OECD Working Group on Bribery

Public Consultation Document

REVIEW OF THE 2009 OECD ANTI-BRIBERY RECOMMENDATION

22 March – 30 April 2019

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Introductory Note

Purpose of the Consultation Paper

The 2009 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions (the Anti-Bribery Recommendation) will celebrate its 10th anniversary in November 2019, two years after the 20th anniversary of the adoption of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the Convention). The OECD Working Group on Bribery[1] (Working Group or WGB) is launching a review of the Anti-Bribery Recommendation, and considers that this review would benefit significantly from canvassing the views of the major stakeholders in the fight against foreign bribery. The Working Group therefore seeks input on the basis of the present Consultation Paper.

This Consultation Paper identifies the main cross-cutting issues that have emerged over the last decade from the implementation of the OECD anti-bribery instruments, and which the Working Group has agreed to revisit in the context of this review. This consultation provides the OECD anti-corruption partners with the opportunity to fully comment on those issues as well as provide any other input they consider appropriate.

Background

The OECD Anti-Bribery Convention and related instruments were adopted to address serious moral and political concerns about bribery in international business transactions and its negative effect on good governance, economic development and a level playing field. To this day, the OECD Anti-Bribery Convention remains the only multilateral instrument in the world focused on the supply-side of foreign bribery.

Twenty years after adoption of the OECD Anti-Bribery Convention, all 44 Parties[2] have criminalised foreign bribery, adopted legislations on liability of legal persons and taken various further steps as required by the Convention and related OECD anti-bribery instruments.[3] The Working Group views these actions very positively, but wants to make sure that all the Parties implement the OECD anti-bribery instruments effectively and pro-actively.

For this reason, the Working Group systematically monitors implementation of the instruments through a rigorous peer-review process in four phases.[4] Since the adoption of the 2009 Anti-Bribery Recommendation, the Working Group has entered into two new phases of monitoring. Phase 3 focuses on enforcement of the Convention, the Anti-Bribery Recommendation, and outstanding recommendations from Phase 2. Phase 4, launched in 2017, focuses on enforcement and cross-cutting issues tailored to specific country needs, and outstanding recommendations from previous phases This

[1] Established in 1994, the OECD Working Group on Bribery in International Business Transactions (Working Group) is responsible for monitoring the implementation and enforcement of the OECD Anti-Bribery Convention and related instruments.

[2] The 44 Parties to the OECD Anti-Bribery Convention are the 36 OECD countries and 8 non-OECD countries (Argentina, Brazil, Bulgaria, Colombia, Costa Rica, Peru, Russia and South Africa).

[3] The other OECD anti-bribery instruments include the following: the OECD Recommendation for Further Combating Bribery of Foreign Public Officials, the OECD Recommendation on Tax Measures for Further Combating Bribery, the OECD Recommendation on Bribery and Officially Supported Export Credits and the OECD Recommendation for Development Co-operation Actors on Managing Risks of Corruption.

[4] For more information on the monitoring process, please check this webpage.

review process produces in-depth critical assessments of each Party's implementation of the instruments in the form of countries' reports. The country evaluations, which are published in their entirety, include stringent recommendations for ensuring the full impact of the anti-bribery instruments. The number and nature of legislative amendments and institutional changes as well as the rise in international enforcement actions by Parties in response to the Working Group's recommendations demonstrate the strength of the peer-review process and the commitment of the Parties. The past ten years have also seen a substantial increase overall in the number of investigations and prosecutions of foreign bribery cases by the Parties to the Convention, although the degree of enforcement in terms of concluded cases remains uneven and rather low for a number of Parties.[5]

Since the adoption of the Anti-Bribery Recommendation, major changes in legal and regulatory approaches to fight foreign bribery have occurred as a response to the OECD anti-bribery requirements and related monitoring work. New trends and challenges have also emerged. This review exercise intends to take stock of these new developments, explore areas where the Anti-Bribery Recommendation could be revised and OECD anti-bribery standards thereby further strengthened, and possibly consider areas for future work.

Request for input

The various cross-cutting issues presented in this Paper follow the thematic structure of the current Anti-Bribery Recommendation. Whether you provide input on one or several issues, the WGB will give the fullest possible consideration to your input.

Instructions on providing input

The Working Group is grateful for your input on this Consultation Paper, which will help to inform the Working Group in its review of the Anti-Bribery Recommendation. The deadline for receiving comments is **30 April 2019**. In responding to one or several questions, please include the question numbers as they appear in the present document. You are invited to forward your responses by e-mail to the following address: maria.xernou@oecd.org.

Responses, including the names and organisations of respondents, will be made public on the OECD website after the end of the written consultation unless confidentiality is specifically requested. The Working Group will keep stakeholders informed of subsequent actions in response to the Consultation Paper on the same webpage.

To start this consultation exercise, we invite you to address the following general questions:

GENERAL QUESTIONS FOR CONSULTATION

GQ1. What are your general impressions concerning the effectiveness and implementation of the 2009 Anti-Bribery Recommendation?

GQ2. Is there a need to increase impact of the OECD anti-bribery monitoring work and, if so, how?

You may respond to one or several of the questions raised below, or raise any issue not presented in this consultation document.

In providing input, please provide supporting evidence in the way of relevant statistics, legal citations, and internet links wherever possible.

[5] See 2017 Enforcement Data: http://www.oecd.org/daf/anti-bribery/OECD-WGB-Enforcement-Data-2018-ENG.pdf

1. Criminalisation of Bribery of Foreign Public Officials and Enforcement[6]

1.1. Foreign bribery offence

1.1.1. *Guidance on Article 1 of the OECD Anti Bribery Convention [Annex I, A]*

Article 1 of the Convention requires Parties to criminalise the bribery of foreign public officials in international business transactions (the foreign bribery offence). Annex I, A of the 2009 Recommendation provides guidance to the Parties on the implementation of Article 1: it clarifies that solicitation is not a defence or exception to the foreign bribery offence, and highlights the importance of raising public awareness and providing training to public officials posted abroad. Concerns expressed by the Working Group in country evaluations since 2009 with respect to the foreign bribery offence relate broadly to the following four themes: (1) ensuring the autonomy of the offence, as enshrined in Commentary 3; (2) covering bribery of officials employed by foreign public enterprises, as provided under Commentary 14; (3) ensuring that the bribery offence is constituted, irrespective of whether public officials acted within or outside their official duties; and (4) covering bribery committed by a best-qualified bidder, as provided in Commentary 4. Whether these items, or others, would benefit from updated Guidance could be considered in the context of the review of the 2009 Anti-Bribery Recommendation.

