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the global coalition against corruption

EXPORTING CORRUPTION

Progress report 2018: Assessing enforcement of the OECD Anti-Bribery Convention

Transparency International is a global movement with one vision: a world in which government, business, civil society and the daily lives of people are free of corruption. With more than 100 chapters worldwide and an international secretariat in Berlin, we are leading the fight against corruption to turn this vision into reality.

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This report was produced by the Transparency International Secretariat as part of a project funded by the Siemens Integrity Initiative.

Thanks and appreciation to Fritz Heimann who initiated this report and collaborated on the first eleven editions.

ISBN of full report: 978-3-96076-097-9

Please note that the following corrections were made in October 2018 to the original report:

Pages 10 and 11: The United States' investigations commenced in 2017 score was changed from 4 to 45, and its total score was changed from 858 to 899.

We apologise for these errors.

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KEY FINDINGS

Only about a quarter of world exports come from countries with active law enforcement against companies bribing abroad.

22 Countries with little or no enforcement

11 Countries with only limited enforcement

Enforcement levels

Countries listed in order of their share of world exports

Active Enforcement
7 countries with
27% of global exports

United States, Germany, United Kingdom, Italy, Switzerland, Norway, Israel

Moderate Enforcement
4 countries with
3.8% global exports

Australia, Sweden, Brazil, Portugal

Limited Enforcement
11 countries with
12.3% global exports

France, Netherlands, Canada, Austria, Hungary, South Africa, Chile, Greece, Argentina, New Zealand, Lithuania

Little or No Enforcement
22 countries with
39.6% global exports

China, Japan, South Korea, Hong Kong, Singapore, India, Spain, Mexico, Russia, Belgium, Ireland, Poland, Turkey, Denmark, Czech Republic, Luxembourg, Slovakia, Finland, Colombia, Slovenia, Bulgaria, Estonia

Costa Rica, Iceland and Latvia could not be classified, as their very low shares in world exports do not permit distinctions between the enforcement categories. Peru became party to the Convention in July 2018, too recently for inclusion in this report.

FIGURE 1: Changes in Enforcement Levels: 2015 – 2018

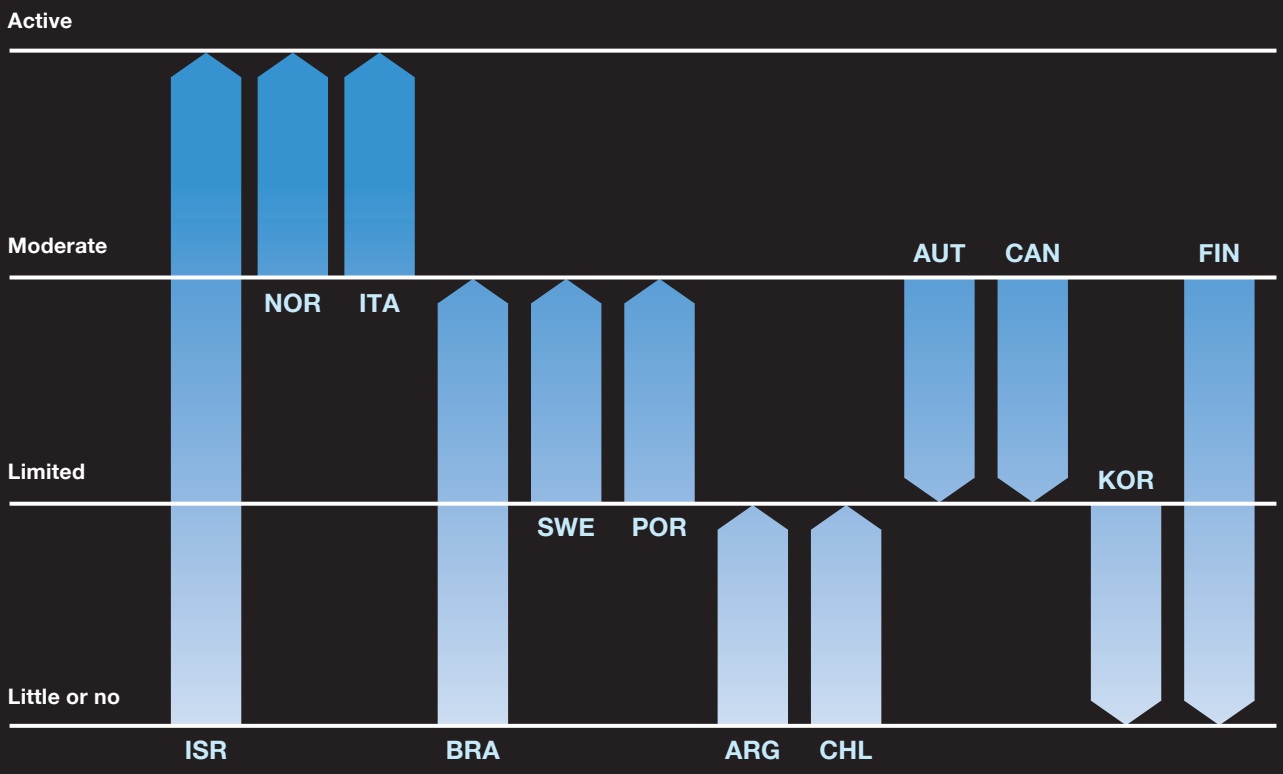
8 Countries have improved:

Israel, Norway, Italy, Brazil, Sweden, Portugal, Argentina, Chile

4 Countries have regressed:

Austria, Canada, Korea, Finland

Countries not shown in this chart have the same level of enforcement as in the previous 2015 report.



Classifications

The enforcement categories (Active, Moderate, Limited, Little or No) show the level of enforcement efforts against foreign bribery. A country that is an "Active enforcer" initiates many investigations into foreign bribery offences; these investigations reach the courts; the authorities press charges and courts convict individuals and/or companies both in ordinary cases and in major cases in which bribers are convicted and receive substantial sanctions.

"Moderate Enforcement" and "Limited Enforcement" indicate stages of progress, but are considered insufficient deterrence. Where there is "Little or No Enforcement", there is no deterrence. More details on the methodology can be found in Section II.

EXECUTIVE SUMMARY

Transparency International's 2018 Progress Report is an independent assessment of the enforcement of the Organisation for Economic Co-operation and Development (OECD) Anti-Bribery Convention, which requires parties to criminalise bribery of foreign public officials and introduce related measures. The Convention is a key instrument for curbing global corruption because the 44 signatory countries are responsible for approximately 65 per cent of world exports[1] and more than 75 per cent of total foreign direct investment outflows.[2] This twelfth such report also assesses enforcement in China, Hong Kong Special Administrative Region of the People's Republic of China,[3] India and Singapore, which are not parties[4] to the OECD Convention but are major exporters, accounting for 18 per cent of world exports. Hong Kong is covered separately in the report, as it is an autonomous territory, with a different legal system from China and export data compiled separately. The report has been prepared by Transparency International, with contributions from our national chapters and experts in 41 OECD Convention countries, as well as in China, Hong Kong SAR, India and Singapore.

Just over 20 years since the Convention was adopted, its multilateral approach to international corruption is needed now more than ever. World merchandise trade more than quadrupled in volume between 1980 and 2011,[5] while competition for markets has intensified. This has increased the risk of cross-border bribery and corruption, which has enormous negative consequences for people in affected countries, by threatening foreign investment, diverting resources and undermining the rule of law. Developed countries in particular have both a self-interest and an obligation to tackle the problem. Top priority should be directed to cases of grand corruption involving politicians and senior public officials, which have serious corrosive political and societal consequences and block achievement of the UN Sustainable Development Goals.

Based on enforcement data, the report classifies countries into four enforcement levels (Active, Moderate, Limited and Little/No). Disappointingly, there has been little change in the overall enforcement level (taking the share of world exports into account) since the last report in 2015. The number of countries in the top two levels has increased by only one, and these nations account for roughly the same share of world exports as in 2015.[6] This apparent standstill means the Convention's fundamental goal of creating a corruption-free level playing field for global trade is still far from being achieved, due to insufficient enforcement.

There have been improvements in eight countries, with three (**Israel**, **Italy** and **Norway**) moving into the Active category, three (**Brazil**, **Portugal and Sweden**) joining the Moderate category and two (**Argentina** and **Chile**) entering the Limited category. The two biggest improvers are Israel (from Little or No Enforcement to Active Enforcement) and Brazil (from Little or No Enforcement to Moderate Enforcement). Taken together, these countries account for 7.1 per cent of world exports. There are now seven countries in the Active category accounting for 27 per cent of world exports, up from four countries in 2015 accounting for 22.8 per cent of world exports.

However, this is offset by four countries – **Austria**, **Canada**, **Finland** and **South Korea** – accounting for 6.7 per cent of world exports, with declining levels of enforcement, with the biggest deterioration in Finland.

In this 2018 report, **China**, **Hong Kong**, **India** and **Singapore** – all with 2 per cent or more of world exports, but not parties to the OECD Convention – are classified for the first time and all fall into the lowest level (Little or No Enforcement). This poor performance argues for these countries' accession to the OECD Anti-Bribery Convention.

The report contains enforcement and case information from multiple and varied sources. Where possible it draws on information published or made available by

country enforcement authorities. Where not possible, it collects information from OECD reports and other public sources, including media reports. For most countries, Transparency International's experts reported inadequate public statistical information and insufficient access to case law, a major deficiency which needs to be remedied.

The report's snapshots of each country's legal framework and enforcement system give some of the reasons for inadequate performance. While many countries show notable improvements, most still have significant deficiencies that impede enforcement and should be promptly addressed. These include insufficient resources and skills in enforcement agencies, weak whistleblower protection and inadequacies in mutual legal assistance. In an increasingly interdependent world, mutual legal assistance and other forms of international cooperation are key and require priority attention from OECD Convention parties.

These challenges are also highlighted in five case studies covering some of the world's most complex cross-border grand corruption cases, concerning Airbus, Odebrecht, Rio Tinto, SBM Offshore and Sinopec.

Based on our research findings, we make country-specific recommendations in each country report. In addition, key overall recommendations are as follows:

- **Countries party to the Convention and other major exporters should scale up their foreign bribery enforcement.**
  - » They should address weaknesses in their legal frameworks and enforcement systems, and give priority to foreign bribery enforcement, as well as enforcement against related money laundering offences, and tax and accounting violations.
  - » They should strengthen anti-money laundering systems to help detection of foreign bribery; this should include creation of public registers of beneficial ownership.
  - » Those whose performance has deteriorated over the past four years should review and address underlying causes.
- **Countries party to the Convention and other major exporters should ensure that settlements in bribery cases meet adequate standards of transparency, accountability and due process.**[7]
  - » Settlement agreements should be made public – including their terms and justification, the facts of the case and the resulting offences. They should be subject to meaningful judicial review and provide for effective sanctions.
  - » Settlement procedures should involve countries and groups affected by the foreign bribery and as far as possible include compensation as part of the settlement agreement.
  - » The OECD Working Group on Bribery (WGB) should develop guidance in this area.
- **The OECD WGB should make public its dissatisfaction when countries party to the Convention fail to enforce against foreign bribery, related money laundering offences and false accounting violations.**
  - » The WGB should disseminate widely an annual list of countries that have failed to produce meaningful enforcement results in the last 3-4 years, and an annual summary of leading WGB recommendations that Convention parties have failed to comply with.
  - » The WGB should also publish an annual list of countries that have taken significant steps to improve enforcement.
- **Countries party to the Convention and other major exporters should publish up-to-date data and case information; the OECD WGB should provide guidance and create a database to house such information.**
  - » Parties to the Convention and other major exporters should publish annual statistics for each stage of the foreign bribery enforcement process (investigations, cases opened and cases concluded) in line with the data required in the Phase 4 questionnaire,[8] as well as on related offences and mutual legal assistance.
  - » The OECD WGB should carry out a horizontal assessment of accessibility of data and case information across all countries party to the Convention, develop guidance and provide technical assistance. The OECD should

also create an open database of statistical data and case information.

- **Countries party to the Convention, other major exporters and the OECD WGB should increase efforts to improve mutual legal assistance, in cooperation with other relevant anti-corruption review bodies.**
  - » Parties and other major exporters should ensure adequate resources, training and guidance, and reasonable response rates. They should also increase the use of joint investigation teams. The dual criminality requirement[9] for mutual legal assistance should be interpreted broadly.
  - » The OECD WGB should carry out a horizontal assessment of mutual legal assistance performance across all parties, and work with other anti-corruption review bodies to develop guidance materials and foster exchange of experience at meetings of representatives.
- **China, Hong Kong, India and Singapore should enforce against foreign bribery and accede to the OECD Anti-Bribery Convention. The OECD WGB should continue to encourage them to do so.**
  - » China, Hong Kong and India should initiate enforcement against foreign bribery and related offences in line with their obligations under the UN Convention against Corruption, and Singapore should increase enforcement.
  - » These countries should publish data on enforcement results and information on case resolutions.
  - » They should, like other major exporters, become party to the OECD Convention and participate in OECD WGB reviews.
  - » The OECD WGB should increase its efforts to persuade China, Hong Kong, India and Singapore to become parties to the OECD Anti-Bribery Convention, including efforts within the G20.

KEY ELEMENTS OF THE REPORT'S CLASSIFICATION SYSTEM[10]

- Four enforcement categories: "Active", "Moderate", "Limited" and "Little or No" Enforcement.
- Countries are scored based on enforcement performance at different stages, i.e. number of investigations commenced, cases opened (charges filed), and cases concluded with sanctions over a four-year period (2014-2017).
- Different weights are assigned according to the stages of enforcement and the significance of cases.
- Countries are categorised based on their share of world exports.

I. GLOBAL FINDINGS AND RECOMMENDATIONS

Just over 20 years after adoption of the OECD Anti-Bribery Convention, in an interdependent world in which trade is steadily growing, it is worth remembering the first lines of the Preamble of the Convention:

- ***Considering*** **that bribery is a widespread phenomenon in international business transactions, including trade and investment, which raises serious moral and political concerns, undermines good governance and economic development, and distorts international competitive conditions;**

- ***Considering*** **that all countries share a responsibility to combat bribery in international business transactions ...**

This is a time for renewed commitment to the Convention and the values and goals it embodies.

This report is an independent assessment of the status of enforcement of the OECD Anti-Bribery Convention in 41 of its 44 parties. It also assesses enforcement in China, Hong Kong SAR[11], India and Singapore because they are major exporters, each with a share of world trade of over 2 per cent. All of them, in particular China, are vital to successful collective action against foreign bribery. They are also bound by similar provisions on criminalisation and enforcement against foreign bribery under the UN Convention against Corruption (UNCAC). Hong Kong is covered separately from China in the report, as it is an autonomous territory, with a different legal system and its export data is compiled separately.

The report has six sections:

Section I presents an overview table reflecting the status of enforcement in 40 of the 44 parties to the Convention,[12] plus China, Hong Kong, India and Singapore. Although they are parties to the OECD Convention, Costa Rica, Iceland and Latvia are not classified as their share of world exports is too small to make this possible – see the methodology for further details. Nevertheless, as a new party to the Convention since 2017, a country report on Costa Rica is included in the report. Peru is not covered in the report, as it became party to Convention in July 2018, too recently for inclusion. In the table, each of the 40 parties plus China, Hong Kong, India and Singapore are placed in one of four enforcement categories (Active, Moderate, Limited, Little or No). "Active Enforcement" is considered a major deterrent to foreign bribery. "Moderate Enforcement" and "Limited Enforcement" indicate stages of progress, but represent insufficient deterrence. Where there is "Little or No Enforcement", there is no deterrent effect on foreign bribery.

Section I also presents key findings across the 41 countries party to the Convention, as well as China, Hong Kong, India and Singapore, on the availability of enforcement data, the quality of mutual legal assistance and the status of the legal framework and enforcement systems. It highlights critical issues, including levels of resources, whistleblower protection, the adequacy of sanctions, settlement arrangements and the extent to which legal persons can be held liable for foreign bribery. The section concludes with global policy recommendations for national governments and the OECD Working Group on Bribery (WGB).

Section II presents detailed country reports for 41 of the countries party to the Convention (excluding Iceland, Latvia and Peru) and Section III covers China, Hong Kong, India and Singapore. Section IV profiles five major foreign bribery cases with global reach arising during the four-year period covered by the report.Replace highlighted text with the following: Section V explains the methodology and Section VI lists country and regional experts who contributed to the report.

TABLE 1: INVESTIGATIONS AND CASES: 2014–2017

	% Share of exports Average 2014-2017*	Investigations commenced (weight of 1)				Major cases commenced (weight of 4)				Other cases commenced (weight of 2)			
		2014	2015	2016	2017	2014	2015	2016	2017	2014	2015	2016	2017
Active Enforcement (7 countries) 27% global exports													
United States	9.8	17	3	8	45	2	0	1	3	2	3	1	1
Germany	7.7	11	13	8	8	1	3	0	1	1	4	3	0
United Kingdom	3.7	6	3	8	19	2	3	1	1	0	1	1	0
Italy	2.7	3	3	11	10	1	0	1	3	7	0	3	1
Switzerland	2.0	27	61	27	/	1	0	0	0	0	0	0	2
Norway	0.7	0	2	0	1	1	0	0	0	1	0	0	0
Israel	0.4	1	6	2	4	0	0	1	0	0	0	0	0
Moderate Enforcement (4 countries) 3.8% global exports													
Australia	1.2	4	4	7	4	0	1	0	1	0	0	0	0
Sweden	1.1	0	4	3	0	0	0	0	2	0	1	0	0
Brazil	1.1	2	3	2	2	1	0	0	0	0	0	0	0
Portugal	0.4	2	2	0	0	0	0	1	0	0	0	0	0
Limited Enforcement (11 countries) 12.3% global exports													
France	3.5	16	8	8	8	0	0	0	1	0	0	0	0
Netherlands	3.1	0	1	3	3	0	0	0	0	0	0	1	1
Canada	2.3	0	0	0	0	2	1	0	0	0	0	1	0
Austria	1.0	0	0	0	0	0	0	0	2	0	0	0	0
Hungary**	0.5	0	2	3	2	0	0	0	0	0	2	2	2
South Africa**	0.5	15	0	0	0	0	0	0	0	0	0	0	0
Chile**	0.4	0	2	2	7	0	0	0	0	0	0	0	0
Greece**	0.3	3	2	0	1	0	0	0	0	1	0	1	0
Argentina**	0.3	0	1	3	5	0	0	0	0	0	0	0	0
New Zealand**	0.2	1	3	2	2	0	0	0	0	0	0	0	0
Lithuania	0.2	0	0	2	0	0	0	0	0	0	0	0	0
Little or No Enforcement (22 countries) 39.6% global exports													
China***	10.8	0	0	0	0	0	0	0	0	0	0	0	0
Japan	3.8	0	0	0	0	1	0	0	0	0	0	0	0
South Korea	3.0	0	0	0	1	0	1	0	0	0	0	0	0
Hong Kong***	2.8	0	0	0	0	0	0	0	0	0	0	0	0
Singapore***	2.3	0	0	0	0	0	0	0	0	0	0	0	0
India***	2.1	0	0	0	0	0	0	0	0	0	0	0	0
Spain	1.9	2	2	1	1	1	0	0	0	0	0	1	0
Mexico	1.9	1	2	0	0	0	0	0	0	0	0	0	0
Russia	1.9	0	0	0	0	0	0	0	0	0	0	0	0
Belgium	1.8	1	0	1	4	0	0	0	0	0	1	0	0
Ireland	1.6	0	0	0	0	0	0	0	0	0	0	0	0
Poland	1.2	0	0	0	0	0	0	0	0	0	0	0	0
Turkey	0.9	0	0	0	0	0	0	0	0	0	0	0	0
Denmark	0.8	0	1	4	1	0	0	0	0	0	0	0	0
Czech Republic	0.7	0	1	0	0	0	0	0	0	0	0	0	0
Luxembourg	0.6	0	0	0	0	0	0	0	0	0	0	0	0
Slovakia	0.4	0	0	0	0	0	0	0	0	0	0	0	0
Finland	0.4	0	0	0	0	0	0	0	0	0	0	0	0
Colombia	0.2	0	0	0	1	0	0	0	0	0	0	0	0
Slovenia	0.2	1	0	0	0	0	0	0	0	0	0	0	0
Bulgaria	0.1	0	0	0	0	0	0	0	0	0	0	0	0
Estonia	0.1	0	0	0	0	0	0	0	0	0	0	0	0

	Major cases concluded with subst. sanctions (weight of 10)				Other cases concluded with sanctions (weight of 4)				Total points	Minimum points required for enforcement levels depending on share of world exports		
	2014	2015	2016	2017	2014	2015	2016	2017	Past 4 years	Active	Moderate	Limited
Active Enforcement (7 countries) 27% global exports												
United States	16	8	30	12	8	7	10	7	**858**	392	196	98
Germany	2	2	1	1	11	12	9	11	**308**	308	154	77
United Kingdom	2	1	2	4	1	0	1	0	**166**	148	74	37
Italy	2	0	1	0	0	1	1	1	**111**	108	54	27
Switzerland	1	0	2	1	4	0	1	2	**191**	80	40	20
Norway	1	0	0	1	1	0	0	0	**33**	28	14	7
Israel	0	0	1	0	0	0	0	0	**27**	16	8	4
Moderate Enforcement (4 countries) 3.8% global exports												
Australia	0	0	0	1	0	0	0	0	**37**	48	24	12
Sweden	0	0	0	0	0	2	0	1	**29**	44	22	11
Brazil	0	0	1	0	0	0	0	0	**23**	44	22	11
Portugal	0	0	0	0	0	0	0	0	**8**	16	8	4
Limited Enforcement (11 countries) 12.3% global exports												
France	0	0	1	0	0	0	0	1	**58**	140	70	35
Netherlands	1	0	1	1	0	0	1	0	**45**	124	62	31
Canada	0	0	0	1	0	0	0	0	**24**	92	46	23
Austria	0	1	0	0	0	0	0	0	**18**	40	20	10
Hungary**	0	0	0	0	0	0	1	0	**23**	20	10	5
South Africa**	0	0	0	0	0	0	0	0	**15**	20	10	5
Chile**	0	0	0	0	0	1	0	0	**15**	16	8	4
Greece**	0	0	0	0	0	0	0	0	**10**	12	6	3
Argentina**	0	0	0	0	0	0	0	0	**9**	12	6	3
New Zealand**	0	0	0	0	0	0	0	0	**8**	8	4	2
Lithuania	0	0	0	0	0	0	0	0	**2**	8	4	2
Little or No Enforcement (22 countries) 39.6% global exports												
China***	0	0	0	0	0	0	0	0	**0**	423	216	108
Japan	0	1	0	0	0	0	0	0	**14**	152	76	38
South Korea	0	0	0	0	5	0	1	0	**29**	120	60	30
Hong Kong***	0	0	0	0	0	0	0	0	**0**	112	56	28
Singapore***	0	0	0	1	0	0	0	0	**10**	92	46	23
India***	0	0	0	0	0	0	0	0	**0**	84	42	21
Spain	0	0	0	0	0	0	0	1	**16**	76	38	19
Mexico	0	0	0	0	0	0	0	0	**3**	76	38	19
Russia	0	0	0	0	0	0	0	0	**0**	76	38	19
Belgium	0	0	0	0	0	1	1	0	**16**	72	36	18
Ireland	0	0	0	0	0	0	0	0	**0**	64	32	16
Poland	0	0	0	0	1	1	0	0	**8**	48	24	12
Turkey	0	0	0	0	0	0	0	0	**0**	36	18	9
Denmark	0	0	0	0	0	0	0	0	**6**	32	16	8
Czech Republic	0	0	0	0	0	0	0	0	**1**	28	14	7
Luxembourg	0	0	0	0	0	0	1	0	**4**	24	12	6
Slovakia	0	0	0	0	0	0	0	0	**0**	16	8	4
Finland	0	0	0	0	0	0	0	0	**0**	16	8	4
Colombia	0	0	0	0	0	0	0	0	**1**	8	4	2
Slovenia	0	0	0	0	0	0	0	0	**1**	8	4	2
Bulgaria	0	0	0	0	0	0	0	0	**0**	4	2	1
Estonia	0	0	0	0	0	0	0	0	**0**	4	2	1

* OECD figures

**Without any major case commenced during the past four years a country does not qualify as being a moderate enforcer, and without a major case with substantial sanctions being concluded in the past four years a country does not qualify as being an active enforcer.

***Non-OECD Convention country. Export data for Hong Kong is the 2014-2016 average

A. STATUS OF ENFORCEMENT

Since the 2015 report, 12 countries have moved to different bands. Eight, accounting for 7.1 per cent of world exports, have improved, while four, accounting for 6.7 per cent of world exports, have deteriorated. The two biggest improvers are Israel (from Little or No Enforcement to Active Enforcement) and Brazil (from Little or No Enforcement to Moderate Enforcement). Israel's increase is due to the successful conclusion of its first ever foreign bribery case (in the form of a settlement) and a significant increase in the number of opened investigations. In Brazil, it is largely due to the successful conclusion of a major foreign bribery case, by means of a settlement. Norway and Italy have moved from Moderate Enforcement to Active Enforcement, while Sweden and Portugal have moved from Limited Enforcement to Moderate Enforcement. For Sweden this is largely due to the successful conclusion of three prosecutions since 2014, while for Portugal it comes thanks to the opening of a number of investigations and one major foreign bribery case in that time. Argentina and Chile have moved from Little or No Enforcement to Moderate Enforcement.

Conversely, Finland has dropped significantly from Moderate Enforcement to Little or No Enforcement, largely because it has opened no new investigations or cases, and none of the prosecutions mentioned in the 2015 report resulted in sanctions. The OECD WGB attributes this in part to Finland's very high threshold for admissibility of evidence.[13] Austria and Canada have dropped from Moderate to Limited Enforcement, while South Korea has dropped from Limited to Little or No Enforcement.

Based on responses from national experts, our classification of foreign bribery enforcement in OECD Anti-Bribery Convention countries is as follows (listed in order of their share of world exports):

Active Enforcement: Seven countries with 27 per cent of world exports – **the United States**, **Germany**, **UK**, **Italy**, **Switzerland**, **Norway** and **Israel**.

Moderate Enforcement: Four countries with 3.8 per cent of world exports – **Australia**, **Brazil**, **Sweden** and **Portugal**.

Limited Enforcement: Eleven countries with 12.3 per cent of world exports – **France**, **the Netherlands**, **Canada**, **Austria**, **Hungary**, **South Africa**, **Chile**, **Greece**, **Argentina**, **New Zealand** and **Lithuania**.

Little or No Enforcement: Eighteen countries with 21.6 per cent of world exports – **Japan**, **South Korea**, **Spain**, **Mexico**, **Russia**, **Belgium**, **Ireland**, **Poland**, **Turkey**, **Denmark**, **Czech Republic**, **Luxembourg**, **Slovak Republic**, **Finland**, **Colombia**, **Slovenia**, **Bulgaria** and **Estonia**. We also include here **China**, **Hong Kong**, **India** and **Singapore** which adds another 18 per cent to the level of world exports in this category.

B. AVAILABILITY OF ENFORCEMENT DATA AND CASE INFORMATION

To enable informed debate and decision-making on a country's enforcement system, it is essential that the state regularly publish updated statistics on criminal, civil and administrative investigations, charges, proceedings, outcomes and mutual legal assistance activity. These statistics should be disaggregated by offence, including a separate category for foreign bribery. While there are legitimate reasons to ensure confidentiality with regard to ongoing investigations, there is no reason why general, anonymised data on the number of investigations cannot be published.

With regard to court judgements, the International Covenant on Civil and Political Rights, ratified by 171 countries, provides that "any judgement rendered in a criminal case or in a suit at law shall be made public" with very limited exceptions.[14] Public access to court judgements and other case dispositions – including information about defendants and the reasoning behind decisions – is necessary to assure that the OECD Convention's requirement of "effective, proportionate and dissuasive criminal penalties" is met. Access is also needed to raise awareness of the risks of foreign bribery and deter its use, and for policymakers and interested parties to be able to assess enforcement results.[15] In most cases, the public interest in knowing details of case dispositions outweighs the defendants' right to privacy or the public interest in rehabilitation of offenders. In addition, legal persons do not have any right to privacy, while natural persons already face restrictions on their right to privacy in the context of criminal proceedings.

Those proceedings are normally public, in line with the principles of fair trial, with a few narrow limitations (for the protection of victims' rights, juvenile offenders and national security). Naming perpetrators both in the courtroom and in written case resolutions is a basic element of due process.

OECD Convention countries are failing in transparency. In 37 of the 42 countries surveyed, there are no published statistics on foreign bribery enforcement or only partial information is published. The same is true for the four non-OECD Convention exporters covered in this report. In some countries, there are no published, up-to-date criminal law enforcement statistics at all, while others provide such statistics, but foreign bribery is not recorded separately. Most countries enable access to data through official requests for information, but this is much less effective than proactively publishing information, as it requires the person requesting to invest significant effort and to know precisely what they are looking for.

FIGURE 2: Publication of enforcement data on foreign bribery in OECD Convention countries plus China, Hong Kong, India and Singapore

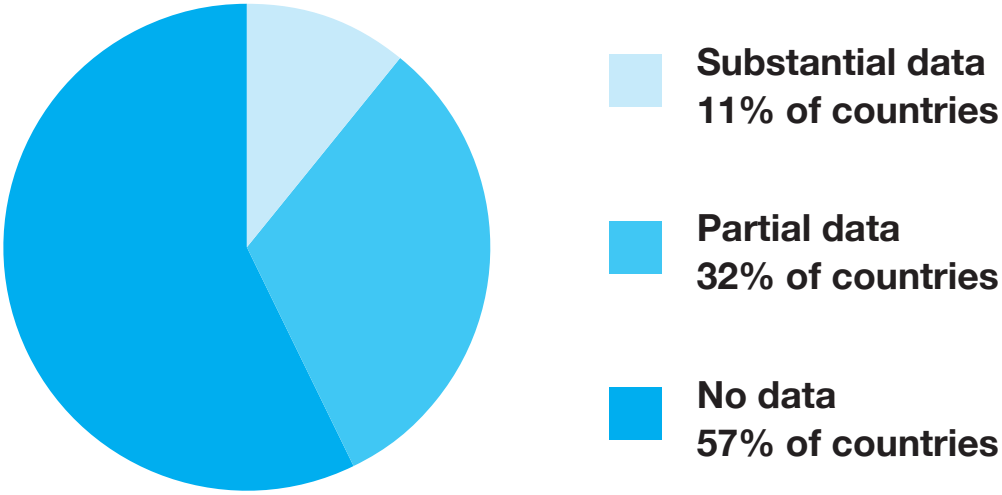
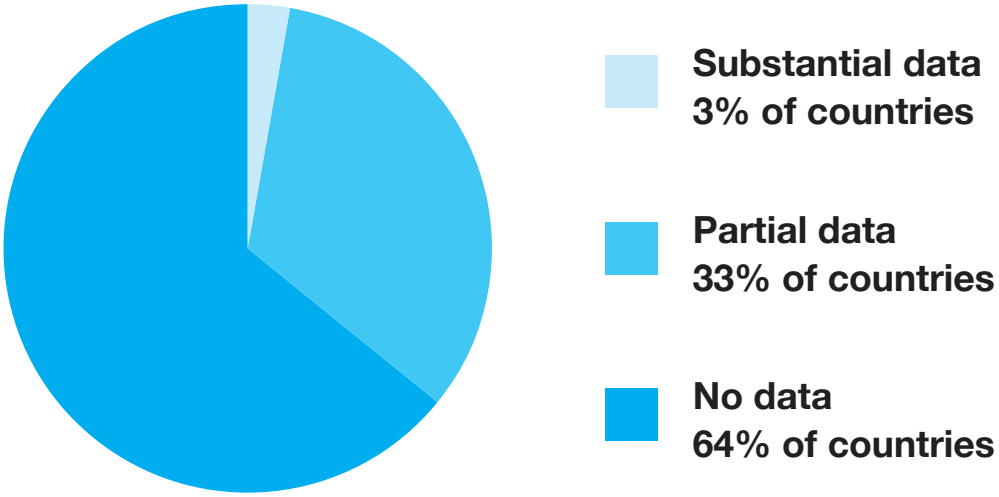


FIGURE 3: Publication of data on foreign bribery-related MLA in OECD Convention countries plus China, Hong Kong, India and Singapore



Several countries surveyed demonstrate that it is possible to do better. The **United Kingdom**'s Serious Fraud Office (SFO) publishes statistics on opened investigations, cases commenced and cases concluded in its annual report.[16] **Chile** publishes detailed statistics on the number of crimes reported and investigated, cases opened and cases concluded on a quarterly and annual basis, including on foreign bribery.[17] **Luxembourg** publishes annual statistics on corruption matters, including the number of files opened, persons prosecuted, judicial information files opened, judgements issued and people convicted, although not specifically in relation to foreign bribery. In **Russia**, almost all court decisions are published online[18] and it is possible to track the progress of judicial proceedings on official websites. **Slovakia** publishes annual statistics on the number of criminal investigations and criminal prosecutions commenced, and the number of individuals charged for offences related to corruption.[19] However, because of the lack of cases, there is no published data on foreign bribery enforcement. **Switzerland** published statistics on pending criminal investigations related to international corruption for the first time in 2016.

Very few countries publish any data on mutual legal assistance. **Brazil** and **Spain** are the two most notable exceptions. Spanish authorities publish data on the number of requests sent and received categorised by country (requests received) and Spanish region (requests sent), while Brazil publishes monthly statistical reports on requests for international legal cooperation.[20] The reports are very detailed, including the number of requests divided by type, current status and number of countries involved.

While all countries provide at least some information on court decisions, many publish only partial information.[21] Some court decisions are only available online via subscription (**Israe**l in some cases, **Norway**), for a restricted audience such as judges and lawyers (**Italy**), or if accessed in person from the relevant court (**Sweden**). Most OECD Convention countries offer only limited access to lower court decisions and out-of-court dispositions such as settlements. In some countries no access is provided at all, and some offer practically no available written justification for outcomes and sanctions determined via out-of-court dispositions. To the extent decisions are published, most courts within the EU render them anonymous beforehand.[22]

In contrast, several countries provide wide access to court judgements and out-of-court arrangements. The two primary enforcement agencies in **the United States** – the Department of Justice and the Securities and Exchange Commission – maintain centralised information web portals that list concluded cases, provide enforcement-related news, explain the law and provide links to relevant statutes. Both agencies publicly announce the results of resolved enforcement cases, posting summaries of the resolution and copies

of legal agreements. The **UK**'s Serious Fraud Office publishes online extensive information about concluded foreign bribery cases, including the date and location of offending, value of the bribe and the advantage received in return, and an explanation of how penalties imposed were calculated.[23] In the **Netherlands**, although settlement agreements are not published in full, they are accompanied by a press release and, since 2016, a public statement of facts.[24] In **Switzerland**, abandonment of proceedings and no-proceedings orders are available on request, although for the latter, a legitimate interest must be demonstrated.

Brazil maintains a regularly updated publicly available database of all foreign bribery cases currently being investigated by the Prosecutor's Office[25] and publishes a chart containing all signed leniency agreements and conduct adjustment agreements.[26] It also hosts a dedicated website containing all sentences and criminal charges regarding its major investigative *Lava Jato* (Car Wash) Operation.[27]

In **Chile**, the courts publish case information via an online database which allows any person to access judicial decisions and see the status of ongoing cases.[28] However, navigating the database requires some expertise. **Argentina** has a "corruption observatory" which publishes all judgments and resolutions related to corruption, although information is difficult to access without specific knowledge about the file.[29] In **Estonia**, all court decisions that have entered into force are available electronically.[30]

RECOMMENDATIONS:

- **Countries party to the Convention and other major exporters should publish annual statistics on foreign bribery enforcement.**

Parties and other major exporters should publish up-to-date statistical data and court judgements, and other case dispositions such as out-of-court settlements. The annual statistics should cover each stage of the foreign bribery enforcement process, in line with the data required in the OECD WGB Phase 4 review questionnaire.[31] They should include not only the foreign bribery offence, but also related money laundering, tax and accounting violations, and handling of mutual legal assistance requests.

- **The OECD should assess accessibility of enforcement data and case information and issue guidance.**

In view of low public access to statistical data and case information on foreign bribery enforcement, the OECD WGB should carry out a horizontal assessment of this issue across all countries party to the Convention, develop guidance and provide technical assistance in this area.

- **The OECD should create an open database of international corruption cases.**

Currently the OECD WGB publishes only very limited country enforcement data (sanctions or acquittals) in its annual reports, aggregating country data from 1999 onwards.[32] Given its special capability to access statistical data and case information on foreign bribery enforcement, it should support investigative work among law enforcement practitioners, investigative journalists and civil society activists by creating a database of international corruption cases. This database should be accessible to the public and should draw on information provided by Convention parties, as well as on publicly available information, including media reports.

C. MUTUAL LEGAL ASSISTANCE

Mutual legal assistance (MLA) is the process by which states seek and provide assistance in gathering evidence for use in criminal cases, whether through police channels or through the legal process within the requested state, such as a judicial order or a compulsory measure (for example, for production of bank records or the search of a residence). In the investigation of foreign bribery and associated money laundering cases, MLA is usually crucial. Assessment of MLA in OECD Convention countries requires consideration of three aspects: the capacity to request, the ability to provide assistance and the responsiveness of authorities in other countries.

Several legal requirements hamper countries' ability to take full advantage of MLA, such as the requirement for dual criminality[33] (e.g. **Austria**, **Belgium**, **Hungary**) or restrictions on MLA being provided to foreign countries conducting civil or administrative proceedings against a company for foreign bribery (**Australia**).

However, even where the legal framework is reported to be strong, MLA processes often suffer from limited resources, lack of coordination and long delays. In **Argentina**, for example, the internal processing of MLA requests can take four to nine months. In **Bulgaria**, shortcomings in practice are due to lack of skills, a heavy workload and insufficient language ability.[34] Language challenges and inadequate resources for translation were also noted in **Costa Rica** and **Poland**. In **Colombia**, the number of officials responsible for processing MLA requests is insufficient, even when they receive training. In **Costa Rica**, the formulation of MLA requests by prosecutors can fail to adequately specify the actions required by recipient authorities. **Russia** has no special unit for coordinating foreign bribery MLA requests, meaning they are managed by each investigative authority separately, without unified standards. The resulting delays in processing MLA requests can lead to the expiry of statutes of limitation in countries initiating requests.

Despite these difficulties, several convention countries are improving their capacity to effectively manage MLA processes, including through technology. **Belgium**, for example, has issued a circular on the electronic recording of statistics for criminal proceedings for foreign bribery and MLA requests, while in **Austria**, the processing of MLA requests improved with the introduction of the electronic Register of Account Information in 2016, which allows law enforcement authorities to access information electronically without a court order.[35] In **Slovenia**, since 2016, the Ministry of Justice's new system of records allows for the processing of statistical data on incoming and outgoing MLA.[36] **South Africa** has assigned a specialised unit to handle MLA and track response times for processing incoming requests.[37]

Brazil's *Lava Jato* case, which has seen investigations across the whole of Latin America, provides a good example of the importance of well-functioning MLA systems in complex cross-border corruption cases. By June 2018, under the operation, the Brazilian authorities had made and received 484 requests for international cooperation to and from foreign authorities, including **Switzerland**, **the United States**, **Denmark**, **Angola**, **Russia** and **several Latin American countries**. In total Brazil has requested international cooperation from 45 countries and received requests from 34 countries. Several working groups were formed with prosecutors and judges from all over Latin America assisting each other in the ongoing investigations.[38]

Similarly, the Eni/Shell investigation in **Italy** saw unusually high cooperation among enforcement agencies over a prolonged period, bringing together investigators from several countries, including **Nigeria** and **the Netherlands**.[39]

A central finding across the five case studies in the report is the key importance of effective international cooperation and joint investigation work for solving these cases and the fact that such cooperation is on the rise. All the case studies involve multi-jurisdictional investigations and enforcement, and sometimes a combination of enforcement against domestic bribery, foreign bribery and money laundering. There are seven countries involved in the case of Airbus,18 in the case of Odebrecht (most related to domestic not foreign bribery enforcement); three for Rio Tinto; five for SBM Offshore, and two in the case of Sinopec.

RECOMMENDATIONS:

- **Countries party to the Convention and other major exporters should ensure their capability to competently make and receive MLA requests.**

The OECD WGB's reviews offer important insights into challenges faced by countries party to the OECD Convention in providing and obtaining MLA, including the availability – or lack – of statistical data. Parties should ensure adequate organisation, resourcing and training of enforcement authorities, so they can competently make MLA requests and handle requests received without undue delay. They should also use joint investigation teams and other forms of cooperation in cross-border investigations.

- **The OECD WGB should review MLA data and performances.**

The twice-yearly meetings of prosecutors and other law enforcement practitioners alongside OECD WGB meetings are an important step in the right direction. It would be timely now to carry out a horizontal assessment of MLA performance across all countries party to the Convention, including a review of data on response levels and rates.

- **The OECD WGB should foster collaboration and improvement in MLA.**

The OECD WGB should continue to facilitate exchange of experience among law enforcement practitioners and discussions of how to improve. This could be done in collaboration with the working groups on international cooperation of the UN Convention against Corruption and the UN Convention against Transnational Organized Crime, as well as regional anti-corruption bodies. Other measures could include fostering joint investigation teams, potentially expanding the International Anti-Corruption Coordination Centre, and developing guidance materials and tools, in cooperation with other anti-corruption bodes.

D. STATUS OF LEGAL FRAMEWORK AND ENFORCEMENT SYSTEMS

As in previous "Exporting Corruption" reports, expert respondents provided comments on inadequacies in the legal framework and enforcement systems in their countries. Many countries have made significant progress in strengthening their legal frameworks and enforcement systems since becoming parties to the Convention, including since the last report in 2015. However, most countries retain important deficiencies that hamper enforcement.

IMPROVEMENTS

Most countries have strengthened their legal frameworks since the last Exporting Corruption report in 2015. Several countries have improved their whistleblower protection including **France**, **Italy**, **Lithuania**, **the Netherlands**, **Portugal** and **Sweden**. The **Japanese** government published guidelines in 2016 and 2017 on establishing, maintaining and operating internal reporting systems, based on the Whistleblower Protection Act. The **United States** Securities and Exchange Commission paid its first whistleblower award related to the Foreign Corrupt Practices Act in 2016.[40]

In June 2015, the European Union's 4th Anti-Money Laundering Directive entered into force, resulting in EU-wide improvements in anti-money laundering, including establishment of central registers of beneficial ownership, which can be expected to assist with detection. In **New Zealand**, in response to the Panama Papers scandal and the ensuing government inquiry,[41] the government introduced reforms to increase compliance and disclosure obligations, including that trusts reveal their beneficiaries and other details to regulatory agencies through a register. **The United Kingdom** introduced a public central register of information on beneficial ownership of companies.

In countries such as **Argentina**, **Colombia**, **Greece**, **Korea**, **New Zealand** and **Spain**, the regime for corporate liability has been strengthened, although some of them still lack criminal liability for legal persons.[42] Argentina's law on corporate criminal liability for corruption entered into force in March 2018.[43] Colombia introduced corporate administrative liability for foreign bribery in 2016. Greece amended its anti-money laundering law in 2017 to strengthen corporate liability.

In **Belgium** a reform package passed in 2016 (the *Pot-Pourri II* law) substantially increased mandatory fines for corruption of foreign public officials. **France**'s *Sapin II* legislation created a National Anti-Corruption Agency in charge of monitoring, investigating and sanctioning non-compliance of large companies with mandatory anti-corruption control systems introduced by the legislation.[44] **Lithuania** has introduced reforms including a 2017 law that raised sanctions for foreign bribery.

Some countries have addressed weaknesses in the enforcement system and provided more resources for law enforcement. The **Australian** federal government announced in 2016 an AU$15 million funding package to expand the investigation capability of the federal police, and established two specialist foreign bribery teams. **Greek** authorities have invested in skills and training for investigators and prosecutors. In **the Netherlands**, since 2016, an extra €20 million has been available annually for Dutch anti-corruption enforcement bodies. A specialist prosecutor coordinates the fight against international bribery.

In 2015, **the United States** formed three dedicated International Corruption Squads, designed to target entities paying bribes and foreign officials who receive them[45]. It also produced new guidance advising Department of Justice attorneys to focus enforcement efforts on specific individuals within entities that commit or are accused of committing misconduct. In **Lithuania**, several agencies signed a memorandum in 2017 to cooperate in foreign bribery cases.

INADEQUACIES

Despite this progress, important inadequacies remain. The definition of the offence remains problematic in several countries including **Greece**, **Portugal**, **Slovenia** and **Russia**. The defence of "effective regret"[46] persists in a handful of countries, including **Greece**, **Poland**, **Russia** and **Slovenia**. Russia also still allows the defence of economic extortion for the offence of foreign bribery.[47] **New Zealand** and the **United States** are among the countries that continue to accept the legality of "facilitation payments" and **Australia** accepts a facilitation payments defence.

Anti-money laundering frameworks and systems remain inadequate in many countries, including **Australia**, **Luxembourg**, **Switzerland** and **Turkey**. In Australia, for example, real-estate agents, accountants, auditors and lawyers are not subject to obligations under the Anti-Money Laundering and Countering Financing of Terrorism Act.[48] The same is true of numerous other OECD Convention countries.[49]

Despite improvements, whistleblower protection is insufficient in numerous OECD Convention countries including **Argentina**, **Australia**, **Belgium**, **Brazil**, **Bulgaria**, **Costa Rica**, **Czech Republic**, **Denmark**, **Finland**, **Germany**, **Greece**, **Hungary**, **Italy**, **Japan**, **the Netherlands**, **New Zealand**, **Norway**, **Poland**, **Portugal**, **Slovenia**, **South Africa**, **Spain** and **Switzerland**. A 2017 study conducted by the Whistleblowers' Authority in the Netherlands found that half the Dutch companies studied were not compliant with the legal requirement of an internal whistleblowing policy.[50]

The legal provisions on corporate liability and related fines are insufficient in several countries including **Argentina**, **Austria**, **Costa Rica**, **Estonia**, **Germany**, **Poland**, **Portugal**, **Russia**, **Sweden**, **Switzerland** and **Turkey**. In Argentina and Costa Rica, for example, there is no corporate liability for false accounting. In Austria, the maximum financial sanction for a company convicted of foreign bribery is €1.3 million, which is not commensurate with the nature and size of many Austrian companies.[51] In Sweden, the maximum fine for companies engaged in international bribery is approximately €1.2 million, which the OECD WGB considers "inadequate".[52] The limit for fines in Germany is €10 million – too low to be dissuasive – although disgorgement of profits can be imposed separately.

In countries including **Belgium**, **Estonia**, **Greece** and **Italy**, an inadequate statute of limitations is a problem. In Italy, despite new legislation increasing the length of the statute of limitations, the fact that limitations have effect throughout all three judicial stages (first instance, appeal and final) means that final judgements are often not reached within the permitted timeframe. **Hungary**'s two-year time limit for investigations may prove too short for large and complex foreign bribery cases.[53]

A significant number of parties to the Convention face challenges in their enforcement systems. In **Greece**, **Japan**, **Slovenia**, **South Africa** and **Spain**, experts report a lack of coordination and communication between different enforcement bodies. Inadequate resources or training of police, prosecution or judiciary were reported to be a problem in numerous countries including **Belgium**, **Finland**, **Greece**, **Hungary**, **Italy**, **Japan**, **Mexico**, **Norway**, **Portugal**, **Slovakia**, **South Africa**, **Spain**, **Turkey** and **the United Kingdom**. Belgium's lack of resources has resulted in a growing backlog of cases and shortages of judges that can cause significant delays, the dismissal of investigations and the expiry of the statute of limitations for certain transnational bribery cases.[54] The Finnish Prosecution Service has stretched resources.[55] Italy's overburdened judicial system is hampered by a shortage of material and human resources, with one of the lowest numbers of judges per capita in Europe.[56] Norway's police remain under-resourced, forcing them to refrain from investigating cases even where there is clear suspicion of financial crime. In the UK, the lack of dedicated crown courts to try serious economic crime cases, coupled with underfunding of the UK court system, results in long delays.

In other countries, including **Argentina, Czech Republic**, **Hungary**, **Mexico**, **Poland**, **South Africa** and **Spain**, concerns persist about the independence of prosecution services or the judiciary. In Hungary, the legal framework for the election of the Prosecutor General raises serious concerns, as does the lack of guarantees to fully prevent the interference of the Minister of the Interior in individual investigations. Polish law seriously limits the independence of prosecutors,[57] and a UN Special Rapporteur has noted that "the adoption of two laws in Poland threatens the independence of the judiciary", by placing the Supreme Court and the National Council of the Judiciary under the control of the executive and legislative branches.[58] In Mexico, the Attorney General's Office lacks sufficient autonomy, while state judges are highly dependent on the executive branch, and lacking in human resources and specialisation.

RECOMMENDATIONS:

- **Countries party to the Convention and other major exporters should actively address systemic weaknesses.**

Weaknesses in legal frameworks and enforcement systems should be promptly addressed and parties, together with other major exporters, should prioritise enforcement against foreign bribery and related money laundering offences and accounting violations. Parties whose performance has deteriorated over the past four years should review why and address the underlying causes. Parties should hold public meetings to discuss the results of OECD WGB reviews and explain plans to address recommendations.

- **The OECD WGB should make public its criticism in response to ongoing non-compliance.**

The OECD WGB should regularly make public statements about its dissatisfaction when countries fail to enforce against foreign bribery, related money laundering offences and false accounting violations. Its 2016 public statement of concern regarding Belgium's limited implementation of the Convention[59] and its postponement of Sweden's Phase 4 review due to its failure to implement key recommendations[60] are appropriate responses to ongoing non-compliance. The WGB should find ways to further increase peer pressure in such cases.

