

QUESTIONNAIRE

Country self-assessment report on implementation and enforcement of G20 commitments on foreign bribery

G20 countries are invited to complete the questionnaire, below, on the implementation and enforcement of G20 commitments on foreign bribery.

Part I questions are drafted directly from the principles outlined in the G20 Guiding Principles on Enforcement of the Foreign Bribery Offence endorsed by G20 Leaders in St. Petersburg, and its background note on Enforcement of Foreign Bribery Offences. Part II questions are drafted from the G20 Anti-Corruption Action Plan and the St. Petersburg Leaders' Declaration.

Responses to this questionnaire could be compiled into a summary on the "state of play" in G20 countries on steps taken to date to implement the aforementioned commitments, as well as plans for future actions in this area.

I. Implementation of the Guiding Principles on Enforcement of the Foreign Bribery Offence in G20 Countries

Note 1: This section of the questionnaire is drafted from the principles outlined in the G20 Guiding Principles on Enforcement of the Foreign Bribery Offence and the background note on Enforcement of Foreign Bribery Offences.

A. A robust legislative framework

In your jurisdiction:

1. Is there a clear and explicit foreign bribery offence that covers the key elements of the internationally agreed definition for foreign bribery, including offering, promising or giving of a bribe, bribery through intermediaries, and bribes paid to third party beneficiaries?

- *If your jurisdiction criminalises foreign bribery*, please provide references to the relevant provisions and/or the full text, if possible.
- *If your jurisdiction does not have a foreign bribery offence:*
 - Please note whether an offence has been "drafted", "submitted for government review", or "adopted but not yet entered into force".
 - Please provide a timeline for the entry into force of draft legislation, where applicable.

Response:

These facts are incriminated by the Criminal code :

Article 435-1

Modified by law n°2007-1598 of November 13th, 2007 - art. 2 JORF 14 November 2007

"Persons exercising public authority, performing public duties or holding elective public office in a foreign state or in a public international organisation who unlawfully request or agree to, at any time, directly or indirectly, benefits, promises, donations, gifts or other advantage, for themselves or others, to induce them to perform or refrain from performing actions in accordance with or facilitated by their duties, functions or office shall be punishable by ten years' imprisonment and a fine of € 150 000."

Article 435-3

Modified by law n°2011-525 of May 17th, 2011 - art. 154

"Persons who unlawfully offer, at any time, directly or indirectly, for themselves or others, benefits, promises, donations, gifts or other advantages to persons exercising public authority, performing public duties or holding elective public office in a foreign state or in a public international organisation, in exchange for performing or refraining from performing actions in accordance with or facilitated by their duties, functions or office shall be punishable by ten years' imprisonment and a fine of € 150 000.

The same penalties shall apply to persons who respond to requests from persons specified in the first paragraph who unlawfully request, at any time, directly or indirectly, for themselves or others, benefits, promises, donations, gifts or other advantages in exchange for performing or refraining from performing such actions."

Note 2: For questions 2 through 11, jurisdictions without a foreign bribery offence should include updates on plans to address the following issues in efforts to establish the criminalisation of foreign bribery and a framework for enforcing this offence.

2. What is the statute of limitations for investigating and prosecuting foreign bribery? Please indicate the criteria for suspension, interruption or extension of the statute of limitations?

Response:

In accordance with article 8 of the code of criminal procedure, the limitation period for these offenses is 3 years.

Each investigation or prosecution act (for example the investigations addressed by the public prosecutor to a police civil servant or to a policeman) interrupts the limitation period, and sets a new start date for the period of limitation. Consequently, when investigations continue in order to establish the reality of the suspected offence, the limitation period is interrupted, and a new limitation period of three years begins with every new investigative act.

The law and case law also provides grounds for suspension of the limitation period, which interrupt the lapse of the period.

Besides, the case law provides flexibility to the rules regarding corruption. Notably, the case law provided considerable flexibility to the rules concerning the limitation period by assuming that for all secretive offences (breach of trust, purloining and misappropriating property, and corruption: Cass. Crim. May 6th, 2009; trading in influence: Cass. Crim. March 19th, 2008), the starting point of the limitation period is the day when the offence is discovered and not the day when it is committed (the fundamental expression of the criminal chamber of the Cour de cassation is the following: the limitation period of the prosecution begins elapsing in case of dissimulation « only from the day when the offence appeared and could be determined in conditions allowing the exercise of the prosecution»).

3. Please describe the form of jurisdiction available over the foreign bribery offence (i.e. territorial or nationality jurisdiction).

Response:

French law is applicable to offences committed on the national territory.

It is also applicable when facts are wholly committed abroad by French nationals, subject to the principle of incrimination reciprocity, also named dual criminality (the offences must be punishable under the legislation of the country where they have been committed).

