

OECD Working Group on Bribery



OECD WORKING GROUP ON BRIBERY 2011 ANNUAL REPORT

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MESSAGE FROM THE SECRETARY-GENERAL



Angel Gurría
Secretary-General



The OECD was created more than 50 years ago to foster international economic cooperation and development. By exchanging government know-how and best practices and through a pioneering system of peer pressure, it has been helping countries produce better policies for better lives, as well as international standards for a stronger, cleaner and fairer global economy. The Anti-Bribery Convention is one of the clearest examples of how the OECD fulfils this mission worldwide.

This Convention is one of the world's most powerful tools to promote more transparent international business practices. It sets the highest and toughest standards for fighting bribery in business. Bribing public officials in international business transactions is a crime that distorts markets, undermines good governance and, at the end of the day, hurts the world's most vulnerable. Proper implementation and active enforcement of the Convention can help countries save billions of dollars and improve public services by increasing competition and transparency in their public procurement systems.

This is ever more important today, as we enter the fifth year of the global crisis and governments make efforts to do more with less, while companies that provide these governments with goods and services have to operate in tighter markets facing greater competition. The importance of fighting bribery and corruption has been recognized as a top global priority by the G20 leaders, who have been promoting action

on this front through instruments like the Anti-Bribery Convention, the UN Convention against Corruption and the G20 Anti-Corruption Action Plan.

And they have good reasons to support these tools. The Anti-Bribery Convention has been quite effective. According to enforcement data from March 2011, since the Convention entered into force (in 1999), nearly 210 individuals and 90 entities have been sanctioned under criminal proceedings for foreign bribery in 14 Parties. And there are approximately 300 ongoing investigations in 26 Parties.

One of the main reasons behind the effectiveness of this Convention is the OECD method of peer reviews, administered by the Working Group on Bribery (WGB), the longest-standing intergovernmental body focused on foreign bribery. The WGB has a responsibility to ensure that its 40 participating governments lead by example. The Working Group recognises this responsibility and its commitment to meeting the standards in the Convention remains as strong as ever.

Nowhere is this more evident than in the practice of its rigorous country evaluations. In 2011, no less than 10 countries were evaluated by the Working Group. The focus in this round of evaluations was enforcement. The Working Group's reports have identified shortcomings and made recommendations to effectively investigate and prosecute foreign bribery cases.

It is always encouraging to see a community of governments, like that in the WGB, working well together, with a common goal and delivering tangible results. It is even more gratifying when others join this community with the same goal in mind.

The Working Group has recently welcomed two new members: Russia and Colombia. In 2011, China, India, Indonesia, Malaysia, Peru, and Thailand participated in Working Group meetings. We also welcomed partner governmental, nongovernmental and business organisations to our discussions, including the Council of Europe, the Extractive Industries Transparency Initiative (EITI), Transparency International, the UN Office on Drugs and Crime, the World Bank, and others. These signs of greater relevance tell a story of successful multilateral cooperation. They reveal that inclusive and effective global governance is possible, especially when we have the right platform, the right tools and strong and skilful leadership like the one provided by Mark Pieth, the Chairman of the WGB.

The following report provides more examples of how the WGB has helped us maintain the highest global standard in the fight against corruption in global business. It reflects the difficulties but also the great benefits of being a Party to the OECD Anti-Bribery Convention. We must keep building on this important progress as we look ahead to 2012. We have a duty to help achieve a stronger, cleaner and fairer global economy and eradicating bribery will be a huge step in that direction.



MESSAGE FROM THE CHAIR, OECD WORKING GROUP ON BRIBERY



Mark Pieth
*Chairperson, OECD Working
Group on Bribery*

Since 2011, the Working Group on Bribery took a number of important steps to take the fight against foreign bribery forward: We completed the first full year of new Phase 3 country monitoring reports, two new countries joined the Working Group on Bribery, and we welcomed observers from governments of major emerging economies around the globe. We were also encouraged by progress made in implementation of the G20 Anti-Corruption Action Plan, which calls on G20 countries to engage with the Working Group on Bribery and to adhere to the OECD's anti-bribery standards.

These significant developments underline the ever-growing importance and relevance of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Since its entry into force in 1999, the Anti-Bribery Convention has remained one of the most powerful international instruments for combating cross-border bribery in business, thanks in large part to the Working Group's rigorous peer review mechanism. By their actions—and not just their words—the States Parties have shown that they remain committed to the standards enshrined in the Convention.

This year, the Working Group adopted 10 Phase 3 reports on: Bulgaria, Canada, Germany, Italy, Japan, Korea, Luxembourg, Mexico, Norway and Switzerland. These reports are the first to review Parties' implementation of the 2009 Recommendation on Further Combating Bribery of Foreign Public Officials in International Business Transactions, which introduces new measures for strengthening countries' capacity to prevent, detect and prosecute allegations of foreign bribery.

The reports are also the first to evaluate how Parties are promoting among their private sectors the new Anti-Bribery Recommendation's Annex II, the Good Practice Guidance on Internal Controls, Ethics and Compliance, which is the first guidance of its kind to be adopted at

an intergovernmental level. The Guidance helps companies prevent corruption in their business dealings. It includes those fundamental elements that, at a minimum, should make up the heart of any effective anti-corruption compliance programme. Including these instruments as a focal point in this round of evaluations will, we hope, lead to their recognition as global standards for effectively combating bribery in business.

With the first full year of the Phase 3 evaluations complete, we can take a moment to reflect on what this exercise shows. First, the reports show that we remain serious about our work. Recommendations remain tough, targeted and focused on action. Active anti-bribery enforcement is absolutely essential to ensuring the continued relevance and effectiveness of the Convention. The reports and this year's updated enforcement data show that, while there has been progress, more must be done. As of December 2011, 298 companies and individuals have been sanctioned for foreign bribery. We expect these figures to increase, with 300 investigations ongoing and as our two new members—Colombia and Russia—begin developing their enforcement figures.

Above all, these reports help us keep the standards in the Convention alive. And, they help us to identify practical steps we should be taking to actively go after this form of corruption. While, sometimes, these lessons may be difficult to learn, they are important. And, we hope that our experiences can benefit others by sharing these lessons with our friends and partners who join us at our meetings and in our anti-bribery events around the world.

This includes our partners in the G20, who, in 2011, completed the first full year of implementing the G20 Anti-Corruption Action Plan. The Plan endorses and supports the Working Group on Bribery's efforts to step up the global fight against foreign bribery and to more closely engage with governments of major emerging economies that are not Party to the Anti-Bribery Convention. We look forward to continuing to work with the G20 Anti-Corruption Working Group through 2012, under the co-leadership of Mexico and the United Kingdom.

In short, we have led a full and productive agenda in 2011. As always, there is room for improvement. As Chair of the Working Group on Bribery, I am confident that 2012 will be no less productive or less challenging. We must earn our reputation as one of the toughest and most expert bodies tackling foreign bribery.

A handwritten signature in black ink, appearing to read "Neil". The signature is written in a cursive, slightly slanted style.

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 Anti-Bribery Convention is the only legally binding instrument globally to focus on the supply of bribes to foreign public officials. All Convention countries must make foreign bribery of public officials a criminal offence. They are obligated to investigate and, where appropriate, prosecute those who offer, promise or give bribes to foreign public officials and to subject those who bribe to heavy penalties. They are also required to deny the tax deductibility for such bribes.

Under the Convention, individuals and companies can also be prosecuted when third parties are involved in the bribe transaction, such as when someone other than the official who was bribed receives the illegal benefit, including a family member, business partner, or a favourite charity of the official. Foreign bribery is also a crime under the Convention even if such corruption is tolerated in the foreign country. If an illegal bribe 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.

More than a decade after the Convention's entry into force, 298 companies and individuals have faced criminal sanctions for the bribery of foreign public officials in international business deals. Sixty-six of those individuals have gone to jail. Approximately 300 investigations are ongoing.

By joining the Convention, countries agree to criminalize foreign bribery. Corrupt behaviour is in no one's interest. It distorts competitive markets; it undermines good governance; and, worst of all, it ends up hurting the world's poorest and most vulnerable.

Working Group on Bribery: Facts and Figures

- As of December 2011, there were 38 Parties to the Convention: the 34 OECD members, plus Argentina, Brazil, Bulgaria, and South Africa.
- In 2011, Colombia and Russia became the 39th and 40th Members of the Working Group on Bribery and will join the Convention in 2012.
- Together, the 40 Working Group on Bribery Members account for nearly 80 percent of world exports.
- The 40 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 countries' implementation of their Convention obligations and better prevent, detect, investigate and prosecute allegations of foreign bribery.

For example, the Anti-Bribery Recommendation calls on Convention countries to establish whistleblower reporting mechanisms and protections for public and private sector employees, and to periodically review their policies and approaches on small facilitation payments. Convention countries are also recommended to ensure their 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. Under the Anti-Bribery Recommendation, Convention countries should also enhance cross-border cooperation on foreign bribery investigations and prosecutions. The new Recommendation also provides guidance on establishing effective corporate liability for foreign bribery.

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 Working Group on Bribery on International Business Transactions (December 2011)

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 anti-corruption 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.

WORKING GROUP DATA ON ENFORCEMENT OF THE ANTI-BRIBERY CONVENTION

Highlights from the Working Group on Bribery Enforcement Data, as of December 2011

- 210 individuals and 90 entities have been sanctioned under criminal proceedings for foreign bribery in 14 States Parties between the time the convention entered into force in 1999 and the end of 2011.
- At least 66 of the sanctioned individuals were sentenced to prison for foreign bribery.
- At least 43 individuals and 92 entities have been sanctioned in criminal, administrative and civil cases for other offences related to foreign bribery, such as money-laundering or accounting in four States Parties.
- Approximately 300 investigations are ongoing in 26 States Parties to the Anti-Bribery Convention. Criminal charges have been laid against 158 individuals and 13 entities in 13 Parties.

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. This year, the Parties have again agreed to publish official data for the 2011 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 information provided on 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). In 2011, 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 accounting misconduct related to foreign bribery.

In Short: Working Group on Bribery Enforcement Data

Note to the reader: This data has been compiled and published by the OECD Secretariat on the basis of statistics, data and information provided by the States Parties to Convention in order to provide a realistic picture of the level of enforcement in the jurisdiction of each of the States Parties. 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 mis-categorisation of certain offences. However, the responsibility for the provision and accuracy of information rests solely with the individual Parties.

To date, all States Parties to the Convention have provided enforcement data. According to data as of December 2011, 210 individuals and 90 entities have been sanctioned under criminal proceedings for foreign bribery in 14 States Parties between the time the Convention entered into force in 1999 and the end of 2011. Out of these 14 States Parties, seven have sanctioned both companies and individuals, one has sanctioned only a company, and six have sanctioned only individuals.

According to the data, at least 66 of the sanctioned individuals were sentenced to prison for foreign bribery. Five States Parties have also

sanctioned individuals or legal persons for accounting misconduct related to foreign bribery.

Approximately 300 investigations are ongoing in 26 States Parties to the Anti-Bribery Convention.

Methodology and Content of the Comparative Table of Enforcement Data Collected from the 38¹ States Parties to the Anti-Bribery Convention – Decisions on Foreign Bribery Cases from 1999 to December 2011

What the Table includes

The Table below contains all data that the States Parties to the Anti-Bribery Convention have agreed to provide on a *mandatory* basis as part of the data-collection exercise on the enforcement of the Anti-Bribery Convention 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 the offence of foreign bribery, failures to prevent a proven case of bribing a foreign public official, or other offences related to the bribery of a foreign public official (Articles 1, 2, 7 and 8 of the Anti-Bribery Convention) in the 38 States Parties to the Anti-Bribery Convention from its entry into force to December 2010.

