

OECD Working Group on Bribery



Annual Report **2008**

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MESSAGE FROM THE SECRETARY GENERAL



Angel Gurría
Secretary-General

The OECD anti-corruption work is among the Organisation's most important achievements – and the OECD Anti-Bribery Convention is the centrepiece of these efforts. Throughout the world, people I meet ask me about our anti-corruption programmes, and I am proud to see the impact they are having in the OECD member countries and beyond.

When the OECD Council adopted the Convention just one decade ago, the idea of a coordinated, international effort to fight bribery of foreign public officials was revolutionary. Companies considered bribes to be a normal part of business, and governments were not focused on this crime. Through the Convention's tough standards and the Working Group on Bribery's monitoring process, the climate for international business has changed significantly in just a short time. Countries are investigating and prosecuting foreign bribery cases as never before.

Since the Convention came into force, more than 135 individuals and companies have been convicted of foreign bribery. These cases have resulted in serious sanctions, including billions of euros in fines for companies, and prison terms for their executives. Countries are becoming more proactive in addressing foreign bribery, and the number of cases is on the rise.

The Working Group itself is also hard at work, evaluating countries' compliance with the Convention, and preparing for the next phase of monitoring. An essential part of this is the review of the Convention and related instruments to ensure that they are still on target.

Additionally, as the OECD plans to expand its membership to include some of the world's most important emerging economies, the Working Group on Bribery is playing a key role in the accession process. Progress

towards accession in the area of anti-corruption is well advanced. Three of the five candidates for accession – Chile, Estonia and Slovenia – have long been Parties to the OECD Anti-Bribery Convention; they have taken steps that show they are willing and able to meet the OECD's demanding anti-corruption standards. Israel joined the Working Group in December 2008, an important step on its accession roadmap. Another major achievement was the recent request by Russia to join the Anti-Bribery Convention.

Supporting countries throughout the world in establishing and enforcing effective anti-corruption policies that conform to international standards is one of our most important tasks. The OECD has been pleased to offer technical support towards implementation of the United Nations Convention against Corruption – as well as to continue working with the Asian Development Bank, the Organisation of American States, the Council of Europe, the World Bank and other organisations to bolster the anti-corruption efforts of a broad group of countries world-wide. In a rapidly changing global economy, this collaboration is even more vital.

The OECD is working towards a stronger, fairer and cleaner world economy. The fight against corruption is an essential building block of the cleaner world agenda – and may be even more important in a time of widespread economic crisis, when companies might feel increased pressure to use all means to win business. In the long run, everyone stands to benefit when business transactions are based on integrity.

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MESSAGE FROM THE CHAIR, OECD WORKING GROUP ON BRIBERY



Mark Pieth
*Chairperson, OECD Working
Group on Bribery*

The OEC Anti-Bribery Convention, and the Working Group on Bribery, have had a significant impact on the global fight against corruption over the past decade. Despite these successes, however, corruption remains a serious problem that governments and businesses must address. Indeed, the current economic crisis has made this issue even more acute.

The Working Group on Bribery is at a crucial moment. A decade after the adoption of the OECD Anti-Bribery Convention, it enjoys a well-earned reputation as the pre-eminent international body for fighting corruption. In 2008, the Group took important steps to ensure that this remains the case in the future.

At all of its plenary meetings this year, the Working Group devoted significant effort to the review of the OECD anti-bribery instruments. This has been a challenging process, which has raised important questions about the very foundations of our work. As we evaluate more countries' implementation of the Convention. It creates a strong foundation supporting countries' actions to fight foreign bribery, and establishes tough and effective standards to guide these efforts. Its impact is clear. Countries are implementing laws, moving forward with prosecutions, and sanctioning foreign bribery offences.

Our responsibility throughout the review process is to undertake a thorough examination of the Convention and its effectiveness. The Working Group also made strides in planning Phase 3 of the monitoring process. The Phase 1 and Phase 2 reviews have shown that the Working Group's monitoring process is meaningful and effective. The goal is to ensure that the standards under the Convention continue to be applied fairly and consistently.

In 2008, the Working Group conducted its highest-profile examination yet: the Phase 2 bis review of the United Kingdom. In the face of worldwide interest and an intense media glare, the discussion was collegial and constructive. I am encouraged by the UK's actions in 2008, and hope that the government will quickly take the Working Group's recommendations on board.

Such significant attention to our work has raised awareness of the damaging effects of foreign bribery, and sent a "wake-up call" to the private sector. Companies now know that any corrupt acts will be detected, investigated and prosecuted.

In addition to ensuring that current Parties comply with the tough standards under the Convention, it is also important to expand its reach to all countries with significant international business interests.

The Working Group was pleased to welcome Israel as its 38th member in December 2008. Israel's membership in the Working Group fits well with our policy of reaching out to major importers and foreign investors, with the aim of combating corruption and levelling the playing field for international business. Israel has shown that it is willing and able to assume the responsibilities under the Convention, an important step in its efforts towards OECD membership.

China also engaged significantly with the Working Group in 2008. A Secretariat mission was received in Beijing in May. A Chinese delegation attended the December plenary meeting as observers, and described advances in China's anti-corruption efforts. The Working Group has invited China to attend its 2009 meetings as an observer, and looks forward to a continued fruitful relationship.

A handwritten signature in black ink, appearing to be 'A. E. H.', located at the bottom right of the page.



Bribery of public officials to obtain advantages in international business raises serious moral and political concerns, undermines good governance and sustainable economic development, and distorts competition. The OECD is leading global efforts to level the playing field for international business by fighting to eliminate bribery of foreign public officials from competition for contracts and investment.

Corruption in awarding business contracts has social, political, environmental and economic costs – which no country can afford. Serious consequences result when public officials take bribes in awarding contracts to foreign businesses for public services such as roads, water or electricity. A one-million-dollar bribe can rapidly amount to a one-hundred-million-dollar loss in a poverty-stricken country, as derailed projects and inappropriate investment decisions undermine plans for development.

The OECD takes a multidisciplinary approach to fighting corruption – in business, taxation, development aid and governance – in its member countries and beyond. For more than a decade, the OECD has been a leader in setting and promoting international anti-corruption standards and principles.

OECD countries, major emerging economies and developing countries alike are working systematically to prevent and punish corruption. However, increased connectivity allows corruption's damaging effects to spread far beyond where the corrupt act is committed, throughout the global economy and society. Technological advances have made corruption easier to commit and harder to detect.

At this critical juncture, countries around the world are looking to the OECD to support their efforts to curb foreign bribery and improve governance in both the public and private sectors.

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

The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions is the keystone of the

Organisation's anti-corruption efforts. It is a legally binding international agreement; countries which join the Convention agree to establish a criminal offence of bribing a foreign public official in their national laws, and to implement effective policies to prevent, detect, investigate and sanction foreign bribery.

The OECD Anti-Bribery Convention is the first and only international anti-corruption instrument focused on the "supply side" of the bribery transaction – the person or entity who offers, promises or gives a bribe. This precise focus has allowed the OECD to become the world's foremost authority on bribery in international business.

The Organisation has accumulated in-depth and up-to-date country-specific and thematic, cross-country information about foreign bribery through its highly effective and well-respected monitoring system, which evaluates countries' implementation of the Convention in practice. Based on the OECD peer review system, the monitoring process is universally acknowledged as a key factor in the Convention's success.

To ensure that their companies do not bribe government officials to gain business advantages anywhere in the world, States Parties' national laws must hold both individuals and companies who engage in bribery of foreign public officials responsible for this crime. Countries that ratify the OECD Anti-Bribery Convention send a clear message that their companies will invest ethically and not engage in corrupt activities.

Foreign bribery is a crime even if the desired results are not achieved, and even if the company would have achieved the desired results without giving the bribe (e.g., even if the company was the best qualified bidder for a tender). It includes bribery committed through an intermediary, subsidiary or other agent; and also bribes that benefit a foreign public official's family or political party, or another third party (e.g., a charity or company in which the official has an interest).

The Convention uses a broad, autonomous definition of a foreign public official: persons holding an elected or appointed legislative, administrative or judicial office in a foreign country (whether appointed or elected); individuals exercising a public function for a foreign country, including for a public agency or public enterprise; and agents or officials of public international organisations. How the foreign country defines the person in question is immaterial.

Because countries have different legal systems and structures, States Parties are not required to use uniform measures to implement the standards under the Convention. Instead, the goal is consistency of results – what matters is that all countries that have ratified the Convention implement it in a way that is effective and enforceable. This principle is referred to as “functional equivalence”.

Other obligations under the Convention include:

- providing prompt legal assistance to other countries in investigating and prosecuting foreign bribery;
- requiring corporate liability for the foreign bribery offence; and
- imposing effective, proportionate and dissuasive sanctions (including confiscation of bribes and any proceeds) upon foreign bribery convictions.