4. Please indicate whether your jurisdiction has a corporate liability regime for the offence of foreign bribery.

If your jurisdiction does not have a corporate liability regime for the offence of foreign bribery, please provide a timeline for implementation of corporate liability.

Response:

Legal persons' liability has been covered by French law since 1994; the legislator, then, limited the scope of the offences a legal person could be held responsible for. According to this « principle of speciality », a legal person could be criminally liable only « in cases specified by law or regulation », e.g. only in cases restrictively listed, and not in the general case. The principle was hugely criticised, which led to its abrogation.

Law of March 9th, 2004 cancelled the « principle of speciality » as of December 31st, 2005. Currently, legal persons are liable for all offences, unless the legislator specified otherwise. Article 121-2 of the criminal code, modified by law of March 9th, 2004, specifies: «Legal persons, with the exception of the State, are criminally liable for the offences committed on their account by their organs or representatives, according to the distinctions set out in articles 121-4 and 121-7. »

This law applies to facts of bribery of foreign public officials.

5(a) Please describe the sanctions and confiscation measures available for natural and legal persons for the crime of foreign bribery.

5(b) Please provide the number of criminal, administrative, and civil cases of foreign bribery that have resulted in a final disposition, and indicate (i) how many of these cases have resulted in a criminal conviction or acquittal, or similar findings under an administrative or civil procedure, and (ii) the number of natural and legal persons who have been convicted or otherwise sanctioned.

- *Where possible, please provide references to the relevant provisions and/or the full text, if possible.*

Response:

5(a)

Natural persons incur primarily for these facts 10 years of imprisonment.

Besides, according to the law of December 6th, 2013, incurred penalties by natural persons for bribery of foreign

public officials (art. 435-1 and 435-3 of the criminal code) were considerably raised from an initial 150.000 € fine to a 1.000.000€ fine. Moreover, it is specified that the fine can reach up to the double of the amount of the proceed of the offence.

A company found criminally liable for this offence can be punished with a fine of an amount reaching five times the fine a natural person can face for the same offense. Other sanctions can be imposed such as the exclusion from public procurement for example (cf. articles 131-37 of criminal code).

5(b)

To date, 4 definitive cases resulted in the condemnation of natural persons for bribery of foreign public officials. A fifth case, involving a legal person, also led to a conviction for this same offense, yet the convict has appealed the sentence.

B. Effective detection and domestic coordination

In your jurisdiction:

6. What steps have been taken to engage with relevant agencies, such as overseas missions, broader tax administrations, trade promotion, public procurement and export credit agencies, as well as with the private sector, on issues related to implementation and enforcement of the foreign bribery offence? Where possible, please cite specific examples.

Response:

France intensifies its efforts to raise awareness among French companies, so that they take into account in their compliance programs the acts of their subsidiaries abroad.

SCPC (Central Service for prevention of corruption, the French ACA) contributes to raise awareness among the private sector, which role is key in the fight against corruption. To this aim, the Service has set up a strategy in the last quarter of 2012 to improve the knowledge of the prevention of corruption within companies. This strategy has two main pillars:

A/ the active participation of the Service in different fora on the prevention of corruption organised by institutional bodies (International Bar Association, Workshops " Conventions " co-organised by the Ministry of Foreign Affairs and the Institute of High Judicial Studies, Circle of Compliance, Circle Libraci, Anticorruption Committee of the French Council of the investors in Africa,) and/or training institutions (C5 Incorporated, Marcus Evans Events).

B/ the implementation, in close cooperation with companies or companies' representatives, of actions aiming to raise awareness or to accompany the private sector in the prevention of corruption.

Meetings were organised:

- in the 4th quarter of 2012 with the legal representatives for the main employers' organisations (MEDEF and CGPME);
- in July, 2013 with the chief executive of the Chamber of commerce and industry of Paris - Ile de France
- in May, 2013 with the French Competition Authority, in charge of ensuring the conditions for fair competition and controlling and assisting operations that may have an impact on the level playing field at the European and international levels;
- in the 2nd quarter of 2013, in the National Competition, Consumption and Fraud prevention School, with the

inspectors and competition auditors in initial training.

SCPC also created a working group associating the main private sector trade organisations, representatives of several companies listed at the Paris Stock Exchange Index (CAC 40), public authorities (representatives of the Ministry of Justice, Foreign affairs, of Economy and Finances), as well as lawyers, with the aim of identifying areas of improvements within French companies in the prevention of corruption when participating in national and international business transactions. The working group met on a regular basis in 2012 and 2013.

7(a) Are appropriate reporting channels available for whistleblowers in both the private and public sectors?

7(b) Are appropriate protections available for whistleblowers in both the private and public sectors?