Suggested questions:

1. **What recommendation could be envisaged to provide greater clarity with respect to certain elements of the foreign bribery offence?**
2. **How could foreign bribery awareness-raising and training actions be further addressed?**

1.1.2. *Other defences*

General or specific defences available to the foreign bribery offence in national legislation may prevent effective investigation and prosecution of the offence in practice. The Working Group has consistently recommended in its country evaluations that countries with the defence of effective regret, where the briber confesses to the authorities that he/she has committed the offence of bribery, amend their laws to ensure the defence does not apply to the foreign bribery offence. While acknowledging that such a provision may play an important role in identifying domestic officials who have been bribed, the Working Group's view is that, when applying this provision to the bribery of foreign public officials, the policy rationale no longer applies. The Working Group has also repeatedly recommended that cooperation not be a complete and automatic defence to foreign bribery – this with a view to ensuring effective enforcement of the foreign bribery offence. (*Note:* internal compliance programs as a defence are included under point 1.2.1).

Suggested question:

3. **What recommendation could be envisaged to address other defences applicable to the foreign bribery offence?**

1.1.3. *Other issues related to criminalisation of foreign bribery*

The Anti-Bribery Convention and 2009 Anti-Bribery Recommendation address the supply side of corruption. The passive, or demand, side is covered by both the Council of Europe's (CoE) Criminal Law Convention on Corruption (Article 3) and the United Nations Convention on Corruption (UNCAC) (Article 15b). With respect to the demand side, the WGB launched its publication "Foreign Bribery Enforcement:

[6] This heading has been broadly interpreted to encompass criminal, civil and administrative laws that seek to implement the Convention.

What Happened to the Public Officials on the Receiving End?" in December 2018. The study shows that enforcement actions targeting public officials (the 'demand side') do take place, but the rate of sanctioning is not particularly high. Furthermore, the main source of detection on the demand side was reportedly the media, and not direct communication among WGB members' enforcement authorities. This suggests that more could be done to facilitate communication and cooperation between Parties working on related supply- and demand-side cases.

Suggested question:

4. **What recommendation(s) could be envisaged to address issues related to foreign bribery, concerning, for instance the demand side of bribery or the bribery of officials from sports organisations, bearing also in mind the specific focus of the Anti-Bribery Convention and the work carried out in other fora on these issues?**

1.2. Legal persons

1.2.1. *Guidance on Article 2 of the OECD Anti Bribery Convention [Annex I, B]*

Liability of legal persons is a key element of the Anti-Bribery Convention (Article 2) and the 2009 Anti-Bribery Recommendation (Annex I.B). It was recognised as an essential element of implementation of the Convention in the 2016 OECD Anti-Bribery Ministerial Declaration,[7] and is currently a pillar of Phase 4 monitoring under the Convention. The 2016 WGB Study on liability of legal persons found wide variability in the legal approach towards holding legal persons liable for foreign bribery across WGB countries, including as concerns consideration of internal compliance systems, successor liability, or liability for acts by related legal persons (see also below). [8] These cross-country variations, as well as work carried out in other fora, such as the G20, may raise the question of whether further guidance on liability of legal persons should be considered as part of the review of the Anti-Bribery Recommendation.

Suggested questions:

5. **What further Guidance on liability of legal persons could be envisaged?**

1.2.2. *Responsibility of legal persons for foreign bribery through intermediaries [Annex I, C]*

Responsibility for foreign bribery committed through intermediaries is a key element in the fight against foreign bribery. In addition to the general reference in Article 1 of the Convention, Annex 1.C. of the 2009 Recommendation recognises the significance of the issue, recommending that "a legal person cannot avoid responsibility by using intermediaries, including related legal persons, to offer promise of give a bribe to a foreign public official." In 2014, the Foreign Bribery Report[9] found that intermediaries were involved in three out of four foreign bribery cases concluded between the entry into force of the Anti-Bribery Convention and June 2014. The 2016 Study on liability of legal persons further examined the conditions

[7] See http://www.oecd.org/corruption/anti-bribery/OECD-Anti-Bribery-Ministerial-Declaration-2016.pdf.

[8] OECD (2016), The Liability of Legal Persons for Foreign Bribery: A Stocktaking Report, p. 8-9.

[9] OECD (2014), OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Public Officials, OECD Publishing, p. 8. http://www.oecd.org/corruption/oecd-foreign-bribery-report-9789264226616-en.htm. The report shows that "intermediaries were involved in 3 out of 4 foreign bribery cases. These intermediaries were agents, such as local sales and marketing agents, distributors and brokers, in 41% of cases. Another 35% of intermediaries were corporate vehicles, such as subsidiary companies, local consulting firms, companies located in offshore financial centres or tax havens, or companies established under the beneficial ownership of the public official who received the bribes."

for corporate liability for acts committed by intermediaries, and found a general lack of clarity concerning the grounds for such liability.[10]

Suggested question:

6. **What recommendation could be envisaged to further address the issues of responsibility of legal persons for foreign bribery through intermediaries?**

1.2.3. *Enhancing compliance [Rec. X.C. and Annex II]*

The Good Practice Guidance on Internal Controls, Ethics, and Compliance (GPG), annex II to the 2009 Anti-Bribery Recommendation, was the first inter-governmental anti-corruption guidance for businesses. It sets out the fundamental elements that should be included in companies' anti-bribery compliance programmes in order to effectively prevent and detect bribery. In the past years, compliance has taken an increasingly important role in corporate liability regimes. Several countries have developed their own compliance models, thus raising the question of harmonisation. For instance, certain compliance systems imposed in the context of a non-trial resolutions go beyond the recommendations of the GPG in terms of financial and accounting procedures, rules applicable to agents, and due diligence in case of merger and acquisition. At the same time, data on concluded foreign bribery cases has shed light on high-risk practices, including the use of third parties and intermediaries. Over the past decade, the adoption of standards, such as ISO Standard 37001 in 2016, further marked the emergence of global anti-corruption compliance standards.

Suggested question:

7. **How could the Good Practice Guidance on Internal Controls, Ethics, and Compliance (the GPG) annexed to the 2009 Anti-Bribery Recommendation be revised to reflect evolving global standards?**

1.2.4. *Incentives for anti-bribery compliance [Rec. X]*

The 2009 Recommendation recommends that countries raise awareness on the importance of compliance, and encourage their government agencies to consider internal controls, ethics and compliance programmes or measures in their decisions to grant public advantages. Incentivising compliance was identified as a key topic and discussed during the 2016 OECD Anti-Bribery Ministerial Meeting.[11] Several WGB countries incentivise compliance, either by making compliance systems a partial or complete defence to foreign bribery, by taking compliance into account when deciding to dispose of foreign bribery charges with a non-trial resolution, or as a mitigating factor at sanctioning. The development of common recommendations could be helpful to ensure that countries seeking to incentivise good corporate behaviour do not adopt policies that are too lenient towards offenders. Related questions also arise, regarding, for instance, which authority is charged with assessing the adequacy of compliance systems, and how this assessment is conducted.

