Corruption Academic Initiative (ACAD) of UNODC or directly with academic institutions such as the New England Law School. The OECD Secretariat also hosts interns enrolled in relevant programmes to provide hands on experience of the Working Group on Bribery's monitoring and global relations activities.

Roundtable on the Impact of the OECD Anti-Bribery Convention 15 Years On



Left to right: Eugenio Maria Curia, Ambassador, Ministry of Foreign Affairs of Argentina, former negotiator of the Convention; Peter Eigen, Founding Member and Chair of the Advisory Council, Transparency International; Don Johnston, former OECD Secretary-General; Founding Partner, Heenan Blaikie; Mark Pieth, former Chair of the OECD Working Group on Bribery.

Concurrent with the December 2013 Working Group on Bribery meeting, the OECD organised a “Roundtable on the Impact of the OECD Anti-Bribery Convention 15 Years On”. High level representatives from government, business and civil society discussed not only the origins of the Convention but more importantly, the challenges of enforcing the Convention faces in the future in an increasingly global fight against foreign bribery.

The first session of the Roundtable brought together some of the founders of the Convention, such as Don Johnston, former OECD Secretary-General, Eugenio Maria Curia, Ambassador, Ministry of Foreign Affairs of Argentina, former negotiator of the Convention, Peter Eigen, Founding Member and Chair of the Advisory Council of Transparency International, and, of course, Prof. Mark Pieth. Tracing the evolution of the fight

against bribery, from “business as usual” to a gradual global acceptance of foreign bribery as a crime, panel members, and the participants, recognised that while much has been accomplished in changing mind-sets and legal frameworks, much work remains to be done.

The second session picked up the thread of discussion from the first, bringing together representatives of emerging economies to consider the enforcement of the Convention in the face of a changing global economic landscape. Representatives of India, and Thailand, who are not Parties, but with whom the Working Group on Bribery undertakes a dialogue (see pages 21-22), shared the panel with representatives from Russia, Transparency International, BIAC and the incoming Chair of the WGB, Mr. Drago Kos. The panel and participants discussed how foreign bribery persists in undermining economic growth and recovery and offered differing views on how to ensure effective enforcement providing for a rich and fruitful discussion. The Roundtable reinforced the importance and value of exchange between the private and public sectors.

WORKING GROUP ON BRIBERY SUPPORT FOR RELATED OECD ANTI-CORRUPTION INITIATIVES

Many other complementary initiatives contribute to expanding the reach and impact of the Anti-Bribery Convention and the work of the Working Group on Bribery. The G20 is one important vector for the OECD and the Working Group on Bribery to promote the criminalisation of foreign bribery (see page 24); however, other initiatives complement the goals of the Convention. These include, working in the context of OECD-wide initiatives and work.

Supporting the OECD Development Agenda

Bribery of foreign public officials in international business transactions has a negative impact on economic development and foreign bribery undermines good governance and economic development. The rigorous and comprehensive monitoring of the implementation of the Convention by the Working Group contributes to Development Agenda of the OECD by fighting foreign bribery which undermines development by diverting funds. Regional anti-corruption initiatives promote good corporate integrity and accountability which are central to the enabling environment for economic development.

Fighting Illicit Financial Flows


Drawing on its experience and expertise in fighting international bribery, the WGB contributes to design policies for curbing illicit financial flows. The performance of OECD countries under the Anti-Bribery Convention is highly relevant to reduce illicit financial flows to and from developing countries.

Integrity Week and the CleanGovBiz Initiative

In April 2013, the OECD CleanGovBiz Initiative organised the 2013 Forum on Integrity – Improving Integrity in Practice which was followed by the High-Level Anti-Corruption Conference for G20 Governments and Business, co-organised by the Russian G20 Presidency and the OECD, with support from the UN Office on Drugs and Crime (UNODC) (see page 23). The Forum brought together country officials and representatives of international organisations, business, trade and civil society to exchange and discuss best practices in implementing integrity. Participants were briefed on current OECD and partner organisations' anti-corruption

projects and covered WGB topics such as enforcement challenges relating to foreign bribery, anti-bribery typologies, and guidance on whistleblower protection.

CleanGovBiz: Integrity in Practice



The CleanGovBiz Initiative, launched in 2012, aims to integrate the different instruments that the OECD has developed to promote clean economies and bring them together into a coherent and user friendly 'Toolkit for Integrity'. The Initiative supports governments, business and civil society to build integrity and fight corruption. While it is not a project of the Working Group on Bribery, it draws together existing anti-corruption tools, including the standards of the Anti-Bribery Convention, reinforces their implementation, improves co-ordination among relevant players and monitors progress towards integrity.

