



TI PROGRESS REPORT:

**ENFORCEMENT OF THE OECD CONVENTION
ON COMBATING BRIBERY OF FOREIGN
PUBLIC OFFICIALS**

Fritz Heimann
Gillian Dell
Agnes Sng-Sachsenroeder
Nicole Whittier

7 March 2005

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TI PROGRESS REPORT ON ENFORCEMENT OF THE OECD CONVENTION

Transparency International considers the OECD Convention on Combating Bribery of Foreign Public Officials to be a key building block in the international legal framework to combat corruption. Effective enforcement of the Convention would significantly reduce the supply side of international corruption as most major international companies have their headquarters in signatory states. TI and its national chapters have strongly promoted the adoption of the Convention, its ratification and the passage of implementing legislation by signatory states. TI has also participated actively in the OECD's follow-up monitoring program.

Laws implementing the Convention entered into force in most signatory states in 1999 and 2000. Intergovernmental monitoring of government enforcement has been underway since 1999. Thus, an assessment of government progress in enforcing the Convention's prohibition of foreign bribery is quite timely. Further, the OECD Working Group on Bribery deserves a great deal of praise for the quality of its peer reviews of government enforcement and its country reports.

This Progress Report approaches monitoring from a different perspective and presents a non-governmental assessment of enforcement of the OECD Convention. It is based on information provided by TI national chapters in twenty-four OECD signatory states, which represent about ninety-five percent of OECD exports. Lawyers and other highly qualified professionals and academics were chosen by these national chapters as expert respondents to a TI questionnaire. These respondents consulted with government officials, including many representatives on the OECD Working Group on Bribery and other knowledgeable persons in their country. They were aided in their work by the invaluable Phase I and Phase II country reports prepared by the OECD Working Group on Bribery.¹

The TI experts' responses cover the number of foreign bribery cases and investigations brought since the OECD Convention became effective in each country. They also provide an assessment of government programs and actions by the OECD, private sector and civil society that are important to enforcement in each country.

The most important conclusions of this Progress Report are:

- Enforcement is now underway in fifteen of the twenty-four countries covered, including most of the major exporting countries. This is a promising start.
- There are, however, only four countries that have seen more than one foreign bribery case and there has been no enforcement in nine countries.
- Enforcement efforts must be stepped up substantially to achieve widespread recognition in the business community that foreign bribery does not pay.

The most important recommendations of this Progress Report are:

- Strengthen coordination of government enforcement by establishing a national office responsible for foreign bribery enforcement and increase resources.

¹ The published reports can be found at:

http://www.oecd.org/document/24/0,2340,en_2649_34859_1933144_1_1_1_1,00.html

- Improve access to enforcement systems through enhanced complaint procedures and whistleblower protection.
- Increase awareness that foreign bribery of public officials is a crime.
- Continue the OECD monitoring program beyond 2007.

TI Recommendations are spelled out more fully in the first section of this report.

This Progress Report is the first in a TI program of annual assessments of the enforcement of the OECD Convention. It will provide a benchmark for measuring progress made in future years. In subsequent reports TI plans to cover additional signatories. TI welcomes comments and suggestions for the preparation of future reports.

TI. TI RECOMMENDATIONS TO INCREASE ENFORCEMENT

TI makes the following recommendations to the OECD and to the governments of signatory states to address the fact that there have been no foreign bribery cases in over half of the responding countries, and only four countries that have seen more than one. These recommendations should be considered while taking into account differing legal systems, practices and conditions in OECD countries.

1. *Strengthen Organization of Government Enforcement*

TI's discussions with prosecutors indicate that it is very difficult to bring foreign bribery cases because they are expensive, time-consuming, and require specialized staffing. Such staff includes forensic accountants, anti-money laundering experts, and lawyers experienced with mutual legal assistance procedures for obtaining evidence from abroad. Marshalling the needed resources is particularly difficult, and may be impossible, where responsibility for foreign bribery cases is decentralized. Local prosecutors swamped with large caseloads are understandably reluctant to take on foreign bribery cases.

TI recommends that governments take the following steps:

- Establish a national office responsible for foreign bribery enforcement. Such an office will have a greater interest than local prosecutors in uncovering violations and following-up on allegations. The national office should manage the investigation and prosecution of foreign bribery cases and should be adequately staffed with well-trained specialists.
- If, under the country's legal system, foreign-bribery enforcement cannot be centralized, a national office should be established to perform a coordinating role, including tasks such as organizing a pool of experienced lawyers and investigators, conducting training programs, serving as a contact point for whistleblowers, ensuring effective mutual legal assistance, and conducting media monitoring on foreign bribery incidents.

2. *Increase Awareness that Foreign Bribery is a Crime*

TI recommends that governments take the following steps:

- Increase public awareness that foreign bribery is a crime through communications programs, including websites, pamphlets and posters directed at companies engaged in international trade, commercial attachés and other diplomatic representatives stationed abroad, prosecutors, the media, and civil society.
- Senior law enforcement officials should communicate their intention to enforce foreign bribery laws through statements at bar association and industry meetings. This message is particularly important in countries where there has been no foreign bribery enforcement, and serves to ensure that lack of action is not interpreted as tolerance of foreign bribery.
- Justice ministries should make public announcements when foreign bribery investigations or prosecutions are initiated. They should also report at least annually on the number of foreign bribery cases and investigations underway. Reporting the number of investigations would be sufficient where government policy precludes disclosing the names of parties under investigation.

3. *Improve Access to Enforcement Systems and Reporting*

TI recommends that governments take the following steps:

- Instruct their embassies abroad to notify the relevant domestic prosecutor's office of any plausible media reports concerning corrupt acts by companies based in their countries.
- Establish a readily-accessible reporting system for foreign bribery complaints. Possible elements include websites, hotlines, and ombudsmen. Whatever system is adopted, it should be widely and repeatedly publicized.
- Provide protection for whistleblowers. The importance of whistleblowing and the protection afforded to whistleblowers should be widely publicized.
- Require tax departments to report evidence of bribery uncovered in the course of tax audits.

4. *Improve Statutory Framework to Ensure Effective Enforcement*

In TI's judgment, criminal liability for corporations and nationality jurisdiction are important elements of an effective enforcement system. They make it easier to bring foreign bribery cases and also have deterrent effects. Most OECD Convention signatories have corporate criminal liability and nationality jurisdiction. Under the OECD Convention, governments are not required to provide criminal liability for corporations or nationality jurisdiction under certain conditions. However, given that the aim is effective enforcement of the Convention, we believe that these exceptions are undesirable.

TI recommends that governments take the following steps:

- If they do not provide for corporate criminal liability, they should take prompt action to do so. We recognize that several countries that do not have corporate criminal liability provide for civil penalties for corporate misconduct. Nonetheless, we do not believe that civil penalties have the same deterrent effect as criminal liability.
- If they do not provide for nationality jurisdiction, they should take prompt action to do so.

5. *Promote Corporate Compliance Programs*

TI regards the adoption of corporate anti-bribery compliance programs as an essential complement to government enforcement programs. Such programs help change business attitudes and encourage the private sector to monitor itself, which is vital as law enforcement can only deal with a limited number of cases. Since the OECD Convention entered into force, an increasing number of companies have adopted compliance programs. The use of corporate compliance programs, however, varies substantially in different signatory states and has not been widely adopted among small and medium-sized enterprises.