The OECD WGB should publish and disseminate widely an annual list of countries that have failed to produce meaningful enforcement results in the last 3-4 years, and an annual summary of key WGB recommendations which signatories have failed to comply with. Where countries show "continued failure to adequately implement the Convention", the WGB should publicise widely each of its steps in line with the Phase 4 Guide and should consider suspension in case of longstanding failure to enforce.[61]

- **The OECD WGB should publicly praise improvements and enforcement results.**

The OECD WGB should recognise progress made by parties to the Convention. It should publish an annual list of countries that have made significant improvements to their legislative framework and enforcement systems, and those which have achieved notable enforcement results.

E. SETTLEMENTS

Settlements can provide an important channel to hold companies to account for wrongdoing and resolve foreign bribery cases without resorting to a full trial or administrative proceeding.[62] In many cases, they have helped to boost enforcement of foreign bribery laws and to improve corporate compliance. However, their deterrent effect is questionable if they are not transparent, do not provide effective, proportionate and dissuasive sanctions, and if there is no meaningful judicial review.

There is an increasing trend towards companies and governments settling foreign bribery cases out-of-court, with recent legal changes in this area having come – or about to come – into force in countries including **Argentina**,[63] **Canada**,[64] **Finland**,[65] **France**[66] and **Japan**.[67] Such settlements can take various forms depending on the country, including plea bargains, non-prosecution agreements (NPAs), deferred-prosecution agreements (DPAs), leniency agreements and conduct-adjustment agreements. While they differ slightly in form, they often require an admission of guilt on the part of the company, cooperation with authorities, the imposition of a compliance programme and/or an external monitor, and a return of the undue benefit.

Transparency is crucial in settlements, for ensuring a deterrent effect and assuring the public of their fairness. The **United States** practice of posting copies of legal documents such as plea agreements, orders, DPAs and NPAs online is commendable. The US Justice Department has also published helpful guidance for companies seeking leniency, which provides clarity on ethics compliance programmes and self-reporting requirements.[68]

Nevertheless, in several countries, concerns have been raised about the way settlements are concluded. The UN Convention against Corruption first cycle review of **Belgium** found insufficient transparency, predictability and proportionality in entering into plea bargains and out-of-court settlements.[69] In **France**, some experts have raised concerns about the new DPA framework, including the lack of guidelines on how judges should independently review the settlement to ensure compliance with the law. In **the Netherlands**, the system for settlements is undermined by lack of transparency, guidelines and a role for an independent court. Settlements currently lack any legal basis for including important aspects such as a monitor or an obligation to report to the authorities.

The OECD WGB has raised concerns about the use in **Switzerland** of summary punishment orders to settle foreign bribery cases.[70] Prosecutors are responsible for the preliminary inquiry, prosecution of offences and drawing up the summary punishment order. This procedure was originally designed for minor cases, meaning the sanctions available are very weak for serious crimes such as foreign bribery.

In **Germany**, a resolution can be reached with natural persons through a termination of proceedings in return for payment of a sum of money, both before and during the trial.[71] The accused and the court need to agree. No similar resolution proceedings are available for companies, but there is a comparable process resulting from the fact that disgorgement of profits is based on estimates provided by the companies themselves. These quasi-settlements should be subject to scrutiny.

Under **Brazil's** highly decentralised justice system, settlements can be entered into by a number of authorities, creating significant legal uncertainty. In **South Africa**, 41 of the Anti-Corruption Task Team's 42 successful domest-ic corruption cases ended with plea bargains and reduced sentences,[72] raising concerns about the ease with which settlements and plea bargain arrangements are entered into. In **the United Kingdom** some commentators have raised concerns that the Serious Fraud Office expects DPAs to become the "new normal", rather than being considered only in cases of strong public interest.[73]

A number of cases also demonstrate a recent trend towards entering into settlement agreements that aim to contain the damage caused to the offending company. In the SBM case in the **United States**, for example, one of the explicit motivations for the settlement on the part of the Department of Justice was the desire "to avoid a penalty that would substantially jeopardize the continued viability of the Company"[74] **(see case study on page 111)**. Similar

"ability to pay" issues have been factored into recent resolutions, including the Odebrecht case in 2016[75]. This approach risks undermining the potential deterrent effect of enforcement actions for foreign bribery, especially for serious or large-scale cases.

In **Finland**, by contrast, there are concerns that the new plea-bargaining regime is not available to legal persons and that there are few incentives for individuals to enter into a plea bargain, given the extremely low likelihood of conviction.[76]

RECOMMENDATIONS:

- **Countries party to the Convention and other major exporters should ensure that settlements are justified and transparent.**

While settlements are cost-saving and incentivise companies to self-report, they should not be used in a way that undermines the justice system or public confidence in it. Parties and other major exporters should ensure that settlements meet adequate standards of transparency, accountability and due process, as outlined in Transparency International's 2015 policy paper.[77] Settlement agreements should be made public, including their terms and justification, the facts of the case, the offences and other relevant information. They should provide for effective, proportionate and dissuasive sanctions and be subject to meaningful judicial review, including an opportunity for affected stakeholders to be heard.

- **The OECD WGB should issue guidance on effective settlement agreements.**

The OECD WGB has already commenced a much-needed study on the use of settlements in foreign bribery cases, which should be used as a basis for developing guidance in this area.

F. THE ROLE OF CHINA AND OTHER MAJOR EXPORTERS NOT PARTY TO THE OECD CONVENTION

In 2014-2017, China's average share of world exports of goods and services was 10.8 per cent, compared with the United States' 9.9 per cent.[78] As the world's leading exporter, China has a special responsibility with respect to the practices of its companies and business people abroad, as they have a significant impact on trade practices. China's performance regarding international anti-corruption standards influences attitudes and behaviour in other major exporting countries. Likewise, other major exporters such as Hong Kong, India and Singapore, covered in this report but not to date party to the OECD Convention, have a responsibility to contribute to tackling corruption in the supply side of international trade.

While China has criminalised the bribery of foreign public officials, in line with obligations under the UN Convention against Corruption, there has been no known enforcement by China against foreign corrupt practices by its companies, citizens or residents. This is despite the fact that Chinese companies and individuals have been the subject of publicly reported investigations and charges laid in numerous other countries, including Bangladesh,[79] Ethiopia,[80] Kenya,[81] Sri Lanka,[82] the United States[83] and Zambia.[84]

Unlike in China, there is a lack of specifically targeted legislation to prohibit bribery of foreign public officials in Hong Kong, India and Singapore. Only in Singapore has there been any enforcement activity against foreign bribery in the last four years and that enforcement has been small in relation to Singapore's share of international trade. The inaction of all these exporters undermines the multilateral consensus that robust collective action is needed.

If China, Hong Kong, India and Singapore do not enforce hard-won international standards for conducting business, competitors from countries that do enforce will find themselves disadvantaged. This may lead to a reduction in enforcement, destabilising the global marketplace. The real losers will be the global economy and people in countries affected by exported corruption, especially grand corruption.

The performance of these exporters with respect to foreign bribery enforcement is a matter of crucial importance for the OECD WGB and for the international community. The review framework of the UN Convention against Corruption, to which they are a party, is inadequate to address their role, lacking the depth of OECD WGB reviews and also lacking a formal follow-up process.

RECOMMENDATIONS:

- **China, Hong Kong and India should initiate enforcement against foreign bribery and Singapore should increase its enforcement.**

China should comply with its UN Convention against Corruption obligation to act against foreign bribery. It should ensure an adequate legal framework, initiate enforcement and publish enforcement data and case information. India, Hong Kong and Singapore should do the same. In Singapore there has been a small amount of enforcement to date, but this should be significantly stepped up.

- **China, Hong Kong, India and Singapore should become parties to the OECD Convention.**

Reflecting their leading roles in international trade, China, Hong Kong, India and Singapore should join other major exporting countries and become parties to the OECD Convention and participate in OECD WGB reviews.

- **The OECD WGB should keep pressing China, Hong Kong, India, Singapore and other major exporting countries over foreign bribery obligations.**

The OECD WGB should redouble its efforts to persuade China, Hong Kong, India and Singapore and other major exporters to become parties to the OECD Anti-Bribery Convention and to meet their obligations under the UN Convention against Corruption. It should seek high-level dialogue on the issue, as well as discussion in appropriate multilateral forums, including the G20. The OECD WGB should consider what will incentivise those countries to give priority to foreign bribery enforcement.

II. REPORTS ON OECD CONVENTION COUNTRIES

We commend the OECD Working Group on Bribery (WGB) for its outstanding work and for encouraging the participation of civil society and the private sector in monitoring implementation of the Convention. We encourage the OECD WGB to increase its efforts to bring its excellent country review reports to the attention of the media, national civil society and private-sector actors. Each Party to the Convention should translate its report into its national language, present it to parliament, hold public consultations on the report and promptly announce plans to address deficiencies.

We also commend the OECD WGB for the improvements in its own transparency following written submissions from civil society organisations, including a report by Transparency International. These improvements have included announcement of the agenda for meetings, publication of the minutes and other documents of the meetings, and a more user-friendly website. However, there is still more that could be done, such as including civil society representatives in parts of the WGB meetings, and publishing or providing information about the individual country representatives attending the meetings.

To complement the OECD WGB country reports, we present in this section country reports for 41 of the 44 Convention countries. Our reports are based on responses from experts primarily from Transparency International chapters in OECD countries party to the Convention. They cover recent foreign bribery cases and investigations in each country, and address issues such as access to information on enforcement, and inadequacies in the legal framework and enforcement system. This year, the reports include a special focus on transparency of enforcement information and adequacy of mutual legal assistance efforts.

ARGENTINA
Limited enforcement

INVESTIGATIONS AND CASES

During the period 2014-2017, Argentina initiated nine preliminary investigations and cases[85] on foreign bribery.[86] According to the Public Prosecutor's Office, (PPO)[87] these include investigations into: **Kolektor S.A.** (an Argentine joint venture specialising in the collection of taxes for the Government of Córdoba) for alleged money laundering and foreign bribery in relation to the development of a tax collection system in Guatemala,[88] **Telespazio Argentina**[89] for alleged bribery of public officials from Panama in 2010 in relation to the installation, maintenance and financing of a digital cartography system;[90] **BioArt S.A.**[91] for alleged bribery of public officials and the sale of rice and corn to Venezuela at prices 80 per cent higher than their market value;[92] **Interpampas SRL**[93] for alleged payment of excessive surcharges and bribes to public officials in Venezuela and Argentina for the export of livestock; and **Unetel S.A.** for the alleged payment of bribes in relation to a project in El Salvador funded by the Inter-American Development Bank.[94] In addition, Argentine prosecutors launched a number of investigations into allegations against Argentine companies of *Lava Jato*-related bribery of Brazilian public officials.[95] These companies include **Contreras Hermanos S.L.**,[96] **Pampa Energia** (Argentina's largest electricity provider),[97] **Tenaris** (a global manufacturer of steel pipes headquartered in Luxembourg and a subsidiary of Techint)[98] and **Techint** (an Italian-Argentine conglomerate).[99]

TRANSPARENCY OF ENFORCEMENT DATA

Argentina does not publish statistics on foreign bribery investigations, cases commenced or cases concluded. The PPO publishes an annual report containing information on general trends in foreign bribery enforcement, but no information about cases. The latest available report is for 2016.[100] The PPO also hosts an

institutional news website, which includes information on progress of significant cases.[101] The Supreme Court of Justice of the Nation's Judicial Information Centre houses a dedicated "corruption observatory" which publishes all judgments and resolutions related to corruption, but the information is not clearly presented and resolutions relating to foreign bribery are difficult to access without specific information on the file (file number, name of the case, etc.).[102] Members of the public can formally request information on foreign bribery cases from the PPO through a request for information.[103] Information on the number of requests for mutual legal assistance (MLA) received and sent is not published, but can also be requested formally from the PPO or the Ministry of Foreign Affairs.

RECENT DEVELOPMENTS

Law 27.401 on corporate criminal liability for corruption entered into force in March 2018[104] and includes foreign bribery in the offences covered. It also provides for an extended statute of limitations of six years, and for penalties including, among others, fines of up to five times the improper benefit obtained. Under the new law, companies can mitigate their sanctions by actively cooperating during an investigation, within the framework of an "effective collaboration agreement" (a sort of settlement that can take the form of a deferred prosecution agreement or a non-prosecution agreement). Companies may be exempted from administrative liability if they self-report, already have an adequate compliance programme in place, and return the undue benefit.[105] In 2016, the government introduced decree 1246/2016, expressly prohibiting the tax deductibility of bribes.[106]

Under the PPO, the Prosecutor for Economic Crime and Money Laundering has recently adopted an online web search system to improve detection of cases reported in the media regarding foreign bribery.[107]

INADEQUACIES IN LEGAL FRAMEWORK

Argentina remains in serious non-compliance with key articles of the OECD Anti-Bribery Convention. The new law on corporate liability does not impose liability for corruption-related false accounting, and maintains a different set of rules for corporate liability for money laundering. Fines for foreign bribery and sanctions for accounting offences remain inadequate, and the new law does not adequately provide for confiscation of assets. In addition, law enforcement agencies will not act on anonymous reports[108] and Argentina still lacks adequate protection for public- and private-sector whistleblowers.[109]

INADEQUACIES IN ENFORCEMENT SYSTEM

The most important deficiency is the lack of independence and high degree of politicisation of the judiciary, meaning the impartiality of prosecutors and judges cannot be guaranteed.[110] Long delays are caused in investigations of economic crimes by inadequate training of both judges and prosecutors,[111] the lack of international cooperation tools for corruption cases and the large number of complex cases brought before each judge. There are also concerns about the failure of Argentine authorities to proactively investigate allegations of bribery by Argentine businesses abroad or to effectively seek cooperation from foreign authorities.[112]

INADEQUACIES IN MUTUAL LEGAL ASSISTANCE

The internal processing of MLA requests can take between four and nine months, mainly due to a lack of resources within the Prosecutor's Office, which has only 10 lawyers to process approximately 500 incoming and 350 outgoing requests annually.[113] However, during 2016 and 2017, in response to the *Lava Jato* investigations in Brazil and the region, Argentine authorities participated in several regional working groups to enable prosecutors and judges to assist each other.[114] In June 2017, the PPO representatives signed a collaboration agreement with Brazilian counterparts as a basis for joint investigation of elements of the case.[115]

RECOMMENDATIONS

- Ensure that the PPO proactively publishes statistics on foreign bribery cases and MLA requests, as well as information about charges filed and the subsequent disposition of cases.
- Enact the law on asset forfeiture.
- Introduce mechanisms for the confiscation of assets in proportion to the bribe paid and its proceeds.
- Ensure adequate training of investigators and prosecutors of foreign bribery cases.
- Adopt effective whistleblower protection legislation for both the public and private sectors.

- Ensure judicial independence through reforms to the Judicial Council.
- Improve transparency and accountability of the judiciary and ensure compliance with the Law of Public Ethics, including enforcing asset declarations by judges.
- Reform the criminal procedure code to reduce the duration of legal proceedings.
- Improve cooperation between the Ministry of Foreign Affairs and the PPO, so any allegations of foreign bribery received by the ministry are promptly investigated by the PPO.

AUSTRALIA
Moderate enforcement

INVESTIGATIONS AND CASES

Since 2014, Australia has opened 19 foreign bribery investigations and one major case, which was completed in 2017 with the first concluded foreign bribery prosecution.

In that case, two directors of the construction and engineering company **Lifese Pty Ltd**, and an associate, pleaded guilty to conspiracy to bribe an Iraqi government official, and were sentenced to four years' imprisonment. The directors were also fined AU$250,000 each.[116] Another longstanding case, which is ongoing, involves the prosecution of a group of former currency executives for their involvement in an alleged scheme to bribe government officials in several countries, including Malaysia, Indonesia and Nepal, to secure government banknote contracts involving Reserve Bank of Australia subsidiaries **Securency International** and **Note Printing Australia**.[117] The individuals were originally charged in 2011,[118] but their trial was only listed to begin in 2017[119] and still has no hearing date. It will focus on bribery allegations involving officials in Malaysia. Separate trials will be held for allegations concerning Indonesia and Nepal.

There are currently 19 ongoing investigations and 13 referrals under evaluation.[120] In 2016 the Australian Federal Police said it had 20 active cross-border bribery investigations.[121] As of 2017, the six-year federal police investigation into the activities of **Leighton Holdings** (now part of the **CIMIC Group**) in Iraq, including its **Unaoil** dealings, is ongoing.[122] Leighton/CIMIC is 70 per cent owned by the German company **Hochtief**, in turn owned by the Spanish **ACS Group**.[123] In the same year, the federal police were reported to have dropped an investigation of whether **BHP Billiton** bribed in Cambodia.[124] The investigation did not proceed to prosecution due to insufficient evidence.[125] In 2017, the police were also reportedly examining whether the mining company **Iluka Resources** breached Australian corruption laws after acquiring **Sierra Rutile**, a London-based firm accused of bribing high-ranking Sierra Leone officials to win mining licences.[126]

According to media reports, in 2016 the federal police were investigating an AU$200,000 (approximately US$162,000) payment allegedly made in 2010 to the family of Cambodia's Prime Minister Sen by the gaming company **Tabcorp**.[127] Also in 2016, the police reportedly confirmed their investigation of **Getax Australia** in relation to alleged bribes paid to Nauru politicians, including the president and justice minister, to access the island's deposits of rock phosphate.[128] A related money-laundering investigation was reported simultaneously in India.[129] In the same year, a Fairfax Media investigation reportedly uncovered evidence which was the subject of a major federal police probe involving the **Snowy Mountains Engineering Company**. The alleged bribery related to a sewerage project in Sri Lanka and a power plant project in Bangladesh.[130] In 2016, the police were also reportedly evaluating documents provided by Fairfax Media and the Australian Broadcasting Corporation's programme *7.30* relating to an iron ore project involving mining company **Sundance Resources** in the Republic of Congo. Journalists say the documents show that a share deal worth millions of dollars was brokered with the son of the Republic of Congo's president, Denis Sassou Nguesso, in connection with presidential approval of the project in 2007.[131]

TRANSPARENCY OF ENFORCEMENT DATA

Australian authorities do not publish statistics on foreign bribery enforcement. The federal police provide annual enforcement information, such as number of investigations, to the federal parliament.[132] Court decisions and sentencing remarks are published by all Australian courts.[133] The Attorney-General's Department publishes annual statistics on requests for mutual legal assistance (MLA) made and received in relation to criminal matters. However, they do not specify how many requests were made in relation to foreign bribery.[134]

RECENT DEVELOPMENTS

The federal parliament amended the foreign bribery offence in 2015, following a recommendation by the OECD WGB.[135] New false accounting laws came into operation in 2016. These make it an offence for individuals or corporations to make, alter, destroy or fail to make an accounting document to conceal, disguise or facilitate foreign bribery.[136] Also in 2016, the federal government announced an AU$15 million (approximately US$11.4 million) funding package to expand the foreign bribery investigation capability of the federal police. This resulted in the establishment of two specialised foreign bribery teams and an expansion of the Fraud and Anti-Corruption Team within the federal police force.[137] In 2017, the Australian Transaction Reports and Analysis Centre launched the Fintel Alliance initiative to fight money laundering, terrorist financing and organised crime.[138]

In December 2017, the federal government introduced legislation, following public consultation, to clarify and expand the scope of the foreign bribery offence, and introduce a corporate offence of failing to prevent foreign bribery.[139] The bill, which has now passed the Committee stage, would also introduce a deferred prosecution agreement scheme, enabling the Office of the Commonwealth Director of Public Prosecutions to enter into such agreements with companies suspected of foreign bribery. In December 2017, the federal parliament introduced legislation to expand the scope of Australia's whistleblower protection, so that it will apply to reporting of suspected foreign bribery in the private sector.[140]

In December 2017, the federal police and the Office of the Commonwealth Director of Public Prosecutions released best-practice guidelines on self-reporting of foreign bribery, covering how and when to self-report, conducting internal investigations, and post-report cooperation requirements.[141]

INADEQUACIES IN LEGAL FRAMEWORK

Real-estate agents, accountants, auditors and lawyers (among others) are not subject to obligations under the Anti-Money Laundering and Countering Financing of Terrorism Act.[142] The OECD WGB Phase 4 Report on Australia in 2017 concluded that Australia was not doing enough to address the risk that the proceeds of foreign bribery will be laundered through the Australian real estate sector.[143] It also considered that Australia was lacking clear, comprehensive protections for whistleblowers across the private sector. Further, Australia still offers a "facilitation payments defence",[144] which the Senate Economics Committee has recently recommended be abolished, with a transition period to allow companies to adjust.[145] In addition, the deferred prosecution scheme does not require corporations to make a formal admission of criminal liability, and the draft foreign bribery legislation has not introduced a debarment regime.

INADEQUACIES IN ENFORCEMENT SYSTEM

Australia has commenced very few foreign bribery prosecutions, though numbers may increase following recent investments and improvements made by the government. The OECD WGB Phase 4 Report stated that Australia had taken steps to improve its operational response, which are expected to yield results.[146]

INADEQUACIES IN MUTUAL LEGAL ASSISTANCE

It is unclear whether Australia's MLA regime provides assistance to foreign countries conducting civil or administrative proceedings against a company for foreign bribery.

RECOMMENDATIONS

- Pass the proposed legislation that will strengthen foreign bribery laws and whistleblower protection.
- Introduce to the deferred prosecution scheme a requirement for admission of criminal liability.
- Introduce a debarment regime.
- Expand the scope of the Anti-Money Laundering and Countering Financing of Terrorism Act to include non-financial entities and businesses such as real estate agents, lawyers and accountants.
- Abolish the facilitation payments defence.
- Expand the scope of MLA laws to allow requests to be made for civil or administrative proceedings.
- Continue to resource the federal police and the Office of the Commonwealth Director of Public Prosecutions so that they can tackle foreign bribery.
- Develop a database of bribery enforcement actions.

AUSTRIA
Limited enforcement

INVESTIGATIONS AND CASES

In the period 2014-2017, Austria opened two foreign bribery cases and concluded one case, joining the OECD's list of jurisdictions that have sanctioned foreign bribery in 2016.[147]

In 2015, in the **Patria** case, the Supreme Court upheld the 2013 conviction of a lobbyist who had acted as a middleman in an arms deal involving bribery of Slovenian officials.[148] He was sentenced to three years' imprisonment and fined €850,000.[149] In 2016, the **Monarola** case was concluded, with the conviction of three businessmen, including a former board member of the bank **Hypo Alpe Adria**, for bribing Croatian politicians to change a property deed. They were sentenced to 20-22 months in prison, subject to appeal.[150] At the end of 2016, seven individuals were facing related charges for foreign bribery.[151] In 2017, charges were filed against two former **Siemens Austria** managers accused of bribing public officials in south-east Europe.[152] In a retrial of a 2014 court case, a Vienna court in February 2018 convicted five defendants from the Austrian Central Bank's printing subsidiary, **OeBS**, to conditional prison sentences of between 18 and 21 months for paying bribes to the central banks of Azerbaijan and Syria for banknote and coin-making orders.[153]

TRANSPARENCY OF ENFORCEMENT DATA

Enforcement data is not publicly available. Data on the total numbers of prosecutions and cases concluded is available from the authorities on request. Court decisions not subject to appeal are available online.[154] Other decisions are selectively published, without the names of the accused. The Austrian authorities publish statistics on the number of requests for mutual legal assistance (MLA) made to and received from other countries, but not specifically related to foreign bribery cases.[155]

RECENT DEVELOPMENTS

The Beneficial Owners Register Act came partly into effect in 2017. It provides law enforcement officials, the public prosecutor and judicial authorities with access to data on ownership and control of various assets.[156] An anonymous whistleblower hotline, piloted from 2013 to 2015, became permanent in 2016 on the website of the Office of the Public Prosecutor for Economic Crime and Corruption (WKStA).[157] The Austrian Federal Competition Authority also introduced a whistleblower hotline in 2018, via a dedicated website.[158] The WKStA increased its staff in 2015, with four additional specialised prosecutors.[159]

INADEQUACIES IN LEGAL FRAMEWORK

The financial sanctions provided for in the Corporate Responsibility Act remain low by international standards and are too low to have a deterrent effect. The maximum financial sanction for a company convicted of foreign bribery is €1.3 million (US$1.6 million), which is not commensurate with the nature and size of many Austrian companies.[160] The Leniency (State's Evidence) Law, which was extended in 2016 for another five years, does not provide for sufficient protection of cooperative witnesses from prosecution in another country (the *ne bis in idem* principle).[161]

INADEQUACIES IN ENFORCEMENT SYSTEM

There is insufficient awareness among prosecutors of the conditions under which entities are responsible for criminal offences under the Federal Statute on the Responsibility of Entities for Criminal Offences. The WKStA remains too small to deal with corruption cases efficiently. Enforcement agencies could benefit from improved technical expertise.[162]

INADEQUACIES IN MUTUAL LEGAL ASSISTANCE

The processing of MLA requests has improved since the introduction of the electronic Register of Account Information in 2016. This allows law enforcement authorities to access information electronically without a court order,[163] meaning bank secrecy no longer causes unnecessary delays. The UN Convention against Corruption first cycle review of Austria recommends further relaxing the strict application of the dual criminality requirement.[164]

RECOMMENDATIONS

- Increase financial sanctions for legal persons so they are proportionate and dissuasive.
- Provide for full prosecutorial independence of the Ministry of Justice, to avoid potential political and economic influence.
- Extend the leniency laws and introduce the *ne bis in idem* principle to ensure full witness protection from prosecution.
- Apply harsher penalties to companies for lack of cooperation in investigations.
- Continue to increase the number of staff in relevant enforcement agencies.
- Train enforcement agencies in new forensic technical methods and IT programmes.
- Improve statistical data collection and establish easy access to statistics on enforcement.
- Publish enforcement data and all court decisions, including in foreign bribery cases.

BELGIUM
Little or no enforcement

INVESTIGATIONS AND CASES

In the period 2014-2017, it is reported that Belgium opened six investigations[165] and closed two cases with sanctions.[166]

In one of these cases, two non-Belgian individuals were convicted of foreign bribery in relation to a case referred to the Belgian authorities by the European Anti-Fraud Office (OLAF).[167] To date, no court decision had been handed down concerning foreign bribery committed by Belgian natural or legal persons.[168]

In 2017, Belgian prosecutors reportedly said they were investigating a deal reached between Belgian company **Semlex** and the Democratic Republic of Congo to produce biometric passports,[169] following a Reuters report about the contract.[170] The Reuters report claimed the deal greatly increased the price citizens had to pay for passports, and that documents showed a Gulf company owned by a relative of Congo's president received a significant share of the revenues. In 2015, the Belgian authorities issued an indictment accusing an ex-minister of the Walloon regional government of bribing a government official from the Democratic Republic of Congo on behalf of a steel company based in Luxembourg.[171] The ex-minister was also made subject to an arrest warrant in February 2015.[172] Two executives of the accused company were detained for judicial questioning in March 2015, but subsequently released.[173]

TRANSPARENCY OF ENFORCEMENT DATA

Belgium does not publish statistics on the number of opened foreign bribery investigations, cases commenced or cases concluded. Nor does it publish any data on requests for mutual legal assistance (MLA) made and received. However, Belgium issued a circular in November 2015 to improve the electronic recording of statistics on criminal proceedings for economic and financial crime and corruption.[174]

RECENT DEVELOPMENTS

In October 2015, Belgium issued a circular recalling the seriousness of both public and private corruption and making the prosecution of public corruption a priority for prosecutors, in particular where bribery of a foreign official is concerned.[175]

In February 2016, the OECD WGB issued a statement about Belgium following its Phase 3 Follow-up Report, expressing concern that the country "has only fully implemented five recommendations out of the 30 Phase 3 recommendations made to Belgium in 2013".[176] It indicated that it "remains concerned by the low proactivity of authorities in cases involving individuals or companies for actual or alleged acts of foreign bribery".[177]

Subsequently, the law of February 2016, known as the *Pot-Pourri II* law, was adopted containing several amendments relating to anti-bribery, including a revision of the definition of public and private "passive" bribery, and a substantial increase in mandatory criminal fines for public corruption of foreign public officials.[178] This law entered into force in February 2017, formally creating a Central Register of Criminal Records for Legal Persons. Belgium affirmed in 2017 its intention to increase the number of specialised investigators and prosecutors with a view, among others, to improving the fight against corruption.[179]

INADEQUACIES IN LEGAL FRAMEWORK

The OECD WGB criticised the dual criminality requirement imposed by article 10quater, paragraph 2 of the Belgian Code of Criminal Procedure. The WGB noted, *inter alia*, that it means that Belgium cannot prosecute if foreign bribery is not a criminal offence in the country where it is committed[180] and requires the prosecuting authorities to produce an additional element of proof. The OECD WGB also found insufficient opportunities to suspend the statute of limitations to allow adequate time to conduct foreign bribery investigations and prosecutions. In practice, five years are needed to start a criminal investigation and up to 10 years to obtain a final conviction verdict. According to the WGB, private-sector whistleblower protection is inadequate. It must also be noted that Belgium has not adopted any specific regulatory legislation on the prevention of corruption which would apply to the private sector. However, in December 2016, a guide was published for Belgian enterprises overseas on complying in the fight against bribery of foreign public officials in international business transactions.[181]

INADEQUACIES IN ENFORCEMENT SYSTEM

According to the OECD WGB in 2013 and 2016, there is insufficient transparency in out-of-court criminal settlements.[182] Belgium has not implemented the OECD WGB's recommendation "to make public, as necessary and in compliance with the relevant rules of procedure, the most important elements of settlements concluded in foreign bribery cases, in particular the main facts, the natural or legal persons sanctioned, the approved sanctions and the assets that are surrendered voluntarily".[183] There are inadequate resources for law enforcement and judicial authorities to prosecute transnational bribery. This is notable given the important caseload linked to transnational corruption cases involving European officials referred to the Belgian authorities by OLAF. A growing backlog of cases and shortages of judges can cause significant delays in the courts, leading to the dismissal of investigations, indefinite postponing of cases, and the expiry of the statute of limitations for certain transnational bribery cases.[184]

INADEQUACIES IN MUTUAL LEGAL ASSISTANCE

While Belgium renders MLA on the basis of dual criminality, the exception exists for the EU, the Council of Europe and several states with which Belgium has bilateral MLA treaties. In these cases, Belgium may provide non-coercive MLA in the absence of dual criminality.[185] The OECD WGB Phase 3 Follow-up Report noted a lack of proactivity on the part of Belgian authorities in cases where information about foreign bribery is revealed in the context of international cooperation.[186]

RECOMMENDATIONS

- Extend the limitation period for foreign bribery to allow adequate time for investigations and prosecutions.
- Provide a strong and harmonised legal framework for whistleblower protection in the private sector.
- Remove the requirement of dual criminality for prosecution of bribery of foreign officials and trading in influence.
- Publish criminal settlements in foreign bribery cases, as part of reform increasing publicity of settlements.

BRAZIL
Moderate enforcement

INVESTIGATIONS AND CASES

In the period 2014-2017, Brazil opened at least nine investigations, opened one case and concluded one case with sanctions.

In October 2016, aircraft manufacturer **Embraer S.A.** entered into a leniency agreement with the Federal Prosecution Office (MPF), Brazil's Securities and Exchange Commission, the US Department of Justice (DoJ) and US Securities and Exchange Commission (SEC), to resolve charges of foreign bribery and money laundering in the Dominican Republic, Mozambique and Saudi Arabia. Embraer agreed to pay US$20 million in disgorgement to Brazilian authorities, as well as a criminal penalty of US$107 million to the

DoJ and US$98 million in disgorgement and interest to the SEC.[187] In February 2017, the MPF and the Mozambique Public Prosecutor's Office signed a leniency agreement with Embraer to exchange information on bribes paid for the purchase of aircraft by the state-owned Linhas Aéreas de Moçambique.[188]

In December 2016, **Odebrecht S.A.** and its subsidiary **Braskem** entered into a global leniency agreement with Brazilian, US and Swiss authorities in relation to the bribery of government officials, their representatives and political parties in Argentina, Angola, Brazil, Colombia, the Dominican Republic, Ecuador, Guatemala, Mexico, Mozambique, Panama, Peru and Venezuela in order to win business in those countries. Odebrecht agreed to pay fines of US$2.39 billion to Brazilian authorities, US$116 million to Swiss authorities and US$93 million to US authorities.[189] A subsequent agreement was signed by Odebrecht and Brazilian authorities in July 2018, but this does not yet constitute a case closed with substantial sanctions. It has not been effectively opened or closed, nor have the sanctions, so far, been substantial **(see case study on page 107)**.[190]

TRANSPARENCY OF ENFORCEMENT DATA

The MPF maintains a regularly updated, publicly available database of all cases currently being investigated, including those related to foreign bribery.[191] It also publishes a chart containing information on all leniency agreements and "conduct adjustment" agreements signed between MPF and companies, although detail on specific cases in the chart is limited.[192] Detailed case information and the latest news on foreign bribery are not easily found. Court decisions are published in full on courts' websites and official gazettes, providing there are no confidentiality issues. The Constitution allows for secrecy in judicial proceedings for social interests or reasons of privacy.[193] Access to some court documents requires a lawyer's registration number and PIN. The authorities usually publish more information about higher profile cases. For instance, the MPF publishes online all sentences and criminal charges related to Operation Car Wash *(Lava Jato)* (see below),[194] and has also published the Odebrecht leniency agreement[195] and Embraer's Conduct Adjustment Agreement.[196] Though partially published, a significant part of the agreements remains under seal, including the annex where the foreign illegal conduct is further detailed.

The Department for Asset Recovery and International Legal Cooperation, within the Ministry of Justice, publishes monthly statistical reports on requests for mutual legal assistance (MLA).[197] The reports are very detailed and contain the number of requests classified by type (criminal, civil or labour), current status and the number of countries involved, among other elements.

RECENT DEVELOPMENTS

Since 2014, the Federal Police have been conducting Operation Car Wash (*Lava Jato*), currently in its 52nd phase.[198] As a result, the MPF has already brought more than 100 charges against almost 500 individuals.[199] The prosecutor's office has created an International Cooperation Unit and specialised corruption prosecution offices to manage the operation.[200] In 2017, the MPF also issued new guidelines on leniency agreements for federal prosecutors in corruption investigations.[201]

The Office of the Comptroller General (CGU) has recently developed a programme called *Pró-Ética*, which seeks to promote a more ethical and transparent corporate environment by encouraging companies' voluntary adoption of integrity measures.[202] The CGU has also entered into a partnership with the Brazilian Health Regulatory Agency to combat foreign bribery through the mutual exchange of intelligence on Brazilian companies and industries operating in foreign countries in the health sector.[203] It also entered into a similar partnership with Brazil's Economic Defence Administrative Council (CADE), which is in charge of competition policy and antitrust.[204] The CGU plans to develop similar partnerships with other public agencies.

A recent leniency agreement was concluded by two companies, MullenLowe and FCB Brasil, units of the global Interpublic Group, with the CGU and the Office of the Attorney General (AGU). This is the first such agreement involving all relevant regulatory agencies with powers to enter into this type of arrangement.[205] The agreement was reached under the auspices of an AGU-CGU Ordinance, signed in December 2016, regulating leniency agreement procedures within the federal government. Prior to this, authorities acted independently, leading to legal uncertainty.[206]

Almost two years after signing the Odebrecht leniency agreement with the MPF, the CGU and the AGU announced that they had concluded a separate leniency agreement with the company.[207] This agreement provides for a fine of US$715 million, which may possibly be deducted from the US$2.3 billion penalty Odebrecht owes Brazilian authorities based on its December 2016 settlement with the United States.[208]

After conclusion of this agreement, Odebrecht will again be able to contract with the federal government and its state-owned enterprises. The terms of the agreement have not, however, been published, nor is Brazil's National Audit Court (TCU) a party, which has generated uncertainty about the possibility of further civil action to demand additional reparations from Odebrecht.[209]

The CGU-AGU agreement establishes a US$10 million fine for foreign bribery – unlike the MPF agreement which did not state any fine for foreign bribery. It also grants Odebrecht a three-year period (renewable for another three years) to seek separate agreements directly with countries where irregularities were committed. If no such agreements are concluded, the CGU retains the competence to seek additional penalties against the company.

INADEQUACIES IN LEGAL FRAMEWORK

Brazil has not established corporate criminal liability for corruption, including foreign bribery, although there are bills relating to the issue pending in parliament.[210] Legislation in 2013 established strict administrative liability and civil liability for companies in corruption cases.[211] However, most states and municipalities have yet to issue local regulations in line with the federal decree,[212] which has led to few companies actually being punished under the law. The National Registry for Punished Companies indicated only 34 companies had suffered some sort of penalty since its establishment.[213]

There are deficiencies in the arrangements for leniency agreements. Besides the MPF, there are other authorities – CGU, AGU, CADE, TCU – with the power to investigate and seek sanctions against companies involved in corrupt practices, both at the civil and administrative levels. The unclear division of competences fosters inaction by the authorities. It may also discourage companies from negotiating agreements because they may fear being the target of prosecution from other authorities.[214] For example, a leniency agreement signed by the MPF does not bind the other authorities. Certain authorities may, however, in some cases, be able to use the information provided as part of the agreement as the basis for their own investigations and cases, though that has not yet happened. Recent decisions by the country's judiciary have also pointed to stricter limits on the use of evidence by authorities not included in the agreements.[215]

The shortcomings described above make it clear that Brazilian authorities have a long way to go to adequately respond to the country's responsibilities over its companies' large-scale transnational corruption. This is all the more so considering the Brazilian state's support to these companies' corrupt operations abroad. Brazil's development bank, for example, granted 99 per cent of its subsidised export credit for engineering services in a decade to only five companies, all of them investigated in Operation Car Wash (*Lava Jato*). Among them, Odebrecht obtained 82 per cent of the credit, worth US$31.7 billion.[216]

In spite of these serious shortcomings, the country's progress in investigating and sanctioning its companies' transnational corruption must be noted. Unlike recent cases such as that of Embraer, which were brought to light and bore consequences due to the initiative of foreign authorities, the Odebrecht settlement resulted to a great extent from Brazilian law enforcers' own efforts. Although the first settlement signed between Odebrecht and the MPF did not produce specific sanctions for the company's foreign bribery, prosecutors took a significant step in demanding, during settlement negotiations, that Odebrecht's executives report their wrongdoings abroad. More recently, the new leniency agreement signed between Odebrecht and the Offices of the Comptroller General and the Attorney General went a step further and included specific sanctions – albeit insufficient – related to the transnational corruption reported.

These efforts signify that Brazilian authorities are starting to give attention to the transnational dimension of the grand corruption schemes they have been confronting with remarkable impetus in recent years. They are also seeking better solutions to the challenges of leniency agreements involving multiple jurisdictions, which still lack jurisprudence, proper regulation and an institutional framework in Latin America.

Whistleblower protection in Brazil remains inadequate, although two bills regarding whistleblower protection and a reward system for whistleblowers are pending.[217] Recent legislation regulating police hotline services is an important step, albeit insufficient.

INADEQUACIES IN ENFORCEMENT SYSTEM

In October 2014, the OECD WGB expressed concern that the level of enforcement against foreign bribery in Brazil remained very low.[218] Progress has been made over the last few years, but challenges remain. Cases and especially investigations can last years before they are concluded, which often undermines enforcement due to expiry of the statute of limitations. Brazilian authorities lack capacity, organisation, resources and effective communication between state and federal agencies. Public officials lack sufficient guidance and regular training on foreign bribery offences.

INADEQUACIES IN MUTUAL LEGAL ASSISTANCE

Between 2014 and June 2018, as part of Operation Car Wash, the MPF made and received 484 requests for international cooperation with foreign authorities,[219] including Switzerland, the United States, Denmark, Angola, Russia and several Latin American countries.[220] Brazil has requested international cooperation from 45 countries and received requests for international cooperation from 34 countries. However, Brazil has only 20 bilateral MLA treaties regarding anti-bribery enforcement, which can be used as a basis for obtaining evidence abroad in criminal matters, including anti-bribery enforcement cases. Such treaties concern only the exchange of information regarding criminal offences, not the exchange of evidence for civil and administrative proceedings, which are the only realms covered by Brazil's Corporate Liability Law.[221] Alongside these efforts, CGU has begun negotiating agreements to facilitate the exchange of information in foreign bribery cases, having already signed a memorandum of understanding with Colombia's Superintendence of Companies.

The map of outgoing MLA requests by Brazilian authorities[222] clearly demonstrates a concentration of requests to jurisdictions that are either tax havens or the headquarters of multinational companies involved in the Car Wash scandal (mostly European countries), with very few requests to other jurisdictions where Brazilian companies under investigation operate abroad (mostly Latin American and African countries). For example, the United States and Switzerland received 44 per cent of all requests made by Brazilian authorities. Despite having received 19 requests from Argentina and nine from Colombia, none were made to these countries' authorities. The fact that Brazil received 60 requests from Peru and made only two requests to Peruvian authorities symbolises this set of priorities. It reveals the extent to which international cooperation by Brazilian authorities prioritises asset recovery and the investigation of offences by foreign companies in Brazil, and involves significantly less investigation of foreign bribery by its own national companies.[223]

Finally, the lack of coordination between the federal executive branch's Department for Asset Recovery and International Legal Cooperation (within the Ministry of Justice) and the Secretariat for International Cooperation (within the Federal Prosecutor's Office) creates confusion through overlapping competences for MLA. Also, the former is a governmental body, which raises questions about the assurance of autonomy and accountability when dealing with cases in which members of the federal government are the object of investigations.[224]

RECOMMENDATIONS

- Address the lack of centralised enforcement of corruption cases and the unclear division of competences between government authorities regarding foreign bribery offences.
- Adopt and implement the bill that facilitates the creation of Joint Investigative Teams included in the "New Measures against Corruption."[225]
- Adopt and implement the bill related to whistleblower protection included in the "New Measures against Corruption."[226]
- Address the competing interests and responsibilities between the MPF's Secretariat for International Cooperation and the Ministry of Justice's Department for Asset Recovery and International Legal Cooperation.
- Ensure the autonomy and accountability of the Ministry of Justice's Department of Asset Recovery and International Legal Cooperation when dealing with cases in which members of the federal government are the object of investigations.
- Require states and municipalities to issue local regulations for the Corporate Liability Law (or reach an agreement to issue a joint regulation) as soon as possible.
- Sign more bilateral MLA treaties with other nations and amend existing ones to cover information

exchange during the investigation of administrative infractions of the Corporate Liability Law.

- Improve cooperation between governmental agencies in the fight against foreign bribery and to negotiate leniency agreements.
- Improve transparency and publication of decisions and leniency agreements related to major cases of foreign corruption and money laundering.
- Maintain public statistics on investigations, prosecutions and sanctions for foreign corruption and money laundering, including data on whether foreign bribery is the predicate offence.
- Provide proper training and guidance for state and local authorities responsible for prosecuting foreign bribery offences.
- Ensure that all credible foreign bribery allegations are proactively investigated.

BULGARIA
Little or no enforcement

INVESTIGATIONS AND CASES

In the period 2014-2017, there were no known foreign bribery investigations, prosecutions or convictions in Bulgaria.

TRANSPARENCY OF ENFORCEMENT DATA

Enforcement data is partially published. In 2016, the Supreme Judicial Council (SJC) mandated separate treatment of foreign bribery cases when collecting and providing summarised statistics on courts' activities.[227] The statistics, published twice a year, contain aggregated numbers of cases that national courts commenced and concluded, broken down by instances, and now cover foreign bribery cases.[228] In 2017, the Chair of the Supreme Court of Cassation (SCC) ordered that data about all corruption (including foreign bribery) and related cases be published on a monthly basis.[229] Data regarding investigations is not publicly provided by the SJC or the Prosecutor's Office. Court decisions and other actions are published in full, except for personal and corporate data. The SJC maintains a dedicated website, which can be searched for decisions.[230] Most courts also provide such information on their websites.

The Prosecutor's Office provides statistical data on requests for mutual legal assistance (MLA) made and received in their annual reports.[231] However, there is no breakdown by type of crime. Data regarding MLA requests to and from courts is not published.[232]

RECENT DEVELOPMENTS

Amendments to the Criminal Code, adopted in 2015, criminalise the bribery of a third person and broaden the definition of "foreign public official".[233] Amendments to the Administrative Violations and Sanctions Act, also adopted in 2015, increase the fine payable by legal persons, based on the intangible or unestablished benefit gained from committing certain crimes, to up to one million Bulgarian lev (approximately US$630,000).[234] They also provide for sanctions against legal persons established in foreign jurisdictions where the crime has been committed in Bulgaria.[235]

In 2015, the Council of Ministers endorsed the National Strategy for Preventing and Combating Corruption in Bulgaria (2015–2020).[236] The strategy prioritises strengthening judicial institutions and improving inter-agency cooperation. In early 2018, the new anti-corruption law (Prevention of Corruption and Forfeiture of Illegal Assets Act) was adopted and a Commission for Prevention of Corruption and Forfeiture of Illegal Assets established.[237] In early 2015, a specialised unit was formed by the Prosecutor's Office and the Ministry of the Interior for investigating corruption crimes perpetrated by persons holding or having held senior public positions.

INADEQUACIES IN LEGAL FRAMEWORK

The Criminal Code does not provide for companies to be held responsible for acts of bribery committed by their subsidiaries and joint ventures with addresses and headquarters outside Bulgaria. The legal framework also does not adequately regulate whistleblower protection.

INADEQUACIES IN ENFORCEMENT SYSTEM

The prosecution and punishment of corruption crimes in general, and foreign bribery in particular, remain inadequate. Key shortcomings in the enforcement system include the heavy workload of judicial practitioners, and the lack of adequate training and expertise of enforcement authorities.

INADEQUACIES IN MUTUAL LEGAL ASSISTANCE

There are no significant inadequacies in the legal framework on MLA. Shortcomings in practice are mainly connected to lack of skills in making and processing MLA requests, heavy workload of practitioners and insufficient language skills.[238]

RECOMMENDATIONS

- Comprehensively regulate the protection of whistleblowers reporting corruption-related acts.
- Strengthen law enforcement entities' capacity and improve inter-agency cooperation.
- Collect and make publicly available statistical data, including on sanctions imposed on legal persons for corruption-related crimes.
- Provide training to judges, prosecutors and investigators on foreign bribery offences.
- Carry out investigations and further strengthen international cooperation.
- Collect and share examples of international good practice and lessons learned in prosecuting foreign bribery.
- Develop model MLA requests, instructions for processing those received, and detailed guidance, available online.
- Implement awareness-raising activities targeted at the general public, the private sector and respective authorities on foreign bribery offences.

CANADA
Limited enforcement

INVESTIGATIONS AND CASES

In the period 2014-2017, Canada commenced four foreign bribery cases and concluded one (upholding an earlier 2013 conviction on appeal). Information on the number of investigations commenced is not publicly available.[239]

In 2017, the Ontario Court of Appeal upheld the 2013 conviction of a Canadian man for conspiring to bribe Indian public officials, including a minister, in a failed bid to win a major contract for **Cryptometrics Canada** to supply security-screening equipment to Air India.[240] The first individual convicted under Canada's anti-bribery law, he was sentenced to three years in prison,[241] and has filed an application for leave to appeal to the Supreme Court of Canada, which has yet to be granted.[242] The Royal Canadian Mounted Police also charged two Americans and one British businessman in 2014 in the same case. Their trial began in January 2018, but there has not yet been a judgement.[243] In October 2017, two of the defendants moved for a stay of proceedings, on the grounds that their right to be tried within a reasonable time had been infringed, but the motion was denied, partly because their extradition proceedings had caused delays.

In 2012 and 2013, the police charged three executives of **SNC-Lavalin**, a former Bangladeshi minister and a Bangladeshi-Canadian citizen with bribery in connection with a US$50 million contract for consultancy services related to the construction of the US$3 billion Padma Bridge in Bangladesh.[244] In 2014, the prosecution of the former minister was stayed for lack of a direct connection to Canada,[245] and in 2015, charges against one SNC-Lavalin executive were stayed based on his agreement to cooperate with the police.[246] In 2017, the Ontario Superior Court of Justice acquitted the three remaining accused, due to insufficient evidence.[247]

In another case involving SNC-Lavalin, in 2014, the police charged two former company executives in 2014 with foreign bribery in Libya. In 2015, the police also charged the SNC-Lavalin Group Inc. and two of its subsidiaries with bribery and fraud in Libya. The cases against the individual and corporate accused have been combined, and the trials are scheduled to begin in September 2018.[248] According to police, a senior SNC-Lavalin executive established a scheme in which two shell companies, **Duvel Securities** and **Dinova International**, billed SNC-Lavalin roughly US$127 million for helping the firm win dozens of major contracts in Libya during the 2000s.[249]

In 2016, the police charged the president of **Canadian General Aircraft** in Calgary with conspiring to offer a bribe to Thai officials in order to secure a contract for the purchase of a commercial jet for Thailand's national airline.[250] In 2017, the charges were stayed.[251]

TRANSPARENCY OF ENFORCEMENT DATA

Enforcement data is partially available through online annual reports produced for parliament by Global Affairs Canada.[252] The reports provide information on foreign bribery cases opened and on convictions, but not on investigations, where charges have not been laid. The Canadian Legal Information Institute, a non-profit organisation, publishes court judgments, tribunal decisions, statutes and regulations from all jurisdictions in Canada.[253] It does not, however, include information on other case resolutions, such as negotiated settlements. There is little public information on Canada's requests for or provision of mutual legal assistance (MLA).[254]

RECENT DEVELOPMENTS

In 2018, the government announced that it would introduce legislation for deferred prosecution agreements (DPAs) to be implemented through judicial remediation orders.[255] In 2017, Public Services and Procurement Canada (PSPC), the Competition Bureau, and the police created a telephone hotline and online platform to report fraud, collusion or corruption in federal contracts and real property agreements, but not for reports of foreign bribery.[256] Also in 2017, the government repealed the exception allowing for facilitation payments under the Corruption of Foreign Public Officials Act (CFPOA).[257] In 2015, the PSPC further revised its "Integrity Regime", so that it no longer penalises suppliers for the actions of affiliates if the supplier could show that it was not involved in the foreign offence. The revisions also allow suppliers to apply for a reduced ineligibility period (five years) where the causes of conduct are addressed.[258] The Integrity Regime was updated again in 2016 to add reporting requirements for bidders, clarify the debarment process and add anti-avoidance provisions.[259] Further enhancements are expected.[260] In 2015, Canada adopted the Extractive Sector Transparency Measures Act, which creates reporting obligations for businesses operating in Canada that work in the extractive sector.[261]

INADEQUACIES IN LEGAL FRAMEWORK

The current system of penalties for foreign bribery, and the requirement for full-blown criminal investigations in all cases, can undermine effective enforcement against less severe breaches of the CFPOA. Allowing for alternative civil or administrative enforcement options would provide greater flexibility, enhancing overall enforcement.