OECD standards and instruments in the Initiative's 'Toolkit for Integrity' include:

- Recommendation of the Council on Regulatory Policy and Governance
- Recommendation on Competition Assessment
- Recommendation Concerning Effective Action against Hard Core Cartels
- Convention on Mutual Administrative Assistance in Tax Matters
- Bribery Awareness Handbook for Tax Examiners
- Convention on Combating Bribery of Foreign Public Officials in International Business Transactions
- Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions
- Good Practice Guidance on Internal Controls, Ethics and Compliance
- Recommendation on Bribery and Export Credits
- Principles of Corporate Governance

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- Guidelines for Multinational Enterprises
 - Principles for Transparency and Integrity in Lobbying
 - Guidelines for Managing Conflict of Interest in the Public Service
 - Principles for Managing Ethics in the Public Service
 - Public Sector Integrity: A Framework for Assessment
 - Principles for Enhancing Integrity in Public Procurement
 - Recommendation on Anti-Corruption Proposals for Aid Funded Procurement
 - Principles for Donor Action on Anti-Corruption
 - Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas
 - Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones

Using the Integrity Toolkit, an Integrity Scan of Tunisia was undertaken. The resulting report was presented to the Prime Minister of Tunisia on June 21, 2013 and provided an overview of the state of anti-corruption and integrity in thirteen different policy areas, including criminalising foreign bribery. The report also detailed practical recommendations and best practices on how to build integrity and combat corruption. Additional Integrity Scans are planned within the context of OECD's country programmes and regional anti-corruption networks. For more information on the CleanGovBiz Initiative, www.oecd.org/cleangovbiz.

APPENDIX 1: PARTIES TO THE CONVENTION

| Country | Deposit of instrument of ratification/ acceptance/ approval | Entry into force of the Convention | Entry into force of implementing legislation |
|--------------------|---|------------------------------------|--|
| Argentina | 8 February 2001 | 9 April 2001 | 10 November 1999 |
| Australia | 19 October 1999 | 18 December 1999 | 17 December 1999 |
| Austria | 20 May 1999 | 19 July 1999 | 1 October 1998 |
| Belgium | 27 July 1999 | 25 September 1999 | 3 April 1999 |
| Brazil | 24 August 2000 | 23 October 2000 | 11 June 2002 |
| Bulgaria | 22 December 1998 | 15 February 1999 | 29 January 1999 |
| Canada | 17 December 1998 | 15 February 1999 | 14 February 1999 |
| Chile | 18 April 2001 | 17 June 2001 | 8 October 2002 |
| Colombia | 20 November 2012 | 19 January 2013 | 14 November 2012 |
| Czech Republic | 21 January 2000 | 21 March 2000 | 9 June 1999 |
| Denmark | 5 September 2000 | 4 November 2000 | 1 May 2000 |
| Estonia | 14 December 2004 | 12 February 2005 | 1 July 2004 |
| Finland | 10 December 1998 | 15 February 1999 | 1 January 1999 |
| France | 31 July 2000 | 29 September 2000 | 29 September 2000 |
| Germany | 10 November 1998 | 15 February 1999 | 15 February 1999 |
| Greece | 5 February 1999 | 15 February 1999 | 1 December 1998 |
| Hungary | 4 December 1998 | 15 February 1999 | 1 March 1999 |
| Iceland | 17 August 1998 | 15 February 1999 | 30 December 1998 |
| Ireland | 22 September 2003 | 21 November 2003 | 26 November 2001 |
| Israel | 11 March 2009 (accession instrument) | 10 May 2009 | 21 July 2008 |
| Italy | 15 December 2000 | 13 February 2001 | 26 October 2000 |
| Japan | 13 October 1998 | 15 February 1999 | 15 February 1999 |
| Korea | 4 January 1999 | 15 February 1999 | 15 February 1999 |
| Latvia | 31 March 2014 | 30 May 2014 | 21 March 2014 |
| Luxembourg | 21 March 2001 | 20 May 2001 | 11 February 2001 |
| Mexico | 27 May 1999 | 26 July 1999 | 18 May 1999 |
| Netherlands | 12 January 2001 | 13 March 2001 | 1 February 2001 |
| New Zealand | 25 June 2001 | 24 August 2001 | 3 May 2001 |
| Norway | 18 December 1998 | 15 February 1999 | 1 January 1999 |
| Poland | 8 September 2000 | 7 November 2000 | 4 February 2001 |
| Portugal | 23 November 2000 | 22 January 2001 | 9 June 2001 |
| Russian Federation | 17 February 2012 | 17 April 2012 | 16 May 2011 |
| Slovak Republic | 24 September 1999 | 23 November 1999 | 1 November 1999 |
| Slovenia | 6 September 2001 (accession instrument) | 18 August 2007 | 27 April 2004 |
| South Africa | 19 June 2007 (accession instrument) | 30 July 2000 | 1 May 2000 |
| Spain | 14 January 2000 | 14 March 2000 | 2 February 2000 |
| Sweden | 8 June 1999 | 7 August 1999 | 1 July 1999 |
| Switzerland | 31 May 2000 | 30 July 2000 | 1 May 2000 |
| Turkey | 26 July 2000 | 24 September 2000 | 11 January 2003 |
| United Kingdom | 14 December 1998 | 15 February 1999 | 14 February 2002 |
| United States | 8 December 1998 | 15 February 1999 | 10 November 1998 |