In 2008, Israel became the 38th member of the OECD Working Group on Bribery. All States Parties to the Convention – the 30 OECD countries, plus Argentina, Brazil, Bulgaria, Chile, Estonia, Israel, Slovenia and South Africa – have put legislation that criminalises foreign bribery in place. (See Annex 1 for a list of State Parties and dates of ratification and entry into force.) Before the Convention came into force in 1999, few countries had such measures on the books.

More than 135 individuals and companies have been convicted of foreign bribery since the Convention came into force, and over 340 allegations are currently under investigation in 27 of the 38 Parties. Fines of up to EUR 1.24 billion (USD 1.69 billion) have been imposed on companies convicted of foreign bribery, and their executives have faced prison terms of up to five years.

The number of foreign bribery investigations continues to increase across the Parties to the Convention. However, the majority still have not had any convictions. And while ongoing monitoring has shown increasing levels of awareness of the OECD Convention and the foreign bribery offence across the Parties, there is evidence that reaching small and medium-sized enterprises remains a challenge.

Nevertheless, the OECD Anti-Bribery Convention creates a strong foundation for countries’ commitment to fight foreign bribery, and establishes tough and effective standards to guide their efforts going forward.

Related OECD Anti-Bribery Instruments

On 23 May 1997, the OECD Council adopted the Revised Recommendation on Combating Bribery in International Business Transactions. The Revised Recommendation acknowledged countries' shared responsibility to create a fair environment for international business and set the stage for the OECD Convention, "an international convention to criminalise bribery ... to be open for signature by the end of 1997".

The Revised Recommendation addresses: criminalisation of bribery of foreign public officials; tax deductibility of bribes to foreign public officials; accounting requirements, external audit and internal company controls for preventing and detecting foreign bribery; and rules and regulations on public procurement. It calls for both individual efforts at the country level, and multilateral cooperation and monitoring.

The 11 April 1996 OECD Council Recommendation on the Tax Deductibility of Bribes to Foreign Officials calls on member countries to disallow tax deductibility of bribes to foreign public officials. Today, no Parties to the OECD Anti-Bribery Convention permit tax deductibility of such bribes; most deny it through provisions in their tax codes.

The 1996 Recommendation acknowledges that allowing tax deductibility may indirectly favour bribery. It instructs the OECD Committee on Fiscal Affairs to monitor the implementation of the Recommendation, in cooperation with the Committee on International Investment and Multinational Enterprises.

The 2006 OECD Council Recommendation on Bribery and Officially Supported Export Credits focuses on international business transactions benefitting from official export credit support. Members are urged to inform exporters and applicants about the legal consequences of foreign bribery, and require exporters to declare that they will not engage in bribery and provide information about all actors in the transaction. Enhanced due diligence is required where exporters or their agents are under charge or have been convicted for foreign bribery. It also prescribes actions to take in cases where bribery occurs.

Monitoring Implementation of the OECD Anti-Bribery Instruments

A unique strength of the OECD anti-bribery instruments is their rigorous, peer-driven review mechanism. The Convention mandates a “procedure of self and mutual evaluation”, whereby all Parties to the OECD Anti-Bribery Convention work together to ensure that countries honour their commitment to fighting bribery.

Detailed monitoring reports evaluate countries’ implementation and enforcement of anti-bribery laws and policies. The assessments are carried out by the OECD Working Group on Bribery, which includes representatives from each of the 38 Parties to the Convention. When countries ratify the Convention, they agree both to being reviewed themselves and to taking an active role in assessing other Parties.

This international, mutual evaluation process motivates Parties to promote integrity in the corporate sector, prevent corruption, and investigate and prosecute cases of foreign bribery. It also allows sharing of ideas and good practices.

When countries do not comply with the Convention, fair conduct of international business is eroded. All Parties therefore have a vested interest in ensuring that every signatory fully and effectively implements the Convention and upholds its rigorous standards.

The Working Group on Bribery in International Business Transactions

The OECD Working Group on Bribery in International Business Transactions oversees the implementation of the Convention. Representatives of each of the 38 Parties – generally public servants from the justice, trade, finance, economic affairs, or foreign affairs sectors – meet in Paris four times each year. Working Group plenary meetings allow delegates to share ideas and information, and to keep up-to-date on Parties’ policy implementation and foreign bribery investigations.

The Working Group’s most important role is to support country-level implementation of the OECD anti-bribery instruments. The monitoring process aims to ensure that all Parties have in place a sound system to fight foreign bribery that complies with the Convention’s high standards.

The Working Group examines countries’ legal and institutional frameworks to identify potential obstacles to the effective implementation of

the Convention. In-depth country reports include recommendations to rectify problems uncovered through the review process. The Working Group then follows up to ensure that the recommendations have been promptly addressed.

A forum for exchange of ideas and sharing of successful strategies, the Working Group also provides delegates with an opportunity to debate and reach agreement on tough recommendations to improve countries' compliance with the Convention. In 2008, the Working Group issued recommendations to reviewed countries addressing: raising awareness of the OECD Convention and the foreign bribery offence; corporate liability for foreign bribery; nationality jurisdiction; non-tax deductibility of bribe payments; and ensuring that sufficient resources are devoted to investigating and prosecuting foreign bribery.

The quarterly Working Group plenary meetings also include a "Tour de Table" discussion. During this session, all countries report on progress on legislation and on their latest inquiries, investigations and allegations – sharing experiences, challenges and good practices. The Tour de Table also allows delegates to ask each other specific questions and to speak openly about alleged cases and other ongoing efforts.

The Secretariat for the Working Group is the Anti-Corruption Division of the OECD Directorate for Financial and Enterprise Affairs. The staff of 15 includes individuals from seven countries (Canada, France, the Netherlands, New Zealand, Ukraine, United Kingdom, United States). Team members bring backgrounds in law including criminal law, economics, public policy, and public service to the OECD's anti-bribery work.

MONITORING COMPLIANCE AND IMPLEMENTATION OF THE CONVENTION

Over the past decade, the OECD Anti-Bribery Convention's monitoring mechanism has established it as the pre-eminent international anti-corruption instrument. The Convention is only effective when all Parties implement it fully and adhere to its tough standards.

Working Group on Bribery delegates both invite review by their peers, and serve as examiners for other countries. This mutual evaluation process creates peer pressure within the Working Group – and motivates countries to ensure the highest level of compliance with the Convention, and to take concrete action to fight corruption.

The monitoring process has so far followed a two-phase process. Phase 1 examinations are an in-depth review of each country's national laws to implement the Convention, while Phase 2 reviews look at the effectiveness of Parties' legislative and institutional anti-bribery frameworks in practice. In 2008, the Working Group began planning for the Phase 3 monitoring cycle (see Page 21, "Ensuring the Continuing Effectiveness of the Convention", Phase 3).

When significant concerns arise regarding specific countries' implementation of the Convention, the Working Group can call for additional examinations or other actions. This happened several times in 2008.

Supporting countries after ratification strengthens their resolve to combat bribery in international business. Monitoring strengthens their legal frameworks for fighting corruption and enhances opportunities to work together internationally to investigate and prosecute cases. Monitoring is essential because of what is at stake: fair competition in international business.

Key Monitoring Actions in 2008

In October 2008, the Working Group conducted its Phase 2 bis review of the United Kingdom. The Working Group sharply criticized the United Kingdom's failure to bring its anti-bribery laws into compliance with the Convention, and urged the rapid introduction of new legislation.

The Working Group believes that the UK's current laws on foreign bribery and corporate liability are insufficient, and create an obstacle to successful prosecutions; more than 10 years after the UK ratified the Convention, there have been no convictions of companies for foreign bribery. The Working Group also expressed concern over whether

UK law sufficiently safeguards the independence of the Serious Fraud Office (which handles foreign bribery investigations).

The Group praised the UK for allocating significant resources to law-enforcement anti-corruption efforts, and for its government-wide strategy to improve capacity to fight foreign bribery. It also positively acknowledged the UK's first foreign bribery conviction of an individual in September 2008. The Group also noted other significant developments, including a civil proceeding against a major UK company and new legislative provisions applying to the intentional assisting or encouraging of crimes including bribery taking place overseas. As these were very recent developments, there was insufficient time to address them in the report.

In light of the issues of concern, the Working Group requested that the UK provide written progress reports on legislative progress at each of the quarterly meetings of the Working Group on Bribery. The Working Group might also take further follow-up action, depending on the information reported.

At its December 2008 plenary meeting, the Working Group agreed to send letters to the Prime Minister of the Czech Republic, and to the Minister of Justice of the Slovak Republic, calling for quick action by these leaders to implement liability of legal persons for foreign bribery in their countries. The Working Group asked both countries to provide written follow-up reports on progress in this area in June 2009.