[10] OECD (2016), The Liability of Legal Persons for Foreign Bribery: A Stocktaking Report, p. 78-91.

[11] OECD Anti-Bribery Ministerial Meeting, 16 march 2016, Prevention: *Frameworks to Encourage and Recognise Anti-Bribery Compliance*, http://www.oecd.org/daf/anti-bribery/Anti-Bribery-Ministerial-Prevention-Compliance-Discussion-Paper.pdf

Suggested question:

8. **What recommendation could be envisaged to address the issue of incentivising anti-bribery compliance?**

1.3. Periodic review of laws and approach to foreign bribery enforcement *[Rec. V]*

1.3.1. *Effectiveness of enforcement actions*

Under the 2009 Recommendation V, countries should periodically review their laws implementing the Convention and their approach to enforcement in order to effectively combat bribery of foreign public officials. A significant number of countries received a recommendation to enhance their enforcement efforts in the context of the Phase 3 monitoring by the Working Group. Annex I.D. further provides that member countries should provide adequate resources to law enforcement authorities so as to permit effective investigation and prosecution of foreign bribery cases. This has also been the subject of recurrent recommendations made by the Working Group to several countries.

Suggested question:

9. **What recommendation(s) could be envisaged to further enhance the effectiveness of foreign bribery enforcement?**

1.3.2. *Investigative means*

In the context of its monitoring work, the Working Group reviews the investigative means (including special investigative techniques such as interception of communications, video surveillance and undercover operations) available in foreign bribery investigations, and their use in practice. As part of investigative techniques adapted to the offence of foreign bribery, the Working Group has recently started looking at the measures that countries take to improve the transparency of company's beneficial ownership information. Country evaluations also show that, where allowed under the law, authorities have successfully leveraged the use of confidential informants and cooperating witnesses to successfully detect but also investigate and prosecute foreign bribery cases.

Suggested questions:

10. **What recommendation could be envisaged to usefully address investigative means in foreign bribery investigations?**
11. **What recommendation could be envisaged on the issue of transparency of beneficial ownership information, given this issue is currently already addressed in other fora?**

1.3.3. *Enforcing Article 5 of the Convention* **[Annex I.D.]**

Article 5 recognises the fundamental nature of national regimes of prosecutorial discretion. It recognises as well that, in order to protect the independence of prosecution, such discretion is to be exercised on the basis of professional motives and is not to be subject to improper influence by concerns of a political nature. Investigation of foreign bribery cases is also not to be influenced by factors listed in Article 5 – a message reinforced in Annex I.D of the 2009 Anti-Bribery Recommendation. These issues are analysed in country evaluations together with the resources allocated to law enforcement bodies, as well as the judiciary. They include a review of issues such as resources, expertise, training, continuity of investigative, prosecution and judiciary personnel and their protection from disciplinary actions, delays investigating and prosecuting foreign bribery cases, practices of individual instructions to prosecutors and the classification of

information covered by defence secrecy. Some country evaluations also assess the independence of the judiciary, as it may relate to foreign bribery cases. [12]

Suggested questions:

12. **What recommendation could be envisaged to further support the enforcement of Article 5 of the Convention?**
13. **What recommendation could be envisaged to address the independence of the judiciary as it relates to foreign bribery enforcement?**

1.3.4. *Resolving foreign bribery cases*

a. Non-trial resolutions

Non-trial resolutions (resolutions) are not specifically addressed by the Convention or 2009 Recommendation. In 2019, the WGB finalised a thematic study on the various forms of resolutions in WGB countries to resolve foreign bribery matters.[13] With close to 80% of all successfully concluded cases since the Convention's entry into force resolved with a resolution, these instruments have also been key to the resolution of various high-profile multijurisdictional cases. In several countries, resolutions are designed to leverage voluntary disclosure, co-operation and remedial actions by offenders. When properly designed, resolutions can thus be a driver of enforcement and a leverage for corporate compliance. Yet, as the Working Group has repeatedly noted in the context of its country monitoring, such mechanisms must be accompanied by adequate measures to ensure their transparency and accountability. This topic has also been the subject of much recent attention by civil society.[14]

Suggested question:

14. **What recommendation could be envisaged to address non-trial resolutions in the enforcement of the foreign bribery offence?**

b. Sanctions, including confiscation [Art. 3 ABC and Rec. II)]

Article 3 of the Convention requires that foreign bribery sanctions be effective, proportionate and dissuasive. Recommendation II recommends that member countries continue taking effective measures to deter, prevent and combat the bribery of foreign public officials in connection with international business transactions, including effective, proportionate and dissuasive sanctions. In its monitoring work, the Working Group reviews whether penalties imposed in law and in practice meet this threshold. While some countries still fail to provide for sufficiently high financial sanctions – notably for legal persons –, an even greater number still face challenges in confiscating the proceeds derived from foreign bribery, whether due to legal hurdles or practical difficulties in quantifying the proceeds of foreign bribery gained by the bribe payer.[15] Various remedies exist to confiscate or recover proceeds, including through confiscation, disgorgement of illicit profits and fines based on the value of the benefit or some combination of those remedies.

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[12] E.g. Argentina Phase 3 and 3bis; Chile Phase 3; Portugal Phase 3.

[13] http://www.oecd.org/corruption/Resolving-Foreign-Bribery-Cases-with-Non-Trial-Resolutions.htm

[14] See e.g. http://www.fcpablog.com/blog/2016/3/15/ngos-to-oecd-corporate-pretrial-agreements-can-work-but-we-s.html and https://www.nhh.no/en/research-centres/corporate-compliance-and-enforcement/guidelines-for-non-trial-resolutions/ .

[15] See A joint OECD-StAR analysis and real case examples provided by different jurisdictions.