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 cooperation 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 sanctions for the commission of the offence of bribing a foreign public official and for failures to prevent a proven case of bribing a foreign public official, *not* other offences that might also apply to this form of conduct in certain circumstances, such as trading in influence or United Nations embargo violations. The Table also does not record sanctions that may have been ordered in

1. As of December 2011, there were 38 States Parties to the Anti-Bribery Convention. In April 2012, Russia became the 39th State Party to the OECD Anti-Bribery Convention. Colombia joined the Working Group on Bribery in 2011 and will also accede to the Convention in 2012.

the 38 States Parties to the Convention against foreign public officials for receiving bribes, as this offence is not covered by the Anti-Bribery Convention. Finally, the Table does not include data from Russia and Colombia because the Anti-Bribery Convention was not in force during the entire 2011 calendar year for these Parties.

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 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

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.

Readers should also note that, while the Table tracks data back to 1999—the year the Convention entered into force—a number of States 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 38 States Parties to the Anti-Bribery Convention

Decisions on Foreign Bribery Cases from 1999 to December 2011¹

Country	Date of latest information supplied	% share of world exports (2011) 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 2011	0.4	0	0	0	0
Australia	December 2011	1.5	0	0	0	0
Austria	December 2008	1.1	0	0	0	0
Belgium ³	December 2011	2.0				
Brazil	December 2009	1.3	0	0	0	0
Bulgaria	December 2011	0.1	1	0	0	0
Canada	March 2009	2.4	0	2	0	0
Chile	December 2011	0.4	0	0	0	0
Czech Republic	December 2011	0.7	0	0	1	0
Denmark	December 2011	0.8	0	0	0	0
Estonia	December 2011	0.1	0	0	0	0
Finland	December 2011	0.5	0	0	0	0
France	December 2011	3.4	4	0	2 ⁴	0
Germany	December 2011	8.2	14 (plus 59 agreed sanctions) ⁵	0	0	0
Greece	December 2011	0.3	0	0	0	0
Hungary	December 2011	0.6	26	0	0	0
Iceland	December 2011	0.04	0	0	0	0
Ireland	December 2011	1.1	0	0	0	0
Israel ⁶	December 2011	0.4	0	0	0	0
Italy	December 2011	2.9	10, including 9 plea agreements ⁷	3, all plea agreements ⁷	2	0
Japan	December 2011	4.1	6	1	0	0
Korea	December 2011	2.9	16	4	0	0
Luxembourg	December 2011	0.4	0	0	0	0
Mexico	December 2010	1.7	0	0	0	0
Netherlands	December 2011	3.2	0	0	1	0
New Zealand	December 2011	0.2	0	0	0	0
Norway	December 2011	0.9	5	1	2	0
Poland	December 2011	1.1	0	0	0	0
Portugal	June 2009	0.4	5	0	0	0
Slovak Republic	December 2011	0.4	0	0	0	0
Slovenia	December 2011	0.2	0	0	0	0
South Africa	December 2011	0.5	0	0	0	0
Spain	December 2011	2.1	0	0	0	0
Sweden	December 2011	1.2	2	0	0	0
Switzerland ⁸	December 2011	1.5	1	1	1	0
Turkey	December 2011	0.8	0	0	1	0
United Kingdom	December 2011	3.6	3	2	0	0
United States ⁹	December 2011	9.6	58, including 22 plea agreements	28 plea agreements (+ 48 DPAs/NPAs ¹⁰)	1	0
TOTAL	December 2011	63.24	151 persons sanctioned, including 22 plea agreements (plus 59 agreed sanctions)	42 legal persons sanctioned, including 30 plea agreements (+ 48 DPAs/NPAs)	11	0
ADMINISTRATIVE AND CIVIL CASES ¹¹			Sanctioned		Found Not Liable	
			I	LP	I	LP
Germany	December 2011	8.2	0	3	0	0
Japan	December 2011	4.1	0	1	0	0
United States ¹²	December 2011	9.6	39 settlements ¹³	51, including 50 settlements ¹³	0	0
TOTAL	December 2011		39 settlements	55 (including 50 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 mis-categorisation of certain offences. However, the responsibility for the provision and accuracy of information rests solely with the individual Parties.

2 Export data provided by OECD Economic Outlook No. 90 (December 2011).

3 Belgium reported that it had several convictions of individuals and legal persons for foreign bribery to report, but was not able to provide specific data at this stage, as data on domestic and foreign bribery cases have not, to date, been counted separately.

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

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

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 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.

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

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

12 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.

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

New in 2011: Tables with Voluntary Data on Cases for Other Offences Related to Foreign Bribery

What the data includes

For the first time this year, 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, 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. The Working Group has chosen to include this new information in this year's annual report in order to reflect States Parties' efforts to fight the crime of foreign bribery with as wide an array of legal means as possible.

Methodology used and limits

For the purposes of completing the voluntary data tables below, cases have been counted per person. 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
France	December 2011	3.4	3	0		
Germany	December 2011	8.2	6	0	0	0
United Kingdom	December 2011	3.6	0	1	0	0
United States	December 2011	9.6	4, including settlements	14, including settlements	2	0
TOTAL			13, including settlements	15, including settlements	2	0

ADMINISTRATIVE/CIVIL SANCTIONS FOR OTHER OFFENCES RELATED TO FOREIGN BRIBERY ²			Sanctioned		Found Not Liable	
			I	LP	I	LP
Germany	December 2011	8.2	1	0	0	0
United Kingdom	December 2011	3.6	0	6	0	0
United States	December 2011	9.6	42, including settlements	86, including settlements	0	0
TOTAL			43, including settlements	92, 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 devise and maintain a system of internal controls, *abus de biens sociaux* (misuse of company assets), and 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 devise and maintain a system of internal controls, *abus de biens sociaux* (misuse of company assets), and 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 a proven case of bribing a foreign public official as well as other offences related to foreign bribery. States 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 300 ongoing investigations in 26 States Parties to the Anti-Bribery Convention (more than 150 in one State Party, between 15 and 50 in 5 States Parties, between 5 and 10 in 4 States Parties, and fewer than 5 in 16 States Parties). No investigation is ongoing in 3 other States 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 170 criminal proceedings (against 158 individuals and 13 entities) are ongoing in 13 States Parties. Nine States Parties have reported that no criminal proceedings are ongoing. The 18 remaining States Parties have not provided information.

► **Prison Sentences for Foreign Bribery**

Out of the 210 individuals sanctioned for foreign bribery under criminal proceedings, at least 66 individuals have been sentenced to prison terms in 9 States 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 States 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. It is expected that the Phase 3 round of evaluations will take four years, with all States Parties to the Convention evaluated by the end of 2014.

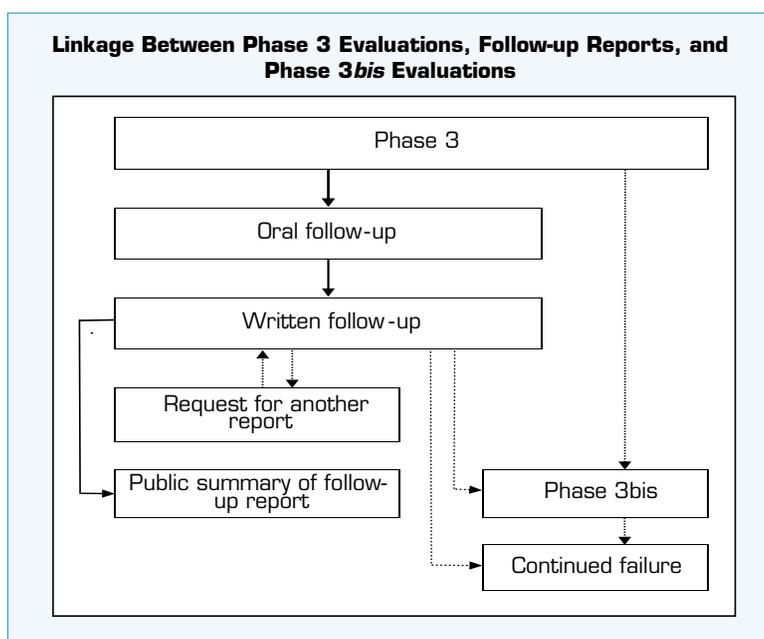
The purpose of Phase 3 *bis* is to ensure Parties' compliance with the Convention and implementation of the 2009 Recommendations.

Elements of a Phase 3 Evaluation

The new Phase 3 round of country monitoring evaluations focuses closely on enforcement of the Convention, the 2009 Anti-Bribery Recommendations, 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 to the country being evaluated;
- evaluation 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
- 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.

Monitoring also provides an opportunity to consult on difficulties in implementation and learn from the experiences of other countries. It should improve States Parties' capacity to fight bribery in international business transactions by examining their undertakings in this field using a dynamic process of mutual evaluation and peer pressure.



Key Monitoring Actions in 2011

In 2011, the Working Group on Bribery completed the first full year of Phase 3 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. The executive summaries of the reports adopted on Bulgaria, Canada, Germany, Italy, Japan, Korea, Luxembourg, Mexico, Norway, and Switzerland are included in Annex 2.

► **Other country updates**

► **Czech Republic**

In September 2011, a law introducing corporate liability for foreign bribery was passed and entered into force in 2012. The Working Group on Bribery has requested since 2000, the year when the Czech Republic joined the Convention, that it legally hold its companies liable for the crime of foreign bribery. The new law will be assessed as part of the Czech Republic's Phase 3 evaluation in 2013.

► **United Kingdom**

The new UK Bribery Act was passed in April 2010 and entered into force in July 2011. Section 9 of the Act requires the UK Government to issue Guidance to Commercial Organisations on Preventing Bribery, which was published in March 2011. The Act creates a specific offence of bribery of a foreign public official and a new offence of failure by a commercial organisation to prevent bribery. The UK's enforcement of the Act will be evaluated as part of its Phase 3 evaluation in 2012.

**OECD Working Group on Bribery:
Phase 1, 2 & 3 Reviews and Related regular Follow-up Reports
in 2011**

Phase 3 evaluations	<ul style="list-style-type: none"> • Bulgaria (March) • Canada (March) • Germany (March) • Italy (December) • Japan (December) • Korea (October) • Luxembourg (June) • Mexico (October) • Norway (June) • Switzerland (December)
Phase 2 oral follow-up reports	<ul style="list-style-type: none"> • Argentina (June) • Brazil (March) • South Africa (June)
Phase 3 oral follow-up reports	<ul style="list-style-type: none"> • Finland (October) • Iceland (December) • United States (October)

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

WORKING WITH KEY PARTNERS IN THE FIGHT AGAINST FOREIGN BRIBERY

New Working Group on Bribery Members

In 2011, Russia and Colombia became the 39th and 40th Members, respectively, of the Working Group on Bribery.