APPENDIX 2: EXECUTIVE SUMMARIES OF PHASE 3 MONITORING REPORTS

Belgium

The Phase 3 report on Belgium by the OECD Working Group on Bribery in International Business Transactions (Working Group) evaluates and makes recommendations on Belgium's implementation and enforcement of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Convention) and related instruments. Phase 3 focuses on key Group-wide (horizontal) issues, in particular enforcement and practical application of the Convention. It also examines country-specific (vertical) issues on progress made in addressing shortcomings identified in Belgium's Phase 2 evaluation in 2005 or issues arising from changes in Belgium's legislative and institutional framework.

The Working Group is disappointed by the lack of priority Belgium gives to the fight against bribery of foreign public officials by Belgian individuals and companies. It is seriously concerned by the flagrant lack of resources of the Belgian authorities in charge of investigations, prosecutions and sentencing in these cases, which, in some foreign bribery cases, leads to investigations not being opened, cases being closed and the expiry of the statute of limitations. Although investigations are ongoing in six foreign bribery cases and a prosecution has commenced in another, not a single Belgian national or company has ever been prosecuted in a foreign bribery case to date. The Working Group is also concerned that the Belgian authorities take into account factors such as exceeding a 'reasonable time limit', which is shorter than the statutory limitation period, in decisions to open investigations or at sentencing stage in foreign bribery cases. The Working Group notes that the Belgian authorities have jurisdiction to prosecute cases involving fraud against the European Union, including corruption, and that this amounts to a very significant workload that is not accounted for by an increase in resources. The lack of sufficient investigative means, the length of procedures and the short timeframe for exceeding a 'reasonable time limit' have serious consequences for Belgium's ability to implement the Convention. This is even more alarming, given the Belgian law enforcement authorities' evident lack of proactivity, demonstrated by their stated policy of not opening investigations following foreign bribery allegations contained in mutual legal assistance (MLA) requests and by the fact that they are disinclined to initiate foreign bribery cases in the absence of a formal referral. In this respect, foreign bribery allegations involving Belgian

natural and legal persons are not reported by Belgian embassies and diplomatic missions abroad.

In addition, the Belgian legal framework for combating foreign bribery is of significant concern to the Working Group. Belgian law relating to liability of legal persons has not been modified since Phase 2, despite a recommendation from the Group in this regard. The lack of clarification of the requirement for attributing the mental element of the foreign bribery offence and the application of the principle of mutually exclusive liability between the natural and legal persons hinder enforcement of corporate liability. Furthermore, applicable penalties are not effective, proportionate and dissuasive, particularly in relation to legal persons. Additional sanctions such as debarment from public procurement appear difficult to apply in practice, given the absence of a criminal record for legal persons. Belgium's approach to exercising extraterritorial jurisdiction in foreign bribery cases could create difficulties for the full implementation of the Convention. Finally, in terms of detection, the Working Group regrets that recently adopted legislation in the area of whistleblower protection does not extend to public and private sector employees who report suspected acts of foreign bribery to the competent authorities.

On the other hand, the Working Group welcomes the progress made by Belgium since Phase 2. On 6 May 2013 the Brussels Court of Appeal confirmed the first conviction in Belgium of natural and legal persons for the foreign bribery offence. However, the Belgian natural and legal persons involved in the foreign bribery in this case were not prosecuted. Following the enactment of the Law of 11 March 2007, Belgian legislation explicitly prohibits the tax deductibility of secret commissions by companies and awareness-raising measures have been undertaken by the tax administration. The Working Group also notes with satisfaction the clarifications made by this law, to private persons performing a public service role, in order to conform to the provisions of Article 1 of the Convention. The Group also welcomes the active role played by the Belgian financial intelligence unit (CTIF) in the detection of bribery cases and notes the increase in the number of CTIF reports to the Public Prosecutor's Office involving the predicate offence of foreign bribery.

The report and its recommendations reflect findings of experts from France and Switzerland and were adopted by the Working Group on 11 October 2013. The Phase 3 Report is based on legislation, regulations and other documents provided by Belgium, along with information obtained by the evaluation during its three-day on-site visit to Brussels from 24 to 26 April 2013, during which the team met representatives

of the Belgian federal administration, private sector and civil society. Belgium will provide a written report on recommendations 2, 3(a), 3(b), 4(a), 4(b), 6 and 13(a) in one year (i.e. October 2014). The Working Group invites Belgium to submit a written follow-up report on the implementation of all recommendations in two years (i.e. October 2015).