TI recommends the following actions to promote widespread adoption of corporate anti-bribery compliance programs:

- OECD monitoring reviews should continue to inquire and report on how widely corporate anti-bribery compliance programs have been adopted in each country.
- The OECD and governments should encourage international financial institutions to make the adoption of corporate anti-bribery compliance programs a condition for bidding on projects financed by those institutions. The World Bank has introduced such a condition.
- Governments should make the adoption of corporate anti-bribery compliance programs a condition for export financing and for bidding on programs funded by its development assistance agencies.

6. *Raise Accounting and Auditing Requirements*

TI recommends the following actions as accurate books and records are needed for anti-bribery enforcement and for corporate compliance programs:

- OECD monitoring reviews should continue to focus on accounting and auditing requirements, particularly prohibitions on the use of off-the-books accounts, reporting of bribes as sales expenses, and other practices for hiding bribe payments.
- The OECD should encourage international accounting and auditing standard-setting bodies to develop stronger and more consistent standards designed to deter foreign bribery.

- Public accountants should be required to report evidence of bribery discovered in their audits to government agencies, if the company management takes no action.

7. *Continue OECD Monitoring*

The Working Group on Bribery plays an indispensable role in providing a forum for the exercise of peer pressure on governments lagging on their commitments under the Convention. TI commends the OECD for the actions taken in the last two years to increase the number of country reviews conducted annually and to assure adequate funding and staffing for the monitoring program until 2007. TI also commends the Working Group on Bribery for its willingness to receive inputs from civil society and the private sector.

TI recommends the following measures to strengthen the monitoring of enforcement:

- The OECD should continue an effective monitoring program beyond 2007. Continued monitoring is of the utmost importance because one round of enforcement reviews will not be enough to ensure that deficiencies identified in country reviews are corrected and to avoid backsliding in those countries where progress has been made. TI's experience indicates that government commitment to combating bribery often wanes with changes in political leadership and priorities.
- The Working Group should provide for consultation with civil society and the private sector in its consideration of follow-up actions after Phase 2 Country Reviews.
- TI national chapters and other civil- and private-sector organizations should do more to call attention to deficiencies identified in OECD country reviews and to press for corrective actions.
- The Working Group should encourage governments to make public announcements when foreign bribery enforcement cases and investigations are brought. Additionally, the Working Group should undertake to publish regular compilations of the number of cases and investigations conducted by each signatory.

II. NUMBER OF FOREIGN BRIBERY CASES AND INVESTIGATIONS

The number of foreign bribery cases and investigations brought in each OECD signatory country provides the best indicator of whether and to what extent the Convention is being enforced. The numbers below were reported by experts from TI national chapters and have been reviewed with government representatives. The term “cases” refers to criminal prosecutions that have been filed in courts and the term “investigations” refers to matters that governments are investigating. Investigations may lead to the filing of cases but may be dropped for lack of sufficient evidence or other reasons.

1. Cases²- Foreign bribery cases have been brought in **eleven** countries: Belgium, Canada, France, Germany, Italy, Korea, Norway, Spain, Sweden, Switzerland and the US. However only four countries have seen more than one case: France, Korea, Spain, and the US.

² TI's questionnaire uses a broad definition to include all prosecutions relating to bribery of foreign public officials, whether brought under laws dealing with corruption or under other laws, such as laws dealing with

There are **thirteen** countries where no foreign bribery cases have been brought: Argentina, Australia, Czech Republic, Denmark, Finland, Greece, Japan, Mexico, the Netherlands, New Zealand, Poland, Slovak Republic, and the United Kingdom.

2. Investigations³ - Foreign bribery investigations have been conducted in **thirteen** countries: Belgium, Canada, Denmark, Finland, France, Germany, Italy, Mexico, Norway, Sweden, Switzerland, UK and the US. However, six countries have only one investigation.

There are **eleven** countries where there appear to be no foreign bribery investigations: Argentina, Australia, Czech Republic, Greece, Japan, Korea, the Netherlands, New Zealand, Poland, Slovak Republic and Spain.

3. No Cases or Investigations: There are **nine** countries where there are no foreign bribery prosecutions or investigations: Argentina, Australia, Czech Republic, Greece, Japan, the Netherlands, New Zealand, Poland, and the Slovak Republic.

Appendix A provides a tabulation of cases and investigations.

III. TI ASSESSMENTS AND OBSERVATIONS

The following assessments and observations are based on answers to the detailed TI Questionnaire by expert respondents designated by TI national chapters in twenty-four OECD signatory states. The experts are identified in Appendix B. The questionnaire and the accompanying Guidelines for Responding can be found in Appendix C.

Many of the assessments are based on readily ascertainable data such as whether foreign bribery enforcement has been centralized; whether there are procedures for reporting foreign bribery complaints; or whether there is whistleblower protection. Other assessments are based on the judgments or perceptions of TI's experts, such as assessments of the adequacy of resources for enforcement, and of the use of corporate compliance programs. TI experts have sought to review their assessments with government representatives in all countries covered by this report and were able to do so in almost all of them. However, the assessments represent the views of TI's experts, and not those of the government representatives they consulted.

The majority of the questionnaire's assessment areas required a rating of strong, moderate, weak or very weak. In this report, these assessments are generally grouped into two categories. First, a statement that "substantial improvement" is needed in a particular program

fraud, money laundering, tax evasion, or accounting violations. It should be recognized that the number of cases reported is subject to some uncertainty, because many countries do not have accessible systems for reporting on foreign bribery cases.

³ Reliable information about investigations is harder to obtain than about cases. Governments generally do not disclose ongoing investigations. Information about investigations is frequently available through lawyers, the media and from public disclosure by companies under investigation. The number of investigations is also subject to some uncertainty because in some countries there is no clear line between formal investigations and informal inquiries. The following numbers reflect the judgment of TI's experts.

indicates that TI experts made an assessment of “weak” or “very weak.” Second, a statement that a program “may need to be strengthened” reflects an assessment of “moderate.”⁴

Observations made by experts from TI national chapters are printed in italics, following the assessments, along with the occasional references to OECD Phase Two reports. Excerpts have been selected by the authors of this report because they provide interesting information or valuable insights amplifying on the assessments. Additionally, by providing examples of strong programs or initiatives, as well as problem areas and obstacles, the excerpts give governments the opportunity to learn from each other. These selected observations are not intended to be comprehensive.

A. *National Enforcement Systems*

1. Centralization

TI’s experts were asked whether their country has a central office for foreign bribery enforcement, and, if enforcement is not centralized, whether the government provides coordination and supervision for foreign bribery enforcement.

Thirteen countries have a centralized office for foreign bribery enforcement: Belgium, France, Greece, Korea Mexico, the Netherlands, New Zealand, Norway, Poland, Spain, Sweden, Switzerland and the US.

Of those countries without a centralized office, TI experts found strong coordination in only **one** country: Denmark. In **six** countries the experts found moderate coordination: Australia, Canada, Finland, Italy, and Slovak Republic.

In **six** countries there is neither centralization nor adequate coordination: Argentina, Czech Republic, Germany, Greece, Japan, and United Kingdom.

