

Fair Market Conditions for
Competitiveness in the Adriatic Region

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



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“The OECD is leading global efforts to combat corruption. The fight against bribery of foreign public officials is a core element in our drive to tackle all forms of corruption, and a shared value that unites all 44 parties to the anti-bribery convention.”

Anguel Gurría, OECD Secretary-General

WHY THE OECD ANTI-BRIBERY CONVENTION MATTERS

- Bribery of foreign public officials distorts markets and raises the costs of doing business, impedes economic development, and undermines the rule of law
- 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 offering, promising or giving bribe.
- Countries that adopt the Convention commit to prevent, detect, prosecute and sanction bribery of foreign officials.
- Under the Convention, law enforcement must be bolstered and cases prosecuted with sufficient resources to deal with increasingly sophisticated bribery-related crimes.
- The OECD Working Group on Bribery monitors Parties’ compliance with the Convention and promotes better anti-bribery laws and enforcement.

What is the issue?

Bribery is a threat to good governance, sustainable economic, democracy and people’s welfare. The corrosive effects of bribery can spread across borders, affecting economies and societies everywhere. The ability to address bribery, both domestically and internationally, is impaired by a lack of transparency, accountability and integrity in the public and private

sectors. Weak criminal legislation and anti-corruption mechanisms, and inadequate international co-operation also thwart efforts to combat bribery. No economic sector is immune from bribery, though the most affected industries are construction, mining, telecommunications, medical and pharmaceutical sectors, transportation, and infrastructure projects.

Two developments present specific challenges in the global context of fighting bribery:

- Increased global economic activity combined with systemic weaknesses within individual countries- weak government capacity, poorly paid public sector officials, lack of transparency and accountability, ineffective law enforcement- has increased both the incentives and opportunities for corruption.
- Outsourcing, privatization and public private partnerships can also create new opportunities.

Why is this important?

The World Bank estimates that more than US\$ 1 trillion dollars squandered every year on bribes paid to public officials in exchange for advantages in international business. The cost of doing business in a country with medium or high levels of corruption compared to a country with low levels of corruption is equivalent to a 20% tax on foreign business. Bribery corrupts bidding for public procurement, leading for instance to unfinished roads, crumbling schools and crippled health systems. Bribery erodes public confidence in political institutions and leads to contempt for the rule of law.

Everyone pays the price of bribery. Local business pay when they cannot compete against bribe-paying competitors. Developing economies pay when growth is slowed because foreign companies fear for their investments in a corrupt environment. Shareholders pay when the reputations of the companies in which they invest suffer from bad publicity. The countries hosting companies involved in bribery pay when their tarnished reputations deter investors. But above all, citizens pay when corrupt business dealings endanger vital public services, such as access to clean water, safe streets and basic health services, putting lives at risk.

What can policy makers in the Adriatic region do?

OECD Anti-Bribery Convention

The Anti-Bribery Convention could serve as a strong legal foundation for the countries in the Adriatic region which would like to commit to fight foreign bribery, as it establishes tough and effective standards to guide their efforts going forward.

Until 1999, foreign bribery was, in most countries, business as usual. In fact, bribes were often tax deductible. That ended with the entry into force of the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*. Today, all OECD

member countries and seven partner countries (Argentina, Brazil, Bulgaria, Colombia, Latvia, Russia and South Africa) are Parties to the *Anti-Bribery Convention*.

The Anti-Bribery Convention is the first and only international anti-corruption legally binding instrument to focus exclusively on the: “supply side “of the bribery transaction: it targets the person or entity promising or giving a bribe to a foreign official. By adopting the *Convention*, countries commit to investigate and, where appropriate, prosecute those who offer, promise or give bribes to public officials and to subject those who bribe to heavy penalties.

Over the past 20 years, monitoring by the OECD Working Group on Bribery has established the *Convention* as the most rigorously enforced international anti-corruption instrument. However, the *Convention* can only be effective when all Parties implement it fully and adhere to its tough standards.

Parties’ laws must hold both individuals and companies responsible for foreign bribery. This includes offers of bribes that are not accepted and offers made to officials of foreign state-owned enterprises. Moreover, bribery committed through an intermediary, such as a subsidiary or other agent– and bribes for the benefit of family members, political parties or another third party (e.g. a charity or company in which the official has an interest) –must also be made illegal.