Czech Republic

The Phase 3 report on the Czech Republic by the OECD Working Group on Bribery evaluates and makes recommendations on the Czech Republic's implementation and enforcement of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments. The report considers country-specific (vertical) issues arising from changes in the Czech Republic's legislative and institutional framework, as well as progress made since the Czech Republic's Phase 2 evaluation. The report also focuses on key Group-wide (horizontal) issues, particularly enforcement.

The Working Group on Bribery welcomes the adoption by the Czech Republic of a comprehensive corporate liability regime, and is hopeful that this will contribute to more effective enforcement of the foreign bribery offence. However, the Working Group considers that foreign bribery enforcement could be much enhanced by engaging with key actors. In particular, the Working Group is concerned by the regrettably low level of awareness of the foreign bribery risks in the Czech Republic. Of serious concern was the complete absence of representatives from Czech companies at the on-site visit, which indicates a serious deficiency in the engagement between the Czech government and the Czech private sector. Similarly, there is a lack of awareness among auditors and accountants of their reporting obligations, and a lack of adequate compliance programmes to address the risks of foreign bribery among Czech companies. To further enhance detection and prevention, the Working Group also recommends that the Czech Republic proceed promptly with its intention to adopt adequate protection for whistleblowers.

The report identifies further areas for improvement. With regards to prosecutorial independence, the Working Group is concerned that possible political pressures over prosecutorial decisions, may indirectly influence investigations and prosecutions for foreign bribery. With respect to the recently introduced procedure on agreements on guilt and punishment, the Working Group considers that significant aspects of such agreements should be publicised, including the natural and legal persons involved, the reasons why the agreement was appropriate

and terms of the agreement, in order to increase accountability, raise awareness, and enhance public confidence.

The report also notes positive developments. The UOKFK and the HPPD, the principal units responsible for investigating and prosecuting foreign bribery, appear well-armed to investigate foreign bribery adequately, and foreign bribery training for the police is included in the general training on corruption. The Czech Republic has also taken measures to improve the level of expertise in the area of confiscation of proceeds of crime, and there has been a steep increase in confiscation in bribery cases. The Czech Republic is also commended for its initiatives to train and assist prosecutors and judges in the field of mutual legal assistance. The Czech Republic has yet to record a conviction or prosecution for foreign bribery. Of the three foreign bribery allegations brought to light, two investigations are ongoing, and one could not be prosecuted due to the absence of corporate liability at the time of the offence. The Working Group is hopeful that the enforcement framework in place will allow the Czech authorities to effectively pursue the investigations underway, as well as any future foreign bribery cases.

The Report and its recommendations reflect findings of experts from Iceland and South Africa, and were adopted by the Working Group on 14 March 2013. It is based on legislation and other materials provided by the Czech Republic and research conducted by the evaluation team. The report is also based on information obtained by the evaluation team during its three-day on-site visit to Prague on 23-26 October 2012, during which the team met representatives of the Czech Republic's public and private sectors, legislature, judiciary, and civil society. Within one year of the Working Group's approval of this report, the Czech Republic will make a follow-up report on its implementation of certain recommendations. It will further submit a written report on the implementation of all recommendations within two years.

Denmark

The Phase 3 report on Denmark by the OECD Working Group on Bribery evaluates and makes recommendations on Denmark's implementation and enforcement of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments. The report considers country-specific (vertical) issues arising from changes in Denmark's legislative and institutional framework, as well as progress made since Denmark's Phase 2 evaluation. The report also focuses on key Group-wide (horizontal) issues, particularly enforcement.

While the Working Group welcomes Denmark's recent efforts to implement the Convention, it has serious concerns about the lack of enforcement of the foreign bribery offence. Only 13 foreign bribery allegations have surfaced, and sanctions have been imposed in just one case that falls within Article 1 of Convention. The lone case that was prosecuted resulted in a settlement with a company, but not for foreign bribery. The individuals responsible for the crime escaped prosecution. Of the nine remaining cases that have been terminated without prosecution, several were closed without adequate investigation or sufficient efforts to secure foreign evidence. The Working Group thus recommends that SØIK thoroughly investigate and prosecute foreign bribery allegations. SØIK should routinely and promptly co-ordinate with foreign law enforcement authorities, and make greater efforts to obtain evidence from these authorities. Foreign bribery cases should be investigated and prosecuted even in the absence of parallel investigations in foreign jurisdictions. Both natural and legal persons in the same case should be prosecuted whenever appropriate. Denmark should enhance the usage of, and train law enforcement authorities on, the corporate liability provisions in foreign bribery cases. The guidelines on corporate prosecutions should be revised to eliminate several ambiguities. Denmark should also review its overall approach to foreign bribery enforcement.