INADEQUACIES IN ENFORCEMENT SYSTEM

Canadian enforcement of white-collar offences is still hampered by systemic challenges, in particular, insufficient coordination between investigators and prosecutors. There is a lack of clear processes for voluntary disclosure of potential offences by corporations. The conditions under which corporations that undertake internal investigations may receive credit for cooperation are also not clearly defined. This is due to structural features of the Canadian criminal law system, such as the merger of the police's International Anti-Corruption Unit into the Serious and International Crimes Division, in order to save resources. This appears to have led to diminished emphasis on CFPOA cases.[262]

INADEQUACIES IN MUTUAL LEGAL ASSISTANCE

Police investigators, Crown prosecutors and defence counsel consistently report that the MLA process is slow.[263] In its most recent report to parliament, the government stated that the available resources for processing MLA requests had been inadequate, and that additional resources were being made available as of 2017.[264] It is uncertain whether this new structure is sufficient, and whether the lack of transparency or detailed reporting regarding the making or receiving of MLA requests limits the possibility of evaluating shortcomings.

RECOMMENDATIONS

- Amend the CFPOA to provide a civil or administrative enforcement option to allow for greater flexibility in enforcement.
- Establish open dialogue with relevant stakeholders to clarify the process for voluntary disclosure of potential offences by corporations, and the prospect of credit for cooperation by those that undertake extensive internal investigations.
- Encourage enforcement officials from the police and PSPC to take a more proactive approach with defence counsel and stakeholders (e.g. Canadian Bar Association, Transparency International Canada) to discuss best practice in areas such as disclosure, tendering of evidence, privilege issues and potential grants of immunity to cooperating witnesses.
- Ensure that legislation on DPAs is passed as planned.

CHILE
Limited enforcement

INVESTIGATIONS AND CASES

In the period 2014-2017, Chile opened at least 11 investigations,[265] and in November 2016, concluded its first foreign bribery prosecution in the so-called "Fragatas Case".[266]

A Chilean criminal court sentenced Víctor Lizárraga Arias, a general in the Chilean Army and the Project Director of **SERLOG** (Servicios Logísticos Ltda.), a logistics company specialising in the brokering of weapons and provisions, to 205 days in prison, a fine of three million pesos (approximately US$5,000), and disqualification for seven years and one day from public office.[267] Arias was found guilty of bribing a Korean public official at the Korean embassy with approximately US$160,000 in exchange for facilitating business deals between Korean companies and different branches of the Chilean armed forces. The ruling has not yet been enforced as it is under appeal. In another case, the Chilean Prosecutor reached a settlement with a Chilean cement company in 2015 in relation to allegations that the company attempted to bribe officials from the Bolivian Highway Agency in 2010.[268] Although the prosecutor could not prove that bribery had taken place, the company was ordered to establish an anti-corruption programme and to donate computer equipment worth more than 10.2 million pesos (approximately US$20,000) to a local educational centre.[269]

In addition, the Chilean authorities initiated 15 investigations into foreign bribery from 2014 to 2017, of which four were ongoing at the end of 2017.[270]

TRANSPARENCY OF ENFORCEMENT DATA

The Chilean Public Prosecutor's Office and the Financial Analysis Unit (in cases of money laundering and financing of terrorism) publish detailed statistics on the number of crimes reported and investigated, cases opened and cases concluded on a quarterly and annual basis, including on foreign bribery.[271] The courts publish case information via an online database which allows any person to access judicial decisions and see the status of ongoing cases, the individuals involved and the case files, although navigating the database requires some expertise.[272] The Public Prosecutor's Office does not publish any information on requests for mutual legal assistance (MLA) sent or received, but this is available through an official request for public information.

RECENT DEVELOPMENTS

Proposed legislation would extend whistleblower protection to government contractors, and require a whistleblower's identity to be kept confidential. However, even if passed, this would be inadequate as it would not cover employees of state-owned enterprises, and the protection would be granted only for a limited period.[273] According to the OECD WGB, the Public Prosecutor's Office has issued instructions to ensure that regional prosecutors pursue foreign bribery cases.[274]

INADEQUACIES IN LEGAL FRAMEWORK

Under Chilean law, companies may not be held criminally liable for foreign bribery if they have an "offence prevention model" at the time of the offence. However, the guidelines on criminal liability issued by the Public Prosecutor's Office in 2014 do not specifically describe the characteristics of such a model when it comes to preventing foreign bribery. There are also concerns about the process for certifying offence prevention models, including a lack of capacity and expertise among private-sector entities which conduct the certification process.[275] Moreover, while the rules on bank secrecy for cases of money laundering have been eased, this does not apply for foreign bribery cases. Chile still does not require accountants and auditors to report suspected money laundering transactions, and legal persons cannot be held liable for false accounting.

Chile has also not amended its legislation to provide clear territorial jurisdiction to prosecute legal persons for the foreign bribery offence.[276] Penalties for bribery offences are not proportionate to the offence, although a bill in parliament proposes to increase these penalties.[277] Formal investigations of foreign bribery must still be concluded within two years, a very short timeframe for often complex cases. The legal framework for whistleblower protection is inadequate, especially for employees of government contractors and state-owned enterprises.

INADEQUACIES IN ENFORCEMENT SYSTEM

There is insufficient awareness among the judiciary and Chilean diplomats abroad of the offence of foreign bribery.[278]

INADEQUACIES IN MUTUAL LEGAL ASSISTANCE

MLA mechanisms tend to be bureaucratic and slow, especially given the short periods available for investigations. In practice, this has encouraged informal communication between prosecutors from different countries, made possible due to different international forums that favour the creation of professional cooperation networks.

RECOMMENDATIONS

- Develop comprehensive whistleblower protection legislation that guarantees protection and confidentiality, and provides incentives to promote the reporting of corruption.
- Lengthen the permissible time periods for preliminary inquiries in foreign bribery investigations.
- Increase penalties associated with corruption offences.
- Provide more awareness-raising and training on the offence of bribery of foreign public officials, especially among judges and diplomatic personnel.
- Include companies in anti-corruption policy discussions.

COLOMBIA
Little or no enforcement

INVESTIGATIONS AND CASES

From 2014-2017, Colombia opened one investigation into foreign bribery, but did not open or conclude any cases.

In September 2017 it was reported that the Superintendence of Companies (Superintendence) initiated a preliminary inquiry into allegations that **Inassa's** former manager acted as an intermediary in relation to payments made to politicians in Panama, the Dominican Republic, Ecuador and Brazil, in exchange for government contracts.[279] Inassa is a subsidiary of the Spanish water provider **Canal Isabel II**, owned by the Madrid local government, which is itself the subject of allegations of embezzlement in Spain and Colombia to the benefit of individuals with ties to the Spanish government's ruling Popular Party.[280] In July 2018, the Superintendent of Companies reported that his office had imposed a fine of 5,078 million pesos (about US$1,700) on Inassa for acts of transnational bribery of Ecuadorian public officals in 2016.[281]

In March 2018, it was reported that the Superintendent was conducting a preliminary investigation into alleged foreign bribery involving at least 10 companies.[282] It was also reported that it fined one of the companies, **Vram Holding S.A.S.**, 155 million Colombian pesos (approximately US$55,000) for denying access to financial and accounting information to support the investigation.[283]

TRANSPARENCY OF ENFORCEMENT DATA

The Attorney General's Office and the Superintendence maintain databases on foreign bribery enforcement, but these are not accessible to the public. Although court judgments are public, accessing this information is difficult due to the time it takes for sentences to be disclosed and the complication of navigating court websites. There is no public access to statistics on requests for mutual legal assistance (MLA) sent and received.

RECENT DEVELOPMENTS

In February 2016, Colombia's President enacted Law 1778, known as the Transnational Corruption Act, the country's first foreign bribery law. This provides for corporate administrative liability for bribes paid abroad by Colombian companies, including the "promising" of a bribe, and provides broad definitions of "transnational bribery", "foreign public official" and "legal person".[284] The law provides for a 10-year statute of limitations for foreign bribery proceedings against a company (higher than the usual five years for bribery). It also increases sanctions for foreign bribery for both natural and legal persons and introduces the possible prohibition of a person convicted of foreign bribery from exercising a public function. Legal persons convicted in a

foreign bribery process can be debarred from public contracting. Article 19 of the law establishes credit for companies with adequate anti-corruption compliance programmes, when calculating penalties for both domestic and foreign bribery violations. The law and accompanying Resolution 100-002657 of 2016 also require certain companies to implement a business integrity programme.

In 2016, the government introduced Decree 1674 to define those who are considered politically exposed persons (PEPs) for the purposes of money laundering. However, the definition does not include foreign PEPs and other categories of relevant persons.[285]

Two draft bills are awaiting discussion in parliament. A Whistleblower Protection Bill includes provisions to promote and facilitate the reporting of acts of corruption, and to protect both public- and private-sector employees from retaliation.[286] A draft law requires lawyers, accountants, tax inspectors and heads of internal control units to report unusual or suspected corrupt activities to the Financial Information and Analysis Unit (UIAF).[287]

During 2017, the Colombian Transparency Secretariat held meetings with a range of stakeholders to raise awareness of the scope of the OECD Anti-Bribery Convention and the Transnational Corruption Act.

INADEQUACIES IN LEGAL FRAMEWORK

As noted by the OECD WGB in its Phase 2 Follow-up Report in February 2018, the Transnational Corruption Act "significantly strengthens Colombia's foreign bribery offence and addresses many deficiencies raised in Phase 2".[288] The principal weakness in the law is that it only establishes administrative, but not criminal, liability for legal persons. The continued absence of a whistleblower protection law remains an important gap. The bill under consideration is not part of the government's current legislative priorities and is unlikely to be passed in the near future.[289]

INADEQUACIES IN ENFORCEMENT SYSTEM

According to the OECD WGB's 2018 report, in order to strengthen capacity and address weaknesses in enforcement against financial and economic crimes, Colombia restructured the Prosecutor's Office and introduced a specialised Unit of Criminal Finances in 2017. Colombia has also set up the National Directorate for Prosecution of Corruption, responsible for prosecuting the most serious corruption cases, and created a special working group in 2017 for prosecuting transnational corruption cases.[290]

INADEQUACIES IN MUTUAL LEGAL ASSISTANCE

Colombia has signed many international agreements and treaties related to MLA, both bilateral and multilateral, and does not have significant legal gaps. However, there are still a number of practical deficiencies in MLA. Firstly, the number of officials responsible for processing requests both in the General Prosecutor's Office and in the Superintendence of Companies is insufficient, even when officials are specifically trained. Additionally, technical weaknesses persist in both entities regarding the databases through which all received and sent requests are recorded. Neither the National Prosecutor's Office nor the Superintendence prioritise the follow-up of possible cases of transnational bribery. Despite these challenges, Colombia has opened one foreign bribery investigation based on an incoming MLA request, and has also been active in the transnational **Odebrecht** corruption case, investigating, prosecuting and sanctioning Colombian public officials on the passive side, and providing MLA to other jurisdictions.[291]

RECOMMENDATIONS

- Ensure criminal liability for natural and legal persons covering any act of corruption, including transnational bribery.
- Adopt legal and practical measures to protect whistleblowers in both the public and private sectors.
- Ensure adequate periods for the investigation and punishment of natural and legal persons for transnational bribery offences.
- Continue developing the concept of politically exposed persons in Colombian legislation.
- Raise awareness in the public and private sectors of national laws and guidelines relating to the OECD Anti-Bribery Convention.

- Increase awareness of the credit legal entities can receive for collaboration with the Superintendence of Companies.
- Increase awareness of companies required to adopt business ethics programmes, and of complaints channels for transnational bribery cases.
- Strengthen the recording of MLA statistics through a regularly updated database and ongoing training for relevant personnel, including UIAF officials.
- Publish statistics on the number and type of cases of transnational bribery being investigated, and improve access to public information on judicial decisions.

COSTA RICA
No classification

INVESTIGATIONS AND CASES

There were no reported investigations or cases for the period 2014-2017. Costa Rica has very few companies that have operations outside the country, which could explain the lack of cases.

TRANSPARENCY OF ENFORCEMENT DATA

This lack of cases means there is no published data on foreign bribery investigations, cases commenced or cases concluded. The judiciary publishes general statistics on crime on its institutional portal, including the number of cases for each type of crime.[292] Only criminal cases that are concluded at the highest-level courts (e.g. Chamber III of Cassation) are published.[293] While a case is pending, the judicial files are confidential and only parties involved can access the information. Some statistics on requests for mutual legal assistance (MLA) are available, but are not sufficiently disaggregated (by date, type of crime, country, judicial file, etc.).[294]

RECENT DEVELOPMENTS

In 2016, the Costa Rican Congress approved Law no. 9389, which modified the crime of transnational bribery (Article 55), to include the "offer", "promise" or "gift" of a bribe.[295] In 2017, Congress approved the country's adoption of the OECD Anti-Bribery Convention (Law no. 9450).[296] Congress is currently discussing a Bill on "Responsibility of legal persons for acts of transnational bribery and domestic bribery" (Law no. 20,547), introduced in 2017. The country's accession process to the OECD is expected to be completed in 2019.

INADEQUACIES IN LEGAL FRAMEWORK

Costa Rican law currently establishes administrative, but not criminal, liability for legal persons for foreign bribery. In its Phase 1 Report in June 2017, the OECD WGB recommended that the country implement the necessary legal reforms to investigate and punish legal entities that participate in acts of bribery.[297] In addition, Costa Rican law currently does not provide for a general false accounting offence applicable to companies, which makes it difficult to sanction such practices when aimed at foreign bribery. Instead, in order to constitute an offence, the act must have been committed for the purpose of altering or avoiding tax. Sanctions for both companies and natural persons are too low to serve as an effective deterrent. In its Phase 1 Report, the OECD WGB expressed concern over the lack of criminal fines and sufficient prison sentences as a sanction for natural persons. It also expressed concerns about the low level of fines for legal persons, and inadequate provision for confiscation of the bribe and proceeds of bribery. In addition, protections for whistleblowers are weak. The numerous treaties signed between Costa Rica and international organisations that grant immunity to officials of international organisations in particular situations can also undermine the legal framework and enforcement.[298]

INADEQUACIES IN ENFORCEMENT SYSTEM

The Public Prosecution Service and the Ministry of Justice are both responsible for enforcement. However, there is a risk of investigative overlap, which may result in allegations being overlooked.[299]

INADEQUACIES IN MUTUAL LEGAL ASSISTANCE

Response times to MLA requests are slow, which can undermine the processing of cases. The formulation of requests by prosecutors can be unclear and can

fail to adequately specify the actions required by the authorities to whom the request is made. In both the Judicial Investigation Agency and the Public Prosecutor's Office, there is a lack of training in local languages on reciprocal judicial assistance. Existing written materials and training tools are often in English, which few staff of these institutions read or speak fluently. Limited staff and resources also undermine the priority given to making or processing MLA requests, and the ability to carry them out.

RECOMMENDATIONS

- Improve the quality of data available on corruption offences, especially national and transnational bribery.
- Approve a law on criminal liability of legal persons with sanctions that are effective, proportionate and dissuasive.
- Identify and renegotiate the international treaties that grant immunity to foreign officials working in Costa Rica, in order to reinforce anti-corruption efforts.
- Ensure a clear and effective system for coordination and cooperation between responsible agencies in foreign bribery cases.
- Approve a whistleblower protection law.
- Improve the capacity of the Judicial Investigative Agency and the Public Prosecutor's Office to handle MLA requests and ensure adequate resources.

CZECH REPUBLIC
Little or no enforcement

INVESTIGATIONS AND CASES

During the period 2014-2017, the Czech Republic opened one new investigation, but no new cases. The investigation, still ongoing, is being pursued by the National Organised Crime Agency (NOCA) and the High Public Prosecutor's Office, and involves the alleged bribery of a foreign public official in a non-party to the OECD Convention. In April 2017, the Financial Analytical Office filed a criminal complaint with the police regarding the laundering of the proceeds of foreign bribery after completing its analysis of a suspicious transaction report. No further details are available. To date, the Czech Republic has not prosecuted a foreign bribery case.[300]

TRANSPARENCY OF ENFORCEMENT DATA

The Czech Republic does not publish statistics on foreign bribery investigations, cases commenced or cases concluded. The Czech police publish statistics on the number of prosecuted crimes related to corruption, but not specifically related to foreign bribery.[301] Higher instance courts such as the Supreme Court publish decisions and resolutions in anonymised form. Decisions from other courts can be accessed on request, also in anonymised form. The OECD WGB Phase 4 Report in 2017 stated that "expedient access to court judgements concerning foreign bribery is necessary to ensure that sanctions for foreign bribery are effective, proportionate and dissuasive as required by the Convention. Their publication is also necessary for raising awareness of the risks of foreign bribery, and to ensure that Czech companies understand how to manage those risks through effective compliance measures". The Czech Republic does not publish statistics on requests for mutual legal assistance (MLA) made and received.[302]

RECENT DEVELOPMENTS

In 2016, the Ministry of the Interior created NOCA by merging the former Police Organised Crime Unit and the Unit for Combating Corruption and Financial Crime. NOCA takes the lead on serious offences, including foreign bribery. The merger was intended to increase efficiencies, but the OECD WGB Phase 4 Report considered it unclear whether the merger would enhance the detection of foreign bribery cases.[303]

The OECD WGB also found that the proposal pending before parliament at the time to safeguard the Supreme Public Prosecutor from unreasonable dismissal was an important and reasonable initiative for ensuring prosecutorial independence and urged adoption of appropriate legislation without further delay. No such legislation was adopted.

According to the OECD WGB's Phase 4 Report, major inroads have been made in the enforcement of the Act on Criminal Liability of Legal Entities, with investigations and prosecutions increasing rapidly since 2013. However, the application of a new exemption for "justly required" efforts to prevent the commission of

an unlawful act is uncertain, and relevant information in a guide produced by the Supreme Public Prosecutor's Office is not sufficiently practical.

Act No.104/2013 Coll, on International Judicial Cooperation in Criminal Matters, which came into force on 1 January 2014, substantially simplified the framework for executing incoming MLA requests. In June 2016, the Ministry of Justice submitted a draft law for implementing the European Investigation Order (the Amendment on international judicial cooperation in criminal matters – EU).[304]

INADEQUACIES IN LEGAL FRAMEWORK

The government submitted to parliament in 2016 a draft law to ensure the independence of the public prosecution service from political influence, as a follow-up to its action plan for 2015.[305] However, it has still not been adopted, meaning there is no guarantee that political factors cannot influence the investigation and prosecution of foreign bribery cases. The Czech Republic also does not have comprehensive whistleblower protection legislation for the public or private sectors.[306] As noted above, the OECD WGB Phase 4 Report found insufficient clarity in the new exemption from criminal liability for companies that have taken "justly required" efforts.

INADEQUACIES IN ENFORCEMENT SYSTEM

The OECD WGB has expressed concern about the absence of prosecutions for foreign bribery, despite the high risk of bribery in sectors in which the Czech Republic is an important exporter, such as machinery and defence materials.[307] The WGB has also noted the need to ensure that NOCA is provided with adequate analytical resources for foreign bribery cases.[308]

INADEQUACIES IN MUTUAL LEGAL ASSISTANCE

To date, MLA requests from foreign jurisdictions have proved the primary source of detection of the bribery of foreign public officials in the Czech Republic, with two cases of foreign bribery having been detected through this channel.[309]

RECOMMENDATIONS

- Adopt legislation to increase the independence of prosecution authorities.
- Improve international cooperation to avoid the application of the statute of limitations for acts of corruption.
- Pass a comprehensive law providing whistleblower protection in the public and private sectors.
- Ensure that NOCA officers give sufficient priority to the detection of foreign bribery cases.
- Update the public and internal versions of the Guide on Implementing the Act on Criminal Liability of Legal Entities, to include relevant law and practical information on assessing compliance measures.
- Ensure as a matter of urgency adequate analytical resources for investigating foreign bribery cases.
- Prioritise the detection of foreign bribery though the anti-money laundering system and support efforts by non-financial entities obliged to detect and report suspicions of money laundering related to foreign bribery (e.g. the real estate and gambling sectors, tax advisors and legal professionals).
- Clarify the new exemption from criminal liability for companies that have taken "justly required" efforts.

DENMARK
Little or no enforcement

INVESTIGATIONS AND CASES

During the period 2014-2017, Denmark opened six investigations, but no new cases.[310]

In May 2015, the Danish Fraud Squad (SØIK) was reported to be investigating allegations that **Maersk**, a transport and shipping company, made bribe payments to a former executive of the Brazilian state oil company **Petrobras** for confidential information in order to gain a competitive advantage in dealing with Petrobras.[311] SØIK entered the case after requests from Brazilian authorities to assist with the investigation. In 2017, the World Bank Sanctions Board debarred the Danish company **Consia Consultants APS** in relation to bribery of government officials in Vietnam.[312] It is not known if Danish authorities are investigating this case.

TRANSPARENCY OF ENFORCEMENT DATA

Denmark does not publish statistics on foreign bribery investigations, cases commenced or cases concluded. Important Danish court decisions are published in the official judicial journal (*Ugeskrift for Retsvæsen*[313]) which can be accessed either via a fee-paying subscription or from public libraries. Copies of court decisions can be obtained, for a fee, from the relevant court if the requester knows the case number.[314] However, the public is not informed of cases opened or concluded, which makes it challenging to follow them. Likewise, the public may request information on penalty notices issued to a company (but not a natural person) under a settlement, but as the public is not informed of settlements, this is also somewhat redundant.[315] Denmark does not publish statistics on requests for mutual legal assistance (MLA) made and received.

RECENT DEVELOPMENTS

On 14 March 2018 a new measure entitled the Fight Against Facilitation Payments Initiative (FAFPI) was launched by the Confederation of Danish Industry and the Foreign Ministry.[316] One of the initiative's main objectives is to promote reporting of demands for facilitation payments and to share experiences about how to develop, establish and implement internal systems for reporting facilitation payments to support FAFPI's anonymous online reporting tool.[317] FAFPI collects anonymised data on when and where Danish companies and organisations encounter demands for facilitation payments.

In March 2017, **Danske Bank Estonia** and **Nordea Denmark** were reported to be involved in global corruption and bribery scandals, allegedly laundering 7 billion kroner (around US$1.1 billion).[318] In June 2017, the Danish parliament adopted the new Danish Anti-Money Laundering Act.[319] An August 2017 review by the Financial Action Task Force criticised Denmark for lacking a national policy and committing inadequate resources to combatting money laundering. It urged the country to "do more to properly assess and understand the risks it is exposed to".[320] The review has reportedly triggered a response by Denmark, including allocation of more resources and greater cooperation.[321] In March 2018, the government published a draft national strategy for combatting money laundering and financing of terrorism from 2018-2021.[322]

In September 2014, the Ministry of Justice launched an Anti-Corruption Forum to ensure coordination and information sharing among all relevant authorities in connection with the fight against bribery and corruption. In December 2014, the Director of Public Prosecutions, the National Commissioner of Police and the Customs and Tax Administration entered an agreement to ensure effective, consistent handling of cases and to enhance coordination.[323]

INADEQUACIES IN LEGAL FRAMEWORK

Danish anti-bribery legislation still does not cover trading in influence. Although it has been encouraged to do so by the OECD WGB, Denmark has not increased the maximum sentence for false accounting offences in Sections 296(1)(2) and 302 of the Criminal Code.[324] Regarding corporate liability, the WGB raised substantial concerns in 2015 that prosecutorial guidelines reduced the basis for imposing corporate liability, noting that Denmark planned to issue new guidelines.[325] However, no such guidelines have been issued to date. Denmark has no specific laws to protect whistleblowers, other than protection from dismissal of whistleblowers in the financial sector. A 2015 report by a government-commissioned expert committee advised against introducing special whistleblower protection legislation.[326] No steps have been taken to establish a clear framework for out-of-court settlements in Denmark.[327] The country has not yet been successful in getting Greenland and the Faroe Islands to agree to be parties to the OECD Convention.

INADEQUACIES IN ENFORCEMENT SYSTEM

Denmark has yet to investigate widely publicised foreign bribery allegations involving major Danish companies that have surfaced since the OECD Phase 3 Report in 2013, and has failed to reopen cases that were of concern in the Phase 3 Follow-up Report in 2015.[328] SØIK has not increased the number of prosecutors or investigators. Two prosecutors have been trained to investigate foreign bribery cases, although neither is currently working on such cases at SØIK. However, one police investigator has been trained to investigate foreign bribery cases and is working on such cases at SØIK. Investigators and prosecutors are not given guidance on the definition of foreign public officials.[329] In 2014, the European Commission suggested that further efforts be undertaken to fight foreign bribery, for example, by raising the level of fines for corporations.[330] This has yet to happen. Denmark has not issued any official guidance on self-reporting for individuals or legal persons.

INADEQUACIES IN MUTUAL LEGAL ASSISTANCE

Denmark has no legislation on MLA in criminal matters and applies its national laws by analogy to MLA requests, using the Council of Europe Convention on Mutual Legal Assistance as guidance. However, the country appears able to respond to requests in a timely, constructive and effective manner and the Single Point of Contact system established by the Danish National Police provides for a rapid and efficient exchange of information with other police authorities.[331] SØIK has adopted new policies to pursue MLA in foreign bribery cases more proactively, and to pursue remaining offenders after settlement with some offenders.[332]

RECOMMENDATIONS

- Increase sanctions for accounting offences.
- Improve whistleblower protection in the public and private sectors.
- Extend foreign bribery legislation to cover Greenland and the Faroe Islands.
- Enhance reliance on corporate liability and ensure that it extends to subsidiaries.
- Increase the number of enforcement officials and enhance expertise in forensic accounting and information technology.
- Engage more actively in enforcement activities, ensuring in particular that all leads are pursued to obtain sufficient evidence.
- Increase cooperation among authorities.
- Disclose details of the terms and implementation of out-of-court settlements.
- Improve detection and prosecution of cases by providing clearer guidance to the audit and legal professions regarding legal obligations.
- Issue official guidelines on self-reporting.
- Formulate an overall strategy for combatting bribery of foreign officials.
- Create a forum for regular dialogue and sharing of best anti-corruption practice between ministries, authorities, trade and aid organisations, individual corporations and civil society.

ESTONIA
Little or no enforcement

INVESTIGATIONS AND CASES

In the period 2014-2017, there were no foreign bribery investigations, prosecutions or convictions in Estonia. In 2018, a Latvian court decided to transfer a case involving the Estonian company **Skinest Rail** to an Estonian court for trial as a foreign bribery case. The company is suspected of having made an improper payment in connection with its sale of four diesel locomotives to the Latvian state-owned railway company **LDZ**.[333]

TRANSPARENCY OF ENFORCEMENT DATA

The Ministry of Justice publishes crime statistics annually, including data on the commencement of criminal proceedings.[334] These reports include a separate section on corruption-related offences. There are no separate databases on sanctions and confiscations. However, the OECD WGB noted in its 2016 Phase 3 Follow-up Report that such information can still be extracted from existing digital databases (E-File) used in the criminal procedures.[335] All court decisions that have entered into force are available electronically.[336] Decisions of the Supreme Court of Estonia are also available and searchable on its website,[337] although publication may only be partial if the decision contains sensitive personal data or information for which existing legislation provides restricted access (e.g. to protect state secrets).[338] The Ministry of Justice published a report on requests for mutual legal assistance (MLA) processed in 2016, although the report makes no mention of requests related to foreign bribery.[339]

RECENT DEVELOPMENTS

Amendments to Section 6 of the Anti-corruption Act, which came into force in 2016, expand existing protection of whistleblowers to the private sector.[340] Amendments to the Penal Code and Code of Criminal Procedure, which came into force in 2017, implement EU Directive 2014/42/EU on the freezing and confiscation of instrumentalities and proceeds of crime in the EU. Additional amendments include clarification of terms related to confiscation of property.[341]

INADEQUACIES IN LEGAL FRAMEWORK

The OECD WGB found in its 2016 report that the requirements for liability of legal persons are insufficiently clear.[342] Estonian legislation does not allow a request for MLA alone to interrupt, suspend or extend the limitation period for all offences (currently five years for bribery-related offences and 10 years for aggravated bribery offences). The OECD WGB said in 2010 that it considered this a "serious deficiency".[343]

INADEQUACIES IN ENFORCEMENT SYSTEM

Without any investigations or prosecutions in Estonia related to foreign bribery, it is unclear which regulatory or enforcement failings may prevent effective prosecution. While there has been training for police, prosecutors and the Financial Intelligence Unit on foreign bribery enforcement, the OECD WGB noted in its 2016 report that Estonia's Tax Administration has not provided guidance or training to tax officials on how to detect and report foreign bribery.

INADEQUACIES IN MUTUAL LEGAL ASSISTANCE

There are no significant inadequacies in the MLA framework.[344]

RECOMMENDATIONS

- Adopt legal provisions on the suspension of the statute of limitations when Estonia issues an MLA request, as recommended by the OECD WGB.[345]
- Ensure that false accounting offences cover all the activities described in Article 8(1) of the OECD Anti-Bribery Convention.
- Clarify the necessary preconditions for the liability of legal persons.
- Study and improve awareness of legal protection offered to whistleblowers in both the public and private sectors.[346]

FINLAND
Little or no enforcement

INVESTIGATIONS AND CASES

Finland did not commence any new investigations or cases in the period 2014-2017. All five prosecutions for foreign bribery previously reported resulted in acquittals either in the District Court or on appeal. The sole conviction obtained in one of these cases was on charges of false accounting.[347]

TRANSPARENCY OF ENFORCEMENT DATA

Finnish authorities do not publish statistics on foreign bribery investigations, cases commenced or cases concluded. The police, the Ministry of Justice, the prosecutor and the Statistical Centre all publish various statistics about crimes and investigations, but these are mostly general, and extracting relevant information is time-consuming and difficult. All court decisions are public, unless specifically declared partially or totally confidential – for example, to protect trade secrets. Apart from that, the conclusions of the court and the relevant details of the crime are always reported publicly.[348] The details of all cases relating to foreign bribery are public and copies of all documents can be obtained from the court.[349]

RECENT DEVELOPMENTS

The government has established a task force from several ministries and government agencies in order to combat economic crime and the grey economy. In 2016, Finland issued a National Strategy and Action Plan for Tackling the Shadow Economy and Economic Crime. While foreign bribery is not specifically mentioned, the plan does include a focus on better detecting and enforcing corruption offences. A bill extending corporate criminal liability to include aggravated accounting offences entered into force at the beginning of 2018.

INADEQUACIES IN LEGAL FRAMEWORK

Finland continues to lack clear, comprehensive whistleblower protection legislation. Provisions are fragmented across different regulatory instruments,

and while failure to report a serious offence is punishable under the Criminal Code, the list of offences covered does not include corruption.[350] In its Phase 4 Report in March 2017, the OECD WGB welcomed the introduction of Finland's new plea bargaining regime, but raised concerns that it is not available to legal persons and that there are few incentives for individuals to enter into a plea bargain given the current extremely low likelihood of conviction in the country.[351]

INADEQUACIES IN ENFORCEMENT SYSTEM

The OECD WGB in its Phase 4 Report raised "serious concerns" regarding the 100 per cent acquittal rate for foreign bribery in Finland to date, due – among other court practices – to the Finnish courts' interpretation of the foreign bribery offence and the extremely high evidentiary threshold applied. The WGB was also concerned about limited awareness of the foreign bribery offence within the judiciary, the absence of regular training for judges and the lack of specialisation of courts and judges.

Another key issue is the lack of specialised prosecutors, law enforcement officials or any kind of anti-corruption body. As a result, there is no funding allocated in the budget specifically for the fight against corruption, apart from one individual at the National Bureau of Investigation and 1.5 in the Ministry of Justice. There is also a lack of adequate training and resources for specialised police officers and prosecutors. The WGB expressed concern about the Prosecution Service's stretched resources.

INADEQUACIES IN MUTUAL LEGAL ASSISTANCE

Gathering evidence from countries outside the European Union is extremely difficult. There is insufficient international coordination between the police forces in various countries. Nevertheless, according to the OECD WGB, Finland has been active in seeking mutual legal assistance in its foreign bribery cases, and has used joint investigation teams within the EU with assistance from Eurojust in two of its foreign bribery cases.[352] Finland's Prosecutor's Memorandum on Foreign Bribery expressly encourages the establishment of a joint investigation team in foreign bribery cases.[353]

RECOMMENDATIONS

- Introduce adequate whistleblower protection legislation and establish whistleblowing channels.
- Improve and make mandatory the exchange of information between different government agencies.
- Raise awareness of foreign bribery among exporting companies.
- Require compliance programmes and provide training and guidance on foreign bribery for small- and medium-sized enterprises.
- Provide training to law enforcement officials and the judiciary on the foreign bribery offence and its application, and consider assigning foreign bribery cases to courts or judges with specialised skills and experience.

FRANCE
Limited enforcement

INVESTIGATIONS AND CASES

Between 2014 and 2017, France opened 40 investigations, commenced one case, and concluded two cases.[354]

Of particular note recently is the **Société Générale** case. In 2017, the Financial Prosecutor opened a preliminary investigation into the bank in relation to allegations by the Libyan Investment Authority that the company paid US$58.5 million to a Panama-registered company as part of a "fraudulent and corrupt scheme" to secure business in Libya.[355] In June 2018, the Tribunal of Paris approved the first settlement ever in France (*convention judiciaire d'Intérêt public* or CJIP) concerning bribery of foreign public officials and also the first sharing agreement with a foreign prosecution authority. This was a joint agreement between the French authorities (*Parquet National Financier*) and the US Department of Justice. Société Générale committed to pay a total of €500 million to close this procedure, to be split evenly between French and US authorities. The agreement also provides for a compliance programme to be overseen by the French anti-corruption agency. Also in 2018, French businessman Vincent Bolloré was indicted in relation to **Groupe Bolloré's** involvement in alleged corruption in the allocation of port concessions in Togo and Guinea.[356]

In 2016, the Paris Court of Appeal overturned a lower court decision and found the French company, **Total**, and the Swiss-based Dutch company, **Vitol**, guilty of corruption of Iraqi foreign public officials in connection with the United Nations Oil-for-Food programme in Iraq. The court fined Total €750,000 and Vitol €300,000. It also found 12 individuals guilty, imposing fines ranging between €5,000 and €100,000.[357] The final appeal court confirmed the judgment in March 2018. In 2015, in another Oil-for-Food case, the Paris Criminal Court acquitted 14 companies, including **Renault Trucks**, **Schneider Electric** and **Legrand**, of bribing the Iraqi government in exchange for contracts.[358] The prosecutor filed an appeal which is still pending.[359] In 2015, **Safran**, a large aerospace, defence and security company, was acquitted on appeal of bribery of public officials in Nigeria, having previously been ordered to pay a fine of €500,000 in what was, at the time, the first conviction of a company in relation to foreign bribery in France.[360]

With regard to investigations, in 2016, the National Financial Prosecutor opened a preliminary investigation into allegations about **Airbus's** use of intermediaries in relation to its civil aviation business[361] **(see case study on page 104)**, and another preliminary investigation into a €6.7 billion **DCNS** contract with Brazil for the sale of five submarines.[362] In 2017, the authorities charged a former director-general of **Thales**, the French aerospace, defence and transportation company (and former president of its subsidiary **Thint Asia**), and a former president of the shipbuilding company **DCNI** with "active bribery" and "misuse of company assets" in connection with the sale of submarines to Malaysia in 2002.[363] The investigation that led to the charges was triggered by a 2010 criminal complaint filed by the Malaysian NGO Suaram.[364] In relation to the same sale, financial prosecutors also reportedly charged a former aide to the Malaysian prime minister with "active and passive complicity in corruption" and "misuse of company assets".[365]

In May 2015, it was reported that the Financial Prosecutor was investigating corruption allegations against French nuclear power multinational **Areva** (86 per cent state-owned) in connection with its purchase of the mining company **UraMin**. According to the report, Areva is alleged to have made false and fraudulent declarations and to have used the deal to direct bribes and commissions to well-connected individuals in countries including France and South Africa. Areva denies the allegations.[366] In December 2015, the anti-corruption NGO Sherpa filed a case against Areva for allegedly bribing officials in South Africa, Namibia and the Central African Republic in relation to the purchase of three uranium mines in 2007.[367]

TRANSPARENCY OF ENFORCEMENT DATA

Enforcement data is not published and is not available to the general public on request. Data has not been released since 2014. While court decisions are supposed to be public, it is not always easy to obtain them. Some are available on a centralised website.[368] Those not published proactively are available on request. Since November 2017, court-approved settlements are widely publicised through press releases issued by the public prosecutor who negotiated the agreement. In addition, the settlement and the approval order are published on the website of the French Anti-Corruption Agency. Data on mutual legal assistance (MLA) is not published.

RECENT DEVELOPMENTS

The so-called "Sapin II" Law on Transparency, Combating Corruption and Modernisation of Economic Life was promulgated in December 2016.[369] Sapin II created a National Anti-Corruption Agency in charge, *inter alia*, of monitoring, investigating and sanctioning non-compliance of large companies with new mandatory internal systems of anti-corruption control.[370] The law also introduces stronger provisions for whistleblower protection, including a broad definition of "whistleblower", protection against retaliation, and civil and criminal penalties for disclosure of identities or facts. Responsibility for whistleblower protection is placed with an independent ombudsman.

Sapin II also introduces an important new form of settlement procedure, the *convention judiciaire d'intérêt public* or CJIP (similar to a deferred prosecution agreement) (DPA), for legal persons suspected of bribery, trading in influence or tax fraud laundering.[371] The procedure does not require any recognition of guilt, but if criminal proceedings have been initiated, it requires an admission of the related facts. The legislation also removes existing extraterritorial requirements that the victim be a French citizen or that the alleged offender be a French citizen, and the conduct at issue be an offence in both France and the territory in which it allegedly took place.[372]

In November 2017, the Paris High Court approved the first CJIP with **HSBC Private Bank Suisse** (see discussion of settlements below). The bank agreed to pay €300 million to settle criminal charges, including money laundering, without admission of guilt.[373] The first CJIP relating to bribery charges was concluded in February 2018 between the Public Prosecutor's Office of Nanterre and two French companies.[374]

In May 2018, Société Générale concluded a CJIP with the French prosecutor and a DPA with the Justice Department. Both authorities were investigating corruption issues related to Libya's sovereign wealth fund and manipulation of the Libor rates. This is the first dual agreement between a company, the US and France on international bribery matters. Société Générale paid €736 million in order to settle both cases. Due to the fact that the French investigation was only in relation to the matters concerning Libya's sovereign wealth fund, the French Prosecutor and the Justice Department agreed to split €500 million. The remaining amount (€236 million) was imposed by the department in the context of its Libor rates investigation.[375]

INADEQUACIES IN LEGAL FRAMEWORK

The "blocking statute" prohibits French companies from providing foreign enforcement authorities with information directly requested for use in their bribery investigations.[376] It aims to prevent a foreign authority from obtaining commercially or politically sensitive information. This law forces authorities to use international conventions or to ask French authorities to obtain the information on their behalf. This could stall or prevent foreign bribery investigations when conducted by a foreign authority without permission of the French authorities. There are some concerns about the new settlement framework, including the lack of guidelines on how judges should independently review the settlement in order to ensure its compliance with the law.[377]

The Ministry of Justice's criminal policy circular of January 2018 provides only very general guidance and is not binding[378]. Furthermore, settlements do not necessarily require offending companies to cooperate and self-disclose wrongdoing and the procedure does not provide for the confiscation of illicitly-gained assets.

INADEQUACIES IN ENFORCEMENT SYSTEM

French courts are often overburdened and under-resourced, which undermines timely enforcement of cases involving bribery and corruption. These inadequacies may be countered in part by the introduction of the settlement procedure, which has to date been applied four times, as well as new investigation techniques (as in Airbus). However, in addition to the concerns about the settlement framework, there are only limited guidelines (those issued in January 2018) as to how the prosecutor should conduct negotiations and what factors it should take into consideration in determining the amount of the fine.[379] (The practice of prosecutors currently being developed also provides some guidance.) The CJIP in the **HSBC** case raises concerns because it did not establish all the conditions that should be respected if settlements are to be used. For example, HSBC does not appear to have given any guarantee of "good behaviour" in the future.[380] Furthermore, French magistrates are reluctant to confiscate the proceeds of active bribery. According to the OECD, as of October 2014, "no asset [had] been seized and managed […] in relation to a foreign bribery case".[381]

INADEQUACIES IN MUTUAL LEGAL ASSISTANCE

The 2014 OECD WGB Phase 3 Follow-Up report on France found that France had yet to act on its earlier recommendation that measures be taken "to ensure that the granting of [mutual legal] assistance in foreign bribery cases not be influenced by considerations of national economic interest under the guise of protecting 'the fundamental interests of the nation.'"

RECOMMENDATIONS

- Adopt stronger guidelines with regard to the new settlement procedure.
- Amend the blocking statute to include a court clearance for foreign authorities' investigations in corruption matters.
- Align the conditions of the appointment of prosecutors with those of judges so as to guarantee their independence.
- Ensure the new anti-corruption agency is fully independent by giving it the status of Independent Administrative Authority.
- Encourage virtuous behaviour by companies through modulating the size of fines in return for cooperation.
- Strengthen the capacity, expertise and levels of cooperation between agencies fighting international corruption, tax evasion and organised crime.

- Ensure that confiscated assets benefit the countries that have been unjustly deprived of them.
- Use the new Sapin II tools more comprehensively, including sanctions and penalties such as the mandatory compliance programme.
- Use settlements only in limited cases, where a company has either spontaneously disclosed the alleged corruption or has taken all reasonable measures to repair the harm caused.
- Amend the law to include the confiscation and restitution of illicit profits.[382]

GERMANY
Active enforcement

INVESTIGATIONS AND CASES

During the period 2014-2017, Germany opened 40 investigations, commenced 13 cases and concluded 49 cases with sanctions.

The **Siemens** corruption scandal, set off in November 2006 with a police raid, was the first large case of foreign bribery in Germany. One proceeding against an ex-board member is still ongoing.[383] He is accused of covering up a slush fund scheme related to a contract with Argentina for the production of passports.[384]

In 2015, a Regional Court in Augsburg sentenced a company manager to two years and eight months in prison for promising a bribe to a consultant of an Iranian state-owned company, in exchange for helping his company win a contract for the construction of a milk powder factory. The promised bribe amounted to approximately US$350,000, and the contract about US$24 million.[385] Also in 2015, a 2014 decision of the Regional Court in Munich became final, in which the presiding judge had reached a deal with a former manager of the **Bayern Landesbank (LB)** imposing a suspended sentence of one year and six months and a fine of €100,000. The ex-manager had admitted the bribery charges in exchange for the court dropping charges of breach of trust in relation to the sale of the Austrian bank **Hypo Alpe Adria** to BayernLB.[386] According to news reports, the Governor of the Austrian state of Carinthia had demanded that €2.5 million be paid for a football stadium in Carinthia in exchange for giving his approval for the sale.

In 2015, the Regional Court in Munich fined the defence company **Krauss-Maffei Wegmann (KMW)** €175,000 under Section 30 of the Administrative Offences Act, based on a crime committed by a manager of the company intended to enrich the company. An ex-manager of KMW had allegedly authorised payment of €5 million to a German company named **Südeuropabüro** in relation to the sale of 24 tank howitzers to Greece for €188 million in 2001. (Südeuropabüro reportedly involved two former Social Democratic Party parliamentarians who had contacts with the then Greek defence minister.) The ex-manager received an 11-month suspended sentence for tax evasion – the limitation period for bribery having expired. On appeal, in June 2017, the Federal Court of Justice in Karlsruhe partly set aside the two sentences and referred the case back to the Regional Court in Munich. Another chamber of the Regional Court will preside over a new hearing of the case.[387] The Karlsruhe court said that the Munich court's fine contained a "legal error" to the advantage of KMW and that the amount had to be "re-calculated". The court said the fine should exceed the "economic advantage" which the offender had gained as a result of the offence.

In another case of alleged bribery in a defence contract, in 2017 Bremen prosecutors issued a press release announcing an administrative penalty order against **Atlas Elektronik GmbH**, a subsidiary of **ThyssenKrupp Marine Systems**, for violation of supervisory duties.[388] The order was agreed with Atlas after "intensive negotiations", and called for disgorgement of €48 million corresponding to Atlas's profit on the projects reviewed. No sanction was imposed. According to the press release, two agents received commissions of more than €13 million, from which bribe payments were made to Greek officials. There may also have been payments in connection with the sale of torpedoes to Peru.

TRANSPARENCY OF ENFORCEMENT DATA

The Federal Ministry of Justice does not publish enforcement statistics on opened investigations, cases commenced or cases concluded. Federal court decisions are published in full. However, decisions in corruption cases are made at the regional level, and such decisions are neither published nor easily available on request.[389] Statistics on requests for mutual legal assistance (MLA) made and received are also not officially published.

RECENT DEVELOPMENTS

On 26 November 2015, a new Anti-Corruption Act entered into force,[390] which integrated the foreign bribery offence as defined in the Act on Combating International Bribery into the Criminal Code, a welcome development. However, this integration is not complete. Article 2, Section 2 of the act, criminalising bribery of members of foreign parliaments and of international parliamentary assemblies, co-exists with Section 108e of the Criminal Code, but it is not included as a predicate offence to money laundering. As a broader offence it would better align with the OECD Convention and should thus be merged into the Criminal Code.[391]

A new confiscation regime came into effect on 1 July 2017,[392] simplifying confiscation and strengthening the rights of victims. It is expected to result in more confiscations, but will need adequate financial and personal resources. A new Section 29a of the Administrative Offences Act makes possible orders of forfeiture against a company without holding it liable under Section 30 and imposing a fine. This gives prosecutors additional options when companies cannot be held liable, but should not be used as an alternative to holding companies liable, as the OECD Phase 4 Report points out.[393]

On 29 July 2017, a new Federal Debarment Register was created,[394] which will become operational within the next two years. It requires debarring from public procurement companies convicted of foreign bribery or alternative crimes. Thus, forfeiture orders under Section 29a Administrative Offences Act would not be included, nor terminations of proceedings under Section 153a of the Criminal Procedures Act for acts of managers attributable to a company.[395] The standard of conviction should be lowered to include cases in which there is no reasonable doubt of serious criminal activity of the company.

INADEQUACIES IN LEGAL FRAMEWORK

In Germany, liability of legal persons is regulated in the Administrative Offences Act, rather than the Criminal Code. The limit for fines for intentional wrongdoing is €10 million, and for negligence, €5 million, too low to be dissuasive, even though disgorgement of profits can also be imposed. In addition, the act gives prosecutors discretion over whether to start investigating a legal person. With regard to natural persons, the prosecutor has to investigate if there is an initial suspicion. There is also discretion over whether or not to impose a fine. When proceedings against the legal person are based on violation of supervisory duties under Section 130 of the Administrative Offences Act, the prosecutor renders the decision without involvement of a court and without transparency.[396] Reform of liability of legal persons was part of the coalition agreement of the previous government and is again of the present government, and should now be implemented, as the OECD Phase 4 Report points out.[397]

Resolutions of cases against individuals without a full trial are increasing in numbers without necessary guidelines, as the OECD WGB Phase 4 review observes.[398] Similar resolution proceedings against companies are not available. In practice, courts or prosecutors use written proceedings to impose penalties (sanctions component) and disgorgement of benefits gained (confiscatory component) under Section 30 of the Administrative Offences Act. The latter is estimated, with the estimates often provided by companies and their lawyers and in fact negotiated.[399] Yet guidelines or safeguards for settlements, as demanded by civil society,[400] are missing. This also needs to be taken up by the planned reform of corporate liability.[401]

Germany does not have legislation to protect whistleblowers in private employment who report serious irregularities and violations of law.[402] The government currently has no plans to review this. The OECD recommends enacting a dedicated whistleblower protection law, which applies across the public and private sectors.[403]

INADEQUACIES IN ENFORCEMENT SYSTEM

The OECD WGB Phase 4 Report on Germany in 2017 praises Germany for high enforcement against individuals, but criticises a lack of enforcement against legal persons.[404] Given that acts of managers are attributed to companies, this lack of enforcement is troubling. As a first step, prosecution against companies would need to be made mandatory as part of the planned reform of corporate liability.

In order for penalties to be “dissuasive”, they need to be published. It is not enough to rely on the media to report cases and penalties imposed. At the appeals level in federal courts, decisions are published. Regional and local courts should do the same and not only make cases available upon request. Sanctions imposed by termination orders under Section 153a of the Code of Penal Procedure and other cases resolved without a full trial should at least be summarised in an annual corruption report, based on the information provided to the OECD WGB.

INADEQUACIES IN MUTUAL LEGAL ASSISTANCE

Information on MLA requests made or received is insufficient to determine whether or not there are any shortcomings. However, Germany stated during the OECD Phase 4 review that the system generally works well, and this was confirmed by the Phase 4 evaluation team.[405] In the data received by Transparency International Germany from the Federal Ministry of Justice, MLA requests are sometimes mentioned, including references to some that were not answered.

RECOMMENDATIONS

- Publish all court decisions, including those from regional and local courts.
- Merge Article 2, Section 2 of the International Bribery Act with Section 108e of the Criminal Code to cover foreign mandate holders.
- Establish clear guidelines for deals between prosecutors and companies, and higher sanctions as part of new legislation on liability of legal persons.
- Enact legislation to protect whistleblowers in private employment, including sanctions for discrimination against whistleblowers acting in good faith, and requiring establishment of internal and external reporting mechanisms.
- Include companies in the "debarment register" in cases where there is no reasonable doubt of serious criminal activity by the company.
- Publish basic information about cases of foreign bribery, including terminations of proceedings and cases against companies, in an annual corruption report.