The Working Group also recommended a Phase 1bis review for Spain, once a major amendment to its Penal Code addressing 11 outstanding recommendations from its Phase 2 review is adopted. The measure addresses the foreign bribery offence, liability of legal persons, sanctions and statute of limitations.

Phase 1 Review in 2008

The Working Group conducted its Phase 1 review of South Africa in June 2008. (South Africa joined the Convention in June 2007.) It found that overall South Africa's legislation conforms to the standards of the Convention. However, the Working Group recommended that South Africa clarify that national economic interest must not be taken into account in prosecutorial decisions, and also amend existing law to allow extradition where the offence was not committed in the requesting state. Issues for follow-up in the Phase 2 report include: the nature of intent required under South African law; liability of legal persons when the individual responsible for foreign bribery cannot be

identified; sanctions, particularly for legal persons; and jurisdiction. The Working Group will also investigate how disbanding of the directorate with responsibility for investigating serious criminal conduct (“the Scorpions”) – including foreign bribery in some cases – will affect enforcement of the foreign bribery offence.

The evaluation section of the Phase 1 report on South Africa is included in Annex 2. All Phase 1 reports are available at www.oecd.org/corruption.

When countries adopt new legislation that significantly changes the foreign bribery offence or related areas, the Working Group may conduct a Phase 1 bis review to assess the effectiveness of these new measures.

Phase 1 reviews

Phase 1 reviews are a comprehensive examination of each country’s national laws and other legal measures to determine whether they meet the standards under the OECD Anti-Bribery Convention. Examination countries submit legislation, regulations and other legal material to the Working Group, and complete a questionnaire on these provisions. Two participating countries – “lead examiners” – work with the Secretariat to analyse this material and prepare a draft report assessing the country’s compliance with the Convention. They also identify outstanding areas which will require special attention during Phase 2 of the review process. The draft report is discussed and adopted at a Working Group plenary meeting, and then published on the OECD website.

Phase 2 Reviews in 2008

In 2008, the Working Group conducted Phase 2 evaluations of Argentina and Estonia.

The Group recommended that Argentina promptly enact effective liability and sanctions for companies for the foreign bribery offence, and improve its capacity to investigate and prosecute this crime. The Working Group also urged Argentina to clarify that tax rules prohibit the tax deductibility of bribes. The report welcomed Argentina’s actions to address recommendations from the Phase 1 report, and also its significant awareness-raising activities.

For Estonia, the Working Group recommended that the government take measures to increase awareness of the foreign bribery offence (most anti-corruption efforts in Estonia have focused on domestic bribery), and identified some deficiencies in Estonia's foreign bribery and corporate liability laws. Positive findings of the examination include express denial of tax deductibility of bribes, and efforts by Estonia's export credit agency to prevent and raise awareness of foreign bribery.

The executive summaries of Phase 2 reports completed in 2008 are included in Annex 2. All Phase 2 reports from 2008 and previous years are available at www.oecd.org/corruption.

Phase 2 includes a follow-up process, whereby countries report their progress in implementing the Working Group's recommendations. They present an oral report one year after adoption of their Phase 2 report, a written report two years after adoption, and a second oral report three years after adoption.

Phase 2 reviews

Phase 2 reports are the second step of the Working Group on Bribery's monitoring process; they evaluate how countries' anti-bribery laws and policies are being implemented in practice. Review countries fill out a detailed questionnaire, and an evaluation team – including two lead examining countries and members of the OECD Secretariat – travels to the country for a week-long on-site visit. During this visit the review team conducts intensive interviews with police and prosecutors, judges, officials from relevant government agencies (e.g. Ministry of Justice, Ministry of Foreign Affairs, public procurement authority, official development assistance agency), private sector representatives (large listed companies, SMEs, business associations, the audit and accounting professions) and civil society (NGOs, academics, journalists). These sessions and the questionnaire responses are analysed to determine how effectively the country prevents, investigates, prosecutes and sanctions foreign bribery. The examination team prepares a draft report, which is discussed in a plenary session of the Working Group and then adopted and published online. In Phase 2, the Working Group develops recommendations to the review country for improving its implementation of the Convention. The country is expected to take prompt action in response to these recommendations.

► **Oral Follow-up Reports**

In 2008, eight countries gave oral follow-up reports, documenting the first year of progress in implementing the recommendations from their Phase 2 reports. Oral reports – presented during Working Group plenary meetings – provide countries with an opportunity to share measures underway to address shortcomings identified in Phase 2, and to showcase plans for future initiatives.

► **Written Follow-up Reports**

Written follow-up reports cover the two-year period following a country's Phase 2 examination. Five countries presented written follow-up reports during Working Group plenary meetings in 2008. During the discussion on these reports, the Working Group assesses if the Phase 2 recommendations have been “fully implemented”, “partially implemented” or “not implemented”.

The written follow-up reports showed that countries have been making strong efforts to raise awareness of the OECD Convention and the foreign bribery offence. Widespread training and information campaigns were provided for public-sector officials and for private companies. However, there were no cases before the courts in any of the reporting countries.

Two countries made legislative changes to strengthen their foreign bribery offences, and one country introduced a measure which did not progress through the legislative process. Although the Working Group recommended that four countries consider whistleblower protection laws, none took concrete steps to do so. One country designated a government agency to coordinate foreign bribery issues, and significantly increased the budget for this entity.

Written follow-up reports, which include a summary and conclusions by the Working Group, are available at www.oecd.org/corruption.

► **Second Oral Follow-up Reports**

The final part of Phase 2 is a second oral follow-up report, presented to the Working Group three years after adoption of the country review. This report presents progress in implementing any recommendations that were not fully addressed at the time of the written follow-up, and allows countries to provide the Working Group with feedback on any remaining unresolved issues. Second oral follow-up reports are very narrowly focused.

**OECD Working Group on Bribery:
Phase 2 reviews and related regular follow-up reports in 2008**

Phase 2 evaluations	<ul style="list-style-type: none"> • Argentina (June) • Estonia (June)
Oral follow-up reports	<ul style="list-style-type: none"> • Ireland (March) • Poland (March) • Portugal (March) • Slovenia (June) • Chile (October) • Brazil (December) • Turkey (December)
Written follow-up reports	<ul style="list-style-type: none"> • Austria (March) • Australia (June) • Denmark (June) • Spain (June) • Netherlands (October) • Czech Republic (December)
Second Oral Follow-up reports	<ul style="list-style-type: none"> • Italy (March) • Japan (March) • Korea (March) • United Kingdom (June) • Belgium (October) • Greece (October) • Hungary (October) • Sweden (October) • Slovak Republic (December)

► **Phase 2 bis**

When the Working Group finds serious deficiencies in a country's implementation and enforcement of the Convention, it can conduct a supplemental Phase 2 evaluation – a Phase 2 bis review. The Phase 2 bis process includes a second on-site visit, which focuses on specific problem areas identified in Phase 2. The Working Group conducted three Phase 2 bis examinations in 2008.

- Ireland: The Working Group recommended that Ireland urgently remove very high standards required to establish corporate liability for the foreign bribery offence, and amend its foreign bribery offence. Provisions currently exist in two different laws, and inconsistencies between the measures could create obstacles to effective prosecution. The Working Group recommended that Ireland consolidate these two measures into a single piece of legislation as soon as possible.
- Luxembourg: The Working Group recommended that Luxembourg promptly introduce liability of legal persons for the foreign bribery offence. It also urged Luxembourg to facilitate judicial access to bank records, increase sanctions for companies convicted of foreign bribery, guarantee jurisdiction over acts of bribery committed abroad by Luxembourg companies, increase efforts to educate SMEs on foreign bribery issues, and institute whistleblower protections.
- United Kingdom: The Working Group urged the United Kingdom to adopt modern foreign bribery legislation, ensure that investigative and prosecutorial decisions at all stages are not influenced by prohibited considerations of the national economic interest, and ensure that the Serious Fraud Office has adequate independence and resources to effectively address foreign bribery cases.

When countries have not taken adequate steps to address outstanding issues after a Phase 2 bis review or the follow-up to a Phase 2 review, the Working Group can take further action. For example, the Working Group may:

- require the country to make regular progress reports detailing its efforts to rectify a specific problem.



Examination Team for the Phase 2bis on-site visit to Ireland.

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- issue a formal public statement declaring that the country is not in compliance with the OECD Convention and requesting immediate action to correct the situation.
 - send a high-level mission (including the chair of the Working Group, representative(s) of the OECD Secretariat, and several heads of delegations) to meet with ministers and senior officials from the review country.

Other Follow-up Activities

In cases where the Working Group has concerns at the completion of a review process, it can ask countries to provide regular reports on some aspect of their implementation of the Convention.