The report identifies additional areas for improvement. The Working Group is very concerned that many of Denmark's Phase 2 recommendations remain unimplemented. It therefore reiterates its earlier recommendation that Denmark promptly increase the maximum sanctions available for foreign bribery and false accounting. In addition, it should take immediate and conclusive steps to ensure that its small facilitation payments defence is clearly defined, has the force of law, and is consistent with Article 1 of the Convention. The government should send a co-ordinated and consistent message to the private sector to prohibit or discourage the making of small facilitation payments. Appropriate measures to protect whistle-blowers in the public and private sectors are needed. The Working Group is extremely disappointed that Denmark has not extended the Convention to Greenland and the Faroe Islands. Denmark should adopt a concrete roadmap to rectify this deficiency as a matter of priority.

The report also highlights positive aspects of Denmark's efforts to fight foreign bribery. The Working Group is encouraged by mechanisms for obtaining bank and tax information, and that secrecy rules have not posed difficulties in SØIK's investigations. Efforts have been taken to raise awareness of foreign bribery and to promote corporate social responsibility. The Working Group also notes that suspicious money

laundering transaction reports have increased and sanctions have been imposed for failure to report.

The Report and its recommendations reflect findings of experts from Finland and the Slovak Republic, and were adopted by the Working Group on 15 March 2013. It is based on legislation and other materials provided by Denmark and research conducted by the evaluation team. The report is also based on information obtained by the evaluation team during its three-day on-site visit to Copenhagen on 25-27 September 2012, during which the team met representatives of Denmark's public and private sectors, legislature, judiciary, and civil society. Within one year of the Working Group's approval of this report, Denmark will make a follow-up report on its implementation of certain recommendations. It will further submit a written report on the implementation of all recommendations within two years.

Ireland

The Phase 3 Report on Ireland by the OECD Working Group on Bribery evaluates and makes recommendations on Ireland's implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Anti-Bribery Convention) and related instruments. This Report focuses on developments since Ireland's Phase 2 evaluation in March 2007, taking into account other Phase 2 monitoring steps, including Ireland's Phase 2*bis* evaluation in December 2008, and Written Follow-up Report in March 2010. It also addresses cross-cutting horizontal issues that are routinely covered in each country's Phase 3 evaluation.

The Working Group has serious concerns that Ireland has not prosecuted a foreign bribery case in the twelve years since its foreign bribery offence came into force. Ireland is currently investigating one case and assessing three. The Working Group is concerned that Ireland has taken few proactive investigative steps in these cases. This appears to be due to inadequate resources to detect and investigate foreign bribery cases, due to their depletion by the investigation of non-bribery cases related to the financial sector. The Working Group therefore recommends that Ireland urgently reorganise law enforcement resources in a manner that credible allegations of foreign bribery will be investigated and prosecuted in a timely and effective manner. The Group also recommends that Ireland consider how to apply cost effective and simple detection and investigative steps at the earliest opportunity.

Ireland's two foreign bribery offences in separate statutes, which contain certain inconsistencies, including the level of sanctions, have still not been consolidated and harmonised in a way that is in compliance with Article 1 of the Anti-Bribery Convention. Additionally, corporate liability for the foreign bribery offence, which only embodies the common law 'identification theory' of liability, and was previously assessed as inadequate by the Working Group, remains unchanged since Phase 2. As a result of these continuing weaknesses in Ireland's legal framework for criminalising foreign bribery, the Working Group recommends that Ireland consolidate and harmonise the two foreign bribery offences without further delay, and review corporate liability with a view to codifying it and expanding it to fully comply with the Good Practice Guidance in Annex 1 of the 2009 Anti-Bribery Recommendation. The Working Group considers that the Draft Scheme of the Criminal Justice Corruption Bill 2012 could be a suitable vehicle to address these issues, and notes that the Irish Government has indicated its interest in receiving recommendations that could contribute to this legislative process.

