

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: Article 291 of the Criminal Code makes it an offence to bribe a foreign public official or a public official of a public international organization personally or through an intermediary.

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:

The statute of limitations for the active bribery offence under Article 291 of the Criminal Code primarily depends on gravity of crime:

- In the case of crimes of little gravity (a bribe is less than 25 000 Roubles (approximately EUR 600)), the statute of limitations is 2 years.
- In the case of average gravity crimes (from 25 000 to 150 000 Roubles (approximately from EUR 600 to EUR 3 600)), the statute of limitations is 6 years.
- In the case of grave crimes (from 25 000 to 150 000 Roubles (approximately from EUR 600 to EUR 3 600)), the statute of limitations is 10 years.
- In the case of especially grave crimes (more than 1 million Roubles (approximately EUR 25 000)), the statute of limitations is 15 years.

The statute of limitation can be suspended if a person who committed a crime is trying to avoid investigation or court procedure.

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

Response:

Territorial jurisdiction: Article 11 of the Criminal Code establishes jurisdiction over offences committed in the territory of the Russian Federation.

Nationality jurisdiction: Article 12 of the Criminal Code establishes extraterritorial criminal jurisdiction over citizens and permanent residents of the Russian Federation who commit, outside of Russia, any crime established in the “Special part” of the Criminal Code (including article 291).

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:

Under Russian law, legal persons cannot be held criminally liable for foreign bribery.

However, according to article 19.28 of the Code of Administrative Offences, illegal transfer, offer or promise, on behalf or in the interests of a legal person, to foreign official or official of a public international organization shall be punishable with a fine of up to one hundred-fold amount of the bribe.

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:

- (a) **Natural persons.** Sanctions applicable to active foreign bribery are the same as for active domestic bribery. According to Article 291 of the Criminal Code, giving a bribe to a foreign public official or a public official of a public international organization shall be punishable with a fine of up to ninety times the amount of bribe as well as imprisonment for up to twelve years.
- Legal persons.** According to Article 19.28 of the Code of Administrative Offences, illegal transfer, offer or promise, on behalf or in the interests of a legal person, to foreign official or official of a public international organization shall be punishable with a fine of up to one hundred-fold amount of the bribe.
- (b) For the time being there have been no investigations or convictions for the foreign bribery offence in the context of international business transactions investigations.

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:

Ministry of Foreign Affairs and trade missions

Following Russia's adhesion to the OECD Anti-Bribery Convention, the Ministry of Foreign Affairs gave instructions to embassies about Russia's obligations under the Convention, in particular with regard to the importance of monitoring and notifying cases of foreign bribery.

In the end of 2013, the Ministry of Economic Development developed and disseminated a set of measures to increase the awareness of trade missions' staff about the offence of foreign bribery and its criminal and administrative consequences under Russian law. Information on countering foreign bribery, including texts of the OECD Anti-Bribery Convention and relevant Russian legislation, has appeared on official web sites of trade missions.

In November-December 2014, a series of training sessions will be provided for public officials on various foreign bribery issues, including detecting and reporting foreign bribery, dealing with solicitation, etc. The Ministry of Labor and Social Development is responsible for organizing the training.

Export credit agencies

Russia supports its exports via several organizations, including the Russian Agency for Export Credit and Investment Insurance (EXIAR) and Vnesheconombank (VEB). The EXIAR supports exports by providing insurance against risk. VEB can provide export credits, using funds received directly from the state budget.

In 2014, in accordance with the Action Plan on Implementation of the OECD Working Group on Bribery recommendations (see response to Question 10) Vnesheconombank made certain important steps with regards to combating foreign bribery. In particular, VEB developed an Anti-Corruption Due Diligence Procedure for all projects receiving public funds. EXIAR adopted in April 2014 the Anti-Corruption Policy aimed at prevention of various forms of corruption, including foreign bribery.

In November 2014, specialized training on combating foreign bribery will be organized by the Ministry of Labor and

Social Protection. Representatives of VEB and EXIAR should also take part in this event.