Efforts to raise awareness among law enforcement authorities on the use of the range of penalties are regularly recommended by the Working Group. Country evaluations have also sometimes reviewed the enforcement of imposed sanctions and the transparency and publication of court and out-of-court decisions (and related information on sanctions). Finally, the existence of a variety of remedies in a given jurisdiction or across different jurisdictions raises the issue of how to avoid unfair duplication of punishments or equivalent measures (see also section 8.3 below).[16]

Suggested questions:

15. **What recommendation could be envisaged to further address the effective, proportionate and dissuasive nature of sanctions for foreign bribery?**
16. **What recommendation could be envisaged to further address the enforcement challenges of confiscation –including challenges to identify and quantify proceeds?**
17. **What recommendation could be envisaged to address issues such as effective enforcement and publicity of sanctions?**
18. **Which other enforcement challenges (e.g. the interaction of remedies in cross-border corruption cases) could be addressed as part of the review of the Anti-Bribery Recommendation?**

c. Mitigating factors in sanctioning [Art 3 ABC and Rec. V]

The 2009 Recommendation does not explicitly address mitigating factors in sanctioning. The WGB consistently notes that when a system appropriately rewards cooperating defendants with lighter sentences, it encourages individuals and companies to cooperate in the enforcement process.[17] The WGB's work since 2009 has mainly focused on mitigating circumstances applicable to corporations. The WGB study on the Detection of Foreign Bribery dealt with mitigated sanctions in the case of self-reporting, voluntary disclosure or cooperation. The OECD Foreign Bribery Report also recognises internal controls and compliance programmes as a potential mitigating factor (see also point 1.2.4. above). Both the WGB study on Liability of Legal Persons and the United Nations Organisation on Drugs and Crime (UNODC) highlight the need for clear instructions to ensure transparency and predictability of the sanctioning regime. [18] In country evaluations since 2009, the Working Group has insisted on preserving the dissuasive effect of sanctions when mitigating circumstances apply.

Suggested question:

19. **What recommendation could be envisaged to address the issue of mitigating circumstances in foreign bribery cases?**

d. Tax treatment of sanctions

In the most recent country evaluations, the Working Group has explored the issue of the fiscal treatment of pecuniary sanctions and confiscation measures applicable to individuals and companies convicted of foreign bribery, with a view to verifying that the level of sanctions in foreign bribery cases remains effective, proportionate and dissuasive. Under some jurisdictions' legislation, any sanction that is not a criminal or administrative fine but seeks to restore a profit (such as confiscation) or to make reparation to

[16] In particular, courts have taken into account confiscation decisions or resolutions with the same effect in foreign jurisdictions to avoid unfair duplication.

[17] OECD (2017), The Detection of Foreign Bribery, p. 17-20, and 55-56; OECD (2016), The Liability of Legal Persons for Foreign Bribery: A Stocktaking Report, p. 148.

[18] UNODC, Aggravating and mitigating factors; The Liability of Legal Persons for Foreign Bribery: A Stocktaking Report, p. 148-154.

victims of a criminal offence can legally be deducted from the tax base. Where such measures are tax deductible, this could raise the question of compliance with Article 3 of the Convention and the extent to which the sanctions remain "effective, proportionate and dissuasive" once the tax deduction is applied.

Suggested question:

20. What recommendation could be envisaged to address the issue of tax treatment of sanctions?

e. Judicial training and specialization

The 2009 Recommendation does not explicitly address judicial training and specialisation. However, this topic has been addressed in the context of several country evaluations.[19] According to the WGB, the establishment of specialised courts with limited or exclusive jurisdiction in economic and financial crime, including foreign bribery, can contribute to improving the judges' understanding of the offence. In its country evaluations since 2009, the Working Group stressed the importance of providing sufficient resources and coordination between specialized and general jurisdictions for stronger enforcement. The WGB also explicitly noted that lack of judicial specialization, awareness and training on the specific features and technicalities of the foreign bribery offence or related issues may result in overload and backlog of cases in court systems. UNODC[20] and the United Nations Interregional Crime and Justice Research Institute (Unicri) address the need for judicial training.[21] The Anti-Corruption Division also provided training to judges recently, notably in the Greece-OECD Project: Technical support on anti-corruption.

Suggested question:

21. What recommendation could be envisaged to address the issue of judicial specialisation and training?

1.4. Small facilitation payments [Rec. VI]

The Anti-Bribery Convention excludes small facilitation payments (SFPs) from the definition of foreign bribery. Under the 2009 Recommendation, countries should periodically review their approach on SFPs, encourage companies to prohibit them and accurately account for them in books and records. In practice, SFPs are not considered a foreign bribery offence in eight member countries, but are considered either as an exception to the foreign bribery offence or an affirmative defence.[22] Where this approach is taken, the WGB has often recommended to clarify the distinction between SFP and bribery.

Suggested question:

22. What step could the Working Group take to further address small facilitation payments?

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[19] E.g. Belgium Phase 3; Finland Phase 4; France Phase 3; Germany Phase 4; South Africa Phase 2 and 3.

[20] UNODC, Unicri, Technical Guide to the United Nations Convention Against Corruption, New York, 2009, p.12.

[21] See in particular recent judicial training activities in the Andean countries and in Albania; Unicri.

[22] Small facilitation payments are not considered a foreign bribery offence in Australia, Denmark, Germany, New Zealand, Switzerland and the United States. In the Netherlands, they are illegal but not prosecuted under certain circumstances. Since the adoption of the 2009 Anti-Bribery Recommendation, they have become illegal in Korea in 2014, and in Canada in 2017.

1.5. Awareness-raising and prevention

1.5.1. *Awareness-raising initiatives in the public and private sectors for the purpose of preventing and detecting foreign bribery [Rec. III.(i)]*

In 2009, the importance of awareness-raising initiatives was incorporated not only in the 2009 Recommendation, but also through the WGB Initiative to Raise Global Awareness of Foreign Bribery. Although many initiatives to raise awareness continue both within Working Group countries and at the global level, and related recommendations are still often issued to evaluated countries, in respect of specific government agencies or professions (e.g. auditors). The 2017 WGB study on the Detection of Foreign Bribery showed that awareness is key to detection, and highlighted the importance of tailored training to the specific public agency or profession.

Suggested question:

23. What recommendation could be envisaged to address the issue of awareness-raising in the public and private sectors?

1.5.2. *Sectoral approach to strengthen understanding and prevention*

The size of a country's economy and the main financial sectors of its activities affect its exposure to foreign bribery risks. In its country evaluations, the WGB identifies systematically the high-risk sectors particularly sensitive to bribery in the country under evaluation. The OECD Foreign Bribery Report identified four sectors in which two-thirds of the foreign bribery cases occurred (extractive, construction, transportation and storage, information and communication). Other OECD bodies have issued guidance on anti-corruption and integrity targeting specific sectors. Other international entities and *fora*, such as the G20, the International Olympic Committee (IOC), the International Partnership Against Corruption in Sport (IPACS) and Transparency International (TI) have also identified key risk areas recently, notably in public procurement, sports and illegal trade in wildlife.

Suggested question:

24. What step could the Working Group envisage to address the particular foreign bribery risks in certain sensitive sectors?