Further recommendations by the Working Group regarding enforcement include the need for Ireland to take proactive and concrete steps, as a matter of priority, to determine whether there is a link to Ireland in credible allegations of Irish companies and individuals bribing abroad. Ireland is also recommended to strengthen its anti-money laundering system for the purpose of detecting foreign bribery cases and supporting the investigation and prosecution of such cases, and enforcing its offence of money laundering where the proceeds of foreign bribery are involved. Recommendations on preventing and detecting foreign bribery include the need for Ireland to raise awareness in the private sector about the importance of adopting effective internal controls, ethics and compliance measures, as set out in the OECD Good Practice Guidance in Annex II of the OECD 2009 Anti-Bribery Recommendation. The priority of more closely engaging with the private sector was underlined by the participation of only one company in the on-site visit to Ireland by the lead examiners. Moreover, the Working Group recommends that Ireland establish procedures to facilitate the reporting of suspicions of foreign bribery by public sector employees, including employees of DFAT and trade promotion and development aid agencies, and raise greater awareness in the public and private sectors of such channels, as well as whistleblower protections available for those who make reports. Ireland also needs to harmonise its current whistleblower protections, which are confusing and exist in a plethora of statutes. The draft Protected Disclosures Bill could address this challenge.

The Working Group commends Ireland in certain areas. Ireland has broadened the forms of bribes covered by the foreign bribery offence in POCA 2010. The categories of foreign public officials covered by the offence in POCA 2010 now also include persons acting on behalf of international organisations in which Ireland is not a member. Furthermore, Ireland now has jurisdiction over foreign bribery offences in POCA 2010 committed abroad by Irish companies and nationals. The sanctions for false accounting offences have been increased under the Companies Act 1990. It is now an offence under the Criminal Justice Act 2011 to fail to report information to AGS that would help prevent the commission of an offence by another person. In addition, DFAT has been raising awareness among its staff of this reporting obligation, and Irish Aid, which is part of DFAT, now considers prior convictions of foreign bribery in its contracting decisions.

The Report and the Recommendations, which reflect the findings of the lead examiners from the United Kingdom and Estonia, are adopted by the OECD Working Group on Bribery on 13 December 2013. Ireland is invited to report back in writing within one year on implementation of the following recommendations: 1(a) on the foreign bribery offence, 2(a) and (b) on corporate liability for the foreign bribery offence, and 5 on enforcement. In accordance with the normal procedure, a further written follow-up report on progress implementing the recommendations will be given within 2 years. The Working Group will closely re-examine foreign bribery enforcement efforts when Ireland makes its one-year Phase 3 written follow-up report in December 2014, and two-year written follow-up report in December 2015.

This report is based on the laws, regulations and other materials submitted by Ireland and information obtained by the lead examiners during their three-day on-site visit to Dublin from 24-26 June 2013, during which they met with representatives of Ireland's public administration, private sector and civil society.

New Zealand

The Phase 3 report on New Zealand by the OECD Working Group on Bribery evaluates and makes recommendations on New Zealand's implementation and enforcement of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments. The report considers country-specific (vertical) issues arising from changes in New Zealand's legislative and institutional framework, as well as progress made since New Zealand's Phase 2

evaluation. The report also focuses on key Group-wide (horizontal) issues, particularly enforcement.

While the Working Group welcomes New Zealand's recent efforts to implement the Convention, it has serious concerns about the lack of enforcement of the foreign bribery offence. Since becoming a Party to the Convention in 2001, New Zealand has not prosecuted any foreign bribery cases. Only four foreign bribery allegations have surfaced. New Zealand opened its first investigations into two of these allegations in July 2013. The Working Group recommends that New Zealand significantly increase its efforts to investigate and prosecute foreign bribery, including by providing practical training to law enforcement authorities on the foreign bribery offence. It further recommends that New Zealand continue to routinely and promptly coordinate with foreign law enforcement authorities and make efforts to obtain evidence from abroad. The Working Group is also very concerned that a number of key recommendations from Phase 2 remain unimplemented. In particular, it reiterates its earlier recommendation that New Zealand broaden its criteria for the liability of legal persons to allow for the effective prosecution of such entities for foreign bribery.

The report identifies additional areas for improvement. With regard to the foreign bribery offence, New Zealand should remove or amend the dual criminality exception and clarify the routine government action (facilitation payments) exception. The low number of foreign bribery allegations raises concerns on the levels of awareness, reporting and detection. There are further concerns that outdated perceptions that New Zealand individuals and companies do not engage in bribery may undermine detection efforts. However, as the Serious Fraud Office (SFO) agrees, the low number of allegations is not a reflection that New Zealand is immune from foreign bribery. The Working Group therefore recommends that New Zealand enhance its awareness-raising efforts and ensure that suspicions of foreign bribery are reported to competent authorities, including by auditors and tax examiners. Effective enforcement also goes hand in hand with effective, proportionate and dissuasive sanctions; in this regard, the range of sanctions available for foreign bribery in New Zealand may be insufficient. In addition, New Zealand should promptly ensure that under no circumstances are foreign bribe payments tax-deductible.