The Phase 2 bis review of the United Kingdom requires quarterly written progress reports on legislative progress at each Working Group plenary meeting. The UK presented its first report at the December 2008 meeting. The UK also invited members of the Working Group's Management Group and the OECD Secretariat to come to London and share their views on the Law Commission proposals and the legislative process.

Following its Phase 2 bis review in 2005, the Working Group recommended that Japan conduct an annual informal meeting in the margins of a plenary meeting to show how it is proactively investigating and prosecuting foreign bribery cases. The agenda for this meeting is narrowly focused on potential cases and cases in progress. This annual meeting – involving Japanese officials, the lead examiners (Italy and the United States), and the OECD Secretariat – took place in March 2008.

OECD ENLARGEMENT AND ENHANCED ENGAGEMENT AND THE FIGHT AGAINST FOREIGN BRIBERY

The OECD Working Group on Bribery is playing a key role in the Organisation's efforts to expand its membership. Chile, Estonia, Israel, the Russian Federation and Slovenia have been working on their "accession roadmaps" to possible future OECD membership. Anti-corruption standards are an important part of this process – and the Working Group is charged with reporting to the OECD Council on the candidate countries' willingness and ability to meet these standards. They include: compliance with the OECD Anti-Bribery Convention; legal framework for combating bribery; adequate accounting, auditing and tax systems to fight bribery; and ability to cooperate with Parties to the Convention.

This evaluation process is taking place in concert with the Working Group's ongoing monitoring (see Box below).

Chile, Estonia and Slovenia are already Parties to the OECD Anti-Bribery Convention and active members of the Working Group on Bribery. All three have undergone their Phase 1 and Phase 2 reviews. Israel joined the Working Group in December 2008 (see below), and Russia requested to join the Convention in February 2009.

The Working Group is also significantly involved with many of the countries that the Organisation has identified for "enhanced engagement" with a view to possible future membership (Brazil, China, India, Indonesia and South Africa). Brazil and South Africa are active members of the Working Group on Bribery, and Parties to the OECD Anti-Bribery Convention. India, Indonesia and China are involved in the ADB/OECD Anti-Corruption Initiative for Asia-Pacific. China is becoming more involved in the international fight against foreign bribery and working more closely with the WGB.

Israel Joins the Working Group on Bribery

In December 2008, Israel became the 38th Party to the OECD Anti-Bribery Convention. This is an important step in its accession to OECD membership. Following its meeting in October 2008, the Working Group recommended to the OECD Council that Israel be invited to accede to the OECD Anti-Bribery Convention and become a full participant in the Working Group.

The formal exchange of letters between the OECD and Israel took place at the December Working Group plenary. OECD Deputy Secretary General Thelma Askey presented HE Daniel Shek, Ambassador of Israel to France, with an official invitation to join the Working Group. Ambassador Shek then offered Israel's letter of acceptance.

Israel's participation as a member of the Working Group is consistent with its view that corruption is an intolerable peril which weakens democratic values and the rule of law, said Ambassador Shek. Mark Pieth, Chair of the Working Group, warmly welcomed Israel and noted that enlargement among major exporters and foreign investors helps to combat corruption and level the playing field for international business. This event took place on 9 December, International Anti-Corruption Day, a global initiative to raise awareness of all forms of corruption.

Israel's Phase 1 examination will take place in March 2009, and its Phase 2 review in December 2009.

Relations with China

The OECD has offered enhanced engagement – with a view to possible future membership – to Brazil, China, India, Indonesia and South Africa. Brazil and South Africa are already Parties to the OECD Anti-Bribery Convention. In 2008, the Working Group stepped up its already-strong relations with China, setting the stage for future collaboration on anti-corruption issues.

In May, staff from the OECD Anti-Corruption Division travelled to China to learn about anti-corruption programmes, and to share information about the OECD Convention and the foreign bribery offence. This first mission to China was very constructive, and will likely lead to a technical seminar on fighting transnational bribery in China in the near future.

In November 2008, the OECD hosted 22 high-ranking Chinese officials for a day-long meeting on the Organisation's anti-corruption work. OECD staff from the Anti-Corruption Division, Public Governance and Territorial Development Directorate, Development Cooperation Directorate, Centre for Tax Policy and Administration, and Centre for Cooperation with Non-Members presented their initiatives and programmes. The Chinese officials also shared information on anti-corruption efforts in China.

A Chinese delegation attended the December 2008 Working Group meeting as observers. The representatives of the Ministry of Supervision presented developments in fighting "business bribery"

in China. Its approach includes awareness-raising activities, more efforts to investigate cases, and new laws and regulations based on international standards. China is also drafting a code of conduct for Chinese companies operating overseas which will investigate and punish bribery that happens abroad. The Working Group invited China to become an ad hoc observer to its meetings for 2009.

China is a dynamic member of the Asian Development Bank/OECD Anti-Corruption Initiative for Asia-Pacific (see Page 22).

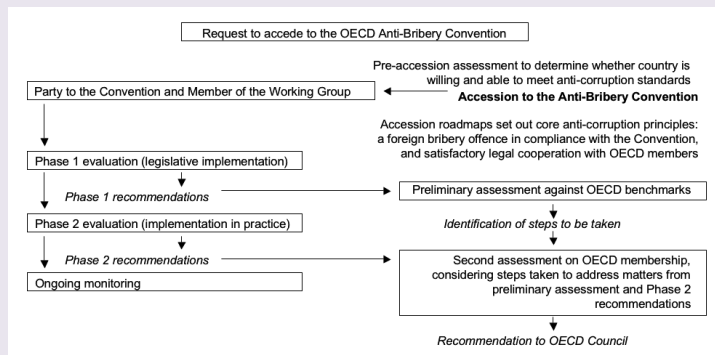
Other Emerging Economies

Russia, a candidate for OECD membership, did not officially request to join the Working Group or take steps to ratify the OECD Anti-Bribery Convention in 2008. Once it does so, the Working Group will commence a pre-accession review.

Among the enhanced engagement countries, India and Indonesia are participants in the ADB/OECD Anti-Corruption Initiative for Asia-Pacific, with Indonesia playing an active role.

The Working Group's Role in OECD Enlargement

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



ENSURING THE CONTINUED EFFECTIVENESS OF THE CONVENTION

The OECD Anti-Bribery Convention is the only international legal instrument to focus on the supply side of bribery, and its tough standards and rigorous monitoring process are respected throughout the world. Just over a decade after its adoption, the Convention is at a critical juncture. The Working Group has completed the Phase 2 monitoring for most countries, and has undertaken a project to review the Convention and related instruments.

Review of Anti-Bribery Instruments

Throughout 2008, the Working Group worked on its ongoing review of the OECD anti-bribery instruments. The goal of this exercise is to ensure that the Convention and related documents remain the standard bearers for the fight against corruption.

The review builds on the Working Group's decade of experience in monitoring countries' compliance with the Convention. After accumulating considerable information through its monitoring process, and analyzing horizontal issues within the May 2006 Mid-Term Study of the 21 Phase 2 monitoring reports completed up to that time, the Working Group launched the review.

In January 2008, the Working Group began a three-month-long public consultation on the instruments. A comprehensive Consultation Paper on the Review of the OECD Instruments on Combating Bribery of Foreign Public Officials in International Business Transactions was posted on the Internet between 10 January and 31 March. Stakeholders were asked to comment on major issues that have arisen in the course of monitoring implementation of the Convention. A total of 35 organisations and individuals – including international legal experts, multi-lateral organisations, NGOs, prosecutors, accounting and auditing professionals, and private-sector representatives – shared their views.

More than 30 representatives of civil society, the private sector, multi-lateral institutions and the legal profession met with the Working Group on Bribery on 16 June for a face-to-face discussion on how to strengthen measures for preventing, detecting, investigating and prosecuting cases of bribing foreign public officials. Participating

individuals and organisations had an opportunity to clarify and expand upon their written responses submitted through the online consultation process.

A number of study groups and expert meetings were planned for 2009 to address priority issues in the review such as small facilitation payments, and auditing and accounting issues. The goal is to complete the review in 2009.

The Phase 3 Assessment Mechanism

The Working Group made significant progress in 2008 in shaping the procedure for the next Phase of monitoring countries' implementation of the OECD Anti-Bribery Convention. The first reviews of the Phase 3 cycle are planned to begin in early 2010.

Phase 3 examinations will focus on individual countries' outstanding issues from earlier reviews, along with horizontal group-wide topics. Two lead examining countries (members of the Working Group) will conduct each evaluation with the support of the Anti-Corruption Division Secretariat, and the schedule will follow the order in which exams were conducted in Phase 2.

