

# OECD Working Group on Bribery



# OECD WORKING GROUP ON BRIBERY: ANNUAL REPORT ON ACTIVITIES UNDERTAKEN IN 2012

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## MESSAGE FROM THE SECRETARY-GENERAL



**Angel Gurría**  
*Secretary-General*



In December 2012, we marked the 15th anniversary of the signing of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The signing of the Convention was a major breakthrough in the fight against corruption. It committed the world's leading exporting countries to make it a crime to bribe foreign public officials when engaging with them in cross-border business transactions. Before 1997, only one government had sanctioned foreign bribery; many governments even treated bribe payments to foreign public officials as legitimate business expenses for tax purposes. Today, the Anti-Bribery Convention is a cornerstone of the OECD's efforts to create a stronger, cleaner and fairer world economy.

The Convention is the only international, legally binding instrument to focus exclusively on the bribery of foreign public officials in international business. This focus has allowed the Parties to the Convention, under the auspices of the OECD Working Group on Bribery, to rigorously monitor performance of each of the Parties since the Convention's entry into force in 1999. The Working Group's peer reviews—which Transparency International calls the “gold standard” of monitoring—holds Parties accountable to their Convention obligation to prevent, detect, investigate and prosecute this crime.

The Anti-Bribery Convention is a powerful tool for cleaning up markets. But the Convention's impact is only as strong as the strength of its

countries' commitment to implementing it. I see three avenues for ensuring the lasting effectiveness of the Convention: first, stepping up enforcement of anti-bribery laws in Convention countries; second, bringing more emerging-market economies into the Convention; and lastly, maximising synergies with the G20's work and commitments on anti-corruption.

Active enforcement is the best weapon we have to fight foreign bribery. Between 1999, when the Convention entered into force, and December 2012 90 companies and 221 individuals were sanctioned under criminal proceedings for foreign bribery, and 83 individuals were sentenced to prison. These figures are set to increase, with approximately 320 investigations under way and criminal charges laid against 166 individuals and entities. However, there has been little or no enforcement in over half of the Parties to the Convention.

The two most recent Parties to the Convention are Colombia and Russia. Russia became the 39th Party to the Convention on 17 April 2012, and Colombia became the 40th Party to the Convention on 19 January 2013. Both underwent their first round of evaluations by the Working Group during 2012.

The 40 countries that have joined the Anti-Bribery Convention generate nearly two-thirds of total world trade and 90 per cent of outward foreign direct investment. So, the vast majority of international business transactions involve companies or individuals who are subject to criminal laws against bribing foreign officials, wherever this may occur. The Convention's influence has been enhanced through the engagement of major emerging-market economies, like China, India and Indonesia, who regularly attend Working Group on Bribery meetings and have either drafted or enacted foreign bribery offences of their own. In 2012, the Working Group also welcomed Costa Rica, Latvia, Malaysia, Peru, Thailand, and Tunisia to its meetings, as well as partner governmental, nongovernmental and business organizations, including Transparency International, the UN Office on Drugs and Crime, and the World Bank.

I am also pleased that in 2012 the G20 Anti-Corruption Working Group and its Anti-Corruption Action Plan called on its Members to strengthen their efforts to fight foreign bribery and, for G20 countries that are not Party to the Convention, to engage more closely with the Working Group on Bribery. The fight against foreign bribery also stands to benefit from G20 work on other, related issues, such as bribery solicitation, international cooperation, whistle-blower protection, and working with the private sector against corruption.

The pages that follow report engagement of the Members of the OECD Working Group on Bribery to carry out their obligations under the Convention. The Convention's impact depends on a collective sense of responsibility for fighting bribery and corruption worldwide. We still have much to do, but I take this opportunity, in reflecting on the past year, to highlight and welcome our Working Group on Bribery Members for their impressive achievements and efforts. I would also like to extend special thanks to Professor Mark Pieth, who has so capably led the Working Group as Chair for the better part of the last two decades in pursuit of stronger and cleaner economies for better lives.



## MESSAGE FROM THE CHAIR, OECD WORKING GROUP ON BRIBERY



**Mark Pieth**  
*Chair, OECD Working Group  
on Bribery*

This year was a demanding year for the Working Group's members in the fight against bribery. It saw the Working Group pass the halfway point of its Phase 3 evaluations, the toughest round of evaluations thus far, focussing on investigation, enforcement and prosecution. For this I thank all the Working Group delegates for their efforts and tireless commitment.

Since the OECD Anti-Bribery Convention was signed 15 years ago, we have learned a lot about this crime, thanks to the Working Group on Bribery's rigorous peer reviews. What we see from these reviews is that foreign bribery is complex and involves many different actors across many different borders. Law enforcement must therefore be equipped with the expertise, knowledge and skills to go after this crime. That is why, since 2010, the Working Group on Bribery's third round of peer reviews has focused on anti-bribery enforcement. In 2012, the Working Group evaluated 12 countries: Australia, Austria, France, Greece, Hungary, Netherlands, Slovak Republic, Spain, Sweden and the United Kingdom, the executive summaries of which are included in this report.

Now that we are more than halfway through this third round of country reviews under the Anti-Bribery Convention, the Working Group is getting a sense of some of the "big issues" when it comes to anti-bribery enforcement. These areas are key to ensuring the effectiveness of the Convention, but many of our Members have found them challenging. These issues include, for example: increasing awareness in the private and public sectors, holding companies liable for the crime of foreign bribery; sharing information across borders in foreign bribery investigations via mutual legal assistance; and ensuring that, as per the Convention, sanctions are "effective, proportionate, and dissuasive" and that countries can seize and confiscate bribes and the proceeds of bribery.

Our Group is not alone in recognizing the importance of these issues and the challenges they present to effective enforcement. The G20 Anti-Corruption Working Group, which oversees implementation of the G20 Anti-Corruption Action Plan, has also underlined anti-bribery enforcement as one of its highest priorities.

Although we've accomplished much in 2012, with the adoption of 12 Phase 3 reports, two Phase 1 evaluations (of our two newest Members: Colombia and Russia) and 13 follow-up reports, we need to keep looking forward. Almost all of the Phase 3 reports adopted in 2012 asked countries to improve awareness-raising efforts, to bolster enforcement and detection efforts, and to review their sanctions regimes.

As we near the end of this third round of country evaluations, we should take stock of the fight against foreign bribery and how we can be most effective in our efforts. We must not take for granted the progress that we have made thus far, with 311 companies and individuals sanctioned for foreign bribery and 320 investigations ongoing. I hope that we can continue to build on the successes—and failures—of the first fifteen years of the Convention, and that we continue to demand of ourselves adherence to the world's toughest anti-bribery standards.

A handwritten signature in black ink, appearing to read "Neil". The signature is fluid and cursive, with a long horizontal stroke at the end.

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## SETTING THE STANDARD: THE ANTI-BRIBERY CONVENTION

### The Anti-Bribery Convention

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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 the bribery of foreign 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 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.

Fifteen years after the signature of the Convention, 306 companies and individuals have faced criminal sanctions for the bribery of foreign public officials in international business deals. Eighty-four of those individuals have gone to jail. Approximately 320 investigations are ongoing.

### The Working Group on Bribery in International Business Transactions

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Established in 1994, the OECD Working Group on Bribery in International Business Transactions (Working Group) is responsible for monitoring the implementation and enforcement of the OECD Anti-Bribery Convention, the 2009 Recommendation on Further Combating Bribery of Foreign Bribery in International Business Transactions (2009 Anti-Bribery



### **Working Group on Bribery: Facts and Figures**

- There are 40 Parties to the Convention: the 34 OECD members, plus Argentina, Brazil, Bulgaria, Colombia, the Russian Federation, and South Africa.
- 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.

Recommendation)], and related instruments. Made up of representatives from the States Parties to the Convention, the Working Group meets four times per year in Paris and publishes all of its country monitoring reports on the OECD website: [www.oecd.org/daf/anti-bribery](http://www.oecd.org/daf/anti-bribery).

### **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 to 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



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the only guidance of its kind adopted at the intergovernmental level. The Guidance provides information to companies to prevent and detect foreign bribery in their international business dealings. It includes fundamental elements—that, at a minimum—should make up the heart of any effective 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 2012

- 221 individuals and 90 entities have been sanctioned under criminal proceedings for foreign bribery in 13 States Parties between the time the Convention entered into force in 1999 and the end of 2012.
- At least 83 of the sanctioned individuals were sentenced to prison for foreign bribery.
- At least 85 individuals and 120 entities have been sanctioned in criminal, administrative and civil cases for other offences related to foreign bribery, such as money-laundering or accounting, in 5 States Parties.
- Approximately 320 investigations are ongoing in 24 States Parties to the Anti-Bribery Convention. Prosecutions are ongoing against 148 individuals and 18 entities in 15 Parties for offences under the Convention.

### About the Working Group on Bribery Enforcement Data

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

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

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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). The enforcement data provided on a voluntary basis and published in the annual report also includes data on concluded criminal, administrative and civil proceedings for other offences related to foreign bribery, such as accounting and money laundering offences.

### **In Short: Working Group on Bribery Enforcement Data<sup>1</sup>**

To date, all States Parties to the Convention have provided enforcement data. According to data as of December 2012, 221 individuals and 90 entities have been sanctioned under criminal proceedings for foreign bribery in 13 States Parties between the time the Convention entered into force in 1999 and the end of 2012. Out of these 13 States Parties, 9 have sanctioned both companies and individuals, and 4 have sanctioned only individuals.

According to voluntarily provided data, at least 83 of the sanctioned individuals were sentenced to prison for foreign bribery. Five States Parties have also sanctioned individuals or legal persons for other offences related to foreign bribery in international business transactions (*e.g.* offences under Articles 7 and 8 of the Anti-Bribery Convention, such as accounting offences, breach of trust, or money laundering).

Approximately 320 investigations are ongoing in 24 States Parties to the Anti-Bribery Convention.

1. The WGB enforcement data represents data collected from 39 States Parties to the OECD Anti-bribery Convention. As of December 2012, there were 38 States Parties to the Anti-Bribery Convention. Russia became the 39th State Party to the OECD Anti-Bribery Convention in April 2012. In January 2013, Colombia became the 40th State Party.

**Methodology and Content of the Comparative Table of  
Enforcement Data Collected from the 39 States Parties to the  
Anti-Bribery Convention – Decisions on Foreign Bribery Cases  
from 1999 to December 2012**

***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 in international business transaction and for failures to prevent a proven case of bribing a foreign public official in international business transactions (Articles 1 and 2 of the Anti-Bribery Convention) in the 39 States Parties to the Anti-Bribery Convention from its entry into force to December 2012. (Colombia did not become a Party to the Anti-Bribery Convention until January 2013 and is therefore not included in this year's WGB enforcement data.)

Additionally, the Table includes data provided on a *voluntary* basis by certain countries concerning the number of foreign bribery cases that have been resolved through an agreement between the law enforcement authorities and the accused person or entity, with or without court approval. In some cases the proceedings may have been terminated or deferred for a certain period on condition that the accused agrees to certain conditions, such as implementation of corporate reforms, the payment of fines, restitution, and/or full 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 the number of sanctions for the commission of the offence of bribing a foreign public official in international business transactions and for failures to prevent a proven case of bribing a foreign public official in international business transactions. It does not include other offences that might also apply to this form of conduct in certain circumstances, such as trading in influence, United Nations embargo violations, or bribery to obtain a benefit outside of an international business transaction. The Table also does not record the number of sanctions that may have been ordered in the 39 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 Colombia because the Anti-Bribery Convention was not in force during the entire 2012 calendar year for that Party.