► **Russia**

Russia officially requested to join the Anti-Bribery Convention in February 2009. At the Ministerial Council Meeting on 25-26 May 2011, the Russian Federation was invited to become a full participant in the Working Group on Bribery and to accede to the Anti-Bribery Convention. This was the result of rapid progress in the adoption in March 2011 of legislation establishing a foreign bribery offence and providing for a significant increase in the statute of limitations for administrative offences and in fines for physical and legal persons. Russia started participating in the WBG as full participant in June 2011 and immediately afterwards launched the ratification process necessary to accede the Anti-Bribery Convention, which ultimately led to the adoption of the law



Secretary-General Angel Gurría and Russian First Deputy Minister of Foreign Affairs Andrey Denisov at the 17 February 2012 ceremony during which Russia deposited its instrument of accession to the Anti-Bribery Convention.

ratifying the Anti-Bribery Convention in January 2012. This opens the way for a Phase 1 review of Russia's anti-bribery legislation in March 2012. In support of Russia's accession to the Convention, members of the Working Group and the Secretariat worked with Russian officials on improving and strengthening Russia's legal framework against the bribery of foreign public officials in international business transactions, including holding a technical seminar with Russian Government officials in Moscow in September 2011. Russia participated in other activities of the Working Group, including the meetings for law enforcement officials and consultations with the private sector and civil society.

As a Party to the Anti-Bribery Convention, Russia can be considered for OECD Membership.

The Working Group on Bribery's Role in OECD Enlargement

The Working Group on Bribery plays a key role in the accession process for OECD membership. The Group is charged with advising the OECD Council as to candidate countries' willingness and ability to adhere to the Organisation's anti-corruption standards. This work is carried out by the OECD Members of the Working Group in parallel with the ongoing monitoring mechanism for all Parties to the Anti-Bribery Convention.

► **Colombia**

Colombia formally applied to join the WGB and accede to the Anti-Bribery Convention in January 2011 and, in October 2011, the Working Group reviewed Colombia's request and its policy and legislative framework for fighting foreign bribery. At the end of the review, the Working Group on Bribery decided to invite Colombia to join the Group, with a view to timely accession to the Anti-Bribery Convention. (Like Russia, Colombia must first join the Working Group on Bribery before it can accede to the Anti-Bribery Convention. Articles 13 and 14 of the Anti-Bribery Convention outline the process for accession.) Colombia participated in the December 2011 Working Group on Bribery as the Group's 40th Member. At the time of writing, the Colombian Government was undertaking the process of accession by enacting legislation to ratify the Convention in Colombian law.

Engagement with Other Emerging Economies

The Working Group is actively working with major emerging economies not Party to the Anti-Bribery Convention, including China, India and Indonesia, as well as countries which are increasingly playing a role in global markets, including Malaysia and Thailand. To China, India and Indonesia, in particular, the Organisation has proposed an Enhanced Engagement process³, which aims to forge a more structured and coherent partnership with these governments, with a view to possible Membership of the Organisation, should these countries decide to explore that possibility.

Existing engagement with China, India, and Indonesia was further strengthened with the adoption of the G20 Anti-Corruption Action Plan, which calls on G20 countries:

...To adopt and enforce laws and other measures against international bribery, such as the criminalization of bribery of foreign public officials, and begin by 2012 the necessary discussions to lead to, on a voluntary basis, more active engagement within the OECD Working Group on Bribery with regards to the standards of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions or to the ratification of the Convention.

China, India, Indonesia, Malaysia and Thailand are also active members of the Asian Development Bank / OECD Anti-Corruption Initiative for Asia and the Pacific. (More on the ADB/OECD Anti-Corruption Initiative is available starting page 36.)

► **China**

China has participated in the activities of the Working Group on Bribery since 2007 as an *ad hoc* observer. The Chinese delegation is led by the Ministry of Supervision's Foreign Affairs Department, which plays a key role in China on matters concerning bribery and corruption. Representatives from the Chinese Ministry of Foreign Affairs and the Supreme People's Procuratorate also attended a Working Group meeting in 2011.

In February 2011, China amended its Criminal Law to establish a criminal offence of bribing non-PRC government officials and officials

3. The OECD has also proposed Enhanced Engagement to Brazil and South Africa, which are already Members of the Working Group on Bribery.

of international public organisations. The new offence came into force on 1 May 2011. It applies to all PRC citizens, wherever located, all natural persons of any nationality within PRC, and all legal persons organized under PRC law. In 2012, the Working Group on Bribery and China will organise a second technical seminar to discuss foreign bribery enforcement. (A first technical seminar was held in October 2010, which focused on establishing an offence of bribing a foreign public official.)

► **India**

India has attended every Working Group on Bribery meeting since December 2009 as an *ad hoc* observer, represented by the Ministry of Personnel, Department of Personnel and Training, the Central Bureau of Investigation (CBI), and the Central Vigilance Commission (CVC). At each meeting, India presents on its recent developments in combating foreign bribery. Indian officials also participated in the 2011 meetings of law enforcement officials.

In September 2011, India hosted the 16th Steering Group Meeting and the 7th Regional Conference of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific. The Conference was opened by the Hon. President of India and included the participation of the Minister of Personnel and the Minister of Finance. Back-to-back with the ADB/OECD



Indian President H.E. Smt. Pratibha Devisingh Patil during her address to the 7th Regional Conference of the ADB/OECD Initiative

Initiative events, a Private Sector Roundtable Discussion on Bribery in Business Transactions was organized by the OECD in conjunction with the Federation of Indian Chambers of Commerce and Industry (FICCI), which was attended by major Indian companies.

Progress in 2011 also included the introduction of a bill establishing a foreign bribery offence to India's Lower House of Parliament in March (Prevention of Bribery of Foreign Public Officials and Officials of International Organisations Bill).

► **Indonesia**

The Working Group also continued to engage closely with Indonesia, which began attending Working Group meetings in October 2009. In 2011, Indonesia attended three of the four Working Group on Bribery meetings as an *ad hoc* observer, represented by the Corruption Eradication Commission (KPK). At each meeting, Indonesia presented on its recent developments in combating foreign bribery, including its draft foreign bribery legislation, and also participated in the 2011 meetings of law enforcement officials.

In May 2011, the OECD and the KPK jointly hosted a conference in Bali on foreign bribery, entitled '*Shaping a New World: Combating Foreign*



The KPK-OECD Conference on Combating Bribery of Foreign Public Officials in International Business Transactions.

Bribery in International Business Transactions.' The event was opened by Indonesia's president, Susilo Bambang Yudhoyono and attended by 10 Indonesian Ministers and the Commissioners of the KPK. It was also attended by over 400 participants from 38 countries, including representatives from over ten international organisations and bodies. Indonesia is currently drafting a bill establish a foreign bribery offence.

► **Malaysia**

Malaysia began regularly attending Working Group meetings in 2010 as an *ad hoc* observer and is represented by the Malaysian Anti-Corruption Commission (MACC). At each meeting, Malaysia—which is one of the only countries in the region with a foreign bribery offence—presented on its recent developments in combating foreign bribery. Malaysian officials also participated in the 2011 meetings of law enforcement officials. Malaysia has stated that it is considering accession to the Anti-Bribery Convention.

► **Thailand**

Thailand—represented by the National Anti-Corruption Commission (NACC)—continued to participate in the activities of the Working Group as an *ad hoc* observer, attending all but one meeting of the Working Group in 2011. At each meeting, Thailand presented on its recent developments in combating foreign bribery.

WORK WITH ANTI-CORRUPTION PARTNER ORGANISATIONS

The Anti-Bribery Convention is the only international instrument focusing on the supply side of the bribery of foreign public officials. 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 the implementation of the Anti-Bribery Convention by including bribe-taking in their scope. The OECD collaborates regularly with these multilateral organisations that are involved in fighting the demand side of foreign bribery.

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.

In 2011, representatives from the UN Office on Drugs and Crime (UNODC), which serves as the secretariat for the Conference of State Parties (CoSP) to the UNCAC, participated regularly in meetings of the Working Group. Likewise, representatives from the OECD participated in UNODC meetings related to UNCAC implementation, including an August 2011 Intergovernmental Working Group on Prevention of States Parties to the UN Convention against Corruption focusing on mechanisms to prevent corruption and a December 2011 expert group meeting on practical issues related to requesting mutual legal assistance, including in relation to issues associated with asset recovery.

At the October 2011 4th meeting of the Conference of States Parties to the UNCAC in Marrakech, Morocco, the OECD was also given the opportunity to address Parties to the UNCAC. In his address, OECD Deputy Secretary-General Richard Boucher re-emphasised the OECD's willingness to work with UNCAC Members in our mutual fight against bribery and corruption.

World Bank



The OECD and the World Bank continued to work closely together in the two organisations' mutual goal of combating corruption. In particular, the OECD Working Group on Bribery and the World Bank / UNODC Stolen Asset Recovery Initiative (StAR) jointly published a typology report on the identification and quantification of the proceeds of active bribery in international business transactions. Public and private organisations alike have long recognised that bribery of public officials is harmful to good governance, economic development and competitive conditions. Confiscation and recovery of the proceeds derived from foreign bribery are key elements in the international framework to fight corruption of public officials.

ENSURING THE CONTINUED EFFECTIVENESS OF THE CONVENTION

Meetings of Law Enforcement Officials: The Use of Whistleblowers and Mutual Legal Assistance

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 2011, the Working Group hosted two such meetings. Thirty-three officials from 23 member countries participated in a June meeting; 11 officials from five observer countries (China, Colombia, India, Indonesia and Malaysia) participated in a part of that meeting that was open to them. The June meeting focused on detecting and investigating bribery through the use of whistleblowers. The discussion specifically addressed methods of encouraging whistleblowers to report, steps to protect whistleblower confidentiality, and evidentiary issues faced by prosecutors when using information obtained from whistleblowers.

The second meeting of law enforcement officials was held in December and formed part of a kick-off meeting for a typology on mutual legal assistance in foreign bribery cases that the Working Group is in the process of preparing. Thirty-seven law enforcement officials from 24 countries participated in this meeting, which focused on challenges, successes and good practices relating to requesting and providing mutual legal assistance in foreign bribery cases. In addition, a portion of the meeting was open to officials from central authorities, observer countries and international organisations. Fourteen additional officials from member countries, ten officials from five observer countries (Colombia, India, Indonesia, Malaysia and Peru) and six officials from international organisations (the European Investment Bank, the United Nations Office on Drugs and Crime and the World Bank) attended this portion of the meeting. The typology study on mutual legal assistance is scheduled for publication in 2012.

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 first Phase 3 evaluation on-site visits. These informal exchanges with key representatives of the private sector and civil society contributed to determining the impact national anti-bribery laws and enforcement actions have on behaviour.

The Working Group also held another of its regular consultations with the private sector and civil society in October 2011, focusing on the challenges of multi-jurisdictional anti-bribery enforcement. The topic was chosen by the Working Group in response to requests from the private sector, which has noted that the increased enforcement of foreign bribery cases in multiple jurisdictions presents a new challenge for compliance. Speakers included a corporate compliance officer from the Norwegian energy company, Statoil; a representative from the International Bar Association's Anti-Corruption Committee; and the deputy chief of the Fraud Section of the United States Department of Justice; thereby offering a business, legal and prosecution perspective to the forum for discussion. A record 92 participants from companies, business associations, civil society, and academia attended.

Initiative to Raise Global Awareness of Foreign Bribery

After the first ten years of monitoring implementation of the Anti-Bribery Convention, the Working Group on Bribery concluded that a lack of awareness of the risks and costs of the crime of foreign bribery remained one of the biggest challenges to the Convention's effective enforcement. To meet this challenge, the Working Group launched an Initiative to Raise Global Awareness of Foreign Bribery on 9 December 2009, International Anti-Corruption Day, and endorsed a three-year strategy for raising awareness of the crime of foreign bribery and the Anti-Bribery Convention.