2. Tax Deductibility

2.1. Implementation of the 2009 Council Recommendation on Tax measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions *[Rec. VIII]*

All Parties to the OECD Anti-Bribery Convention are required to accept and implement the 2009 Tax Recommendation that introduced requirements in three areas: (i) an express prohibition on the tax deductibility of bribes in legislation; (ii) the establishment of an effective legal and administrative framework and adoption of guidance to facilitate reporting by tax authorities of suspicions of foreign bribery to domestic law enforcement authorities (see section 4.2 below) and; (iii) the inclusion in their bilateral tax treaties of provisions allowing the sharing of tax information by tax authorities with other law enforcement agencies. Countries Parties to the Convention also commit to support the monitoring carried out by the OECD Committee on Fiscal Affairs.

Suggested questions:

25. **The 2009 Tax Recommendation is a joint instrument of the Committee on Fiscal Affairs and the WGB. To what extent should the review of the Anti-Bribery Recommendation address tax-related issues? In particular, what recommendation could be envisaged to enhance reporting and sharing of information between law enforcement and tax authorities in foreign bribery cases?**

26. **What step could the Working Group take to further support the implementation of the Recommendation of the Council on Tax measures for Further Combating Bribery of Foreign Public Officials in International Business Transactions that it has jointly endorsed with the Committee of Fiscal Affairs?**

3. Detection and Reporting of Foreign Bribery

The 2016 Anti-Bribery Ministerial Declaration highlighted detection as one of the pillars of upcoming Phase 4 and encouraged the Working Group to address it. The 2017 study on Detection of Foreign Bribery clearly demonstrated that a number of potential detection sources are largely untapped, and that much could be done to improve the use of these sources to improve detection of foreign bribery.[23]

3.1. Accessible channels for reporting of foreign bribery [Rec. IX.(i)]

Under the 2009 Recommendation, members should ensure that "easily accessible channels are in place for the reporting of suspected acts of bribery of foreign public officials to law enforcement authorities". Establishing and publicising clear reporting channels in both government and the private sector is essential if any alleged foreign bribery that has been detected is to be reported to law enforcement authorities. In its country evaluations, the WGB has recommended that 17 countries raise awareness in the public and private sectors about the available channels for making reports. In recent years, civil society organisations (such as advocacy groups or non-governmental organisations) have also played an increasingly important role as a channel for receiving and transmitting foreign bribery reports.

Suggested questions:

27. What recommendation could be envisaged to enhance awareness and effective use of reporting channels for foreign bribery?

3.2. Facilitating reporting by public officials [Rec. IX.(ii)]

As noted in country evaluation and in the 2017 Detection study, several government agencies which interact with companies operating abroad can play a key role in the detection of foreign bribery.[24] Recent major cases have highlighted the intrinsic links between foreign bribery and related tax offences, showing how tax authorities could usefully detect foreign bribery. Detection by foreign representations, export credit agencies, official development aid agencies and competition authorities was also examined in the context of the WGB study on the Detection of Foreign Bribery. The study recognised that each of these agencies carries a specific mandate, which is not primarily to detect foreign bribery, but noted that their exposure to situations at risk of bribery put them in a unique position for detection, and concluded that those agencies have yet to realise their full potential in detecting foreign bribery. While recognising that there can be no one-size-fits-all approach, the study identified certain key elements for enhancing detection and reporting by public officials, such as adequate protection, clear reporting channels, incentives and support.[25]

Suggested question:

28. What recommendation could be envisaged to enhance detection and reporting by public officials to law enforcement authorities?

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[23] Detection in this chapter should be understood in the general sense as the "action or process of identifying the presence of something concealed" (Oxford Dictionary), and not as the work carried out by law enforcement authorities in investigating crime.

[24] OECD (2017), The Detection of Foreign Bribery, Chapters 5, 6 and 7.

[25] The 2017 OECD Recommendation on Public Integrity further highlights the importance of clear rules and procedures for reporting throughout the whole public sector.

3.3. Whistleblower protection [Rec. IX.(iii)]

The WGB has long recognised the importance of whistleblowers as a detection source for foreign bribery, and made recommendations to countries to adopt effective whistleblower protection regimes since Phase 2. Recommendation IX(iii) was included to this effect in the 2009 Anti-Bribery Recommendation. In 2016, the OECD Anti-Bribery Ministerial meeting recognised the need for promoting strong and effective whistleblower protection;[26] the same year, the OECD published a publication on the topic.[27] In its 2017 study on the Detection of Foreign Bribery, the Working Group dedicated one chapter to the role of whistleblowers and whistleblower protection. In addition, the need for effective protection against all types of unjustified treatments as a result of reporting in good faith and on reasonable grounds violations of integrity is recognised in the OECD *Recommendation on Public Integrity* (2017). Significant work has also been undertaken in other international and regional fora such as the G20[28] and the European Union.[29]

Suggested question:

29. **What recommendation(s) could be envisaged to further strengthen whistleblower protection?**

3.4. AML Detection and reporting [Rec. III.(i) and (vi) and IX.(i)]

Foreign bribery frequently involves money laundering (ML) of the bribe or the proceeds of bribery, as recognised in Article 7 of the Convention. Thus, anti-money laundering (AML) reporting systems can be expected to detect and report foreign bribery cases regularly, and to add value to ongoing cases. However, this is rarely the case as highlighted in the WGB study on the Detection of Foreign Bribery and illustrated in country evaluations, and several recommendations made by the WGB to this effect. This limited detection results from a lack of awareness raising efforts in the public and private sectors about foreign bribery as a predicate offence to ML and the inadequacy of preventive measures applicable to reporting entities. The WGB, in its country evaluations, has also repeatedly voiced its concern over financial intelligence units' (FIUs) lack of resources, capacity and expertise. These reports also show that access by law enforcement authorities to information held by financial institutions can remain a challenge.

Suggested questions:

30. **What recommendation(s) could be envisaged to:**
    a. **Enhance detection and reporting of foreign bribery by financial and non-financial professions subject to AML requirements?**
    b. **Address the mechanisms of detection of foreign bribery by FIUs?**
    c. **Address access by law enforcement authorities to information held by financial institutions relevant to foreign bribery enforcement?**

[26] See http://www.oecd.org/corruption/anti-bribery/OECD-Anti-Bribery-Ministerial-Declaration-2016.pdf.

[27] OECD (2016), Committing to Effective Whistleblower Protection, OECD Publishing, Paris.

[28] Whistleblower protection has been consistently prioritised in G20 Anti-Corruption Action Plans since 2010.

[29] The European Union. Parliament Committee on Legal Affairs approved a proposal for a draft EU Directive on the protection of persons reporting on breaches of Union law in November 2018.