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### ***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.

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 39 Parties to the Anti-Bribery Convention  
Decisions on Foreign Bribery Cases from 1999 to December 2012<sup>1</sup>**

| Country                                      | Date of latest information supplied | % share of world exports (2012) <sup>2</sup> | Number of individuals (I) and legal persons (LP) sanctioned or acquitted/found not liable |  |                  |     |
|--|-------------------------------------|--|---|--|------------------|-----|
| CRIMINAL CASES                               |                                     |  | Sanctioned  |  | Acquitted        |     |
|  |                                     |  | I   | LP   | I                | LP  |
| Argentina                                    | December 2012                       | 0.4  | 0   | 0  | 0                | 0   |
| Australia                                    | December 2012                       | 1.4  | 0   | 0  | 0                | 0   |
| Austria                                      | December 2012                       | 1.1  | 0   | 0  | 0                | 0   |
| Belgium <sup>3</sup>                         | December 2012                       | 1.9  |   |  |                  |     |
| Brazil                                       | December 2012                       | 1.3  | 0   | 0  | 0                | 0   |
| Bulgaria                                     | December 2012                       | 0.1  | 1   | 0  | 0                | 0   |
| Canada                                       | December 2012                       | 2.5  | 0   | 2  | 0                | 0   |
| Chile  | December 2012                       | 0.4  | 0   | 0  | 0                | 0   |
| Czech Republic                               | December 2012                       | 0.7  | 0   | 0  | 1                | 0   |
| Denmark                                      | December 2012                       | 0.8  | 0   | 0  | 0                | 0   |
| Estonia                                      | December 2012                       | 0.1  | 0   | 0  | 0                | 0   |
| Finland                                      | December 2012                       | 0.5  | 0   | 0  | 0                | 0   |
| France                                       | December 2011                       | 3.2  | 4   | 0  | 24               | 0   |
| Germany                                      | December 2012                       | 7.9  | 21 (+67 agreed sanctions) <sup>5</sup>  | 0  | 0                | 0   |
| Greece                                       | December 2011                       | 0.3  | 0   | 0  | 0                | 0   |
| Hungary                                      | December 2012                       | 0.5  | 26  | 0  | 2                | 0   |
| Iceland                                      | December 2012                       | 0.04   | 0   | 0  | 0                | 0   |
| Ireland                                      | December 2012                       | 1.0  | 0   | 0  | 0                | 0   |
| Israel <sup>6</sup>                          | December 2012                       | 0.4  | 0   | 0  | 0                | 0   |
| Italy  | December 2012                       | 2.7  | 8, including plea agreements <sup>7</sup>   | 2, including plea agreements <sup>7</sup>                            | 3                | 2   |
| Japan  | December 2011                       | 4.0  | 6   | 1  | 0                | 0   |
| Korea  | December 2012                       | 2.9  | 16  | 4  | 0                | 0   |
| Luxembourg                                   | December 2012                       | 0.4  | 0   | 0  | 0                | 0   |
| Mexico                                       | December 2012                       | 1.8  | 0   | 0  | 0                | 0   |
| Netherlands                                  | December 2012                       | 3.0  | 0   | 0  | 1                | 0   |
| New Zealand                                  | December 2012                       | 0.2  | 0   | 0  | 0                | 0   |
| Norway                                       | December 2012                       | 0.9  | 2   | 1  | 2                | 0   |
| Poland                                       | December 2012                       | 1.0  | 0   | 0  | 0                | 0   |
| Portugal                                     | June 2009                           | 0.4  | 0   | 0  | 0                | 0   |
| Russian Federation                           | N/A                                 | 2.7  | N/A   | N/A  | N/A              | N/A |
| Slovak Republic                              | December 2012                       | 0.4  | 0   | 0  | 0                | 0   |
| Slovenia                                     | December 2012                       | 0.2  | 0   | 0  | 0                | 0   |
| South Africa                                 | December 2012                       | 0.5  | 0   | 0  | 0                | 0   |
| Spain  | December 2012                       | 2.0  | 0   | 0  | 0                | 0   |
| Sweden                                       | December 2012                       | 1.2  | 2   | 0  | 0                | 0   |
| Switzerland <sup>9</sup>                     | December 2012                       | 1.5  | 1   | 1  | 0                | 1   |
| Turkey                                       | December 2012                       | 0.8  | 0   | 0  | 1                | 0   |
| United Kingdom                               | December 2012                       | 3.5  | 5   | 2  | 1                | 0   |
| United States <sup>10</sup>                  | December 2012                       | 9.9  | 62, including plea agreements   | 29 plea agreements (+ 48 DPAs/NPAs <sup>11</sup> )                   | 1                | 0   |
| <b>TOTAL</b>                                 | December 2012                       | 60.44  | 221 persons sanctioned, including plea agreements and agreed sanctions                    | 90 legal persons sanctioned, including plea agreements and DPAs/NPAs | 14               | 3   |
| ADMINISTRATIVE AND CIVIL CASES <sup>12</sup> |                                     |  | Sanctioned  |  | Found Not Liable |     |
|  |                                     |  | I   | LP   | I                | LP  |
| Germany                                      | December 2012                       | 7.9  | 1   | 7  | 0                | 0   |
| Japan  | December 2011                       | 4.0  | 0   | 1  | 0                | 0   |
| United States <sup>13</sup>                  | December 2012                       | 9.9  | 41, including settlements <sup>14</sup>   | 55, including settlements <sup>14</sup>                              | 0                | 0   |
| <b>TOTAL</b>                                 | December 2011                       |  | 42, including settlements   | 63, including settlements  | 0                | 0   |

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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. The number of convictions and sanctions may decrease from previous years due to appeals and other challenges. However, the responsibility for the provision and accuracy of information rests solely with the individual Parties.

2 Export data provided by the OECD Economics Directorate and includes data through the first nine months for 2012.

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 by 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 Portugal's Phase 3 report, adopted 14 June 2013, notes that Portugal's foreign bribery enforcement statistics as provided by Portugal and as originally included in the 2013 Working Group on Bribery Annual Report erroneously included cases of bribery of Portuguese officials. These cases do not fall under Article 1 of the Convention for Portugal. The data in this version of the Annual Report has been corrected to rectify this error.

9 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.

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

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

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

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

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



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

#### ***What the data includes***

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

#### ***Methodology used and limits***

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

| CRIMINAL SANCTIONS FOR OTHER OFFENCES RELATED TO FOREIGN BRIBERY <sup>1</sup> |               |     | Sanctioned                            |                                  | Found Not Liable |          |
|---|---------------|-----|---------------------------------------|----------------------------------|------------------|----------|
|   |               |     | I                                     | LP                               | I                | LP       |
| Australia   | December 2012 | 1.4 | 1                                     | 0                                | 0                | 0        |
| France  | December 2011 | 3.2 | 3                                     | 0                                | 0                | 0        |
| Germany   | December 2012 | 7.9 | 20 (+8 agreed sanctions)              | 0                                | 0                | 0        |
| United Kingdom  | December 2012 | 3.5 | 0                                     | 1                                | 0                | 0        |
| United States   | December 2012 | 9.9 | 5, including settlements <sup>2</sup> | 14, including settlements        | 2                | 0        |
| <b>TOTAL</b>  |               |     | <b>37, including settlements</b>      | <b>15, including settlements</b> | <b>2</b>         | <b>0</b> |

| ADMINISTRATIVE/CIVIL SANCTIONS FOR OTHER OFFENCES RELATED TO FOREIGN BRIBERY <sup>2</sup> |               |     | Sanctioned                       |                                   | Found Not Liable |          |
|---|---------------|-----|----------------------------------|-----------------------------------|------------------|----------|
|   |               |     | I                                | LP                                | I                | LP       |
| Germany   | December 2012 | 7.9 | 4                                | 3                                 | 0                | 0        |
| United Kingdom  | December 2012 | 3.5 | 0                                | 7                                 |                  |          |
| United States   | December 2012 | 9.9 | 44, including settlements        | 95, including settlements         | 0                | 0        |
| <b>TOTAL</b>  |               |     | <b>48, including settlements</b> | <b>105, including settlements</b> | <b>0</b>         | <b>0</b> |

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

2 Only those countries that have reported administrative/civil sanctions for offences related to foreign bribery have been listed under the "Administrative/Civil Sanctions for Other Offences Related to Foreign Bribery". This information was voluntarily provided by Member Countries. "Other offences related to foreign bribery" include offences falling under Articles 7 (Money Laundering) and Article 8 (Accounting) of the Convention. Examples include books and records violations, failure to implement sufficient internal controls, abus de biens sociaux (misuse of company assets), and untreu (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 320 ongoing investigations in 24 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 15 in 6 States Parties, and fewer than 5 in 12 States Parties). No investigation is ongoing in 5 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 160 criminal proceedings (against 148 individuals and 18 entities) are ongoing in 15 States Parties. Seven 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 216 individuals sanctioned for foreign bribery under criminal proceedings, at least 83 individuals have been sentenced to prison terms in 7 States Parties.

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## MONITORING COMPLIANCE AND IMPLEMENTATION OF THE CONVENTION

### The Phase 3 Evaluation Process

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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. 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 is to ensure Parties' compliance with the Convention and implementation of the 2009 Recommendations. Monitoring also provides an opportunity to consult on difficulties in

#### 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.

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 2012, the Working Group on Bribery reached its halfway point in its Phase 3 round of evaluations. Each of the countries that underwent a Phase 3 evaluation will provide a written follow-up report in two years' time to report on steps taken to implement recommendations made by the Working Group in the evaluation reports. Summaries of the reports adopted on Australia, Austria, France, Greece, Hungary, Netherlands, Slovak Republic, Spain, Sweden, and the United Kingdom are included in Annex 2.

### OECD Working Group on Bribery: Phase 1, 2 & 3 Reviews and Related Regular Follow-up Reports in 2012

|                                   |  |
|-----------------------------------|--|
| Phase 3 evaluations               | <ul style="list-style-type: none"> <li>• Hungary (March)</li> <li>• United Kingdom (March)</li> <li>• Greece (June)</li> <li>• Slovak Republic (June)</li> <li>• Sweden (June)</li> <li>• Australia (October)</li> <li>• France (October)</li> <li>• Austria (December)</li> <li>• Netherlands (December)</li> <li>• Spain (December)</li> </ul> |
| Phase 3 oral follow-up reports    | <ul style="list-style-type: none"> <li>• Bulgaria (March)</li> <li>• Germany (March)</li> <li>• Luxembourg (June)</li> <li>• Korea (October)</li> <li>• Mexico (October)</li> <li>• Italy (December)</li> <li>• Japan (December)</li> </ul>  |
| Phase 3 written follow-up reports | <ul style="list-style-type: none"> <li>• Finland (October)</li> <li>• United States (October)</li> <li>• Iceland (December)</li> </ul>   |
| Phase 2 written follow-up reports | <ul style="list-style-type: none"> <li>• Israel (March)</li> <li>• South Africa (June)</li> </ul>  |
| Phase 1 evaluations               | <ul style="list-style-type: none"> <li>• Russia (March)</li> <li>• Colombia (December)</li> </ul>  |

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**Working Group on Bribery Phase 3 Evaluation Schedule**

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

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



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## WORKING WITH KEY PARTNERS IN THE FIGHT AGAINST FOREIGN BRIBERY

### New Parties to the Anti-Bribery Convention

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In 2012, Russia became the 39th Party to the OECD Anti-Bribery Convention, and Colombia deposited its instrument of accession in December 2012, becoming the 40th Party to the Convention on 19 January 2013.