Typology Exercise on Intermediaries in Foreign Bribery

Business abroad is often conducted by intermediaries – and intermediaries are almost always involved in foreign bribery cases. While companies can benefit from intermediaries' special knowledge of the business environment and local rules and regulations, they can be susceptible to corruption. The Working Group began work on a typology exercise on "The Role of Intermediaries in Foreign Bribery". This project will examine the complex role of intermediaries in foreign bribery transactions, including the different types of intermediaries that can participate, the use of multiple intermediaries, risk-prone sectors for bribery through intermediaries, and detection of bribery through intermediaries. It will address particularly challenges of creating corporate compliance programmes that effectively prevent bribery by intermediaries, and the difficulties in detecting and investigating bribery by intermediaries. An informal expert meeting to support this typology exercise was held in December 2008, and the report is expected to be completed in 2009. It will include anonymised examples of cases involving bribery by intermediaries.

Meetings of Prosecutors

More than 30 prosecutors from 23 Parties to the OECD Convention attended an informal meeting in conjunction with the June 2008 Working Group plenary meeting. Participants discussed foreign bribery and the issue of multiple jurisdictions and shared information on their countries' mutual legal assistance (MLA) procedures and policies. The group also discussed how prosecutors can work together in the future in the context of the Working Group on Bribery.

Attendees found aspects of the meeting very useful, and agreed to circulate a list of contact information so they can consult each other in relation to specific MLA requests. The final session was an open discussion with the Working Group, where prosecutors proposed to hold regular voluntary meetings of interested prosecutors. In October 2008, the Working Group agreed, in principle, to hold such informal meetings on an annual basis.

Data on enforcement

In 2008, the Working Group approved a project to collect and disseminate statistics on foreign bribery. The data collected will be divided into two categories: information which all countries have agreed to provide, and information to be provided on a voluntary basis. Only a narrow range of statistics, covering the outcomes of criminal and administrative/civil proceedings, will be a mandatory part of this project. Voluntary submissions will include data on investigations (number ongoing, number discontinued, number of sanctions in connection with discontinued investigations, etc.) and prosecutions and proceedings (number discontinued with/without sanctions, details about sanctions and civil penalties, etc.). The first set of statistics will be published in late 2009.

REGIONAL ACTIVITIES

As the world economy changes and international commerce becomes more widespread, regional anti-corruption initiatives bring the Convention's tough standards – and its Parties' experience in fighting bribery – beyond the membership of the Working Group. Both established programmes and new activities are effective in broadening the Convention's reach.

The Anti-Corruption Network for Eastern Europe and Central Asia

The Anti-Corruption Network for Eastern Europe and Central Asia (ACN) covers more than 20 countries in Eastern Europe and Central Asia. This initiative brings together governments, civil society and business representatives to fight corruption. The ACN reviews its members' anti-corruption initiatives, conducts regional conferences, and carries out thematic projects on priority issues.

The 7th General Meeting of the ACN was held in Tbilisi, Georgia, in June 2008. More than 110 representatives of governments, NGOs and businesses from 30 countries attended this meeting, along with international organisations. The high attendance confirmed the ACN's key role as a forum for anti-corruption debate in the region.

The Tbilisi meeting represented the first time that an ACN member country hosted the General Meeting, and participants were interested to hear about Georgia's significant progress in fighting corruption during recent years. Plenary and thematic sessions included: international anti-corruption instruments and related monitoring mechanisms;



Opening session of the 7th General Meeting of the Anti-Corruption Network for Eastern Europe and Central Asia (ACN). Tbilisi, Georgia, 25 June 2008.

investigation and prosecution of complex and high-level corruption cases; and the role of the private sector in combating corruption.

In 2008, the ACN also adopted its methodology for the second round of monitoring under the Istanbul Anti-Corruption Action Plan – a peer review of anti-corruption programmes in Armenia, Azerbaijan, Georgia, Kazakhstan, Tajikistan and Ukraine. These evaluations will take place in 2009 and 2010. The review process will involve comprehensive examination of countries' measures for criminalisation of corruption, and their law-enforcement and prevention activities. Standards under the United Nations Convention against Corruption will be used as benchmarks. Thematic expert seminars will be organised to provide analytical support on the most challenging issues. In December 2008, a training seminar for Istanbul Action Plan evaluators was held in Basel, Switzerland; the event aimed to train national experts from the ACN to carry out mutual evaluation and to use the approved methodology for the reviews. The training was provided by the Basel Institute on Governance and OECD experts.

The ACN recently published an in-depth report analysing findings from the first round of monitoring under the Istanbul Action Plan. *Fighting Corruption in Eastern Europe and Central Asia: Recent Achievements and Future Challenges*, provides an overview of reforms to anti-corruption legislation and institutions in the countries of the former Soviet Union, and forecasts future challenges.

The ACN secretariat also continued its work on a country-specific programme "Strengthening the Capacity for Investigation and Prosecution of Corruption in Ukraine", funded by the US Department of State. This project focuses on assisting Ukrainian authorities to establish a specialised anti-corruption institution with law-enforcement powers, and to develop anti-corruption specialisation within the prosecution service in line with European and international standards.

The Glossary of International Criminal Standards, a key ACN publication, continued to attract interest in 2008. As more countries adhere to international anti-corruption instruments and seek to implement their criminalization standards, the Glossary provides a welcome guide. Its readership has expanded far beyond the Eastern European and Central Asian region.

The ACN was established in 1998 to provide a regional forum for promotion of anti-corruption activities, exchange of information, elaboration of best practices and donor coordination.

The ADB/OECD Anti-Corruption Initiative for Asia-Pacific

The Asian Development Bank/OECD Anti-Corruption Initiative for Asia-Pacific supports 28 Asian and Pacific economies in their anti-corruption efforts. The programme fosters policy dialogue and mutual learning, and provides technical seminars. The initiative aims to increase members' capacities to implement international anti-corruption standards set out in the OECD anti-bribery instruments, the UN Convention against Corruption and the Initiative's own Anti-Corruption Action Plan for Asia-Pacific.

The Initiative's 6th Regional Anti-Corruption Conference – Fighting Corruption in Asia-Pacific: Strategies for Business, Government and Civil Society – was held in Singapore in November 2008. The meeting focused on the supply side of bribery in business transactions. Workshops addressed: international criminal law standards; managing conflicts of interest in the public and private sectors; internal company controls for preventing and detecting corruption; private-to-private corruption; and the impact of corruption on sustainable development. About 150 representatives of 33 countries attended this meeting. The 12th Steering Group meeting was held back-to-back with the Conference, while the 11th session took place in May in Manila, Philippines. At its meeting, the Steering Group agreed to undertake a thematic review on criminalization of bribery, including the bribery of foreign public officials, in 2009. The Group also agreed in principal to launch voluntary country reviews of members' implementation of standards under the Anti-Corruption Action Plan.

Several key publications were produced in 2008. Mutual legal assistance, extradition, and recovery of proceeds of corruption in Asia-Pacific – frameworks and practices in 27 Asian and Pacific jurisdictions, is an in-depth review of frameworks and practices for granting and requesting extradition and mutual legal assistance in the Initiative's member countries. This publication is accompanied by a database (available online and on a CD-ROM) including the full texts of treaties and legislation that govern MLA and extradition in member economies. It was a major success, and is in use by anti-corruption practitioners across the globe. The proceedings of three regional technical seminars were also published: "Detecting, Avoiding and Managing Conflict of Interest", "Asset Recovery and Mutual Legal Assistance in Asia and the Pacific", and "Fighting Bribery in Public Procurement".

The ADB/OECD Initiative was launched in 1999, and its first regional Action Plan was adopted in 2001. Its twice-yearly Steering Group meetings bring together delegates from each member economy to discuss their efforts to implement the action plan, assess developments and progress, and exchange experiences in anti-corruption reforms. Regional technical seminars focus on agreed issues of priority. As the Initiative approaches ten years of operation, in 2009 it will undergo an independent evaluation to assess its strengths and weaknesses, and to ensure that it moves forward in a way that is of greatest benefit to its members.

The Anti-Bribery and Business Integrity in Africa Initiative

In December 2008, the OECD and the African Development Bank launched a partnership to support the efforts of African governments and business to fight bribery and corruption, and to boost corporate integrity.

The Anti-Bribery and Business Integrity in Africa Initiative will help countries design and put in place effective policies to prevent bribery of public officials. The programme will also aim to improve the competitiveness of the private sector across Africa by improving standards of corporate integrity and accountability. Finally, it will seek to highlight and enhance complementarities among the African Union Convention on Combating Fraud and Corruption, the United Nations Convention against Corruption, and the OECD Anti-Bribery Convention.

The first project of the Initiative is a stocktaking review of policies and practices in 20 African countries. It is expected to be completed by the end of 2009, and discussed at a regional meeting in early 2010.