Parties also commit to ensure that projects they have financed, including through official development aid and officially supported export credits, are not tainted by foreign bribery and that adequate mechanisms are in place to prevent, detect and address bribery in projects that benefit from state funding.

The OECD Working Group on Bribery is leading global efforts to fight bribery of foreign public officials in international trade and investment. The fight against foreign bribery is a core shared value that unites all 44 Parties to the *Anti-Bribery Convention*. The group uses a rigorous peer-review monitoring system, which Transparency International calls the “gold standard” of monitoring. Parties to the *Convention* are subject to review by their peers, and OECD Working Group on Bribery experts serve as examiners in the peer review mechanism for other countries. All of the OECD Working Group on Bribery evaluation reports and recommendations are then made public on the OECD website.

The process motivates countries to ensure the highest level of compliance with the *Convention* and to take concrete action to fight foreign bribery and corruption. The monitoring process is subject to specific agreed upon principles. Not only are the reports made public but the process is compulsory for all Parties and includes meetings with non-government actors. The evaluated country has no right to veto the final report and recommendations.

The OECD Working Group on Bribery began the fourth phase of monitoring in 2016. Phase 4 focuses on enforcement and covers unresolved issues from prior reports, as well in-depth exploration of horizontal issues such as detection, company liability and co-operation and mutual legal assistance.

In a nutshell:

- 560 individuals and 184 entities have received criminal sanctions for foreign bribery between the time the Convention entered into force in 1999 and the end of 2017.
- At least 125 of the sanctioned individuals have been sentenced to prison for foreign bribery, including at least 11 for prison terms exceeding 5 years.
- For the 97 individuals for whom information is available on the length of (non-suspended) prison terms, 11 were for more than 5 years, 41 were in the 2-5 year range, 26 in the 1-2 year range and 19 were less than 1 year.

OECD Recommendation on Combating Foreign Bribery

The OECD Recommendation on Combatting Bribery in International Business Transactions that includes new provisions for combating small facilitation payments, protecting whistleblowers, and improving communication between public officials and law enforcement authorities. Such additional commitments include:

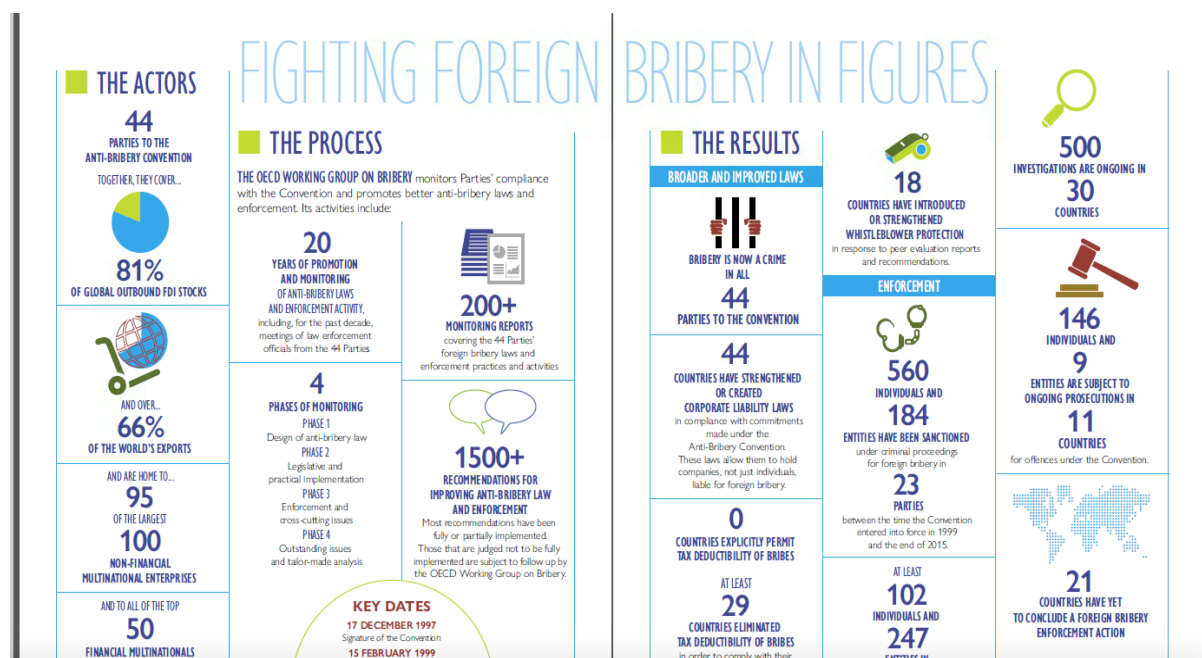
- providing prompt legal assistance to other Parties to the *Convention* investigating foreign bribery allegations;
- denying tax deductibility of bribe payments;
- sanctioning false accounting to disguise bribe payments;
- making it an offence to launder the proceeds of foreign bribery; and imposing effective, proportionate and dissuasive sanctions for foreign bribery acts.