Where possible, specific reference should be made to implementation of the G20 Study on Whistleblower Protection Frameworks, Compendium of Best Practices and Guiding Principles for Legislation.¹

Response:

Article L. 1161-1 of the Labour code (since law of November 13th, 2007 relating to the fight against corruption) already provides an efficient legal protection for any employee who, acting in good faith, testifies or notifies to their employer or to judicial or administrative authorities acts of corruption that comes to their knowledge in the performance of their duties.

Law n°2013-907 of October 11th, 2013 relating to the transparency of public life provides a legal protection to persons who, acting in good faith, report to administrative or judicial authorities what they assess to be a situation of conflict of interests involving a person subject to the control of the High authority for the transparency of public life. (whistleblowers with bad intentions incur the same penalties as for malicious denunciation)

First, the law creates the article L. 1132-3-3 of the Labour code which states that « *no person can either be moved aside from a procedure of recruitment or of the access to an internship or a period of vocational training, no employee can be punished, laid off or made the object of a discriminating measure, direct or indirect, notably regarding remuneration, as in article L. 3221-3, performance based incentives or share distribution, formation, reclassification, posting, qualification, classification, professional promotion, transfer, renewal of contract, for having reported or testified, with the best intentions, facts constitutive of an offence or a crime which he would have gained knowledge in the performance of his functions* ».

This way, a legal protection is granted to every employee having reported or testified, with the best intentions, any constituting facts of an offence or a crime that comes to their knowledge in the performance of their duties. It is worth mentioning that this protection is not limited to information disclosed to the employer or to the administrative or judicial authorities: the employee will also be protected in the case of disclosing information to third parties (such as the press).

Besides, in case of a dispute on the application of the text, the law provides a reversal of the burden of proof when the employee reported, with the best intentions, facts constituting an offense. In case of litigation, as long as the employee establishes facts that allow to presume that he stated, with the best intentions, facts constituting a crime or an offense, it is to the defendant, in view of these facts, to prove that their decision was based on objective grounds external to the declaration or to the testimony of the concerned person.

A similar protection is set for civil servants by a new article 6 ter A of Law n ° 83-634 of July 13th, 1983 relating to the rights and obligations of civil servants.

¹ Available online here: <http://www.oecd.org/corruption/48972967.pdf>

Any provision or any act affecting an employee or a civil servant taken in disregard of these dispositions is void (article L. 1132-4 of the labour code and article 6 ter A indent 2 of law n° 83-634 of July 13th, 1983).

Finally, a new article 40-6 in the Code of Criminal procedure was introduced, providing that «*the person who reported an offence or a crime made in the enterprise or the administration he works in, contacts, at his request, the Central Service for the prevention of corruption when the reported offence is within the competence of this Service*».

C. Effective investigation and prosecution

In your jurisdiction:

8(a) Please describe the investigative powers granted to law enforcement authorities to proactively and effectively investigate and prosecute foreign bribery.

8(b) Please describe the specialized training on detecting, investigating and prosecuting foreign bribery provided and/or planned to be provided to law enforcement authorities.

Response:

8 a) In this field, besides traditional powers of investigations, special techniques of investigations are also applicable (except for 96 hours’ police custody and night house searches), such as:

- extended surveillance (article 706-80 of the code of criminal procedure) ;
- undercover operations (articles 706-81 to 706-87 of the code of criminal procedure) ;
- Interception of mail (article 706-95 of the code of criminal procedure) ;
- Audio captures, transmission and recording of words in private or public places or vehicles, or picture in a private place (articles 706-96 to 706- 102 of the code of criminal procedure) ;
- Capture, storage and transmission of data (articles 706- 102-1 to 706-102-9 of the code of criminal procedure) ;
- Seizures of goods (article 706-103 of the code of criminal procedure).

8b) The French judiciary system includes 8.300 professional, permanent and appointed judges and prosecutors, in charge with general justice.

The national judiciary school (ENM) offers them, within the pole “criminal Justice”, sessions specifically or partly devoted to the question of corruption, under the angle of prevention, detection and repression.

In total in 2013, 183 professional judges and prosecutors (2 %), particularly the judges or prosecutors who are specialized for financial cases, benefited from such training actions.

Action	beneficiaries
National session « corruption, prevention, repression »	60
Regional sessions « corruption, prevention, repression »	32
National session « economic and financial criminal law, level 1 »	32
National session « economic and financial criminal law, level 2 »	31



Module of the cycle « deepening – economic and financial law »	26
Formations for French judges and prosecutors abroad	2
Total	183

Since 2011, on the initiative of the Central Service for the Prevention of Corruption (SCPC), an annual session of continued training dedicated to «*the fight against corruption: detection, prevention, repression*» is organised by the National Judiciary School, for an audience made of judicial, administrative and financial judges and prosecutors, French and foreigners, of police commissioners, of judicial Customs officers, and of police officers.