The Latin American Anti-Corruption Programme

Four Latin American countries are Parties to the OECD Anti-Bribery Convention: Argentina, Brazil, Chile and Mexico.

The Latin-American Regional Anti-Corruption Conference: Commitment and Co-operation in the fight against Corruption and Transnational Bribery took place in Mexico City in September 2008. More than 800 participants from 22 countries attended this important regional event. Its key objectives included: to reaffirm Latin-America's commitment to fighting corruption and combating transnational bribery, and to upholding international anti-corruption standards; to identify challenges and foster information exchange and mutual legal assistance; and to

Participants in Key Regional Anti-Corruption Initiatives

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

support countries' national strategies for prevention, investigation, prosecution and sanctioning of bribery.

Three Mexican Ministries – Public Function, Foreign Affairs, and Attorney General – worked collaboratively to organise this meeting, which was sponsored jointly by the OECD and supported by the Organisation of American States and the InterAmerican Development Bank. In conjunction with this meeting, the Mexican Ministry of Public Administration and the Spanish Ministry of International Affairs and Cooperation produced a Spanish-language translation of the OECD publication *Bribery in Public Procurement: Methods, Actors and Counter-Measures*; this was distributed to all meeting attendees, and additional copies will be used in training public servants to better implement the OECD Anti-Bribery Convention.

EXTERNAL RELATIONS

Key Governmental Partners

The OECD Convention is the first – and so far the only – international instrument focusing on the supply side of foreign bribery. To reduce corruption, however, governments must address both the supply of bribes and the demand for bribes. Several other international instruments provide a broader framework for addressing all aspects of the bribery equation, particularly the officials who accept or ask for bribes. The OECD collaborates with other international organisations, each bringing its unique expertise and strengths to the international fight against corruption.

► *United Nations Convention against Corruption*

Because it is open for signature to all States, the United Nations Convention against Corruption (UNCAC) adds significant momentum to the global anti-corruption movement. It complements and reinforces requirements under other international instruments and tackles other issues that have not been previously addressed.

The UNCAC treats foreign bribery in a similar manner as the OECD Anti-Bribery Convention. Both require signatories to criminalise foreign bribery, and include provisions on MLA, extradition, money laundering and asset recovery.

Since the UNCAC was adopted in 2003, the OECD has supported that the UNCAC and the OECD Anti-Bribery Convention should mutually reinforce each other. Members of the OECD Anti-Corruption Secretariat have attended meetings of the committee to develop a review methodology for the UNCAC, and have provided the UN with country-specific information on the Parties to the OECD Convention that volunteered for the UNCAC Pilot Review.

In January 2008, the OECD Working Group on Bribery transmitted a message to the second Conference of State Parties to the UNCAC, which took place in Bali. The Working Group congratulated the Conference of State Parties on the ratification of the UNCAC by more than 100 countries and strongly supported efforts of the UN and the OECD to coordinate anti-corruption activities. The Working Group also offered to share its considerable expertise on: development of a

review mechanism for implementation of the UNCAC; identification of best practices; and prevention and detection of bribery.

► **StAR Initiative**

The Working Group will also become involved in the United Nations/World Bank Stolen Asset Recovery (StAR) programme. StAR focuses on the recovering assets stolen from developing countries, approaching the issue from the perspective of how the assets are hidden. Actions include providing legal and technical assistance to help developing countries recover stolen assets and offering countries alternative methods for monitoring recovered assets. The Working Group can contribute significantly to this dialogue, due to its wealth of experience on confiscation of the proceeds of bribery (which is often a precursor to asset recovery) as a sanction for foreign bribery.

Engagement with the private sector and civil society

Civil society plays a key role in the Working Group's activities. The on-site visits for the Phase 2 examinations of countries' implementation of the OECD Anti-Bribery Convention include meetings with civil society representatives, who provide an important perspective on countries' efforts to fight foreign bribery. The private sector and civil society will also play a key role in the Phase 3 evaluations.

The review of the OECD anti-bribery instruments has also provided an opportunity for civil society organisations to weigh in on issues of importance and contribute to the future effectiveness of the Convention.

The Working Group continues its productive and mutually beneficial relationship with Transparency International, which has been active in encouraging Parties to honour their commitments to fighting bribery under the Convention.

The private sector remains a most significant stakeholder in the OECD's anti-corruption work. Companies' commitment to ensuring fair competition in international business is a key to success.

ANNEX 1.**PARTIES TO THE CONVENTION**

Country	Deposit of instrument of ratification/ acceptance	Entry into force of the Convention	Entry into force of implementing legislation
Argentina	8 February 2001	9 April 2001	10 November 1999
Australia	18 October 1999	17 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	20 February 1999	29 January 1999
Canada	17 December 1998	15 February 1999	14 February 1999
Chile	18 April 2001	17 June 2001	8 October 2002
Czech Republic	21 January 2000	21 March 2000	9 June 1999
Denmark	5 September 2000	4 November 2000	1 May 2000
Estonia	23 November 2004 (accession instrument)	22 January 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	6 April 1999	1 December 1998
Hungary	4 December 1998	15 February 1999	1 March 1999
Iceland	17 August 1998	15 February 1999	30 December 1998
Ireland	22 September 2003	21 November 2003	26 November 2001
Israel	11 March 2009 (accession instrument)	10 May 2009	21 July 2008
Italy	15 December 2000	13 February 2001	26 October 2000
Japan	13 October 1998	15 February 1999	15 February 1999
Korea	4 January 1999	5 March 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	16 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
Slovak Republic	24 September 1999	23 November 1999	1 November 1999
Slovenia	6 September 2001 (accession instrument)	5 November 2001	23 January 1999
South Africa	19 June 2007 (accession instrument)	18 August 2007	27 April 2004
Spain	4 January 2000	4 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

ANNEX 2. EXCERPTS OF MONITORING REPORTS

In 2008, the Working Group completed: Phase 2 reports for Argentina and Estonia; Phase 2bis reports for Ireland, Luxembourg and the United Kingdom; and a Phase 1 report for South Africa. Executive summaries of the Phase 2 and Phase 2bis reports follow. As there are no executive summaries for Phase 1 reports, the Evaluation section of the report on South Africa is included.

► South Africa: Phase 1

General comments

The Working Group commends the South African authorities for their high level of co-operation and openness during the examination process. In addition, the Working Group appreciates that South Africa liaised regularly with the Secretariat while preparing the responses to the Phase 1 Questionnaire to ensure a comprehensive and effective basis for the examination.

Section 5 of the Prevention and Combating of Corrupt Activities Act 2004 (the PCCA) criminalises bribery of foreign public officials. The Working Group considers that overall South Africa's legislation conforms to the standards of the Convention, subject to the issues noted below. In addition, some aspects of the South African legislation would benefit from follow-up during the Phase 2 evaluation process.

Specific issues

The offence of active bribery of foreign public officials

The foreign bribery offence in the PCCA does not specifically refer to an element of intent. It would therefore appear that what needs to be intended is that the offer, promise or gift of a benefit to a foreign public official is for the purpose of obtaining an improper advantage. However, South Africa has provided several responses in its answers to the Phase 1 questionnaire, and in additional material and discussions, which have raised questions about the exact nature of the intent required under South African law. Therefore, this issue will be the subject of follow-up in Phase 2.

Responsibility of legal persons

To prosecute a legal person under South African law, it must be proven that a "director" or "servant" has committed an offence. South Africa expresses the view that it would not be necessary to identify that a specific director or servant committed the act to trigger the liability of a legal person, but that it would suffice to show that a director or servant committed an act. However, due to the absence of case law, and the practical difficulties in identifying conduct by one individual in a complex and decentralised corporate structure, the Working Group considers that this issue should be followed-up in Phase 2.

Sanctions

Article 3.1 of the Convention requires that sanctions in place for foreign bribery be effective, proportionate and dissuasive; Article 3.2 makes similar requirements in respect

of legal persons. Article 3.3 calls for effective confiscation measures in respect of the bribe and its proceeds.

The Working Group is encouraged by steps taken by South Africa in the Policy Directives for Prosecutors and in recent amendments to the Criminal Law Amendment Act 1997 to ensure that foreign bribery is always tried at the highest level, with the possibility of imposing unlimited fines. It is also encouraged by recent decisions by the Constitutional court confirming fines and important confiscation penalties on legal persons. However, the Working Group questions whether the lower sanctions mentioned in the PCCA in respect of jurisdiction by lower courts [i.e. a maximum fine of ZAR 360 000 (EUR 28 150 or USD 44 425) in Regional Court and ZAR 100 000 (EUR 7 820 or USD 12 340) in the Magistrate's Court] may have an influence on sanctions pronounced by the South African courts in respect of foreign bribery, especially where legal persons are involved. The Working Group is concerned that, if this were the case, sanctions in respect of legal persons may not be sufficiently effective, proportionate and dissuasive. The Working Group is of the view that this issue will benefit from further discussions in Phase 2 and as case law develops.