GREECE
Limited enforcement

INVESTIGATIONS AND CASES

The OECD WGB's Phase 4 Report in 2017 indicated that Greece had seven ongoing investigations, with formal charges having been brought for foreign bribery in two. One new case had been opened since 2015 and one case closed for lack of evidence.[406] According to news reports in 2016, an Athens public prosecutor charged the CEO of the Greek construction group **ELLAKTOR** and two other individuals with bribery of Cypriot officials in relation to the construction of a waste management plant in Cyprus.[407]

TRANSPARENCY OF ENFORCEMENT DATA

Statistics remain a challenge in the administration of justice, with Greek authorities unable to provide detailed statistics on the sanctions imposed in corruption cases. Data is compiled only on request for specific purposes. The data collection process is expected to improve markedly, however, after the implementation of a new computerisation system for the courts (the "Integrated Civil and Penal Justice Case Management System"), developed by the Ministry of Justice, Transparency and Human Rights. The aim is to link the records and archives of all courts, allowing for detailed categorisation of cases and monitoring of progress.[408]

RECENT DEVELOPMENTS

In July 2018, the EU Commission referred Greece to the EU Court of Justice for failing to implement the 4th EU Anti-Money Laundering Directive.[409]

The Greek government amended Article 51 of the Anti-Money Laundering Law in 2017, with the aim of establishing a more effective regime of corporate liability. Liability of legal persons is now triggered by the acts or omissions of natural persons exercising managerial authority and acting either individually or as a member of a collective body.[410] In July 2017, the Ministry of Justice set up a legislative drafting committee to strengthen the legal framework for whistleblower protection in the public and private sectors.[411] To assist with streamlining of mutual legal assistance (MLA) procedures, the Athens Court of First Instance set up a Special Investigative Office for International Judicial Mutual Assistance in 2015. The office covers the largest first instance court, which receives the vast majority of incoming MLA requests, and has already contributed to reducing delays in providing outgoing MLA.[412] Greece has also engaged in activities to increase awareness of the offence of foreign bribery among the population and in the public and private sectors, addressing concerns expressed by the OECD WGB.

Greece updated its National Anti-Corruption Plan in 2016 and aims to address many of the main deficiencies in its legal framework and enforcement system described below.[413] In 2016 the OECD and the European Commission launched a project to assist Greece with implementing this plan.

INADEQUACIES IN LEGAL FRAMEWORK

The most recent report by the OECD WGB in 2017 recommended that Greece amend the definition of a foreign public official to ensure that it covers officials and agents of public international organisations of which Greece is not a member. The report also recommended that Greece eliminate the "effective regret" defence.[414] The limitation period for foreign bribery offences is also inadequate, and the framework does not allow for MLA requests to interrupt the period. There are no specific provisions to protect whistleblowers in the public or private sectors in relation to acts of corruption, and protection remains inadequate in practice.[415] The administrative framework is complex and requires simplification.

INADEQUACIES IN ENFORCEMENT SYSTEM

Greek authorities have invested in skills and training for investigators and prosecutors, and improved their ability to engage in foreign bribery investigations, which had previously been a concern.[416] However, there is a lack of coordination and communication between different enforcement bodies. The 2015 UN Convention against Corruption review recommended that Greece continue its efforts to simplify the legal and administrative framework, in light of the plethora of applicable laws causing administrative complexity.[417] This has already been largely achieved by Law 4254/2014.

INADEQUACIES IN MUTUAL LEGAL ASSISTANCE

According to the 2015 UNCAC first cycle review of Greece, the MLA process would benefit from streamlining, with the aim of reducing delays in providing assistance.

RECOMMENDATIONS

- Strengthen institutions in terms of transparency and public consultation, in order to improve the legal framework.
- Accelerate court proceedings.
- Eliminate conflict among public authorities.
- Systematically collect and publish enforcement data.
- Strengthen whistleblower protection, in particular in the private sector.
- Dedicate adequate resources to anti-corruption enforcement agencies, and improve their structure and coordination.
- Improve internal compliance programmes and corporate governance in Greek companies that conduct business abroad, including those not listed on the Greek stock exchange.
- Ensure the sanctions available against natural and legal persons for foreign bribery are effective, proportionate and dissuasive.

HUNGARY
Limited enforcement

INVESTIGATIONS AND CASES

In the period 2015-2017, Hungary commenced seven investigations and there were six indictments. In addition, one person was sentenced to community service for foreign bribery in 2016, but no further details are available.[418]

Magyar Telekom (in 2011) and three former executives (in 2017) respectively reached settlements with US authorities in a major case involving use of sham contracts to funnel bribes to officials in Macedonia and Montenegro to win business and exclude competition.[419] Magyar Telekom paid US$95 million in civil and criminal penalties, and penalties were also imposed on the executives.[420]

TRANSPARENCY OF ENFORCEMENT DATA

The Ministry of Interior records the number of offences reported and registered, investigations commenced, investigations terminated and indictments for the offences of trading in influence and bribery of public officials. While this information is not publicly available, it is available on request. Court decisions are published in anonymised form.[421] According to the OECD WGB Phase 3 Follow-up Report in 2014, Hungary had not implemented a mechanism to compile comprehensive annual statistics on requests for mutual legal assistance (MLA).[422]

RECENT DEVELOPMENTS

Hungary's new Criminal Procedure Code, in force since 1 July 2018, establishes a new regime for covert policing and intelligence gathering.[423] The code provides prosecutors with unlimited access to information obtained through covert investigations, and oversight of relevant tools and methods, including for domestic and international corruption investigations.[424] The latest amendment to the Criminal Code introduced the duty of all public officials to report incidents of corruption, including foreign bribery, to a competent investigative agency or to the Prosecutor. Failure to do so is punishable by imprisonment for up to three years.[425]

The Hungarian judiciary has retained a substantial degree of autonomy, despite intrusive regulations adopted by the Orban administrations. These include the appointment of new leadership with extensive powers to the National Judicial Office (NJO), the judicial administration. Laws that govern the judiciary empower the NJO president to intervene in the process of appointing and promoting candidates for judicial positions and to reassign ordinary judges without their consent, which the Venice Commission of the Council of Europe has criticised.[426] The Council of Europe's Group of States against Corruption (GRECO) has recommended to the Hungarian government the reduction of the NJO president's powers in order to prevent arbitrary interventions,[427] but the request remains ignored.

INADEQUACIES IN LEGAL FRAMEWORK

There are serious concerns about the legal framework for the prosecution service and the powers accorded to the Prosecutor General, as well as over the lack of accountability of the Minister of the Interior, whose interference in individual investigations cannot be fully prevented. The Venice Commission of the Council of Europe expressed concerns in 2011 about "the high level of independence of the Prosecutor General, which is reinforced by his or her strong hierarchical control over other prosecutors".[428] In 2015, GRECO concluded that the provisions which govern the election of the Prosecutor General "increase considerably political influence in respect of the elections to this important office" and therefore recommended that the "possibility of maintaining the Prosecutor General in office after the expiry of his/her mandate by a minority blocking of the election in parliament of a successor be reviewed by the Hungarian authorities".[429] The Minister of the Interior is also able to influence which cases the police pursue and how they pursue them.[430]

The OECD WGB noted in its Phase 3 Follow-up Report in 2014 that no steps had been taken to limit immunity from investigation and prosecution in foreign bribery cases, which it considered too broad in scope and applicability, and which could be granted on the basis of political considerations. This remains the situation. Nor has Hungary taken measures to extend the two-year time limit for investigations, which may prove too short in the context of large and complex foreign bribery cases.[431]

The law on whistleblower protection which came into force in January 2014 remains seriously deficient.[432] It does not establish a designated agency to protect persons who make whistleblowing reports, or a specialised procedure to examine information exposed by reporting persons. The law does not encourage people to report abuses and has not introduced new and proactive investigative techniques to examine reported incidents of corruption. Provisions on private-sector whistleblowing call for companies to submit to the authorities information on corruption reported to them, making companies hesitant about adopting compliance programmes.[433]

INADEQUACIES IN ENFORCEMENT SYSTEM

There is little awareness of the offence of foreign bribery in the private sector, and weak internal controls or ethics and compliance programmes within Hungarian companies.

INADEQUACIES IN MUTUAL LEGAL ASSISTANCE

Hungarian law imposes a dual criminality requirement on MLA.[434] However, the OECD WGB reports that this requirement has never been problematic in practice. The law provides for the possibility of exchanging MLA on the basis of reciprocity, even if the requirement of dual criminality is not fulfilled.[435] The first cycle review of Hungary's implementation of UN Convention against Corruption identified several areas in which Hungary could improve its MLA.[436]

RECOMMENDATIONS

- Provide the police and the prosecution services with more resources and specialised training on foreign bribery.
- Ensure that those deciding whether or not to prosecute are accountable to an independent body.
- Introduce checks and balances within the prosecution service to counter the Prosecutor General's extensive hierarchical control over other prosecutors and over the prosecution of suspected offences.
- Increase awareness of foreign bribery in the private sector and promote better internal controls and compliance programmes.
- Introduce robust and efficient protection tools to prevent those who report malpractice from facing retribution, including a designated agency to protect whistleblowers.
- Compel investigating and prosecuting agencies to credibly examine whistleblower reports.

IRELAND
Little or no enforcement

INVESTIGATIONS AND CASES

To date Ireland has not opened any foreign bribery cases. According to the OECD WGB Phase 3 Follow-up Report in 2016, investigations into three foreign bribery cases have not established territorial connections with Ireland. Investigations are ongoing in one case involving a subsidiary of a foreign company.[437]

The use of Irish shell companies has been mentioned in several recent money laundering investigations or cases brought in other countries.[438] In addition, in 2015, the US Department of Justice (DoJ) filed civil forfeiture actions to recover nearly US$1 billion in bribe money that the companies **VimpelCom**, **MTS of Russia** and **Telia** allegedly paid to Gulnara Karimova, the eldest daughter of the late Uzbek President Islam Karimov.[439] The DoJ won a federal court order in 2015 to impound US$300 million in bank accounts linked to Karimova. The accounts, linked to companies in Luxembourg with ties to Karimova, were held by the **Bank of New York Mellon Corp**. in Ireland, Luxembourg and Belgium, and at **Clearstream Banking SA**.[440]

TRANSPARENCY OF ENFORCEMENT DATA

There is no publicly available information regarding the number of complaints, investigations, files referred for prosecution or cases in which no prosecution is carried out. The Garda National Economic Crime Bureau and the Financial Intelligence Unit, responsible for foreign bribery investigations, have set up the Garda Knowledge Management Portal containing all relevant legislation and case law, and information on assets and proceeds of crime, but it is not accessible to the public. The Courts Service of Ireland publishes on its website all judgments made available by the Supreme Court from 2001, the Court of Appeal from 2014 and the High Court from 2004, as well as determinations of the Supreme Court from 2015.[441] Ireland does not publish statistics on requests for mutual legal assistance (MLA) made and received.

RECENT DEVELOPMENTS

Ireland had made progress on whistleblower protection. In 2016, an Irish court awarded the first statutory injunction under the Protected Disclosures Act 2014.[442] It ordered the respondent company to pay the salary of the claimant employees, who made a protected disclosure to Revenue Commissioners, pending determination of their unfair dismissal claim by the Workplace Relations Committee.[443] Also in 2016, the Labour Court made its first award for penalisation of a whistleblower under the Protected Disclosures Act.[444]

However, in June 2018 the government amended Ireland's whistleblower law which it claims was necessary to transpose the EU Trade Secrets Directive.[445] The amendment has been criticised for leaving employees open to legal action or criminal prosecution where they report corruption using commercially valuable information unless they can show they reported for the purpose of protecting "the general public interest". This means that it may be a crime to report corruption using commercially valuable information, even if the allegations are true. Businesses will also be allowed to seek a court injunction to stop their employees from reporting corruption to the police, unless whistleblowers can prove that the information they are sharing is evidence of corruption.

Whistleblowers could still be subject to civil action by their employer unless they can also prove that they were motivated by the general public interest. This would leave whistleblowers vulnerable to attacks on their personal character and exposes them to heavy financial costs in defending a legal action against them.

Ireland is the only EU member state to have changed its whistleblowing legislation in this way. Transparency International Ireland has described the amendment as the "the single most significant set back for the fight against white-collar crime in a decade".[446]

The Criminal Justice (Corruption Offences) Act 2018 (the "Corruption Act"), first approved by the government in 2012, was re-published in an updated form in November 2017 and enacted in June 2018.[447] It establishes the new standalone criminal offences of "active and passive corruption" and "trading in influence", as recommended by the Group of States against Corruption (GRECO) in its Third Round Evaluation Report on Ireland.[448] The Act amends the definition of criminal conduct in the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 to include acts of corruption in another state involving a foreign official. It also introduces a new definition for "foreign public official" and removes all reference to "agent" and "principal".

There are new penalties for corruption under the Corruption Act, with a conviction for most corruption offences attracting a maximum penalty of 10 years' imprisonment and an unlimited fine. A new "trading in influence" offence attracts a penalty of up to five years' imprisonment and an unlimited fine. The act has extra-territorial effect for offences committed partially in or outside the state, and includes a new strict liability offence, under which a corporation can be liable for the actions of directors, managers and employees who commit a corruption offence for the benefit of the corporation.[449] It is a defence if a company can prove that it took all reasonable measures and exercised due diligence to avoid the commission of the offence. However, the corporate liability offence will not provide for the prosecution of foreign companies for bribery outside the Irish state, as acts committed outside Ireland can only be prosecuted if certain connections to Ireland can be shown. These include the offence having involved the bribery of an Irish official, or the person carrying out the bribe being an Irish citizen or company.

In April 2018, the Cabinet approved the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Bill.[450] This will transpose most of the 4th EU Anti-Money Laundering Directive into national law. The Bill is currently passing through parliament and is expected to be enacted later this year. The aspects of the Directive relating to registers of beneficial ownership are being dealt with separately by regulations expected shortly. While foreign bribery was already a predicate offence to money laundering, the recent amendment by the Criminal Justice (Corruption Offences) Act 2018 to the Criminal Justice (Money Laundering and Terrorist Financing) Act 2010 means that it can be a predicate offence even where the bribery was not criminalised in the place it occurred. In July 2018, the EU Commission referred Ireland to the EU Court of Justice for failing to implement the 4th EU Anti-Money Laundering Directive.[451]

INADEQUACIES IN LEGAL FRAMEWORK

The government has been slow to enact relevant legislation and faces EU infringement proceedings for its failure to transpose the 4th EU Anti-Money Laundering Directive by the June 2017 deadline.[452]

INADEQUACIES IN ENFORCEMENT SYSTEM

The OECD WGB expressed "serious concerns" in its Phase 3 Report in 2013 that Ireland had not prosecuted a foreign bribery case. This concern was reiterated in the OECD WGB Statement of October 2016.[453] The WGB found that Ireland should improve its capacity and level of resources to detect, investigate and prosecute cases of foreign bribery.[454] Reports published by the Garda Inspectorate have outlined deficiencies in the structure and culture of Ireland's national police force, in charge of investigating bribery and corruption offences.[455] The Financial Action Task Force stated in its 2017 Mutual Evaluation Report on Ireland's anti-money laundering performance that while Ireland has implemented effective systems to combat money laundering and terrorist financing, progress is absent in terms of obtaining convictions and confiscating the proceeds of crime.[456] GRECO found in its 2017 Compliance Report that Ireland has yet to implement recommendations on improvements to the judiciary.[457]

INADEQUACIES IN MUTUAL LEGAL ASSISTANCE

MLA is regulated by the Criminal Justice (Mutual Assistance) Act 2008, which is only applicable to EU member states, Iceland and Norway, although it allows for international agreements with other states. While the act provides for the execution of freezing orders, it does not address the identification and tracing of the proceeds of crime in accordance with the provisions of UNCAC. The UNCAC Implementation Review Group (IRG) has recommended that domestic legislation be amended to address this.[458] The IRG

also recommended that the Mutual Assistance Act be amended to allow for accessory extradition in accordance with UNCAC. In addition, Ireland should continue to engage in bilateral and multilateral agreements with the aim of enhancing MLA, particularly with non-European countries.

RECOMMENDATIONS

- Collect and proactively provide information on concrete enforcement efforts, including on the number of complaints relating to foreign bribery investigated or sent to the Director of Public Prosecutions.
- Repeal the amendment to the Protected Disclosures Act which makes it an offence to use "trade secrets" when reporting corruption unless a whistleblower can defend his or her motivation in doing so.
- Enhance resources to ensure credible foreign bribery allegations are investigated and prosecuted.

ISRAEL
Active enforcement

INVESTIGATIONS AND CASES

In the period 2014-2017, Israel opened 13 investigations, commenced one case and concluded its first ever foreign bribery case, reaching a settlement with **NIP Global**[459] in December 2016. Under the settlement, the Israeli company was fined US$1.2 million after it admitted paying over US$500,000 in bribes to a senior official from the Lesotho Interior Ministry in order to advance its businesses in the country.[460]

In January 2018, following an investigation reported in 2017, Israeli authorities announced a settlement with **Teva Pharmaceuticals Industries Ltd** over bribery issues that Teva had resolved with US authorities in 2016.[461] Under a Conditional Agreement concluded with the Israeli Ministry of Justice, Teva admitted all charges, took responsibility for its actions and agreed to pay an administrative fine of 75 million shekel (about US$22 million), but no indictment was filed.[462] Under its deferred prosecution agreement with US authorities in 2016, the pharmaceutical giant had paid total penalties of US$519 million in relation to offences under the US Foreign Corrupt Practices Act in Russia, Ukraine and Mexico, yielding profits of over US$221 million.[463]

In 2015, the media revealed that the US Federal Bureau of Investigation and Israeli police had been conducting a two-year undercover corruption investigation into a retired Israeli Defence Force Brigadier General and CEO of **Defensive Shield**, a private security intelligence firm, in relation to alleged money laundering and bribery in Georgia.[464] In December 2016, Israeli billionaire Beny Steinmetz was questioned over bribery allegations relating to activities of his mining firm **BSG Resources** in Africa. The company denied any wrongdoing and said the investigation had been initiated by the Government of Guinea, which had opened a review of mining contracts signed before 2011 as part of international efforts to improve transparency.[465] The Guinean government has reportedly claimed that BSG Resources obtained an iron ore mining concession by paying more than US$1.5 million in cash through a representative to the then-wife of the country's president.[466] **(see Rio Tinto case study, page 110)**. According to the Israeli press, the investigation is ongoing.[467]

In 2017, the police reportedly summoned for questioning the CEO and three top managers of **Shapir Engineering and Industry Ltd**, on suspicion of bribing foreign public officials in Romania to promote the company's projects in the country. The company was also raided.[468] This was reportedly part of an Israeli police inquiry which joined a Romanian investigation started in 2014 into allegations that a Shapir subsidiary in Romania paid a €175,000 bribe to the mayor of Constanta to win a US$10 million tender for a building project. The investigation is ongoing.

In February 2018, Israeli police were reported to be investigating **Shikun & Binui Holdings Ltd**, a public company controlled by **Arison Investments**, regarding alleged bribery of public officials in Africa, including Kenya, with police reportedly stating: "It is suspected that the payments were made to enable construction projects in Africa worth hundreds of millions of dollars."[469] In the same month, in an investigation conducted in conjunction with Swiss law enforcement, Israeli police raided the company **Housing & Construction** and arrested several past and present senior executives on suspicion of paying bribes to government employees in Africa to facilitate projects worth hundreds of millions of dollars.[470] The investigation is reportedly based in part on a lawsuit by a former finance director at a Kenyan subsidiary,

who claims he was treated unfairly after disclosing serious acts of corruption by company figures over a period of years.

In March 2018, the Israeli police and the Tax Authority were reported to have detained three senior officials of **Israel Shipyards**, a private company owned by the **Shlomo Group**, on suspicion of bribing African officials to facilitate defence export deals worth tens of millions of dollars. The investigation reportedly relates to the company's sale, around 10 years ago, of two patrol boats to the Nigerian navy.[471] The officials are also suspected of money laundering, falsifying corporate documents, fraud, violating the Defense Export Control Law and tax offences.

TRANSPARENCY OF ENFORCEMENT DATA

Israel does not publish statistics on the number of investigations opened, cases commenced or cases concluded. The Supreme Court publishes decisions on its website. Other courts' decisions can be found on the judicial website. Several other websites publish court resolutions and decisions on a subscription basis.[472] Israel does not publish any statistics on requests for mutual legal assistance (MLA) made or received.[473]

RECENT DEVELOPMENTS

According to the OECD WGB Phase 3 Follow-up Report in 2017, Israel has made considerable progress in addressing the WGB's concerns, including an enhanced ability to detect foreign bribery allegations. Israel has designated the Tel Aviv Taxation and Economic District to handle foreign bribery prosecutions, and has improved detection of allegations through media sources and the anti-money laundering authority.[474] Israeli authorities have taken measures to ensure that credible foreign bribery allegations are investigated using a range of techniques and has increased its use of formal MLA requests to investigate foreign bribery allegations. In November 2015, Israel acceded to the Convention on Mutual Administrative Assistance in Tax Matters.[475] Israeli tax authorities have harmonised the standard for denying tax deductions for bribe payments and provided guidance for tax examiners on detecting foreign bribery. The country has provided training to both the Israel Money Laundering and Terror Financing Prohibition Authority and entities obliged to make suspicious transaction reports. It has also taken steps to improve the quality of reports on suspicions of foreign bribery.

Israel is raising awareness of foreign bribery, and related issues such as corporate liability and whistleblowing, through training for accountants, auditors, law enforcement authorities, judges, staff at Israel's Export Insurance Corporation Ltd, and other groups in the public and private sectors.[476] The Ministry of Justice maintains a webpage with information relating to the OECD Convention, while the Manufacturers Association of Israel continues to run the Corporate Responsibility and Anti-Bribery Business Forum. Several forum meetings have focused on implementation and enforcement of the Convention.

INADEQUACIES IN LEGAL FRAMEWORK

Israel does not require foreign bribery to be an offence in the country where the incident took place. However, it is developing draft legislation to address other aspects of the dual criminality requirement regarding sanctions, as well as the dual criminality limitation on Israeli criminal jurisdiction. Recently, the Israeli parliament (*Knesset*) lowered the monetary threshold in article 4 of the Prohibition on Money Laundering Law to approximately US$42,000.

INADEQUACIES IN ENFORCEMENT SYSTEM

Israel's Defence Export Controls Agency has not established formal guidelines on conducting due diligence on applicants, including the use of international debarment lists, or provided sufficient training for officials on foreign bribery risks. The country has not adopted a policy permitting procurement authorities to deny contracts on the basis of a foreign bribery conviction, or encouraging them to consider applicants' compliance programmes or international debarment lists.[477]

However, public procuring authorities may discretionally exclude companies convicted of foreign bribery from publicly funded contracts, and Israel is developing an ordinance on the denial of tenders on the basis of foreign bribery convictions.

INADEQUACIES IN MUTUAL LEGAL ASSISTANCE

Israel does not have any significant inadequacies in the legal framework governing international cooperation and has reported a demonstrated increase in the use of formal MLA since 2015.[478]

RECOMMENDATIONS

- Israel should amend the Penal Law to ensure that sanctions for foreign bribery are not subject to the dual penalty requirement (article 14(c)) and that that the limitations to jurisdiction that exist under article 14(b)(2) do not apply to foreign bribery.
- The Ministry of Defence should develop quality standards and a mechanism to oversee the implementation of anti-corruption compliance programmes for defence-related exports.

ITALY
Active enforcement

INVESTIGATIONS AND CASES

In the period 2014-2017, Italy opened 27 investigations, opened 16 cases and concluded six cases with sanctions,[479] according to data provided by the Ministry of Justice.

In 2015, the Court of Appeal in Milan confirmed the sentence handed to **Saipem-TSKJ**, (Snamprogetti at that time) of US$600,000 in fines and US$24.5 million confiscation for allegedly bribing Nigerian public officials to obtain contracts for gas stocking and transportation.[480]

In 2016, Italian prosecutors indicted **Saipem S.p.A.**, **Eni S.p.A.**, the former CEO of Eni S.p.A. and others for alleged bribery of Algerian officials to obtain oil and gas contracts.[481] According to prosecutors, Saipem was involved in the payment of €197 million (US$217 million) in bribes to obtain seven contracts worth a total of €8 billion.[482] Previously, the investigation of Saipem S.p.A.[483] had led to a case against the former head of **Saipem Contracting Algerie**,[484] which concluded in 2015 with a plea bargain that called for a jail sentence of two years and 10 months, and a confiscation of 1.3 million Swiss francs.[485]

In a major case initiated in 2017, prosecutors indicted **Eni S.p.A.**, **Royal Dutch Shell plc**, the CEO of Eni S.p.A., its ex-chairman and others for alleged bribery of Nigerian government officials for exclusive rights to use an oilfield.[486] Prosecutors allege that the two companies paid almost US$1.1 billion in bribes. The trial was due to start in March 2018, but was postponed to May 2018[487] and then re-adjourned again to June 2018.[488]

In 2016, an Italian appellate court overturned a previous lower court ruling and sentenced a former chief executive of **Finmeccanica** (now **Leonardo S.p.A.**) and a former head of **AgustaWestland** (a subsidiary of Finmeccanica) to four-and-a-half years and four years in prison, respectively, and a fine of €7.5 million, for corruption and falsifying invoices. The trial concerned alleged bribes in a €560 million contract awarded to AgustaWestland in 2010 to supply 12 helicopters to India.[489] The Supreme Court found fault with the appellate court's ruling and ordered another trial in December 2016. In January 2018, the subsequent appellate court acquitted the two former executives, citing insufficient evidence of their involvement in the alleged bribes. It is uncertain whether the case will return to the Supreme Court.[490] India is continuing investigations into the case.[491]

Of the 27 investigations initiated in the period 2014-2017, at least seven were reported in the media: **Microelettrica Scientifica S.p.A.**,[492] **Eni S.p.A.**,[493] **Frabemar S.r.l**,[494] **Consorzio Dinamo**,[495] **Pilosio S.p.A.**,[496] **AgustaWestland**[497] and **Techint Group**.[498] The latter investigation extended to Argentina in 2017.[499]

TRANSPARENCY OF ENFORCEMENT DATA

There are currently no published statistics on foreign bribery enforcement, nor is there a national database for ongoing cases of foreign bribery.[500] There is no general provision requiring court decisions to be published. Most of the courts' decisions can be accessed on the website *ItalgiureWeb*.[501] However, this is free of charge only to a small number of people, i.e. judges, lawyers and civil servants.[502] Currently, only Constitutional Court decisions are published in open data format.

No statistics on requests for mutual legal assistance (MLA) are available on the Ministry of Justice website.[503]

RECENT DEVELOPMENTS

In 2017, the Italian parliament approved new whistleblower protection legislation, which applies primarily to the protection of public-sector employees.[504] Also in 2017, the Italian Senate adopted new legislation to increase the length of the statute of limitations for some crimes of corruption. The law also provides for circumstances that warrant its suspension.[505] In addition, parliament approved new legislation in 2016 ratifying and implementing the European Union Convention on Mutual Assistance in Criminal Matters.[506] This came into effect in 2017 and simplifies the direct exchange of MLA between EU members.[507]

INADEQUACIES IN LEGAL FRAMEWORK

Despite the increased length of the statute of limitations, the fact that limitations continue to have effect throughout all three judicial stages (first instance, appeal and final) may mean that final judgements will not be reached within the permitted timeframe. The incidence of time-barred cases is higher in corruption-related cases than other types of crime.[508] In addition, the legal framework does not recognise a unique statute of limitations for continuous crimes.[509] The application of the new statute of limitations concerns only crimes suspected of having been committed after the new law entered into force. The appeal system lacks effective disincentives to bringing appeals which are merely dilatory. Protection of private-sector whistleblowers under the new legislation remains inadequate.[510]

INADEQUACIES IN ENFORCEMENT SYSTEM

A key inadequacy of the judiciary is the backlog of cases.[511] Italy is among the countries with the highest number of pending cases and the longest duration of proceedings.[512] The overburdened judicial system is hampered by a shortage of material and human resources, with one of the lowest numbers of judges per capita in Europe.[513] As of 2016, there was a significant shortage of magistrates, as well as of auxiliary staff.[514] The lack of an open and easily accessible central database of information about investigations and cases remains a major problem. Such a database would allow effective coordination between enforcement agencies, prevent intelligence gaps and enable accurate monitoring of Italy's progress in tackling foreign bribery and other corruption offences.

INADEQUACIES IN MUTUAL LEGAL ASSISTANCE

There are no significant inadequacies in Italy's MLA system. The Eni/Shell investigation saw an unusually high level of cooperation among enforcement agencies over a prolonged period, bringing together investigators from several countries, including Nigeria and the Netherlands.[515] However, difficulties still persist regarding the tracking of financial flows through normal rogatory mechanisms, and identifying beneficial owners operating under corporate secrecy.

RECOMMENDATIONS

- Extend whistleblower protection to the private sector.
- Implement broader reform of the criminal justice system, including the appeal system, in order to alleviate the backlog of cases and speed up procedures.
- Revise further the rules on statutes of limitations, including recognising a unique statute of limitations for continuous crimes.
- Develop a more efficient follow-up system of criminal cases through a data web register, to help alleviate the backlog of cases.[516]
- Ensure appropriate material and human resources in the court system.
- Improve the management and accessibility of information about investigations and prosecutions of foreign bribery cases (including plea bargain agreements).
- Increase the use and capacity of open data in governmental and private institutions.
- Join the Extractive Industries Transparency Initiative to promote good governance in the oil, gas and mining sectors.

JAPAN
Little or no enforcement

INVESTIGATIONS AND CASES

As far as can be ascertained, in the period 2014-2017, Japan did not initiate any investigations into foreign bribery, but opened and concluded one case with sanctions. Japan has prosecuted only four cases of foreign bribery since 1999, when the amendment to its Unfair Competition Prevention Law came into effect, making foreign bribery an offence.[517]

The most recent case was concluded in 2015, when the Tokyo District Court found **Japan Transportation Consultants Inc. (JTC)** and three former executives guilty of paying bribes of US$1.3 million to public officials in Vietnam, Indonesia and Uzbekistan,

between 2009 and 2014, in order to secure official development assistance railway projects.[518] The court fined JTC 90 million yen and sentenced the former executives each to imprisonment of two to three years, with probation of three to four years.[519]

TRANSPARENCY OF ENFORCEMENT DATA

There is no publicly available data on foreign bribery enforcement in Japan. Information on court decisions is available through a centralised court website[520] and other law reporting services.[521] For each case, sentencing decisions are summarised and the accused are anonymised. The full text of judgements and commentaries are available online. Statistics on mutual legal assistance (MLA) requests are available on the Ministry of Justice's website, including requests sent and received.[522] However, there are no separate statistics available for MLA related to foreign bribery cases.

RECENT DEVELOPMENTS

Japan became a party to the UN Convention against Corruption and the UN Convention against Transnational Organised Crime in July 2017. In 2016 Japan enacted an amendment to the Code of Criminal Procedure providing for a plea-bargaining system which will take effect on 1 June 2018. The aim is to strengthen the prosecution of corporate and financial crime. Plea bargaining will apply to cases of violation of the Unfair Competition Prevention Act.[523] From 2015 to 2017, the Ministry of Economy, Trade and Industry and the Japan Federation of Bar Associations significantly revised and expanded various guidelines in relation to prevention of foreign bribery, targeted at Japanese companies and legal counsel.[524] The 2015 revision included greater emphasis on the importance of companies building an internal control system with respect to compliance.[525] In response to the OECD WGB recommendation in the Phase 3 Follow-up Report in 2014, the 2017 revision highlighted the fact that illegal earnings from foreign bribery can be confiscated under the Act on Punishment of Organised Crimes and Control of Crime Proceeds.[526] The government also published in 2016 and 2017 various guidelines on establishing, maintaining and operating internal reporting systems, based on the Whistleblower Protection Act.[527]

INADEQUACIES IN LEGAL FRAMEWORK

Much corporate misconduct would not have been discovered without whistleblower reports, and it is now well recognised among Japanese businesses that a corporate whistleblowing system is an effective means of discovering corrupt behaviour. Most companies listed on the stock exchange have adopted whistleblowing systems, including anonymous reporting to external lawyers and to an independent expert organisation. However, when serious corporate misconduct cases were discovered, such as the **Toshiba** accounting injustice case[528] or the **Olympus** accounting fraud case,[529] reports by independent investigatory committees have often pointed out that whistleblower protection was not working properly.[530] One reason may be that in practice, whistleblower protection in Japan is currently weak. Those who come forward sometimes face retaliation, such as firing or other unfair treatment.[531] In order to invalidate their dismissal or receive compensation under the current system, whistleblowers must take companies to civil court.[532] The law does not currently stipulate any penalties for employers who treat whistleblowers unfairly, although the government has recently announced that it will consider imposing administrative orders or criminal sanctions for companies that retaliate against whistleblowers.[533]

INADEQUACIES IN ENFORCEMENT SYSTEM

The OECD WGB has expressed significant concerns about the lack of foreign bribery enforcement in Japan, including in its most recent report on Japan in 2016.[534] Enforcement agencies lack skills and adequate resources for international investigations. The OECD WGB recommended in 2016 that Japan establish an action plan to organise police and prosecution resources so they can proactively detect, investigate and prosecute foreign bribery cases.

There is a lack of whistleblower protection and incentives for whistleblowers to come forward or for firms to self-report.[535] Implementation of the OECD Anti-Bribery Convention in Japan largely falls under the remit of the Ministry of Economy, Trade and Industry, which is also responsible for the promotion of Japanese business abroad, a dual mandate which creates obvious tensions.[536]

INADEQUACIES IN MUTUAL LEGAL ASSISTANCE

There are no known significant inadequacies in Japan's MLA framework.

RECOMMENDATIONS

- Introduce and implement improvements to whistleblower protection and create incentives for whistleblowers to come forward.
- Properly resource enforcement bodies and improve coordination and communication between the different prosecution and investigative branches.
- Adopt a separate act to regulate foreign bribery, moving the responsibility for implementing UNCAC and other anti-bribery legislation such as the Fair Competition Law to the Ministry of Justice, so as to address concerns expressed by the OECD WGB regarding the role of the Ministry of Economy, Trade and Industry.
- Collect and publish enforcement statistics.

KOREA (SOUTH)
Limited enforcement

INVESTIGATIONS AND CASES

In 2015, the Seoul Central Prosecutor's Office indicted three closed-circuit television (CCTV) manufacturers and their respective executives and employees, alleging they gave bribes of 128 million Korean won (US$120,000) to an American military official stationed in Korea. The case is still pending.[537] In 2017, prosecutors commenced an investigation into **SK Engineering and Construction** for allegedly bribing a US Corps of Engineers contracting officer with 3.2 billion won (US$2.9 million), to win a military construction project worth 460 billion won (US$430 million).[538] In October 2016, the Seoul Northern District Court ordered a senior executive at **Keangnam Enterprises Co** to pay US$590,000 in damages to the company for his role in the attempted bribery of a foreign public official in Qatar.[539] Another man was sentenced in the US to 42 months in prison in October 2017 for his role in the attempted bribery scheme.[540] Finally, the report of an investigation by Fairfax Media and The Huffington Post alleged that in 2016 billions of dollars of government contracts were awarded on behalf of numerous global firms including Korean companies **Samsung** and **Hyundai** as part of a web of bribery within the oil industry, allegedly run by the Monaco company **Unaoil**.[541]

TRANSPARENCY OF ENFORCEMENT DATA

Enforcement statistics on opened investigations, cases commenced and cases concluded are not published. The website of the Supreme Prosecutor's Office provides some up-to-date statistics and related analysis in respect of general investigations and prosecutions.[542] However, there are no statistics regarding foreign bribery-related investigations and prosecutions specifically. Court decisions are usually published on the Seoul Central Prosecutor's database, although not always in full.[543] Mutual legal assistance (MLA) statistics are not published.

RECENT DEVELOPMENTS

In 2017, the National Assembly passed an amendment to the External Audit of Joint-Stock Company Law to include limited liability companies (which covers subsidiaries of foreign companies) among the companies subject to external audit.[544] The law is expected to come into effect in November 2018. Following the introduction of the Improper Solicitation and Graft Act, which came into effect in 2016, there are fewer inadequacies in the legal framework for both foreign and domestic bribery prosecutions.[545] The new law applies to a much wider scope of people and corporations, introducing the concept of corporate liability for bribery offences and broadening the category of "public officials". In 2014, the Act on Preventing Bribery of Foreign Public Officials in International Business Transactions was amended to eliminate the facilitation payment exception.[546]

INADEQUACIES IN LEGAL FRAMEWORK

Regarding sanctions and confiscation, the OECD WGB found in its 2014 Phase 3 Follow-up Report that the penalties imposed in practice continue to be insufficiently effective, proportionate and dissuasive.[547] This is still the case, despite the fact that the legal regime to support such sanctions has been strengthened (see above).

The provisions of the Whistleblower Act apply to public- and private-sector whistleblowers, but only in circumstances where there is a "public interest" to protect. Whistleblowers from the corporate sector in South Korea are still not fully protected. They can experience backlash and continue to suffer from cultural stigma.[548]

INADEQUACIES IN ENFORCEMENT SYSTEM

There have been very few prosecutions for foreign bribery in Korea. The investigation and prosecution authorities do not receive adequate resources, which means that dedicated staff cannot be retained.[549] In addition, these departments do not coordinate their work effectively. Private corporations are not well informed about the offence of foreign bribery and many companies do not have adequate internal controls to prevent and detect it, despite the revision of the Commercial Act to introduce a new compliance officer system. In addition, South Korea has yet to find effective ways to facilitate reporting by the tax authorities of suspicions of foreign bribery uncovered in their tax audits. Korea adopted guidelines in 2013 requiring foreign bribery cases detected through tax audits to be referred to the National Tax Service Headquarters, which would in turn share non-tax-related information with other law enforcement agencies through the new consultative body. However, it does not appear that the transfer of this information has been undertaken on a systematic basis.[550]

INADEQUACIES IN MUTUAL LEGAL ASSISTANCE

Korea has legal barriers in place that prohibit the spontaneous sharing of suspicion of foreign bribery with criminal law enforcement authorities.[551]

RECOMMENDATIONS

- Improve public access to enforcement information.
- Increase resources dedicated to enforcement of foreign bribery regulations, and demonstrate greater commitment to investigating and prosecuting the offence.
- Educate South Korean businesses about foreign bribery and provide adequate protection for private-sector whistleblowers.
- Encourage companies to adopt internal controls where possible.
- Improve systems to facilitate reporting by the tax authorities on suspicions of foreign bribery.
- Provide more specific training in the detection of foreign bribery and corresponding reporting obligations among external auditors.

LITHUANIA
Limited enforcement

INVESTIGATIONS AND CASES

There are no reports of foreign bribery cases initiated in Lithuania, but there are two ongoing investigations.[552]

The first investigation, commenced in 2016 by the Special Investigation Service (STT), alleged that the son of the owner of a Lithuanian aircraft engineering company bribed a US army officer to secure a helicopter maintenance contract. The investigation stems from a request for mutual legal assistance (MLA) by US authorities.[553] The other investigation, also commenced in 2016, involves a Lithuanian frozen food company alleged to have bribed the head of the regional office of the Federal Service for Veterinary and Phytosanitary Surveillance of the Russian Federation in Kaliningrad. The company allegedly sought approval to continue exporting food products to the Russian Federation, despite the detection of contamination in its previous exports.[554]

TRANSPARENCY OF ENFORCEMENT DATA

Enforcement data is published by the General Prosecutor's Office (GPO) for national criminal cases, but not for foreign bribery cases.[555] A searchable database of all cases (anonymised) is available online.[556] As of November 2017, the Penal Code requires the full sentencing verdicts of legal persons to be published in the media for the crimes of bribery, trading in influence and graft.[557] The GPO publishes statistics on MLA requests issued and received in its annual reports, although not specifically for foreign bribery.[558] In its

Phase 2 Report on Lithuania in December 2017, the OECD WGB recommended that Lithuania maintain comprehensive statistics on the offences involved, assistance requested and time required for execution of all incoming and outgoing MLA requests, so that requests involving foreign bribery can be identified.[559]

RECENT DEVELOPMENTS

In 2017, the parliament adopted the law ratifying the OECD Anti-Bribery Convention (Law No. XIII-305), which came into force in the same year.[560] Lithuania has taken significant steps to strengthen its legislative framework to combat foreign bribery.[561] In 2017, the government amended a decree, effective from 1 January 2018, increasing the amount serving as the basis for calculating fines.[562] The government also increased the maximum sanctions available for natural and legal persons for all offences, including foreign bribery, money laundering and accounting offences (Law No. XIII-653), and introduced fines as an alternative sanction to imprisonment for the offence of aggravated bribery.[563] The scope of the crimes of bribery and graft has also been widened[564] and the Penal Code has been amended to enable prosecution of foreign persons (both legal and natural) in absentia for corruption-related offences. Also in 2017, the parliament enacted the Law on Whistleblowers' Protection, which will come into force on 1 January 2019.[565] The law provides protections to persons linked by service, employment or contractual relationship to public or private institutions, who disclose information about "infringements", including foreign bribery.[566] In the same year, the STT, GPO, National Tax Inspectorate, Public Procurement Office, Financial Crime Investigation Service, Customs Department and Police Department signed an agreement to cooperate and exchange relevant information for detection and investigation in foreign bribery cases, with STT as the focal point.[567]

INADEQUACIES IN LEGAL FRAMEWORK

There are no significant inadequacies in the legal framework.

INADEQUACIES IN ENFORCEMENT SYSTEM

Lithuania's record in investigating foreign bribery is modest so far. Difficulties in securing effective bilateral cooperation with relevant foreign countries and institutions may potentially undermine investigations. In its 2017 report, the OECD WGB concluded that the STT has insufficient resources to effectively investigate foreign bribery.[568] It expressed concern that Lithuanian law enforcement authorities are not yet sufficiently trained to enforce corporate liability in foreign bribery cases. It also raised concerns about attempts by the parliament in the past to exercise control over the Prosecutor General, and risks of political influence on both the STT Director and Prosecutor General in bribery investigations and prosecutions. The WGB's 2017 report also found that sanctions applied in domestic bribery cases are in practice too low, with average fines amounting to less than 10 per cent of the maximum fine possible.

INADEQUACIES IN MUTUAL LEGAL ASSISTANCE

There are no known significant inadequacies in the legal framework for MLA. However, the absence of comprehensive data on MLA requests makes it difficult to determine potential shortcomings.

RECOMMENDATIONS

- Establish effective whistleblowing channels as a matter of priority.
- Analyse the need for bilateral legal agreements with additional OECD Convention countries and, where relevant, strengthen existing such agreements.
- Increase awareness among prosecutors and other pre-trial investigation agencies that all information relating to suspected foreign bribery should be systematically transmitted to the Department for Investigation of Organised Crime and Corruption (in the GPO) and STT for investigation.[569]
- Improve the collection and publication of enforcement and MLA data.

LUXEMBOURG
Little or no enforcement

INVESTIGATIONS AND CASES

There were no known investigations or prosecutions of foreign bribery during the period 2014-2017.

In 2017 it was reported that Argentinian authorities had opened a foreign bribery investigation relating to **Tenaris**, a global manufacturer of steel pipes headquartered in Luxembourg (a subsidiary of **Techint**) but there are no reports of an investigation in Luxembourg.[570] In 2015, the Belgian authorities issued an indictment accusing an ex-minister of the Walloon regional government of bribing a government official from the Democratic Republic of Congo on behalf of a steel company based in Luxembourg.[571] There are no reports of an investigation in Luxembourg.

Luxembourg has, however, played a role in investigating other kinds of international corruption. In 2016, a criminal district court opened a judicial investigation into suspected money laundering of funds embezzled to the detriment of the Malaysian sovereign wealth fund **1Malaysia Development Berhad** (1MDB).[572] The embezzlement was allegedly carried out through offshore companies having bank accounts in Singapore, Switzerland and Luxembourg, with hundreds of millions of US dollars paid in exchange for the issuance of bonds in May and October 2012. The investigation aimed to track down wire transfers made in 2012 and 2013 to an offshore company with a bank account in Luxembourg. In 2016, the **Banque Privée Edmond de Rothschild (Europe)**, the Luxembourg arm of the Swiss private bank, was cited in connection with a possible fraud involving 1MDB. In June 2017, Luxembourg's financial regulator fined the bank €8.99 million for non-compliance with the requirement to put in place a robust internal governance system, which notably covers a compliance policy and compliance with professional anti-money laundering and counter-financing of terrorism obligations.[573] No allegations of foreign bribery have been made in relation to these transactions.

In 2016, the Criminal Court of the district of Luxembourg-City convicted a European civil servant and another individual of trading in influence in relation to a call for bids carried out by the European Parliament. A leased car was provided in exchange for the civil servant's influence over the evaluation process for the bids.[574]

TRANSPARENCY OF ENFORCEMENT DATA

The financial intelligence unit of the Luxembourg Prosecutor publishes annual statistics on corruption matters, including the number of files opened, persons prosecuted, judicial information files opened, judgments issued and people convicted. However, the figures do not allow identification of activities specifically related to foreign bribery.[575] Court decisions and other case resolutions are not published in full. Some statistics regarding cooperation between Luxembourg and the other Europol members on corruption matters are published, including the number of messages sent and received.[576]

RECENT DEVELOPMENTS

In response to the EU's 4th Anti-Money Laundering Directive of 2015,[577] the Luxembourg law of 23 December 2016 extended the money laundering offence to aggravated tax evasion and tax fraud from 1 January 2017. The Luxembourg Law of 13 February 2018 (Amending Law), which entered into force on 18 February 2018, introduces further amendments to Luxembourg's anti-money laundering legislation,[578] including an amended definition of "beneficial owner" of corporate entities and trusts; setting different thresholds for customer due diligence measures, and enhanced requirements for professionals to carry out risk assessments. The act also defines new requirements regarding local and foreign politically exposed persons; emphasises data protection requirements, employee training, whistleblowing and record-keeping; and increases criminal sanctions and sanctions for supervisory authorities.[579]

The remaining provisions of the 4th Anti-Money Laundering Directive regarding the implementation of a register of beneficial owners and a register of trusts are treated separately in two other bills which have yet to be adopted.[580]

In April 2015 the Minister of Justice indicated that the government would consider extending the scope of protection to whistleblowers reporting additional forms of wrongdoing relating to security or working conditions, and would improve and simplify the existing reporting channel.[581] This too has yet to happen.

INADEQUACIES IN LEGAL FRAMEWORK

A March 2017 European Parliament report found Luxembourg (along with the Baltic states and Cyprus) among EU countries disproportionally threatened by money laundering in relation to their gross domestic product. It noted that in the Panama Papers, Luxembourg was linked to 10,877 offshore entities, the second highest number after the UK.[582]

The OECD WGB, in its Phase 3 Follow-Up Report in 2013, considered that the majority of the recommendations made by the group in 2011 (such as those in relation to offence, liability of legal persons, accounting and audit) remained unimplemented.[583] Out of 24 recommendations, the group considered that seven were fully implemented, nine were partially implemented and eight remained unimplemented.

Luxembourg's current whistleblower protection legislation only protects whistleblowers against dismissal, not against prosecution.

INADEQUACIES IN ENFORCEMENT SYSTEM

The Group of States against Corruption (GRECO) suggested in 2015 that more training programmes be established for judges, prosecutors, members of the administrative courts and other court personnel.[584] Specific sessions on ethical rules are now part of the training given to judicial assistants, who constitute the pool of future judges and prosecutors, including a presentation on Luxembourg legislation applicable to corruption.

INADEQUACIES IN MUTUAL LEGAL ASSISTANCE

There are no significant inadequacies in the way Luxembourg makes and receives requests for MLA.

RECOMMENDATIONS

- Improve access to enforcement statistics and case law.
- Resolve within the OECD WGB differences of views about inadequacies identified in the OECD WGB's 2013 Follow-up Report.
- Develop and implement the extension of the whistleblower protection legislation, strengthen reporting channels and put provisions in place for an independent body to handle corruption allegations.
- Improve training for judges, prosecutors, members of the administrative courts and other court personnel.
- Complete implementation of the EU's 4th Anti-Money Laundering Directive.

MEXICO
Little or no enforcement

INVESTIGATIONS AND CASES

In the period 2014-2017, Mexico opened three investigations, but no cases.

There are also investigations underway in other countries concerning the activities of two Mexican companies. The US and Colombian authorities are investigating **CEMEX Mexico** activities in Colombia[585] and Spanish authorities are investigating **Grupo Mexico** activities in Spain.[586] However, there are no known investigations in Mexico of the activities abroad of those two companies.

TRANSPARENCY OF ENFORCEMENT DATA

The Attorney General's Office has a Specialised Unit for Crimes Committed Abroad, which publishes basic data on foreign bribery enforcement on the government's open data portal. The data includes the date, file number, country in which the alleged offence took place and the status of the investigation or case, but does not contain other information.[587] In addition, the data is incomplete.[588] The judiciary is required to publish resolutions and court decisions by law, if such information is in the public interest.[589] Neither the Ministry of Foreign Relations' website, nor the government's open data portal contains any data on incoming and outgoing mutual legal assistance (MLA) requests.

RECENT DEVELOPMENTS

Following the creation of a National Anti-Corruption System (NAS)[590] in 2015, a package of seven secondary laws was approved in 2016, including the General Law on Administrative Responsibilities (GLAR).[591] The GLAR

along with amendments to the Federal Criminal Code[592] included a new set of administrative and criminal sanctions for individuals and corporations participating in acts of corruption. However, there are no adequate mechanisms to hold offenders to account, such as a well-functioning prosecution service and court system, (see below).[593] This is due, in part, to the lack of independence in the Attorney General's Office and the judiciary.