Moreover, since 2012, ENM (Ecole Nationale de la Magistrature) and SCPC agreed on a long-term training scheme with the aim of directing to all Courts of appeal. In 2012, the areas of Aix-en-Provence, Douai, Lyon, Nancy and Paris were involved. In 2013, the action extended to those of Montpellier, Versailles, Bordeaux and Rennes.

In the framework of the different sessions, at the national and regional level, all aspects relating to the prosecution of the offences of corruption are tackled, both on a theoretical and on a practical perspective, and notably the issue of transnational corruption.

Other related actions are also organised by ENM. The issue of corruption is also tackled in the course of trainings on “economic and financial criminal law” (cycle intended for judges and prosecutors of the Public Prosecutor Office, instructors and members of the specialised judgement chambers in economic and financial functions):

- in the course of introductory sessions to economic and financial criminal law, through an in-depth study of breaches of public honesty: corruption, Offences against equal access in public tenders and public service delegations, trading in influence, unlawful taking of interests;
- in the course of advanced sessions in economic and financial criminal law, through a 3 days module called «public management and probity» dedicated to the study of the rules of public procurements and contracts, the analysis of probity in the accounts’ control by financial courts, and the specificities of investigations in the field.

In both cases, the emphasis is also put on the issue of transnational corruption.

9(a) Please describe the procedures in place for ensuring prompt and effective handling of outgoing and incoming mutual legal assistance requests in relation to foreign bribery cases.

9(b) Please describe how informal assistance is encouraged, in conformity with your jurisdiction’s legal system.

Where possible, specific reference should be made to implementation of the G20 High-Level Principles on Mutual Legal Assistance.²

Reponse:

In this field, requests of mutual assistance are addressed in accordance to the law with due diligence.

French judicial authorities provide wide assistance to requesting States in criminal matters, either as part of bilateral or multilateral conventions, or in the general framework of the Code of Criminal procedure.

When no international agreement is applicable, requests of mutual assistance are carried out on the basis of the reciprocity principle. They are transmitted through normal diplomatic channel and executed according to French Law. However, legal requirements of the requesting State can be taken into consideration, provided that they do

² Available online here: <http://www.oecd.org/g20/topics/anti-corruption/High-Level-Principles-on-Mutual-Legal-Assistance.pdf>

not limit the exercise of French procedure rights.

No request can be executed if it may threaten public order or fundamental interests of the Nation.

Elements of proof transmitted by France following a request of mutual legal assistance may only be used for the purpose of which they were collected as specified in the request of mutual assistance (principle of speciality).

II. Implementation of Foreign Bribery Provisions in the 2012-2013 G20 Anti-Corruption Action and the St Petersburg Declaration

Note 3: This section of the questionnaire is drafted from the 2012-2013 G20 Anti-Corruption Action Plan and the St. Petersburg Leaders' Declaration. It also seeks updates from G20 countries on next steps for fighting foreign bribery.

10. Please specify next steps for continuing “efforts to adopt and enforce laws and other measures against foreign bribery”.³

Response:

France intends, in close cooperation with the private sector, to draft national guidelines to international businesses to implement processes to fight corruption.

Corrupt practices are indeed detrimental to all businesses – large and small, at the multinational and local level. Corporate scandals have upset financial markets and undermined investors’ confidence. Corruption is identified as the top impediment to conducting business in 22 out of 144 economies, as measured in the World Economic Forum’s Global Competitiveness Report. The fight against corruption is strategically crucial for business.

On top of that, issuing guidelines is a means to promote and highlight companies’ commitment in the fight against corruption. Guidelines will:

- provide guidance to companies in the concrete implementation of an anti-corruption regime, with a view to put practices in line with anti-corruption principles and help them to comply with domestic and foreign anti-corruption laws and regulations ;
- encourage companies to extend their anti-corruption programs to their subsidiaries and business partners ;
- help them to put in place an efficient and systematic internal regime which provides a framework for companies to prevent and fight corruption, but also to demonstrate to the external world that they effectively do so.

11. Please specify next steps for engagement with the OECD Working Group on Bribery with a view to explore possible adherence to the OECD Anti-bribery Convention as appropriate.

Specifically and where applicable, please indicate any plans to:

- Attend meetings of the WGB in 2014;

³ G20 Anti-Corruption Action Plan 2013 – 2014, Point 2.



- Co-organize or attend meetings on foreign bribery; and/or
- Engage in technical assistance activities on the issue of implementation and enforcement of the foreign bribery offence;
- Open discussion for Membership in the WGB, with a view to acceding to the OECD Anti-Bribery Convention.

Response:

France has been a party to the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions since 1999 and attends all plenary meetings of the working group in charge of its implementation. Since then, France has been strongly committed throughout the different phases of monitoring, in order to strengthen its anti-bribery framework, implement the Convention and effectively combat bribery in international transactions.

France intends to continue to be an active member of the OECD Working Group on Bribery, especially in the context the current work on the definition of the next monitoring phase (Phase 4).