3.5. Voluntary disclosure / Self-reporting

Voluntary disclosure (also referred to as "self-reporting") was identified as a key emerging topic in the 2016 OECD Anti-Bribery Ministerial Declaration, [30] and is one of the three pillars of Phase 4 monitoring by the WGB. In 2017, the WGB Detection Study found that, of the 263 foreign bribery schemes that have resulted in definitive sanctions since the entry into force of the OECD Anti-Bribery Convention, almost a quarter (23%) were detected via self-reporting. Voluntary disclosure is also an important element in foreign bribery enforcement actions, where it is typically factored in (i) to decide whether to enter into a non-trial resolution; (ii) as a mitigating factor in sentencing; and/or (iii) as a basis for declination to prosecute. However, the risk of triggering enforcement actions in other jurisdictions may sometimes deter companies from self-reporting. While the WGB has not recommended that countries take into account voluntary disclosure in any specific way, it has often recommended that countries clarify how this element weighs on the choice of enforcement vehicle or the sentence imposed. Several member countries incentivise self-reporting by issuing guidance and establishing clear self-reporting procedures, but practices vary across member countries in that regard.

Suggested questions:

31. **What recommendation could be envisaged to address the issue of voluntary disclosure?**

3.6. Reporting of foreign bribery by certain professions [Rec. X.B(iii) and (v) and the Good Practice Guidance on Internal Controls, Ethic and Compliance]

Recommendation X.B recognises the role of external audit in preventing and detecting foreign bribery. Overall, OECD reviews of enforcement actions shows that there have been extremely few foreign bribery cases concluded to date directly detected through accountants or auditors. Many country reports noted the need for further guidance for auditors on reporting obligations, especially when the foreign bribery reporting requirement coexists with reporting obligations under anti-money laundering legislation. The WGB study on the Detection of foreign bribery considered more broadly the role of other professional advisers in detecting and reporting foreign bribery and other corrupt acts, either directly (by identifying illicit conduct) or indirectly (by uncovering the illicit proceeds of bribery). The Study further noted that divergent considerations need to be reconciled to achieve a balance between the right to confidentiality between clients and professional advisers and the public interest in having wrongful acts reported to the appropriate authorities.

Suggested questions:

32. **What recommendation could be envisaged to enhance detection and reporting of foreign bribery by external auditors and accountants?**
33. **Should the recommendation address the issue of reporting of foreign bribery by other professional advisers, and if so, how?**

3.7. Detection by the media

The 2009 Recommendation does not currently address detection by the media and investigative journalism. Nevertheless, the WGB has recognised media reporting as an essential source of detection in foreign bribery cases, as well as an important tool for public awareness-raising on corruption, noting that "the fourth estate should be respected as a free eye investigating misconduct and a free voice reporting it to citizens".[31] In the

[30] See http://www.oecd.org/corruption/anti-bribery/OECD-Anti-Bribery-Ministerial-Declaration-2016.pdf

[31] OECD (2017), The Detection of Foreign Bribery, Chapter 4.

context of foreign bribery, media reporting is a primary source of detection not only for law enforcement authorities that conduct investigations, but also for companies that decide to conduct internal investigations or self-report, and anti-money laundering reporting entities that make suspicious transaction reports. However, the WGB study on Detection of Foreign Bribery noted that only 2% of foreign bribery schemes resulting in sanctions were initiated following media reports. Recent country evaluations insisted on the need to allocate resources, expertise, skills and training to law enforcement authorities to routinely and systematically assess and act upon credible, domestic and international media reports. This issue has also been considered in other regional fora.[32]

Suggested questions:

34. **What recommendation could be envisaged to enhance detection and reporting of foreign bribery by the media?**
35. **To what extent and how would it be useful for the WGB to turn its attention to legal frameworks protecting freedom, plurality and independence of the press, as well as laws allowing journalists to access information from public administrations?**

[32] For instance, the GRECO considers the level of freedom of press as an indicator of compliance with the rules established by the Council of Europe for fighting corruption.

4. Accounting Requirements, External Audit, and Internal Controls, Ethics and Compliance

4.1. Adequate accounting requirements for companies [Rec. X.A.(i)-(iii)]

Article 8 of the Convention requires criminalisation of false accounting committed for the purpose of bribing a foreign public official or of hiding such bribery, and effective, proportionate and dissuasive sanctions in this respects. Section X.A. of the Anti-Bribery Recommendation reiterates this requirement and goes in further detail into accounting requirements. Country evaluations show that accounting standards still need to be strengthened in some countries and that, where applicable, sanctions are not sufficiently effective, proportionate and dissuasive. These reports also highlight a limited enforcement of the false accounting offences and accounting requirements in bribery cases and a need to raise awareness of the false accounting offence among accounting professionals and law enforcement. Whether both natural and legal persons can be held liable for false accounting was reviewed in some countries' assessments, and several countries received recommendations in this respect.

Suggested questions:

36. **What recommendation could be envisaged to enhance the enforcement of false accounting offences and accounting requirements in foreign bribery cases?**
37. **What recommendation could be envisaged to clarify that both natural and legal persons can be held liable in application of Article 8 of the Convention?**

4.2. Independent external audit [Rec. X.B.(i)-(v)]

Section X.B. of the 200 Anti-Bribery Recommendation directly refers to the role of external auditors, providing for adequate standards to ensure their independence. It also asks countries to require external auditors to report suspected acts of foreign bribery internally and consider requiring them to report to competent external authorities (see section 4.6 above). The attention paid to external auditors reflects the particular role of these professional advisers, who assess all the documents and statements of a company without being its employees, and should therefore have a much higher independence and decision-making autonomy. As part of the Working Group's monitoring work, countries have been asked to improve audit quality standards, including with regard to the independence of external auditors and, where such standards are in place, to ensure that this independence is sufficiently ensured in practice.

Suggested question:

38. **What recommendation could be envisaged to strengthen the independence of external auditors in practice so that they can provide an objective assessment of company accounts, financial statements and internal controls?**

4.3. Internal controls, ethics and compliance [Rec. X.C.(i)-(vi) and Annex II]

Section X.C of the 2009 Anti-Bribery Recommendation, as well as Annex II, refer to internal controls, ethics and compliance for the purpose of preventing and detecting foreign bribery. This topic is discussed under section. 1.2.3 above.