Two years into this effort, the OECD has undertaken a number of activities in the context of the Initiative, focusing mainly on outreach and developing key partnerships with like-minded organizations and promoting anti-bribery education in academia;. Some of the activities originally included in the Working Group on Bribery's awareness-raising plans have been taken up within broader anti-corruption initiatives, such as the OECD CleanGovBiz Initiative or the G20 Anti-Corruption Working Group, which is a positive sign that the activities proposed by the Working Group on Bribery are relevant.

Highlights of these efforts in 2011 include the inclusion, for the first time, of reference to the Anti-Bribery Convention in the 2011 *compromis*

for the White & Case International Rounds of the 2011 Philip C. Jessup International Law Moot Court Competition (Jessup Moot). The *compromis* required students from over 500 law schools in more than 80 countries to analyse the Anti-Bribery Convention, in particular applications of Articles 5 and 9. A team from the University of Sydney, Australia, won the competition in the final round, held in Washington, D.C.

Activities also continued under the Anti-Corruption Strategy for the Legal Profession, launched in 2010 as a joint effort by the International Bar Association (IBA), OECD and UNODC. Under this strategy, 11 seminars for senior-level legal professionals were held in Argentina, Brazil, Chile, Colombia, Indonesia, Japan, Korea, Malaysia, Mexico, Peru and Venezuela. A 2010 survey conducted as part of the Anti-Corruption Strategy for the Legal Profession found that 40 percent of 642 legal professionals from 95 jurisdictions had never heard of the UNCAC and the Anti-Bribery Convention.

Awareness-raising efforts in academia also included the delivery of more than 100 presentations to date on the Anti-Bribery Convention by the OECD, in support of the Initiative, to universities and academic or research institutions in Bulgaria, Canada, France, Indonesia, Malaysia, Mexico, the United Kingdom, and the United States in English, French, Mandarin Chinese and Spanish. The OECD is also supporting an Anti-Corruption Academic Initiative (ACAD), an academic project led by a group of anti-corruption experts coordinated by Northeastern University and the United Nations Office on Drugs and Crime. The ACAD Initiative will aim to promote the inclusion of anti-corruption and integrity issues in educational curricula and to provide practical support for those who wish to draw on it. Helping to make the case for the need for such an Initiative: A May 2011 survey of 42 law schools from 31 countries conducted by the IBA as part of the Anti-Corruption Strategy for the Legal Profession, found that 85 percent of schools surveyed included some content on anti-corruption in their courses—most often within the context of criminal law classes—but only 15 percent had courses dedicated to anti-corruption issues.

GLOBAL RELATIONS ACTIVITIES

The Anti-Corruption Network for Eastern Europe and Central Asia

► ***Istanbul Anti-Corruption Action Plan***

► *Monitoring of Armenia and Kazakhstan*

The second round of monitoring reports for Armenia and Kazakhstan were adopted at the Istanbul Anti-Corruption Action Plan (IAP) plenary meeting on 28-30 September 2011. These reports were prepared in the framework of the IAP, a sub-regional initiative monitoring and supporting anti-corruption reforms in Armenia, Azerbaijan, Georgia, Kyrgyz Republic, Kazakhstan, Tajikistan, Ukraine and Uzbekistan since 2003.

The report on Armenia commends the government for adopting its anti-corruption strategy, creating a specialised body to investigate crimes committed by senior public officials, and adopting a new public sector ethics law, which includes measures for preventing corruption among high-ranking officials, protecting whistleblowers and requiring high-ranking officials to declare property and income. However, the report notes that political declarations and laws are not properly implemented in Armenia and that investigations and prosecutions of corruption crimes are very limited. The report recommends that Armenia ensures vigorous implementation of anti-corruption strategies through stronger leadership and necessary resources, steps up its enforcement actions, in particular targeting high-level corruption and ensures a transparent and effective public procurement system.

The report on Kazakhstan commends the country for ratifying the UN Convention against Corruption (UNCAC), adopting an anti-corruption strategy and taking steps to improve business regulations. However, the report notes that the level of corruption remains high, and recommends that Kazakhstan brings its criminal legislation in line with the UNCAC, including the adoption of the law on responsibility of legal persons, strengthens public sector integrity and ensures the independence of the judiciary and the supreme audit institution. It further recommends that Kazakhstan ensures genuine involvement of civil society in anti-corruption policies and introduces measures to prevent corruption in public procurement.

► **12th ACN Steering Group Meeting**

The 12th ACN Steering Group Meeting on 29 – 30 September 2011 focused on progress in implementing the ACN work programme in 2011 and the proposal for activities in 2012 and beyond.

The Steering Group agreed to continue the IAP country monitoring programme, which combines the OECD peer review methodology with support to implement UNCAC standards in the region and provides a strong tool to help countries to pursue their anti-corruption reforms. The Steering Group invited the Secretariat to prepare a draft methodology for the third round of monitoring for discussion at the next Steering Group meeting scheduled for February 2012.



Members of the Anti-Corruption Network for Eastern Europe and Central Asia

The Steering Group also supported the continuation of ACN's peer learning programme. It noted that peer learning seminars provide a unique and effective forum for training and networking for practitioners. The Steering Group agreed that, in 2012, at least two seminars will be organised. The first will focus on the investigation and prosecution of corruption, and the second will focus on corruption in the judiciary.

Looking at future activities of the Network, the Steering Group also supported ACN's cooperation with the UN Office on Drugs and Crime (UNODC), UN Development Programme (UNDP), OECD-EU SIGMA Programme, Organisation for Security and Cooperation in Europe (OSCE), OECD Education Directorate, and other partners. And finally, in order to reinforce ACN members' political commitment to fight corruption, the majority of ACN member countries supported the idea of organising a high level meeting in 2012.

In addition to discussions of ACN's programme of work for 2012, the 12th ACN Steering Group Meeting also included, for the first time, an ACN tour de table, where members were asked to share information on main achievements and examples of good practices to prevent and combat corruption. The tour de table exercise commenced with seven countries (Albania, Belarus, Bulgaria, Croatia, the former Yugoslav Republic of Macedonia, Moldova and Montenegro) and will continue at upcoming ACN meetings.

► ***Vilnius Seminar on Ethics and Strategies and Follow-Up***

In the framework of the ACN peer learning programme, the ACN organised an expert seminar entitled, "*Anti-Corruption Policy and Ethics Training*", in Vilnius, Lithuania, 23 – 25 March 2011. The seminar focused on anti-corruption strategies, ethics training for public officials and anti-corruption awareness-raising. It brought together 50 practitioners from state institutions responsible for these issues in ACN and selected OECD countries.

As a follow-up to the Vilnius seminar, ACN jointly launched a project on Ethics Training for Public Officials with the OECD, EU SIGMA programme, and OECD Public Integrity Network. The project will analyse existing approaches to delivering ethics training to public officials in ACN countries, as well as in selected OECD countries, and will develop a training module that can be used by the ACN and other countries to develop such trainings for their public officials.

► ***Kyiv Seminar on Investigation and Prosecution of Corruption***

Also within the framework of the ACN peer learning programme, ACN organised an expert seminar entitled, '*Investigation and Prosecution of Corruption: Financial Investigations and Links with Money Laundering*' in Kyiv, Ukraine, on 28 – 30 June 2011. This seminar for corruption investigators and prosecutors focused on the following topics: financial investigations; multidisciplinary investigation teams; forensic accounting; and links between corruption and money laundering. The seminar gathered prosecutors, investigators, Financial Intelligence Units and experts from ACN and selected OECD countries.

► ***ACN business consultations***

The first of a series of ACN consultations with the private sector began in 2011 with consultations in Lithuania, Armenia, Kazakhstan and Ukraine. These consultations are designed to take stock of government and business activities to prevent corruption in the private sector and to identify areas for regional activities that could be implemented by the ACN in the future. The business consultations are held back-to-back with ACN events in selected countries. They involve separate meetings with business sector representatives and responsible government authorities.

► ***Anti-corruption projects for Azerbaijan, Georgia, Moldova, and Ukraine***

Two ACN projects have continued to support training and development of analytical and methodological tools to support detection, investigation and prosecution of corruption in Ukraine and in Azerbaijan, Georgia, Moldova, and Ukraine. The first involves the development of a training manual on the investigation and prosecution of corruption, including a case-study with elements of corruption and money-laundering. The manual is being developed in co-operation with the Basel Institute on Governance and will be disseminated among law enforcement and prosecution training institutions in 2012. This project involves also a study on specialised anti-corruption prosecutors' offices (see below). As part of the second project a review of regional and international cooperation instruments to combat corruption was commissioned in 2011.

► ***Working Paper on Anti-Corruption Specialisation of Prosecutors in Selected European Countries***

This paper was published in 2011. It analyses international standards and presents four case studies of anti-corruption specialisation of

prosecution services in Lithuania, Hungary, Spain and Poland, in order to inform the debate about the reform of the prosecutorial services in the region. This paper can be also useful to other countries which are reforming their prosecutorial systems to ensure more effective prosecution of corruption offences.

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

► ADB/OECD Initiative 16th Steering Group Meeting and 7th Regional Conference

From 27 to 29 September 2011, the Government of India hosted the 16th Steering Group meeting and 7th Regional Conference of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific. The Steering Group meeting included reports by ADB/OECD Initiative countries and organisations involved in anti-corruption on their progress in combating corruption. The Steering Group also reviewed and agreed on the Initiative's three-year work plan and budget, which includes upcoming meetings, seminars and conferences and thematic reviews, including next year's Initiative meeting in Vietnam (in the autumn of 2012) and the upcoming 'Thematic Review on Preventing Corruption through Accounting and Auditing, Corporate Compliance and Tax Measures'.

The 7th Regional Conference of the ADB/OECD Initiative was entitled, 'Building Multidisciplinary Frameworks to Combat Corruption', and took place from 28 to 29 September 2011. More information on this event is available above under the section on India.

► Delivery by India of the ADB/OECD Initiative Statement to the 4th UNCAC CoSP

India played a major role in representing the ADB/OECD Anti-Corruption Initiative for Asia-Pacific at the 4th Session of the Conference of States Parties (CoSP to the UN Convention against Corruption (UNCAC)) in Marrakech from 24 to 28 October 2011. Secretary Alka Sirohi, Department of Personnel and Training, Ministry of Personnel, Public Grievances and Pensions, honoured the Initiative by delivering its message to the Conference. The message from the Initiative essentially highlights ways in which the Initiative could contribute to effective reviews of UNCAC implementation by States Parties from the Asia-Pacific Region. [To view the message from the ADB/OECD Anti-Corruption Initiative for Asia-Pacific to the 4th Session of the Conference of States Parties to the UN Nations Convention against Corruption, see the Annex to this newsletter.]

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

► ***Participation in the Fifth Ministerial Conference of the NEPAD-OECD Africa Investment Initiative***

Building on the momentum achieved at the First Regional Experts' Meeting of the Joint Initiative in January 2011, the Joint Initiative organised a break-out session on Anti-Bribery and Business Integrity Efforts in Africa at the Fifth Ministerial Conference of the NEPAD-OECD Investment Initiative, held in Dakar, Senegal in April 2011. The session brought together speakers from the Secretariat, BIAC, Le Forum Civil (Transparency International's Senegalese chapter), the Senegalese anti-corruption commission and the OECD's Centre for Tax Policy and Administration. Discussions focused on regional successes and challenges in promoting transparency and accountability in business conduct, and the event helped raise awareness of the Joint Initiative and the newly adopted Anti-Bribery and Business Integrity Course of Action of Africa.