*The **Argentine** expert concludes that organization of enforcement is weak because while efforts are being made at the national level, Argentina has a federal political system. There are many causes of corruption in the states but the states lack an institution similar to the federal Anticorruption Office, so there is no standard system.*

*The **Canadian** report mentions that the system could be reinforced by establishing a coordinating role for one of the principal agencies responsible for the implementation of the relevant legislation.*

*In **France**, the expert notes that the French Ministry of the Interior created the Brigade Centrale contre la Corruption in 2004. This is a centralized office handling issues of both domestic and foreign corruption. A Directive of the Ministry of Justice will be issued shortly to recommend to judges and prosecutors the use of the Brigade and also the use of the Mission Interministérielle d’Enquête sur les Marchés and the Service Central de Prévention de la Corruption.*

*The **German** experts state that, to their knowledge, there exists no centralized coordination or supervision. The federal states are responsible for prosecution; several have established specialized corruption prosecution offices at state-, regional- or municipal-level. In general,*

⁴ Please note that the TI expert from Switzerland was not able to make an assessment on a number of the subjects and that the TI experts from Poland did not assess the accounting and auditing requirements.

there is a reluctance to initiate investigations concerning foreign bribery allegations due to limited staff resources, a backlog of domestic cases, anticipated problems with international legal assistance, and lack of experience with the specific problems of investigations in cross-border foreign bribery cases. This judgment is based on discussions with numerous prosecutors (at all levels), judges, investigatory authorities and other officials.

*The **Italian** expert notes that in some Public Prosecutor's departments, there are teams of magistrates who are highly specialized in economic crimes (corruption, money laundering, fraud). Additionally, every prosecutor is empowered to initiate and carry out such proceedings. Further, the High Commissioner for the Fight against Corruption, established in September 2004, is an independent office with considerable powers to investigate within the public administration. In its Phase 2 report on Italy, the OECD Working Group notes that it is planning to follow up on the question of whether conflicts of competence amongst Italian public prosecutors has led to delays and a waste of resources, thereby decreasing the effectiveness of foreign bribery investigations. The lead examiners recognize the Italian initiative to appoint a High Commissioner for the Fight against Corruption to oversee the public administration and recommended that his tasks include the fight against foreign bribery.*

*In the **Japanese** report, it is noted that there seems to be no formal coordination, let alone communication, between the Ministry of Economy, Trade and Industry and the Ministry of Justice which are jointly responsible for the Unfair Competition Prevention Law. The Japanese experts therefore recommend that Japan establish a department specializing in foreign bribery within the National Police Agency or the Public Prosecutor's Office, and strengthen communication and coordination between the ministries and agencies concerned.*

*The **Mexican** expert reports that a special unit of federal prosecutors and investigators was established in July 2003 in the Attorney-General's Office, charged with investigating and prosecuting crimes committed by public officials, including domestic and transnational bribery. Mexican officials, however, have reported to the OECD monitoring group that out of the 600 cases handled in 2003 there was not one bribery case. The Mexican expert concludes that it is evident that there is a lack of government commitment to combat bribery and corruption given all the empirical, anecdotal and public opinion evidence (including a number of corruption scandals reported on national television in the last year) pointing to corruption as one of the major challenges facing Mexico and Mexicans.*

*The **UK** expert indicates that the biggest single cause of lack of enforcement of the relevant section of the 2001 Act is the complex investigation and enforcement structure and the absence of a single coordinated body for this purpose. The complexity and overlap between agencies leaves it unclear as to which institution will initiate the specialized investigations that would be required to lead to a successful prosecution of a case of foreign bribery in the UK and how such an investigation would be resourced. The creation, however, in January 2003 of a Memorandum of Understanding between relevant agencies who cooperate on a regular basis and subsequent reviews, demonstrated a commitment to a coordinated approach. Active enforcement does not necessarily result in prosecutions because of factors such as the difficulty of obtaining evidence.*

2. Resources

TI experts were asked to assess the adequacy of staffing and resources for foreign bribery enforcement. Such assessments are based on discussions with prosecutors and with lawyers handling enforcement cases.

TI experts in **six** countries believe the resources available for foreign bribery enforcement need substantial improvement: Czech Republic, Greece, Japan, Poland, Spain, and the United Kingdom.

TI experts in **seventeen** countries believe that the resources available for enforcement may need to be strengthened: Argentina, Australia, Canada, Germany, Italy, Korea, Mexico, the Netherlands, New Zealand, Norway, Slovak Republic, Sweden and the US.

*The **French** expert says that resources were increased with the creation of specialized inter-regional chambers for economic crime in October 2004. In the eight chambers, tax and custom agents provide training for judges and staff and according to the Ministry of Justice the number of judges has been increased.*

*The **German** expert notes that at the federal level the resources dedicated to corruption fighting are very limited, both in the Government and in the Bundeskriminalamt (BKA). Where specialized prosecution offices have been established at state level or below, these offices have broader responsibilities and thus the resources available for foreign bribery enforcement are not quantifiable. However, several of these special offices set up more recently have been assigned additional prosecutors and investigating staff.*

*The **Norwegian** expert also indicates the need to increase the resources for foreign bribery enforcement, in line with the OECD Working Group Phase 2 report on Norway, which found, inter alia, that the broadening of reporting obligations within public institutions in Norway was likely to increase the number of reports of alleged offences, but that there was no government plan for a concomitant increase in resources.*

*The **Swedish** expert points out that additional staff were provided for foreign bribery enforcement in the past year. Additionally, the expert expects that more staff will be provided as a result of the efforts of the Swedish Commission on Business Confidence.*

*The **Swiss** expert quotes the spokesman for the National Prosecutor: “In the National Prosecution department today there exist more complex corruption cases than ever before. Nonetheless, we are prohibited from hiring more employees to deal with the increase in complexity.” Transparency International Switzerland welcomes the enormous efforts made by the Swiss authorities to make the criminal prosecution of large-scale economic crime and transnational bribery more efficient. However, the local TI expert argues that if the government continues to cut the budget of the Effizienzvorlage, efficient prosecution of bribery of foreign officials cannot be guaranteed.*

*According to the experts from the **Netherlands**, the centralized agency has funding for six full-time positions for investigating and/or prosecuting foreign bribery, but, despite government efforts, two of these positions have yet to be filled. The lack of staff makes it very difficult, if not impossible, to investigate and prosecute foreign bribery.*

*The **UK** expert indicates that, save for a few cases that may be referred to the Serious Fraud Office, the principal investigatory body will be the local police force. And although the government has greatly increased spending on policing, there have been no additional resources allocated specifically to foreign bribery, even though legal and forensic accounting specialists with international experience are required to investigate even relatively straightforward foreign bribery cases. Additionally, most local police forces have neither teams with specialist skills, nor the budget to conduct foreign investigations. Priorities for local police forces do not include economic crime. Government agencies, however, maintain that resources will always be found for investigating and prosecuting large, complex and serious cases and that no investigation has been declined for lack of resources.*

*According to the **US** expert, the increase in cases (and voluntary disclosures) has strained SEC and Department of Justice resources and, consequently, staffing in enforcement agencies should be increased.*

B. Public Awareness that Foreign Bribery is a Crime

TI's experts were asked to assess government efforts to increase public awareness of foreign bribery as a crime. Their assessments reflect such factors as whether there have been public statements by government leaders and enforcement officials and whether conferences and training programs have been conducted. TI experts' assessments also reflect discussions with their contacts in relevant private sector and civil society organizations.

TI experts in **twelve** countries believe that substantial improvement is needed in government efforts to build public awareness: Argentina, Belgium, Czech Republic, Germany, Greece, Japan, New Zealand, Poland, Slovak Republic, Spain, Sweden, and the United Kingdom.

In a further **twelve** countries, TI experts believe that government efforts to build public awareness may need to be strengthened: Australia, Canada, Denmark, Finland, France, Korea, the Netherlands, Norway, and Switzerland.