5. Public Advantages, including Public Procurement

5.1. Suspension from public advantages [Rec. XI]

Article 3(3) of the Convention requires countries to consider the imposition of additional civil or administrative sanctions. Among these sanctions, countries should consider suspension from public advantages, to the extent a member applies procurement sanctions for the bribery of domestic public officials, as provided under Recommendation XI.(i). In its monitoring work, the Working Group assesses whether countries make full use of additional sanctions (such as suspension from public advantages) to ensure effective deterrence. The Working Group also reviews how suspension from public advantages works in practice, and related challenges (e.g. whether consideration is given to international (and/or domestic) debarment lists during the tender process; whether such listing can serve the basis of exclusion from application for public tenders; whether mechanisms are in place to verify the accuracy of information provided by applicants, along with enhanced due diligence where appropriate; etc.).

Suggested question:

39. **What recommendation could be envisaged to further address the enforcement challenges of suspension from public advantages?**

40. **Should automatic suspension from public advantages be considered, and if so how, including as concerns notice and appeal mechanisms, and procedures for imposing or lifting suspension measures?**

5.2. Supporting implementation of the 1996 ODA Recommendation [Rec. XI.(ii)] [33]

The Anti-Bribery Recommendation promotes the prevention of corruption through ODA measures, in accordance with the 1996 Development Assistance Committee Recommendation on Anti-corruption Proposals for Bilateral Aid Procurement. This Recommendation was recently updated and the Recommendation of the Council for Development Co-operation Actors on Managing the Risk of Corruption was adopted jointly on 16 November 2016 by the OECD Development Assistance Committee and the WGB. With a view to supporting its implementation, the Working Group has now entered into the monitoring of this new Recommendation, focusing its efforts on the review of recommendations 6-10.

Suggested question:

41. **What step could the Working Group take to further support the implementation of the Recommendation of the Council for Development Co-operation Actors on Managing the Risk of Corruption that it has jointly endorsed with the OECD Development Assistance Committee?**

5.3. Supporting efforts of the OECD Public Governance Committee and related Recommendations [Rec. XI.(iii)] [34]

According to the Anti-Bribery Recommendation, countries should support the efforts of the OECD Public Governance Committee to implement the principles contained in the 2008 Council Recommendation on Enhancing Integrity in Public Procurement, as well as work on transparency in public procurement in other

[33] This part of the Anti-Bribery Recommendation would need to be updated to reflect the 2016 Recommendation of the Council for Development Co-operation Actors on Managing the Risk of Corruption.

[34] This part of the Anti-Bribery Recommendation would need to be updated to reflect more recent Recommendations by the OECD Public Governance Committee.

international governmental organisations such as the United Nations, the World Trade Organisation (WTO), and the European Union, and are encouraged to adhere to relevant international standards such as the WTO Agreement on Government Procurement.

Suggested question:

42. What step could the Working Group take to further support the efforts to promote transparency in public procurement, including in collaboration with the OECD Public Governance Committee for the implementation of the principles contained in the 2008 Council Recommendation on Enhancing Integrity in Public Procurement?

6. Officially Supported Export Credits

6.1. Supporting implementation of the 2006 Export Credit Recommendation [Rec. XII.(ii)] [35]

Under the 2009 Anti-Bribery Recommendation, countries Party to the OECD Anti-Bribery Convention that are not OECD Members should adhere to the 2006 OECD Council Recommendation on Bribery and Officially Supported Export Credits. The WGB further commits to supporting the efforts of the OECD Working Party on Export Credit and Credit Guarantees to implement and monitor the Export Credit Recommendation. It carries out this task notably through regular meeting with export credit agencies in the context of country evaluations, and recommendations to countries to enhance prevention and detection of foreign bribery by export credit agencies (see also section 4.2. above). The role of export credit agencies in detecting and reporting foreign bribery was also examined in the context of the WGB's 2017 study on the Detection of Foreign Bribery. [36] Finally, a new Recommendation on Bribery and Officially Supported Export Credits was adopted by the OECD Council on 13 March 2019.[37]

Suggested question:

43. What step could the Working Group take to further support the implementation of the Council Recommendation on Bribery and Officially Supported Export Credits, adopted by the OECD Working Party on Export Credit and Credit Guarantees?

[35] This would need to be updated to reflect updates to the Recommendation on Bribery and Officially Supported Export Credits.

[36] OECD (2017), The Detection of Foreign Bribery, Chapters 5, 6 and 7.

[37] See https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0447

7. International Co-operation

7.1. International co-operation related standards [Rec. XIII.(iv)]

The Anti-Bribery Recommendation requires countries to ensure that their national laws afford an adequate basis for international cooperation in accordance with Articles 9 (mutual legal assistance, MLA) and 10 (extradition) of the Convention. In its monitoring work, the Working Group reviews the adequacy of such legislation. On several occasions, the Working Group has requested countries to amend their legislation to ensure that a broad range of MLA could be provided in foreign bribery-related civil or administrative proceedings against a legal person to a foreign state whose legal system did not allow criminal liability of legal persons. In some instances, the Working Group has also called for changes of legislation to clarify that international cooperation should not be denied based on considerations of Article 5 factors. Regarding extradition, one country was asked to amend its legislation to be able to provide extradition for foreign bribery, regardless of where the foreign bribery has been committed.

Suggested question:

44. What recommendation could be envisaged to further clarify the existing legal requirements that serve as a basis for mutual legal assistance and extradition?

7.2. International cooperation and enforcement challenges [Rec. III.(i), (ii), (iii), (v) and (ix); Rec. XIII.(ii)]

The Anti-Bribery Recommendation asks countries to take enforcement actions in several areas relevant to international cooperation. For instance, countries are asked to seriously investigate credible allegations of foreign bribery referred by international governmental organisations and to make the full use of existing arrangements and agreements for MLA. Other considerations under the Anti-Bribery Recommendation are reviewed by the Working Group in its monitoring work, in particular: (i) countries' capacity and actual practice of consulting, cooperating and sharing information internationally (see also section 8.3 below); and (ii) actual measures and efforts to timely and seriously execute incoming MLA requests. Denial of MLA on grounds of bank secrecy and the existence of an information system to allow for the collection of data on MLA in foreign bribery cases are also reviewed. In its most recent countries' reviews, the Working Group has put an emphasis on assessing effectiveness and how countries handle outgoing and incoming MLA requests, including by consulting the Working Group Members on their international cooperation experience with the evaluated country. In relation to extradition, the Working Group has analysed the application in practice of the legal principle of *aut dedere aut judicare* ("either extradite or prosecute").

Suggested questions:

45. What recommendation(s) could be envisaged to facilitate MLA and extradition in foreign bribery cases?

46. What recommendation(s) could be envisaged to further address the issues of cooperation with multilateral and regional development banks in the context of foreign bribery investigations?