Private sector

Regular events are conducted by both government and largest business-associations to raise awareness on anti-corruption measures for business, including Article 13.3 of Federal Law on Combating Corruption and relevant Guidelines (see response to Question 7), Article 19.28 of the Code of Administrative Offences as well as the Anti-Corruption Charter for businesses. Those issues were discussed for example (i) at a conference organized in March 2014 by the Russian Union of Industrialists and Entrepreneurs in the framework of the annual Russian Business Week, (ii) at a separate session on fighting corruption in business within the annual International Legal Forum in June 2014, (iii) at a separate session on countering corruption and fraud organized by the Chamber of Commerce and Industry of the Russian Federation within the framework of the Finance Forum in September 2014, etc.

Other

Certain steps have also been taken to raise awareness of foreign bribery offence within Defence exports, Tax authorities as well as some other relevant agencies.

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:

(a) There is no legislation establishing a general reporting obligation for public officials regarding suspected foreign bribery offences. The only reporting obligation imposed on public servants in relation to corruption concerns situations where the public official himself has been offered to commit a corruption offence. Such duty is established by Article 9 of the Law on Combating Corruption. Recommendations regarding the procedure of notification by federal employees to their employer were approved by the Presidium of the RF Presidential Council for Anti-Corruption in 2010.

As for the private sector, there are neither obligation to report foreign bribery offences, nor any specific reporting channels for corporate employees. However, Article 13.3 of Federal Law on Combating Corruption requires companies to develop internal anti-corruption policies. To encourage the implementation of this rule the Ministry of Labor and Social Protection issued the Guidelines on developing and implementing measures to prevent and combat corruption within organizations. In accordance with the Guidelines, companies are recommended to establish internal corruption reporting channels and whistleblower protection mechanisms.

(b) Certain whistleblower protection mechanisms are provided in the Federal Law No. 119-FZ “On government protection of victims, witnesses and other participants of judicial proceedings on criminal cases”. However, protection measures prescribed by this law can be applied only after the relevant criminal proceeding has been initiated.

Also in accordance with the Presidential decree #309 of 2 April 2013 public officials as well as SOE employees who report alleged cases of corruption can not be subject to disciplinary sanctions (including dismissal) without consent of the relevant internal Conflict of Interest Commission.

Russia is now actively working on enhancing whistleblower protection and developing relevant legislation. According to the National Anti-Corruption Plan for 2014-2015 adopted in April 2014, draft legislation on corruption reporting and whistleblower protection should be developed by November 2014.

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

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:

(a) Russia has not established a specialised unit for investigating and prosecuting foreign bribery cases. Foreign bribery investigations are to be conducted by the same law enforcement agencies that conduct investigations of domestic bribery.

Two types of investigations can be conducted in the context of a foreign bribery case: criminal and administrative. Criminal investigations are conducted against natural persons while administrative investigations are conducted against legal persons. Proceedings in these investigations are governed by the Criminal Procedure Code and Code of Administrative Offences, respectively.

Criminal investigations – Natural persons. Instances of foreign bribery can be detected by any institution with law enforcement powers or through the receipt of information from other sources. When detected, the crime report must be referred for verification to the Investigative Committee.

Based on the results of the verification, an investigator of the Investigative Committee either (i) initiates a criminal case; (ii) refuses to initiate a criminal case; or (iii) refers the crime report to another authority that has jurisdiction over such crimes.

If a criminal case is initiated a mandatory pre-trial investigation is launched. A pre-trial investigation should be finished within two months, however this timeline can be extended under certain circumstances. An investigator can decide to terminate the criminal case at any point of the pre-trial investigation if concluded that (i) no offence was committed; (ii) there is no reasonable suspicion that the person has committed the criminal offence as well as for some other reasons. A decision on termination of a pre-trial investigation should be forwarded to the prosecutor who can either accept or overrule it.

If special investigation techniques, such as wiretapping, undercover agents, surveillance, etc., are necessary, an investigator may instruct operative officers of law enforcement agencies allowed to perform operative and search activities (Ministry of Internal Affairs, Federal Security Service and some others). Certain investigative measures require court authorization.

