

# G20 Anti-Corruption Working Group

## Proposal for 2015-16 priorities

### Proposed priority

Enforcement against foreign bribery

### Proposing country / organisation

*Civil 20. This paper was produced by the C20 Governance Group. Earlier drafts were made available for consultation with a number of civil society organisations and coalitions, including the Financial Transparency Coalition, the UNCAC Coalition, the Publish What You Pay Network and the Follow the Money Network.*

### What is the problem?

With few exceptions G20 countries have anti foreign bribery legislations in place, however the level of enforcement is uneven. In order to make the joint efforts of G20 countries against foreign bribery successful their enforcement has to reach a tipping point (active enforcement in countries with over half of world exports).<sup>1</sup> The OECD's Anti-Bribery Convention entered into force 15 years ago but we have not yet reached this point. Tackling foreign bribery should be a priority of G20 members as exports form a significant share of their economies and they "share responsibility for reinforcing the open and rules-based global economic system".<sup>2</sup>

There are several challenges to full and effective enforcement, of which the following are just a few:

- Currently many G20 countries have flawed data collection systems. This hinders planning and evaluating the performance and effectiveness of their law enforcement in tackling foreign bribery.
- Out of court settlements are not always seen as dissuasive, fair or credible, even though a substantial number of foreign bribery cases are now settled through negotiations between prosecutors and the accused companies and individuals.
- In numerous countries, sanctions are inadequate to be effective deterrents for companies engaging in corrupt acts.
- Resources for truly effective investigation and prosecution are often lacking.

### Why should this be a priority for the G20?

Corruption distorts markets, undercuts business and undermines a level playing field. In countries with high rates of bribery, firms waste more time with government officials over bureaucratic negotiations and experience higher, not lower, costs of capital.<sup>3</sup> In a 2011 worldwide business survey conducted by Transparency International, nearly 30% of the respondents declared to have lost business to bribery by a competitor in the last year.<sup>4</sup>

The United Nations, the OECD, the Council of Europe and the Organisation of American States have criminalised foreign bribery and review the implementation in law and in practice. All G20 countries are parties to at least one of these conventions and their exports form the majority of global exports. Enforcement is a key challenge, but can be broken down into a number of concrete, manageable actions. The G20 has the mandate and ability to conduct work that can concretely contribute towards enhancing enforcement.

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<sup>1</sup> See enforcement activities in TI's Exporting Corruption Report 2013

[http://www.transparency.org/whatwedo/pub/exporting\\_corruption\\_progress\\_report\\_2013\\_assessing\\_enforcement\\_of\\_the\\_oecd](http://www.transparency.org/whatwedo/pub/exporting_corruption_progress_report_2013_assessing_enforcement_of_the_oecd)

<sup>2</sup> [https://www.g20.org/sites/default/files/g20\\_resources/library/Saint\\_Petersburg\\_Declaration\\_ENG\\_0.pdf](https://www.g20.org/sites/default/files/g20_resources/library/Saint_Petersburg_Declaration_ENG_0.pdf)

<sup>3</sup> Kaufmann, Daniel and Shang-Jin Wei. "Does 'grease money' speed up the wheels of commerce?" *MPRA Paper* No. 8209, 1999.

<sup>4</sup> Transparency International, *Putting Corruption out of Business*, 2012. <http://www.transparency.org/research/bps2011/>

## What should the G20 do?

1. **G20 Members should improve statistical data collection and access to that information.**<sup>5</sup>  
No policy decision should be made without data. G20 countries should share best practices, review their data collection and publication systems accordingly, and introduce improvements. The OECD could be approached to help with technical cooperation and capacity development on a country by country basis.
2. **G20 members should ensure the fairness and public credibility of settlements, make all settlements subject to court approval, publish their terms and abstain from inhibiting prosecution in other jurisdictions.**  
An existing commitment in the Anti-Corruption Action Plan 2013-2014 is to identify best practices to encourage businesses to voluntarily self-report suspected breaches of bribery laws which often leads to settlements. G20 countries should agree to adopt legislation that make all settlements subject to court approval, and publishes their terms and reduce the barriers for prosecution in other jurisdictions.
3. **The G20 should work with the OECD Working Group to conduct and publish a systematic review of sentencing practices, identifying where they are not 'effective, proportionate and dissuasive'.**
4. **G20 Members should ensure there are adequate resources for detection, investigation, and prosecution of foreign bribery.**

## What is the deliverable?

1. A compilation of best practices in data collection and publication systems.  
Individual country assessments against those best practices and demonstrable progress before end of 2016.
2. Legislation in individual G20 countries enhancing the transparency of settlements.
3. A review of sentencing practices with a set of recommendations for future action.
4. High-level political commitment in the Brisbane Declaration to ensure adequate resources are provided to law enforcement for investigation and prosecution of foreign bribery cases. Numbers of successfully prosecuted cases at the end of the Action plan can give an indication of the success of increasing resources.

## Who will lead this work?

1. The G20 ACWG should collect and share best practices in data collection and publication systems, possibly in collaboration with the OECD Working Group on Foreign Bribery. Each G20 country should then draw up country assessments against those best practices and look to achieve demonstrable progress.
2. Individual G20 countries must work towards adopting legislation on transparency of settlements.
3. The G20 should mandate an independent body such as the OECD to conduct a review of sentencing practices, and draw up a set of recommendations for publication with a view to G20 leaders pledging to meet these guidelines at the 2016 Summit.
4. G20 Leaders should issue a commitment in the Brisbane Declaration to ensure adequate resources are provided to law enforcement for investigation and prosecution of foreign bribery cases.

## What is the timeframe?

1. Mid 2015: Publication of best practices in data collection and publication systems.  
End of 2015: Individual country assessments against best practices and look to achieve demonstrable progress before end of 2016.
2. 2016: OECD conducts a review of sentencing practices, and draws up recommendations for publication end 2016 with a view to G20 leaders pledging to meet these guidelines at the 2016 Summit.
3. 2014: G20 Leaders should issue a commitment in the Brisbane Declaration towards ensuring adequate resources are provided to law enforcement for investigation and prosecution of foreign bribery cases.

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<sup>5</sup> See Transparency International Guidance Document for Acceptable Settlements, [http://archive.transparency.org/policy\\_research/policy\\_and\\_working\\_papers/guidance\\_documents](http://archive.transparency.org/policy_research/policy_and_working_papers/guidance_documents)