#### ► **Russia**

On 17 April 2012, Russia officially became the 39th Party to the OECD Anti-Bribery Convention. Russia officially requested to join the Convention in February 2009. As a full Party to the Anti-Bribery Convention, Russia must now undergo the Working Group on Bribery's peer-review monitoring system. In March 2012, the Working Group on Bribery adopted the Phase 1 evaluation of Russia under the Convention. The evaluation recognized the efforts Russia has made to bring its anti-bribery framework into line with the Convention and also identified areas for improvement, which the Group will follow up in the context of Russia's Phase 2 evaluation in late 2013. These include recommendations for strengthening the Russian foreign bribery offence, Russia's regime for holding companies liable for foreign bribery and for sanctioning false or inadequate accounting, and for ensuring that bribes paid to foreign public officials are not considered as tax-deductible business expenses.

#### ► **Colombia**

Colombia deposited its instrument of accession to the Anti-Bribery Convention on 11 December 2012 and became the Convention's 40th Party on 19 January 2013. Like Russia, Colombia's accession to the Convention triggered its participation in the WGB's peer review process. On 14 December 2012, the WGB adopted Colombia's Phase 1 evaluation, which considered Colombia's anti-bribery legislation, other than its framework for liability of legal persons, generally capable of conforming to the standards of the Convention. Nonetheless, the report highlighted areas where Colombia's framework for fighting foreign bribery could be strengthened. For example, when the WGB considers Colombia's Phase 2 evaluation in June 2014, it will focus on Colombia's regime for holding companies liable for foreign bribery, available sanctions to ensure they are effective, proportionate and dissuasive, and the explicit non-tax deductibility of bribes paid to foreign public officials, among other issues.



Former Colombian Secretary for Transparency Carlos Galán, Ambassador Gustavo Adolfo Carvajal, and Minister of Justice Ruth Stella Correa deposit Colombia's instrument of accession to the OECD Anti-Bribery Convention.

## Engagement with Major 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 that are increasingly playing a role in global markets, including Malaysia and Thailand. To China, India and Indonesia, in particular, the Organisation has proposed a Key Partners process<sup>3</sup>, 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 2010 Seoul G20 Anti-Corruption Action Plan, which called on G20 countries to strengthen their laws and measures for fighting foreign bribery and, for those G20 countries not Party to the Convention, to engage with the OECD Working Group on Bribery or to ratify the Convention. In 2012, G20 governments renewed the Action Plan. The 2013-2014 G20 Anti-Corruption Action Plan calls on G20 governments to:

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

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

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 25.)

#### ► **China**

China attended one meeting of the Working Group on Bribery in 2012. The Chinese delegation is led by the Ministry of Supervision, which plays a key role in China on matters concerning bribery and corruption, and also often includes representatives from the Ministry of Foreign Affairs and the Supreme People's Procuratorate, which is the People's Republic of China's highest-level body charged with prosecutions and investigations.

A technical seminar is planned for 2013, for the purpose of exchanging knowledge and expertise between the WGB and China on foreign bribery enforcement. (A previous seminar was held with China in 2010, which focused on establishing a foreign bribery offence.) In February 2011, China amended its Criminal Law to establish a criminal offence of bribing non-PRC government officials and officials of international public organisations. The new offence came into force on 1 May 2011.

#### ► **India**

India, represented by the Ministry of Personnel, Central Bureau of Investigation, and the Central Vigilance Commission, also continued to engage with the Working Group on Bribery and participate in WGB meetings in 2012. At each meeting, India presented on its recent developments in combating foreign bribery, including the status of India's foreign bribery bill, the Prevention of Bribery of Foreign Public Officials and Officials of International Organisations Bill.

To support the passage of India's draft foreign bribery offence, representatives from the OECD secretariat to the WGB visited India in May 2012 to discuss the legislation, build private sector support for

the adoption of the Bill, and raise awareness of the benefits of India's joining the Anti-Bribery Convention. Also in May 2012, the OECD and the Federation of Indian Chambers of Commerce and Industry (FICCI) Aditya Birla Centre for CSR Excellence co-organized two foreign bribery awareness-raising events in Mumbai and Delhi with over 70 representatives from the Indian private sector.

### ► **Indonesia**

Indonesia's commitment to engaging with the WGB continued in 2012. At three of the WGB's four meetings in 2012, representatives from the Indonesian Corruption Eradication Commission (KPK) provided updates to the Group on progress drafting a bill to make the bribery of foreign public officials a criminal offence in Indonesia. KPK officials also participated in the December 2012 meeting of law enforcement officials. (For more information on WGB law enforcement official meetings, see page 38.) In July 2012, representatives from the OECD Secretariat to the WGB visited Jakarta to share WGB experiences with KPK legal experts on criminalising foreign bribery and establishing the liability of legal persons for such conduct. The Secretariat also met with the Ministry of Law and Human and Human Rights, and the Ministry of Foreign Affairs to discuss closer engagement with the WGB.



Representatives from the OECD and KPK meet in July 2012 to discuss the criminalisation of foreign bribery and establishment of corporate liability for such conduct.

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In September 2012, the OECD Secretariat to the WGB participated in a workshop organized by the KPK entitled, "International Co-operation and Mutual Legal Assistance" in Yogyakarta, Indonesia. The workshop was held in conjunction with the annual meeting of the Southeast Asian Parties against Corruption (SEA-PAC), and involved experts from Australia, Korea, the Netherlands, and the United States.

► **Malaysia**

Malaysia has been regularly attending WGB meetings since 2010 and attended three of the WGB's four meetings in 2012. Led by the Malaysian Anti-Corruption Commission (MACC) or the Ministry of Foreign Affairs, the Malaysian delegation provided regular updates on the implementation of its foreign bribery offence, which came into force in 2009.

In June 2012, the MACC's Malaysia Anti-Corruption Academy hosted and jointly organized with the OECD two seminars. The first was to exchange knowledge and expertise with MACC investigators and focused on investigating foreign bribery cases using Malaysia's foreign bribery offence. The second seminar was open to officials from countries in the Southeast Asian region, China and India to exchange knowledge and expertise on effective legislative frameworks for combating foreign bribery. This seminar was attended by experts from the governments of Malaysia, Brunei, Cambodia, China, India, Singapore, and Malaysian state-owned enterprises (SOEs). Experts from Australia, Korea, the United States, the United Nations Office on Drugs and Crime (UNODC), and the OECD participated in these seminars.

► **Thailand**

The Thai National Anti-Corruption Commission (NACC) also maintained its close working relationship with the WGB in 2012. The NACC attended one WGB meeting and hosted a meeting in Bangkok in January 2012 with representatives from the OECD Secretariat to the WGB and the Thai Research Study Commission to discuss closer engagement with the WGB.

Also in January 2012, the NACC hosted and jointly organized with the OECD a seminar on foreign bribery and the Anti-Bribery Convention. The seminar was opened by the NACC President, the Deputy Prime Minister, Minister of Commerce, and NACC Commissioners. In addition to the NACC, the seminar was attended by several other Thai ministries, civil society representatives, and SOEs. Discussions were led by experts from Germany, Israel, Korea, Norway, and Switzerland.

Additionally, in November 2012, the OECD Secretariat to the WGB participated in a National Anti-Corruption Day Conference on the fight against corruption in Thailand, hosted and organised by the Thai Institute of Directors (TIOD) and a workshop on anti-corruption compliance in the private sector, also organised by the TIOD.

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## GLOBAL RELATIONS ACTIVITIES

### **The Anti-Corruption Network for Eastern Europe and Central Asia**

Established in 1998, the main objective of the Anti-Corruption Network for Eastern Europe and Central Asia (ACN) is to support its member countries in their efforts to prevent and fight corruption. It provides a regional forum for the promotion of anti-corruption activities, the exchange of information, elaboration of best practices and donor coordination via regional meetings and seminars, peer-learning programmes, and thematic projects. ACN also serves as the home for the Istanbul Action Plan (IAP), a sub-regional anti-corruption peer-review programme, which is described in greater detail below.

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

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

#### ► ***Monitoring of the Kyrgyz Republic and Uzbekistan***

The second round of IAP monitoring finished in 2012 with the adoption of evaluation reports on the Kyrgyz Republic and Uzbekistan. These reports were adopted at the 11th Istanbul Anti-Corruption Action Plan Monitoring Meeting, which took place in February 2012 at the OECD in Paris and which brought together 64 participants coming from 20 ACN countries, as well as delegates from other countries, IOs and NGOs.

- The second-round IAP report on the Kyrgyz Republic commends the Government for adopting a new anti-corruption strategy, strengthening the capacity of law enforcement to fight corruption, and for taking steps to better regulate political-party financing, to strengthen the Government's supreme audit institution, and to modernize the Kyrgyz civil service. To build on this progress, the report recommends that the Kyrgyz Government: implement its new anti-corruption strategy, amend Kyrgyz legislation to



introduce corporate liability for corruption and money-laundering, and strengthen public sector integrity, among other measures.

- Uzbekistan joined the IAP in March 2010 and its first- and second-round monitoring reports were adopted in February 2012. The combined report commends Uzbekistan for raising awareness of the risks of corruption, making public procurement procedures more transparency, and for simplifying business regulations. To further strengthen Uzbekistan's anti-corruption framework, the report recommends that the Government bring its anti-corruption legislation closer in line with the UNCAC, strengthen law enforcement's ability to detect and investigate corruption, and to improve the integrity of the judiciary and other high-level officials, among other measures.

► ***Reinforcing Political Will to Fight Corruption: High-Level ACN Meeting***

On 10 December 2012, the ACN organized a high-level meeting entitled, "Reinforcing Political Will to Fight Corruption in Eastern Europe and Central Asia", which brought together 90 anti-corruption decision-makers from 18 countries in Eastern Europe and Central Asia, including ministers, deputy ministers, heads of anti-corruption institutions, deputy prosecutors-general, and other high-level officials, as well representatives from OECD countries, international organisations supporting the fight against corruption, civil society, and business organisations. The meeting focused on how to make anti-corruption policies more robust, looking at case studies from Azerbaijan, Croatia, Estonia, Georgia, the Kyrgyz Republic, Lithuania, Romania, and the Ukraine, as well as those of participating Members of the Working Group on Bribery. At the meeting, Mongolia also officially joined the ACN.