*According to the **Australian** expert, there is a website with information about the crime of foreign bribery and how to report suspected breaches. A number of Australian government websites include a direct link to this information. Additionally, the government is now providing direct training to Australian officers posted overseas about bribery offences and the processes for handling allegations or information about this activity by Australian companies overseas. The Australian government has also printed pamphlets and is in the process of a wide distribution campaign.*

*In **Belgium**, according to the TI expert, day-to-day efforts are quite impressive, but there is scant publicity around these. Awareness in the population is therefore less the result of government efforts than the consequence of well-known cases such as the Agusta Dassault case. According to Office Central pour la Répression de la Corruption (OCRC), however, the awareness resulting from these cases is now dwindling.*

*The **Czech** expert reports that there appears to have been no government initiative directed at increasing public awareness that foreign bribery is a crime.*

*The **German** experts state that, to their knowledge, there have been hardly any public statements by government leaders or senior law enforcement officials addressed to business*

groups, bar associations and similar groups concerning foreign bribery laws. More generally, to their knowledge, there have been no government awareness-raising efforts.

*The **Italian** expert notes several awareness-raising activities undertaken by Italian officials, as well as by industry associations and civil society organizations. At the same time, the OECD Working Group's Phase 2 report on Italy encourages the Italian authorities to increase efforts to raise public awareness among the public administration on the offence of bribery of foreign public officials. Given the somewhat complicated nature of the foreign bribery offence as defined in the Criminal Code, they also recommend that additional training be provided to law enforcement authorities in order to ensure full understanding of the technicalities of this offence.*

*In **Korea**, the expert acknowledges that the Korea Independent Commission Against Corruption (KICAC) has been raising public awareness of the OECD Convention as a part of its general anti-corruption awareness program. KICAC has published and distributed over 500 copies of the "OECD Convention Guidebook" for Korean corporations and 3,000 copies of an anti-corruption textbook "Work and Ethics" for new university students and corporate employees. Additional steps are being taken to include materials regarding the Convention in sector-specific and specialized textbooks.*

*In **Mexico**, the government campaigned in 2003 and 2004 to ensure that the objectives of the OECD Convention were publicized. As part of this campaign, the government is working together with organizations such as the Consejo Coordinador Empresarial, the Banco Nacional de Comercio Exterior and the National Bank of Development to establish private sector integrity programs and codes of conduct that include provisions to guarantee the protection of whistleblowers.*

*The **New Zealand** experts comment that the government has until very recently made no public announcements about the criminalization of foreign bribery and no statements to exporters or professional groups. The report recommends publicity measures aimed at professional groups.*

*According to the **Slovak** expert, the Government of the Slovak Republic does not seem to make any effort to generate public awareness that foreign bribery has become a crime. For instance, there is no information concerning foreign bribery on the website of the government or particular ministries or the police.*

C. Accessibility of Enforcement Systems

1. Complaint Procedures

TI experts were asked to assess government efforts to provide and publicize procedures for reporting foreign bribery complaints, such as hotlines, websites and ombudsmen.

In **sixteen** countries TI experts believe that substantial improvements are needed in the system for reporting bribery complaints: Argentina, Belgium, Canada, Czech Republic, Finland, France, Germany, Greece, Japan, the Netherlands, New Zealand, Norway, Poland, Spain, Sweden, and the United Kingdom.

TI experts in **six** countries believe that the system for reporting bribery complaints may need to be strengthened: Australia, Denmark, Italy, Korea, Slovak Republic and Switzerland.

*In **Australia**, there is no dedicated hotline or website for foreign bribery complaints. There are, however, multiple mechanisms in place for reporting crimes generally, including Crimestoppers which allows people to make anonymous reports of criminal activity.*

*The **French** expert notes that there are no hotlines or websites for foreign bribery complaints and that prosecutors are unlikely to launch an inquiry on the basis of anonymous information unless evidence is shared. The instruction (“Circulaire”) of 21 June 2004 also suggests that prosecutors inform plaintiffs, in cases of dismissed corruption complaints, of the reasons for dismissal, thus simplifying the appeal process. The French expert reports that it is too early to evaluate the impact of this instruction on day-to-day practice.*

*The **German** report notes that the federal government has not addressed the issue of reporting violations of the German law regarding foreign bribery. The federal government expects accusations to be lodged with the appropriate Länder (state) prosecution offices, although these are sometimes difficult to identify, or with the police, just as with any other criminal violation.*

*In **Mexico**, complaints and reports can be submitted electronically via several different internet pages, by telephone hotline or by mail. There are 221 Órganos Internos de Control (OICs) of the Federal Public Administration which have mailboxes to facilitate the submission of complaints. Additionally, an electronic system, the Sistema Electrónico de Atención Ciudadana, is incorporated into the OICs, and allows citizens to register their complaints except in cases where the department or organization in question has their own such service.*

*In the **US**, the expert reports that the government encourages corporate hotlines and reporting procedures by making them a factor for credit in settlement of a proposed charge in a bribery investigations. Additionally, the Department of Justice and the Department of Commerce have increased efforts to make the public aware of their hotlines.*

2. Whistleblower protection.

TI experts were asked to assess the adequacy of whistleblower protection for foreign bribery complaints in their countries.

TI experts in **fourteen** countries believe that whistleblower protection needs substantial improvement: Argentina, Australia, Canada, Czech Republic, Denmark, Germany, Italy, Mexico, the Netherlands, Norway, Poland, Spain, Sweden and Switzerland.

TI experts in **nine** countries believe that whistleblower protection may need to be strengthened: Belgium, Finland, France, Greece, Japan, Korea, New Zealand, Slovak Republic and the UK.

*The **Argentine** expert notes that lack of incentives and protection for whistleblowers is a major obstacle to enforcement. The expert criticizes the fact that even though a few representatives in the Cámara de Diputados have introduced bills on whistleblower protection, none of which have received enough support to become law. The expert*

recommends that the whistleblower protection bill drafted by civil society representatives in 2001 as part of “Las Leyes de Mayo” be given a higher political priority.

*The **French** expert notes that employees in a company who report an act of corruption do not have any specific protection against dismissal. In this connection, the OECD Working Group Phase 2 examiners strongly recommended that France adopt stronger protection measures that would enable employees of private companies to disclose suspected acts of transnational bribery without fear of being dismissed or sued.*

*The **German** report notes that there is no specific whistleblower protection for foreign bribery complaints and that whistleblower protection in Germany is generally weak. Only a website established by the State of Lower Saxony allows whistleblowers to provide information about criminal conduct anonymously. The relatively high frequency of bribery reports submitted to this platform (and to the Deutsche Bahn’s two external independent ombudsmen) suggests that whistleblowers are afraid to make their reports in the open, underlining the need for effective whistleblower protection.*

*In **Greece**, there is no specific whistleblower protection. Labor laws, however, are very protective and a company can not fire an employee who has filed a complaint for a crime committed by the company. Moreover, it may not fire any employee who has brought the company to court. The courts implement these laws; therefore the protection provided is quite strong.*

*The **Italian** expert points out that the Italian law does not provide for whistleblower protection but only for the general protection accorded to witnesses in trials. She also notes that whistleblowing is not common in Italy and that it is important to provide for specific measures to protect employees who report suspicions of bribery in order to encourage the practice of whistleblowing.*