The report also notes positive developments. The Working Group commends New Zealand's progress on confiscation and welcomes the establishment of a new civil-based asset confiscation scheme, as well as the creation of the Police Asset Recovery Unit. It also commends

New Zealand for adopting a comprehensive whistleblower protection law and for efforts made to encourage and facilitate whistleblowing. The Working Group welcomes the entry into force of the new AML/CFT regime, and the recent steps taken by New Zealand to review its mutual legal assistance (MLA) framework to ensure incoming requests are effectively addressed. It is also encouraged by the planned legislative steps to address some of the above-mentioned loopholes in its foreign bribery offence.

The report and its recommendations reflect findings of experts from Israel and Korea, and were adopted by the Working Group on 10 October 2013. It is based on legislation and other materials provided by New Zealand and research conducted by the evaluation team. The report is also based on information obtained by the evaluation team during its three-day on-site visit to Auckland and Wellington on 22-24 April 2013, during which the team met representatives of New Zealand's public and private sectors, and civil society. The Working Group invited New Zealand to submit a written report in six months on progress made in establishing the liability of legal persons for foreign bribery and every six months thereafter, if needed. As well, as part of its regular Phase 3 evaluation process, the Working Group invited New Zealand to report orally on its implementation of recommendations 2, 4a, 4b, 4c, 11a, 11b and 11c in one year (i.e., by October 2014). It will further submit a written report on the implementation of all recommendations within two years. New Zealand is further invited to provide detailed information in writing on its foreign bribery-related enforcement actions when it submits these two reports.

Poland

The Phase 3 Report on Poland by the OECD Working Group on Bribery (WGB) evaluates and makes recommendations on Poland's implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Convention) and related instruments. The report focuses on developments since Poland's Phase 2 review in January 2007, and takes into account Poland's Phase 2 Written Follow-Up Report in October 2009. It also addresses cross-cutting horizontal issues that are routinely covered in each country's Phase 3 review.

The WGB regrets that Poland has not successfully prosecuted a foreign bribery case in the twelve and a half years since its foreign bribery offence came into force. Poland is currently prosecuting one case of

bribery of foreign public officials. Two investigations of allegations of foreign bribery were terminated; both involved allegations of bribery of foreign public procurement authorities by SOEs in sensitive sectors. A third allegation of bribery of a foreign public procurement authority in a sensitive sector has not been investigated. The WGB also observes that due to increasing international business activities by Polish companies, the risk of foreign bribery could increase in the medium to long term. Unimplemented and partially implemented Phase 2 recommendations at the time of Poland's Phase 2

Unimplemented and partially implemented Phase 2 recommendations at the time of Poland's Phase 2 Written Follow-Up Report still have not been fully implemented. These include recommendations on the "impunity" provision in the foreign bribery offence, the effectiveness of the liability of legal persons, and the tax treatment of bribe payments. Further, Poland has not implemented the recommendation to consider amending the cap on fines for legal persons; instead, Poland has decreased the level of fines from PLN 20 million (around EUR 5 million) to PLN 5 million (around EUR 1.2 million).

In the current report, the WGB recommends that Poland take measures to ensure that the "impunity" provision in the Penal Code that applies to foreign and domestic bribery cannot be applied to the bribery of foreign public officials. This provision allows perpetrators of bribery to automatically escape punishment by notifying the law enforcement authorities of the offence before the authorities learn about it from other sources. Such a provision might also have an impact on the effectiveness of the liability of legal persons, the provision of mutual legal assistance and extradition. The WGB also recommends that Poland take urgent steps to eliminate a requirement for the conviction or discontinuance of proceedings against a natural perpetrator in order to be able to institute proceedings for foreign bribery against a legal person. In addition, the WGB recommends that Poland establish an investigation and prosecution strategy for foreign bribery cases to address concerns about whether adequate resources and expertise are available to effectively investigate and prosecute highly complex cases, and the extraordinary length of proceedings for corruption cases in Poland.

The WGB makes further recommendations to Poland in a number of areas for preventing foreign bribery. For instance, Poland needs to raise greater awareness of the risk of foreign bribery and the relevance of the foreign bribery offence in the general public, accounting and auditing profession, industry, including SOEs, FIU and entities subject to money

laundering reporting requirements, and among institutions involved in public procurement contracting, including ODA-funded procurement contracting. Poland needs to reform its law on whistleblower protections, which are not clearly stated in the law or contained in any statutory provisions expressly for this purpose. The WGB also recommends that Poland's public procurement and official export credit support authorities consider systematically checking whether applicants and contractors have been included on the publicly available debarment lists of international financial institutions for the purpose of triggering enhanced due diligence. Finally, as the tax law does not contain a clear statement that bribes to foreign public officials are not tax-deductible, the WGB recommends that Poland clarify this matter.