Participants of the ACN High-Level Meeting, "Reinforcing Political Will to Fight Corruption in Eastern Europe and Central Asia"

### ► **ACN Peer Learning Programme**

The ACN Peer Learning Programme brings together officials from ACN and OECD countries responsible for implementing their countries' anti-corruption measures, as well as representatives from partner organizations including the Council of Europe Group of States against Corruption (GRECO), the Organisation for Security and Cooperation in Europe (OSCE), the UN Office on Drugs and Crime (UNODC), and the World Bank. In 2012, three expert seminars were held as part of ACN's Peer Learning Programme:

- "Asset Declarations for Public Officials: A Tool to Fight Corruption in Central Asia," held in Bishkek, Kyrgyz Republic, 14 – 15 May;

- "Independence and Integrity of the Judiciary," held in Istanbul, Turkey, 28 – 29 June; and
- "Investigation and Prosecution of Corruption: Bribery, Illicit Enrichment and Liability of Legal Persons," held in Batumi, Georgia, 25 – 26 September.

In support of this programme, ACN, in co-operation with Basel Institute on Governance, also developed an anti-corruption training material, entitled *Investigation and Prosecution of Corruption Offences: Materials for the Training Course*.

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

Launched in 1999, the Asian Development Bank / OECD Anti-Corruption Initiative for Asia and the Pacific serves as a regional forum for supporting national and multilateral efforts to reduce corruption in Asia and the Pacific. The Initiative focuses on assisting its 30 member countries and jurisdictions with the proper implementation of the UN Convention against Corruption.

#### **► Timor-Leste and Solomon Islands Join the Initiative**

In 2012, Timor-Leste and the Solomon Islands became the 29th and 30th members of the ADB/OECD Initiative after endorsing the Initiative's Anti-Corruption Action Plan for Asia and the Pacific. As Members of the Initiative, Timor-Leste and the Solomon Islands have agreed to recognise the need for action against corruption and the benefits of sharing knowledge and experience across borders; to take steps to implement anti-corruption measures; to commit to undertake reforms to implement the Initiative's "strategic principles", which focus on implementation of the UNCAC; and to participate in the Initiative's review mechanisms.

#### **► ADB/OECD Initiative 17th Steering Group Meeting and 11th Regional Seminar**

From 22-24 October, Vietnam hosted the 17th Steering Group meeting and the 11th Regional Seminar of the ADB/OECD Anti-Corruption Initiative for Asia and the Pacific. The Initiative's Steering Group comprise representatives of the Initiative's member governments and defines the Initiative's priorities and activities to support the members' anti-corruption reforms. From 22-23 October, the Steering Group meeting included reports by ADB/OECD Initiative countries and organisations

involved in anti-corruption on their progress in combating corruption, as well as a meeting with representatives from the private sector and civil society in the region. The Group also agreed to launch the Initiative's next in-depth thematic review, which will focus on preventing corruption through corporate compliance, internal controls, and ethics measures, as required under Article 12 of the UNCAC.

The 11th Regional Seminar of the ADB/OECD Initiative followed, from 23-24 October. H.E. Mr. Tran Duc Luong, Deputy Inspector General, Government Inspectorate of Vietnam, chaired the Seminar, which focused on effective asset disclosure systems for fighting corruption and new developments in illicit flows and recovery of the proceeds of corruption.



The ADB/OECD Initiative's 17th Steering Group Meeting was hosted by Vietnam, 22-23 October 2012.

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

The OECD/AfDB Initiative to Support Business Integrity and Anti-Bribery Efforts in Africa aims to work with African countries to strengthen their efforts to fight the bribery of public officials in business transactions and to improve corporate integrity and accountability. In support of these objectives, the Initiative in 2012 worked to raise awareness of the Initiative's Course of Action for business Integrity and Anti-Bribery Efforts

in Africa among partner governments and organizations in the region and internationally, such as Interpol and the European Commission's European Anti-Fraud Office, OLAF. The Course of Action sets out a number of specific and concrete steps that the Initiative countries have agreed to undertake in their anti-bribery and business integrity efforts.

In October 2012, the OECD and AfDB also co-published the Initiative's *Stocktaking Report on Anti-Bribery and Business Integrity Policies and Practices in Twenty African Countries*. The study's recommendations promote effective anti-bribery and business integrity measures in Africa and take into account best practices within both OECD and developing economies.

## OECD – Latin American Anti-Corruption Programme

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

### ► **Eighth Latin American Regional Conference**

From 1 to 2 March 2012, Colombia hosted the *Latin American Meeting on the Fight against Transnational Corruption* in Bogotá. The event brought together over 500 representatives from government, the legal and accounting professions, academics, the private sector and civil society from the majority of countries in the region. International organisations and multilateral financial institutions, such as the Conference of Ministers of Justice of IberoAmerican Countries (COMJIB), IberRed (Red IberoAmericano de cooperaci3n jur3dical – IberoAmerican Network for Legal Cooperation), the Inter-American Development Bank (IDB), the OAS, OECD, Transparency International, the UN Office on Drugs and Crime (UNODC), and the World Bank were also represented. The conference agenda covered issues ranging from corporate liability for corruption offences, to confiscation and asset recovery, mutual legal assistance, extradition and money laundering.



Left to right: Catalina Crane, High Presidential Counsellor for Public and Private Management, Colombia; Juan Mauricio Ramírez, Sub-Director, National Department of Planning, Colombia; Juan Carlos Esguerra, Former Minister of Justice, Colombia; Richard Boucher, OECD Deputy Secretary-General; Aldo Lale-Demoz UNODC Representative in Colombia.

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

In May 2011, the G8 established the Deauville Partnership with the aim of supporting political and economic transformation in the MENA region. Partnership countries include the G8 Governments, Egypt, Kuwait, Qatar, Saudi Arabia, Tunisia, Turkey, and the United Arab Emirates. Since 2011, the OECD has supported the Deauville Partnership goals by sharing lessons learned in combating domestic and foreign bribery.

#### **► International Conference on Reinforcing the Integrity Framework and Corruption Prevention**

On 13 February 2012, the Tunisian Government and the OECD jointly hosted the *International conference on reinforcing the integrity framework and corruption prevention*. The conference focused on engaging stakeholders, including the private sector, in efforts to combat corruption. The OECD Secretariat to the WGB shared the experience of WGB Members in engaging the private sector in the fight against foreign bribery and the importance of encouraging the private sector's adoption and enforcement of anti-corruption compliance measures like those included in the OECD Good Practice Guidance on Internal Controls, Ethics and Compliance. During other sessions of the conference, Tunisia's

National Commission of Investigation of Corruption and Embezzlement (CNICM) presented the findings of its report into some 4000 cases of corruption referred to it after its creation following the Tunisian revolution in February 2011.

### Participants in Regional Anti-Corruption Initiatives

|   |  |
|---|--|
| Anti-Corruption Network for Eastern Europe and Central Asia ( <a href="http://www.oecd.org/corruption/acn">www.oecd.org/corruption/acn</a> )  | ADB/OECD Anti-Corruption Initiative for Asia-Pacific ( <a href="http://www.oecd.org/corruption/asiapacific">www.oecd.org/corruption/asiapacific</a> )  |
| <ul style="list-style-type: none"> <li>Albania</li> <li>Armenia</li> <li>Azerbaijan</li> <li>Belarus</li> <li>Bosnia and Herzegovina</li> <li>Croatia</li> <li>Georgia</li> <li>Kazakhstan</li> <li>Kyrgyz Republic</li> <li>Latvia</li> <li>Lithuania</li> <li>Former Yugoslav Republic of Macedonia</li> <li>Moldova</li> <li>Montenegro</li> <li>Romania</li> <li>the Russian Federation</li> <li>Serbia</li> <li>Tajikistan</li> <li>Ukraine</li> <li>Uzbekistan</li> </ul> | <ul style="list-style-type: none"> <li>Australia</li> <li>Bangladesh</li> <li>Bhutan</li> <li>Cambodia</li> <li>People's Republic of China</li> <li>Cook Islands</li> <li>Fiji Islands</li> <li>Hong Kong, China</li> <li>India</li> <li>Indonesia</li> <li>Japan</li> <li>Republic of Kazakhstan</li> <li>Republic of Korea</li> <li>Kyrgyz Republic</li> <li>Macao, China</li> <li>Malaysia</li> <li>Mongolia</li> <li>Nepal</li> <li>Pakistan</li> <li>Republic of Palau</li> <li>Papua New Guinea</li> <li>the Philippines</li> <li>Samoa</li> <li>Singapore</li> <li>Solomon Islands</li> <li>Sri Lanka</li> <li>Thailand</li> <li>Timor Leste</li> <li>Vanuatu</li> <li>Vietnam</li> </ul> |



| OECD/AfDB Initiative to Support Business Integrity and Anti-bribery Efforts in Africa <sup>4</sup><br>( <a href="http://www.oecd.org/corruption/africa">www.oecd.org/corruption/africa</a> )   | OECD-Latin America Anti-Corruption Programme<br>( <a href="http://www.oecd.org/corruption/latinamerica">www.oecd.org/corruption/latinamerica</a> )  |
|--|---|
| <ul style="list-style-type: none"> <li>• Benin</li> <li>• Burkina Faso</li> <li>• Cameroon</li> <li>• Ethiopia</li> <li>• Ghana</li> <li>• Kenya</li> <li>• Madagascar</li> <li>• Malawi</li> <li>• Mali</li> <li>• Mauritania</li> <li>• Mozambique</li> <li>• Niger</li> <li>• Nigeria</li> <li>• Rwanda</li> <li>• Senegal</li> <li>• Sierra Leone</li> <li>• South Africa</li> <li>• Tanzania</li> <li>• Uganda</li> <li>• Zambia</li> </ul> | <ul style="list-style-type: none"> <li>• Argentina</li> <li>• Bahamas</li> <li>• Belize</li> <li>• Brazil</li> <li>• Chile</li> <li>• Colombia</li> <li>• Costa Rica</li> <li>• Dominican Republic</li> <li>• Ecuador</li> <li>• El Salvador</li> <li>• Haiti</li> <li>• Mexico</li> <li>• Paraguay</li> <li>• Peru</li> <li>• Spain</li> <li>• Trinidad and Tobago</li> <li>• United States</li> <li>• Uruguay</li> <li>• Venezuela</li> </ul> |

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*.

## **A HOLISTIC APPROACH TO FIGHTING FOREIGN BRIBERY: WORKING GROUP ON BRIBERY ENGAGEMENT WITH PARTNERS**

### **Work with partner international organizations**

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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, in particular the UN Office on Drugs and Crime (UNODC) and the World Bank.

The UNCAC has provided significant momentum to the global anti-corruption movement. It is open for signature to all States, covers a wide range of corrupt conduct, including the bribery of foreign public officials, and addresses important issues in addition to the criminalisation of bribery, such as prevention and asset recovery. The OECD Anti-Bribery Convention and the UNCAC are complementary and mutually supportive instruments. In practice, the secretariats to these two instruments met regularly in 2012, in order to keep abreast of relevant developments and UNODC representatives participated in meetings of the Working Group.

Representatives from the World Bank also participated in meetings of the throughout the year. In addition, in June 2012, the OECD Secretariat to the WGB participated in the second biennial meeting of the World Bank's International Corruption Hunters Alliance, which brought together approximately 200 senior anticorruption officials and heads of investigation and prosecution agencies, as well as other international organisations and academics. This second meeting of the ICHA focused on three themes: international cooperation, national anti-corruption enforcement, and innovations in the uses of information technology in the fight against corruption.