Jurisdiction

Articles 4.1 and 4.2 of the Convention refer to the application of territorial and nationality jurisdiction over foreign bribery offences. Section 35(1) of the PCCA is quite clear on the application of nationality jurisdiction. However, there is no specific mention of the criteria for establishing territoriality jurisdiction in the PCCA and case law on this issue has not been provided. The Working Group therefore recommends that the issue of territorial jurisdiction be the subject of further analysis and discussions in the context of South Africa's Phase 2 evaluation. However, the Working Group acknowledges that provisions on nationality jurisdiction appear very strong under the South African law.

Enforcement

As of the time of this review, it has been decided by South Africa that the Directorate for Special Operations, which had responsibility for investigating and prosecuting serious criminal or unlawful conduct, including foreign bribery in certain circumstances, would be disbanded. A new Directorate for Priority Crime Investigation is due to be created in its place. South Africa explains that this modification in the institutional framework is part of the review of the criminal justice system, and will allow for improved coordination. The Working Group expresses serious concern in regard of this issue, and will monitor this further in the context of a Phase 2 evaluation, to ensure that the effective enforcement of the foreign bribery offence is not affected by this rearrangement of law enforcement responsibilities.

The South African Policy Directives for Prosecutors state that, when considering the "public interest" in decisions to prosecute, "the economic impact of the offence on the community" should be taken into account. South Africa contends that this factor is one among several, and would only constitute an aggravating factor. Consideration of such a factor in investigating and prosecuting foreign bribery cases is prohibited by Article 5 of the Convention, and the Policy Directives do not specifically state that it would only be considered an aggravating circumstance. The Working Group is encouraged by South

Africa's expressed intention to carry out the necessary clarifications, and urges South Africa to proceed expeditiously with such clarifications.

Extradition

South Africa's laws on extradition, as well as extradition agreements to which South Africa is a party, always require that the offence for which extradition is sought has been committed "within the jurisdiction" (i.e. within the territorial jurisdiction of the requesting country). The Working Group is therefore concerned that South Africa will not be able under the current system to provide extradition for a foreign bribery offence when the requesting country is exercising nationality jurisdiction (i.e. the offence took place outside the requesting country's territory) which will normally be the case for foreign bribery offences.

The Working Group welcomes the statements made by South Africa that a proposed Extradition Bill would remove this requirement, and encourages South Africa to proceed expeditiously with the adoption of these amendments to answer the concerns of the Working Group.

Argentina: Phase 2

The Phase 2 Report on Argentina by the Working Group on Bribery evaluates Argentina's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The Working Group notes that Argentina has engaged in important efforts to implement the Convention including legislative amendments in 2003 to address concerns in the Working Group's Phase 1 report. However, the Working Group is seriously concerned about the continuing absence of liability for legal persons (companies) that engage in bribery, and about systemic deficiencies in the overall framework for the investigation and prosecution of foreign bribery and related offences.

The Working Group is particularly concerned that there is still no liability of legal persons for bribery in Argentina despite the clear requirements of the Convention and the Working Group's recommendation in Phase 1. It recommends that the law be promptly changed to make companies accountable. In the area of investigation and prosecution, it appears that Argentina is rarely able to effectively investigate and prosecute foreign bribery or other serious economic crime to a resolution on the merits, in particular because of extraordinary delays in getting to a decision due, inter alia, to the applicable rules of procedural law. In addition, the Working Group is concerned that serious allegations of foreign bribery that appeared in the public domain in 2002 were not investigated until 2006. While these issues raise fundamental concerns, the Working Group notes that the government has commenced a reform process that would improve the federal criminal justice system. A new draft Criminal Procedure Code, based on an accusatorial system, was recently published by a commission mandated by the Ministry of Justice.

In addition to the areas noted above, the Phase 2 report also notably recommends that Argentina adopt nationality jurisdiction for the foreign bribery offence; include foreign "politically exposed persons" in relevant anti-money laundering materials; and clarify that tax rules prohibit the deductibility of bribes to foreign public officials.

In this context, the Working Group will conduct a supplementary Phase 1 bis review of Argentina one year from now to evaluate Argentina's efforts to establish corporate liability and sanctions, and to adopt nationality jurisdiction for foreign bribery cases. The review will also report on the status of legal changes with regard to broad criminal procedure and institutional reform (Recommendation 3(c)). Depending on progress in these areas (as well as with regard to its specific recommendations), the Working Group will also decide whether to conduct a supplementary on-site evaluation (Phase 2 bis review) of Argentina or take other appropriate action.

The Report also highlights positive aspects in Argentina's fight against foreign bribery including numerous recent awareness raising activities for public sector personnel that can play a key role in preventing and detecting foreign bribery, including foreign diplomatic personnel and tax inspectors. The Working Group also welcomed ongoing efforts to enhance the anti-money laundering framework.

The Report, which reflects findings of experts from Brazil and Spain, was adopted by the Working Group along with recommendations. In addition to the Phase 1bis review mentioned above, Argentina will report to the Working Group, within one year of the adoption of the Phase 2 Report, on the steps that it will have taken or plans to take to implement the Working Group's recommendations, with a further report in writing within two years. The Report is based on the laws, regulations and other materials supplied by Argentina, and information obtained by the evaluation team during its on-site visit to Buenos Aires. During the five-day on-site visit in December 2007, the evaluation team met with representatives of Argentine government agencies, the private sector, civil society and the media. A list of these bodies is set out in an annex to the Report.

Estonia: Phase 2

The Phase 2 Report on Estonia by the OECD Working Group on Bribery evaluates and makes recommendations on Estonia's implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments. The Working Group notes that Estonia has dedicated considerable efforts and resources to fight corruption. These actions, however, have focused almost exclusively on domestic and not foreign bribery. The level of awareness of foreign bribery and the Convention in Estonia is accordingly low.

Because of a lack of awareness of the foreign bribery offence and the OECD Convention, the Estonian public and private sectors have implemented very few measures to fight foreign bribery. The Report notes a lack of activity, policies and efforts by Estonia's law enforcement agencies, prosecutor's offices, the judiciary, tax authorities, diplomatic services, official development assistance programme, and other relevant government Ministries. A similar vacuum is found among Estonian accountants, auditors, tax and legal professionals, private enterprises, and civil society. The Report accordingly recommends that Estonia take measures in all of these sectors to prevent, detect, report and raise awareness of foreign bribery.

In the area of legislation, the Group is concerned that Estonia's current regime for the criminal liability of legal persons is inconsistent with the Convention. Consequently, sanctions for foreign bribery against legal persons in Estonia are not effective, proportionate or dissuasive. The Group therefore recommends that Estonia amend its Penal Code to broaden the criteria for the liability of legal persons in order to make prosecution of legal persons that commit foreign bribery more likely and more effective. As for the offence of foreign bribery, Estonia has not made significant legislative changes since its Phase 1 Review in February 2006. As a result, there remain several shortcomings in the offence, such as the failure to expressly cover bribery of foreign officials who perform legislative functions, and the need to refer to foreign law in order to prove the offence. The Report urges Estonia to amend its Penal Code and address these deficiencies.

The Report also notes some positive aspects of Estonia's implementation of the Convention. Estonia's legislation expressly denies the tax deduction of bribe payments. KredEx, Estonia's officially supported export credit agency, has taken several measures to prevent and raise awareness of foreign bribery. These range from requiring anti-corruption declarations from applicants to discussing with clients the risks of foreign bribery in certain overseas markets. Estonian prosecutors and law enforcement agencies have an effective system for case assignment, co-ordination, and information sharing. Finally, shortly before this Report was adopted, Estonia took some measures to raise awareness among tax officials, diplomats, and staff in the Ministry of Foreign Affairs. It also initiated the legislative process to deal with some deficiencies in its laws. The report refers to but does not evaluate the proposed legislative amendments.

The Report and the recommendations therein reflect findings of experts from Bulgaria and Sweden and were adopted by the OECD Working Group on Bribery. Estonia will provide an oral follow-up report on its implementation of the recommendations within one year of the Group's approval of the Phase 2 Report. It will further submit a written follow-up report within two years. The Phase 2 report is based on the laws, regulations and other materials supplied by Estonia. It is also based on information obtained by the evaluation team during its five-day on-site visit to Tallinn in January 2008, during which the team met representatives of the Estonian public administration, private sector and, civil society.

Ireland: Phase 2bis

The Phase 2bis report on Ireland evaluates certain aspects of Ireland's implementation of the OECD Anti-Bribery Convention, identified by the OECD Working Group on Bribery as areas of particular concern. In March 2007, the Working Group on Bribery had conducted Ireland's Phase 2 evaluation, and found that it could not adequately and fully assess Ireland's implementation of the Convention under the Phase 2 procedures, due in particular to the low level of participation during the on-site visit.