Representatives of the Second Regional Experts' Meeting of the Joint OECD/AfDB Initiative

OECD – Latin American Anti-Corruption Programme

► ***Presentation to the Red Ibero Americano de cooperaciòn juridica – Iber American Network for legal cooperation***

In May 2011, the Secretariat presented on the OECD Anti-Bribery Convention at an IberRed (Red Ibero Americano de cooperaciòn juridica – Iber American Network for legal cooperation) conference for Central Authorities from IberoAmerican States Parties to the UN Convention against Corruption. The conference was held in Cartagena de Indias, Colombia, and was attended by officials from Central authorities for UNCAC of 13 countries (Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Dominican Republic, Ecuador, Nicaragua, Panama, Paraguay, Peru, and Spain). IberRed is comprised of 22 Iberamerican countries, which includes all Latin American countries, Spain, Portugal, Andorra and the Supreme Court of Puerto Rico.

► ***Presentation to the Conference of Ministers of Justice of IberoAmerican Countries (COMJIB)***

The Secretariat presented on the experience of the Working Group on Bribery in its Members' efforts to seek and obtain mutual legal assistance (MLA) during the COMJIB conference on International Cooperation and the Fight against Corruption, held in Madrid from 22-23 September 2011. The conference was opened by the Spanish Minister of Justice, Francisco Caamaño, and the Secretary-General of COMJIB. Approximately 100 participants attended, hailing from Argentina, Brazil, Colombia, Costa Rica, Cuba, Dominican Republic, the Financial Action Task Force of South America (GAFISUD), Honduras, Panama, Peru and Spain. Representation was generally at the level of Prosecutor-General or prosecutor.

► ***12th Meeting of the Latin American Corporate Governance Roundtable***

The Latin American Corporate Governance Roundtable was established in April 2000, and aims to facilitate corporate governance improvements by providing a forum for the structured exchange of experience between senior policy-makers, regulators and market participants. The 11th Meeting of the Latin American Corporate Governance Roundtable was held 29-30 November 2011 in Lima, Peru, co-hosted by the Superintendencia del Mercado de Valores (SMV), Bolsa de Valores de Lima (BVL), and Procapitales and supported by the Government of Spain. Representatives from Argentina, Bolivia, Brazil, Canada, Chile, Costa

Rica, Colombia, Dominican Republic, Ecuador, Mexico, Panama, Peru, Spain, Sweden, Turkey, Uruguay, the United Kingdom, the United States and Venezuela participated in the Roundtable.

The 2011 Roundtable featured, for the first time, a breakout session on the Role of Corporate Governance in Preventing Corruption. The meeting included representatives from the Companies Circle of the Latin American Corporate Governance Roundtable, a group of 19 Latin American companies who have adopted good corporate governance practices in order to provide private sector input to the Roundtable, along with regulators.

Initiatives in the Middle East and North Africa (MENA) region

► ***Creation of the Deauville Partnership***

In May 2011, the G8 established the Deauville Partnership with the aim of supporting political and economic transformation in the MENA region, following the Arab Spring. The partnership's founding members were the G8 countries, together with Egypt and Tunisia. After a meeting of finance ministers in Marseilles on 10 September, Kuwait, Qatar, Saudi Arabia, Turkey and the United Arab Emirates formally joined the Partnership. On 20 September, the Deauville Partnership Foreign Affairs Ministers' Meeting issued a communiqué outlining the approaches for implementing its political and economic pillars, and welcomed Libya to the Partnership. Paragraph 10 of the communiqué highlights the relevance of accession to and implementation of international instruments in the fight against corruption, including the Anti-Bribery Convention.

► ***Multi-Stakeholder Dialogue on 'Putting anti-corruption Commitments into Practice: Transparency, Participation and Rule of Law'***

The Multi-Stakeholder Dialogue on 'Putting anti-corruption Commitments into Practice: Transparency, Participation and Rule of Law' was held under the High Patronage of the King of Morocco from 9 to 10 June in Rabat. It attracted over 200 high-level government representatives from 33 MENA and OECD countries, leading experts from 25 private sector and civil society associations, as well as representatives of regional and international organisations. The dialogue focused on ways to respond to the on-going transformation in the Arab region, in particular approaches to improving governance and fighting corruption in the region. Actions proposed as part of these discussions included the launch of an observatory on integrity; the instigation of an 'Anti-Corruption and

Participants in Regional Anti-Corruption Initiatives

<p>Anti-Corruption Network for Eastern Europe and Central Asia (www.oecd.org/corruption/acn)</p>	<p>ADB/OECD Anti-Corruption Initiative for Asia-Pacific (www.oecd.org/corruption/asiapacific)</p>
<ul style="list-style-type: none"> • Albania • Armenia • Azerbaijan • Belarus • Bosnia and Herzegovina • Croatia • Georgia • Kazakhstan • Kyrgyz Republic • Latvia • Lithuania • Former Yugoslav Republic of Macedonia • Moldova • Montenegro • Romania • the Russian Federation • Serbia • Tajikistan • Ukraine • Uzbekistan 	<ul style="list-style-type: none"> • 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 • the Philippines • Samoa • Singapore • Sri Lanka • Thailand • Vanuatu • Vietnam

OECD/AfDB Initiative to Support Business Integrity and Anti-bribery Efforts in Africa ⁴ (www.oecd.org/corruption/africa)	OECD-Latin America Anti-Corruption Programme (www.oecd.org/corruption/latinamerica)
<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 • 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

4. 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*.

Integrity in the Arab Countries' project (ACIAC); the establishment of a network that can represent private sector perspectives and to facilitate the private sector's participation in anti-corruption efforts; and a follow-up forum that would provide a high-level platform for the identification of new anti-corruption reform initiatives, including concrete time-bound government commitments to demonstrate progress.

► ***International Conference: 'What to do about corruption and embezzlement?'***

From 22-24 September 2011, the Tunisian National Commission of Investigation of Corruption and Embezzlement hosted a conference on the fight against corruption in Tunisia. Participants included the Interim President of Tunisia, the President of the National Commission, the OECD Legal Director and heads of the Anti-Corruption and Public Governance Divisions. The President of the Commission stated that corruption in the private sector is one of the most important and challenging issues for the new administration and called for assistance in preventing bribery in business.

OECD SUPPORT FOR RELATED ANTI-CORRUPTION INITIATIVES

In addition to supporting the on-going work of the Working Group on Bribery, the OECD Secretariat also supports broader anti-corruption initiatives, including the implementation of G20 Anti-Corruption Action Plan adopted by G20 leaders in 2010, and the OECD CleanGovBiz Initiative. These initiatives are described in greater detail below.

G20 Anti-Corruption Action Plan

Taking Stock: The Cannes Summit Anti-Corruption Monitoring Report

At its Seoul Summit in November 2010, the Leaders of G20 countries adopted a G20 Anti-Corruption Action Plan for 'combating corruption, promoting market integrity, and supporting a clean business environment'. The Anti-Corruption Action Plan calls on G20 countries to adopt and enforce laws and other measures against foreign bribery and, for G20 countries not party to the Anti-Bribery Convention to engage more closely with the Working Group on Bribery, or to ratify the Convention. The OECD has also contributed to the efforts of the G20 Anti-Corruption Working Group, which oversees the Action Plan's implementation, to promote stronger whistleblower protections and public-private sector engagement against corruption.

The G20 Cannes Summit of November 2011, organised under the French Presidency of the G20, marked the first year of G20 countries' implementation of the Anti-Corruption Action Plan. The G20 Leaders' final Summit Declaration re-emphasized the importance of fighting



foreign bribery and corruption and G20 Leaders' commitment to 'lead by example' in this area. Leaders also endorsed the 'First Monitoring Report of the G20 Anti-Corruption Working Group to G20 Leaders on Individual and Collective Progress Made by G20 Countries in the Implementation of the Seoul Action Plan' which includes commitments to implement further the Anti-Corruption Action Plan, in areas such as whistleblower protection and public sector integrity.

OECD Support to G20 Anti-Corruption Efforts

The OECD provided support throughout 2011 to the G20 Anti-Corruption Working Group's efforts to implement the 2010 G20 Anti-Corruption Action Plan. On foreign bribery, the OECD's and the G20's goals are mutually complementary: Both the OECD and the G20 Anti-Corruption Working Group welcomed the progress made in a number of countries, including efforts made by Russia to join the Convention, and by China, India, and the UK to further develop their anti-bribery frameworks. (See page 36 for more information on the Working Group on Bribery's engagement with China, India and Indonesia.)

At the G20 Anti-Corruption Working Group's request, the OECD, working with G20 countries also presented a study on G20 whistleblower protection frameworks, as well as a compendium of best practices and guiding principles for legislation, which were endorsed by the G20 Anti-Corruption Working Group.



Christine Lagarde, then-French Minister of Economy, Finance and Industry, delivered a keynote address to the G20-OECD conference, 'Joining Forces against Corruption: G20 Business and Government' (27-28 April 2011).

Finally, the OECD supported G20 efforts to mobilise the private sector in the fight against corruption by co-organising, with the G20 French Presidency as host, a high-level conference on 27-28 April 2011 entitled, 'Joining Forces against Corruption: G20 Business and Government', which brought together more than 350 representatives from the public and private sectors in all G20 countries and highlighted the OECD Good Practice Guidance on Internal Controls, Ethics and Compliance. Speakers included Christine Lagarde, then-French Minister of Economy, Finance and Industry; Yury Fedotov, Executive Director of the UN Office on Drugs and Crime (UNODC); Salvador Vega-Casillas, Mexican Secretary of Public Administration; and Laurence Parisot, President of the Mouvement des Entreprises de France (MEDEF). The conclusions of this meeting have since helped set the direction for further public-private sector dialogue within the G20 anti-corruption context. The OECD has also been working with the G20 ACWG on integrity issues, in particular on public procurement.

CleanGovBiz: Integrity in Practice



The CleanGovBiz Initiative, launched on the occasion of the 2012 OECD Forum, 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'. Still at an early stage, the Initiative aims to support 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 that will make up the Initiative's so-called 'toolkit' on anti-corruption include:

- Convention on Combating Bribery of Foreign Public Officials in International Business Transactions
- Good Practice Guidance on Internal Controls, Ethics, and Compliance

- Tax Measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions
- Guidelines for Multinational Enterprises
- Principles for Transparency and Integrity in Lobbying
- Principles for Integrity in Public Procurement
- Recommendation on Bribery and Export Credits
- Guidelines for Managing Conflict of Interest in the Public Service
- Principles for Managing Ethics in the Public Service
- Principles for Donor Action on Anti-Corruption
- Principles of Corporate Governance
- 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
- Public Sector Integrity: A Framework for Assessment
- Checklist for Enhancing Integrity in Public Procurement
- Bribery Awareness Handbook for Tax Examiners

APPENDIX 1: PARTIES TO THE CONVENTION

OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

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
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
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)	5 November 2001	23 January 1999
South Africa	19 June 2007 (accession instrument)	18 August 2007	27 April 2004
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

Bulgaria: Phase 3

The Phase 3 Report on Bulgaria by the OECD Working Group on Bribery evaluates and makes recommendations on Bulgaria's implementation and enforcement of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments. As well as focusing on key Group-wide (horizontal) issues, particularly enforcement, consideration is also given to country-specific (vertical) issues arising from progress made since Bulgaria's Phase 2 evaluation in 2003, or issues raised, for instance, by changes in the domestic legislation or institutional framework of Bulgaria.

Fighting domestic bribery, organised crime and fraud with EU funds are the Bulgarian government's political priorities. This has led Bulgaria to reform its judiciary, law enforcement system and many of its laws. However, Bulgaria has given much lower priority to fighting the bribery of foreign public officials.