### **Ensuring the Continued Effectiveness of the Convention**

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Ensuring the continued effectiveness of the Convention also requires reaching out beyond the physical Working Group on Bribery to colleagues

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in law enforcement, the private sector, and civil society. These individuals are often on the front line in the fight against foreign bribery.

► ***Typology on Mutual Legal Assistance in Foreign Bribery Cases***

In its series of anti-bribery typology reports, the WGB applies its expertise and experience in implementing the Convention to the analysis of methods and patterns used in corruption cases. These typology reports can be used by researchers, governments, law enforcement authorities and international organisations to review bribery patterns and to improve the effectiveness of current anti-bribery policies and measures.

In December 2012, the WGB published the *Typology on Mutual Legal Assistance in Foreign Bribery Cases*. Because foreign bribery cases take place across borders, effective mutual legal assistance (MLA) between countries is crucial for the successful investigation, prosecution and sanctioning of this crime. Requesting or providing evidentiary information via MLA can be difficult, for example due to bank secrecy rules, fears of tipping off witnesses, political considerations, or everyday procedural hang-ups. This study offers guidance on how to overcome many of the challenges associated with MLA and identifies some best practices to help avoid obstacles in the future.

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

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

In 2012, the Working Group hosted two such meetings. The first, which took place on 12 March, included 21 officials from as many Parties to the Convention. Nine officials from five invited, non-Member countries (Indonesia, Malaysia, Latvia, People's Republic of China and Peru) participated in a part of that meeting that was open to non-Parties to the Convention. The meeting focused on the challenges to effective MLA in foreign bribery cases and solutions for meeting those challenges. The discussions at the meeting provided useful input to the publication of the WGB *Typology on Mutual Legal Assistance in Foreign Bribery Cases* (see above).

The second meeting of law enforcement officials was held on 10 December and focused on the role of mandatory and voluntary disclosure in foreign bribery cases. In addition, a portion of the meeting was open to officials from observer countries and international organisations and was attended by officials from India, Indonesia, Latvia and Malaysia, and an official from the World Bank.

► ***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 2012, focusing on collective action in the fight against bribery. The discussion was led by representatives from BIAC, the group of Business 20 (B20), Colombia's Secretary for Transparency, the International Centre for Collective Action of the Basel Institute for Governance, Siemens, and Transparency International, and included more than 170 participants from business, civil society and government.

In the context of the 2012 WGB consultation, the Group also hosted, for the first time, a separate session with the B20, in order to discuss their recommendations to improve transparency and anti-corruption, which include engaging more closely with the WGB in its peer-review mechanism, greater cooperation between private and public sectors in combating corruption, and encouraging the wider adoption of business codes of conduct, with a specific focus on outreach to small- and medium-sized enterprises (SMEs).

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

December 2012 marked the completion of the third year of the Working Group on Bribery's Initiative to Raise Global Awareness of Foreign Bribery, which was launched in 2009 on International Anti-Corruption Day, 9 December. The Initiative seeks to address the lack of awareness of the risks and costs of foreign bribery that the Group discovered over the course of its first ten years of monitoring implementation of the

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Convention and which the Group considers a serious challenge to the effective enforcement of the Convention.

The Initiative has three main areas of focus: raising awareness of foreign bribery as a serious crime through outreach activities; increasing knowledge of how to combat foreign bribery; and undertaking research to try to quantify the problem of foreign bribery. These efforts have included:

- Working with the UNODC and the International Bar Association on a survey of 642 lawyers in 95 jurisdictions, 40% of whom said they had never heard of international anti-corruption instruments like the UNCAC and the Anti-Bribery Convention. The survey was carried out as part of the IBA/OECD/UNODC Anti-Corruption Strategy for the Legal Profession ([www.anticorruptionstrategy.org](http://www.anticorruptionstrategy.org)), which aims to inform and equip the global legal profession to effectively combat corruption;
- Reaching out to more than 500 law schools in over 80 jurisdictions via the Philip C. Jessup International Law Moot Court Competition, which, in 2011, included for the first time the Anti-Bribery Convention in its compromis;
- Making more than 100 presentations to universities and academic or research institutions, public officials and professional organizations around the world; and
- Undertaking an analysis of final convictions or sanctions for the foreign bribery offence decided to date in WGB Member countries in order to generate a clearer picture of the “anatomy” of the crime of foreign bribery in a forthcoming report.

## 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 G20 commitments on Anti-Corruption***

At its Seoul Summit in November 2010, the Leaders of G20 countries adopted a two-year 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.

Following two years of implementation under French and Mexican Presidency, G20 Leaders at the Los Cabos Summit in June 2012 renewed the mandate of the G20 Anti-Corruption Working Group and called for a new Action Plan, which was adopted by the Sherpas at their October meeting in Mexico. Leaders further reiterated their commitment to more active engagement with the OECD Working Group on Bribery on a voluntary basis "with a view to ensuring the high standards of criminalization and enforcement of the [ABC] Convention". The new 2013-2014 Anti-Corruption Action Plan reinforces the importance of fighting foreign bribery for non-Parties, as well as for Parties through enhanced enforcement. It includes commitments to address the issue of solicitation and ways to improve mutual legal assistance.

#### ***OECD Support to G20 Anti-Corruption Efforts***

The OECD provided support throughout 2011 and 2012 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 Russia's accession to the Convention, as well as efforts by China, India, and Indonesia to further develop their anti-bribery

frameworks. (See page 23 for more information on the Working Group on Bribery's engagement with China, India and Indonesia.) Moreover, the G20 has relied on OECD WGB's work to step up its efforts on enforcement and against solicitation.

Finally, the OECD has continued to support G20 efforts to mobilise the private sector in the fight against corruption. Together with UNODC and the World Economic Forum (WEF), the OECD supported the organization of a High-Level Dialogue on Anti-Corruption by the Mexican Presidency in April 2012. The OECD Chief of Staff Gabriela Ramos made a keynote address and several other OECD officials made public interventions, on the topics of enforcing foreign bribery offenses and ensuring transparency in 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'. The Initiative supports governments, business and civil society to build integrity and fight corruption. While it is not a project of the Working Group on Bribery, it draws together existing anti-corruption tools, including the standards of the Anti-Bribery Convention, reinforces their implementation, improves co-ordination among relevant players and monitors progress towards integrity.

OECD standards and instruments that will make up the Initiative's so-called 'toolkit' on anti-corruption include:

- Recommendation of the Council on Regulatory Policy and Governance
- Recommendation on Competition Assessment
- Recommendation Concerning Effective Action against Hard Core Cartels
- Convention on Mutual Administrative Assistance in Tax Matters

- Bribery Awareness Handbook for Tax Examiners
- Convention on Combating Bribery of Foreign Public Officials in International Business Transactions
- Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions
- Good Practice Guidance on Internal Controls, Ethics and Compliance
- Recommendation on Bribery and Export Credits
- Principles of Corporate Governance
- Guidelines for Multinational Enterprises
- Principles for Transparency and Integrity in Lobbying
- Guidelines for Managing Conflict of Interest in the Public Service
- Principles for Managing Ethics in the Public Service
- Public Sector Integrity: A Framework for Assessment
- Principles for Enhancing Integrity in Public Procurement
- Recommendation on Anti-Corruption Proposals for Aid Funded Procurement
- Principles for Donor Action on Anti-Corruption
- Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas
- Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones

For more information on the CleanGovBiz Initiative, please visit [www.oecd.org/cleangovbiz](http://www.oecd.org/cleangovbiz).



## APPENDIX 1: PARTIES TO THE CONVENTION

| Country            | Deposit of instrument of ratification/ acceptance/ approval | Entry into force of the Convention | Entry into force of implementing legislation |
|--------------------|---|------------------------------------|--|
| Argentina          | 8 February 2001   | 9 April 2001                       | 10 November 1999                             |
| Australia          | 19 October 1999   | 18 December 1999                   | 17 December 1999                             |
| Austria            | 20 May 1999   | 19 July 1999                       | 1 October 1998                               |
| Belgium            | 27 July 1999  | 25 September 1999                  | 3 April 1999                                 |
| Brazil             | 24 August 2000  | 23 October 2000                    | 11 June 2002                                 |
| Bulgaria           | 22 December 1998  | 15 February 1999                   | 29 January 1999                              |
| Canada             | 17 December 1998  | 15 February 1999                   | 14 February 1999                             |
| Chile              | 18 April 2001   | 17 June 2001                       | 8 October 2002                               |
| Colombia           | 20 November 2012  | 19 January 2013                    | 14 November 2012                             |
| Czech Republic     | 21 January 2000   | 21 March 2000                      | 9 June 1999                                  |
| Denmark            | 5 September 2000  | 4 November 2000                    | 1 May 2000                                   |
| Estonia            | 14 December 2004  | 12 February 2005                   | 1 July 2004                                  |
| Finland            | 10 December 1998  | 15 February 1999                   | 1 January 1999                               |
| France             | 31 July 2000  | 29 September 2000                  | 29 September 2000                            |
| Germany            | 10 November 1998  | 15 February 1999                   | 15 February 1999                             |
| Greece             | 5 February 1999   | 15 February 1999                   | 1 December 1998                              |
| Hungary            | 4 December 1998   | 15 February 1999                   | 1 March 1999                                 |
| Iceland            | 17 August 1998  | 15 February 1999                   | 30 December 1998                             |
| Ireland            | 22 September 2003   | 21 November 2003                   | 26 November 2001                             |
| Israel             | 11 March 2009<br>(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<br>(accession instrument)                  | 5 November 2001                    | 23 January 1999                              |
| South Africa       | 19 June 2007<br>(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

### Australia

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

While the Working Group on Bribery welcomes Australia's recent efforts, it has serious concerns that overall enforcement of the foreign bribery offence to date has been extremely low. Only one foreign bribery case has led to prosecutions. These prosecutions were commenced in 2011 and are on-going. Out of 28 foreign bribery referrals that have been received by the Australian Federal Police (AFP), 21 have been concluded without charges. The Working Group thus recommends that the AFP take sufficient steps to ensure that foreign bribery allegations are not prematurely closed, and be more proactive in gathering information from diverse sources at the pre-investigative stage. Alternate charges or jurisdictional bases should be considered where appropriate. Co-ordination and case referrals could be improved with clear, written arrangements between the AFP and relevant Commonwealth and State-level government agencies and law enforcement bodies. Concurrent or joint investigations with Australian and foreign authorities should continue to be systematically considered. Corporate liability provisions should be applied where appropriate and coupled with on-going training. Australia recently began strengthening its enforcement efforts, such as by establishing a Foreign Bribery Panel of Experts to advise AFP investigation teams. The Working Group encourages Australia to continue these efforts, and looks forward to evaluating the impact of these developments on Australia's enforcement of its foreign bribery laws.

The report identifies additional areas for improvement. Usage of the corporate liability provisions should be enhanced. ASIC's experience and expertise in investigating corporate economic crimes should be tapped to assist the AFP to prevent, detect and investigate foreign bribery where appropriate. Steps should be taken to ensure that the

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CDPP has sufficient resources to prosecute foreign bribery cases. The maximum sanctions against legal persons for false accounting should be increased commensurate with Australia's legal framework. Awareness should continue to be raised about the difference between a bribe and a facilitation payment. The record-keeping requirements for facilitation payments in tax legislation should be harmonised with those in the Criminal Code Act. The same requirements to report foreign bribery should apply equally to the public service and independent statutory authorities. Protection of whistleblowers in the public and private sectors need to be strengthened.