In 2017, the Secretary of Public Administration in Mexico published its Model Program for Corporation Integrity, which provides recommendations for corporate compliance programmes and policies.[594]

Mexico is also currently working on an anti-bribery protocol that will facilitate coordination between government entities and foreign governments over foreign bribery. This will consider the problems of territorial jurisdiction, criminal and administrative responsibility of corporations, information exchange between authorities, and the improvement of Mexico's international cooperation mechanisms.

INADEQUACIES IN LEGAL FRAMEWORK

The new Attorney General's Office, created under the constitutional reforms of 2014, was not granted sufficient autonomy. The Attorney General's appointment still needs executive approval and the President can still remove the incumbent from office. There remains a need for secondary laws regarding the judiciary, including structural reforms to ensure autonomy of the judicial power's governing body, in order for cases to be adequately judged in the courts. The OECD WGB expressed concern in its 2014 Phase 3 Follow-up Report that Mexico's territorial jurisdiction to prosecute foreign bribery is too narrow. This remains the case.[595]

INADEQUACIES IN ENFORCEMENT SYSTEM

Although the GLAR came into effect in July 2017, relevant amendments to the Organizational Law of the Attorney General's Office and the Federal Criminal Code have not come into force because of the pending nomination of the Special Anti-Corruption Prosecutor. This means that corruption-related crimes cannot currently be prosecuted under the terms of the new law. The Senate refused to confirm the appointment of judges of the Federal Court of Administrative Justice, due to allegations of bias in favour of political parties which could subsequently be judged by the appointees.[596]

There is a severe lack of independence among judges in Mexico's states. They are highly dependent on the executive branch and are frequently removed or appointed because of ties to the state governor. There is a serious lack of human resources for these state judges and their level of specialisation is often negligible. At federal level, judicial independence is much stronger. However, there have been serious criticisms of the lack of meritocracy and accusations of systematic nepotism.[597] In February 2018, the Federal Judiciary Council cancelled an exam for the appointment of judges because it discovered that the responses to the questions had been stolen and were being sold.[598]

INADEQUACIES IN MUTUAL LEGAL ASSISTANCE

Mexico has signed multiple MLA treaties with different countries. Under article 90 of the GLAR, investigation authorities must cooperate with international authorities in order to strengthen investigation procedures.

RECOMMENDATIONS

- Amend Article 102 of the Constitution to ensure that the Attorney General's Office is independent from the executive power.
- Complete the appointment of the Special Anti-Corruption Prosecutor and anti-corruption judges of the Federal Court of Administrative Justice.
- Ensure that the NAS is implemented at state level.
- Introduce mechanisms to ensure the judiciary operates free from political motives, e.g. make appointment mechanisms less dependent on the executive power, and reform the judiciary's governing body (at present headed by the President of the Supreme Court, who is also appointed by the executive).
- Provide more resources and training for the police to investigate corruption cases.
- Ensure that the Tributary Administration Service and the Financial Investigation Unit begin to play an active role in corruption cases both in Mexico and abroad.

- Publish more information on corruption-related cases and investigations on the government's open data portal.

THE NETHERLANDS
Limited enforcement

INVESTIGATIONS AND CASES

During the period 2014-2017, the Netherlands opened at least seven investigations, commenced two cases and concluded four cases with sanctions, including three major foreign bribery settlements with the Dutch Public Prosecutor Service (DPPS).[599]

In 2014, **SBM Offshore NV** agreed to pay the Netherlands US$240 million in fines and forfeited proceeds of crime in relation to commissions paid to sales agents in Equatorial Guinea, Angola and Brazil **(see case study on page 111)**. Telecom company **VimpelCom Ltd** and its subsidiary **Silkway Holdings BV** paid the Netherlands US$397.5 million in 2016 as part of a global settlement of US$795 million in fines and forfeited proceeds of crime, orchestrated by US authorities. The settlement relates to bribes of approximately US$114.5 million paid in connection with entering the Uzbek telecom market in 2006 and obtaining licences.[600] In 2017, three Rotterdam-based subsidiaries of the Stockholm-based international telecom provider **Telia Company AB** paid the Netherlands US$274 million, also in relation to bribery of foreign officials to operate in the Uzbek telecom market. As with VimpelCom, this was part of a global settlement announced by US authorities, involving a total financial sanction of US$965 million.[601]

In December 2013, the accountancy firm **KPMG** reached a €7 million settlement with the Dutch authorities in relation to allegations that it had helped the Dutch construction company **Ballast Nedam** disguise suspicious payments to foreign agents in order to obtain business in Saudi Arabia. Ballast Nedam settled with the Dutch authorities for €17.5 million in 2012.[602] The settlements with both corporations were paired with criminal investigations into five individuals. Two are former Ballast Nedam directors who allegedly profited personally from the money paid in Saudi Arabia and Suriname.[603] The court cases commenced in December 2017. The other three individuals are former accountants from KPMG, who have recently been formally accused of hiding the bribes through shadow accounting.[604] A Dutch court declared the charges inadmissible, stating *inter alia* that the DPPS had acted unfairly and there was an improper weighing of interests.[605] The DPPS appealed this decision in April 2018.[606]

In 2016, a court case (*in absentia*) was conducted which concerned charges brought against **Takilant Ltd**, a mailbox company registered in Gibraltar, accused of having received payments of over €300 million from VimpelCom and Telia Company AB to enable their Uzbek subsidiaries, **Unitel** and **Ucell**, to gain permits to operate in the local mobile telephone market.[607] In 2016, the Amsterdam District Court found Takilant guilty of complicity to commit passive bribery, sentenced it to a fine of €1.58 million, and ordered the criminal confiscation of 1,080 registered shares and forfeited proceeds of crime of €123 million.[608]

The Dutch Fiscal Information and Investigation Service has been investigating **ING Bank NV** since 2016 on suspicion of facilitating international corruption and money laundering.[609] The bank is suspected of failing to report, in a timely manner, unusual transactions by VimpelCom and Telia Company AB for payments into the bank accounts of Takilant.[610] In 2017, the DPPS further offered a settlement to **E&Y** for failure to report unusual transactions of VimpelCom. E&Y rejected this offer and was summoned to appear in criminal proceedings before the District Court of Amsterdam.[611]

TRANSPARENCY OF ENFORCEMENT DATA

Enforcement data is not published by the Dutch authorities. Not all investigations are made public, though some are announced by the DPPS. In some cases, investigations are first made public by companies, via their annual reports. Court decisions are published in full, though anonymised.[612] Settlement agreements are not published in full, but are accompanied by a press release and, since 2016, a public statement of facts.[613] Statistics on mutual legal assistance (MLA) are not recorded.

RECENT DEVELOPMENTS

There have been major improvements in enforcement since 2015. Since 2016, an extra €20 million has been made available annually for Dutch anti-corruption enforcement bodies. By 2020, the treasury is expected to receive €80 million in fines and confiscation annually.[614] In addition, the Senate passed the Whistleblowers Authority Act, which came into force in 2016. The Panama Papers have increased public

awareness that Dutch mailbox companies pose a risk for the Netherlands' financial integrity,[615] mostly because of their role in aggressive tax planning.[616] There is also a greater focus in the DPPS on the role of service providers in facilitating foreign bribery (customer due diligence)[617] and there are efforts to increase transparency in settlement procedures,[618] which is currently perceived to be lacking.

INADEQUACIES IN LEGAL FRAMEWORK

The DPPS has yet to prosecute an individual for their responsibility in foreign bribery, the key reason given being jurisdictional limitations concerning the prosecution of foreign individuals employed by Dutch companies who committed their crimes outside the Netherlands. The system for settlements is undermined by lack of transparency, the absence of any role for an independent court, and the lack of a legal basis for Dutch settlements to include important aspects such as a monitor or obligatory future reporting to the DPPS. Settlement amounts in cases of foreign corruption compared to national corruption (either as a settlement or imposed by local courts) are much higher. Clear guidelines for companies on what to expect when they report or enter into settlement negotiations are lacking. In addition, there are no clear rules to ensure that forfeited amounts of proceeds of crime are returned to the countries where the profits were originally earned.

Regarding mailbox companies and the role of service providers in facilitating foreign bribery, the Netherlands has still not set up a register of ultimate beneficial owners as part of implementation of the EU's 4th Anti-Money Laundering Directive – which partially addresses these issues.

INADEQUACIES IN ENFORCEMENT SYSTEM

Even though resources for enforcement have increased markedly, it remains to be seen whether the justice system is capable of effectively conducting full trials against larger Dutch companies and their management. Up to 2017, the only foreign bribery case ever brought to court, against Takilant Ltd, was a trial *in absentia*.

While the new whistleblower legislation[619] prescribes that companies with more than 50 employees must implement a policy to protect whistleblowers from retaliation, it does not establish adequate standards for these arrangements. A 2017 study conducted by the Whistleblowers' Authority found that half the Dutch companies studied were not compliant with the legal requirement of an internal whistleblowing policy.[620] This is confirmed by an assessment by Transparency International Netherlands of the quality of whistleblowing policies of 27 Dutch publicly listed companies.[621]

There is a lack of focus on awareness-raising of corruption as a separate issue, especially among small-and medium-sized enterprises. Corruption is generally addressed in the context of corporate social responsibility, and mainly through a sectoral approach. A broad, overarching understanding of the risks and implications of corruption and its negative impact on human rights and the environment is lacking within the government's policy to raise awareness of foreign bribery as an offence.[622]

INADEQUACIES IN MUTUAL LEGAL ASSISTANCE

There is no information on MLA in the Netherlands.

RECOMMENDATIONS

- Evaluate and improve protection for whistleblowers.
- Fully implement the EU's 4th Anti-Money Laundering Directive, including the establishment of a register of ultimate beneficial owners.
- Develop a better policy on settlements, including consideration of the role of victims and asset recovery, identification of jurisdictional limitations concerning foreigners employed by Dutch companies, and a sentencing guideline.
- Increase the number of cases concerning foreign bribery actually prosecuted in court (not merely resulting in out-of-court settlements) and conduct a full trial in court against one or more persons or companies responsible for active foreign bribery.
- Expand the jurisdiction over foreigners employed by Dutch companies for foreign bribery under certain conditions.
- Raise awareness, especially among small-and medium-sized enterprises on their possible role in foreign bribery and the consequences.

NEW ZEALAND
Limited enforcement

INVESTIGATIONS AND CASES

New Zealand began eight investigations in the period 2014-2017, two involving activities in Indonesia, two in Fiji, and one each in China, Israel, Saudi Arabia and one unknown country.[623] These did not result in judicial proceedings.

Media research and the Panama Papers reveal the involvement of New Zealand companies and trusts in cases of alleged foreign bribery.[624] Most notably, **Unaoil**, the Monaco energy "facilitation" company accused of corruptly securing contracts for multinationals, is apparently owned by **UNA Energy Group Holding of Singapore**, which is in turn owned by a New Zealand shell company **UnaEnergy Trustees**, in its turn owned by **Fleetwood Trustees**, based in the tax haven of St Kitts and Nevis.[625]

TRANSPARENCY OF ENFORCEMENT DATA

The New Zealand Serious Fraud Office (SFO) does not publish complete statistics on foreign bribery. Where an ongoing investigation is already public, or where there is otherwise a public interest in the matter being disclosed, the SFO may make a public statement about an investigation. Such press releases remain available on its website archive. Requests under the Official Information Act provide limited additional information. The SFO website and annual reports make references to mutual legal assistance (MLA) requests, but these are vague and incomplete. Many, but not all, judicial decisions are published online.[626] Bribery cases are not listed separately and searching the databases requires a degree of expert knowledge.

RECENT DEVELOPMENTS

Amendments to the Crimes Act introduced in 2015 clarify that a corporate entity is liable for acts of foreign bribery by "employees" when such acts are undertaken within an employee's lawful authority, to the benefit of the corporate entity. The amendments also led to the removal of the dual criminality requirement and clarified the "routine government action" (facilitation payment) exception.[627] The legislation criminalises the giving and accepting of a bribe in return for using influence over a foreign public official, and the acceptance of a bribe by a foreign public official – but only if the foreign public official (or corporation) is a New Zealand resident or citizen, or the action took place in New Zealand.[628]

In response to the Panama Papers scandal and the ensuing government inquiry,[629] the government introduced reforms to increase compliance and disclosure obligations, including that trusts reveal their beneficiaries and other details to regulatory agencies through a register. The new regime led to the deregistration of around three-quarters of foreign trusts in New Zealand.[630] However, the register is not publicly accessible.[631]

INADEQUACIES IN LEGAL FRAMEWORK

Facilitation payments continue to be legal, although such expenses must now be recorded. The Ministry of Justice has issued a statement which clarifies the nature of these payments and discourages their use.[632] However, it remains uncertain when exactly a payment would be subject to exemption. Further concerns exist around the lack of a specific statutory obligation for auditors to report foreign bribery to the relevant authorities.[633] New Zealand lacks positive requirements for commercial organisations to prevent foreign bribery. It also continues to require that the Attorney General (a political appointee) provide consent for foreign bribery prosecutions.[634]

INADEQUACIES IN ENFORCEMENT SYSTEM

There is little evidence of active investigation of foreign bribery, with prosecutorial agencies instead relying on complaints submitted to them.[635] However, the recognised inadequacy of New Zealand's whistleblowing regime discourages such tip-offs.[636] None of the eight investigations by the SFO led to the initiation of prosecution or a settlement of any form.

INADEQUACIES IN MUTUAL LEGAL ASSISTANCE

In 2016 the New Zealand Law Commission criticised the country's MLA system on the grounds of its informality and lack of coherence.[637] The Commission has proposed a new statutory framework to improve mutual assistance in criminal matters and broaden the

types of assistance that New Zealand can provide. The Ministry of Justice is considering the report's recommendations.[638]

RECOMMENDATIONS

- Remove the facilitation payment exception for the bribery of foreign public officials.
- Improve whistleblower protection.
- Introduce requirements for auditors to disclose suspicions of foreign bribery.
- Establish comprehensive mechanisms to ensure transparency of New Zealand trusts and companies, such as public registers that include information on beneficial ownership.
- Fund and develop active investigation mechanisms.
- Remove the requirement that the Attorney General consent to foreign bribery prosecutions.
- Introduce a positive requirement for commercial organisations to prevent foreign bribery.

NORWAY
Active enforcement

INVESTIGATIONS AND CASES

In the period 2014-2017, Norway began three investigations, opened two cases and closed three cases with sanctions.

In 2017, **Yara International ASA**'s former chief legal officer was sentenced on appeal to seven years in prison in connection with bribery in India and Libya. Three other Yara executives were acquitted.[639] In 2014, Yara International ASA agreed to pay a fine of US$44 million – the largest ever of its kind in Norway – as part of a corporate settlement with the National Authority for Investigation and Prosecution of Economic and Environmental Crime (Økokrim).[640] Also in 2014, Økokrim reached a criminal settlement with shipping company **Torvald Klaveness** relating to allegations that one of its subsidiaries paid bribes in 2003-2004 to senior Bahraini officials, including the oil minister, in connection with freight shipping agreements with **Aluminum Bahrain BSC (ALBA)**, a majority state-owned entity. The parent company agreed to a criminal fine and forfeiture totalling around US$5.4 million.[641] In 2016, police dropped charges against **Kongsberg Gruppen ASA** and **Kongsberg Defence & Aerospace AS** alleging corruption related to deliveries of communications equipment to Romania in the period 2000-2008. Instead, a former Kongsberg executive was charged with fraud.[642] In 2017, police ended an investigation of the former chief executive of **VimpelCom** in relation to the company's activities in Uzbekistan.[643] There is currently one ongoing investigation involving the company **Sevan Marine** in relation to dealings between **Sevan Drilling** and the Brazilian state-owned oil company **Petrobras**.[644]

TRANSPARENCY OF ENFORCEMENT DATA

Publication of data on foreign bribery enforcement is limited. The UNCAC first cycle review of Norway concluded that "Norway is encouraged to adapt its information system to allow it to collect data and provide more nuanced and detailed statistics on corruption offences".[645] There is a list of scheduled court cases online,[646] court decisions are available upon request to the relevant court, and online access to Supreme Court decisions is accessible to everyone free of charge via *Lovdata.no*. Additionally, the full text of all court decisions on corruption can be accessed for subscribers through *Lovdata.no*.[647] Transparency International Norway also publishes a collection of important corruption cases, which it updates on an annual basis.[648] There are no statistics on mutual legal assistance (MLA) requests made or received.

RECENT DEVELOPMENTS

Amendments to Norway's 2005 Penal Code in force since October 2015 make it more difficult to prosecute a person who is not a Norwegian citizen for offences committed abroad, if the person is not resident in Norway at the time of the charge.[649] Changes to the Criminal Procedure Act in 2016 introduced additional investigative techniques and coercive measures which can be applied without notification for offences where the minimum penalty is at least 10 years' imprisonment (including aggravated corruption). The Department of Labour and Administration began the process of evaluating the efficiency of existing whistleblower legislation in 2013.[650] An expert committee was appointed by the government in November 2016 to discuss measures to strengthen the protection of whistleblowers. The committee published its report in March 2018, calling almost unanimously for reform.[651]

INADEQUACIES IN LEGAL FRAMEWORK

As noted in the previous Exporting Corruption report, whistleblower protection in Norway is not strong enough.[652] The changes to the Penal Code mentioned above also mean that it is now more difficult to prosecute non-Norwegians for offences committed abroad. The OECD WGB Phase 4 Report on Norway in June 2018 raised concerns about the legal framework. It observed that: "Overall, Norway has a robust legal framework that has supported active anti-bribery enforcement. Since the Phase 3 evaluation, however, Norway has made some significant amendments that could weaken enforcement. Notably, the new Penal Code narrows Norway's jurisdiction over criminal offences committed abroad, *inter alia*, potentially limiting nationality jurisdiction over foreign bribery to acts that are 'also punishable under the law of the country in which they are committed'."[653] The OECD WGB also called for Norway to clarify the application of penalty notices, the use of mitigating factors and the scope of corporate liability for offences committed within the operations of related entities.

INADEQUACIES IN ENFORCEMENT SYSTEM

The police remain under-resourced, forcing them to refrain from investigating cases even where there is clear suspicion of financial crime. The results of police reform announced in early 2015 have yet to be seen in the field of anti-foreign bribery enforcement.

INADEQUACIES IN MUTUAL LEGAL ASSISTANCE

The UNCAC 2013 first cycle review of Norway recommended that "Norway may wish to consider providing further legislative or administrative specification regarding the required format and content of [mutual legal assistance] requests".[654] A shortcoming in relation to MLA requests made to other countries is the time it takes to process them due to heavy bureaucracy in most countries, in some cases up to a year. The exception is from countries within the Schengen area, where requests can be handled directly between prosecuters.

RECOMMENDATIONS

- Ensure better whistleblower protection, including a stronger role for regulators in the whistleblower protection regime.
- Make it possible to prosecute non-Norwegians for offences committed abroad, including when the person is not resident in Norway at the time of the charge.
- Develop stronger incentives for companies to self-report suspected corruption to Økokrim.
- Ensure that the financial police and Økokrim have sufficient resources to investigate financial crimes.

POLAND
Little or no enforcement

INVESTIGATIONS AND CASES

There were no foreign bribery investigations or cases commenced in Poland during the period 2014-2017. According to the Polish Ministry of Justice there were two convictions for active bribery of a foreign public official in that period, one person in 2014 and one in 2015.[655] No further details are available.

TRANSPARENCY OF ENFORCEMENT DATA

The Polish Ministry of Justice publishes statistics on the number of convictions of individuals, according to type of crime, including foreign bribery. There are no published statistics on investigations or cases commenced. There is a public database of court decisions, but these are incomplete and data is anonymised.[656] Third-party access to a particular judgement may be granted exceptionally on request, at the discretion of the court. Statistics on mutual legal assistance (MLA) requests made and received are neither published nor available on request.

RECENT DEVELOPMENTS

In May 2018, the government published a draft of the Act on the Liability of Collective Entities for Deeds Prohibited under Penalty[657] which is intended to make the procedure for bringing corporate entities to account more effective.[658]

In 2017, new regulations on so-called "extended confiscation" were introduced to increase the efficiency of asset confiscation, especially in cases of fraud, tax evasion or money laundering.[659] In addition, the government is preparing a new Act on Transparency of Public Life which would require medium-sized and large companies to introduce internal anti-corruption procedures, and provides legal protection for whistleblowers.[660] The act is currently in the public consultation phase.

The Prosecution Service Law of 28 January 2016 has greatly modified the organisation and operation of the prosecution service, seriously limiting the independence of prosecutors. The functions of Minister of Justice and Prosecutor General have been combined and the principle of fixed-term appointment of prosecutors heading specific units has been eliminated.[661] In December 2017, the UN Special Rapporteur on the Independence of Judges and Lawyers issued a statement saying that "the adoption of two laws in Poland threatens the independence of the judiciary" because the laws placed two key judicial institutions – the Supreme Court and the National Council of the Judiciary – under the control of the executive and legislative branches.[662] A few days earlier, the European Commission initiated a procedure under article 7(1) of the Treaty on the European Union to determine the existence of a serious breach of the rule of law in Poland. The Commission issued a press release entitled "Rule of Law: European Commission acts to defend judicial independence in Poland".[663]

INADEQUACIES IN LEGAL FRAMEWORK

Weaknesses in Polish legislation mean that in practice, companies do not face criminal liability for foreign bribery. In a statement issued in March 2018, the OECD WGB said that Poland "still needs to take urgent steps to ensure companies can be held responsible for foreign bribery, even if the persons who perpetrated the offence are not convicted".[664] The OECD WGB also called for removal of the Polish Penal Code's "impunity" provision (akin to the "effective regret" provision in some countries), which allows perpetrators of bribery to escape punishment by notifying the law enforcement authorities of the offence before the authorities learn about it. The OECD WGB further noted that Poland should ensure that appropriate measures are in place to protect private- and public-sector employees from retaliatory or disciplinary action if they report suspected acts of foreign bribery in good faith and on reasonable grounds. The Polish Ministry of Justice announced in late 2017 that it was working on new legislation regarding this matter. However, no legislative proposal has been presented so far.[665] Another deficiency in the Polish legal framework is that the sanctions that can be imposed on legal persons for the bribery of foreign public officials are not effective, proportionate or dissuasive. In 2015, the OECD WGB found that Poland has decreased the maximum cap on monetary sanctions since the WGB Phase 2 Report in 2007.[666] Polish companies are also not subject to appropriate penalties for false accounting.

INADEQUACIES IN ENFORCEMENT SYSTEM

The offence of foreign bribery is not well known among businesspeople, public officials, accountants and auditors. Polish enforcement agencies, including the Public Prosecutor's Office, are not well informed about the activities of Polish businesses abroad, and do not regularly exchange information about vulnerable sectors with their foreign equivalents or cooperate with them. Poland has not sufficiently raised awareness among Polish law enforcement authorities of the importance of imposing confiscation.[667] There are insufficient safeguards in place to protect the Central Anti-Corruption Bureau from politicisation, given the fact that the head of the bureau is directly subordinate to the Prime Minister.

INADEQUACIES IN MUTUAL LEGAL ASSISTANCE

Prosecutors from district prosecutors' offices have to send MLA requests to the regional prosecutor's office before they can be sent abroad. This can slow down the MLA process. Forms of MLA and the level of cooperation with foreign authorities also depend on relations with a particular country. There are several problems, for example, with translation of documents into lesser-known languages, which is expensive and time-consuming.

RECOMMENDATIONS

- Improve legislation on corporate criminal liability.
- Strengthen safeguards against potential politicisation of the Central Anti-Corruption Bureau.
- Raise companies' awareness of the importance of internal controls and compliance measures.
- Separate the functions of Minister of Justice and Prosecutor General, to ensure independence of prosecutors.
- Ensure independence of the judiciary.

PORTUGAL
Moderate enforcement

INVESTIGATIONS AND CASES

From 2014 to 2017, Portugal opened four foreign bribery investigations and commenced one case.[668]

In 2016, Portuguese authorities arrested José Veiga, in the case known as *Rota do Atlântico* which has become one of the country's biggest corruption cases, involving dozens of investigators.[669] **Asperbras**, a large Brazilian multinational, along with Veiga and his associates, were charged with paying bribes to officials in the Republic of the Congo in exchange for public works and construction contracts.[670] In 2017, the Public Prosecution Service charged seven individuals for bribery of foreign officials in a case that linked representatives of **TAP**, the Portuguese airline, and the Angolan oil company **Sonangol** and two of its subsidiaries, **SONAIR** and **WORLDAIR**. According to the Public Prosecutor, the defendants forged a contract between companies in order to launder money in Portugal.[671] However, in 2018, a judge from the pre-trial chamber dismissed the case, on the grounds that the Public Prosecutor had violated the law and failed to act in an impartial manner.[672]

TRANSPARENCY OF ENFORCEMENT DATA

Official enforcement statistics published by the Council for the Prevention of Corruption and from the Directorate-General for Justice Policy do not incorporate information on foreign bribery.[673] Judicial investigations are protected and disclosure of any kind of information while investigations are underway is forbidden by law.[674] Selected case decisions from the second instance (Court of Appeal, Supreme Court of Justice) are available online[675] at the Legal and Documentary Database of the Ministry of Justice. However, as foreign bribery cases are not classified separately, it is very difficult to trace them. Statistics on requests for mutual legal assistance (MLA) are not published.

RECENT DEVELOPMENTS

Since 2016, implementation of the European Union's 4th Anti-Money Laundering Directive[676] has produced improvements in the legal framework and enforcement system for preventing and combating money laundering and economic crime.[677] As a result, the Criminal Code has been amended to allow for prosecution even if the crime was committed outside the national territory, and even if no complaints or investigations are in place elsewhere. This has resulted in new cases and investigations related to money laundering. Provisions on collaboration and communication of suspicious situations have also been strengthened.[678]

Following recommendations made by the OECD WGB and Council of Europe GRECO review processes and by the United Nations Convention against Corruption first cycle review in 2013,[679] all political parties in early 2015 approved a package of amendments to the penal code on corruption issues and bribery in international business.[680] These extended the definition of "foreign official" to include those who exercise public service functions to private companies under public procurement contracts, and introduced criminal liability for public and state-owned companies.[681] Parliament also approved an amendment to existing anti-corruption laws in 2015 that extended the statute of limitations for the crime of trading in influence to 15 years.[682] Following a recommendation by the OECD, new legislation extends whistleblower protection to employees in the private sector.[683]

In 2017 in particular there were important legislative improvements regarding asset recovery, increasing the efficiency of investigations and prosecutions.[684]

INADEQUACIES IN LEGAL FRAMEWORK

The key inadequacies that were identified for Portugal in the 2015 Exporting Corruption report remain. Vagueness

in the legal definition of foreign bribery and in available defences may lead to legal uncertainty.[685] Sanctions for corruption-related crimes committed by legal persons are inadequate for large multinational corporations. Whistleblower protection generally remains a serious problem.[686]

INADEQUACIES IN ENFORCEMENT SYSTEM

There continue to be key inadequacies in enforcement systems in general, such as a lack of human and material resources for investigation and lack of expertise and training on the enforcement of economic crimes. The sluggishness of the judicial system and complexity of cases is also an obstacle to effective prosecution. In 2014, the Central Department for Criminal Investigation and Prosecution (DCIAP) was restructured and divided into two main areas: (i) economic and financial crimes (including all types of corruption) and (ii) violent crimes and drug trafficking. This was expected to generate significant productivity gains, but these have not materialised.[687] The *Rota do Atlântico* case showed the insufficiency of human resources, and one of the reasons for the delay in the investigation is the fact that the Prosecutor, Susana Figueiredo, was also part of the team of prosecutors in another highly publicised case (Operation Marquês) and provided support in others (such as Operation Lex).[688]

The Beneficial Ownership Central Register, prescribed by Law 89/2017, has yet to be implemented.

INADEQUACIES IN MUTUAL LEGAL ASSISTANCE

Apart from the slow response to requests for international cooperation, there are no significant inadequacies in MLA. The *Rota do Atlântico* case was initiated by an international MLA request made by Switzerland to Portugal in 2014.[689]

RECOMMENDATIONS

- Grant more resources to the investigation of corruption cases.
- Improve the flow of information and awareness of Article 5 of the OECD Convention among prosecutors, investigators and the judiciary by providing training.
- Implement the DCIAP 2014 Action Plan,[690] which aims to strengthen the resources and training of investigators and prosecutors in the fight against corruption.
- Comprehensively regulate the protection of whistleblowers reporting corruption.
- Enforce the law on the liability of legal persons regarding foreign bribery.
- Implement the Financial Action Task Force's recommendation to "establish the criminal liability for money laundering of legal persons."[691]
- Increase the use of special investigative measures and exchange information with foreign government agencies about vulnerable sectors.
- Systematically collect and publish statistical data on enforcement.
- Engage more actively in awareness-raising activities in high-risk sectors and highly relevant professions (for example, auditors and accountants).
- Streamline pre-trial procedures and reduce court delays.
- Set up the Beneficial Ownership Central Register.

RUSSIA
Little or no enforcement

INVESTIGATIONS AND CASES

There were no known investigations into foreign bribery in the Russian Federation during 2014-2017 and, according to the Judicial Department under the Supreme Court of Russia, no criminal cases on foreign bribery in Russian courts during 2015-2017.[692]

TRANSPARENCY OF ENFORCEMENT DATA

The Russian Federation publishes criminal enforcement statistics, but there are no published statistics on foreign bribery enforcement. By law, all court decisions are required to be published online, excluding those containing national secrets, commercial secrets, sexual crimes, divorce cases and crimes against minors.[693] In non-commercial courts, personal data is also not to be published.[694] The authorities occasionally issue press

releases which provide some information on mutual legal assistance (MLA) requests, but do not publish separate statistics on MLA requests concerning foreign bribery.[695]

RECENT DEVELOPMENTS

In October 2017, the government submitted to Parliament amendments to the Anti-Corruption Law which, if approved, would provide whistleblower protection in relation to corruption-related crimes.[696] The amendments would extend protection to state and municipal employees and individuals in the private sector, and would guarantee confidentiality, pro-bono legal assistance and protection against unlawful dismissal or discrimination.[697] An member of parliament from the ruling party United Russia also submitted a draft bill to parliament in 2017 on criminalising the offering of bribes, in response to recommendations from the third evaluation round of the Council of Europe's Group of States against Corruption (GRECO).[698] The draft bill relates to all bribery cases, including foreign and commercial bribery. Russian law does not currently criminalise the promise to give or take a bribe.

A bill presented to the Russian Duma in March 2015 by Deputy Remezkov and Federal Council member Kovitidi included criminal liability of legal entities for corruption, as well as other offences.[699] However, as the draft was not supported by the government or the Supreme Court, it seems unlikely that the law will be adopted.[700] In March 2016, the General Prosecutor's Office of the Russian Federation established a working group on the return of assets derived from corrupt practices,[701] but there is no known result of this group's work and the General Prosecutor's Office refused a request from Transparency International Russia to be informed about the composition of the working group.

INADEQUACIES IN LEGAL FRAMEWORK

The Criminal Code's definition of "foreign official" is narrow and falls short of requirements under the OECD Anti-Bribery Convention. Russia has not eliminated the defence of "effective regret" and still allows for the defence of economic extortion to apply to the offence of foreign bribery.[702] Russian law does not cover, under the offence of foreign bribery, all cases where a foreign public official directs the benefit to a third party, but only those where the official has a proven relationship with the third party.[703] At present, under Article 19 of the Criminal Code, only individuals can bear criminal liability, including for bribery and corruption.[704] Legal entities bear administrative liability, sentenced by a court. Russian law does not require external auditors to report instances of foreign bribery to law enforcement.[705]

INADEQUACIES IN ENFORCEMENT SYSTEM

Due to their lack of practical experience, employees of law enforcement agencies and prosecutor's offices may experience challenges investigating bribery of international officials or other inter-state issues. There is no special legal unit for investigating foreign bribery. Instead, the Economic Security and Combating Corruption Division of the Ministry of Interior is charged with investigating such cases. It is not obligatory for the employees of such divisions to know a foreign language, including English.

INADEQUACIES IN MUTUAL LEGAL ASSISTANCE

There is no special unit for coordinating legal assistance requests related to foreign bribery. Instead, these are managed separately by each investigative authority (such as the Investigative Committee, Ministry of Interior, etc.), without any unified standards.

RECOMMENDATIONS

- Criminalise non-monetary or intangible forms of bribery.
- Amend the offence of foreign bribery to cover the promising and offering of bribes.
- Adopt as soon as possible the draft bill on whistleblower protection introduced to parliament.
- Support obligatory compliance and due diligence policies on foreign bribery in the private sector by administrative responsibility, putting special emphasis on anti-corruption in auditing and accounting.
- The Ministry of Interior should focus on investigating foreign bribery cases. This would help create a body of case law in this field in Russia.
- Make it obligatory for authorities working on foreign bribery to speak English.

- The government should strengthen cooperation within and between government bodies, in particular, to improve information sharing and increase the effectiveness of investigations.
- Improve training for prosecutors and law enforcement officers in detecting, investigating and prosecuting bribery of foreign public officials.
- Public authorities should invite the media and NGOs to help develop anti-corruption policy on foreign bribery, and act on media and NGO investigations into foreign bribery.

SLOVAKIA
Little or no enforcement

INVESTIGATIONS AND CASES

In the period 2014-2017, Slovakia is not reported to have commenced any foreign bribery investigations or cases.

TRANSPARENCY OF ENFORCEMENT DATA

The National Crime Agency publishes in its annual reports statistics from the Anti-Corruption Unit on the number of criminal investigations and criminal prosecutions commenced, and the number of individuals charged for offences related to corruption (passive bribery, active bribery, trading in influence and electoral corruption).[706] However, because of the lack of foreign bribery enforcement, there is no published data on foreign bribery investigations, cases commenced or cases concluded. All court decisions are published in anonymised form.[707] Official public sources provide only general statistics regarding requests for mutual legal assistance (MLA) and MLA requests within the European Judicial Network.[708] Slovakia does not systematically collect data on incoming and outgoing MLA requests for foreign bribery.[709] As a result, such data is not published.

RECENT DEVELOPMENTS

The offence of foreign bribery was updated in September 2015, when the relevant amendment to the Criminal Code entered into force, to comply with the OECD WGB's November 2014 recommendations by providing a definition of "foreign public official."[710] The Law on the Criminal Liability of Legal Persons entered into force in July 2016 and applies to all legal persons unless they are explicitly excluded from its application under Section 5. In March 2018, a new law came into effect to comply with the EU's 4th Anti-Money Laundering Directive. In January 2015, Act No. 307/2014 Coll. on Certain Measures Related to Reporting of Antisocial Activities and on Amending and Supplementing Certain Acts came into force. The Act is one of the few dedicated whistleblower protection laws that applies to both public- and private-sector employees and provides preemptive protections from retaliation in the workplace. It also requires all private employers with at least 50 employees, and all public institutions, to have internal whistleblower systems in place. Whistleblowers whose reports contribute to final rulings in criminal or administrative cases are eligible for rewards of up to 50 times the minimum wage.[711] Currently, the National Council of the Slovak Republic is preparing a new Act on the Protection of Whistleblowers, which should take effect on 1 January 2019. The Act aims to establish an independent office for the protection of whistleblowers.

The Government Office of the Slovak Republic regularly organises seminars and anti-corruption programmes for public servants.[712]

INADEQUACIES IN LEGAL FRAMEWORK

The Law on the Criminal Liability of Legal Persons may exempt some of the 180 state-owned enterprises from its coverage where they are "established by operation of law" because they perform a state function.[713]

INADEQUACIES IN ENFORCEMENT

The European Commission's Country Report Slovakia 2018 noted serious concerns about the independence of the Slovak judiciary, particularly with regard to the security screening of judges based on information from the Slovak National Security Authority. According to the report, Slovakia remains the lowest-ranked EU member state as regards the perceived independence of the judiciary, with no signs of improvement.[714]

INADEQUACIES IN MUTUAL LEGAL ASSISTANCE

Slovakia's procedures for the provision of MLA in criminal matters apply to natural and legal persons alike, as provided by the Criminal Procedure Code and the Law on the Criminal Liability of Legal Persons. The OECD WGB Phase 3 Report notes that "the absence of MLA treaties had proved a major impediment to the execution of MLA requests sent by the Slovak Republic to foreign states. This was cited as the key reason why none of the six foreign bribery-related requests sent by the Slovak Republic at this time had been executed, and several were met with no response of any kind".[715] Where there is neither a bilateral nor a multilateral treaty in place, requests may be made on the basis of reciprocity.

RECOMMENDATIONS

- Amend the Law on the Criminal Liability of Legal Persons regarding the exemption of state-owned enterprises from criminal liability.
- Increase the independence and transparency of the judiciary, in particular with regards to the selection procedure for judges, security screening of judges, judicial review and the Judicial Council.
- Employ more enforcement staff and provide training for auditors, accountants and tax examiners, to raise awareness of foreign bribery and improve their ability to detect the offence.
- Enhance law enforcement capabilities to allow more efficient detection of bribery, and provide law enforcement agencies with better tools to investigate and prosecute bribery cases.

SLOVENIA
Little or no enforcement

INVESTIGATIONS AND CASES

In the period 2014-2017, the authorities conducted only one investigation into foreign bribery. This was terminated in 2016 due to lack of sufficient evidence. The Office of the State Prosecutor General and the Commission for the Prevention of Corruption provided no other details.[716] According to the Commission, there has not been a court decision in a foreign bribery case to date.

TRANSPARENCY OF ENFORCEMENT DATA

Annual statistics on the work of the police and prosecution services are published on their websites, including statistics on corruption cases as defined in the Criminal Code.[717] There is, however, no distinction made for foreign bribery cases. It is possible to access foreign bribery statistics on demand.[718] In general, court jurisprudence is available online, but the databases do not include substantial details of cases.[719] Some court decisions can be obtained on demand. The current government has stated that a project to publish court decisions in real time, in anonymised form, is underway, but this has yet to be implemented.[720] There are no published statistics on mutual legal assistance (MLA) requests. However, since the start of 2016, the Ministry of Justice's new system of records allows for the processing of statistical data on incoming and outgoing MLA.[721]

RECENT DEVELOPMENTS

There are no significant recent developments. Government reports on the implementation of the Anti-Corruption Programme make little mention of foreign bribery. While some national anti-corruption strategies in the past, such as the 2015-2016 Anti-Corruption Programme,[722] mention foreign bribery, the 2017-2018 Anti-Corruption Programme[723] no longer does so. According to this programme, however, permanent measures arising from the 2015-2016 Anti-Corruption Programme remain in force. It is unclear whether this represents a shift in government priorities.

In its July 2016 Phase 3 Follow-Up Report, the OECD WGB found that Slovenia had shown improved commitment to combating foreign bribery by providing training to investigators and prosecutors on the foreign bribery offence and encouraging prosecutors to treat foreign bribery cases as a priority.[724] However, no systemic change is visible in this regard.[725] The government has also attempted to raise awareness of the foreign bribery offence among public sector agencies, including officials posted abroad.[726]

INADEQUACIES IN LEGAL FRAMEWORK

Slovenia's foreign bribery offence does not fully meet OECD Anti-Bribery Convention requirements. The OECD WGB's 2016 report notes that clarification is needed

on the scope of the offence and that the defence of "effective regret" should not apply to foreign bribery. Whistleblower protection is currently only covered in the Integrity and Prevention of Corruption Act.[727] Current legislation does not protect whistleblowers in the private sector. Additionally, protection only extends to a whistleblower who reports corruption, but not other unethical and illegal activities.

INADEQUACIES IN ENFORCEMENT SYSTEM

The 2004 Resolution on Prevention of Corruption, which includes foreign bribery, is outdated.[728] The assessment, strategy and action plan derived from the resolution are also outdated. While there are some instances of raising awareness among the private sector, this has not extended to auditing and accounting professions.[729] In addition, more efforts are needed to promote internal controls, ethics and compliance measures to prevent foreign bribery in the private sector.[730] Relevant law enforcement authorities (e.g. investigators, police, prosecutors and judges) lack sufficient training and awareness to enforce legislation effectively, including whistleblower legislation.[731] Coordination between the judicial branch and units that specialise in economic crime remains poor. Greater efforts are also needed to improve detection of foreign bribery, and to ensure that the authorities prioritise its investigation and keep proper records of foreign bribery cases.[732]

INADEQUACIES IN MUTUAL LEGAL ASSISTANCE

Slovenia has demonstrated some degree of proactivity in seeking MLA or other forms of international cooperation in the one ongoing foreign bribery case. While it has enhanced its capacity to collect data on incoming and outgoing MLA requests, the complexities of its recording systems could raise difficulties in practice, as outlined in the OECD WGB Phase 3 Report.[733] It is also unclear whether and how MLA requests trigger the opening of foreign bribery investigations.[734]

RECOMMENDATIONS

- Update the 2004 Resolution on Prevention of Corruption with a revised assessment, strategy and action plan to meet current needs.
- Amend the existing Anti-Corruption Programme to address foreign bribery, including a more detailed plan to tackle it, with clearly determined responsibilities for implementation, and details on evaluation of implementation.
- Ensure a comprehensive system of whistleblower protection in both legislation and enforcement – possibly through a dedicated Whistleblower Protection Act.
- Keep and publish improved and separate statistics on all stages of enforcement in relation to foreign bribery, unified across institutions.
- Strengthen the Commission for the Prevention of Corruption to take a proactive role in publishing disaggregated statistics.
- Continue to improve training of public officials and enforcement personnel, and coordination between specialised units.
- Increase awareness about foreign bribery offences, both in the private and public sectors, including by imposing more rigorous auditing and accounting standards.

SOUTH AFRICA
Limited enforcement

INVESTIGATIONS AND CASES

In the period 2014-2017, South Africa opened 15 formal foreign bribery investigations and three cases were closed as at December 2017. However, no convictions have been made to date. One investigation reported in the press concerns allegations by **Turkcell** that **MTN** used bribery to win a mobile network operating licence in Iran and a stake in Iran's second largest operator.[735]

TRANSPARENCY OF ENFORCEMENT DATA

There are no published statistics relating to foreign bribery enforcement in South Africa, due to the lack of convictions for foreign bribery cases to date. The OECD WGB recommended in 2016 that South Africa "continue to maintain statistics on convictions of natural and legal persons for foreign bribery; convictions of natural and legal persons for other intentional economic

crimes, including levels of fines, actual time served by natural persons under prison sentences, and the Court which imposed the sanction."[736] In this regard, the Anti-Corruption Task Team (ACTT), an inter-governmental body charged with curbing corruption and collaborating on corruption investigations, has established an electronic database where all relevant information relating to each OECD offence under investigation is captured. However, the database is not publicly available. The National Prosecuting Authority (NPA) and the Directorate for Priority Crime Investigation (DPCI) jointly keep a database of all cases that qualify as foreign bribery cases. However, the information is not published while cases are under investigation. Most court decisions are available through an online database compiled by the Southern African Legal Information Institute.[737] Court decisions are also available from respective court websites. The Department of Justice and Constitutional Development maintains statistics on requests for mutual legal assistance (MLA) received and their turnaround times, but these are not published.[738]

RECENT DEVELOPMENTS

In 2017, the Minister of Justice and Correctional Services introduced a bill to parliament to amend the Prevention and Combating of Corrupt Activities Act 2004.[739] The bill extends the definition of "foreign public official" to include the executive and any member of a diplomatic mission or post, as well as consultants or temporary appointees performing functions on behalf of government. It also defines an "official of a public international organisation", clarifies that South Africa does not allow facilitation payments, and criminalises passive corruption committed by a foreign public official. Other clauses include an "immunity" provision to protect those who report knowledge or reasonable suspicion of corrupt activity; drastic increases in monetary sanctions;[740] and compulsory guidelines for courts imposing a fine on a corporate body.

Also in 2017, then-President Zuma signed the Financial Intelligence Centre Amendment Act into law, amending 2001 legislation.[741] The amended legislation imposes additional rules on customer identification and due diligence, and requires every accountable institution to implement a risk management and compliance programme for anti-money laundering and counter-terrorism financing. The Protected Disclosures Amendment Act was also signed into law in 2017 and extends protection to non-permanent employees and workers, provides civil and criminal protection, increases legal obligations on employers to keep whistleblowers informed, and extends the bodies to which people can make protected disclosures.[742]

Prior to 2015, the NPA had one prosecutor assigned to deal with foreign bribery cases. In October 2015, the National Director of Public Prosecutions assigned these cases to the Specialised Commercial Crime Unit within the NPA, whose mandate is to deal with serious, organised and complex commercial crimes. A core group of prosecutors has been assigned to guide investigations and provide support to the DPCI in its investigations of the cases. In July 2017, the Department of Public Service and Administration (DPSA) established a task team and action plan to ensure that foreign bribery cases are effectively detected, monitored and investigated. The plan was endorsed by the ACTT and Anti-Corruption Inter-Ministerial Committee. In collaboration with the NPA, the DPSA held a detection study workshop in October 2017 involving the Financial Intelligence Centre, South African Revenue Service, South African Reserve Bank, Companies and Intellectual Property Commission, DPCI and Serious Commercial Crimes Unit Regional Heads, to improve the country's capability to detect foreign bribery.

South Africa has made many changes in the last two years to improve legislation, such as the newly amended Protected Disclosures Act, with a wider ambit than previously, and with better protections afforded to whistleblowers. The Public Service Regulations 2016 regulate the conduct of 1.3 million public employees, and were amended to include an obligation on public employees to blow the whistle, and an obligation on department heads to establish a reporting system that guarantees confidentiality.

In 2014, the Prosecution Policy of the National Prosecuting Authority was amended to make it clear that prosecutorial decision-making in foreign bribery cases shall not be influenced by considerations of national economic interest, the potential effect on relations with another state or the identity of the natural or legal persons involved.[743] In 2014, the Supreme Court reviewed and decided on amendments to the South African Police Service Amendment Act, to improve guarantees of independence.[744]

The Companies Act introduced in 2012 provides that all companies require either an audit or an independent review, except very small owner-managed companies where all shareholders are directors and all directors are shareholders.

INADEQUACIES IN LEGAL FRAMEWORK

The recent amendments noted above have addressed many of the concerns raised by the OECD WGB in its 2014 and 2016 reports. The government disagrees with the description of challenges identified by the OECD WGB regarding the definition of extradition.[745] The government also disagrees with the OECD's finding of challenges in the ability to hold companies liable, including for their subsidiaries, joint ventures and agents.[746]

Despite the introduction of the Protected Disclosures Amendment Act, awareness of whistleblower protections remains a challenge. However, concrete legislative steps have been taken to ensure that reporting can occur without fear of reprisal.[747]

INADEQUACIES IN ENFORCEMENT SYSTEM

The OECD WGB raised serious concerns in 2016 about South Africa's continued lack of active foreign bribery enforcement, especially given the country's large economy and the high-risk sectors and countries in which it operates. While South Africa was reported at the time to have 11 open investigations and to have taken formal investigative steps in four of these cases, most appeared far from prosecution and few formal investigative tools had been used. The OECD WGB also noted that South Africa is unable to show whether it is effectively investigating, prosecuting or sanctioning false accounting offences. However, as indicated below, steps have been taken to close loopholes that may allow entities to escape external audits required by law.[748]

Concerns have also been raised about the ease with which settlements and plea bargain arrangements are entered into in South Africa.[749] For example, the country's Standing Committee on Public Accounts noted that 41 of the Anti-Corruption Task Team's 42 successful corruption cases have ended with plea bargains and reduced sentences.[750]

Despite the introduction of the Protected Disclosures Amendment Act, awareness of whistleblower protections remains limited, and no concrete steps have been taken to ensure that reporting can occur without fear of reprisal.[751]

INADEQUACIES IN MUTUAL LEGAL ASSISTANCE

According to the OECD WGB 2016 report, South Africa has taken positive steps with respect to MLA, including assigning a specialised unit to handle MLA and tracking response times for processing incoming requests. However, the report also raised concerns that the majority of incoming requests (49 out of 54) had not been acted on and that South Africa has only used MLA in connection with one of its ongoing investigations.[752]

Since then, during the period November 2017 to May 2018, South Africa has submitted MLA requests in three of the foreign bribery investigations underway. It has executed MLA requests on foreign bribery investigations relating to OECD WGB member countries, including an MLA request from the UK relating to the **Securency**/Chapman case,[753] and from the USA in the **Embraer** matter.[754]

South African authorities also cooperate with their foreign counterparts in the investigation of foreign bribery cases, as in the foreign bribery investigation involving an Israeli entity **Nikuv (NIP Global)**, alleged to have bribed Lesotho government officials in order to be awarded Lesotho government contracts. South African authorities assisted in the liaison between Israeli and Lesotho authorities, which led to the finalisation of the investigation by Israeli authorities and eventually to the conviction and sentencing of NIP Global in court for foreign bribery. Israel advised the OECD WGB that had it not been for the assistance provided by South Africa, it would not have been able to finalise the case.

RECOMMENDATIONS

- Increase institutional capacity to detect, investigate and prosecute foreign bribery.
- Systematically publish enforcement data.
- Strengthen whistleblower protection, including by providing guidelines for the Protected Disclosures Act.
- Dedicate adequate resources to anti-corruption enforcement agencies.
- Improve coordination between investigating and prosecuting authorities, and ensure that investigations are free from political interference.

- Improve internal compliance programmes and corporate governance in South African companies that conduct business abroad, including those not listed on the South African stock exchange.