The Working Group notes with concern that there is a general lack of awareness in Bulgaria of the risks of foreign bribery. As a result, very low priority is given to the prevention, detection, investigation and prosecution of this crime. The Working Group therefore recommends that Bulgaria raise awareness of the risks of and responsibility for foreign bribery among the relevant public institutions and the private sector. Bulgaria needs to provide adequate resources and training to judges, prosecutors and investigators on investigations and prosecutions of legal persons and complex financial cases. It should also ensure that such investigations are conducted whenever appropriate.

In addition, Bulgaria needs to address several shortcomings in its laws. The Working Group recommends that Bulgaria improve its foreign bribery offence, and substantially amend its current law on the liability of legal persons to eliminate many legislative deficiencies. The legal framework on confiscation should be streamlined, and also modified to address certain deficiencies. As well, Bulgaria does not expressly prohibit the tax deduction of bribes, despite a recommendation in Phase 2. The Working Group welcomes Bulgaria's commitment to rectify this shortcoming.

The report also notes favourably that Bulgaria has one conviction for foreign bribery and an investigation in a second case. Wiretap evidence

is now directly admissible at trial after a recent legislative amendment. A constitutional amendment took effect in 2007 and reduced judicial immunity, thereby implementing the Working Group's Phase 2 recommendation on this issue.

The report and its recommendations reflect findings of experts from Chile and Poland and were adopted by the OECD Working Group on Bribery. Within one year of the Group's approval of the report, Bulgaria will make an oral follow-up report on its implementation of certain recommendations. It will further submit a written report within two years. The Report is based on the laws, regulations and other materials supplied by Bulgaria, and information obtained by the evaluation team during its three-day on-site visit to Sofia on 26-28 October 2010, during which the team met representatives of Bulgaria's public administration, judiciary, private sector and civil society.

Canada: Phase 3

The Phase 3 Report on Canada by the OECD Working Group on Bribery evaluates and makes recommendations on Canada's implementation and enforcement of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the Convention) and related instruments. It focuses on progress made by Canada since its Phase 2 evaluation in March 2004, taking into account progress already noted in Canada's written follow-up report in June 2006. It also addresses cross-cutting horizontal issues that are routinely covered in each country's Phase 3 evaluation. The Working Group welcomes Canada's recent enforcement efforts, including one conviction, one ongoing prosecution and over 20 active investigations. This activity can be largely attributed to the diligent efforts of the new RCMP Anti-Corruption Unit. However, the Working Group considers that the future of these cases and enforcement more generally of the Corruption of Foreign Public Officials Act (CFPOA) may be uncertain, due to significant concerns that remain about Canada's framework for implementing the Convention.

The RCMP International Anti-Corruption Unit, established in January 2008, is comprised of two International Anti-Corruption Teams strategically located in Ottawa, Canada's capital, and Calgary, a major nucleus for industry, trade and finance, and a hub for Canada's extractive industries. It has complemented its enforcement efforts with substantial awareness raising and training. Other new features of Canada's law enforcement framework are also notable. The legal framework that established the Public Prosecution Service Canada (PPSC) in 2006 should further enhance prosecutorial discretion in Canada. The PPSC

created a position in Ottawa for the purpose of advising the two RCMP teams on ongoing investigations. Since Phase 2, Canada has also codified the liability for legal persons ('corporate liability') in the Criminal Code, which appears much broader than the previous common law approach. Canada has also made important progress encouraging the reporting of CFPOA violations in the public and private sectors. Agencies in the public administration have adopted guidelines on reporting CFPOA violations to law enforcement authorities. Several reports have already been made pursuant to these mechanisms. Canada has also enacted a Criminal Code offence of threatening or retaliating against whistleblowers in the public and private sectors.

Despite these important positive developments, Canada's legislative and institutional framework remains problematic in four major respects. First, the offence of bribing a foreign public official in the CFPOA only applies to bribes for the purpose of obtaining or retaining an advantage of business carried out in Canada or elsewhere "for profit". The interpretation of this requirement in Canada is unclear, and the Convention does not differentiate between business for profit and not for profit. The Working Group therefore recommends that Canada amend the foreign bribery offence so that it is clear it applies to bribery in the conduct of all international business, not just business "for profit". Second, while statutory maximum penalties prescribed for violations of the CFPOA appear appropriate, sanctions applied in practice in the only CFPOA case to date were too low to be "effective, proportionate and dissuasive". The Working Group will therefore monitor sanctions applied as the body of cases grows. Third, extraterritorial jurisdiction in Canada for offences under the CFPOA requires a "real and substantial" link to the territory of Canada. The Working Group therefore recommends that Canada urgently take such measures as may be necessary to prosecute its nationals for the bribery of foreign public officials committed abroad. Fourth, Canada has indicated that it interprets Article 5 of the Convention as prohibiting consideration in investigations and prosecutions of "improper" considerations of "national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved". The Working Group recommends that Canada clarify that consideration of the Article 5 factors can never be "proper."

The Working Group is also concerned that Canada has not yet committed resources for coping with the substantial body of cases that is expected to proceed to the prosecution stage in the near future. The Working Group therefore recommends that Canada urgently dedicate resources to prosecute these cases. In addition, significant institutional features, including for coordinating CFPOA investigations involving various

agencies, cannot be properly assessed by the Working Group until more cases have been prosecuted.

The Report and its recommendations, which reflect findings of experts from Austria and the United States, were adopted by the OECD Working Group on Bribery. Due to the significant issues raised in this report on Canada's implementation of the Convention, the Working Group recommends that Canada report back to it on progress on the recommendations in this report in October 2011. This will be followed by an oral follow-up report by Canada within one year of the adoption of the Report (March 2012), and a written follow-up report on all recommendations and follow-up issues within two years of adoption of the Report (March 2013). The Report is based on the laws, regulations and other materials supplied by Canada, and information obtained by the evaluation team during an on-site visit to Canada from 19 to 22 October 2010, during which the team met with representatives from Canada's public administration, private sector and civil society.

Germany: Phase 3

The Phase 3 report on Germany by the OECD Working Group on Bribery evaluates and makes recommendations on Germany's implementation and enforcement of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments. It focuses on horizontal issues, which concern the Working Group as a whole, particularly enforcement, and also considers country-specific (vertical) issues arising from progress made since Germany's Phase 2 evaluation in 2003, or issues raised, for instance in the domestic legislation or institutional framework of Germany.

Since Phase 2, Germany's enforcement has increased steadily and resulted in a significant number of prosecutions and sanctions imposed in foreign bribery-related cases against individuals. The Working Group is particularly encouraged by Germany's recent enforcement efforts against legal persons since 2007 and recommends that Germany take further measures to ensure the effectiveness of the liability of legal persons, including through sanctions that are effective, proportionate and dissuasive. It also welcomes legislative measures and jurisprudence resulting in increased reporting of suspicions of foreign bribery by tax auditors.

Increased enforcement against natural persons was enabled by Germany's pragmatic approach to prosecute and sanction foreign bribery with a range of criminal offences other than the foreign bribery

offence, where it was not possible to establish all the elements of proof required to charge the person with the foreign bribery offence. The Working Group nonetheless recommends that Germany ensure that the criteria in the Convention and its Commentaries defining a foreign public official are interpreted broadly, and that no element of proof beyond those contemplated in Article 1 of the Convention is required. The report notes the ambiguity surrounding facilitation payments and the Working Group hence recommends that Germany review its policy and approach on this implicit exception. The report also notes that Germany's increased enforcement was also enabled by its commendable level of international cooperation with other Parties to the Convention. The use of arrangements under section 153a of the Code of Criminal Procedure has also permitted numerous monetary sanctions against individuals, but the Working Group recommends that Germany should increase the transparency of its use of those arrangements.

However, the report highlights that sanctions imposed to date against individuals have generally been within the lower range of available sanctions and that most prison sentences have been suspended. The Working Group is concerned that these sanctions may not always be fully effective, proportionate and dissuasive, including in cases involving solicitation. Regarding legal persons, the Working Group is concerned that the maximum level of the punitive component of the administrative fine available in the law is too low, especially for large companies, as was already stressed by the Working Group during Phase 2, and that the confiscatory component, even when covering large amounts of money, only disgorges ill-gotten gains. The Working Group therefore reiterates the recommendation that Germany increase this statutory maximum. In addition, the report highlights the continuing limited availability of data, already noted in Phase 2, and encourages Germany to strengthen its efforts to compile at the federal level, for future assessment, information and statistics relevant to monitoring and follow-up the approach to enforcement of German legislation implementing the Convention.

The Working Group is also encouraged by the efforts made by Germany to raise awareness both within the public and the private sector about the foreign bribery offence and to provide training to judges, prosecutors, the police and other relevant public officials to better address cases of foreign bribery. The Working Group recommends that Germany continue its awareness-raising efforts, especially among SMEs, and strengthen the role of German missions abroad in providing advice on and dealing with suspicions of foreign bribery. The Working Group welcomes the growing specialisation and coordination of the prosecuting and police offices. It also recommends that Germany strengthen existing

mechanisms to enable company employees to report foreign bribery, through any appropriate means, e.g. by codifying the protection identified by jurisprudence and disseminating information on such protection.

The report highlights the effectiveness of the requirement for tax auditors to report suspected acts of foreign bribery to the prosecuting authorities. The Working Group recommends that Germany consider enhancing the role of external auditors in reporting suspected acts of foreign bribery. The report notes that Germany has made progress in limiting access to public advantages of companies convicted for foreign bribery, in particular as regards export credits. The Working Group recommends that Germany take additional measures, such as guidelines to procurement authorities and that it consider the establishment of a central registry of unreliable companies.

The report and its recommendations reflect findings of experts from Japan and New Zealand and were adopted by the OECD Working Group on Bribery. Within one year of the Group's approval of the report, Germany will make an oral follow-up report on its implementation of certain recommendations. It will further submit a written report within two years. The report is based on the laws, regulations and other materials supplied by Germany, and information obtained by the evaluation team during its 4-day on-site visit to Munich and Berlin on 21 to 24 September 2010, during which the team met with representatives from Germany's public administration, private sector and civil society.

Italy: Phase 3

The Phase 3 report on Italy by the OECD Working Group on Bribery evaluates and makes recommendations on Italy's implementation and enforcement of the Convention on Combating Bribery of Foreign Public Officials in International Business transactions and related instruments. It focuses on horizontal issues, which concern the Working Group as a whole, particularly enforcement, and also considers country-specific (vertical) issues arising from progress made since Italy's Phase 2 evaluation in November 2004, taking into account progress observed in Italy's written follow-up report in March 2007.

Italy's prosecutors and law enforcement officials are currently engaging in significant efforts to investigate and prosecute foreign bribery offences, which is particularly notable given the challenges presented by the Italian statute of limitations. Since Phase 2, Italy's efforts to enforce its foreign bribery offence, including against legal persons, have increased steadily. However, although 60 defendants have been prosecuted and 9 cases

are under investigation, final sanctions were only imposed against 3 legal persons and 9 individuals, in all cases through *patteggiamento*. Cases against numerous other legal persons and individuals have been dismissed, in most cases as time-barred under Italy's statute of limitations, which has not increased since Phase 2 and is capped at 7.5 years for all stages of a trial (through appeals), including suspensions and interruptions. For this reason, the Working Group recommends that Italy urgently take the necessary steps to extend the length of the ultimate limitation period with respect to the prosecution and sanctioning of foreign bribery, through any appropriate means.