*According to the **Japanese** expert, a whistleblower protection law was enacted in June 2004 and will be enforced within two years of the enactment. The scope of this law will be made known as stipulated by a government order. The Unfair Competition Prevention Law, introducing the prohibition of foreign bribery, is most likely to be brought within the scope of the law as a government panel has recently made a proposal to this end.*

*While experts from the **Netherlands** acknowledge the existence of legislation intended to protect whistleblowers, they feel that, in practice, lack of such protection still remains a serious obstacle to reporting. The Dutch experts believe that additional measures need to be introduced to accommodate the needs of whistleblowers who fear dismissal under other pretences and discrimination by potential employers in the future.*

*According to the **Norwegian** expert, whistleblowers in Norway are discouraged from reporting violations since enforcement authorities cannot guarantee the anonymity of complainants during the course of an investigation or prosecution, and because there are no specific safeguards provided by Norwegian law to protect employees who witness employer misconduct. Thus, the Norwegian expert calls for increased whistleblower protection.*

*The **Swedish** expert comments that whistleblower protection in Sweden is weak. She notes that no protection is included in legislation dealing with corruption but that certain limited protection is provided by other legislation in certain cases, for example by labor law. Additionally, anonymity is guaranteed by law to press and media informants.*

In Switzerland, the expert reports that people who disclose information about malpractice in a company or in an organization, in an institution or in a public function, are not protected by Swiss law against any form of discrimination, including “mobbing” (creating a hostile work environment) or dismissal. Therefore, Swiss law needs to be changed. Additionally, it is recommended that the public authorities develop a reporting system for whistleblowers that guarantees their anonymity.

D. Corporate Compliance Programs

TI’s experts were asked to assess how widely corporate anti-bribery compliance programs have been adopted in their countries. Their assessments reflect perceptions based on their contacts with the private sector. Many national chapters have organized local workshops for the business community on the TI Business Principles for Countering Corruption.

TI experts in **twelve** countries believe that substantial improvements are needed in the use of corporate anti-bribery compliance programs: Argentina, Australia, Czech Republic, Greece, Mexico, New Zealand, Norway, Poland, Slovak Republic, Spain, Sweden and Switzerland.

TI experts in **eleven** countries believe that the use of corporate compliance programs may need to be strengthened: Belgium, Canada, Denmark, France, Germany, Italy, Japan, Korea, the Netherlands, UK and the US.

The Canadian expert states that the use of compliance programs by small and medium –sized companies needs to be expanded.

In France, the expert comments that more and more companies have codes of conduct ruling out corruption, but it is not clear that their foreign subsidiaries are affected by these rules.

In Japan, METI has issued guidelines for corporations and many major companies have made efforts to establish compliance systems or programs in the past few years. However, it is unclear how widely these guidelines have been adopted by Japanese companies.

In Korea, thirty major corporations created the “Council of Business Ethics Officers” in 2001 and a “Business Ethics Support Center” was established within the Federation of Korean Industries in 2002.

The New Zealand experts note that a recent survey conducted by the Securities Commission of forty companies listed on the New Zealand Stock Exchange found that only sixteen fostered ethics or had a corporate code of ethics, suggesting that the remainder are very unlikely to have a compliance program relating to the payment of foreign bribes. (It is not known how many of the companies that have a code of ethics included any reference to foreign bribery.)

According to the Slovak expert the following actions are needed in his country: setting up criminal liability for corporations, government-sponsored awareness-raising, among corporations and the public, of foreign bribery as a crime and greater involvement of business associations in promoting changes in business behavior.

According to the Swiss experts, there is a strong need for action in terms of educating and institutionalizing the fight against corruption. As the study conducted by economiesuisse and

TI-Switzerland has shown, only 24 % of companies surveyed have reacted to a changed legal environment. Only 12% of companies surveyed have introduced a Compliance Officer or an internal control system. These companies are the large Swiss multinationals that preside over greater personnel and financial resources. A considerable number of small and medium-sized Swiss companies do not consider bribery a serious matter and make no effort to implement anti-bribery programs.

In the US, the Department of Justice and the Department of Commerce have issued publications on the Foreign Corrupt Practices Act and there have been some public advisories resulting from the Advisory Opinion Procedures. However, the US expert recommends that the US Government issue additional public guidelines to assist businesses in complying with the Foreign Corrupt Practices Act, and equip them with risk management tools, useful for structuring international transactions. The US expert also reports that while there is widespread use of compliance programs among large multinational companies, their use by small and medium-sized companies needs to be expanded.

E. Accounting and Auditing Requirements

TI's experts were asked to assess accounting and auditing requirements to prevent practices for hiding foreign bribery, such as prohibition of off-the-books accounts.

TI experts in **seven** countries believe that substantial improvements are needed in accounting and auditing requirements to prevent the concealment of foreign bribery: Argentina, Canada, Germany, Italy, Korea, Mexico and the Netherlands.

TI experts in **ten** countries believe that accounting and auditing requirements may need to be strengthened: Belgium, Czech Republic, Greece, Japan, New Zealand, Norway, Slovak Republic, Spain, Switzerland and the UK.

*According to the **Argentine** expert, Argentine accounting and auditing laws comply with the Convention. However, she notes that the accounting and auditing problems in Argentina are not related to the lack of legislation but to the lack of application of such legislation.*

*The **Canadian** report notes that there is no clear prohibition in Canada relating to off-the-books accounts. The Canadian Institute of Chartered Accountants has recommended that federal and provincial legislation on incorporation address more specifically books and records requirements for all Canadian companies, including foreign subsidiaries.*

*The **Czech** expert points out that, in the Czech Republic, auditors are obliged by law to report irregularities to the companies' governance body, but they are not obliged by law to report the findings to law enforcement authorities as well.*

*The **French** expert explains that the recent legislation on financial security has increased the already stringent obligations of auditors and considers the French accounting and auditing requirements strong.*

*The **Korean** experts' evaluation of accounting and auditing standards as needing substantial improvement is supported by the OECD Working Group Phase 2 report which recommends that Korea consider increasing the penalties for false accounting so that they are effective, proportionate and dissuasive.*

The experts in New Zealand comment that the general legal framework for accounting prohibits keeping off-the-books-accounts and other relevant practices that might be used to disguise payment of bribes. However, there appears to have been no publicity within the accounting or auditing profession in New Zealand concerning the criminalization of foreign bribery, which would make these prohibitions more effective. The experts recommend such publicity.

The Norwegian expert lists accounting and auditing requirements as an area needing improvement, which coincides with the commentary in the OECD Working Group Phase 2 report. The OECD report notes that more awareness-raising is needed among accounting professionals and that more stringent detection regulations and practices could be introduced.

Concluding Note and Acknowledgements

The information and perceptions provided by TI experts regarding OECD Convention enforcement in their countries indicate that there has been considerable progress towards enforcement, but that levels of enforcement vary between individual countries. Nine countries have no enforcement, only four have seen more than one case of enforcement and there is a need for some improvement all countries. It is our hope that this report helps identify common issues and encourages improvement of enforcement in individual countries. Our recommendations propose specific steps that governments, the OECD and civil society can take to increase enforcement. We encourage the OECD Working Group on Bribery to continue their monitoring work in this area and to maintain the involvement of civil society. We hope that they will see this Progress Report as a contribution to their work

We want to express our appreciation to the many individuals who contributed to this first TI Progress Report on Enforcement of the OECD Convention. This includes the experts from twenty-four TI national chapters, listed in Appendix B, who responded to our Questionnaire. They provided the information, assessments and observations on which this report is based. They consulted with government representatives and many others in their countries.