SPAIN
Little or no enforcement

INVESTIGATIONS AND CASES

Spain has commenced at least six investigations, opened two cases and completed one successful prosecution in the period 2014-2017.[755] Spain's first ever court conviction for foreign bribery[756] took place in 2017, when two managers of the Spanish publishing house **APYCE** were found guilty of bribery of an Equatorial Guinean vice minister and each sentenced to one year in prison and a fine of approximately €1,000 each.[757]

In 2016, it was reported that the Spanish National Court in Madrid had charged the companies **Elecnor**, **Assignia** and **Rover Alcisa** with bribery, corruption and money laundering through a criminal network involving an ambassador as well as a politician from Spain's ruling party.[758] The companies allegedly paid bribes of nearly €3 million to Algerian officials and members of their families to win the €230 million Ouargla tramway project in southern Algeria. Payments were allegedly made through a company in the Netherlands.[759] In 2017, allegations surfaced of bribes paid by Elecnor in relation to a contract to manage the Souk Tleta desalination plant in northern Algeria in 2009.[760]

The six investigations include two separate investigations into suspected bribery and money laundering by **DEFEX**, one relating to operations in Angola and the other to operations in Cameroon, Saudi Arabia, Egypt and Brazil.[761] Established in 1972, DEFEX promotes and exports goods and services, in particular weapons, produced by Spanish companies, and is 51 per cent state-owned. The company has alleged that three top executives mounted a "complex criminal puzzle" to divert "large sums of money".[762] Another investigation reported to be underway concerns allegations of bribes paid to members of the Algerian military in connection with the construction of an ammonia production facility by a joint venture involving the Spanish company **Fertiberia**, a subsidiary of **Villar Mir**.[763] In addition, Spain's high profile Operation Lezo probe into illegal payments to Spanish politicians in exchange for public works contracts and other favours has now expanded to Latin America.[764] Spanish, Colombian and Brazilian prosecutors are reportedly jointly investigating **Canal Isabel II**, Madrid's water utility company, owned by the Madrid local government, for the alleged purchase of companies above their real value and the payment of bribes to officials to win public works contracts in numerous Latin American countries including Colombia, Brazil, Mexico and Panama.[765] Spanish construction and energy conglomerate **Isolux Corsán** was reportedly being investigated in Spain over allegations that it set up an international bribery network to obtain public works contracts in Africa and South America. In 2016, Chilean media reported that Spanish energy company **Endesa** was being investigated by the Office of the Prosecutor against Corruption and Organised Crime in Spain, along with its parent company **Enel** for allegedly having donated US$3.5 million to Chilean politicians during the 2013 election campaign in order to obtain permits for the development of a hydroelectric plant in Chile.[766]

According to the Spanish National Prosecutor's Office, other investigations are still open, but further details are not currently available.[767] An investigation of a Spanish company is underway in Brazil and a Spanish company's subsidiary was fined in Mexico for accounting violations.[768]

TRANSPARENCY OF ENFORCEMENT DATA

Statistics on enforcement are published every three months. The data covers indictments for crimes related to corruption, as well as final judgments, although the types of corruption offences are not specified for the indictments.[769] Court decisions are also published in full.[770] The Spanish authorities publish data on the number of mutual legal assistance (MLA) requests sent and received. These are categorised by country (for requests received) and Spanish region (for those sent), as well as the main channels through which requests were made. The data covers all MLA requests, not only those relating to foreign bribery, although there is a separate category for requests sent by the Special Prosecutor for Corruption.[771]

RECENT DEVELOPMENTS

A 2014 amendment to the Penal Code, which entered into force in 2015, introduced several important changes relating to foreign bribery. These include improvements

in regulating the criminal liability of public companies, clarification of rules governing the prosecution of acts committed abroad, the incorporation of particularly severe corruption offences into the code, and clarification of the legal definition of "public official".[772] The Asset Recovery and Management Unit was established in 2015. Since 1 January 2017, the unit has been fully operational throughout Spain.[773] Reforms pending aim to strengthen the autonomy of the prosecution services.

INADEQUACIES IN LEGAL FRAMEWORK

Since the amendments to the Penal Code came into force in March 2015, several inadequacies in the legal framework have been remedied. However, whistleblower protection remains weak despite improvements, and there is also a lack of public awareness about the offence of foreign bribery and the availability of whistleblower protection. Accounting and auditing requirements are also inadequate.

INADEQUACIES IN ENFORCEMENT SYSTEM

Inadequate resources remain a key obstacle to the effective enforcement of the OECD Anti-Bribery Convention. The Public Prosecutor's Office is currently investigating nearly 700 cases of domestic corruption and has been involved in 253 trials for corruption-related offences during the past two years, as well as being responsible for prosecuting foreign bribery.[774] The judiciary is not sufficiently independent or efficient, and there is inadequate coordination between enforcement authorities.

INADEQUACIES IN MUTUAL LEGAL ASSISTANCE

MLA is often slow and sometimes ineffective.[775] There is a serious lack of resources for processing MLA requests. This is especially problematic, as delays in processing cases often result in expiry of the statute of limitations. It is hoped that this situation will be alleviated by future reforms of the Penal Code, which are expected to extend the statute of limitations and suspend the recording of time during an MLA request.

RECOMMENDATIONS

- Improve whistleblower protection in the public and private sectors.
- Improve access to statistics and information on foreign bribery cases, investigations and settlements.
- Allocate more resources to public and private bodies to combat international corruption.
- Fully implement the 2010-2015 amendments to the Penal Code relating to foreign bribery, entailing further training activities for police, prosecutors and the judiciary, as well as lawyers and the private sector.
- Introduce measures to increase judicial independence and efficiency, including reform of the appointment system for its governing bodies and certain higher-rank officials.[776]
- Improve coordination between enforcement authorities and ensure investigations are not prematurely closed.[777]

SWEDEN
Moderate enforcement

INVESTIGATIONS AND CASES

In the period 2014-2017, Sweden commenced seven investigations – four in 2015 and three in 2016. By the end of 2017, two were ongoing. Sweden also opened three cases and concluded three cases during the same period.

In 2017, a global settlement was reached between **Telia Company**, on one hand, and the US Department of Justice, US Securities and Exchange Commission and the Dutch Public Prosecution Service, on the other.[778] The Swedish telecommunications company and its Uzbek subsidiary admitted to paying more than US$331 million in bribes to an Uzbek government official in connection with telecoms licences.[779] Telia agreed to pay at least US$965 million in fines and disgorgement to US authorities, with credit for a substantial percentage of any payments made to Dutch and Swedish authorities. Swedish prosecutors brought bribery charges against the former CEO and two other high-level company executives in 2017.[780] Court proceedings are expected

to start later in 2018. In 2015, the court of appeal sentenced two employees of **Sweco** to nine months' imprisonment for bribing officials in Ukraine.[781] The prosecutor has appealed against a 2017 judgement by a district court to acquit an employee of **Bombardier Transportation Sweden AB** of bribery in Azerbaijan.[782] Reuters reported at the time that the prosecutor said a preliminary investigation into higher-ranking employees at Bombardier was proceeding.[783]

TRANSPARENCY OF ENFORCEMENT DATA

Statistics on enforcement data and on mutual legal assistance (MLA) requests are not publicly available. Court decisions are published in full, but can only be accessed in person from the court where the case was handled. The UN Convention against Corruption first cycle review of Sweden in 2014 recommended that Sweden put in place an information system on extradition and MLA cases, as well as cases of law enforcement cooperation.[784]

RECENT DEVELOPMENTS

Progress has been made in whistleblower protection. A law which came into effect in 2017 prohibits companies from retaliating against whistleblowers in any way, and requires employers to set up internal mechanisms for whistleblowing, among other measures.[785]

INADEQUACIES IN LEGAL FRAMEWORK

Provisions for holding corporations responsible for bribery remain inadequate, particularly relating to fines. The maximum fine for companies that engage in international bribery is approximately €1.2 million, which the OECD WGB considers to be "inadequate, given the size of the Swedish economy, sectors of business activity, and trade and investment partners".[786] The OECD WGB recently decided to postpone the Phase 4 evaluation of Sweden due to lack of progress in these areas.[787]

INADEQUACIES IN ENFORCEMENT SYSTEM

The low number of foreign bribery investigations and cases suggests that foreign bribery enforcement is not proactively pursued by the Swedish authorities. Police officers could benefit from improved technical expertise.

INADEQUACIES IN MUTUAL LEGAL ASSISTANCE

There are no significant inadequacies regarding mutual legal assistance requests.

RECOMMENDATIONS

- Conduct a review of all provisions on bribery.
- Develop provisions requiring companies to take preventive measures, with the view to achieving modern and effective bribery legislation, including enacting a new law on liability for legal persons.
- Review the provisions on dual criminality.
- Provide police officers with adequate technical support for bribery investigations.

SWITZERLAND
Active enforcement

INVESTIGATIONS AND CASES

In the period 2014-2017, Switzerland commenced 115 investigations, opened three cases and concluded 11 cases with sanctions.[788] The main foreign bribery investigations in 2016-2017 concerned the **Petrobras**, **1MDB**, **Yara** and **Gazprom** cases.[789] The OECD WGB Phase 4 Report on Switzerland in March 2018 noted that five legal persons had been convicted in the past four years and that a large number of foreign bribery cases are under investigation (137 investigations for money laundering and foreign bribery in 2016, compared to 24 in 2011).[790] Of the 137 investigations, 70 were for money laundering where the predicate offence was foreign bribery.

In October 2014, the Swiss Federal Criminal Court sentenced the former head of construction at **SNC-Lavalin**, a Canadian construction company, to three years' imprisonment (half suspended) and the confiscation of 40 million Swiss francs (CHF) for bribery of public officials, criminal mismanagement and money laundering in relation to corrupt payments to Saadi Gaddafi (son of Libyan dictator Muammar Gaddafi) in order to obtain business and other undue advantages for the company. The judgment is significant in that the son of a public official was considered as a *de facto* public official.[791]

In 2017, the Office of the Federal Attorney General (OAG) issued a summary punishment order against **KBA-Notasys SA**, a Swiss subsidiary of the German banknote printing press manufacturer **Koenig & Bauer**. The order convicted the company for failing to do enough to prevent corruption, imposing a fine of a single Swiss franc and requiring it to pay a claim of CHF 35 million (around US$35 million), of which CHF 5 million was to go into a fund for the improvement of compliance standards in the banknotes industry. The alleged bribe payments related to contracts with a value of CHF 626 million (around US$634 million) secured by the subsidiary in Brazil, Nigeria, Morocco and Kazakhstan. The company self-reported the irregularities in 2015, becoming the first company in Switzerland to voluntarily disclose wrongdoing.[792]

The OAG issued four summary punishment orders in 2017 convicting the Belgian company **Dredging Environmental and Marine Engineering NV** (DEME), which specialises in petroleum infrastructure and dredging, and its Cyprus subsidiary **Dredging International Services (Cyprus)**[793] for failure to take reasonable and necessary organisational measures to prevent bribes to a foreign public official. This related to CHF 20 million in payments made to Nigerian public officials to secure contracts via three shell companies domiciled in the British Virgin Islands. These shell companies held accounts with Swiss banks. Two employees of the two companies were convicted of foreign bribery and a financial intermediary was convicted of complicity in foreign bribery.[794]

Also in 2017, the Office of the Geneva Attorney General opened and then abandoned criminal proceedings against **Addax Petroleum**, a subsidiary of the Chinese state-owned oil company **Sinopec**, on charges of making improper payments of tens of millions of US dollars to a law firm in Nigeria. To settle the matter, Addax agreed to pay the Canton of Geneva CHF 31 million (around US$31 million) in reparation and to take other measures.[795]

In 2016, OAG issued a summary penalty order against Brazilian company **Odebrecht SA** and one of its subsidiaries, **CNO**, in connection with international corruption involving the Brazilian semi-state-owned oil company **Petrobras**.[796] The case was a coordinated effort between the Brazilian, US and Swiss authorities. The Swiss summary penalty order found the two companies guilty of violating corporate criminal law, in that they did not take all reasonable organisational measures required to prevent the bribery of foreign public officials. The order required them to pay CHF 117 million in fines and disgorgement. At the same time, OAG abandoned proceedings against **Braskem SA** (in which Odebrecht has a controlling share and which also paid bribes via the same channels as Odebrecht SA and CNO) as the company was being held accountable in the United States for offences that included the acts of bribery under investigation in Switzerland. However, the Swiss decision to abandon the proceedings involved the company paying compensation of CHF 94.5 million[797] **(see case study on page 107)**.

In August 2015, the OAG initiated a criminal investigation into suspected fraud, bribery and money laundering by officials from Malaysia and the United Arab Emirates, who each held several bank accounts in Switzerland which were allegedly used to embezzle funds from the Malaysian sovereign fund (1MDB). The OAG is closely UN Convention against Corruption with authorities in the United States, Singapore and other countries conducting investigations, although Malaysia has refused to execute a request for legal assistance.[798] The investigation has extended to two Swiss banks.[799]

The OECD WGB Phase 4 Report on Switzerland noted that several dossiers on foreign bribery have implicated Swiss financial institutions. In the Petrobras and 1MDB dossiers, a total of 24 banks based in Switzerland were investigated. Since 2016, the Swiss Financial Market Supervisory Authority has opened 11 enforcement proceedings in these cases against financial intermediaries, of which eight have now been closed, and seven sets of proceedings against the persons responsible. The procedures led to sanctions.

TRANSPARENCY OF ENFORCEMENT DATA

Enforcement data for foreign bribery is available from the OAG only on request. The OAG published statistics on pending criminal investigations related to international corruption for the first time in its 2016 annual report.[800] Federal Criminal Court decisions are published in full and available on its website.[801] OAG decisions – including summary penalty orders and abandonment orders with sanctions – are available on request, in summary format and anonymised. Abandonment of proceedings and no-proceedings orders are also available on request, in anonymised form. For the latter, there must be demonstration of a legitimate interest.[802] The OECD WGB's Phase 4 Report calls for concluded cases to be published and their content disclosed to the fullest extent possible.[803]

The Phase 4 Report also calls for Switzerland to "collect exhaustive statistics on the number of [foreign bribery] cases at cantonal and federal levels". In particular, it recommended that the authorities collect statistics on decisions to discontinue and acquit in foreign bribery cases. It also calls for concluded cases to be published and their content disclosed to the fullest extent possible.[804] Specifically, it called for Switzerland to promptly publish elements of summary punishment orders, including the legal basis for the choice of procedure, the facts of the case, the natural and legal persons sanctioned (anonymised if necessary) and the sanctions imposed.

In its Phase 4 Report, the OECD WGB reiterated its Phase 3 recommendation that "Swiss authorities collect more detailed statistics on MLA [mutual legal assistance] requests received, sent and rejected that relate to money laundering where foreign bribery is the predicate offence". The publication of data on MLA requests is not formally regulated and information comes from various sources. The OAG published statistics on passive MLA for the first time in its 2016 annual report.[805] These cover all requests for legal assistance, but without segregating those relating to transnational corruption. The Swiss authorities compile data on requests (active and passive) in relation to foreign bribery, which are available on request.[806]

RECENT DEVELOPMENTS

New rules came into force in 2016 criminalising active and passive corruption in the private sector (Swiss Criminal Code Art. 322 *octies* and *novies*).[807] The Swiss government and parliament are expected to approve a draft amendment to the Federal Law on International Mutual Assistance in Criminal Matters this year. The aim is to improve cooperation.[808]

INADEQUACIES IN LEGAL FRAMEWORK

The OECD WGB Phase 4 Report found that the level of fines for legal persons was insufficiently high in law and that consideration should be given to making a broader range of sanctions available. It also identified the lack of a clear and transparent framework for self-reporting by companies and questioned the use of summary punishment orders for natural persons.

The legal framework for preventing money laundering is insufficient. The law currently applies fully only to financial intermediaries,[809] to a very limited extent to traders and not at all to other persons involved in financial transactions (e.g. notaries, lawyers, real estate agents, accountants, luxury goods dealers). These non-financial intermediaries do not have due-diligence and reporting obligations to prevent money laundering.[810] The OECD WGB Phase 4 Report also cited reservations about the system for reporting suspicions of money laundering, including reporting by financial institutions.

There is still no legislation protecting whistleblowers in the private sector. A draft law submitted to parliament was sent back to the government for further elaboration in 2015 and has not been resubmitted. A web-based reporting platform was introduced by the Federal Police in 2015, allowing for anonymous reports of information on corruption in the public and private sectors.[811]

The inadequacies in the legal framework identified in 2014-2015 are still current, including the absence of a specific offence of "trading in influence". In addition, the offence of granting or accepting an undue advantage in order for an official to carry out his or her duties is applied only to national and not to foreign officials.

INADEQUACIES IN ENFORCEMENT SYSTEM

Enforcement remains decentralised, but this has been partly countered by the OAG's leadership and treatment of international money laundering and corruption as one of three priorities.[812] While Switzerland's efforts to crack down on foreign bribery have improved in recent years (evident in the growing number of investigations and cases), the OECD WGB Phase 4 Review states that the country still needs to do more to prosecute companies and apply tougher sanctions.[813] It finds that several court decisions demonstrated a restrictive interpretation of the foreign bribery offence and of corporate liability. In addition, sanctions imposed are not always effective, proportionate or dissuasive.[814]

INADEQUACIES IN MUTUAL LEGAL ASSISTANCE

The legal framework governing MLA in criminal matters has not yet changed, though reform is being worked on. Separate legal assistance proceedings are required for each country, even if there is a large number of countries involved in a case.[815] This can result in slow and

inefficient processes, as proceedings must be observed in full for each country.[816] However, the OECD WGB's Phase 4 Report commends Switzerland's adoption of proactive MLA and the ongoing reform of Swiss law in order to formalise such MLA and foster even more timely and effective international cooperation.[817]

RECOMMENDATIONS

- Increase enforcement and impose tougher sanctions.
- Broaden the scope of the Anti-Money Laundering Act to non-financial intermediaries.
- Enact efficient protection of whistleblowers in the private sector.
- Continue to improve the statistics on corruption, especially by including data from the cantons.
- Systematically publicise concluded foreign bribery cases.
- Streamline the procedure for MLA.
- Improve awareness-raising among small-and medium-sized enterprises, encouraging them to take internal measures to prevent and detect foreign bribery.

TURKEY
Little or no enforcement

INVESTIGATIONS AND CASES

There have been no new investigations opened in the period 2014-2017 and no foreign bribery cases brought in Turkey to date.[818] Of the two active investigations reported in 2014, one has not progressed and the other appears to have been closed.[819] There has also been limited progress with regard to four other allegations known to Turkey at that time. It is unknown whether Turkey is investigating a serious claim that the Turkish joint venture **GATE** is "implicated" in the **Unaoil** scandal.[820] Unaoil is currently the subject of a multi-country investigation and the target of allegations which include claims about its role in tenders for the giant Kashagan oilfield in Kazakhstan.[821]

In 2013, Turkey investigated allegations that a Turkish-Iranian gold trader, a deputy CEO of a state-owned bank and other high-profile government officials, including four ministers, helped Iran evade US sanctions. The investigations were closed in 2014 and allegations against the ex-ministers dismissed in 2015.[822] In 2017, the gold trader testified in a US court that he paid bribes as part of the Iran sanctions-busting scheme. He pleaded guilty to seven charges under a plea deal with federal prosecutors.[823] In 2018, a US jury found the deputy CEO guilty on five charges.[824]

TRANSPARENCY OF ENFORCEMENT DATA

Turkey maintains aggregated data on domestic bribery offences, but this does not include data on specific sanctions imposed, the amount of the bribe or the value of the advantage received from the bribe.[825] The country does not publish statistics on foreign bribery enforcement. Unless otherwise stated, all court decisions may be accessed from courts on request. Legal assistance agreements are published, but there is no published data on mutual legal assistance (MLA) requests sent and received.

RECENT DEVELOPMENTS

In 2016, the government published "Increasing Transparency and Strengthening Anti-Corruption Efforts", a new action plan covering the period 2016-2019. The plan outlines measures to prevent bribery and increase transparency in a range of areas related to domestic anti-corruption efforts. In terms of enforcement, it includes items relating to the approval system for investigations of public officials, and the introduction of whistleblower protection in the private and public sectors, including in NGOs.[826] Implementing regulations are in preparation.

INADEQUACIES IN LEGAL FRAMEWORK

Criminal liability of legal persons is still not recognised in Turkish law, although legal entities can be subject to civil or administrative liability.[827] The OECD WGB Phase 3 Follow-up Report noted in 2017 that "Turkey has not taken appropriate measures to clarify that all Turkish legal persons, including state-owned enterprises, can be held liable for foreign bribery and that legal persons can

be held liable without prior prosecution or conviction of a natural person".[828] Sanctions available for legal persons for committing foreign bribery remain too low to be considered "effective, proportionate and dissuasive".[829]

The amendment in 2017 of articles 172/2 and 173 of the Criminal Procedure Law makes it more difficult to re-prosecute cases previously closed. Re-prosecution now requires both "new evidence constituting substantial doubt" and a decision by the Criminal Court of Peace. This has the potential to hinder anti-corruption efforts.[830] Whistleblower protection is currently lacking, although this is addressed in the 2016-2019 action plan.[831] Turkey has not ensured that natural and legal persons can be held liable for the full range of misconduct relating to accounting, auditing and taxation, or that sanctions for this misconduct are adequate.[832]

INADEQUACIES IN ENFORCEMENT SYSTEM

The OECD WGB Phase 3 Report in 2014 raised serious concerns about Turkey's lack of active enforcement and called on the country to review its overall approach, provide sufficient resources and expertise to prosecutors and the police, be more proactive in detection, and ensure that the investigation and prosecution of foreign bribery is not influenced by factors prohibited under Article 5 of the Anti-Bribery Convention. The Phase 3 Follow-up Report in 2017 found that Turkey had done little to address these issues. There are ongoing concerns over the independence of Turkey's judiciary and political interference in relation to enforcement of corruption provisions. In particular, increased executive power over the Supreme Board of Judges and Prosecutors and limited police powers with respect to bribery allegations undermine anti-corruption efforts. The prolonged State of Emergency exacerbates the situation, as it appears to deprioritise such efforts.[833]

While the government has implemented awareness-raising initiatives and training in foreign bribery detection for export credit agencies and judicial and law enforcement officials, it has yet to address issues with internal controls, or check debarment lists of financial institutions.[834] General public awareness about the negative effects of bribery is still noticeably low. Inadequate resources mean the judicial system is slow-moving and enforcement officials are poorly trained. There is no specialised court or prosecution office tasked with investigating foreign bribery cases. In some cities there are bureaus that specialise in conducting investigations related to economic and financial crimes generally, but these lack a special focus on foreign bribery.[835] Coordination is still poor between the tax authority and auditing bodies, although aggregate data on local bribery is kept by the government.[836]

INADEQUACIES IN MUTUAL LEGAL ASSISTANCE

Turkey has taken several steps to strengthen its MLA practice. The Ministry of Justice issued a circular in 2015, stating that international MLA requests may be made in cases where a large part of the evidence related to the offence would be found in the country where the offence was committed. It pointed out that "requests drafted by the judicial authorities of other countries for the same purpose need to be fulfilled efficiently, expeditiously and by taking into consideration Article 5 of the Convention".[837]

RECOMMENDATIONS

- Protect the judiciary from improper political influence.
- Proactively and effectively investigate foreign bribery allegations.
- Increase corporate fines to deter foreign bribery by corporations and introduce criminal liability of legal persons.
- Require courts to publish all decisions relating to foreign bribery, and collect and publish data regarding the investigations and cases in implementation reports.
- Raise awareness about foreign bribery among the general public and train private-sector employees and public officials to increase anti-corruption awareness within their organisations.
- Regulate and enforce whistleblower protection in the public and private sectors.
- Regulate politically exposed persons through relevant anti-money laundering legislation.

UNITED KINGDOM
Active enforcement

INVESTIGATIONS AND CASES

In the period 2014-2017, the UK commenced at least 36 investigations,[838] opened nine cases and concluded 11 cases.

Among those concluded by the Serious Fraud Office (SFO)[839] were five major cases with substantial sanctions against five legal persons (**Rolls-Royce**, **Standard Bank**, **Sweett Group**, **Smith & Ouzman** and one unnamed company – "XYZ") and seven natural persons. The SFO used deferred prosecution agreements (DPAs) to resolve three of the five cases: the first with Standard Bank Plc in 2015 over a payment made to obtain business in Tanzania,[840] the second with a small-or medium-sized enterprise anonymised[841] as XYZ Limited ("XYZ") in 2016,[842] and the third (and largest) with Rolls-Royce[843] in 2017 in relation to alleged corrupt payments and failure to prevent bribery in connection with its operations in China, India, Malaysia, Nigeria, Russia and Thailand.[844] The SFO also convicted **F.H. Bertling** and six current and former employees in 2017 of conspiracy to make corrupt payments to an agent of the Angolan state oil company, Sonangol, although they have yet to be sentenced.[845] In addition, the SFO charged four individuals with conspiracy to make corrupt payments to obtain contracts in Iraq for Unaoil's client **SBM Offshore**.[846] As of March 2016, according to various news sources, the SFO had charged seven people and two companies in connection with alleged offences concerning the supply of trains to the Budapest Metro between 2003 and 2008.[847] The current position of this investigation is unclear.

The SFO and other responsible agencies[848] have a number of ongoing foreign bribery investigations at the pre-charge stage. Long-running investigations include those into **ENRC Ltd** (previously ENRC PLC),[849] **GlaxoSmithKline PLC**[850] and **GPT Special Project Management**.[851] More recent SFO investigations include those into **Unaoil**,[852] **Airbus Group**[853] **(see case study on page 104)**, **Rio Tinto Group**[854] **(see case study on page 110)**, **British American Tobacco**,[855] and **Chemring Group PLC** and its subsidiary, **Chemring Technology Solutions Limited**.[856] It is understood that UK prosecutors have at least seven additional ongoing foreign bribery investigations at the pre-charge stage.[857]

TRANSPARENCY OF ENFORCEMENT DATA

The SFO publishes statistics on opened investigations, cases commenced and cases concluded in its annual report.[858] The OECD WGB has commended the SFO for "exemplary" publishing of information about concluded foreign bribery cases on its website.[859] This includes the date and location of offending, value of the bribe and the advantage received, and how penalties imposed were calculated. However, the publication of court decisions regarding foreign bribery offences remains inconsistent.[860] UK authorities do not routinely publish mutual legal assistance (MLA) statistics, although in response to Freedom of Information requests, the Home Office occasionally releases statistics on the number of requests sent and received.[861] However, this data covers all MLA requests, not only those regarding foreign bribery. There is no automatic calculation of the time taken to respond to foreign bribery-related MLA requests.[862]

RECENT DEVELOPMENTS

In 2015, as part of the 2014 UK Anti-Corruption Plan, the newly established National Crime Agency (NCA) International Corruption Unit (ICU) assumed the remit of the Metropolitan Police Service Proceeds of Corruption Unit, the City of London Police (COLP) Overseas Anti-Corruption Unit and the NCA Kleptocracy Investigation Unit. In addition, changes to the SFO's funding arrangements were announced in April 2018. The changes are cost-neutral but will enable the SFO to manage its budget more flexibly and efficiently, with a significantly reduced call on the reserve.

At the London Anti-Corruption Summit in May 2016, the UK government committed to establishing an International Anti-Corruption Coordination Centre, which became operational in July 2017. In December 2017, the UK government published its updated Anti-Corruption Strategy 2017-2022.[863] Key priorities which may affect the country's approach to foreign bribery include strengthening the UK's integrity as an international financial centre, improving the business environment globally and working with other countries to combat corruption.

Other notable developments have been the introduction of a public central register of beneficial ownership information (the People of Significant Control Register) and the passage of the Criminal Finances Act 2017. This includes provisions strengthening the UK response to corruption through the introduction of unexplained

wealth orders and provides greater powers to combat money laundering and terrorist financing.

A statutory, post-legislative review by parliament of the Bribery Act has now commenced as intended. This will evaluate the effectiveness of the legislation and address questions about the relative impact for small-and medium-sized enterprises.

INADEQUACIES IN LEGAL FRAMEWORK

The Bribery Act 2010 continues to provide a sound legal basis for prosecuting foreign bribery by both natural and legal persons. The corporate offence of failure to prevent bribery under Section 7 has proved a very effective incentive for businesses to adopt adequate corporate compliance measures and internal controls. However, the defence of adequate procedures has only recently been tested by the courts.[864] The jurisdiction of the Bribery Act does not extend to legal persons incorporated in the Crown Dependencies and Overseas Territories.[865]

The UK's Anti-Corruption Strategy 2017-2022[866] only commits to "considering" extending corporate criminal liability beyond bribery and tax evasion[867] to wider economic crimes, such as money laundering, false accounting and fraud. Former SFO Director David Green CB QC, has repeatedly called for wider powers to pursue corporate crime where a commercial organisation fails to prevent acts of financial crime by employees. In January 2017, the Ministry of Justice published a Call for Evidence on corporate criminal liability. The results of the call for evidence are yet to be announced.

INADEQUACIES IN ENFORCEMENT SYSTEM

The new SFO funding arrangements have alleviated concerns about the resources available to it and about its funding model (reliant on "blockbuster" funding for large and complex cases). The arrangements also address a perceived scope for political interference (although there is no evidence of this to date).[868]

Uncertainty regarding the SFO's future has long been a concern. For now, fears that it may be subsumed into the NCA have been abated by the announcement of a new National Economic Crime Centre as part of the 2017-2022 Strategy[869] – although the crime centre will be able to task the SFO to carry out investigations. Other barriers to effective SFO enforcement include the lack of dedicated crown courts to try serious economic crime cases, which, coupled with underfunding of the court system, results in long delays. There is also a lack of tools for ensuring that courts can impose a review of compliance procedures within sentencing.

Concerns have been raised that DPAs will become the "new normal",[870] rather than being considered only in cases of strong public interest and where a company has self-reported. The Rolls-Royce agreement highlighted the need to ensure that the public interest is properly served by any out-of-court disposition.

The judgement noted that Rolls Royce is "considered to be a company of central importance to the UK",[871] and cited the diversion of SFO resources from other cases as negatively impacting the public interest.[872] The judge did note the "national economic interest is irrelevant" when making the decision to approve this DPA. This is notable given current SFO investigations into **Barclays**, GlaxoSmithKline, Rio Tinto and British American Tobacco – UK companies with considerable influence in the City of London and British society. The OECD WGB Phase 4 Report notes that the investigator or prosecutor in these cases must have demonstrable independence from government.[873]

There is little evidence that the exclusion provisions of the Public Contracts Regulations are being used on a regular or meaningful basis. This lack of implementation is becoming starker as more convictions occur.[874]

INADEQUACIES IN MUTUAL LEGAL ASSISTANCE

The OECD WGB recently recognised improvements in the UK's management of MLA requests and statistics, but recommended that the UK continue to strengthen tools for measuring performance and executing MLA requests related to foreign bribery.[875] The OECD WGB also noted difficulty in assessing the Overseas Territories and Crown Dependencies' MLA record, due to lack of data.[876] In light of the UK's departure from the EU, the government acknowledges a potential impact on resources for responding to MLA requests.[877] The UK Central Authority is undergoing a recruitment exercise to increase staffing levels, which is intended to improve the processing of all MLA requests, including those relating to foreign bribery. According to governmental guidance, MLA requests relating to investigations for politically motivated prosecutions may result in the

refusal of assistance.[878] However, this is only guidance and a possible consideration.

RECOMMENDATIONS

- Broaden corporate criminal liability beyond failure to prevent foreign bribery and tax evasion.
- Closely monitor the impact of Brexit on the UK's foreign bribery enforcement, particularly in relation to international cooperation arrangements with EU countries.
- Ensure anti-corruption and transparency provisions in post-Brexit trade agreements.
- Maintain the SFO's role as the principal actor for enforcing foreign bribery offences.
- Publish court sentencing remarks and judgments in foreign bribery cases as open data.
- Ensure that DPAs are used only in cases of strong public interest, and with utmost transparency.
- Conduct a review of the MLA institutional framework along with Crown Dependencies and Overseas Territories.
- Provide greater support and education on the UK Bribery Act for small-and medium-sized enterprises.
- Strengthen mechanisms to determine whether companies convicted of bribery should be debarred from public contracts.
- Extend the jurisdiction of the Bribery Act to legal persons incorporated in Crown Dependencies and Overseas Territories.

UNITED STATES
Active enforcement

INVESTIGATIONS AND CASES

Between 2014 and 2017, the United States opened at least 32 investigations,[879] commenced 13 cases[880] and concluded 98 cases.[881] Enforcement activity surged in 2016. The Department of Justice (DoJ) and Securities and Exchange Commission (SEC) achieved a record-setting penalty total of approximately US$2.5 billion that year. The SEC's 24 enforcement actions and the DoJ's 14 prosecutions against companies far surpassed totals for the previous five years. A large percentage of the cases in 2016 concerned alleged bribery in China. While there were far fewer resolved cases in 2017 than 2016, there was still considerable enforcement of the Foreign Corrupt Practices Act (FCPA), with monetary recoveries setting new records in 2017.

In July 2015, the DoJ reached coordinated resolutions with engineering and construction firm **Louis Berger International** and two former senior vice presidents over charges of bribing officials in India, Indonesia, Kuwait and Vietnam to win government contracts. The DoJ entered into a deferred prosecution agreement (DPA) with the company, including a penalty of US$17 million and a three-year compliance monitor. It also secured guilty pleas from the former executives, with one sentenced to imprisonment of one year and the other sentenced to two years' probation and a US$10,000 fine.[882] In August 2015, the SEC announced a cease-and-desist proceeding against **Bank of New York Mellon Corporation** (BNY Mellon) for alleged FCPA violations – the first FCPA charges focusing on a financial service firm and potential bribery aimed at gaining business managing a foreign sovereign wealth fund.[883] BNY Mellon agreed to pay US$9.8 million in disgorgement and interest, and a US$5 million civil penalty.[884] A September 2015 SEC enforcement action against **Hitachi Ltd** was a relatively rare case involving payments to a foreign political party. Hitachi agreed to pay a US$19 million civil penalty to resolve charges of inaccurately recording payments to South Africa's ruling African National Congress party in connection with contracts worth US$5.6 billion to build two power plants.[885]

Among the high-payout cases in 2016 was a global settlement with the Brazilian company **Odebrecht** and its subsidiary **Braskem S.A. (see case study on page 107)**.[886] Under the settlement, the companies agreed to pay US$2.6 billion, divided between Brazil (US$2.39 billion), Switzerland (US$116 million) and the United States (US$93 million).[887] A settlement with Israeli **Teva Pharmaceutical Industries** and its Russian subsidiary over charges of bribing government officials in Russia, Ukraine and Mexico resulted in payment of US$519 million in criminal penalties and disgorgement.[888] To settle claims of using intermediaries to bribe high-ranking government officials in Africa, **Och-Ziff Capital Management Group** paid US$413 million in criminal penalties and disgorgement. CEO Daniel Och was ordered to disgorge US$2.2 million.[889]

2017 saw four noteworthy global settlements. **Rolls-Royce** agreed to pay enforcement authorities in the United Kingdom, the United States and Brazil a

combined total of US$800 million to resolve allegations of bribery and corruption in at least a dozen countries over more than two decades.[890] A settlement with Swedish telecoms multinational **Telia Company** took the form of a DPA with a guilty plea in the United States, over charges relating to bribery in Uzbekistan.[891] The settlement involved payments totalling US$965 million, including to the Netherlands and Sweden. The Dutch **SBM Offshore** and its US subsidiary paid a US$238 million criminal penalty for illicit payments to officials in Brazil, Angola, Equatorial Guinea, Kazakhstan and Iraq **(see case study on page 111).**[892] **Keppel Offshore & Marine Ltd** and its US subsidiary paid US$422 million in criminal penalties for bribery in Brazil. As in the SBM Offshore prosecution, a subsidiary of Keppel Offshore and a former executive pleaded guilty.[893]

TRANSPARENCY OF ENFORCEMENT DATA

Information about FCPA enforcement is generally easily accessible and publicly available. The DoJ and the SEC maintain centralised FCPA information web portals[894] that list concluded cases,[895] provide enforcement-related news,[896] explain the law and give links to the text of the statute.[897] Both agencies publicly announce the results of resolved enforcement cases, posting summaries and legal documents such as plea agreements. Court decisions and transcripts can be obtained for a small fee on the Public Access to Court Electronic Records (PACER) system,[898] an online repository of US trial and appellate court records. However, the agencies do not disclose the number of FCPA investigations ongoing, when they commenced, and whether, when or why agencies decline to pursue enforcement action. Data on open investigations and cases may be publicly available, but finding it can be a challenge. Publicly traded companies disclose commenced investigations and pending cases through public financial filings they are required to submit periodically by US securities law. These are posted on the SEC's Electronic Data Gathering, Analysis and Retrieval (EDGAR) website,[899] and are often featured in the news media or blogs and websites of law firms, legal organisations and public interest groups.[900] The government does not publish statistics on mutual legal assistance (MLA).

RECENT DEVELOPMENTS

In 2015, the Federal Bureau of Investigation (FBI), in conjunction with the DoJ's Fraud Section, established three International Corruption Squads[901] to target entities paying bribes and recipient foreign officials.[902] Also in 2015, then-Deputy Attorney General Sally Yates issued a memorandum advising DoJ attorneys to focus enforcement efforts on individuals within entities accused of committing misconduct.[903] This signalled a dramatic shift in federal prosecutorial strategy. Individuals comprised 80 per cent of the DoJ's FCPA enforcement actions in 2015, and in all prosecutions involving companies, the DoJ also took action against individual officers.[904]

In 2015 and 2016, the DoJ developed new guidance for companies seeking leniency, addressing ethics compliance programmes and reporting requirements.[905] In April 2016, the DoJ launched a one-year FCPA Pilot Program intended to encourage companies to report violations and cooperate with governmental investigations,[906] by setting out conditions companies must meet in order to win leniency. The programme created a new form of FCPA case resolution – declination with disgorgement – in which the DoJ declines to prosecute in exchange for a company's agreement to relinquish all income derived from the allegedly illegal activity.[907] In 2017, Deputy Attorney General Rod Rosenstein effectively made the FCPA Pilot Program permanent and surpassed previous DoJ guidance in encouraging companies to cooperate and report violations.[908]

In 2016, the SEC cracked down on corporate confidentiality and severance agreements that restrict current and former employees from reporting foreign bribery and other corporate misconduct. It imposed penalties on **Merrill Lynch**,[909] **Health Net**[910] and **Anheuser-Busch**[911] for illegally stifling whistleblowers. The SEC also paid its first ever FCPA-related whistleblower award in 2016.[912]

In June 2017, the US Supreme Court ruled the SEC has a five-year limitations period for seeking the penalty of disgorgement in an enforcement action.[913] This decision has potentially far-reaching consequences for FCPA enforcement. The time limit could hamper the government's ability to seek disgorgement in foreign bribery cases, which can take several years to investigate. Parties previously ordered to pay disgorgement outside the five-year window could also ask the courts to overturn their punishment.

INADEQUACIES IN LEGAL FRAMEWORK

There are no significant inadequacies in the US legal framework for enforcing the laws against foreign bribery.

INADEQUACIES IN ENFORCEMENT SYSTEM

The OECD WGB, in its Phase 3 Follow-up Report, considered that the United States had not sufficiently clarified its policy on dealing with claims for tax deductions for facilitation payments. The WGB also felt that insufficient guidance had been given to help tax auditors identify payments claimed as facilitation payments that violate the FCPA, or signal that corrupt conduct that violates the FCPA is occurring.

INADEQUACIES IN MUTUAL LEGAL ASSISTANCE

There are no significant inadequacies in MLA.

RECOMMENDATIONS

- The DoJ and SEC should provide regular information regarding the number of investigations commenced, ongoing and concluded without enforcement action, and on when and why an enforcement action was not sought.[914]
- The DoJ and SEC should disclose the number of referrals provided to and received from other countries.
- The DoJ and SEC should assess the deterrent effect of non-prosecution agreements and DPAs, and report the reasons for a particular type of agreement – as well as its terms and duration, and how a company has satisfied, or failed to satisfy, those terms.
- The United States should collaborate with other countries in maintaining an open data register of beneficial owners, to help uncover suspicious corporate networks.
- The United States should eliminate the time limit on the SEC's authority to seek disgorgement in enforcement actions.

III. REPORTS ON NON-OECD CONVENTION COUNTRIES

The OECD has been active for over 10 years in promoting adherence to the OECD Convention among major exporting countries not yet parties, and in calling for them to enforce against foreign bribery. In 2007, for example, the OECD and its Secretary General called on large emerging economies to join the OECD Anti-Bribery Convention, saying: "Its ultimate impact in creating a fair business climate, fostering economic growth, and encouraging democratic development depends on an even wider reach."[915] In 2010, the Secretary General reported that major emerging economies such as China, India and Indonesia "are working with us and strengthening their anti-bribery frameworks."[916] In 2011, he noted that China, India, Indonesia, Malaysia, Peru and Thailand had participated in OECD Working Group on Bribery meetings that year[917] and similar reports were made in subsequent years. In 2018, it was reported that the OECD is once again holding discussions with China to persuade it to sign the Convention.[918]

The G20 too has discussed the OECD Anti-Bribery Convention and engagement with G20 members not yet parties. The current G20 Anti-Corruption Action Plan 2017-2018, like the last two action plans, states on behalf of member countries that: "We will participate actively with the OECD Working Group on Bribery to explore the possible adherence of all G20 countries to the OECD Anti-Bribery Convention."[919]

While Transparency International has over the years repeatedly called on all G20 countries to adhere to the OECD Anti-Bribery Convention, this twelfth report on OECD Convention enforcement is the first where we profile a number of major exporting countries that are not parties to the Convention.[920] Reports on four countries with a share of world trade of over 2 per cent are included in the report, in view of the importance of robust enforcement by these countries, as well as other major exporters that are not party to the Convention.

CHINA
Little or no enforcement

INVESTIGATIONS AND CASES

There are no known foreign bribery cases or investigations brought by the Chinese government during the period 2014-2017.[921] Media research indicates that there have been a number of investigations and enforcement actions against Chinese entities and individuals by foreign governments in connection with alleged bribery of foreign officials (see Table 2 below). In certain cases, as the alleged misconduct may not have been adjudicated by courts or regulatory bodies in the relevant jurisdictions, it is unclear as to whether the allegations are substantiated.

TRANSPARENCY OF ENFORCEMENT DATA

China generally publishes court cases and related information in three public databases that it maintains, including **http://wenshu.court.gov.cn** (reflecting court cases), **https://splcgk.court.gov.cn/gzfwww/** (reflecting case status and procedural matters), and **http://zhixing.court.gov.cn** (reflecting enforcement of judgments). No foreign bribery cases or enforcement actions were identified in the relevant databases. It is unclear how comprehensive the databases are.

RECENT DEVELOPMENTS

In March 2018, the National People's Congress established a new anti-corruption agency – the National Supervision Commission (NSC) – through a

constitutional amendment. The NSC then issued "Regulation on Jurisdiction of National Supervision Commission (For Trial Implementation)", which states that the NSC has broad enforcement power that covers 88 categories of "duty crimes" under the Criminal Law, including foreign bribery cases.

The Chinese government has recently signalled that it may focus more on foreign bribery enforcement.[922] China's Central Commission for Discipline Inspection and Ministry of Supervision held a symposium together with the World Bank in 2017, which focused in part on best practices to mitigate potential corruption risks associated with the Belt and Road initiative.[923] In December 2017, five departments, led by the National Development and Reform Commission, issued guidelines for overseas investment by private Chinese firms, which included a requirement that Chinese firms do not bribe local officials overseas.[924] The state owned Assets Supervision and Administration Commission (SASAC), the agency overseeing companies owned by the central government, also issued "Guidance on Strengthening the Control of Overseas Corruption Risk in Centrally Owned Enterprises", which requires government-owned companies to strengthen their anti-corruption compliance systems.[925] In January 2018, Hao Peng, the Party Chief of SASAC, announced that the agency would strengthen the investigation and punishment of foreign corruption by centrally owned companies or their foreign subsidiaries.[926]

During China's time as president of the G20 in 2016, it enhanced anti-corruption efforts by setting up a research centre on anti-corruption, fugitive repatriation and asset recovery in Beijing, which was open to other member states. At the China 2016 G20 Summit, the G20 leaders endorsed the "G20 High Level Principles on Cooperation on Persons Sought for Corruption and Asset Recovery", which, among other things, promotes diplomacy and international cooperation with respect to anti-corruption and anti-money laundering law enforcement. However, China did face some criticism during its time as president of the G20, due to a decision to suspend the group's B20 (Business 20) anti-corruption task force.[927]

INADEQUACIES IN LEGAL FRAMEWORK

Since President Xi Jinping took office in 2012, China has launched sweeping anti-corruption campaigns aimed at rooting out domestic bribery and corruption. In addition to its efforts to combat bribery of domestic government officials, China has developed laws on foreign bribery. In 2011, the Chinese government criminalised the bribery of foreign officials by individuals and businesses in China, as well as by Chinese citizens located outside China, through an amendment to Article 164 of the Criminal Law.[928]

Despite this progress, there is still room for improvement. First, the Criminal Law does not define several key terms in Article 164, such as "functionary of a foreign country", or "improper commercial benefit" (although it is possible that a court will apply an analogous definition of "improper benefit" used in domestic bribery cases, due to the similarities between the two terms). Article 164 also does not appear to expressly prohibit the offering or promising of bribes (as distinct from the actual provision of a bribe). Likewise, it does not appear to contain an explicit prohibition of indirect payment of bribes to foreign officials (e.g. through a third party) or explicitly cover companies' liability for actions of their subsidiaries. The 2016 official review of China's implementation of the UN Convention against Corruption (UNCAC) found that in relation to UNCAC Article 16(1), China should ensure that "the similarities of bribery of foreign and national public officials are taken into account in order to maintain necessary consistency in the criminalisation of these two types of acts".[929]

INADEQUACIES IN ENFORCEMENT SYSTEM

The Chinese government has made significant efforts to curb domestic bribery and corruption in recent years, and China has developed the anti-foreign bribery legal framework. However, China has faced increasing criticism for failure to enforce its anti-foreign bribery laws (Article 164), as there is no evidence of cases or investigations brought by the Chinese government against Chinese nationals or companies for bribery of foreign officials.[930] Additional and continued training of law enforcement officials on Article 164 may help to increase enforcement of China's foreign bribery laws.

In terms of anti-money laundering, in December 2016, China introduced the People's Bank of China's No. 3 Decree, which requires financial institutions to develop an effective set of transaction monitoring mechanisms.[931] Additionally, China is a country member of the Financial Action Task Force (FATF), an intergovernmental agency that sets global anti-money laundering standards. China is undergoing its FATF "mutual evaluation" in 2018, a process through which FATF conducts peer reviews of each member, and is expected to further improve its anti-money laundering regulatory system afterwards.[932] Internationally, however, China faces some criticism

with respect to its anti-money laundering efforts.[933] Chinese banks in particular have become a target of foreign regulators in recent years, including China's largest state-run bank, Agricultural Bank of China (ABC). ABC was fined US$215 million by the US government in November 2016 for allegedly masking suspicious transactions at its New York branch and omitting information regarding transactions with sanctioned countries.[934]

INADEQUACIES IN MUTUAL LEGAL ASSISTANCE

China has entered into 79 criminal judicial assistance treaties with 61 countries, and has signed extradition treaties with 50 countries.[935] It is unclear how many of the treaties may have been exercised in connection with prosecution of Chinese nationals or companies engaged in potential bribery or related conduct in other jurisdictions. The government also relies on cooperation among states party to UNCAC for potential international cooperation in connection with anti-corruption efforts.[936]

RECOMMENDATIONS

- Define and clarify key terms in Article 164 (or explicitly link them to the corresponding UNCAC definitions).
- Expand the scope of conduct covered in Article 164, in particular to explicitly cover the promising and offering of bribes, indirect bribery, and bribery committed by companies' subsidiaries, joint-venture partners and agents, among others.
- Continue to provide training to law enforcement officials, prosecutors and judges about Article 164 and relevant UNCAC provisions, and in conducting investigations.