Italy's significant efforts in enforcing its law are made possible by its comprehensive framework for prosecuting the foreign bribery offence, including the availability of the *patteggiamento* procedure, which is akin to plea bargaining, and varied means for sanctioning legal persons for foreign bribery and confiscating proceeds of bribery. Enforcement of the offence against legal persons has also created a strong incentive for Italian companies to put in place internal compliance programs. In addition, agencies administering public benefits, such as export credits and public contracts, have put in place policies and procedures to prevent and detect foreign bribery.

Nonetheless, in addition to the issues raised above, the Working Group recommends that Italy eliminate *concessione* as a possible defence in foreign bribery cases. The Working Group also expresses concerns about the effectiveness and deterrent effect of the sanctions available in Italy, particularly those available against legal persons, and recommends that Italy strengthen them. In addition, the Working Group will monitor the possibility to effectively confiscate both the bribe and the proceeds of foreign bribery. In addition, the Working Group encourages Italy to strengthen its efforts to emphasize the detection of foreign bribery through means such as accounting and auditing, tax inspections and whistleblower protection.

The report and its recommendations reflect findings of experts from Australia and Germany and were adopted by the OECD Working Group on Bribery. It is based on legislation and other materials provided by Italy, as well as information obtained by the evaluation team during its four-day on-site visit to Italy on 5-8 July 2011, during which the team met representatives of Italy's public administration, judiciary, private sector and civil society. Within one year of the Working Group's approval of the report, Italy will make an oral 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.

Japan: Phase 3

The Phase 3 Report on Japan by the OECD Working Group on Bribery evaluates and makes recommendations on Japan's implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Anti-Bribery Convention) and related instruments. The Report focuses on developments since Japan's Phase 2 evaluation in March 2005, taking into account other Phase 2 monitoring steps, including Japan's Phase 2*bis* evaluation in June 2006, and written self-assessment report and written follow-up report in October 2007. It also addresses cross-cutting horizontal issues that are routinely covered in each country's Phase 3 evaluation. The Group notes that Japan has obtained convictions for foreign bribery in two cases since the foreign bribery offence came into force in Japan in 1999. Of particular note is the second case, which involved substantial bribe payments in relation to a major infrastructure project financed in part by official development assistance (ODA) from Japan. This case resulted in convictions of four natural persons, including the representative of a foreign subsidiary, and the company itself, which was also delisted for two years from ODA-funded contracting. Nevertheless, prosecutions in two foreign bribery cases in 12 years appears very low in view of the size of the Japanese economy, and the Working Group continues to have serious concerns that Japan still does not appear to be actively enforcing its foreign bribery offence.

Japan must take measures to ensure that sanctions for individuals and legal persons are 'effective, proportionate and dissuasive' in accordance with Article 3 of the Convention, and take urgent measures to ensure compliance with Article 3.3 of the Convention by establishing a legal basis for confiscating the proceeds of bribing foreign public officials. Japan must also take urgent steps to encourage companies to prohibit the use of facilitation payments, and make it an offence to launder the proceeds of foreign bribery. The Working Group also recommends that the Ministry of Economy, Trade and Industry (METI), the lead ministry on the implementation of the Convention, balance its emphasis on prevention of foreign bribery by Japanese companies and individuals with facilitating enforcement of Japan's foreign bribery offence. Moreover, the Group recommends that METI strengthen its prevention role by, for instance, increasing visibility of information about foreign bribery on its website and more actively engaging with companies on establishing compliance programmes. The Working Group will also follow-up certain features of Japan's framework for addressing foreign bribery, such as application of its foreign bribery offence to cases where a bribe is transferred to a third party with the agreement of the foreign public official and corporate liability for the offence. In two years, the Working

Group will revisit the issue of placement of the foreign bribery offence in the UCPL if enforcement of the offence has not significantly increased by the time of Japan's written follow-up report.

The Working Group acknowledges indications by Japan that they are making greater use of mutual legal assistance (MLA) and non-compulsory investigative measures at an early stage in foreign bribery investigations. The Working Group also has a clear expectation that Japan will give serious consideration to using new investigative techniques, such as wire-tapping and grants of immunity from prosecution. It also appears that the police and prosecutors, and other agencies such as the National Tax Agency and Financial Service Agency's Securities and Exchange Surveillance Commission, are beginning to more closely coordinate and share information. Japan has also taken some steps that should increase reports of allegations of foreign bribery, including a legal requirement that external auditors report possible illegal acts to law enforcement authorities, developing contact points in overseas missions for collecting information on foreign bribery allegations, and providing whistleblower protections for public and private sector employees.

The Report and the recommendations, which reflect the findings of experts from Canada and Norway, were adopted by the OECD Working Group on Bribery on 16 December 2011. The Working Group invited Japan to submit a written report in six months on progress in actively detecting and investigating foreign bribery cases and on its implementation of recommendations 2, 4 and 5, an oral report in one year on recommendations 8, 9 and 13, and, according to regular Phase 3 procedure, a written report in two years on its progress implementing all the recommendations. This report is based on the laws, regulations and other materials supplied by Japan and information obtained by the lead examiners during their three-day, on-site visit to Tokyo from 26 to 28 July 2011, during which the examiners met with representatives of Japan's public administration, private sector and civil society.

Korea: Phase 3

The Phase 3 Report on Korea by the OECD Working Group on Bribery evaluates and makes recommendations on Korea's implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Anti-Bribery Convention) and related instruments. The Report focuses on developments since Korea's Phase 2 evaluation in November 2004, taking into account progress observed in Korea's written follow-up report in March 2007. It also addresses cross-cutting horizontal issues that are routinely covered in

each country's Phase 3 evaluation. The Working Group recognises that Korea has obtained convictions in nine separate cases of the bribery of foreign public officials under Korea's Act on Preventing Bribery of Foreign Public Officials in International Business Transactions (FBPA), including three convictions of legal persons, since 1999; although the majority of these cases involved the bribery of foreign military staff on Korean soil. The Working Group considers it a positive sign that currently one case is under prosecution, and three cases are in the pre-investigation stage – all which appear to have taken place abroad. However, Korea needs to use more proactive steps to gather information from diverse sources at the pre-investigation stage both to increase sources of allegations and enhance investigations. In addition, Korea must preserve transnational bribery case records for a reasonable period to allow for full reporting on those cases to the Working Group.

Important developments since Phase 2 that should bolster enforcement of the FBPA include concrete efforts to improve information gathering and coordination between the various relevant agencies. A new information and intelligence gathering capacity coordinated by the Ministry of Justice and involving the Ministry of Foreign Affairs and Trade and the Supreme Prosecutor's Office was launched in May 2011, to support investigations of crimes with international elements, including foreign bribery and tax evasion. A consultative group for sharing information on foreign bribery enforcement was also recently established by the Ministry of Justice, National Tax Service, and Anti-Corruption and Civil Rights Commission. Korea's agencies responsible for public procurement contracting, including procurement financed by official development assistance funds, and its official export credit support agency, are now empowered to debar companies convicted of foreign bribery. Korea has also made notable efforts to improve the prevention and detection of foreign bribery, including through awareness-raising of the FBPA in the private sector. Moreover, the Commercial Act has been amended to require listed companies to establish compliance guidelines and appoint a compliance officer to implement the guidelines. Reporting suspicions of foreign bribery should increase, due to a new whistleblower law that applies to both public and private sector employees and now extends to reports on foreign bribery.

The Working Group also identified further measures that need to be taken by Korea to further strengthen the implementation of the Convention. These include ensuring that criminal sanctions imposed in practice for foreign bribery are effective, proportionate and dissuasive, and that Korea confiscates the proceeds of foreign bribery where possible. To enhance prevention and detection, the Working Group recommends

that Korea encourage all companies, including SMEs, to adopt adequate internal controls, ethics and compliance programmes and measures. In addition, Korea is recommended to find ways to facilitate reporting by the tax authorities of suspicions of foreign bribery that they uncover in their tax audits.

The Report and the recommendations, which reflect findings of experts from Finland and Israel, were adopted by the OECD Working Group. Korea will submit an oral report on its implementation of recommendations 7 and 11 within one year, and a written report on its progress implementing all recommendations within two years. The Report is based on the laws, regulations and other materials supplied by Korea, and information obtained by the lead examiners during its three-day on-site visit to Seoul from 31 May to 2 June 2011, during which the examiners met with representatives of Korea's public administration, private sector and civil society.

Luxembourg: Phase 3

The Phase 3 report on the Grand Duchy of Luxembourg, by the Working Group on Bribery, assesses and makes recommendations in respect of the implementation and enforcement of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments. This phase is centred on key horizontal issues of interest to the Working Group, with a particular focus on implementation and actual enforcement of the Convention, and it also examines country-specific (vertical) issues involving the progress made by Luxembourg in correcting the shortcomings identified since the Phase 2 and Phase 2*bis* assessments in 2004 and 2008, along with any issues raised by changes in national legislation or Luxembourg's institutional framework.

The Working Group on Bribery welcomes the substantial progress made since Phase 2*bis* by the Grand Duchy, with the significant amendments to its legislation to achieve compliance with its international obligations under the Convention, and in particular by the introduction, on 3 March 2010, of provisions for the criminal liability of legal persons into its legal system, thus implementing Recommendation 4 (a) of Phase 2*bis*. The Working Group, though aware that these provisions came into force only recently, notes that their application to date has been limited, and it encourages the Luxembourg authorities to take all appropriate steps to draw the attention of the prosecution service to the importance of also prosecuting legal persons in cases of bribery of foreign public officials. It also recommends Luxembourg to ensure by all means that this regime does not limit such liability to cases in which the natural

person or persons who committed the offence are prosecuted and found guilty, and that the level of authority of the person or persons involved and the type of act likely to incur liability be sufficiently broad for effective enforcement.

The Working Group regrets that the recent legislative amendments to strengthen means for combating bribery did not seize the opportunity to clarify that no element of proof other than those stipulated in Article 1 of the Convention should be required to constitute the offence of bribing a foreign public official, and it therefore recommends that Luxembourg state explicitly that it is not necessary to prove the existence of a “corruption pact”, and that the notion of “without right” which appears *inter alia* in Article 247 of the Penal Code, should not be interpreted as implying a need for prosecutors to prove that a provision in force in the country of the foreign public official prohibits that official from receiving a bribe.

The report highlights the lack of enforcement of the offence of bribery of foreign public officials, with only one case currently being prosecuted that might involve an offence of bribing a foreign public official. Nevertheless, the magnitude of capital flows in Luxembourg and the associated risks of economic crime cause Luxembourg to receive a large number of requests for mutual legal assistance. The Working Group, while applauding the efforts made by Luxembourg to give priority to responding to those requests, thus enabling other countries to pursue their prosecutions, recommends that Luxembourg re-examines its approach to exercising its own jurisdiction over the prosecution of bribery of foreign public officials on its own territory, in particular on the basis of information obtained and provided through mutual legal assistance.

The Working Group encourages Luxembourg to pursue the efforts undertaken through its 2010 and 2008 legislation with regard to obtaining information that is needed for investigating and prosecuting bribery of foreign public officials from banks, financial institutions and tax authorities, so that such information may be obtained even in the absence of a formal referral to an investigating magistrate, thus ensuring full implementation of Phase 2*bis* Recommendation 3 (b). It also recommends that Luxembourg continue its reflection on police investigative powers at the preliminary enquiry stage, with a view to extending those powers by tailoring the available means and methods of investigation to the need to gather sufficient evidence so that prosecution can be initiated in cases involving bribery of foreign public officials.