The report also notes positive developments. The foreign bribery offence is becoming a priority for the Australian government. Australia's first National Anti-Corruption Plan aims to create a —whole-of-government approach— to corruption; it is expected to be adopted by December 2012. In February 2012, Australia concluded a proactive public consultation on the facilitation payment defence. Guidance has been amended to clarify that the facilitation payment defence is restricted to payments of a minor value, and to eliminate certain examples that had caused concerns. The maximum fine against legal persons for foreign bribery was substantially raised in 2010. The sharing of tax information was enhanced with the ratification in August 2012 of the Convention on Mutual Administrative Assistance in Tax Matters and the amending Protocol.

The report and its recommendations reflect findings of experts from Canada and Japan and were adopted by the Working Group on 12 October 2012. It is based on legislation and other materials provided by Australia and research conducted by the evaluation team. The report is also based on information obtained by the evaluation team during its four-day on-site visit to Canberra and Sydney on 28-31 May 2012, during which the team met representatives of Australia's public and private sectors, legislature, judiciary, civil society, and media. Within one year of the Working Group's approval of this report, Australia 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.

## **Austria**

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The Phase 3 Report on Austria by the OECD Working Group on Bribery evaluates and makes recommendations on Austria's implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (Convention) and related

instruments. The Report focuses on developments since Austria's Phase 2 Review in February 2006, and takes into account Austria's Phase 2 Written Follow-Up Report in March 2008, and Phase 1 *bis* Review on legislative amendments in October 2010. It also addresses cross-cutting horizontal issues that are routinely covered in each country's Phase 3 review.

The Working Group regrets that there has not been a conviction of foreign bribery since Austria ratified the Anti-Bribery Convention in 1999, despite a number of allegations that have come to light. The Group therefore welcomes that one case involving five indictments is currently being tried; a second case has resulted in indictments, including against a legal persons; a third is expected to result in an indictment at the beginning of 2013; and four other cases are currently under investigation. In addition, Austria has amended its foreign bribery offences in the Penal Code, in part to address certain recommendations by the Working Group in Phase 2. However, since these amendments do not take effect until January 2012, the Working Group could not assess their impact in practice on foreign bribery enforcement in Austria.

The Working Group makes a number of recommendations regarding Austria's framework for liability of companies and other entities that bribe foreign public officials. The framework is still not widely known or fully understood by prosecutors, and the relevant legislation – Federal Statute on Responsibility of Entities for Criminal Offences (VbVG) – contains certain unclear concepts. The Working Group recommends that Austria increase the maximum EUR 1.3 million fine for companies convicted of foreign bribery to a level more commensurate with the nature and size of many Austrian companies, and because the maximum EUR 1.8 million fine for natural persons is substantially higher. Moreover, the application of Austria's foreign bribery offences to companies and natural persons that use foreign intermediaries to bribe on their behalf abroad is an area that needs to be followed-up.

The Working Group identifies the need for improved access to bank information in order to make foreign bribery investigations more effective. Although bank secrecy has largely been reduced in Austria, in practice the routine use of remedial actions by financial institutions in response to court orders to provide access to bank records could impede foreign bribery investigations. Austria is recommended to ensure that investigations and prosecutions are not influenced by considerations prohibited by Article 5 of the Convention, including the national economic interest. The Working Group also finds that the Austrian authorities are not making effective use of tax information for detecting and reporting

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suspicious of foreign bribery, and recommends that Austria urgently take steps to significantly increase the awareness of the law enforcement authorities of the value of tax information in foreign bribery investigations.

The Working Group commends Austria for progress in a number of areas. In addition to the amendments to improve the foreign bribery offences, including by broadening the definition of a “foreign public official”, Austria also made it easier to establish jurisdiction over Austrian companies and individuals that bribe foreign public officials abroad, by eliminating the legal requirement of “dual criminality”. Moreover, sanctions for individuals were increased to a maximum of EUR 1.8 million, and significant steps have been taken to strengthen the institutional framework for investigating and prosecuting foreign bribery cases. For instance the Public Prosecutors Office for Combating Economic Crimes and Corruption (WKStA) was established in 2011, the Federal Bureau of Anti-Corruption (BAK) in 2010, Police Headquarters was re-organized in 2012 to include a separate department for economic and financial crime, and the Coordinating Body on Combating Corruption was established in 2010.

The Report and the Recommendations, which reflect the findings of the lead examiners from Germany and Greece, are adopted by the OECD Working Group on Bribery on 14 December 2012. In view of the recent significant increase in law enforcement actions, and the new amendments to the foreign bribery offences, the Working Group invites Austria to report in writing one year after adoption of this Report on progress prosecuting foreign bribery cases, including cases of bribery through intermediaries, cases of bribery by companies and other entities, the confiscation of the proceeds of bribery, and the use of remedial actions by financial institutions in response to court orders to provide access to bank records. At the same time, in accordance with the normal procedure, Austria will provide an oral report on implementation of recommendations 1 c), 4 e) i), and 8 b). In accordance with the normal procedure, a further written report on progress implementing the recommendations will be given within 2 years. This report is based on the laws, regulations and other materials submitted by Austria and information obtained by the lead examiners during their three-day on-site visit to Vienna from 3 to 5 July 2012, during which the examiners met with representatives from Austria’s public administration, private sector and civil society.

## France

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The Phase 3 report on France by the OECD Working Group on Bribery in International Transactions (the —Working Group—) evaluates and makes recommendations on the implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the “Convention”) and related documents. Phase 3 focuses on key Group-wide (horizontal) issues, in particular the implementation and enforcement of the Convention, and also examines country-specific (vertical issues) arising from changes in France’s legislative and institutional framework, as well as progress made since France’s Phase 2 evaluation in 2004.

The Working Group is seriously concerned that despite the very significant role of French companies in the international economy, only 33 foreign bribery proceedings have been initiated and five convictions – of which only one, not yet final, concerns a legal person – have been handed down since France became a party to the Convention in 2000. The Working Group is particularly concerned by the lacklustre response of the French authorities in relation to companies sanctioned by other Parties to the Convention.

The Working Group regrets in particular that legislative changes in 2007 and 2011 aimed at further combating corruption did not lead to the elimination of the dual criminality requirement and recommends that France remove it. The Working Group also regrets the special regime of common law that prohibits victims of foreign bribery (except corruption occurring within the EU) from being civil parties to proceedings and therefore initiating criminal cases. The Working Group recommends that France remove this limitation. It also recommends that France ensure that companies and their subsidiaries cannot avoid criminal liability. The applied and available penalties, along with the lack of any recourse to measures to confiscate the proceeds of corruption do not appear to be effective, proportionate or dissuasive: France should increase the maximum fines and make full use of confiscation and additional penalties that are available under the law, in particular debarment from public procurement.

The Working Group welcomes the reforms underway to guarantee greater independence of prosecutors and recommends that France continue in this direction in order to guarantee that the role of prosecutors in opening and in conducting criminal proceedings is performed in a manner that is independent from political power and that investigations and prosecutions in foreign bribery cases are not influenced by the consideration of factors

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prohibited under Article 5 of the Convention. While welcoming the progress made in 2009, the Group recommends that France ensure that the implementation of legal provisions for classification of documents covered by defence secrecy does not create an obstacle to investigations and prosecutions in foreign bribery cases. It also emphasises the limited resources available to investigations, which it sees as another possible explanation for the limited number of proceedings instigated to date, and asks France to rectify this situation. Moreover, while acknowledging the efforts of the French administration to raise the awareness of officials of the obligation to report suspected corruption to the Public Prosecutor's Office, it regrets the low number of reports and therefore recommends the strengthening of mechanisms aimed at encouraging such reporting. More generally, the Working Group asks France to draw the attention of law enforcement authorities to the importance of reacting to the full extent expected in foreign bribery cases.

The Working Group welcomes the measures taken in 2010 and 2012 to facilitate the legal process for seizure and confiscation and the work of two specialised agencies in this area. The Working Group encourages France to make full use of these tools. France has also made substantial legislative progress by introducing protection for whistle-blowers into French law. The Working Group also congratulates France on its efforts to raise awareness of companies. With regard to the non-deductibility for tax purposes of bribes to foreign public officials, France is an example of good practice: the French tax authorities have required reimbursements in 18 cases on these grounds. The Working Group also welcomes the role played by the anti-money laundering unit, TRACFIN, in detecting and reporting cases.

The report and its recommendations reflect the conclusions of the Italian and Swiss lead examiners and have been adopted by the Working Group on Bribery. France will make an oral report on the recommendations 1(b), 3 and 4(a) relating to the offence, sanctions and new directions in criminal justice policy, within a period of one year and will submit a written report on all the recommendations within a period of two years. The Phase 3 report is based on the texts of laws, regulations and other documents supplied by France as well as on information obtained by the evaluation team during its 3-day on-site visit to Paris from 2 to 4 April 2012, during which the team met representatives of the French public and private sectors and of civil society.

## Greece

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The Phase 3 report on Greece by the OECD Working Group on Bribery evaluates and makes recommendations on Greece's implementation and enforcement of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments. The report considers country-specific (vertical) issues arising from changes in the Greece's legislative and institutional framework, as well as progress made since the Greece Phase 2 evaluation in 2005. The report also focuses on key Group-wide (horizontal) issues, particularly enforcement. The report concludes that the Working Group could not conduct a proper examination of many issues because of the Greek authorities' failure to provide timely information, detailed statistics and translated legislation. This may be explained by the on-going financial crisis in the country. Greece is therefore required to undergo a Phase 3bis evaluation in order to review specific issues identified throughout this report. The Working Group will decide the precise timing and scope of the Phase 3bis evaluation in June 2013.

The report describes in particular several areas in which Greece's implementation of the Convention falls short. The Working Group is especially concerned over the Greek authorities' inaction in a case in which three Greek nationals allegedly committed foreign bribery. Despite learning of the allegations for almost two years, the Greek authorities failed to open a domestic investigation until after the on-site visit in January 2012. The Working Group will further examine this case in Greece's Phase 3bis evaluation. In the meantime, it recommends that Greece take all necessary measures to ensure that foreign bribery cases are seriously investigated and prosecuted as appropriate. Greece should also raise the awareness of foreign bribery among judges and prosecutors through appropriate training, and ensure that all competent law enforcement authorities have the power to investigate this crime. In addition, the Working Group recommends that Greece rationalise and eliminate duplicative statutory provisions that apply to the offence of foreign bribery, liability and fines against legal persons, confiscation, and foreign bribery-related accounting misconduct. Greece should also improve its system for seeking and providing mutual legal assistance and clarify the types of assistance available.

The Working Group is also concerned about Greece's limited ability to detect foreign bribery. Awareness of Greece's foreign bribery laws among the private sector, especially accountants and auditors, is low and needs to be raised. Finally, the Group noted that Greece still has not adopted



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appropriate measures to protect whistleblowers in both the public and private sectors from discriminatory or disciplinary action.