We also want to express our gratitude to the OECD Working Group on Bribery which invited us to present a draft of this report for their comments. The final text has been considerably strengthened as a result of the comments and criticisms we received from the Working Group.

In the coming months, TI will conduct a review of the methodology and other aspects of the Progress report, in preparation for conducting future reports on OECD enforcement. We welcome suggestions from all those who participated in the preparation of this report, and from other interested organizations and individuals. Suggestions for future reports can be submitted via email to Gillian Dell (gdell@transparency.org).

Fritz Heimann
Gillian Dell
Agnes Sng-Sachsenroeder
Nicole Whittier

7 March 2005

TI Progress Report on OECD Convention Enforcement

APPENDIX A**FOREIGN BRIBERY CASES AND INVESTIGATIONS
as of 28 February 2005**

	Countries	Entry into force of Implementing Legislation	Cases	Investigations
1	Argentina	10 November 1999	0	0
2	Australia	17 December 1999	0	0
3	Belgium	3 April 1999	1*	3
4	Canada	14 February 1999	1	3
5	Czech Republic	9 June 1999	0	0
6	Denmark	1 May 2000	0	3
7	Finland	1 January 1999	0	1
8	France	29 September 2000	3*	1
9	Germany	15 February 1999	1	12
10	Greece	1 December 1998	0	0
11	Italy	26 October 2000	1	1
12	Japan	15 February 1999	0	0
13	Korea	15 February 1999	3	0
14	Mexico	18 May 1999	0	1
15	Netherlands	1 February 2001	0	0
16	New Zealand	3 May 2001	0	0
17	Norway	1 January 1999	1	2
18	Poland	4 February 2001	0	0
19	Slovak Republic	1 November 1999	0	0
20	Spain	2 February 2000	2	0
21	Sweden	1 July 1999	1	1
22	Switzerland	1 May 2000	1*	2**
23	UK	14 February 2002	0	4***
24	US	10 November 1998	35****	17

*This number was provided by government sources but without case details. The number may include confidential proceedings being conducted by investigative judges

**Switzerland has referred a number of cases to other countries for action

*** In addition, there are or have been numerous preliminary or scoping enquiries

****This number includes 20 criminal cases and 15 civil actions

TI Progress Report on OECD Convention Enforcement

APPENDIX B- List of Experts from TI National Chapters

COUNTRY	EXPERTS
Argentina	<p>Nicolás Dassen Legal Advisor of Representative Marcela Rodríguez at the National Judicial Council</p> <p>Note: Some inputs were provided by Virginia Lencina, Coordinator of Action with Private Sector Area, Fundación Poder Ciudadano, Law Degree, University of Buenos Aires</p>
Australia	<p>Jane Ellis Lawyer; Director TI-Australia</p>
Belgium	<p>Francois Vincke Lawyer, Willkie Farr & Gallagher LLP Chairman, ICC Commission on Anti-corruption Manager, TI-Belgium</p>
Canada	<p>Michael N. Davies, Q.C. Lawyer; Member of Board of Directors, TI-Canada</p>
Czech Republic	<p>Ondrej Knot Analyst for Prime Minister for Economic Affairs Ph.D. Candidate at the Centre for Economic Research-Economic Institute (CERGE-EI) M.A Economics, Charles University, Prague Law Degree, Charles University, Prague External Expert, TI-Czech Republic</p>
Denmark	<p>Ole Richter Head of Administration, Helsinki Komiteen, Copenhagen Law Degree, University of Copenhagen Member of Board of Directors, TI-Denmark</p> <p>Jens Berthelsen Director Respect Europe Member of the BIAC working group on anti-corruption since 1996 Chairman of BIAC Task Force on the Environment and Export Credits Adviser to several governments on anti-corruption issues. Author of "Avoid corruption: A business manual" Member of TI-Denmark</p>
Finland	<p>Antti Pihlajamäki Chief District Prosecutor of Turku District GRECO Evaluator Legislative Counsellor in the Ministry of Justice Former member of the OECD Working Group on Bribery (1997 - 2001) Vice-President, TI-Finland</p>
France	<p>Jacques Terray, Lic. And L.L.M Former partner of Gide Loyrette Nouel law firm Vice-chair, TI-France</p> <p>Philippe Fontana Lawyer; member of TI-France</p>
Germany	<p>Dr. Michael Wiehen Long-time executive of the World Bank, Attorney 1996-2003 Member of Board of Directors, TI-Germany</p> <p>Jan Richter Legal trainee, State Government of Hamburg; doctoral student Member of TI-Germany</p>
Greece	<p>Dr. Angelos Syrigos Lawyer; Vice President, TI-Greece</p> <p>Markella Samara Lawyer; member of TI-Greece.</p>

Italy	<p>Anna Marra Lawyer; Project Officer, TI-Italy Law Degree with Honors, Università degli Studi di Milano M.A International Affairs, ISPI Bocconi</p>
Japan	<p>Prof. Toru Umeda Professor of International Law Deputy Director, Business Ethics and Compliance Research Centre, Reitaku University</p>
Korea	<p>Prof. Hyoung Koo Moon Professor, Korea University Former Vice President, The Korean Academy of Business Ethics Member, Advisory Committee on Business Ethics, Korea Independent Commission Against Corruption Advisor, Committee on Corporate Business Ethics, the Federation of Korean Industries Member, Open Managerial Reform Committee, KEPCO Board Member, TI- South Korea</p> <p>Kim Geo-Sung Secretary General, TI-South Korea Member of TI Board of Directors Advisor, Committee on Corporate Business Ethics, the Federation of Korean Industries Member, Policy Committee, Korea Independent Commission Against Corruption Member, Open Managerial Reform Committee, KEPCO Member, Committee for Citizen Audit Requests Review, Ministry of Government Administration and Home Affairs Member, Committee for Reforming Defence Acquisition System for the PM Member, Clean Procurement Committee, Public Procurement Service</p>
Mexico	<p>Dr. Alejandro Posadas Professor of Law, CIDE Law School in Mexico City External Consultant, Thomas & Partners, Barristers & Solicitors, Canada Member of the Bar in the State of New York, USA SJD and LL.M Duke University School of Law Law Degree, Universidad Nacional Autónoma de Mexico and Licensed Lawyer in Mexico Senior External Specialist, TI-Mexico</p>
Netherlands	<p>Prof. Hans de Doelder Professor in the Faculty of Law, Erasmus University, Rotterdam Specialist in Criminal Law Chairman, TI-Netherlands</p> <p>Paul Verloop Researcher in the Faculty of Law, Erasmus University, Rotterdam Secretary, TI-Netherlands</p>
New Zealand	<p>Hugh Templeton Deputy Chair, TI-New Zealand Director of Lombard Financial Services Vice President of the NZ Institute of International Affairs Formerly Cabinet Minister in Senior Portfolios, mainly Economic outreach, including Trade and Industry</p> <p>Murray Petrie Principal of the Economics and Strategy Group, New Zealand Member of the Panel of Fiscal Experts, IMF Author of numerous publications on fiscal transparency Former Advisor to the Executive Director of the IMF Executive Officer, TI-New Zealand</p>
Norway	<p>Jan Borgen Secretary-General, TI-Norway Lawyer-specialized in International Public Law M.A Law, University of Oslo, Law Faculty Former Visiting Scholar at Boalt Hall School of Law, University of California</p>