Since Phase 2, the Luxembourg government has taken numerous initiatives to raise awareness in the business sector and among certified

accountants and company auditors, but also in the public sector and among agencies that confer public benefits in a context of bolstering the integrity of financial markets and combating money laundering. These actions have contributed indirectly to heightening awareness of the offence of bribing a foreign public official, even if the number of actions focused on the offence *per se* was significantly more limited. The Working Group also welcomes the introduction into Luxembourg law of whistleblower protection measures in the private and public sectors, with the enactment on 13 February 2011 of the Act strengthening means to combat bribery, thus implementing Phase 2*bis* Recommendation 2 (c). The Working Group recommends that the business and public sectors alike be made more aware of the importance of reporting and preventing transnational bribery, and of the protection now afforded to whistleblowers.

The report and its recommendations reflect the conclusions of Italian and Belgian experts and have been adopted by the Working Group on Bribery. One year after the approval of this report, Luxembourg is invited to present the Working Group with an oral follow-up report on implementation of certain recommendations. It will then submit a written report in two years' time. The Phase 3 evaluation report is based on the laws and regulations and other documents provided by Luxembourg, as well as on the information obtained by the examiners during their three-day on-site visit to Luxembourg on 1 to 3 February 2011, during which the evaluation team met with Luxembourg representatives of government, the private sector and civil society.

Mexico: Phase 3

The Phase 3 Report on Mexico by the OECD Working Group on Bribery evaluates and makes recommendations on Mexico's implementation and enforcement of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments (Anti-Bribery Convention). As well as focusing on key Group-wide (horizontal) issues, particularly enforcement, consideration is given to country-specific (vertical) issues arising from progress made since Mexico's Phase 2 evaluation in 2004, or issues raised, for instance, by changes in the domestic legislation or institutional framework of Mexico.

Fighting corruption is a stated priority of the Mexican government. Mexico has opened its first two foreign bribery investigations. It has also made some improvements to its legislative framework for fighting foreign bribery, such as by amending the foreign bribery offence. However, several deficiencies remain in its laws, and the pace of legislative change

has been slow. The Working Group therefore recommends that Mexico enact legislation, without delay, to resolve serious shortcomings in the liability of legal persons. Legislative amendment is necessary to allow for confiscation of the equivalent value of the bribe and its proceeds. The tax non-deductibility of bribes needs to be explicitly clarified. Debarment should also be made available as a sanction for not only domestic but also foreign bribery.

The report further expresses significant concerns over Mexico's criminal enforcement of its foreign bribery laws. Mexico should recognise that investigating and prosecuting bribery criminally is equally important as enforcing other offences such as organised crime and money laundering. The Working Group therefore recommends that Mexico give greater priority to the criminal enforcement of bribery offences. Mexico should ensure that its criminal law enforcement authorities seriously investigate all allegations. These authorities should also be given sufficient resources and the necessary expertise for engaging in complex financial and corporate investigations. When a company or individual has been found to have engaged in domestic or foreign bribery, Mexico should re-examine the briber's tax return for the relevant years to verify whether the bribe payments had been deducted from the briber's taxable income.

Mexico has made efforts to promote awareness, prevention and detection of foreign bribery within the private sector. The report recommends that Mexico continue these efforts, and focus especially on Mexican companies, including SMEs, that are active internationally but are not subject to the jurisdiction of the US Foreign Corrupt Practices Act. Mexican missions abroad and trade promotion agencies should assist and inform internationally active Mexican businesses to combat foreign bribery. Legislation to protect whistleblowers in not only the public but also the private sector is strongly supported by Mexican business and civil society, and should be enacted. Mexico should also amend its Federal Code of Criminal Procedure and other relevant legislation to clarify that an auditor's obligation to report crimes to law enforcement overrides his/her professional obligations towards his/her client.

The report commends Mexico for its considerable efforts and high-level commitment to raising awareness of foreign bribery, especially among tax examiners and the public. Mexico's system for sending and receiving mutual legal assistance has improved since Phase 2, but Mexico could improve the level and speed of its responsiveness in foreign bribery-related cases. Mexico has also shown commendable leadership in fighting corruption-related money laundering in the Financial Action Task Force.

The report and its recommendations reflect findings of experts from Slovenia and Spain and were adopted by the OECD Working Group on Bribery. It is based on legislation and other materials provided by Mexico, and information obtained by the evaluation team during its three-day on-site visit to Mexico City on 17-19 May 2011, during which the team met representatives of Mexico's public administration, judiciary, private sector and civil society. Within one year of the Group's approval of the report, Mexico will make an oral 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.

Norway: Phase 3

The Phase 3 Report on Norway by the OECD Working Group on Bribery evaluates and makes recommendations on Norway's implementation and enforcement of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments. It focuses on horizontal issues, which concern the Working Group as a whole, particularly enforcement, and also considers country-specific issues arising from progress made since Norway's Phase 2 evaluation in 2004 and Phase 2 follow-up in 2007, or issues raised, for instance, by changes in the domestic legislation or institutional framework of Norway.

Enforcement of the foreign bribery offence in Norway has increased steadily since Phase 2, and resulted in a number of prosecutions and sanctions of individuals and companies in foreign bribery-related cases. This is primarily owing to the experienced and well-resourced investigators and prosecutors situated in the specialised Anti-Corruption Teams within Norway's National Authority for Investigation and Prosecution of Economic and Environmental Crime, Økokrim, as well as a general determination by Norway to proactively seek out, investigate and prosecute corruption at all levels, be it domestic or foreign bribery, in the public or private sector.

Increased enforcement against companies is notably a result of Norway's efficient legal framework for corporate liability, which does not restrict the liability of legal persons to cases where the natural person is prosecuted or sanctioned, as well as to Økokrim's approach, which has led to systematic investigation, prosecution and sanctions on companies involved in foreign bribery. It is nevertheless worth noting that all foreign bribery cases involving companies have been settled through the use of out-of-court settlements (or "optional penalty writs"), and that the courts have therefore not yet had the opportunity to provide their interpretation of the corporate liability provisions in foreign bribery cases, although one case is currently pending before the courts. More significantly, the

Report notes that confiscation measures have not been relied on by the law enforcement authorities to seize and confiscate the proceeds of bribery potentially gained by companies, and the Working Group recommends that full use of confiscation provisions be made, where appropriate.

Regarding the detection and reporting of foreign bribery, the Report outlines the efforts made by Norway to encourage the reporting of foreign bribery, in particular through comprehensive and effective whistleblowing legislation; indeed several foreign bribery cases have come about as a result of whistleblower reports. In addition, engagement of Norwegian public officials operating in key government agencies, such as the Tax administration, the Ministry of Foreign Affairs, or Norway's export credit agencies, is likely to enhance the sources of detection of foreign bribery cases. As further concerns public agencies providing public advantages (e.g. export credit, ODA, or public procurement agencies), the Report notes that they are entitled to debar companies convicted of corruption offences, which could prove a powerful deterrent for companies to engage in bribery. In this respect, the Working Group suggests that this debarment mechanism could be made more efficient, for example if a centralised resource existed to allow these agencies to access information on companies sanctioned for foreign bribery.

The Report and its recommendations reflect findings of experts from the Czech Republic and Sweden and were adopted by the OECD Working Group on Bribery. The Report is based on the laws, regulations and other materials supplied by Norway, and information obtained by the evaluation team during its three-day on-site visit to Oslo on 1 to 3 February 2011, during which the team met with representatives from Norway's public administration, private sector and civil society. Within two years of the Group's approval of the Report, Norway will submit a written report on its implementation of its Phase 3 recommendations, which will be made publicly available.

Switzerland: Phase 3

The Phase 3 Report on Switzerland by the OECD Working Group on Bribery in International Business Transactions (Working Group on Bribery) evaluates and makes recommendations on Switzerland's implementation and enforcement of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments (Anti-Bribery Convention). Phase 3 focuses on key Group-wide (horizontal) issues, particularly enforcement, consideration is also given to country-specific (vertical) issues arising from progress made since Switzerland's

Phase 2 evaluation in 2004, or issues raised by changes in the domestic legislation or institutional framework of Switzerland.

Switzerland has made progress in its enforcement actions since the Phase 2 evaluation, with the conviction, in the last twelve months, of one natural and one legal person in two cases of foreign bribery falling within the scope of the Convention. Switzerland also exemplifies good practice in the context of confiscation of the instrument and proceeds of corruption: since 2008, the Office of the Attorney-General (OAG) has confiscated 163 million Swiss francs and USD 32 million in relation to bribery of foreign public officials. The Working Group also congratulates Switzerland for its effort to respond to requests for mutual legal assistance and considers that these efforts provide a significant contribution to enforcement actions against foreign bribery in other jurisdictions. The Working Group notes, however, that the number of convictions remains low, and wonders whether in the context of companies, this is not due to difficulties in applying provisions on the criminal liability of legal persons. The Working Group welcomes the record fine and compensation ordered in Switzerland against Alstom under the Criminal Code provisions on bribery of foreign public officials and considers that the sanctions in this matter are effective, proportionate and dissuasive. Nevertheless, the Working Group considers that in practice sanctions do not always appear sufficiently dissuasive, as evidenced in the penalties ordered against an individual convicted for bribery of foreign public officials. The Group is equally concerned about the lack of a systematic approach allowing for the exclusion of companies convicted of bribery from public procurement or official development assistance contracts.

The Working Group welcomes improvements in the legislative framework in Switzerland. In January 2011 a new Code of Criminal Procedure entered into force, introducing a single prosecutorial model for the whole of Switzerland. At the same time, the Swiss legislature introduced a general obligation for the majority of federal officials to report allegations of crimes in office, including foreign bribery, as well as a framework to protect federal officials that report in good faith. The Group recommends that Switzerland consider expanding the scope of these provisions to apply to officials from federal agencies that are not subject to this law (for example, SERV and FINMA) and encourage the cantons to consider the introduction of similar measures for their personnel, when they do not already exist. In the same context, the Group takes into account projects at federal and cantonal levels to train administrative officials on the offence of bribery but nevertheless notes the very low level of detection and reporting of transactions that could constitute bribes paid to foreign public officials and recommends that Switzerland reinforce

its efforts in this regard. The Group is pleased to note the existence of draft legislation defining the framework for reporting and whistleblower protection in the private sector, and recommends that it be adopted as soon as possible.

The Working Group notes with interest the extension of external auditing requirements to a larger number of categories of legal entities and also notes the efforts to consult and train auditors and accountants on the issue of the detection of fraud associated with bribery. In general, the Group notes that Switzerland has made significant efforts, in partnership with professional associations and civil society, to raise awareness in the business, accounting and auditing sectors. In this regard, the Working Group encourages Switzerland to undertake even more focused awareness raising with SMEs, on internal control mechanisms to prevent the payment of bribes to foreign public officials. In relation to external audit, the Group also recommends that Switzerland require external auditors to report allegations of foreign bribery to competent authorities outside of the company. In addition, the Group considers that, given the importance of the country in the international economy and the number of influential Swiss companies, Switzerland should undertake a regular review of its policy in relation to small facilitation payments.

The report and its recommendations reflect findings of experts from Austria and Hungary and were adopted by the Working Group on Bribery. Switzerland will submit a written report on the implementation of all recommendations within two years. The Phase 3 report is based on legislation and other materials provided by Switzerland, as well as the information obtained by the evaluation team during the three-day on-site visit to Bern from 28 to 30 June 2011, during which the evaluation team met representatives from the federal and cantonal administrations, the private sector and civil society.

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