TABLE 2: SELECTED REPORTS ON FOREIGN BRIBERY INVESTIGATIONS OR CASES CONCERNING CHINESE COMPANIES AND BUSINESS PEOPLE

Country of enforcement	Selected reports on foreign bribery investigations or cases
Bangladesh (2018)	**China Harbour Engineering Company** was blacklisted for allegedly offering to bribe the top bureaucrat in Bangladesh's road transport ministry to obtain construction work: https://www.thedailystar.net/frontpage/no-job-china-harbour-future-1520917; http://www.dailymail.co.uk/wires/afp/article-5280767/Bangladesh-blacklists-Chinese-firm-alleged-bribe.html; https://www.scmp.com/news/asia/south-asia/article/2129493/bangladesh-blacklists-chinese-construction-firm-cancels-highway
Ecuador (2017) and World Bank (2014)	**China International Water and Electric (CWE)**, a contractor for a hydroelectric plant in Ecuador, is under investigation by the Ecuador Attorney General for alleged bribery: https://cuencahighlife.com/attorney-general-opens-bribery-investigation-of-chinese-construction-company-projects/ The World Bank sanctioned this company with debarment in 2014 for misconduct in Africa and Southeast Asia: http://www.worldbank.org/en/news/press-release/2014/09/24/world-bank-sanctions-china-international-water-electric-corp-misconduct-africa-south-east-asia
Ethiopia (2017)	A Chinese construction company was allegedly involved in embezzlement of 1.1billion birr (US$47.2million), and its senior official detained along with over 30 senior Ethiopian government officials, businesspeople and brokers: https://capitalethiopia.com/2017/07/31/corruption-crackdown-nabs-42/; http://www.africanews.com/2017/07/28/ethiopia-puts-37-people-before-court-over-high-level-corruption/; http://www.fanabc.com/english/index.php/news/item/9595-government-officials,-businesspersons-appear-in-court-for-alleged-corruption
Kenya (2015)	Alleged bribery of Kenyan highways authority officials by senior managers of **China Roads and Bridge Construction Company**: http://www.scmp.com/news/china/diplomacy-defence/article/1857073/two-chinese-state-firm-officials-face-bribery-charges; http://www.scmp.com/news/china/diplomacy-defence/article/1863452/managers-chinese-state-owned-enterprise-building-us38b
Norway (2015)	The Council of Ethics for the Norwegian Government Pension Fund Global recommended the exclusion of the Chinese company **ZTE** from the Government Pension Fund Global due to corruption allegations involving the company in several countries: https://etikkradet.no/files/2017/05/ENG-Tilr%C3%A5dning-ZTE-24.-juni-2015-ENGELSK-amended-Nov.-2016.pdf
Sri Lanka (2015)	Alleged bribery of the President of Sri Lanka by **China Communications Construction Company** and China Harbour Engineering Company: https://www.reuters.com/article/sri-lanka-rajapaksa/rajapaksa-comeback-bid-checked-by-sri-lanka-bribery-probe-idUSL3N1043EF20150724; https://www.reuters.com/article/us-sri-lanka-china-portcity/china-harbour-engineering-to-invest-1-billion-in-sri-lankas-port-city-minister-idUSKBN1ER1DX

Country of enforcement	Selected reports on foreign bribery investigations or cases
United States (2017)	Ng Lap Seng, head of the **Sun Kian Ip Group** and a member of the National Committee of Chinese People's Political Consultative Conference, was convicted by a Manhattan federal court of paying more than US$1.7 million to UN ambassadors (although Seng is pursuing appeals): https://www.scmp.com/news/china/society/article/2104421/macau-billionaire-ng-lap-seng-convicted-us-jury-un-bribery-case; https://www.cnbc.com/2015/09/26/macau-billionaire-jailed-in-us-subpoenaed-in-foreign-bribery-probe.html
United States (2016)	Mahmoud Thiam, the former Guinean Minister of Mines and Geology, was sentenced to seven years' imprisonment in New York for receiving and laundering US$8.5 million in bribes from executives of **China Sonangol International Ltd** and **China International Fund**, **SA (CIF)**: https://www.justice.gov/opa/pr/former-guinean-minister-mines-sentenced-seven-years-prison-receiving-and-laundering-85; http://www.fcpablog.com/blog/2016/12/14/former-guinea-mining-minister-charged-in-us-with-laundering.html
United States (2017)	Alleged bribery of high-level officials in Chad and Uganda by Chi Ping Patrick Ho, head of **China Energy Fund Committee** (a Hong Kong-based NGO) and Cheikh Gadio from Senegal, to obtain business in the oil and gas sectors of Chad and Uganda: https://www.fcpablog.com/blog/2017/11/20/doj-charges-two-in-chinese-plot-to-bribe-africa-officials.html; https://www.justice.gov/opa/press-release/file/1012531/download; https://edition.cnn.com/2018/02/09/world/patrick-ho-corruption-china-africa/index.html; https://player.fm/series/the-china-in-africa-podcast-108224/hong-kong-millionaires-arrest-exposes-problem-of-chinese-corruption-in-africa; https://frontpageafricaonline.com/index.php/editorial/6167-latest-arrests-in-u-s-shows-liberia-s-sable-bribery-saga-must-not-be-swept-under-carpet
United States / Switzerland (2017)	Alleged bribery of Nigerian officials by **China Petroleum and Chemical Group (Sinopec)** to resolve a business dispute with Sinopec's Geneva-based subsidiary, **Addax Petroleum**: https://www.bloomberg.com/news/articles/2017-08-30/sinopec-is-said-to-be-probed-by-u-s-over-nigeria-payments Addax Petroleum agreed to pay Swiss authorities US$32 million to settle charges of suspected bribery of Nigerian officials. According to reports, prosecutors noted that while doubts about the legality of certain payments remained, no criminal intent was established, Addax acknowledged potential organisational shortcomings, and the company had taken steps to improve internal anti-corruption controls: https://af.reuters.com/article/commoditiesNews/idAFL8N1JW3G4
Zambia (2015)	Zambia's former Minister of Mines was convicted of corruption for his role in the award of prospecting licences to Chinese mining company **Zhonghui International Mining Group**: https://www.reuters.com/article/zambia-mining-corruption/zambian-ex-mines-minister-found-guilty-of-corruption-idUSL5N0VZ57S20150225
Zambia (2014)	Alleged bribery of senior Zambian government officials by China's ZTE to obtain a US$210 million closed circuit television (CCTV) camera contract. The contract was cancelled after allegations of corruption surfaced: https://www.techadvisor.co.uk/feature/enterprise/zambia-finds-corruption-in-award-of-cctv-contract-to-zte-3531111/

HONG KONG SPECIAL ADMINISTRATIVE REGION OF THE PEOPLE'S REPUBLIC OF CHINA

Little or no enforcement

INVESTIGATIONS AND CASES

In the period 2014-2017 there were no foreign bribery cases in Hong Kong; the number of investigations is not known. There have historically been very few enforcement actions involving either a foreign public official or the extraterritorial application of Hong Kong's main anti-corruption legislation, the Prevision of Bribery Ordinance (POBO). However, Hong Kong is sometimes mentioned in the context of cases in other jurisdictions. For example, allegations of use of shell companies in Hong Kong to channel bribe payments have been made in the context of the **Airbus** Eurofighters case in Austria.[937]

TRANSPARENCY OF ENFORCEMENT DATA

Hong Kong does not maintain a centralised database or press release outlet on foreign corruption enforcement. Publication of data on foreign bribery enforcement is difficult to identify.[938] Nonetheless, the Hong Kong Independent Commission Against Corruption (ICAC) – an independent government agency responsible for investigating bribery-related cases and common law misconduct – publishes statistics on the number of prosecutions and corruption complaint reports received,[939] as well as notable corruption-related investigations and cases.[940]

RECENT DEVELOPMENTS

Recent anti-corruption developments in Hong Kong primarily involve high-profile domestic cases, including the 2017 decision of the Court of Final Appeal in relation to the conviction of Thomas Kwok, one of the richest people in Hong Kong and former co-Chairman of Sun Hung Kai Properties. The court ruled that an offence may be committed when corrupt advantages are provided to a public official, even if it could not be established that the official did anything specific in return.[941] Also in 2017, in connection with the prosecution and conviction of former Hong Kong Chief Executive Donald Tsang for conflict of interest dealings, it was noted that some of POBO's provisions do not apply to the Chief Executive.[942]

From 1 March 2018, a number of additional Hong Kong businesses and professions will be subject to enhanced customer due diligence and record-keeping obligations in light of the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) (Amendment) Ordinance. The amendment introduces changes to the Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615).[943]

INADEQUACIES IN LEGAL FRAMEWORK

POBO only applies to bribery of foreign public officials if the bribe was offered or received in Hong Kong.[944] Its definition of "public servants" is intended to refer only to Hong Kong government officials and employees, and it contains no definition of foreign public officials.[945] Instead, Hong Kong courts have broadly interpreted the term "agent" under section 9 of POBO to include foreign public officials, as well as employees of state-owned enterprises, which makes it possible to charge foreign officials of bribery if the bribe has been either been offered or received in Hong Kong.[946]

Although Hong Kong does not have any specific legislation protecting or rewarding whistleblowers, some specific laws and measures do offer protection to whistleblowers. For example, Section 30A of POBO, "Protection of Informers", requires that the names and addresses of informers be safeguarded in civil or criminal proceedings, unless the court believes that the informer made a material statement known to be false or untrue, or if justice cannot otherwise be fully done.[947] The ICAC states that it handles all complaints in "strict confidence according to elaborate procedures to protect the complainants' identity and the content of the complaint".[948] Commentators also noted that Hong Kong authorities, including the police and the ICAC, have measures in place to ensure the confidentiality, anonymity and personal safety of the informers and to grant immunity to witnesses and in prevention of any potential unfair treatment.[949]

Echoing English common law, Hong Kong will impose corporate liability on companies on finding that the company has committed the crime (*actus reus*) and that its officers or employees had a guilty state of mind or the required intent (*mens rea*) in committing the crime. In Hong Kong, corporate liability is assessed by two principles: (1) identification (where courts identify the persons who represent the mind, control and will of the company), and (2) vicarious liability (where an employee's

action can be attributable to the company).[950] Industry experts have criticised the identification principle for being ineffective with large companies where employees' functions and responsibilities are widely dispersed through complex corporate structures.[951]

As Hong Kong does not have specific legislation governing foreign bribery, penalties for foreign bribery (where jurisdiction exists) are the same as the penalties for domestic bribery. Under Section 3 of POBO, bribery offences could carry a maximum prison term of one year and a maximum fine of HK$100,000. In addition, other provisions under POBO (Sections 6, 10 and 12) may impose penalties for indictable offences which could carry a maximum prison term of 7-10 years and a maximum fine of HK$500,000 to HK$1 million. Hong Kong courts can also order disgorgement, mandatory confiscation and restitution.[952]

INADEQUACIES IN ENFORCEMENT SYSTEM

Due to limitations in the legal framework and narrow judicial interpretation, Hong Kong regulators would not have grounds to prosecute a person or entity for bribing foreign government officials outside Hong Kong. Hong Kong has potential jurisdiction over the bribery of Hong Kong officials overseas, or the bribery of foreign officials in Hong Kong.

INADEQUACIES IN MUTUAL LEGAL ASSISTANCE

As of March, 2018, Hong Kong has adopted mutual legal assistance (MLA) agreements with 29 countries, including several Asian and European countries, as well as the United States.[953] Guidelines for making applications (Chapter 525, Laws of Hong Kong) and asset recovery are published on Hong Kong's Department of Justice website.

The requirement for dual criminality in Hong Kong is based on the nature of the conduct. As Hong Kong has not established a specific offence of foreign bribery, a MLA request relating to foreign bribery may not satisfy the dual criminality requirement unless the underlying conduct constitutes a crime under Hong Kong law (such as corrupt transactions with agents under section 9 of POBO). However, Hong Kong is obliged to provide non-coercive MLA, pursuant to the UN Convention against Corruption guidelines, in the absence of dual criminality.[954]

A 2017 OECD report raised concerns over Hong Kong's potential shortfall in resources to meet the growing number and complexity of MLA requests. The report credits ICAC's expertise in corruption investigations, but noted that Hong Kong is a small Asia-Pacific jurisdiction where, at times, there may not be enough capacity to process and handle all aspects of MLA requests.[955]

RECOMMENDATIONS

- Establish laws that clearly prohibit Hong Kong persons and entities from engaging in corrupt practices overseas, including bribery of foreign public officials.
- Define "foreign public officials" in POBO and other applicable laws.
- Increase enforcement efforts against foreign corruption, including through the ICAC and collaborative initiatives with foreign governments and other international anti-bribery organisations.

INDIA
Little or no enforcement

INVESTIGATIONS AND CASES

There are no known foreign bribery cases or investigations during the period 2014-2017, although media research indicates that there are a few investigations and enforcement actions against Indian entities and individuals by foreign governments in connection with alleged bribery of foreign officials.[956]

TRANSPARENCY OF ENFORCEMENT DATA

The Indian government does not publish statistics on its foreign bribery enforcement and does not disclose such statistics on request. The authorities do not disclose any information about unpublished cases related to bribery of foreign public officials by Indians.[957] It is also not clear whether the governmental enforcement and investigative agencies collect information related to foreign bribery, separately or not.

RECENT DEVELOPMENTS

In 2015 the Indian Law Commission submitted a report to the Indian government with a draft bill on "Prevention of Bribery of Foreign Public Officials and Officials of Public International Organisations", proposing to criminalise the offence of foreign bribery and providing for sanctions including a prison term of up to seven years. The draft bill also covered passive bribery (acceptance of a bribe by foreign officials).[958] To date, the government has not introduced the bill in parliament. In March 2015 the government announced that a bill to criminalise any attempt to bribe foreign public officials and officials of public international organisations was under active consideration.[959]

In July 2018, the Indian parliament passed a bill amending the present Prevention of Corruption Act, which covers bribe payers for the first time.[960] The bill also covers agents, subsidiaries and subcontractors of foreign firms working in India or doing business with Indian entities.

INADEQUACIES IN LEGAL FRAMEWORK

Although India has been a party to the UN Convention against Corruption since 2011, it has yet to meet the Article 16 obligations to define and criminalise foreign bribery, and the legal framework suffers from other shortcomings which affect its capacity to prevent and prosecute foreign bribery. The G20 has repeatedly encouraged its member countries, including India, to ratify the OECD Anti-Bribery Convention.[961] The Companies Act 2013 has a greater focus on transparency, accountability and corporate governance than the previous Companies Act 1956. It obliges companies to keep "true and fair accounts" and requires an improvement in the transparency of company ownership. The Act also prohibits companies from recording payments with an "illegal purpose" as expenses and imposes significant sanctions for doing so. Penalties include blacklisting offending companies and other penal actions provided for in the Indian Penal Code. However, it is not certain whether bribing a foreign public official would be considered an illegal purpose under the 2013 Act.

The Companies Act 2013 provides for a "vigil mechanism" in certain categories of companies, aimed at protecting whistleblowers, but its provisions are minimal and ineffective.

The Whistleblowers Protection Act 2014 affords protection to "person or public servant".[962] This is a wide scope, because "public servant" has been defined broadly[963] and the meaning of "person" is also not limited in the Act. However, Section 8 exempts certain matters from disclosure if such information involves the disclosure of proceedings of State or Union Cabinets and "is likely to prejudicially affect the interest of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality or in relation to contempt of court, defamation or incitement to an offence".

INADEQUACIES IN ENFORCEMENT SYSTEM

As foreign bribery is not yet criminalised in India, the adequacy of the enforcement system in relation to this specific offence cannot be assessed. However, certain shortcomings in the enforcement system, in particular those evident from current enforcement of domestic corruption, are also a concern for foreign bribery enforcement. In particular, while the Indian Penal Code and Prevention of Corruption Act prescribe criminal and civil liability for domestic corruption, the reality is that actions taken against the perpetrators have been few.

The governing legislation does not provide for criminal liability for legal persons. However, there is Supreme Court jurisprudence which states that "a Corporation is virtually in the same position as any individual and may be convicted of common law as well as statutory offences including those [requiring] *mens rea*".[964] Companies cannot be absolved completely of liability when there is recurrent evidence of corruption. Under the Companies Act 2013, company management can be held liable for corrupt practices committed by the director. As per the amended Prevention of Corruption Act of India, in case of an offence committed by an employee of a commercial organisation, it will be presumed, unless proven to the contrary, that such a person has performed services on behalf of the commercial organisation.

INADEQUACIES IN MUTUAL LEGAL ASSISTANCE

India has signed mutual legal assistance (MLA) treaties with 39 countries.[965] The Ministry of Home Affairs is the central authority for seeking and providing MLA in

criminal law matters. The translation of documents into foreign languages is a major factor slowing down the MLA process.

RECOMMENDATIONS

- Criminalise foreign bribery, and sign and ratify the OECD Anti-Bribery Convention as a key priority.
- Introduce effective legislation to protect whistleblowers in the private sector.
- Encourage company management to actively promote a corporate anti-corruption culture among staff and improve whistleblower reporting mechanisms and protection.
- Publish an annual public overview detailing reported cases of foreign bribery and action taken by the authorities.

SINGAPORE
Little or no enforcement

INVESTIGATIONS AND CASES

In the period 2014-2017 there was one foreign bribery case in Singapore; the number of investigations is not known. The Corrupt Practices Investigation Bureau[966] (CPIB) has been quoted as saying that over the past 20 years, two local companies and 15 Singaporeans have been prosecuted in Singapore for giving bribes totalling 10.8 million Singapore dollars (around US$1.4 million) to secure business deals overseas.[967]

In December 2017, Singapore-based shipbuilder **Keppel Offshore & Marine Ltd** and its wholly-owned US-based subsidiaries were found guilty of engaging in corrupt practices in Brazil by US, Brazilian and Singaporean authorities. According to the allegations, Keppel paid approximately US$55 million in bribes to Brazilian state-owned oil company, **Petrobras Brasileiro SA**, and some members of the then-governing Brazilian political party, the Workers Party of Brazil, in exchange for 13 contracts with Petrobras and other related companies from 2001 to 2014. Keppel allegedly concealed the bribes as "commissions" to a third party intermediary under the guise of legitimate consulting agreements.[968] In a joint press release dated 23 December 2017, the Attorney General's Chambers and CPIB stated they had issued a conditional warning to Keppel for corruption offences under Section 5 of the Prevention of Corruption Act and ordered the company to pay approximately US$105.5 million in criminal penalties.[969] Their press release also stated that investigations in respect of individuals involved were ongoing. In February 2018, the CPIB arrested several of Keppel's key individuals in connection with the corruption investigations, including the former president and chief executive of Keppel's Brazilian subsidiary.[970] In addition to the investigations and penalties in Singapore, the US Department of Justice and Brazil's Federal Prosecution Office also penalised Keppel and responsible individuals, as part of Operation Car Wash, (*Lava Jato*) for criminal bribery and charges related to the US Foreign Corrupt Practices Act.[971]

Singapore has been mentioned in the context of allegations and investigations in other countries. Allegations of use of shell companies in Singapore to channel bribe payments have been made in the context of the **Airbus** Eurofighters case in Austria.[972] In May 2018, the UK Serious Fraud Office brought charges against two **Unaoil** employees relating to corrupt payments to secure a contract worth US$733 million for **Leighton Contractors Singapore PTE Ltd** for a project to build two oil pipelines in southern Iraq. Further, **Unaoil**, the Monaco energy "facilitation" company accused of corruptly securing contracts for multinationals, is apparently owned by **UNA Energy Group Holding of Singapore**, which is in turn owned by a New Zealand shell company, **UnaEnergy Trustees**, in its turn owned by **Fleetwood Trustees**, based in the tax haven of St Kitts and Nevis.[973]

In December 2015, a Singapore-based Malaysian businessman was arrested in the United States on corruption charges. The businessman and his firm, **Glenn Defense Marine Asia (GDMA)**, allegedly bribed US naval officers using cash, travel, luxury items and other benefits to reveal confidential information regarding the movement of US Navy ships, and defrauded the US Navy through numerous support service contracts for US Navy vessels in Asia.[974] The businessman remains in US custody, though his exact whereabouts are unknown according to media reports from May 2018.[975]

Since 2016, several major banks and individuals have been charged and fined for their role in connection with a transnational money laundering investigation by the Monetary Authority of Singapore regarding the Malaysian state investment fund 1MDB. This triggered the closure of **BSI Bank Limited** and **Falcon Bank** for violating anti-money laundering requirements.[976]

TRANSPARENCY OF ENFORCEMENT DATA

Singapore does not maintain a centralised database or press release hub on foreign corruption enforcement. Publication of data on foreign bribery enforcement is limited. According to the United Nations Office on Drugs and Crime (UNODC), Singapore does not maintain nor publish any statistical data on sentences involving foreign bribery.[977] However, the CPIB publishes statistics on the number of prosecutions and corruption complaints received,[978] as well as notable corruption-related investigations[979] on its website.

RECENT DEVELOPMENTS

In June 2018, the CPIB and UNODC jointly ran a training course on "Combating Corruption: Financial Investigation Techniques and International Cooperation Mechanisms".[980] The course aimed to strengthen investigators' and prosecutors' capacity to deal with financial crimes and corruption cases in the Asia-Pacific region.

In March 2018, the Singapore parliament passed a Criminal Justice Reform Bill (No.14/2018) to introduce deferred prosecution agreements (DPAs) as a tool for addressing allegations of corruption, money laundering and violations of the Singapore Securities and Futures Act by corporations. As indicated in the Bill, a DPA works the same way as a non-prosecution agreement (NPA) and is a voluntary alternative to judicial proceedings where the prosecutor agrees to grant amnesty in exchange for a defendant's fulfillment of certain requirements. The Bill specifies to the Singapore High Court that DPAs must be evaluated based on principles of fairness and reasonableness, and in the interests of justice.[981]

INADEQUACIES IN LEGAL FRAMEWORK

Sections 5, 6 and 37(1) of the Prevention of Corruption Act (PCA) contain regulations regarding corruption-related offences committed by Singapore citizens in Singapore and abroad.[982] However, there is no definition of foreign public officials under the PCA, and Singapore does not have other specific legislation on corruption committed by foreign public officials. There is also concern among some legal commentators that the PCA is not sufficiently broad to cover all individuals acting for or on behalf of delinquent corporations, such as the board of directors, senior management and agents. Industrial experts have therefore suggested that Singapore broaden the scope of its PCA to expand criminal liability to cover these individuals, as well as third parties retained by corporations, who are involved in corrupt practices committed overseas.

Under the PCA, penalties for bribery are either or both a fine not exceeding 100,000 Singapore dollars (around US$70,000) and imprisonment for a term not exceeding five years (for private-sector bribery offences) or seven years (for public-sector bribery offences). In light of the Keppel case, industry experts have raised concerns that the PCA's maximum fine is too low, given that bribes in recent years have exceeded millions of US dollars.[983] The United Nations Convention against Corruption (UNCAC) first cycle review of Singapore in 2015 stated that: "The reviewers welcome indications by Singapore that it is considering amending the PCA to distinctly provide for, and increase, the maximum penalties applicable to legal persons in corruption cases, an indirect consequence of which would be to further clarify the separate liability of entities and principals engaging in acts of corruption."[984]

Singapore does not have dedicated and broadly applicable legislation on whistleblower protection.[985] However, whistleblowers for certain offences are protected under specific legislation[986] and the CPIB also reiterates that a complainant's identity will be kept confidential.[987] The UNCAC first cycle review of Singapore recommended that Singapore "consider further expanding measures to protect reporting persons against unjustified treatment (art. 33)".

INADEQUACIES IN ENFORCEMENT SYSTEM

An independent review conducted as a result of a case found that the CPIB suffered from internal supervisory lapses that led to a lack of financial controls. Following the case, the CPIB appointed a new director to rebuild public trust, and issued warning letters to two directors who were at the helm when the lapses occurred.[988]

INADEQUACIES IN MUTUAL LEGAL ASSISTANCE

Singapore is a party to mutual legal assistance (MLA) treaties concerning criminal matters with the People's Republic of China, Hong Kong, Thailand, India and the

United States.[989] The country is also a party to the Treaty on Mutual Legal Assistance in Criminal Matters Among like-minded ASEAN Member Countries and other multilateral treaties, as well as the Scheme for Mutual Assistance Within the Commonwealth (also known as the Harare Scheme). While all MLA is granted based on Singapore's domestic legal assistance statute under the Mutual Assistance in Criminal Matters Act,[990] Singapore applies the provisions of its domestic law regardless of whether the foreign request is made under a bilateral treaty or a multilateral convention. Despite Singapore's strict interpretation, and stringent requirements and procedures under the mutual assistance act, the country does provide some MLA in corruption-related investigations, including money laundering cases.

RECOMMENDATIONS

- Establish laws that clearly prohibit Singaporean persons and entities from engaging in corrupt practices overseas.
- Define "foreign public officials" in the PCA and other applicable laws.
- Strengthen criminal penalties under the PCA and other applicable anti-corruption laws.
- Continue to explore and evaluate the effectiveness of alternatives to judicial proceedings, such as DPAs and NPAs, in combating corrupt practices.
- Increase collaboration with foreign governments, Interpol and other international anti-bribery organisations.

IV. CASE STUDIES

This section describes foreign bribery enforcement in relation to five major companies – Airbus, Odebrecht, Rio Tinto, SBM Offshore and Sinopec – operating in the sectors of aerospace, construction, mining and oil. The Rio Tinto case study also references China Sonangol and China International Fund.

The case studies illustrate key challenges and successes of current enforcement against foreign bribery. They show the importance of access to case information as an ingredient for success, as well as the need for a strong legal framework, robust enforcement systems and effective international cooperation. They also highlight the importance of adequate settlement arrangements in order to achieve remedies and deterrence.

The cases reveal the need to protect against political interference in the enforcement process, whether to defend perceived national economic interests or to protect the interests of individual actors. Concerns have been raised that such interference may be slowing down UK enforcement in the Airbus case and may also be hindering efforts in other cases. If this is tolerated, it threatens to undermine the whole enterprise of tackling the supply side of international corruption.

Here and elsewhere in the report, the case studies expose systemic failures in the prevention and detection of foreign bribery. Recurring challenges that must be tackled include the use of shell companies in many countries as vehicles to facilitate the payment of bribes, arranged with the assistance of lawyers as intermediaries. There is also a repeated failure of anti-money laundering controls to stop suspicious transactions, with bankers and real estate agents facilitating corrupt financial flows and the concealment of proceeds of corruption, and accountants and auditors failing to identify and report suspicious behaviour.

AIRBUS

NAME OF COMPANY: Airbus, as well as its subsidiaries Airbus Defence and Space GmbH and GPT Special Project Management, and its joint venture Atlas Elektronik

COMPANY HEADQUARTERS: Toulouse, France

SECTOR: Aerospace industry

REVENUES OF THE COMPANY: €67 billion / US$79 billion (2016)[991]

COUNTRIES TARGETED BY ALLEGED BRIBERY: Austria, China, Greece, India, Indonesia, Kazakhstan, Kuwait, Mali, Mauritius, Pakistan, Poland, Saudi Arabia, Sri Lanka, Thailand, Tunisia, Turkey

COUNTRIES ENGAGED IN ENFORCEMENT (MULTIPLE ALLEGATIONS): Austria, France, Germany, Kuwait, Poland, United Kingdom, United States (the enforcement in Austria is against domestic bribery)

TOTAL FINES AND OTHER MEASURES TO DATE: €81 million disgorgement and €250,000 fine (Munich, Germany); temporary withdrawal of export credit (UK); undisclosed settlement (Bremen, Germany)

CASE DETAILS

Airbus, Europe's largest aeronautics and space company,[992] has been the subject of a series of allegations of foreign bribery in recent years, leading to investigations and enforcement actions in multiple jurisdictions. Several business segments within the company have been implicated, including aerospace and defence, commercial aerospace and helicopters.

In February 2018, **German** prosecutors in Munich issued a penalty of €81.25 million – comprising an administrative fine of €250,000 and a disgorgement of €81 million[993] – against Airbus Defence and Space GmbH for negligent breach of duty.[994] The penalty was the result of an investigation into suspected bribery of foreign officials in connection with the sale of 18 Eurofighter Typhoon fighters to Austria, as well as the arrangement of so-called "compensation transactions" worth more than €4 billion for the benefit of the Austrian economy.[995] While the authorities did not find any evidence of bribery, prosecutors alleged that Airbus was unable to account for over €100 million in payments connected to the compensation transactions made to two shell companies in the UK. These payments bypassed internal controls and were used for "unclear purposes", ultimately leading to the charge of negligent breach of duty.[996] The company accepted the notice, and the case has been settled.[997]

In February 2017, in a domestic bribery case, the **Austrian** Federal Ministry of Defence raised criminal allegations and claims for damages against Airbus Defence and Space GmbH, for wilful deception and fraud in the Eurofighter deal[998] (supposedly by falsely inflating prices[999]). Airbus stated that it could not see any foundation for the allegations of bad faith and fraud[1000] and, in September 2017, filed a submission to the Vienna Public Prosecutor in response to the allegations.[1001] The case is ongoing.

In a separate case, the **UK** Serious Fraud Office (SFO) and the **French** Parquet National Financier (PNF) opened investigations in 2016 into allegations that the civil aviation wing of Airbus made misleading statements to the countries' **export credit agencies** about its use of intermediaries.[1002] This followed an internal review by Airbus which uncovered a number of compliance red flags, including misstatements and omissions to UK government agencies, which it then reported to the authorities.[1003] It is understood that further support from UK Export Finance (the UK's export credit agency) was temporarily suspended after it was informed of the allegations in April 2016.[1004] Airbus issued a statement saying it was "putting significant resources and effort into supporting the coordinated criminal investigations by the UK Serious Fraud Office (SFO) and France's Parquet National Financier (PNF)".[1005] The company uncovered similar problems in October 2017, this time involving "inaccuracies in filings" made with the **US** Department of State under section 130 of the International Traffic in Arms Regulations.[1006] Among other things, section 130 requires exporters to disclose to the State Department payments to third-party intermediaries for certain overseas sales.[1007] Airbus has stated it is "cooperating with the US authorities" on the matter.[1008]

These investigations come on top of a long-standing investigation, first announced by the **UK** SFO in 2012, into GPT Special Project Management, Airbus's UK-registered Saudi-based subsidiary, concerning "aspects of the conduct of their business in the Kingdom of Saudi Arabia".[1009] The investigation is reported to involve allegations that GPT paid bribes to win a US$2.6 billion contract to provide services and training for the Saudi Arabian National Guard on behalf of the UK Ministry of Defence (MoD).[1010] As part of the investigation, the SFO reportedly made arrests and questioned at least six individuals, including two MoD employees, in July 2014, but has yet to make any formal charges.[1011]

In June 2017, the Bremen public prosecutor in **Germany** reached a settlement with Atlas Elektronik – a joint venture between Airbus and German defence company Thyssen Krupp – requiring the company to pay €48 million in disgorged profits in relation to contracts in **Greece** and **Peru**.[1012] The prosecutor alleged that Atlas had paid a Greek intermediary €13 million in connection with the purchase of submarines by the Greek military, and that suspicious payments had also been made over the sale of torpedoes to the Peruvian military.[1013]

In January 2015, French media reported that **France**'s Financial Brigade, a division of the Parisian Judicial Police, had started an investigation into suspicious commission payments made to intermediaries by Airbus in relation to a 2007 contract to provide 160 Airbus planes to two different **Chinese** airlines.[1014] Although the case was later dismissed by the Paris Prosecutor's Office,[1015] media reports suggest that the use of intermediaries in China forms part of the investigation opened in 2016 by France's PNF and the UK's SFO, discussed above.[1016]

Other recent cases include an ongoing investigation in **France** of possible corrupt payments stemming from Airbus's 2010 satellite sales to **Kazakhstan**,[1017] a request for mutual legal assistance from the government of **Tunisia** to French judicial authorities in connection with aircraft sales,[1018] and an investigation by **Polish**

prosecutors into a tender for 50 Caracal helicopters worth US$3.7 billion for the Polish Ministry of Defence, which may have been designed to favour Airbus over other companies.[1019] **Kuwait's** anti-corruption authority opened an investigation in January 2018 into a US$1.1 billion helicopter deal with France, following a report in a French magazine which alleged that a middleman had demanded €60 million from Airbus in commission for the deal.[1020]

Airbus is also reported to have launched an internal investigation after *The Guardian* newspaper reported an alleged series of curious transactions involving an exchange of shares between two companies that Airbus secretly controlled.[1021] Further allegations have reportedly begun to emerge around the world, including in **India**,[1022] **Mauritius**,[1023] **Sri Lanka**,[1024] and **Mali**,[1025] although it would appear formal investigations have yet to be instigated.

IMPLICATIONS

As is apparent in many recent foreign bribery cases, the use of **shell companies** to cover the trail of money is also a feature of several strands of the Airbus saga. According to German magazine *Der Spiegel*, the Munich prosecutor leading the Eurofighters case suspected that "significant sums of money" from Vector (one of the two UK companies that received €114 million in payments from Airbus, or EADS as it was called at the time) were "to be used for bribery payments to decision-makers ... in Austria".[1026] The magazine also claims that investigators were only able to find records pertaining to €9 million, with the rest passed on to shell companies in places such as Hong Kong, Singapore and the British Virgin Islands, raising suspicions that Vector maintained a slush fund for the entire company as a source of bribes, and not just for the fighter plane order from Austria.[1027] More recently, *The Guardian* reported an apparently unrelated series of questionable financial transactions involving €19 million by two companies (Eolia and Avinco Holdings) alleged to be secretly controlled by Airbus, a large portion of which was then routed to a mysterious company via Panama.[1028] While there is no evidence in either case that the funds were ultimately used for bribery schemes, there remains no plausible explanation for why such large sums of money apparently went completely unaccounted for, and there are legitimate reasons to question the need for a leading company such as Airbus to engage in such secretive arrangements.

The Airbus case, and in particular the investigation into GPT Special Project Management in the UK, also highlights the potential for **political interference** in such high-profile cases. Although the case has been under investigation for more than five years[1029] and despite reports at the end of 2016 that the SFO was preparing to bring charges,[1030] the case remains unresolved. A recent study by the NGO Corruption Watch UK suggests that this may be due to strong political pressure to prevent or limit GPT's prosecution because of the UK government's desire to secure trade- and defence-related deals with countries such as Saudi Arabia ahead of Brexit.[1031] This is despite the fact that Article 5 of the OECD Anti-Bribery Convention prohibits considerations of national economic interest or damage to relations with a foreign state when investigating and prosecuting bribery, and despite the serious reputational damage caused to the UK by the 2006 decision to close an investigation into allegations of widespread corruption by BAE Systems in a government to government contract in Saudi Arabia, for similar reasons of so-called national interest.[1032] As the Corruption Watch UK report notes: "The GPT investigation is a real test of the independence of the SFO and its ability to pursue overseas corruption investigations involving government to government contracts in highly sensitive contexts."[1033] Such considerations are especially relevant to Airbus, given that the company is part-owned by the French and German governments and is a key strategic industry in both countries.

More positively, as other cases in this report demonstrate, the Airbus case highlights the increasingly important role of **international cooperation** in bringing foreign bribery cases to a successful conclusion. In the recently resolved Eurofighters case, the Munich prosecutor noted that the "extraordinarily extensive investigations were carried out in close cooperation with the Austrian law enforcement authorities and covered a wide range of investigative measures in other European countries."[1034] The Munich-based investigation itself came about as a result of a request for assistance from the Austrian authorities in 2012,[1035] following an initial Austrian probe in 2007 which came to no concrete conclusions.[1036]

ODEBRECHT

NAME OF COMPANY: Odebrecht S.A. and its subsidiaries Braskem S.A. and CNO

COMPANY HEADQUARTERS: Salvador and Sao Paulo, Brazil

SECTOR: Engineering, construction and petrochemicals

REVENUES OF THE COMPANY: US$27.7 billion, of which US$15.9 billion from Braskem S.A. (2016)[1037]

COUNTRIES TARGETED BY THE ALLEGED BRIBERY: Angola, Argentina, Brazil, Colombia, the Dominican Republic, Ecuador, Guatemala, Mexico, Mozambique, Panama, Peru and Venezuela

COUNTRIES ENGAGED IN ENFORCEMENT: Argentina, Brazil, Chile, Colombia, Dominican Republic, Ecuador, France, Guatemala, Mexico, Panama, Peru, Portugal, Sweden, Switzerland, United States, UK and Venezuela (in all of the Latin American countries except Brazil, the enforcement relates only to allegations of domestic corruption, not foreign bribery)

TOTAL FINES AND OTHER MEASURES TO DATE:

- US$2.6 billion fine for Odebrecht (US$2.39 billion to Brazil; US$116 million to Switzerland and US$93 million to the United States).[1038]
- US$632 million fine for Braskem (US$443 million to Brazil; US$95 million to Switzerland and US$95 million to the United States).[1039]
- US$325 million in disgorgement of profits for Braskem (US$260 million to Brazil and US$65 million to the United States).[1040]
- 19-year jail sentence for former Odebrecht CEO Marcelo Odebrecht (reduced to 2.5 years in prison and five years' house arrest in exchange for his cooperation). Four-year house arrest for his father, Emilio Odebrecht.
- Six-year jail sentence for Ecuador's Vice President Jorge Glas for receiving US$13.5 million in bribes.[1041]
- CHF1.3 million (US$1.4 million) in disgorgement of profits from Swiss bank PKB Privatbank SA for failing to prevent possible crimes linked to Petrobras and Odebrecht.

CASE DETAILS

Odebrecht S.A. (Odebrecht), a global construction conglomerate based in Brazil, and Braskem S.A. (Braskem), its Brazilian petrochemical subsidiary, continue to be the subject of numerous investigations and enforcement actions across the Americas and Europe as part of what the US Department of Justice has termed "a massive and unparalleled bribery and bid-rigging scheme" which operated for more than a decade.[1042] Under the scheme, Odebrecht paid approximately US$788 million in bribes to government officials, their representatives and political parties in Angola, Argentina, Brazil, Colombia, the Dominican Republic, Ecuador, Guatemala, Mexico, Mozambique, Panama, Peru and Venezuela in order to win business in those countries. The criminal conduct was directed by the highest levels of the company, with the bribes paid through a complex network of shell companies, off-the-book transactions and offshore bank accounts. The conduct resulted in "corrupt payments and/or profits" totalling approximately US$3.34 billion.[1043]

***TABLE 3**: Total alleged or admitted bribes paid by Odebrecht (US$ millions)*[1044]

Admitted	
Brazil	**349**
Venezuela	**98**
Dominican Republic	**92**
Panama	**59**
Angola	**50**
Argentina	**35**
Ecuador	**33.5**
Peru	**29**
Guatemala	**18**
Colombia	**11**
Mexico	**10**
Mozambique	**1**
Alleged	
Antigua	**10.5**
El Salvador	**unknown**
Under investigation	
Chile	**unknown**
Portugal	**unknown**

Braskem also admitted to paying approximately US$250 million between 2006 and 2014 – via Odebrecht's secret bribe payment system – to politicians and political parties in Brazil, as well as to an official at Petrobras, the country's state-controlled oil company, in return for preferential rates for the purchase of raw materials, contracts with Petrobras, and favourable legislation and government programmes. This conduct resulted in "corrupt payments and/or profits" totalling approximately US$465 million.[1045]

In December 2016, Odebrecht and Braskem reached a global settlement with authorities in the **United States**, **Brazil** and **Switzerland** over the bribery scheme, with both companies pleading guilty to conspiracy to violate anti-bribery provisions of the US Foreign Corrupt Practices Act. Under the agreement, Odebrecht initially agreed to pay a combined total penalty of at least US$3.5 billion.[1046] This was subsequently reduced to US$2.6 billion in April 2017 following an ability to pay analysis by the US Department of Justice (DoJ) and the company, to be divided between Brazil (US$2.39 billion), Switzerland (US$116 million), and the United States (US$93 million).[1047]

At the same time, Braskem entered into a plea agreement with US authorities to pay a criminal penalty of US$632 million – to be divided between Brazil (US$443 million), Switzerland (US$95 million) and the United States (US$95 million)[1048] – as well as disgorgement of US$325 million (US$260 million to Brazil and US$65 million to the United States).[1049] In both cases, Odebrecht and Braskem also agreed to continue cooperating with law enforcement, adopt enhanced compliance procedures and retain independent compliance monitors for three years.[1050]

It is important to note, however, that the settlement between Brazil's Federal Prosecution Office (MPF) – and Odebrecht did not cover foreign bribery allegations. Although prosecutors demanded that the company report its wrongdoings abroad and that they be annexed to the agreement, these activities could not be the object of sanctions by the MPF, as authority to sanction such claims and to sign leniency agreements on the matter lies with the Comptroller General's Office (CGU).[1051]

Also in 2016, the Swiss Office of the Attorney General (OAG) issued a summary penalty order against Odebrecht and one of its subsidiaries, CNO, in connection with international corruption involving Petrobras.[1052] The Swiss summary penalty order found the two companies guilty of not taking all reasonable organisational measures required to prevent the bribery of foreign public officials. The order required them to pay CHF117 million (US$115 million) in fines and disgorgement.

In 2015, the former CEO of Odebrecht, Marcelo Odebrecht, was convicted of money laundering, corruption and organised crime and sentenced to 2.5 years in prison in Brazil and five years' house arrest (the initial conviction was for 19 years in prison, but this was reduced as part of the leniency agreement). He was released from prison in December 2017.[1053] His father, Emílio, was sentenced to four years under house arrest.[1054] Seventy-seven other Odebrecht executives were also offered leniency agreements as part of the deal with the Brazilian authorities, although the exact details of the agreement are not known.[1055]

In December 2017, **Ecuador's** Vice President Jorge Glas was sentenced to six years in prison after being convicted of taking US$13.5 million in bribes from Odebrecht, becoming the first high-ranking government official to be convicted as part of the bribery scheme.[1056] In **Peru**, ex-president Ollanta Humala and his wife Nadine Heredia have been put in pre-trial detention accused of receiving payments to fund his presidential campaigns in 2006 and 2011, while former President Alejandro Toledo, believed to be living in the US, is accused of taking US$20 million in bribes, and an international warrant for his arrest has been issued by the Peruvian government.[1057] **Panama**, meanwhile, has charged 17 people including government officials, and charged Odebrecht US$59m in compensation. Other investigations have been reported in **Argentina**,[1058] **Chile**,[1059] **Colombia**,[1060] **Dominican Republic**,[1061] **France**,[1062] **Guatemala**,[1063] **Mexico**,[1064] **Sweden**,[1065] the **US**,[1066] the **UK**[1067] and **Venezuela**.[1068]

Only in July 2018 was a separate leniency agreement between other Brazilian authorities – the CGU and the Attorney General's Office (AGU) – and Odebrecht finally signed. Under this agreement, Odebrecht agreed to pay approximately US$715 million in exchange for restoring its ability to contract with the federal government.[1069] This amount may be discounted, pending negotiations with the MPF, from the overall US$2.39 billion fine imposed in the previous agreement. It includes a US$10 million fine referring to foreign bribery allegations committed by the company and its employees between 2014 (when the Corporate Liability Law came into effect) and 2016. Foreign bribery is technically covered under the new agreement, albeit under a methodology that differs from the one employed by US authorities. It demands Odebrecht to negotiate and conclude separate and specific agreements with all countries in which irregularities were committed, within a three-year period (possibly extended for three more years). If, after this period, Odebrecht fails to come to terms with any one of these countries, new fines may be imposed by the CGU. The rationale behind this new methodology is to

allow countries themselves to negotiate and conclude agreements and for them to seek their compensation directly.

It should be noted, however, that this new agreement – including the amount of the fines – stems solely from information provided by Odebrecht, not from independent investigations. The agreement therefore provides that if Odebrecht's allegations are later proved false or incomplete, the company may lose its benefits. The exchange of information between the MPF and CGU has been limited, particularly over foreign bribery reports, which calls into question part of this enforcement framework. Brazil's National Audit Court (TCU) was not included in the CGU-AGU agreement, which has generated uncertainty about the possibility of further civil action to demand additional reparations from Odebrecht.[1070]

IMPLICATIONS

Given investigations in more than 15 countries, the strength of **international cooperation** is particularly important to the case. There have been significant and commendable efforts to cooperate across borders in Odebrecht-related cases. Brazil and 55 other countries made 484 **mutual legal assistance** requests between 2014 and June 2018 (250 from Brazil and 234 from other countries), mostly related to the Odebrecht case. This development, coupled with the February 2017 commitment of state prosecutors from 11 countries to establish bilateral and multilateral joint investigation teams,[1071] represents a significant and commendable effort by enforcement agencies to cooperate across borders.

However, there have been challenges. Odebrecht's leniency agreement foresaw an initial six-month confidentiality period, during which Brazilian authorities could not specifically share information regarding international bribery with foreign authorities.[1072] Since the conclusion of this quarantine, Brazil has been sharing the information only with countries that agree to extend the benefits of the leniency agreement, that is, to grant immunity to Odebrecht and its executives. Although this measure is understandable to avoid double jeopardy (*non bis in idem*), this rationale only stands if the company has also been effectively sanctioned for foreign bribery under the leniency agreement signed with Brazilian prosecutors – and the Prosecutor's Office, which signed the first settlement with Odebrecht, lacks the legal competence to prosecute and sanction this type of offence committed by companies, according to Brazilian legislation.

There has been criticism over this position by the Brazilian authorities, as countries that do not agree to extend the benefits of the leniency agreement might be using this as the perfect excuse simply not to receive information, and therefore not to open or advance investigations into bribe-taking by national officials. There is a strong argument that in such cases, Brazil's Federal Supreme Court should lift the confidentiality agreement, allowing citizens and the press in other countries to pressure their authorities to act over the crimes reported by Odebrecht.

These challenges make clear the need for the inter-American system of penal cooperation to be updated and adapted to address transnational corruption and multi-jurisdictional settlement agreements. There is also the issue of domestic interference with international cooperation. Top prosecutors in Brazil and Argentina, for example, have complained of government interference in the creation of a Joint Investigative Team, enabling politicians, many of whom are under investigation, to control the exchange of evidence.[1073]

Such allegations of political interference have fuelled criticism of the use of **plea bargaining and leniency agreements** in Brazil. Under the 2013 Clean Company Act, the authorities may offer reduced fines and possible exemption from judicial and administrative sanctions if a company cooperates with investigators, self-discloses violations and adopts externally-monitored anti-corruption compliance programmes.[1074] While plea bargaining has enabled identification of names and bank accounts allegedly used to channel bribes,[1075] there are concerns about the way leniency agreements are reached. Besides the Federal Prosecution Service, other authorities – the Ministry of Transparency, Monitoring and Control, the Attorney General's Office and the National Court of Audit – can investigate corruption and seek sanctions against companies, both at civil and administrative levels.

The lack of regulation regarding coordination of these authorities' competing interests has been the focus of concerns from companies when negotiating agreements.[1076] However, recent agreements point to a growing ability and willingness by the MPF, the AGU and the CGU to work together, which may have encouraged more companies to seek agreements with these authorities. According to CGU officials, there are currently 37 proposals from companies being analysed to start settlement negotiations.

There are also concerns about the capacity of Brazilian anti-corruption institutions to oversee compliance programmes, and the public perception of leniency

agreements as maintaining impunity for the powerful.[1077] In response, the Federal Prosecutor's Office released detailed guidelines on leniency agreements in August 2017.[1078] These aim to facilitate coordination among enforcement agencies, promote transparency and inform companies considering settlement negotiations.[1079] Nevertheless, the Odebrecht case cautions that attempts to transpose US and UK corporate settlement models (themselves subject to criticism[1080]) to other countries require care and should consider the broader political and social context.

Efforts to create a new methodology for the investigation and punishment of companies in global corruption schemes have also generated questions, despite holding potential for new patterns of cooperation. The most recent CGU-AGU agreement puts pressure on Odebrecht to seek agreements with all countries where it admitted to bribing foreign officials. If fulfilled, it settles the matter of reparations being directed to the countries that suffered the irregularities. It also shines a light on the authorities' efforts (or lack of) to follow up on Odebrecht's obligation to seek agreements with other countries.

Many questions remain regarding the leniency agreement reached in this case. Was the total amount of penalties right? Should the agreement have taken into consideration, as it did, the company's ability to continue in business? How did Brazil, the United States and Switzerland determine the division of the penalties, and was this the right formula? Should representatives of victims have been given an opportunity to be heard in the process of deciding the penalty?

The case also highlights the potential **role of banks** in facilitating cross-border grand corruption cases. Brazil's National Audit Court conducted a review of the subsidised export credit received by Odebrecht from the country's development bank. This shows the over-concentration of credit (Odebrecht alone received 88 per cent of all the bank's export credit for engineering services in the last decade) and the lack of anti-corruption safeguards and due diligence protocols in credit operations.[1081] The Swiss Office of the Attorney General recently launched criminal proceedings against Swiss private bank PKB Privatbank SA for failing to prevent possible crimes linked to Petrobras and Odebrecht. The Swiss Financial Market Supervisory Authority has ordered the bank to disgorge CHF1.3 million (US$1.4 million) in unlawfully generated profits and will appoint an external auditor to supervise these measures. The authority has investigated more than a dozen Swiss banks in relation to the Petrobras and Odebrecht cases, and launched four enforcement proceedings, one of which is pending.[1082]

RIO TINTO

(also referencing CHINA SONANGOL and CHINA INTERNATIONAL FUND)

NAME OF COMPANY: Rio Tinto Group

COMPANY HEADQUARTERS: Dual-listed: London, UK (plc) and Melbourne, Australia (Ltd)

SECTOR: Mining industry

REVENUES OF THE COMPANY: US$40 billion (2017)[1083]

COUNTRIES TARGETED BY THE ALLEGED BRIBERY: Republic of Guinea

COUNTRIES ENGAGED IN ENFORCEMENT: Australia, UK, United States

TOTAL FINES AND OTHER MEASURES TO DATE: Seven-year prison term for a Guinean public official in a related case

CASE DETAILS

Rio Tinto Group ("Rio Tinto"), the world's second-largest mining company, has recently become the subject of foreign bribery enforcement actions related to its operations in the West African country of the Republic of Guinea.