Where do we go from here?

For the last ten years, law enforcement officials of the now 44 Parties have met twice a year in a confidential setting to share experiences and information on anti-foreign bribery enforcement. Practitioners discuss practical challenges encountered in investigating and prosecuting foreign bribery and share good practices. These regular law enforcement meetings of the OECD Working Group on Bribery have proven to be instrumental in fostering contacts between law enforcement officials and facilitating international co-operation in foreign bribery cases. This may help to explain, along with the *Convention's* binding provisions for mutual legal assistance, why most successfully concluded foreign bribery cases involve Parties to the *Convention*.

The OECD's efforts are focused on strengthening implementation by the current Parties to the *Convention* and expanding the reach of the *Convention*. The Saint Petersburg Leaders' Declaration in 2013 and the 2012 Anti-Corruption Action Plan call on G20 countries not Party to the *Convention* to consider ratifying it. The OECD is working actively with China, India and Indonesia, all of which have either drafted or enacted their own foreign bribery legislation. A further 80 countries participate in regional anti-corruption initiatives to align themselves more closely with the OECD anti-corruption disciplines. The OECD's Working Group on Bribery will continue to ensure rigorous implementation of the *Convention* by closely monitoring signatories that have not fulfilled their commitment to eradicate foreign bribery. The OECD will also continue to collaborate with the other multilateral organisations involved in fighting corruption, in particular the United Nations Office on Drugs and Crime (UNODC) and the World Bank.

Key Figures



Sources:

OECD Convention on Combating Bribery of Foreign Public officials in International Relations Business Transactions: Implementing the OECD Anti-Bribery Convention. See www.oecd.org/corruption

Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions, 2009. See <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0378>

Fighting Bribery in International Business. Why the OECD anti-bribery convention matters. Policy brief, September 2014. See www.oecd.org/policy-briefs

Fighting the Crime Of Foreign Bribery: A Snapshot Of Implementation And Enforcement. December 2018.

For more information on foreign bribery, the Anti-bribery Convention and the OECD Working Group on Bribery, go to www.oecd.org/corruption/anti-bribery



POLICY BRIEFING NOTES
**FAIR MARKET CONDITIONS FOR COMPETITIVENESS
IN THE ADRIATIC REGION PROJECT**

High levels of corruption and lack of transparency are key constraints to economic growth and competitiveness in many countries worldwide. The Policy Briefing Notes, designed for stakeholders from the Adriatic Region, aim to provide practical guidance to tackle corruption, foster integrity and level the playing field for all firms. They draw on OECD guidelines, legal instruments and good practices and are tailored to the region's circumstances.

The Policy Briefing Notes are one output of the three-year OECD project to promote fair market conditions for competitiveness in Bosnia and Herzegovina, Croatia, and Serbia, supported by the Siemens Integrity Initiative. Through Collective Action, government officials from the region along business leaders, anti-corruption experts and practitioners, civil society representatives and academics have engaged to jointly identify country-specific challenges to integrity and foster fair market competition.

These efforts are part of the engagement of the OECD South East Europe Regional Programme, which collaborates with the region since 2000 to foster private sector development and competitiveness, improve the investment climate and raise living standards for an inclusive and sustainable future for the people of South East Europe.

**www.oecd.org/south-east-europe
oe.cd/fair-market-conditions**