The report also notes some positive developments, such as Greece's efforts to improve its anti-money laundering framework, and to enact legislation to impose debarment from public procurement as a sanction for foreign bribery. Other Parties to the Convention have expressed appreciation of Greece's provision of mutual legal assistance in foreign bribery cases.

The report and its recommendations reflect findings of experts from Ireland and Korea and were adopted by the OECD Working Group on 14 June 2012. It is based on legislation and other materials provided by Greece and research conducted by the evaluation team. The report is also based on information obtained by the evaluation team during its three-day on-site visit to Athens from 31 January to 2 February 2012, during which the team met representatives of the Greek public sector, judiciary, private sector and civil society.

## Hungary

The Phase 3 report on Hungary by the OECD Working Group on Bribery evaluates and makes recommendations on Hungary'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 Hungary's Phase 2 evaluation in May 2005, taking into account progress observed in Hungary's written follow-up report in September 2007.

Hungary has made progress in its enforcement actions since the Phase 2 evaluation, with the recent conviction of 26 individuals in connection with one case that involved bribes in small amounts provided to border officials in a neighbouring country. In addition, two foreign bribery investigations of legal persons have been opened so far, of which one is still ongoing. The Working Group notes that the number of convictions for foreign bribery remains low and considers that, in the context of companies, this may be due to difficulties in applying provisions on the criminal liability of legal persons. Those provisions require, in virtually all cases, that a natural person must be convicted and punished as a prerequisite to the liability of a legal person. The Working Group insists that Hungary eliminate this requirement of its law. It also recommends that Hungary

take steps to ensure that a legal person cannot avoid responsibility by committing an act of foreign bribery through an intermediary.

The Working Group welcomes improvements in the framework in Hungary to strengthen its ability to enforce the offence. For example, Hungary has recently hired additional specialized prosecutors and established units at the regional level to deal specifically with corruption cases, including foreign bribery. As well, Hungary has lengthened the statute of limitations period for prosecuting this offence and has passed a law requiring public officials to report foreign bribery offences. Hungary has also introduced new legislation to protect whistleblowers. The report also notes Hungary's efforts to facilitate the provision of mutual legal assistance.

The report also notes shortcomings as regards awareness of the offence among the private sector and therefore recommends that Hungary takes step in this matter, including by encouraging companies to adopt and develop internal controls or ethics and compliance programmes to prevent and detect bribery, Hungary should also engage in further awareness raising activities targeting the public administration and public agencies that work with Hungarian companies active in foreign markets. The failure to take proactive steps to discover suspicions of foreign bribery is also noted.

The Phase 3 report and its recommendations reflect findings of experts from Denmark and New Zealand and were adopted by the Working Group on Bribery. The report is based on legislation and other materials provided by Hungary, as well as information obtained by the evaluation team during its three-day on-site visit to Budapest from 18 to 20 October 2011, during which the evaluation team met representatives of Hungary's public administration, the private sector and civil society. Within one year of the Working Group's approval of the report, Hungary 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.

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## Netherlands

The Phase 3 report on the Netherlands by the OECD Working Group on Bribery evaluates and makes recommendations on the Netherlands' implementation and enforcement of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments. The report considers country-specific (vertical) issues arising from changes in the Netherlands' legislative and institutional

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framework, as well as progress made since the Netherlands' Phase 2 evaluation. The report also focuses on key Group-wide (horizontal) issues, particularly enforcement.

The Working Group on Bribery has serious concerns that the overall results of foreign bribery investigations and prosecutions to date are too low. Eleven years after the entry into force of the Convention in the Netherlands, no individual or company has been sanctioned for foreign bribery. Out of 22 foreign bribery allegations received by the Dutch law enforcement authorities, 14 have not triggered the opening of any investigation, in part due to a lack of resources. Only two foreign bribery cases have led to prosecutions, which are scheduled to go to trial in 2013, and four cases are the subject of ongoing investigations. The Working Group thus recommends that the Dutch law enforcement authorities be more proactive in opening investigations into foreign bribery allegations, and take all the necessary steps to ensure their effective investigation. The Working Group questions in particular the Netherlands' ability and proactivity in initiating proceedings against companies which are incorporated in the Netherlands but pursue their activities entirely from abroad ("mailbox companies"). Out of the 22 foreign bribery allegations mentioned, 12 concern mailbox companies. In this respect, the Working Group welcomes the firm intention recently expressed by the Dutch prosecution authorities to actively pursue ongoing investigations and prosecutions in foreign bribery cases involving such mailbox companies. The Working Group recommends that the Netherlands vigorously pursue these efforts, and looks forward to seeing increased enforcement of the Netherlands' foreign bribery laws very soon.

The report identifies further areas for improvement. Law enforcement authorities must be adequately resourced to be able to effectively deal with the significant number of foreign bribery allegations requiring investigation, a situation which has yet to be remedied in the Netherlands. While other prosecutors may take on foreign bribery cases, the office of the National Public Prosecutor for Corruption, which is responsible for the coordination and prosecution of foreign bribery, is only staffed with two prosecutors. Efficient enforcement also goes hand in hand with effective, proportionate and dissuasive sanctions: the current level of sanctions for legal persons in the Netherlands is not sufficient in that respect. The Working Group therefore welcomes the draft legislation prepared by the Netherlands aiming to increase the maximum pecuniary sanctions for legal persons to ten per cent of the turnover of the company, and recommends that the Netherlands proceed promptly with the passing of this law. The Netherlands should also step up efforts

to enhance detection and reporting of foreign bribery, in particular by adopting appropriate whistleblower protection legislation.

The report also notes positive developments. The Netherlands has developed strong expertise with respect to confiscation of the proceeds of crime, as demonstrated by the efficient legislation in place, the significant financial commitments to support its implementation in practice, and the high level of expertise in the specialised Criminal Asset Deprivation Bureau. A database has also been set up to track mutual legal assistance requests, thus ensuring more prompt and efficient responses, and facilitating the collection of statistics. The Netherlands has also put in place a number of initiatives to raise awareness of foreign bribery among the Dutch public and private sectors. The Ministry of Foreign Affairs has been particularly active in the awareness-raising area through its embassies abroad, and has put in place specific channels to facilitate the reporting of foreign bribery.

The Report and its recommendations reflect findings of experts from Estonia and Ireland, and were adopted by the Working Group on 14 December 2012. It is based on legislation and other materials provided by the Netherlands and research conducted by the evaluation team. The report is also based on information obtained by the evaluation team during its three-day on-site visit to The Hague on 19-21 June 2012, during which the team met representatives of the Netherlands' public and private sectors, legislature, judiciary, civil society, and media. Within one year of the Working Group's approval of this report, the Netherlands will make a follow-up report on its implementation of certain recommendations. It will further submit a written report on the implementation of all recommendations within two years. The Working Group will closely re-examine foreign bribery enforcement efforts when the Netherlands makes its Phase 3 Follow-up Report in 2013 and its Written Follow-up Report in 2014.

## **Slovak Republic**

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The Phase 3 report on The Slovak Republic by the OECD Working Group on Bribery evaluates and makes recommendations on the Slovak Republic'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 the Slovak Republic's Phase 2 evaluation in December 2005, taking into

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account progress observed in Slovak Republic's written follow-up report in January 2008.

The Slovak Republic has recently amended its legislative framework to fight foreign bribery and hence clarified a number of issues raised in Phase 2 concerning certain elements of the offence. The Working Group was also encouraged by the clarification of the role of the bodies in charge of the investigation and prosecution of corruption – although further efforts to fully staff the relevant teams remain to be made – as well as by the creation of a Specialised Criminal Court, which has exclusive jurisdiction over corruption cases. However, the legislation in force at the time of this report remains vague and there are loopholes with regard to the foreign bribery offence. The main concern of the Working Group is the continued lack of liability of legal persons, which has still not been established 12 years after the entry into force of the Convention in the Slovak Republic, and the lack of adequate confiscation. These shortcomings, in addition to a general lack of awareness among the private and public sectors of the specificities of the foreign bribery offence, could help explain the absence of enforcement of the foreign bribery offence and related money laundering and accounting and auditing offences. Despite the Slovak Republic's growing exposure to foreign bribery – notably through foreign-owned enterprises operating in and exporting from the Slovak Republic and an increasing number of Slovak-based enterprises doing business outside Slovak borders – there has been only one investigation, which has been stopped, against a Slovak citizen allegedly involved in the bribery of a Caribbean high level official. Therefore, the Working Group has serious concerns that the Slovak Republic has still not fully completed the transposition of the Convention into its legislation and does not appear to be actively enforcing its foreign bribery offence.

The Slovak Republic must, as a matter of priority, establish the liability of legal persons, to ensure that legal persons can be held liable for the offence of bribery of a foreign public official, including through intermediaries, and that the system thus established takes one of the approaches described in Annex I to the 2009 Recommendation.<sup>5</sup> The Working Group acknowledges indications by the Slovak Republic that

5. In June 2010, the Slovak Republic introduced initial reforms to address Phase 2 recommendations that the Slovak Republic establish corporate liability of foreign bribery. At the request of the Slovak Republic, the introduction of these reforms was acknowledged in an OECD press release ([http://www.oecd.org/document/33/0,3746,en\\_2649\\_34859\\_45521313\\_1\\_1\\_1\\_1,00.html](http://www.oecd.org/document/33/0,3746,en_2649_34859_45521313_1_1_1_1,00.html)). The Working Group did not conduct a Phase 1bis evaluation of these new provisions at the time. This Phase 3 evaluation is thus the Working Group's first opportunity to examine in-depth these provisions.

these legislative changes appear on the Governmental Action Plan against Fraud, approved on 31 May 2012. In two years, the Working Group will revisit this issue and determine whether the Slovak Republic has completed its reform in this regard. The Slovak Republic must also take urgent steps to revisit the enforceability and proportionality of the sanctions provisions (including confiscation) available for legal and natural persons.

The Working Group believes that, once there is enforcement of the foreign bribery offence by Slovak authorities, the recent decision that all judgements should be published online, including on plea bargaining, could enhance the deterrent effect of such settlements and related sanctions. The recent introduction of a legal requirement for external auditors to report possible illegal acts to law enforcement authorities should increase reports of allegations of foreign bribery. However, there is still an urgent need to provide guidance to auditors and tax examiners to facilitate the identification and reporting of suspicious transactions. The Working Group also encourages the Slovak Republic to urgently pass a whistleblower protection law and to be more proactive about following up on MLA requests and executing incoming MLA requests in foreign bribery matters.

The report and its recommendations reflect findings of experts from Norway and Turkey and were adopted by the OECD Working Group on Bribery. It is based on legislation and other materials provided by the Slovak Republic, as well as information obtained by the evaluation team during its three-day on-site visit to the Slovak Republic on 7-9 February 2012, during which the team met representatives of the Slovak Republic's public administration, judiciary, private sector and civil society. The Working Group invited the Slovak Republic to submit a written report in six months on progress in establishing the liability of legal persons with regard to cases of foreign bribery and every six months thereafter, if needed. According to regular Phase 3 procedures, within one year of the Working Group's approval of the report, the Slovak Republic 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. If, by the time of this written follow up, the Slovak Republic has not completed the reform it has initiated to establish the liability of legal persons with regard to cases of foreign bribery, the Working Group will undertake additional follow-up measures to the Phase 3 evaluation of the Slovak Republic.