When a pre-trial investigation is finished, the indictment is drawn up and after approval by the head of the investigative body is sent to the prosecutor.

Administrative investigations – Legal persons. In administrative proceedings, the prosecutors would be responsible for investigating foreign bribery allegations involving a legal person. Neither the Investigative Committee nor any other law enforcement authority would be directly involved in administrative investigations. However, prosecutors could use any evidence collected during a criminal investigation as part of their investigation.

Prosecution. The General Prosecutor's Office is responsible for prosecuting foreign bribery allegations involving both natural persons and legal persons.

The prosecutor considers the criminal case and takes one of three decisions to either: (i) approve the indictment bill; (ii) send the criminal case back to the investigator for additional steps, and (iii) forward the indictment to the superior prosecutor if the case is within the scope of the authority of a higher court. After endorsing the bill of indictment the prosecutor forwards the criminal case to the court.

(b) In November 2014, specialized training is planned to be provided on detecting foreign bribery through financial documents and accounting records examination.

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

Response:

(a) The central authority for granting legal assistance at the pre-trial stage is the General Prosecutor’s Office. Since 2006, the GPO has had a General Department for International Cooperation that deals with MLA issues. All requests for assistance must be sent to Moscow, which transmits them to the competent local authority.

However, in some bilateral treaties not only the Prosecutor General's Office but also the Ministry of Justice are designated as a central authority.

The procedural basis for executing MLA requests is the Chapter 53 of the Criminal Procedure Code (especially Articles 457 and 459).

If an international treaty acceded by Russia establishes different procedural rules for rendering assistance from those envisaged by Russian domestic law, the rules of the treaty should apply. Russia has treaties with over 70 states and is a party to several agreements concerning MLA in criminal matters, including the European Convention on MLA in Criminal Matters and its First Additional Protocol, the Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime, the UNCAC.

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:

In October 2013, the OECD Working Group on Bribery completed its second report on Russia's implementation of the OECD Anti-Bribery Convention. As a result of the review, a number of recommendations were issued on further enhancing the relevant legislation as well as developing training and awareness-raising measures.

In May 2014, the Government of the Russian Federation approved the Action Plan on Implementation of the OECD Working Group on Bribery recommendations. The Action Plan includes a number of next steps that should be taken

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

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

in 2014-2015 to follow the recommendations and further enforce measures against foreign bribery, including:

- Developing draft legislation on corruption reporting and whistleblower protection;
- Further developing legislation on criminalization of false accounting offences – *in July 2014 the Article 172.1 was included in the Criminal Code that provides sanctions in the form of fines, disqualification and imprisonment for falsification of financial documents and records;*
- Developing rules and procedures necessary for implementation of the 2006 OECD Council Recommendation on Bribery and Officially Supported Export Credits;
- Considering relevance and feasibility of further amending the Russian criminal legislation on foreign bribery, including possible ways of
 - criminalizing the "promising" and "offering" of a bribe;
 - covering any bribes in the form of non-material advantages by the foreign bribery offence;
 - eliminating the defence of "effective regret" as it applies to foreign bribery;
 - seizing and confiscating of the proceeds of the bribe and their equivalent value.
- Streamlining cooperation between law enforcement agencies, tax authorities and FIUs in combating foreign bribery;
- Further enhancing MLA cooperation;
- Providing regular training for various stakeholders on revealing and countering foreign bribery and solicitation, including training for law enforcement officers, Ministry of Foreign Affairs officials, private companies management and employees, etc.

In addition, it is necessary to mention that the new Anti-Corruption Action Plan for 2014-2015 takes further development of anti-corruption measures for business as one of four key mid-term goals. The Plan includes a number of important items, e.g. considering the exterritorial application of the Russian foreign bribery legislation. In order to implement the measures prescribed by the Plan a new unit was established within the Ministry of Labor and Social protection that will deal with developing anti-corruption tools for business and providing methodological support on implementation of relevant legislation.

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;
- 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:

By December 2014 Russia should finalize its report on implementation of the OECD Working Group on Bribery Phase 2 recommendations and present it during the WGB meeting.