The Working Group commends Poland in certain areas. The on-site visit involved excellent participation by the private sector and civil society. The WGB welcomes Poland's efforts to train law enforcement authorities on asset recovery. Poland has also made significant efforts to raise awareness in the tax administration on the detection of bribes in the course of tax inspections. The WGB commends the Polish authorities for their efficient and effective response to mutual legal assistance requests concerning foreign bribery and active cooperation with foreign jurisdictions.

The Report and the Recommendations, which reflect the findings of the lead examiners from Argentina and Turkey, are adopted by the OECD Working Group on Bribery on 14 June 2013. Poland is invited to present its enforcement strategy for foreign bribery in writing one year from adoption of this report. The WGB also requests that the strategy address in writing the recommendation on the application of the "impunity" provision in the Penal Code to foreign bribery cases, and the recommendations on the liability of legal persons and the prevention and detection of foreign bribery through tax measures. At the same time, in accordance with the normal procedure, Poland will provide on oral report on implementation of recommendation 3c) on sanctions for legal persons. In accordance with the normal procedure, a further written follow-up report on progress implementing the recommendations will be given within 2 years.

This report is based on the laws, regulations and other materials submitted by Poland and information obtained by the lead examiners during their three-day on-site visit to Warsaw from 5 to 7 February 2013, during which the lead examiners met with representatives of Poland's public administration, private sector and civil society.

Portugal

The Phase 3 report on Portugal by the OECD Working Group on Bribery evaluates and makes recommendations on Portugal's implementation and enforcement of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments. The report considers country-specific (vertical) issues arising from changes in Portugal's legislative and institutional framework, as well as progress made since Portugal's Phase 2 evaluation. The report also focuses on key Group-wide (horizontal) issues, particularly enforcement.

The Working Group is seriously concerned that Portugal's enforcement of the foreign bribery offence has been extremely low. Despite Portugal's strong economic links to countries plagued by severe corruption, only 15 foreign bribery allegations have surfaced since 2001. Of similar concern is that these allegations have not resulted in a single prosecution to date. Several investigations were closed prematurely. Portuguese authorities did not proactively investigate or seek the co-operation of foreign authorities in several cases. The Working Group thus recommends that Portugal review its overall approach to enforcing its foreign bribery laws. Portugal should take steps to ensure that foreign bribery investigations are not prematurely closed, and seek the assistance of foreign authorities where appropriate. Portugal should gather information more proactively from diverse sources at the pre-investigative stage both to increase sources of allegations and enhance investigations. Concerns about low enforcement are exacerbated by the risk that foreign bribery cases may be influenced by factors prohibited under Article 5 of the Convention. Several of Portugal's foreign bribery allegations involve high-level foreign officials and/or major Portuguese companies and their executives. Portugal should adopt heightened vigilance to address this concern.

The report identifies additional areas for improvement. Portuguese companies and media have an alarmingly low level of awareness of and interest in the fight against foreign bribery. Portugal should further raise awareness and promote corporate compliance programmes to prevent foreign bribery. Greater efforts need to be made to detect, prevent and prosecute money laundering by politically exposed persons, especially those from jurisdictions with pervasive corruption and close economic ties to Portugal. Foreign diplomatic missions have in several instances not informed Portuguese prosecutors of allegations of foreign bribery committed by Portuguese companies or individuals that were widely reported in the local media. Steps must be taken to ensure reporting occurs in practice. Whistleblower protection in the public and private

sectors also need to be strengthened. Corporate liability for foreign bribery should be extended to state-owned or controlled enterprises.

The report also notes positive developments. Portugal has maintained the resource levels for key law enforcement bodies despite government-wide austerity measures. It has issued a circular to address the allocation and referral of foreign bribery cases among law enforcement bodies. It has taken some steps to improve co-operation on MLA with other countries, though more should be done. The use of seizure before trial has increased. The foreign bribery offence and related legislation have been improved, though certain provisions still raise some questions. Law enforcement's access to bank information has been improved. Confidential expenses under tax legislation have been disallowed. Portugal has also created a database of criminal convictions of legal persons.

The report and its recommendations reflect findings of experts from Bulgaria and the Netherlands and were adopted by the Working Group on 14 June 2013. It is based on legislation and other materials provided by Portugal and research conducted by the evaluation team. The report is also based on information obtained by the evaluation team during its on-site visit to Lisbon on 12-14 February 2013, during which the team met representatives of Portugal's public and private sectors, legislature, judiciary, civil society, and media. Within one year of the Working Group's approval of this report, Portugal will provide a written follow-up report on its implementation of certain recommendations, and on its foreign bribery investigations and prosecutions. It will further submit a written report on the implementation of all recommendations, and foreign bribery investigations and prosecutions, within two years. The Working Group will take appropriate measures throughout this process, including the possibility of a Phase 3bis evaluation, should Portugal have failed to take steps to adequately address its recommendations.

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OECD Working Group on Bribery

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