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## Spain

The Phase 3 report on Spain by the OECD Working Group on Bribery evaluates and makes recommendations on Spain'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 Spain's Phase 2 evaluation in March 2006, taking into account progress observed in Spain's written follow-up report in June 2008.

The Working Group has serious concerns that, almost 13 years after the entry into force of Spain's foreign bribery offence, no individual or company has ever been prosecuted or sanctioned for this offence. At the time of this report, the Spanish foreign bribery offence has only given rise to seven [7] investigations, that had all been closed. The Working Group welcomes the entry into force, in 2010, of a new foreign bribery offence in the Spanish Penal Code, which *prima facie*, addresses most Phase 2 recommendations regarding the deficiencies identified in the former foreign bribery offence. However, the Working Group is seriously concerned that a separate offence was also introduced for the bribery of European officials, which still contains these same deficiencies, in particular with regard to the scope of the offence, the level of sanctions, and the statute of limitations. The Working Group hence recommends that Spain complete the reform of its Penal Code, to consolidate or harmonise the offence under art. 427 PC with the one under art. 445 PC, and to remove inconsistencies between the two offences which could provide obstacles to the effective implementation of the Convention. The Working Group considers that the entry into force, in 2010, of Spain's first regime of liability for legal persons, which offers a wide range of possibilities for holding companies criminally liable for offences of foreign bribery, was an important step. However, the Working Group is seriously concerned that this new regime of liability excludes from its scope State owned enterprises and recommends that the reform of the regime of criminal liability of legal persons be completed with the removal of this exception. The Working Group also recommends that Spain clarify that the criteria of "due control" cannot be used by legal persons as a defence to avoid liability. The Working Group welcomes the additional reform of the Penal Code announced in a letter to the Chair of the Working Group from Spain's Minister of Justice dated 4 December 2012.

The regime of sanctions applicable to natural and legal persons should also be harmonised to ensure that the sanctions imposed are effective,

proportionate and dissuasive for bribery of all foreign public officials, including European officials. The Working Group expresses concerns about the continued lack of implementation of confiscation measures, for any offence, despite the legal framework that has been in place for almost ten years and recommends that Spain make full use of confiscation of both the bribe and the proceeds of foreign bribery and clarify that these rules also apply to legal persons. The report also notes that the Special Public Prosecutor's Office against Corruption and Organised Crime (ACPO), Spain's highly specialised prosecutor's office, should be allowed to perform effectively the central role it has been allocated in the fight against foreign bribery. The Group is concerned that the ACPO has not been informed of some clear cases of suspected foreign bribery which have come to the attention of other law enforcement authorities. To this end, Spain should reinforce the coordination between the broader State Prosecution Service (SPS) and the ACPO and ensure that the courts and other law enforcement authorities systematically and urgently inform the ACPO of any foreign bribery allegation, which comes to their knowledge. Noting that since Phase 2, a majority of foreign bribery investigations have been closed because they were time barred, the report welcomes the extension of the statute of limitations to ten years for the offence of bribing non-EU officials. However, the Working Group recommends that Spain enact a uniform limitation period for all foreign bribery offences, including the offence of bribing EU officials and review the possibilities for suspension and interruption of the limitation period.

In relation to tax measures to combat bribery in Spain, the Working Group is concerned that the autonomous tax regions of the Basque Country and Navarra still do not have an explicit prohibition on the tax deductibility of bribes. It urges Spain to take measures to eliminate this possible loophole. The Working Group also recommends that Spain take measure to address the concerning lack of legislative protection for public and private sector whistleblowers who report suspected offences, including foreign bribery, in good faith and on reasonable grounds.

The report and its recommendations reflect the findings of experts from Brazil and Chile and were adopted by the OECD Working Group on Bribery. Spain will make an oral report on the recommendations 2(b), relating to the consolidation or harmonisation of the offences of foreign bribery (under art. 427 and 445 PC), 3(a) and 2(a) regarding the coverage of State-owned and State-controlled companies under the regime of liability of legal persons, 5(g) regarding the extension of the limitation period in certain cases within a period of one year, 8(b) regarding the explicit prohibition on the tax deductibility of bribes in the autonomous tax regions and 10 on public and private whistleblower protection and will submit a



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written report on all the recommendations within a period of two years. The Phase 3 report is based on the texts of laws, regulations and other documents supplied by Spain as well as on information obtained by the evaluation team during its 3-day on-site visit to Madrid on 3-5 July 2012, during which the team met representatives of the Spanish public and private sectors and of civil society.

The Working Group requests that Spain provide a written self assessment report in one year (*i.e.* in December 2013) on (1) progress in amending its Penal Code; and (2) prosecuting foreign bribery cases, including on implementation of recommendations 2(b), 3(a), 5(g), 8(b) and 10. It further invites Spain to submit a written follow-up report on all recommendations and follow-up issues within two years (*i.e.* in December 2014). The Working Group will take appropriate measures throughout this process, including the possibility of a Phase 3*bis* evaluation, should Spain have failed to take steps to address its recommendations.

## Sweden

The Phase 3 Report on Sweden by the OECD Working Group on Bribery evaluates and makes recommendations on Sweden'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 Sweden's Phase 2 Review in February 2005, taking into account Sweden's Phase 2 Written Follow-Up Review in October 2007. It also addresses cross-cutting horizontal issues that are routinely covered in each country's Phase 3 review. The Working Group notes that Sweden has not had a single prosecution of foreign bribery for more than 8 years and has never imposed liability on a company since the entry into force of the Convention. In view of several allegations reported by the media involving Swedish companies, the size of many Swedish companies, their international scope and sectors of business, including defence, telecommunications and energy, the Working Group believes that the absence of cases over this period signals that something is not working in Sweden's framework for detecting, investigating and prosecuting foreign bribery.

The Working Group recommends that Sweden amend its framework on "corporate fines" to ensure that companies are held liable for foreign bribery, including when committed through lower-level employees, intermediaries, subsidiaries, and third-party agents who were directed or authorised to bribe by the highest level of managerial authority. As a matter of priority, the Working Group also recommends that Sweden make greater efforts to diligently investigate potential links between

Swedish companies and allegations of the bribery of foreign public officials perpetrated on behalf of foreign subsidiaries, including by non-Swedish nationals; and take appropriate steps to be able to sanction Swedish companies for foreign bribery offences committed by them abroad.

As a matter of priority, the Working Group also recommends that Sweden increase substantially the awareness of the public-at-large of the risks of Swedish companies bribing foreign public officials abroad, and the negative impact of such bribery on Sweden and globally, to increase public support in Sweden for investigating and prosecuting foreign bribery cases. Sweden must also ensure that adequate resources are available, and investigators in the newly established National Anti-Corruption Police Unit receive adequate specialised training, for investigating such cases. In addition, the Working Group recommends that Sweden take urgent measures to improve its detection of foreign bribery through its anti-money laundering system. The Working Group further recommends an increase in the maximum level of fines for companies, currently set at a maximum of SEK 10 million (approximately EUR 1.1 million), which is insufficient to be "effective, proportionate, and dissuasive".

The Working Group acknowledges progress by Sweden in certain areas, such as the important efforts by the Tax Administration to detect and report suspicions. Moreover, Sweden has assisted other Parties to the Anti-Bribery Convention in their investigations of foreign bribery allegations. Most importantly, a new law will come into force on 1 July 2012, which amends the foreign bribery offence as well as establishes a new offence of negligent financing of bribery. In January 2012, the National Anti-Corruption Police Unit was created to support the National Anti-Corruption Unit with corruption investigations, including foreign bribery. Sweden invites the lead examiners to return for a further on-site visit in two years to assess the effectiveness of these new initiatives along with steps taken to address the key recommendations made by the Working Group in this report.

The Report and the recommendations, which reflect the findings of experts from Brazil and Iceland, were adopted by the OECD Working Group on Bribery on 15 June 2012. The Working Group recommended a Phase 3bis evaluation, the time and scope of which will be decided at a one-year written follow-up report. In addition, the Group recommends a six-month written follow-up report concerning recommendations: 1, 3(a), 3(b), 3(d), 4(a), 4(c), 4(d), and 6. This report is based on the laws, regulations and other materials submitted by Sweden and information obtained by the lead examiners during their three-day, on site visit to Stockholm from 13 to 15 February 2012, during which the examiners

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met with representatives of Sweden's public administration, private sector and civil society.

## United Kingdom

The Phase 3 report on the UK by the OECD Working Group on Bribery evaluates and makes recommendations on the UK's implementation and enforcement of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments. The report considers country-specific (vertical) issues arising from changes in the UK's legislative and institutional framework, as well as progress made since the UK's 2005 Phase 2 evaluation, 2008 Phase 2bis evaluation, and 2010 Phase 1ter evaluation. The report also focuses on key Group-wide (horizontal) issues, particularly enforcement.

The Working Group commends the UK for the significant increase in foreign bribery enforcement actions since Phases 2 and 2bis. The UK is encouraged to continue providing adequate resources and support to the SFO and other relevant law enforcement agencies so that they may continue improving their record of enforcement. The Working Group also commends the UK for publishing the Guidance to Commercial Organisations which led to the entry into force of the Bribery Act after the Phase 1ter evaluation. However, the Working Group is concerned that, to settle foreign bribery-related cases, UK authorities are increasingly relying on civil recovery orders which require less judicial oversight and are less transparent than criminal plea agreements. The low level of information on settlements made publicly available by UK authorities often does not permit a proper assessment of whether the sanctions imposed are effective, proportionate and dissuasive. This also misses an opportunity for the UK to provide guidance and raise public awareness on foreign bribery-related issues. It is equally concerning that the SFO has in some cases entered into confidentiality agreements with defendants that prevent the disclosure of key information after cases are settled.

The report identifies some additional concerns. Progress in extending the Convention to the UK's Overseas Territories has been slow. Some of these territories are considered offshore financial centres which may be used to facilitate corrupt transactions. The Working Group thus recommends that the UK promptly adopt a roadmap for remedying this deficiency. The Guidance to Commercial Organisations has helped increase awareness of foreign bribery issues, but the significance of "reasonable and proportionate" hospitality and promotional expenditures, including the reference to industry norms, needs to be clarified. UK policy should ensure that companies effectively move towards "zero

tolerance” of facilitation payments. The SFO’s process of giving advice to companies and accepting self-reports of wrongdoing also needs to be more transparent and better defined. The UK should continue to provide mutual legal assistance to other countries after settlements, where appropriate.

The report also notes several positive developments. The UK government, including through its overseas missions, has made substantial efforts to raise awareness of the Bribery Act and the foreign bribery offence. Coupled with the publicity surrounding the enactment of the Bribery Act, this has led to heightened awareness of foreign bribery-related issues in the UK. The Working Group also notes the UK’s approach of requiring companies to compensate the country of a bribed official, although further refinements are recommended.

The report and its recommendations reflect findings of experts from France and South Africa and were adopted by the OECD Working Group on 16 March 2012. It is based on legislation and other materials provided by the UK and research conducted by the evaluation team. The report is also based on information obtained by the evaluation team during its three-day on-site visit to London on 18-20 October 2011, during which the team met representatives of the UK’s public sector, judiciary, private sector and civil society. Within one year of the Working Group’s approval of this report, the UK 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.

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## **OECD Working Group on Bribery**

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