7.3. International cooperation: addressing issues of growing importance

Recommendation XIII recommends that countries consult and otherwise cooperate with competent authorities in other countries in investigations and other legal proceedings, including through such means as the sharing of information, spontaneously or upon request, provision of evidence, extradition, and the identification, freezing, seizure, confiscation and recovery of proceeds of foreign bribery.

As early as 1997, Article 4(3) of the Convention acknowledged the importance of consultations where more than one Convention country may have jurisdiction over a foreign bribery offence. Countries appear to be increasingly cooperating in the context of multi-jurisdictional cases involving foreign bribery or related offences. Recent country evaluations provide examples of challenges faced by countries in cases in which prosecutions for foreign bribery are brought in more than one country for related acts of foreign bribery. The multi-jurisdictional cases raise complex issues, including when it comes to the application of *ne bis in idem* protection, how investigations and prosecutions in different jurisdictions are to be coordinated, and how sanctions may be divided.[38]

Another issue of growing importance concerns international asset recovery. The Working Group could therefore be well placed to bring its perspective on these issues.

Suggested questions:

47. What recommendation could be envisaged to address the issue of international asset recovery and related challenges, given work already undertaken in this area in other fora?

48. What recommendation could be envisaged to address the enforcement challenges raised by multi-jurisdictional cases?

[38] Other challenges arise (e.g. how do the procedural rules for investigations, information sharing and attorney-client privilege interact across jurisdictions; how are financial and non-financial sanctions determined and shared between jurisdictions?).

8. Follow-up and institutional arrangements in the WGB [Recs XIV and XV]

Sections XIV and XV of the 2009 Anti-Bribery Recommendation provide for a number of follow-up arrangements to ensure and enhance implementation by the WGB of the Anti-Bribery Convention and Anti-Bribery Recommendation. These include:

- Monitoring implementation by countries of the Anti-Bribery Convention and related instruments through country evaluations. Since 2009, the WGB has completed its Phase 3 evaluation and launched its Phase 4 in 2017. Phase 4 focuses on key issues relating to detection, enforcement and liability of legal persons, as well as any outstanding issues from previous phases. Phase 4 endeavours to take a tailored approach, considering each country's unique situation and challenges, and reflecting positive achievements. All country evaluations are publicly available on the OECD website;[39]
- Facilitating international cooperation by maintaining a table of responsible authorities, which is regularly updated and published on the OECD website;[40]
- Regular reporting by countries during WGB meetings on steps taken to implement the Anti-Bribery instruments. These reports are in addition to country evaluations, and include regular updates on foreign bribery enforcement actions;
- Meetings of law enforcement officials from WGB countries, which take place on a biannual basis. In addition, since 2015, two meetings of law enforcement officials involved in the enforcement of transnational bribery cases have been organised at the global level;[41]
- Examination of prevailing trends: the WGB has published several studies examining for instance liability of legal persons, the detection of foreign bribery, the demand or 'flip' side, and resolutions;[42]
- Development of tools to increase the impact, including enforcement data which are completed annually by WGB countries and published online;[43] and
- Provision of regular information to the public on WGB work: in addition to publication of the above-mentioned material, this takes the form of, for instance, annual consultations with stakeholders, and, since 2018, publication of the agendas and summary records of the WGB's quarterly meetings.

Suggested questions:

49. What steps could the WGB take to further ensure and enhance implementation by Parties of the Anti-Bribery Convention and related OECD anti-bribery instruments?

50. What steps could the WGB take to further increase enforcement by Parties of the Anti-Bribery Convention and Anti-Bribery Recommendation?

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[39] http://www.oecd.org/daf/anti-bribery/countryreportsontheimplementationoftheoecdanti-briberyconvention.htm

[40] http://www.oecd.org/daf/anti-bribery/OECD-WGB-Country-Contact-Points-International-Cooperation-July-2018.pdf

[41] In 2015 and 2017: see http://www.oecd.org/daf/anti-bribery/global-law-enforcement-network-meeting-2015.htm and http://www.oecd.org/corruption/anti-bribery/global-law-enforcement-network-meeting-2017.htm.

[42] OECD (2016), The Liability of Legal Persons for Foreign Bribery: A Stocktaking Report; OECD (2017), The Detection of Foreign Bribery; OECD (2018) Foreign Bribery Enforcement: What Happened to the Public Officials on the Receiving End; OECD (2019), Resolving Foreign Bribery Cases with Non-Trial Resolutions: Settlements and Non-Trial Agreements by Parties to the Anti-Bribery Convention.

[43] See 2017 Enforcement Data: http://www.oecd.org/daf/anti-bribery/OECD-WGB-Enforcement-Data-2018-ENG.pdf

9. Co-operation with non-Members [Recs XVI and XVII]

The 2009 Anti-Bribery Recommendation encourages enhancing cooperation with non-Member countries[44] that are major exporters and foreign investors, and instructs the WGB to act as a forum for consultation in this regard. The WGB and the OECD Secretariat regularly engage on transnational bribery issues through its regional initiatives in Africa, Asia-Pacific, Eastern Europe and Central Asia, Latin America, and the Middle-East and North Africa. In addition, the WGB reviews its Global Relations Strategy on a biennial basis, and, in this context, identifies countries with which to enhance engagement including through invitations to participate in the meetings of the WGB. In October 2018, the WGB held its first joint session with the G20 Anti-Corruption Working Group: this provided a welcome opportunity to engage with those G20 countries not yet Party to the Convention – China, India, Indonesia and Saudi Arabia – to identify areas of mutual interest, and advance discussions on the commitment in the 2017-18 G20 Anti-Corruption Action Plan that G20 countries "participate actively with the OECD Working Group on Bribery to explore the possible adherence of all G20 countries to the OECD Anti-Bribery Convention."

Suggested questions:

51. **What steps could the Working Group take to further appeal to key non-Members to adhere to and implement the Anti-Bribery Convention and related instruments?**
52. **What steps could the Working Group take to further engage with key non-Members, act as a forum for consultation with such non-Members, and more generally promote application of the standards in the Anti-Bribery Convention and related instruments?**

[44] Non-Member countries are defined in the Anti-Bribery Recommendation as countries other than OECD Member countries and other countries party to the Convention.

10. Relations with international governmental and non-governmental organisations [Rec. XVIII]

The 2009 Anti-Bribery Recommendation invites the WGB to consult and cooperate with international organisations, non-governmental organisations and the business community. Cooperation with international government organisations, and in particular multilateral development banks, is covered in part in section 8.2. Interaction with stakeholders is broadly addressed under section 9 above.

Suggested question:

53. What further steps could the Working Group take to enhance cooperation with international organisations (including international financial institutions and other fora such as the G20), non-governmental associations and the business community?