Poland	<p>Anna Urbanska Director of Human resources, LexisNexis Poland M.A Sociology, Warsaw University PhD Candidate, Warsaw University Member of Board of Directors, TI-Poland</p> <p>Julia Pitera Commentator for the Polish Edition of “Newsweek” and “Wspolnota,” the local government’s weekly Member of the Greater Warsaw City Council Founder and Member of the Board, Institute for Citizen Education and Promotion of Women Published several articles on corruption Former Member of the Public Administration’s Reform Office in the Office of the Council of the Ministers Chair of Board of Directors, TI-Poland</p>
Slovak Republic	<p>Branislav Pavlovic Research Assistant, TI-Slovakia M.A Political Science, Charles University, Prague. PhD Candidate Public and Social Policy, Charles University.</p> <p>Prof. Emilia Sicakova Professor in the Faculty of Political Science, Comenius University Ph.D. University of Economics in Bratislava, Faculty of International Relations 2003 Yale World Fellow President, TI-Slovakia</p>
Spain	<p>Manuel Villoria Professor of Political Science University Rey Juan Carlos Former Civil Servant for Ministry of Interior and Government of Madrid Bachelor of Law, Complutense University of Madrid PhD Political Science and Sociology, Complutense University of Madrid Former Fulbright Scholar, M.A Public Affairs, Indiana University</p>
Sweden	<p>Birgitta Johansson Former Head of Department for Democracy and Social Development, Swedish International Development Cooperation Agency Former Ambassador to Hanoi and Maputo B.A Law, University of Lund, Sweden TI-Sweden</p>
Switzerland	<p>Anne Schwöbel Managing Director, TI-Switzerland M.A Law, University of Geneva Executive MBA, University of St. Gallen</p> <p>Philippe Lévy President, TI-Switzerland Member of the Board, Werner Schiesser</p>
UK	<p>Graham Rodmell Director of Corporate and Regulatory Affairs of TI -UK Solicitor (not practising) Formerly partner with Simmons and Simmons Former General Counsel of CDC (the UK government's bilateral development finance institution)</p>
US	<p>Lucinda A. Low Lawyer, Miller & Chevalier Chartered Member of the Executive Council of the Inter-American Bar Association Resident Member of the Washington Institute of Foreign Affairs Former Chair, the Section of International Law and Practice, American Bar Association Member of Board of Directors, TI-USA</p> <p>Martin Weinstein Lawyer, Wilkie Farr & Gallagher</p> <p>Margaret Ayres Lawyer, Davis Polk Wardwell</p>



APPENDIX C

TI Report Card on Enforcement of OECD Convention

Questionnaire for TI National Chapters in OECD Signatory States

7.7.04

Questionnaire for: (Name of national chapter)

Date:

I. Current Status of Enforcement

A. Prosecutions brought

Please list all cases involving allegations of bribery of foreign public officials brought by prosecutors in your country since the OECD Convention became effective in your country. The list should cover as far as possible all cases relating to bribery of foreign public officials, whether brought under laws dealing with corruption, or under other laws, such as laws dealing with fraud, money laundering, and tax evasion or accounting violations.

Total number of cases: ____

For each case please list if possible the following:

- (1) Name of case, including principal parties
- (2) Date and court where filed
- (3) Summary of principal charges, including name of the country whose officials were allegedly bribed
- (4) Penalties or other sanctions sought
- (5) If case concluded, please indicate disposition: conviction, settlement, dismissal or other disposition. If case pending, please indicate current status, including trial or appeal dates if known.

Comments and sources, if possible:

B. Investigations under way

Please provide available information on government investigations of allegations of bribery of foreign public officials which were commenced since the OECD Convention became effective in your country.

If information unavailable, please indicate: _____

Total number of known investigations: ____

For each investigation, where possible, please list the following:

- (1) Names of parties
- (2) Date when investigation started
- (3) Name of country whose officials were allegedly bribed
- (4) Current status, including likelihood case will be brought

Comments and sources, if possible:

C. Serious allegations

Please provide information about serious allegations of foreign bribery by companies or individuals based in your country, that (a) have been published in reputable international or domestic publications since the OECD Convention became effective in your country, and (b) with respect to which, as far as you know, no investigation or prosecution has been undertaken.

Total number of serious allegations: ____

For each matter, where available, please list the following:

- (1) Names of companies and/or individuals involved
- (2) Date of publication:
- (3) Nature of allegations
- (4) Name of country whose officials were allegedly bribed

Comments and sources, if possible:

II. Actions to Promote Enforcement

A. Government Commitment to Enforcement

How would you assess your government's commitment to enforcing foreign bribery laws?

Please choose one of the following:

1	2	3	4
<i>Very Weak</i>	<i>Weak</i>	<i>Moderate</i>	<i>Strong</i>

Comments and sources, if possible:

B. Organization of Enforcement

1. Does the government have a centralized national office for foreign bribery enforcement?

Yes___ No___

2. If enforcement is not centralized, what level of coordination and supervision does the government provide for foreign bribery enforcement?

Please choose one of the following:

1	2	3	4
<i>Very Weak</i>	<i>weak</i>	<i>Moderate</i>	<i>Strong</i>

Comments and sources, if possible:

C. Available Resources

How would you assess your government's provision of staffing and resources for foreign bribery enforcement?

Please choose one of the following:

1	2	3	4
<i>Very Weak</i>	<i>Weak</i>	<i>Moderate</i>	<i>Strong</i>

Comments and sources, if possible:

D. Complaint Procedure

How would you assess your government's efforts to provide and publicize procedures for reporting foreign bribery complaints, such as hotlines and websites?

Please choose one of the following:

1	2	3	4
<i>Very Weak</i>	<i>Weak</i>	<i>Moderate</i>	<i>Strong</i>

Comments and sources, if possible:

E. Whistleblower Protection

How would you assess the level of whistleblower protection for foreign bribery complaints?

Please choose one of the following:

1	2	3	4
<i>Very Weak</i>	<i>Weak</i>	<i>Moderate</i>	<i>Strong</i>

Comments and sources, if possible:

F. Public Awareness

How would you assess your government's efforts to create public awareness that foreign bribery has become a crime?

Please choose one of the following:

1	2	3	4
<i>Very Weak</i>	<i>Weak</i>	<i>Moderate</i>	<i>Strong</i>

Comments and sources, if possible:

G. Accounting and Auditing Requirements

How would you assess accounting and auditing requirements intended to prevent practices for hiding foreign bribery (such as the prohibition of off-the-books account or the use of other practices for hiding foreign bribery)?

Please choose one of the following:

1	2	3	4
<i>Very Weak</i>	<i>Weak</i>	<i>Moderate</i>	<i>Strong</i>

Comments and sources, if possible:

H. Private Sector Efforts

How would you assess the use of corporate anti-bribery compliance programmes in your country?

Please choose one of the following:

1	2	3	4
<i>Very Weak</i>	<i>Weak</i>	<i>Moderate</i>	<i>Strong</i>

Comments and sources, if possible:

I. Statutory and Other Legal Obstacles

1. Are there significant inadequacies in the legal framework for foreign bribery prosecutions in your country?

Yes _____ No _____

2. If so, please indicate if these include:

- Short statutes of limitation: Yes _____ No _____
- Jurisdictional limitations: Yes _____ No _____
- Restrictive dual criminality requirements: Yes _____ No _____
- Lack of criminal liability for corporations: Yes _____ No _____
- Other, please indicate: _____

Comments and sources, if possible:

J. Actions Needed in Your Country

Please list, in order of importance, the most important actions the government in your country should take to promote enforcement and compliance. Please consider the actions listed above, but feel free to add other actions.