The Working Group welcomes the satisfactory efforts of Ireland in terms of preparation and participation during the Phase 2bis process. However, the Group is concerned that some important recommendations concerning the foreign bribery offence and liability of legal persons have not yet been taken into account by Ireland.

In particular, the Working Group is disappointed that Ireland did not seize the opportunity of the Prevention of Corruption (Amendment) Bill 2008 to act upon the Phase 2 recommendations to consolidate and harmonise the two separate foreign bribery offences in the Prevention of Corruption (Amendment) Act 2001 and the Criminal Justice (Theft and Fraud Offences) Act 2001. The Group therefore recommends, as it did in 2007, that Ireland act on this issue as a matter of priority. It urges Ireland to pursue its declared intent to make changes to the 2008 Bill in order to achieve greater consistency between the two statutes, and consolidate at the first possible opportunity the corruption offences into a single piece of legislation. In addition, the Group continues to recommend that Ireland adopt on a high priority basis appropriate legislation to achieve effective corporate liability for foreign bribery.

The report also highlights some positive aspects of Ireland's fight against foreign bribery, and points out areas of improvement since the Phase 2 evaluation. The Working Group notes the significant efforts by Ireland to raise awareness of the foreign bribery offence among Irish public officials in key Irish ministries and agencies, as well as within the business community. In this regard, the establishment of a Senior Officials Compliance Committee to oversee and coordinate the fight against foreign bribery in Ireland is noteworthy. The Group also welcomes improvements to the anti-bribery legislation proposed in the Prevention of Corruption (Amendment) Bill 2008, which expands the scope of nationality jurisdiction in the Prevention of Corruption (Amendment) Act 2001, and provides for the protection of whistleblowers.

This Phase 2bis report, which reflects findings of experts from Estonia and New Zealand, was adopted by the Working Group on Bribery in December 2008, along with recommendations. This report is based on the laws, regulations, and other materials provided by Ireland, as well as information obtained by the evaluation team during its on-site visit. During this three day visit to Dublin in June 2008, the evaluation team met with representatives of Irish government departments and agencies, law enforcement authorities, the business community, the private bar, and civil society.

The Working Group will continue to monitor Ireland's implementation of the Convention through the regular follow-up reports to be provided by Ireland to the Group on implementation of its Phase 2 and Phase 2bis recommendations. It requests that Ireland provide the Working Group with a written follow-up report on the implementation of the Group's Phase 2 and Phase 2bis recommendations for consideration during the Working Group's meeting in October 2009.

Luxembourg: Phase 2bis

The Phase 2bis report on Luxembourg assesses the measures taken by Luxembourg to meet those recommendations from Phase 2 that the OECD Working Group on Bribery had deemed inadequately implemented in its Phase 2 written follow-up report. While the Working Group notes that the Luxembourg authorities have taken steps to satisfy those recommendations, the Group is seriously concerned that Luxembourg has still not responded to key Phases 1 and 2 recommendations; these recommendations relate to the establishment of a clear, effective and dissuasive system of liability of legal persons and efforts to raise awareness of the foreign bribery offence among the private sector. Considering the seriousness of the situation, the Working Group has decided that, within one year, Luxembourg will report, in writing, on measures taken to fulfil the recommendations of the Group, and reserves the right, in the event of continued failure to implement the Convention, to take further steps.

The Working Group is particularly concerned about the continuing absence of liability for legal persons that engage in bribery. While a bill has been placed before Parliament dealing with the criminal liability of legal persons, the report highlights gaps in the bill which, if adopted in its current state, would fall short of the requirements of the Convention. Luxembourg should establish a rule for attributing acts of bribery to legal persons that is sufficiently broad to give full effectiveness to the liability of legal persons: the criterion of an act committed "by one of the legal bodies or by one or more members of its legal bodies", as included in the bill before Parliament, seems too restrictive, as it excludes most operational organs or structures. It is also essential that the liability of legal persons be subject to effective sanctions: the fine imposed must be severe enough to be dissuasive. Furthermore, the bill should expressly recognise the jurisdiction of the Luxembourg courts over offences committed outside the national territory by legal persons of the Grand Duchy.

It is also important for Luxembourg to take a more proactive approach in encouraging SMEs to comply with stricter ethical standards when they are looking for business abroad. A system for protecting whistleblowers should also be introduced. Furthermore, the report asks Luxembourg to take whatever steps are needed to facilitate the work of the judicial authorities in obtaining information from Luxembourg financial institutions.

The report highlights the efforts that Luxembourg has made since the Phase 2 evaluation, and in particular the creation of a Corruption Prevention Committee, which is expected to do much in raising awareness among the public and private players concerned about the phenomenon of bribery, and to improve interagency and interdisciplinary coordination; and the introduction of anti-bribery mechanisms in agencies responsible for export credit insurance and development cooperation. The report also welcomes the measures included in the draft law on interagency and judicial cooperation. That bill, which the Working Group hopes will be voted as it stands, should enhance the capacity of the Luxembourg tax authorities to detect payments that involve the bribery of foreign public officials, and should allow them, by waiving bank secrecy, to provide the judicial authorities, at all stages of criminal proceedings, with the information needed to establish the offence of bribery.

This report, which presents the conclusions of the Belgian and French experts as well as the recommendations of the Working Group, was adopted in March 2008 by the Working Group. It is based on the existing and proposed laws, regulations and other documents supplied by Luxembourg, as well as information that the examining team gathered from representatives of government departments and agencies and of the Luxembourg private sector during the on-site mission to Luxembourg, conducted between 16 and 18 October 2007. In the year following approval of the Working Group's report, Luxembourg will submit to the Group a written report on measures taken to fulfil the Phase 2bis recommendations. Luxembourg's implementation of these recommendations will be evaluated by the Group and made public.

United Kingdom: Phase 2bis

The Phase 2 bis Report on the United Kingdom evaluates certain aspects of the UK's track record of implementation of the OECD Anti-Bribery Convention that are of particular concern to the member states of the OECD Working Group on Bribery. Overall, the Group is disappointed and seriously concerned with the unsatisfactory implementation of the Convention by the UK.

The Working Group is particularly concerned that the UK's continued failure to address deficiencies in its laws on bribery of foreign public officials and on corporate liability for foreign bribery has hindered investigations. The Working Group reiterates its previous 2003, 2005 and 2007 recommendations that the UK enact new foreign bribery legislation at the earliest possible date. The Group also strongly regrets the uncertainty about the UK's commitment to establish an effective corporate liability regime in accordance with the Convention, as recommended in 2005, and urges the UK to adopt appropriate legislation as a matter of high priority.

The Report finds that the unsatisfactory treatment of certain cases since the 2005 Phase 2 report has revealed systemic deficiencies, including the uncertainty over the application of Article 5 to all stages of the investigation and prosecution of foreign bribery cases, and the hurdle created by the special Attorney General consent requirement for foreign bribery prosecutions. The Report finds that these issues should be addressed and that the independence of the Serious Fraud Office should be strengthened. The Working Group also recommends that the UK ensure that the SFO attributes a high priority to foreign bribery cases and has sufficient resources to address such cases effectively.

The Working Group also highlights some positive aspects in the UK's fight against foreign bribery including the allocation of significant financial resources and nation-wide jurisdiction to a specialised unit of the City of London Police for foreign bribery investigations. The Group notes the UK's first conviction in September 2008 for foreign bribery in international business transactions, and its recent anti-corruption strategy to improve and strengthen the UK's law and structures to tackle foreign bribery. Reforms are urgently needed and should be dealt with as a matter of political priority.

In light of the numerous issues of serious concern, the Working Group has requested the UK to provide quarterly written reports on legislative progress for each Working Group meeting and may carry out follow-up visits to the UK. The Working Group may also take further appropriate action after it considers the reports or any on-site visits. The Working Group stresses that failing to enact effective and comprehensive legislation undermines the credibility of the UK legal framework and potentially triggers the need for increased due diligence over UK companies by their commercial partners or Multilateral Development Banks.

The Phase 2 bis Report, which reflects findings of experts from Canada and France, was adopted by the Working Group along with recommendations. This Report is based on the laws, regulations and other materials supplied by the UK, and information obtained by the evaluation team during its on-site visit to London. During the three-day on-site visit in April 2008, the evaluation team met with representatives of UK government agencies, the private sector, and civil society. A list of these bodies is set out in an annex to the Report.

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OECD Working Group on Bribery

The OECD Working Group on Bribery is responsible for monitoring the implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The members of the Working Group on Bribery are Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom and United States.

For more information, please visit
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