1. _____
2. _____
3. _____
4. _____
5. _____

III. Current and Anticipated Level of Enforcement

1. How would you assess the current level of foreign bribery enforcement in your country?

Please choose one of the following:

1	2	3	4
<i>Very Weak</i>	<i>Weak</i>	<i>Moderate</i>	<i>Strong</i>

2. How do you expect your government's enforcement of foreign bribery to change in the coming three years?

Please choose one of the following:

1	2	3
<i>Decreasing Enforcement</i>	<i>No change</i>	<i>Increasing enforcement</i>

Comments and sources, if possible:

Report prepared by :

_____ (signature)

Name of respondent:

Affiliation:

Professional experience:

Appendix

List of persons consulted (with affiliation), if possible:

Inclusion of this information is not required, but would be helpful.

List of references and sources used in responding to this questionnaire

Inclusion of this information is not required, but would be extremely beneficial in helping us to build a database that could be of use to TI-S and other National Chapters.

Guidelines for Responding to TI Report Card Questionnaire On OECD Convention Enforcement

The information below is intended to explain the purpose of individual questions and to provide relevant background. We have not provided explanations for questions which seem self-explanatory. If additional information would be useful, please contact Gillian Dell by e-mail at: gdell@transparency.org

I. Current Status of Enforcement

- A. Prosecutions brought: Our interest is in prosecutions alleging bribery of foreign officials. Such prosecutions are most likely to be brought under the law prohibiting foreign bribery. In some countries foreign bribery cases might also be brought under other laws, such as laws dealing with fraud, money laundering, tax evasion, and accounting violations: if possible also include such cases.
- B. Investigations under way: We recognize that practices regarding disclosure of investigations vary considerably, and that you may not be able to obtain the requested information. In some countries it may be possible to obtain information on the number of cases under investigations, but not the names of companies or individuals under investigations. Often information regarding major investigations becomes available through the media, even if not directly from prosecutors. Investigations reported in response to this question should not include investigations that have resulted in prosecutions reported under the previous question.
- C. Serious Allegations: The purpose of this question is to determine whether governments have failed to investigate or prosecute serious allegations of foreign bribery. By “serious allegations” we mean allegations that have been reported in reputable publications or other media (important newspapers in your country or in prominent international publications, such as the Financial Times, the Wall Street Journal, or the Economist), not rumors or gossip. Please report those allegations that in your judgment appear sufficiently serious to justify investigation by law enforcement officials.

II. Actions to Promote Enforcement

- A. Government Commitment to Enforcement: The purpose of this question is to determine whether government leaders have conveyed a clear message that foreign bribery will no longer be tolerated. In some countries the message has been ambivalent or even negative. The clearest message is conveyed by bringing foreign bribery cases against prominent companies. Other examples of government commitment to enforcement include (1) the establishment of an office to investigate and prosecute foreign bribery, or (2) public statements by government leaders or senior law enforcement officials addressed to business groups, bar associations and similar groups.
- B. Organization of Enforcement: Foreign bribery cases are complex, time-consuming and require trained lawyers, investigators and forensic accountants. Prosecutors may be reluctant to bring foreign bribery cases because they have limited staffs and a large backlog of domestic cases. The reluctance to bring foreign bribery cases will be even greater where responsibility for investigation and prosecution is left to regional or local offices. To overcome such obstacles, some governments have assigned responsibility for foreign bribery cases to a specialized office. Where responsibility for foreign bribery enforcement is not centralized, another option for governments is to take steps to supervise and coordinate foreign bribery enforcement by decentralized offices.
- C. Available Resources: Foreign bribery cases require experienced staffs including investigators, forensic accountants and prosecutors. Substantial funding will be needed because foreign bribery cases generally take years to complete, as evidence must be obtained not only from the country whose officials were allegedly bribed, but also from other countries through whose banks funds were laundered and ultimately deposited. In this question we seek your perception of the

adequacy of staffing and funding. Where a centralized office for foreign bribery enforcement has been established, some factual data may be obtainable. Where foreign bribery enforcement is handled by offices with broader responsibility, the resources available for foreign bribery enforcement may not be quantifiable, but would depend on the managerial discretion of the heads of the various offices, i.e. how much of their total resources are likely to be assigned to foreign bribery cases. Any useful information indicating the basis for your response is also requested.

- E. Whistleblower Protection. This refers to whistleblower protection available to persons reporting foreign bribery complaints to your government under the complaint procedure referred to under Section D above. Such protection could be specifically provided under the complaint procedure for foreign bribery. Whistleblower protection could also be available under rules of broader scope providing protection to persons reporting violations of laws and regulations to your government.
- F. Public Awareness: Target audiences for awareness-raising that foreign bribery is a crime include: (a) companies engaged in international trade; (b) lawyers, bankers and accountants working with companies engaged in international trade; (c) the media; and (d) civil society groups interested in monitoring corruption and business ethics.
- G. Accounting and Auditing Requirements: Such accounting and auditing requirements could be provided under the law prohibiting foreign bribery, under laws and regulations covering corporate reporting and disclosure, or under professional standards published by accounting and auditing organizations. Information should be obtainable from accounting and auditing firms in your country.
- H. Private Sector Efforts: This refers to the adoption by companies in your country of corporate compliance programs that specifically prohibit foreign bribery. Anti-bribery compliance programs should be differentiated from corporate ethics policies that do not call for specific action to prevent foreign bribery. Information on the use of anti-bribery compliance programs should be obtainable from business organizations such as chambers of commerce. The extent to which companies have adopted anti-bribery compliance programs is a good indicator of business community belief that the prohibition of foreign bribery will be enforced.
- I. Statutory and Other Legal Obstacles. This refers to obstacles to foreign bribery enforcement resulting from restrictive statutory provisions or court decisions. The four most common obstacles are discussed below. Feel free to identify others that you consider important.
 - a. Statutes of Limitation: Because bribery is always conducted in secrecy, statutes of limitations can be a serious obstacle to foreign bribery enforcement. Statutes of limitation are particularly problematic if they begin to run from the time the bribery occurred, instead of from the time of discovery of the bribery. Adequate statutes of limitation do not begin to run until at least three years from the time of discovery or ten years from the occurrence of the bribery.
 - b. Jurisdictional Limitations: Jurisdictional limitations are not obstacles to enforcement if (1) the territorial basis for jurisdiction is applied broadly so that even limited physical connection between the foreign bribery and your country is sufficient to permit your courts to accept jurisdiction; and (2) nationality jurisdiction applies i.e. bribery acts of nationals of your country should be covered even when performed abroad.
 - c. Dual Criminality Requirements: Dual criminality requirements are not considered an obstacle if the bribe is unlawful in your country and in the country where it occurred. Dual criminality requirements would represent an obstacle to foreign bribery enforcement if any differences in statutory provisions prevent your courts from taking action.
 - d. Corporate liability: The prohibition of foreign bribery can be more effectively enforced, if corporations can be prosecuted; and not merely individual officers, directors and employees. Most OECD countries have adopted corporate liability. However, there are some countries that have not yet done so.
- J. Actions Needed in Your Country: This section seeks to determine priorities for action. Please list three to five top priorities, which could include but need not be limited to those listed in II. A to I,

above. We are particularly interested in learning whether the same actions are identified as top priorities by a majority of NCs.