In July 2017, the **UK** Serious Fraud Office (SFO) announced it had opened an investigation into suspected corruption by Rio Tinto, its employees and others associated with it in the conduct of business in the Republic of Guinea.[1084] This followed a statement by the **Australian** Federal Police to the *Australian Financial Review* in March 2017 that they were also looking into the matter.[1085] Both investigations are the result of a self-report by Rio Tinto regarding a US$10.5 million payment made to a consultant providing advisory services on the Simandou iron ore project in the southeast of the Republic of Guinea in 2011.[1086] The consultant, Francois Polge de Combret, is believed to have been negotiating with the Republic of Guinea's President Alpha Conde – an old university friend – about the project.[1087] In August 2016, Rio Tinto stated that it had become aware of email correspondence relating to such payments and launched an internal investigation into the matter, as well as suspending Energy and Minerals chief executive Alan Davies, "who had accountability for the Simandou project in 2011".[1088] According to *Business Insider*, the

series of emails reportedly show top executives from Rio Tinto discussing the consultant's fee and how important de Combret had been in securing the deal in Simandou, given his close ties to the President.[1089]

Shortly afterwards, in August 2017, according to the **US** Department of Justice (DoJ), Mahmoud Thiam a former Minister of Mines and Geology of the Republic of Guinea, was sentenced by the Southern District of New York to seven years in prison and three years of supervised release for receiving and laundering US$8.5 million in bribes from two Chinese companies, China Sonangol International Ltd. (China Sonangol) and China International Fund, SA (CIF).[1090] According to the DoJ, "Mahmoud Thiam, a United States citizen who was Minister of Mines and Geology of the Republic of Guinea in 2009 and 2010, engaged in a scheme to accept bribes from senior representatives of a Chinese conglomerate and to launder that money into the United States and elsewhere. In exchange for these multimillion-dollar bribe payments, Thiam used his position as Minister of Mines to facilitate the award to the Chinese conglomerate of exclusive and highly valuable investment rights in a wide range of sectors of the Guinean economy, including near total control of Guinea's significant mining sector".[1091] Neither China Sonangol nor China International Fund were charged in the Thiam case.[1092]

While Rio Tinto is not directly implicated in the US case, Bloomberg reported that Thiam himself had previously accused Rio Tinto of offering him a bribe while he was minister in early 2010 in order to win back control of half of the undeveloped Simandou project from a rival company, BSG Resources Ltd (BSGR), owned by Israeli billionaire Beny Steinmetz. An ex-Rio Tinto executive denied the claims.[1093] According to *The Guardian*, Rio Tinto and BSGR have been involved in a long-standing tussle over Guinea's mining rights since at least 2008, when former Guinean President Lansana Conte stripped Rio Tinto of its rights to the mine and granted half of them to BSGR, although this was overturned by the newly elected government a year later.[1094]

IMPLICATIONS

This case demonstrates how foreign bribery schemes, especially when connected to **powerful political figures**, can paralyse an entire sector of a country's economy. The Simandou iron ore deposits are estimated to be worth around US$110 billion and could add nearly US$6 billion to the Republic of Guinea's gross domestic product, almost doubling the country's economy in nominal terms.[1095] Yet although rights to explore the mine were first granted to Rio Tinto more than 20 years earlier, mining had still not commenced by 2017.[1096] In October 2016, Rio Tinto signed a non-binding agreement to sell its entire stake in the Simandou project to the Chinese company Chinalco with a view to later signing a binding agreement. In March 2018, Rio Tinto announced it had reclassified the ore deposits from "reserves" to "resources" due to "current uncertainties in timing of development and potential variations to project scope under future project ownership".[1097] As noted by *Global Witness*: "The concessions high in West Africa's Simandou Mountains have yet to deliver a single tonne of ore, but continue to yield an unending stream of dirt- and to provide object lessons to an industry with a sorry history of dodgy deals."[1098]

The related case of bribery from China International Fund and China Sonangol also shows how the use of **foreign intermediaries and bank accounts** can facilitate such schemes and make them more difficult to detect, especially if the requisite **background checks** are not performed. According to evidence presented at his trial, Mahmoud Thiam opened a bank account in Hong Kong and misreported his occupation to conceal his status as a public official in Guinea.[1099] As stated by the DoJ in a press release announcing his sentencing: "Thiam participated in a scheme to launder the bribe payments from 2009 to 2011, during which time China Sonangol and China International Fund paid him US$8.5 million through a bank account in Hong Kong. Thiam then transferred approximately US$3.9 million to bank accounts in the United States and used the money to pay for luxury goods and other expenses. To conceal the bribe payments, Thiam falsely claimed to banks in Hong Kong and the US that he was employed as a consultant and that the money was income from the sale of land that he earned before he was a minister."[1100]

SBM OFFSHORE

NAME OF COMPANY: SBM Offshore N.V. and its subsidiary SBM Offshore USA Inc.

COMPANY HEADQUARTERS: Amsterdam, Netherlands – with offices also in Switzerland, Monaco and Houston (Texas)

SECTOR: Oil and gas industry

REVENUES OF THE COMPANY: US$1.67 billion (2017)[1101]

COUNTRIES TARGETED BY THE ALLEGED BRIBERY: Angola, Brazil, Equatorial Guinea, Iraq, Kazakhstan (the enforcement in Brazil is against domestic bribery)

COUNTRIES ENGAGED IN ENFORCEMENT:
Brazil, Netherlands, Switzerland, United Kingdom, United States

TOTAL FINES AND OTHER MEASURES TO DATE:
Criminal penalties of at least US$478 million

CASE DETAILS

SBM Offshore N.V., a major Dutch corporation specialising in the design, construction and supply of offshore oil and gas drilling equipment, has been the subject of a series of foreign bribery enforcement actions in the **Netherlands**, the **United States**, the **UK** and **Brazil** (with the support of Swiss authorities) since 2014.[1102]

Following its own internal investigation in 2014[1103] into initial allegations of bribery made by a whistleblower[1104] and its report to the Dutch authorities, SBM Offshore entered into an out-of-court settlement with the Netherlands Public Prosecutor's Service. The settlement related mainly to US$180.6 million in improper payments to sales agents and foreign government officials in Angola, Brazil and Equatorial Guinea between 2007 and 2011, and called for a payment by SBM Offshore of US$240 million in total (US$40 million fine and US$200 million disgorgement) in three instalments.[1105]

After the Dutch settlement, the US Department of Justice (DoJ) initially announced that it was closing its own inquiry into the matter.[1106] However, the DoJ reopened the case in 2016 based on new information that a US-based executive of SBM's wholly owned US subsidiary (SBM Offshore USA) managed a significant portion of the corrupt scheme within the jurisdiction of the United States.[1107]

In court papers filed in November 2017, the DoJ alleged and SBM Offshore admitted that between 1996 and 2012, the company conspired to violate the US Foreign Corrupt Practices Act (FCPA) by paying more than US$180 million in commissions to intermediaries in Angola, Brazil, Equatorial Guinea, Iraq and Kazakhstan, in the knowledge that a portion of those commissions would be used to bribe public officials in those countries.[1108] The intermediaries were alleged to have paid bribes on behalf of SBM Offshore – in the form of cash, gifts, entertainment, jobs and tuition for foreign officials' relatives – in order to secure improper advantages and obtain a total of US$2.8 billion in projects with various state-owned oil companies.[1109] A significant portion of the alleged bribery scheme is linked to the Petrobras bribery scandal in Brazil.[1110] According to a DoJ representative, the corrupt scheme "involved some of the highest-level executives within the company, spanned five countries and lasted for more than a decade".[1111]

As a result of the reopened investigation, SBM Offshore agreed to pay a further criminal penalty of US$238 million under a published deferred prosecution agreement (including US$500,000 as a criminal fine and US$13.2 million as forfeiture paid by SBM Offshore N.V. on behalf of SBM Offshore USA).[1112] In connection with the resolution, SBM USA pleaded guilty of conspiracy to violate the FCPA. The agreement came weeks after Anthony Mace, the former CEO of SBM and a former board member of SBM USA, and Robert Zubiate, a former SBM USA executive, pleaded guilty to violating the FCPA in early November 2017.[1113] Both Mace and Zubiate were scheduled to be sentenced in August 2018.[1114]

Also in November 2017, the UK Serious Fraud Office (SFO) charged two former SBM Offshore executives and two Unaoil senior employees with allegedly funnelling bribes to officials in Iraq through Unaoil in order to secure contracts for SBM Offshore.[1115] In May 2018, the SFO brought additional charges against the two Unaoil employees relating to corrupt payments to secure a contract worth US$733 million for Leighton Contractors Singapore PTE Ltd for a project to build two oil pipelines in southern Iraq.[1116]

In Brazil, in December 2015 prosecutors reportedly charged 12 people in a domestic bribery case over a bribery scheme involving SBM Offshore. The prosecutors alleged that at least US$46 million in "undue payments" were made in Switzerland between 1998 and 2012 through a scheme involving the bribery by SBM Offshore of officials from the Brazilian state-controlled oil company Petrobras, tied to contracts for floating oil production, storage and offloading ships.[1117] SBM Offshore entered into a leniency agreement with Brazilian authorities and Petrobras on 15 July 2016[1118] to pay a cash penalty of US$162.8 million[1119] and guarantee a 95 per cent price reduction on bonus payments relating to lease and operating contracts of two of its offshore vessels between 2016 and 2030.[1120] However, in September 2016, the Fifth Chamber (review body) of the Brazilian Public Prosecutor's Office refused to approve the deal and in December 2016, the Higher Council, the highest body in the Public Prosecutor's Office, returned the deal to the Fifth Chamber and the prosecutors involved for reconsideration.[1121]

According to a recent update by SBM Offshore, Brazilian authorities have since presented the company with two separate leniency agreements, which it is

reviewing.[1122] At the same time, the Brazilian Federal Court of Accounts has indicated it has concerns with some of the provisions in one of the agreements, relating to the scope and the sufficiency of the amounts payable by the company as **compensation for damages** to Petrobras.[1123] The issue has yet to be resolved.

IMPLICATIONS

It is significant that three out of the four enforcement actions against SBM Offshore have involved some form of **settlement**: an out-of-court settlement in the Netherlands, a deferred prosecution agreement in the United States and a leniency agreement in Brazil. (For the UK, it is too early to tell what the outcome will be, and the charges are in any case brought against individuals, not the company.)

In the Netherlands, the reasons given for the settlement include the fact that SBM Offshore itself brought the facts to the authorities' attention, agreed to fully cooperate with subsequent criminal investigations and underwent a change in senior management from 2012, since taking significant measures to improve compliance.[1124]

In the United States, the reasons for leniency included the risk of "collateral consequences" of a guilty plea, cooperation and remediation undertaken by the company, and the pre-existing Dutch and imminent Brazilian resolutions which were taken into account in the penalty.[1125] As a result, according to the DoJ, SBM Offshore received "an aggregate discount of 25 per cent off the bottom of the otherwise-applicable US Sentencing Guidelines fine range".[1126] Leniency was granted, in the words of the DoJ, "despite the nature and seriousness, pervasiveness and scope of the offense", despite the fact that the conduct "lasted over 16 years, was carried out by employees at the highest level, […] involved large bribe payments, and included deliberate efforts to conceal the scheme", and despite the fact that "the company did not receive voluntary disclosure credit because […] the disclosure did not occur for approximately one year and thus was not timely".[1127] Yet these considerations, it would appear, were ultimately outweighed by the DoJ's desire "to avoid a penalty that would substantially jeopardize the continued viability of the Company".[1128]

The SBM case demonstrates how use of **shell companies** allows such schemes to go undetected. According to the charges filed by the US authorities, SBM Offshore N.V. and its subsidiaries used four intermediaries, including a Brazilian individual who owned several Brazil-based intermediary companies and British Virgin Islands-based shell companies. Additionally, the company used two Monaco-based intermediaries and one Milan-based intermediary. The charges stated that at the request of its intermediary in Brazil, SBM would split its "commission" payments into two accounts, transferring one portion to bank accounts in Brazil held in the name of the intermediary's oil and gas services companies, and another, larger, portion to bank accounts in Switzerland held in the names of the same intermediary's shell companies. The intermediary then wired a portion of the Swiss-based funds to bank accounts under the control of Petrobras officials as bribes.[1129] A similar arrangement was made with regard to another intermediary's transfers to Kazakhstan, with the amounts split between Italy and Switzerland. In the case of a third intermediary, SBM paid its "commissions" to a bank account in Switzerland controlled by the intermediary, who used the funds transferred to make wire transfers to bank accounts under the control of Angolan state oil company Sonangol and its US subsidiary Sonusa, as well as officials in Equatorial Guinea.[1130]

The SBM Offshore case also demonstrates the increasingly important role of **international cooperation** in complex enforcement actions which span multiple jurisdictions. While much of the US-based work was led by the DoJ, this was conducted in collaboration with multiple national and international law enforcement agencies, including the US Federal Bureau of Investigation, Internal Revenue Service, and Immigration and Customs Enforcement; the Dutch Public Prosecution Service, the UK Serious Fraud Office, the Brazilian Federal Prosecution Office, and the Swiss Federal Office of Justice and Office of the Attorney General.[1131] On the Dutch side, a critical step in advancing the case was a request for mutual legal assistance (MLA) to an unnamed country in relation to SBM Offshore's activities in Brazil. While SBM's initial internal investigation yielded "red flags" but no "credible evidence" of improper payments in Brazil, Dutch prosecutors' MLA request uncovered evidence that SBM Offshore's payments to its sales agent in Brazil were passed on to Brazilian government officials.[1132]

The SBM Offshore case highlights important discrepancies in the **depth and quality of information** made public by different actors in high-profile foreign bribery cases. The DoJ published detailed information on the case, including press releases, the full list of charges (so-called "criminal information") against both SBM Offshore and SBM USA, and the final deferred prosecution agreement in full.[1133] The Dutch authorities published a press release explaining the details of the case, but the court documents themselves are

not available.[1134] SBM Offshore itself issued regular press releases and updates throughout the various proceedings, providing both factual representation of the status quo, but also offering the company the opportunity to present its perspective to stakeholders on how the various actions were progressing.[1135]

SINOPEC

NAME OF COMPANY: Addax Petroleum, a Swiss company owned by Sinopec International Petroleum Exploration and Development Corporation (SIPC), which is managed and operated by the Sinopec Group[1136] along with China Petroleum & Chemical Corporation (Sinopec Corp.), also a subsidiary of Sinopec Group

COMPANY HEADQUARTERS: Beijing, China (Sinopec Group) and Geneva, Switzerland (Addax Petroleum)

SECTOR: Oil and gas industry

REVENUES OF THE COMPANY: US$268 billion (2016)[1137]

COUNTRIES TARGETED BY THE ALLEGED BRIBERY: Nigeria

COUNTRIES ENGAGED IN ENFORCEMENT: Switzerland, United States

TOTAL FINES AND OTHER MEASURES TO DATE: Settlement of US$32 million with the Swiss authorities

CASE DETAILS

The Chinese state-controlled oil producer, Sinopec Group, is the largest oil and petrochemical products supplier in China and the second-largest chemical company in the world.[1138] In 2017 it was ranked third on Fortune's Global 500 list.[1139] Sinopec Group manages and operates Sinopec International Petroleum Exploration and Production Corporation (SIPC).[1140] In 2009, SIPC bought Swiss-based Addax Petroleum for US$7.24 billion, in what was then China's biggest-ever foreign oil acquisition, in order to establish a presence in Geneva and expand its oil production in Africa and Iraq.[1141]

Addax had operated in Nigeria since 2001 under a "side letter" agreement with the Nigerian government, under which it was granted special tax breaks and relief from capital costs. However, in 2014, the Nigerian government attempted to retract the agreement and demanded US$3 billion in repayments from Addax, which then filed a lawsuit against the Nigerian government to revoke the decision.[1142] In May 2015, Addax and the Nigerian government reached a settlement validating the original terms of the side letter and effectively nullifying Nigeria's demand for repayments.[1143]

In 2016, allegations of bribery of foreign officials began to emerge, related to the settlement in Nigeria and to the promotion of Addax's activity in the country more generally. The allegations surfaced following the resignation of Addax's auditor, Deloitte, in December 2016 on the grounds that it was unable to obtain "satisfactory explanations" for the reason or size of payments amounting to US$100 million made by the company.[1144] This included payments of more than US$20 million made to several "legal advisers" in Nigeria and the United States from bank accounts in Nigeria and the Isle of Man, in order to ratify the validity and enforcement of the original side letter agreement following the dispute. Deloitte noted particular concern given the "magnitude, timing and urgency of the payments in relation to the settlement agreement".[1145] The payments also included more than US$80 million made to the construction firm Kaztec in relation to construction projects which did not come to fruition. Deloitte's concerns over these payments were compounded by the testimonies of several whistleblowers, both internal and external to Addax, including allegations of bribery of Nigerian government officials using Addax funds through the payments to legal advisers and to Kaztec, as well as other allegations relating to the misuse of Addax corporate funds.[1146] In a letter to the boards and management of Sinopec and Addax in November 2016, Deloitte noted that "(t)he lack of audit evidence we have been able to obtain coupled with the serious whistleblowing allegations gives rise to a suspicion of fraud".[1147]

Soon after, in February 2017, the Office of the Attorney General of the canton of Geneva in Switzerland initiated criminal proceedings against the CEO and legal director of Addax and against the company itself. Following a four-month investigation, the prosecutor concluded that the payments were not sufficiently documented and, as a result, uncertainties remained as to their legality. However, he was unable to establish criminal intent. Instead, given the company's acknowledgement of possible organisational shortcomings, collaboration during the proceedings, and steps taken to improve its internal anti-corruption processes, a settlement

was reached whereby Addax agreed to pay CHF31 million (US$32 million) to the State of Geneva as compensation.[1148]

In August 2017, **US** authorities began investigating another of Sinopec Group's subsidiaries, China Petroleum and Chemical Corporation (Sinopec Corp.) in relation to the same allegations. According to Bloomberg, investigators from the Securities and Exchange Commission (SEC) and Department of justice (DoJ) were looking into allegations that outside lawyers acting as middlemen for the company (including an unidentified Nigerian lawyer who was a member of the California bar[1149]) funnelled illicit payments from Addax to Nigerian officials through banks in New York and California.[1150] The US investigations remain in their early stages.[1151]

IMPLICATIONS

To date, the case has only resulted in a US$31 million **settlement**, which is a small price to pay for the third-largest company in the world with an annual revenue in 2016 alone of more than US$280 billion. As noted by Yves Bertossa, the Swiss magistrate who investigated the case: "The suspicious payments took place without any coherent or plausible explanation. But to say that they ended up in the pockets of officials, it was necessary to obtain the cooperation of Nigeria. That was the obstacle, the difficulty of this investigation."[1152] This demonstrates the importance of **international cooperation** in ensuring that criminal sanctions can be pursued. Without this cooperation, authorities in the prosecuting jurisdiction are often left with little choice but to settle. It may be that such cooperation was made more difficult in this case given the fact that the alleged bribery took place in the context of a dispute which had previously been resolved between the company and the Nigerian government. However, the ongoing investigation by US authorities and the fact that there have reportedly been recent calls from Nigerian civil society for local law enforcement to conduct a full-scale investigation of Deloitte's allegations[1153] offers hope that this avenue is not yet closed.

Addax's actions and response during the investigations offer some important lessons, in particular with regards to **the treatment of (potential) whistleblowers** and the critical **role of external auditors** in foreign bribery cases. According to the Swiss newspaper which initially broke the story on Deloitte's audit findings, Addax management systematically side-lined executives worried about bribe payments in Africa, offering generous "golden parachutes" to buy their silence, with at least five senior executives leaving since 2012.[1154] Interestingly, despite generous financial compensation, most of the resigning executives reportedly negotiated the right to be able to testify in court about possible corruption, with several former employees subsequently testifying during the Geneva inquiry.[1155]

Just as significant were Addax's alleged attempts to illegally terminate Deloitte's auditing responsibilities over the company and a number of its subsidiary companies in Nigeria, the Isle of Man and the UK. In response, Deloitte noted two important considerations which would apply, even if the terminations were to be legally concluded: (a) Deloitte would be required to disclose to subsequent auditors of Addax or its subsidiaries in these countries the relevant details of the case; and (b) an audit termination would result in the issues becoming a matter of public record in the UK (via the listing of Addax's UK subsidiary on the UK's public registry of companies) which, in the words of Deloitte, "has the potential to damage the reputation not only of Addax, but also of Sinopec Group, in particular regarding the inadequate response to date".[1156]

It is perhaps not surprising that shortly after the Swiss settlement, Addax announced it was shutting its offices in Geneva, as well as two further offices in Houston and Aberdeen, integrating the three offices into a new technical centre in Beijing, with Addax's operating companies reporting directly to Sinopec headquarters.[1157] According to one analysis: "The decision by Sinopec [Group] to centralise Addax's management in Beijing is likely a defensive move to protect the company from future similar allegations, given the evident track record established."[1158] Reports also indicate that Sinopec is contemplating transferring auditing responsibilities away from Western firms to solely China-based companies in future.[1159]

V. METHODOLOGY

Transparency International assesses three factors to place OECD Convention countries in one of four categories showing their level of enforcement of the convention:

- **Active Enforcement**
- **Moderate Enforcement**
- **Limited Enforcement**
- **Little or No Enforcement**

"Active Enforcement" is considered a major deterrent to foreign bribery. "Moderate Enforcement" and "Limited Enforcement" indicate stages of progress, but are considered to represent insufficient deterrence. Where there is "Little or No Enforcement" there is no deterrence.

The factors used to classify countries' enforcement level are:

FACTOR 1: TIME PERIOD COVERED

The classification of enforcement is based on the Convention countries' enforcement actions in the period 2014-2017. (The previous report covered 2011-2014.)

FACTOR 2: SHARE OF WORLD EXPORTS

The underlying presumption is that the prevalence of foreign bribery is roughly in proportion to export activities and that exporting countries can be compared. Transparency International recognises that the potential for foreign bribery could be affected by factors other than the level of world exports, such as foreign investment, a country's culture of business ethics, and corruption risks in particular industry sectors and economies. As reliable country-by-country information for most of these factors is not currently available, an inclusion of these variables in the weighting scheme was not deemed possible. However, we will continue to explore possibilities for improving our methodology.

Thresholds for enforcement categories are based on the country's average percentage of world exports over a four-year period.[1160]

FACTOR 3: POINT SYSTEM WEIGHTING FOR DIFFERENT ENFORCEMENT ACTIVITIES

The weighting used is as follows: one point for commencing investigations[1161], two points for commencing cases, four points each for commencing major cases or concluding cases with sanctions, and 10 points for concluding major cases with substantial sanctions.[1162] The definition of "major case" includes the bribing of senior public officials by major companies, including state-owned enterprises.[1163] In determining whether a case is "major", additional factors to be considered include:

- whether the defendant is a large multinational corporation.
- whether the amount of the contract and of the alleged payment(s) is large.
- whether the case constitutes a major precedent and deterrent.

The date of commencement of a case is when an indictment or a civil claim is received by the court. Prior to that, it is counted as an investigation.

This point system reflects two factors: 1) the level of effort required by different enforcement actions, and 2) their deterrent effect. While the points assigned are somewhat arbitrary, it seems clear that concluding

a major case with substantial sanctions will have a greater deterrent effect and require greater effort than commencing an investigation. Similarly, concluding a case with sanctions requires more work and greater effort, and has a greater deterrent effect, than launching a case.

CALCULATION OF ENFORCEMENT CATEGORY

Each country collects enforcement points through its enforcement actions. The sum of these points is multiplied by the average of the country's share of world exports during the four-year period assessed.

To enter the categories of "Active Enforcement", "Moderate Enforcement" or "Limited Enforcement", a country's result has to reach the pre-defined threshold ("Minimum points required for enforcement levels", indicated in the table below) of the particular enforcement category. If the result is below the lowest threshold, the country qualifies for the "Little or No Enforcement" category.

The thresholds for each per cent of share of world exports are as follows: 40 points for the "Active Enforcement" category, 20 points for the "Moderate Enforcement" category, and 10 points for the "Limited Enforcement" category, while a country that has a 1 per cent of share in world exports but collects less than 10 points through its enforcement activities is in the "Little or No Enforcement" category. The following table gives examples of thresholds of enforcement categories based on share of world exports:

	Country W	Country X	Country Y	Country Z
Share of world exports / Enforcement categories	0.5%	1%	2%	4%
Active Enforcement	**20**	**40**	**80**	**160**
Moderate Enforcement	**10**	**20**	**40**	**80**
Limited Enforcement	**5**	**10**	**20**	**40**
Little or No Enforcement	**< 5**	**< 10**	**< 20**	**< 40**

For example, Argentina has a 0.4 per cent share of world exports. 0.4 multiplied by 40, by 20 and by 10 renders the following thresholds: 16 points to be in the "Active Enforcement" category, 8 points for the "Moderate Enforcement" category, and 4 points for the "Limited Enforcement" category.

In addition to the necessary point scores, for a country to be classified in the "Active Enforcement" category, at least one major case with substantial sanctions needs to have been concluded during the past four years. In the "Moderate Enforcement" category at least one major case needs to have commenced in the past four years.

The above thresholds assume that a country which has a 1 per cent share of world exports should collect at least 40 points over a period of four years to be considered as an active enforcer. This may mean, for example, four investigations (4x1 points) plus two cases commenced (2x2 points) plus two major cases commenced (2x4 points) plus one case concluded with sanctions (1x4 point) plus two major cases concluded with substantial sanctions (2x10 points).

For the purposes of this report, foreign bribery cases and investigations include civil and criminal cases and investigations, whether brought under laws dealing with corruption, money laundering, tax evasion, fraud, or violations of accounting and disclosure requirements. They concern active bribery of foreign public officials, not bribery of domestic officials by foreign companies.

Cases (and investigations) involving multiple corporate and/or individual defendants, or multiple charges, are counted as one if they are commenced as a single proceeding. If during the course of a proceeding, cases against different defendants are separated, they may be counted as separate concluded cases.

Cases brought on behalf of European Union institutions or international organisations are not counted – for example, in Belgium and Luxembourg. These are cases that are identified and investigated by European Union bodies and referred to domestic authorities.

DIFFERENCES BETWEEN REPORTS BY TRANSPARENCY INTERNATIONAL AND THE OECD WORKING GROUP ON BRIBERY

Transparency International's report differs from the Working Group's report in several key respects. Transparency International's report is more comprehensive than the Working Group's, as Transparency International covers investigations, commenced cases and convictions, settlements or other dispositions of cases that have become final, and in which sanctions were imposed, while the Working Group covers only convictions. Transparency International uses a broader definition of foreign bribery cases, covering cases where foreign bribery is the underlying issue, whether brought under laws dealing with corruption, money laundering, tax evasion, fraud or violations of accounting or disclosure requirements; the Working Group covers only foreign bribery cases. The Working Group report is based on data supplied directly by the government representatives who serve as members of the Working Group. Transparency International uses data supplied by its own experts.

Transparency International selects corporate or criminal lawyers who are experts in foreign bribery matters to assist in the preparation of the report. They are primarily local lawyers chosen by Transparency International national chapters. Questionnaires are filled in by the experts (most of whom have been respondents for this report for several years) and are reviewed by lawyers in the Transparency International Secretariat. The Secretariat provides the country representatives of the OECD Working Group with an advanced draft of the full report, in order to receive their comments. The draft is further reviewed by the experts and the Transparency International Secretariat after the country representatives provide feedback.

To enable comparisons between the results in 2015 and in this 2018 report, we include here the scoring results from the 2015 report.

TABLE 4: INVESTIGATIONS AND CASES: 2011-2014

NB: Blank spaces mean that statistical data is not available. Iceland, Latvia and Peru are not included in the table; see the note on the Status of Enforcement and country reports.

***** Obtained from OECD average for 2011–2014.

****** Without any major case commenced during the past four years, a country does not qualify as being a moderate enforcer, and without a major case with substantial sanctions being concluded in the past four years, a country does not qualify as being an active enforcer.

******* The Convention entered into force in Russia in April 2012, in Colombia in January 2013 and in Latvia in May 2014, so the requirements were lowered proportionately.

TABLE 4: INVESTIGATIONS AND CASES: 2011-2014

	Share of world exports*	Investigations commenced (weight of 1)				Major cases commenced (weight of 4)				Other cases commenced (weight of 2)			
	Average 2011-2014	2011	2012	2013	2014	2011	2012	2013	2014	2011	2012	2013	2014
Active Enforcement: (4 countries) 22.8 %													
United States	9,8	27	24	25	17	4	2	4	2	0	2	0	0
Germany	7,4	32	13	14	9	1	2	2	0	11	3	5	8
United Kingdom	3,6	11	6	2	2	4	3	1	2	0	0	0	0
Switzerland	2,0	16	19	22	27	0	1	0	0	0	0	1	1
Moderate Enforcement: (6 countries) 8.8%													
Italy	2,7	1	7	1	3	1		1	2		9	6	7
Canada	2,4	10	2		0	2	2	3	1	0	0	0	0
Australia	1,4	5	10	11	0	1	0	0	0	0	0	1	0
Austria	1,0	5	2	1	0	1	2	1	0	0	0	0	0
Norway	0,9	2	1	0		1	0	0		0	0	0	
Finland	0,5	1	0	0	0	0	2	1	0	0	0	0	0
Limited Enforcement: (9 countries) 12.7%													
France	3,5	1	2	9	16	2	1	1	0	1	1	0	0
Netherlands	3,1	3	3	1	1	0	0		0	0	0		0
South Korea	3,0	0	0	3	0	1	0	0	0	3	0	3	0
Sweden	1,1	0	3	2	0	0	1	0	0	0	0	1	0
Hungary	0,5	1	0	0	0	0	0	0		1	0	0	
South Africa**	0,5	2	2	1	15	0	0	0	0	0	0	0	0
Portugal**	0,4	0	2	5	1	0	0	0	0	0	0	0	0
Greece **	0,3	1	1	1	3	0	0	0	0	0	0	0	0
New Zealand	0,2	0	0	2	1	0	0	0		0	0	0	
Little or No Enforcement: (20 countries) 20.4%													
Japan	3,7	1		2	0	0		0	1	0		1	0
Russia***	2,6	0	0	0	0	0	0	0	0	0	0	0	0
Spain	1,9	1	1	0	1	0	0	0	0	0	0	0	0
Belgium	1,9				1	1			0				0
Mexico	1,7	0	0	0		0	0	0		0	0	0	
Brazil	1,3	2	3	0	3	0	0	0	1			0	0
Ireland	1,1	0	0	0	0	0	0	0	0	0	0	0	0
Poland	1,0	0	0	0	0	0	0	0	0	0	1	0	0
Turkey	0,9	3	1	1	0	0	0	0	0	0	0	0	0
Denmark	0,8	0	3	0	0	0	0	0	0	0	0		0
Czech Republic	0,7	1	2	0	0	0	0	0	0	0	0	0	0
Luxembourg	0,5	0	1	0		0	0	0		0	1	0	
Argentina	0,4	0	1	0	0	0	0	0	0	0	0	0	0
Chile	0,4	0	0	0	0	0	0	0	0	0	0	0	0
Israel	0,4	0	0	0	1	0	0	0	0	0	0	0	0
Slovak Republic	0,4	0	0	0	0	0	0	0	0	0	0	0	0
Colombia***	0,3			0	0			0	0			0	0
Slovenia	0,2	0	1	0		0	0	0	0	0	0	0	
Bulgaria	0,2	0	0	0		0	0	0		0	0	0	
Estonia	0,1	0	0	0	0	0	0	0	0	0	0	0	0

TABLE 4: INVESTIGATIONS AND CASES: 2011-2014

	Major cases concluded with substantial sanctions (weight of 10)				Cases concluded with sanctions (weight of 4)				Total points	Minimum points required for enforcement levels depending on share of world exports		
	2011	2012	2013	2014	2011	2012	2013	2014	Past 4 years	active	moderate	limited
Active Enforcement: (4 countries) 22.8 %												
United States	15	18	13	16	20	11	7	8	**949**	390	195	98
Germany	3	5	0	2	16	24	13	11	**490**	297	148	74
United Kingdom	7	1	2	2	1	0	0	0	**185**	142	71	36
Switzerland	2	0	3	1	1	1	8	4	**208**	81	41	20
Moderate Enforcement: (6 countries) 8.8%												
Italy	0	1	0	2	1		0	0	**106**	108	54	27
Canada	1	0	1	1	0	0	0	0	**74**	97	49	24
Australia	0		0	0	0	1	1	0	**40**	54	27	14
Austria	0	0	0	0	0	0	0	0	**24**	40	20	10
Norway	0	0	0	2	1	0	0		**31**	36	18	9
Finland	0	0	0	0	0	0	1	0	**17**	18	9	5
Limited Enforcement: (9 countries) 12.7%												
France	0	0	0	0	1	1	1	0	**60**	139	70	35
Netherlands	0	1		1	0	0	1	0	**32**	123	61	31
South Korea	0	0	0	0	0	0	0	5	**39**	122	61	30
Sweden	0	1	0	0	0	0	0	0	**21**	45	23	11
Hungary	0	0	0		1	0	0	0	**7**	21	10	5
South Africa**	0	0	0	0	0	0	0	0	**20**	20	10	5
Portugal**	0	0	0	0	0	0	0		**8**	15	8	4
Greece **	0	0	0	0	0	0	0	0	**6**	13	6	3
New Zealand	0	0	0		0	0	0		**3**	9	5	2
Little or No Enforcement: (20 countries) 20.4%												
Japan	0		0	0	0		1	0	**13**	149	74	37
Russia***	0	0	0	0	0	0	0	0	**0**	67	34	17
Spain	0	0	0		0	0	0		**3**	76	38	19
Belgium	1			0				0	**15**	76	38	19
Mexico	0	0	0		0	0	0		**0**	69	34	17
Brazil	0	0	0	0	0	0	0	0	**12**	50	25	13
Ireland	0	0	0	0	0	0	0	0	**0**	43	22	11
Poland	0	0	0	0	0	1	0	0	**6**	42	21	10
Turkey	0	0	0	0	0	0	0	0	**5**	36	18	9
Denmark	0	0	0	0	0	0	0	0	**3**	32	16	8
Czech Republic	0	0	0	0	0	0	0	0	**3**	29	14	7
Luxembourg	0	0	0		0	0	0		**3**	20	10	5
Argentina	0	0	0	0	0	0	0	0	**1**	15	8	4
Chile	0	0	0	0	0	0	0	0	**0**	16	8	4
Israel	0	0	0	0	0	0	0	0	**1**	16	8	4
Slovak Republic	0	0	0	0	0	0	0	0	**0**	15	8	4
Colombia***			0	0			0	0	**0**	6	3	1
Slovenia	0	0	0	0	0	0	0	0	**1**	6	3	2
Bulgaria	0	0	0		0	0	0		**0**	8	4	2
Estonia	0	0	0	0	0	0	0	0	**0**	4	2	1

VI. COUNTRY/REGION EXPERTS

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Pro bono recognition

Transparency International would like to acknowledge the support provided by the International Senior Lawyers Project-UK, which identified national experts in several countries who pro bono prepared country reports or made other pro bono contributions to the report.

ENDNOTES

EXECUTIVE SUMMARY

1 https://www.oecd-ilibrary.org/economics/oecd-economic-outlook-volume-2017-issue-1/shares-in-world-exports-and-imports_eco_outlook-v2017-1-table256-en
2 OECD (2018), FDI flows (indicator). doi: 10.1787/99f6e393-en (Accessed on 14 May 2018): https://data.oecd.org/fdi/fdi-flows.htm
3 Hong Kong is a Special Administrative Region (SAR) of the People's Republic of China.
4 By parties is meant countries that have consented to be bound by the Convention through ratification, accession or adhesion and depositing an instrument of ratification. There are currently 44 parties to the OECD Anti-Bribery Convention, sometimes referred to in this text as "signatories".
5 https://www.wto.org/english/res_e/booksp_e/wtr13-2b_e.pdf page 55; World trade in goods and services doubled in the period 2005 – 2015 https://www.wto.org/english/res_e/statis_e/wts2016_e/WTO_Chapter_02_e.pdf; See also,https://data.worldbank.org/indicator/NE.EXP.GNFS.CD
6 The underlying assumption is that the prevalence of foreign bribery is roughly in proportion to level of export activity.
7 A settlement is a resolution between disputing parties about a legal case before or after court action begins. In the context of foreign bribery cases it relates to resolutions of criminal, civil or administrative actions brought by government enforcement authorities. For full details on adequate standards, see Transparency International's 2015 Policy Brief on settlements: https://www.transparency.org/whatwedo/publication/can_justice_be_achieved_through_settlements
8 http://www.oecd.org/daf/anti-bribery/Phase-4-Guide-ENG.pdf pp 45 and subsequent. The questionnaire calls for detailed data on investigations, prosecutions, court proceedings and civil or administrative proceedings and their outcomes.
9 The principle of dual criminality requires is that the particular acts alleged constitute a crime in both jurisdictions. To satisfy the dual criminality requirement, it is enough that the conduct involved is criminal in both countries.
10 See also Section II on Methodology.

I. GLOBAL FINDINGS AND RECOMMENDATIONS

11 Hong Kong is a Special Administrative Region (SAR) of the People's Republic of China.
12 By parties is meant countries that have consented to be bound by the convention through ratification, accession or adhesion and depositing an instrument of ratification. There are currently 44 parties to the OECD Anti-Bribery Convention, sometimes referred to in this text as "signatories".
13 http://www.oecd.org/corruption/anti-bribery/Finland-Phase-4-Report-ENG.pdf
14 https://treaties.un.org/Pages/ViewDetails.aspx?chapter=4&clang=_en&mtdsg_no=IV-4&src=IND
15 The OECD WGB said in its Phase 4 Report on the Czech Republic in 2017 "expedient access to court judgements concerning foreign bribery is necessary to ensure that sanctions for foreign bribery are effective, proportionate and dissuasive as required by the Convention. Their publication is also necessary for raising awareness of the risks of foreign bribery, and to ensure that Czech companies understand how to manage those risks through effective compliance measures". http://www.oecd.org/corruption/anti-bribery/Czech-Republic-Phase-4-Report-ENG.pdf
16 https://www.sfo.gov.uk/publications/corporate-information/annual-reports-accounts/
17 www.fiscaliadechile.cl and www.uaf.cl
18 https://sudrf.ru/
19 See, for example, the 2016 annual report: https://www.minv.sk/swift_data/source/policia/naka_opr/opr/inf_o_cinnosti_naka/Informacia%20o%20cinnosti%20NAKA%20P%20PZ%20za%20rok%202016%20public.pdf
20 http://www.justica.gov.br/sua-protecao/cooperacao-internacional/estatisticas
21 For a survey of the situation in the EU, see Online Publication of Court Decisions in the EU (15 February 2017) http://www.bo-ecli.eu/uploads/deliverables/Deliverable%20WS0-D1.pdf
22 http://www.bo-ecli.eu/uploads/deliverables/Deliverable%20WS0-D1.pdf As a general rule, natural persons have to be anonymised, legal persons do not. In practice, legal persons are anonymised in some EU countries, including Germany and the Netherlands.
23 OECD WGB Phase 4 Report on the UK in 2017, page 59 at paragraph 156, http://www.oecd.org/corruption/anti-bribery/UK-Phase-4-Report-ENG.pdf
24 See the website of the Dutch Public Prosecutor (27 February 2018): https://www.om.nl/onderwerpen/hoge-transacties/hoofdofficier/ (in Dutch)
25 http://aplicativos.pgr.mpf.mp.br/mapas/mpf/atuacao/index.php?UID=1448285810
26 http://www.mpf.mp.br/atuacao-tematica/ccr5/coordenacao/colaboracoes-premiadas-e-acordos-

de-leniencia/colaboracoes-premiadas-e-acordos-de-leniencia

27 http://www.mpf.mp.br/para-o-cidadao/caso-lava-jato/atuacao-na-1a-instancia/parana/resultado

28 http://www.pjud.cl/consulta-unificada-de-causas

29 http://www.cij.gov.ar/inicio.html

30 https://www.riigiteataja.ee/kohtulahendid/koik_menetlused.html (in Estonian)

31 http://www.oecd.org/daf/anti-bribery/Phase-4-Guide-ENG.pdf pp 45 et seq. The questionnaire calls for detailed data on investigations, prosecutions, court proceedings and civil or administrative proceedings and their outcomes.

32 https://www.oecd.org/daf/anti-bribery/Anti-Bribery-Convention-Enforcement-Data-2016.pdf

33 The principle of dual criminality requires is that the particular acts alleged constitute a crime in both jurisdictions. To satisfy the dual criminality requirement, it is enough that the conduct involved is criminal in both countries.

34 NJN Activity Report for the period 17.03.2016-24.02.2017: http://www.vss.justice.bg/root/f/upload/14/otcet-2016.pdf;

35 https://one.oecd.org/document/DAF/WGB(2017)72/en/pdf

36 http://www.oecd.org/daf/anti-bribery/Slovenia-Phase-3-Written-Follow-Up-Report-ENG.pdf

37 https://www.oecd.org/corruption/anti-bribery/South-Africa-Phase-3-Written-Follow-Up-Report-ENG.pdf

38 https://www.mpf.gob.ar/blog/mesa-de-trabajo-de-los-equipos-tecnicos-por-el-caso-lava-jato-odebrecht/

39 https://af.reuters.com/article/africaTech idAFKCN1GP1VM-OZABS

40 http://www.fcpablog.com/blog/2016/8/30/report-sec-pays-its-first-fcpa-whistleblower-award.html

41 New Zealand Treasury, Government Inquiry into Foreign Trust Disclosure Rules, 2016 (The Shewan Inquiry)

42 See OECD, Liability of Legal Persons for Foreign Bribery: A Stocktaking Report (September 2016), http://www.oecd.org/corruption/liability-of-legal-persons-for-foreign-bribery-stocktaking-report.htm

43 https://www.boletinoficial.gob.ar/ -!DetalleNorma/175501/20171201

44 https://www.economie.gouv.fr/afa

45 FBI Corruption Squad members are experienced white-collar crime investigators who have at their disposal a set of powerful investigative tools, including financial analysis, court-authorised wiretaps, undercover operations and informants. The three squads are based in New York City, Los Angeles and Washington, D.C.; https://www.fbi.gov/news/stories/fbi-establishes-international-corruption-squads

46 The defence of "effective regret" exonerates a person who commits bribery but voluntarily reports the crime to the authorities.

47 http://www.oecd.org/daf/anti-bribery/Russia-Phase-2-Written-Follow-up-Report.pdf

48 Implementing the OECD Anti-Bribery Convention Phase 4 Report, Australia: http://www.oecd.org/corruption/anti-bribery/Australia-Phase-4-Report-ENG.pdf, page 14. Australia is currently considering the expansion of reporting obligations under anti-money laundering and countering the financing of terrorism legislation to real estate agents, lawyers, conveyancers, accountants, high-value dealers, and trust and company service providers.

49 See Transparency International's report "Doors Wide Open" (2017), which identified problems in Australia, Canada, the UK and the United States: https://www.transparency.org/whatwedo/publication/doors_wide_open_corruption_and_real_estate_in_four_key_markets

50 https://huisvoorklokkenluiders.nl/wp-content/uploads/2018/01/Verkenning-Meldprocedures-en-integriteitsvoorzieningen-2017.pdf (in Dutch)

51 http://www.oecd.org/daf/anti-bribery/Austria-Phase-3-Follow-up-Report-ENG.pdf, page 4

52 http://www.oecd.org/corruption/oecd-says-swedish-progress-combatting-foreign-bribery-insufficient-to-warrant-phase-4-evaluation.htm

53 http://www.oecd.org/daf/anti-bribery/HungaryP3WrittenFollowUpReportEN.pdf

54 https://www.business-anti-corruption.com/country-profiles/belgium/

55 http://www.oecd.org/corruption/anti-bribery/Finland-Phase-4-Report-ENG.pdf

56 https://rm.coe.int/16806dce15, paragraph 127

57 http://www.codozasady.pl/en/recent-changes-in-criminal-procedure-operational-monitoring-and-the-prosecution-system/

58 http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22564&LangID=E

59 http://www.oecd.org/corruption/statement-of-the-oecd-working-group-on-bribery-on-belgium-s-limited-implementation-of-the-anti-bribery-convention.htm

60 http://www.oecd.org/corruption/oecd-says-swedish-progress-combatting-foreign-bribery-insufficient-to-warrant-phase-4-evaluation.htm

61 http://www.oecd.org/daf/anti-bribery/Phase-4-Guide-ENG.pdf, pp 26 -27

62 A settlement is a resolution between disputing parties about a legal case before or after court action begins. In the context of foreign bribery cases it relates to resolutions of criminal, civil or administrative actions brought by government enforcement authorities. For full details on adequate standards, see Transparency International's 2015 Policy Brief on settlements: https://www.transparency.org/whatwedo/publication/can_justice_be_achieved_through_settlements

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77 For full details see Transparency International's 2015 Policy Brief on settlements: https://www.transparency.org/whatwedo/publication/can_justice_be_achieved_through_settlements
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II. REPORTS ON OECD CONVENTION COUNTRIES

85 Information provided to *Poder Ciudadano* (Transparency International Argentina) by the Public Prosecutor's Office does not differentiate between investigations and prosecutions. *Poder Ciudadano* also made a request for public information on cases of transnational bribery to the Ministry of Foreign Affairs, but the Ministry refused, claiming this information is not public.
86 Given that Law 27.401 on corporate criminal liability for corruption only came into force in March 2018, in cases where the alleged offence was committed before that date, it is individuals, not the companies themselves, who are being investigated (be they shareholders, board members, directors, employees or intermediaries).
87 Response to a request for information made by Poder Ciudadano (Transparency International in Argentina) to the Public Prosecutor's Office on 17 November, 2017.
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89 Telespazio Argentina is a subsidiary of Telespazio, an Italian joint venture between Leonardo (67 per cent) and Thales (33 per cent), which specialises in satellite solutions and services. In 2016, Leonardo changed its name from Leonardo Finmeccanica. Under its previous name the company was accused of creating slush funds to bribe politicians in Brazil, India, Italy and Panama: https://www.traceinternational.org/TraceCompendium/Detail/421?class=casename_searchresult&type=1
90 http://www.tynmagazine.com/justicia-imputa-a-ejecutivos-de-telespazio-argentina-por-presuntos-sobornos-en-panama/
91 The company no longer exists: https://www.clarin.com/politica/hermanos-ligados-vido-millonarios-record_0_ryfXsG28.html
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100 https://www.mpf.gob.ar/wp-content/uploads/2017/05/Informe-Anual-2016.pdf
101 www.fiscales.gob.ar
102 http://www.cij.gov.ar/inicio.html
103 The type of information that can be obtained is limited to the file number, the name of the case, the crimes that are investigated, the responsible court and those involved, but no other details about the case.
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105 http://www.fcpablog.com/blog/2018/1/16/jorge-and-basch-argentina-introduces-deferred-prosecution-ag.html
106 http://www.consejosalta.org.ar/wp-content/uploads/Decreto-1246.pdf
107 Source: Response to a request for information made by *Fundación Poder Ciudadano* to the PPO on 17 November 2017.
108 However, within the PPO both the *Procuraduría de Investigaciones Administrativas (PIA)* and *Procuraduría de Criminalidad Económica y Lavado de Activos (PROCELAC)* can initiate preliminary investigations from anonymous allegations.
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110 http://www.oecd.org/corruption/anti-bribery/Argentina-Phase-3bis-Report-ENG.pdf
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112 http://www.oecd.org/corruption/anti-bribery/Argentina-Phase-3bis-Report-ENG.pdf
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115 http://www.telam.com.ar/notas/201706/192610-procuracion-argentina-brasil-equipo-investigacion.html
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122 https://www.smh.com.au/national/first-charges-laid-in-unaoil-bribery-scandal-20171117-gznelf.html; https://www.nytimes.com/2017/09/23/business/ahsani-middlemen-oil-unaoil.html

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124 https://globalinvestigationsreview.com/article/1148619/australia-drops-another-bhp-investigation

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140 Treasury Laws Amendment (Enhancing Whistleblower Protections) Bill 2017

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143 http://www.oecd.org/corruption/anti-bribery/Australia-Phase-4-Report-ENG.pdf

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145 Report of the Senate Economics References Committee, 28 March 2018: https://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Foreignbribery45th/Report

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156 https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=20009980
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163 https://one.oecd.org/document/DAF/WGB(2017)72/en/pdf
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limited-implementation-of-the-anti-bribery-convention.htm

178 The amendment increases the amount of the fines by multiplying its minimum amount by three and its maximum amount by five, if the briber or the bribed person is either a public official from a foreign state or a member of an organisation under public law. This increases the maximum fine to €4,000,000 for individuals and €8,000,000 for legal entities.

179 https://one.oecd.org/document/DAF/WGB(2017)67/en/pdf

180 This can happen either if a Belgian person bribes a public official of country X where domestic bribery is not a criminal offence, or if a Belgian person bribes a public official of country X from a third country, Y, where foreign bribery is not a criminal offence.

181 By the National Contact Point in Belgium for the OECD guidelines for multinational enterprises, in collaboration with the Justice and Economic Affairs Administrations, the Belgium International Chambers of Commerce, and the Federation of Enterprises in Belgium: https://diplomatie.belgium.be/sites/default/files/downloads/anti-corruption-guide.pdf

182 http://www.oecd.org/daf/anti-bribery/Belgium-Phase-3-Written-Follow-Up-Report-ENG.pdf; http://www.oecd.org/daf/anti-bribery/Belgium-Phase-3-Written-Follow-Up-Report-ENG.pdf

183 http://www.oecd.org/daf/anti-bribery/Belgium-Phase-3-Written-Follow-Up-Report-ENG.pdf; If a criminal settlement is concluded when the case is pending before trial courts, the settlement will be homologated during a public audience – but there is no certaintly that it will ever be "published". If the criminal settlement is concluded during the investigation, there will be no such publicity (the only potential publicity would be a leak to journalists).

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188 http://www.mpf.mp.br/atuacao-tematica/sci/noticias/noticias-1-1/ministerios-publicos-do-brasil-e-de-mocambique-firmam-acordo-com-a-embraer

189 http://politica.estadao.com.br/noticias/geral,odebrecht-e-braskem-fecham-acordo-de-r-6-9-bilhoes-com-eua-e-suica,10000095711; http://www1.folha.uol.com.br/poder/2016/12/1843413-eua-e-suica-anunciam-acordo-de-r-14-bi-com-odebrecht-e-braskem.shtml

190 The case should not be considered to have been opened, as charges for foreign bribery have not been brought against either the company or its executives. Further, the CGU agreement does not, as of its signing, include a significant sanction in a major foreign bribery case for the following reasons: (i) as its terms have not been made public, as of July 2018, it is not possible to fully evaluate it; (ii) the portion of the fine that refers to foreign bribery – US$10 million – is not proportional to the irregularities committed abroad by the company and its employees and agents; (iii) the six-year period allowed for Odebrecht to seek agreements with countries where its employees bribed officials is too long and may lead to impunity, especially in jurisdictions where there is no political interest in pursuing investigations of local authorities involved in Odebrecht's wrongdoings, and therefore no interest in settling agreements with the company; (iv) the willingness of Brazilian authorities to investigate and punish Odebrecht for irregularities committed in countries with which the company does not celebrate agreements remains untested (see case study on page 107). In addition, developments which took place in 2018 have not been considered under the methodology of this report.

191 For most cases (except those deemed confidential), this includes the location of the proceedings, the type of proceedings (investigation, criminal case, etc.), number of the case, start date and details of its processing: http://aplicativos.pgr.mpf.mp.br/mapas/mpf/atuacao/index.php?UID=1448285810

192 http://www.mpf.mp.br/atuacao-tematica/ccr5/coordenacao/colaboracoes-premiadas-e-acordos-de-leniencia/colaboracoes-premiadas-e-acordos-de-leniencia

193 As stated on the article 5th, LX of the Brazilian Constitution.

194 http://www.mpf.mp.br/para-o-cidadao/caso-lava-jato/atuacao-na-1a-instancia/parana/resultado

195 http://politica.estadao.com.br/blogs/fausto-macedo/wp-content/uploads/sites/41/2017/01/Leni%C3%AAncia-Odebrecht.pdf

196 http://www.mpf.mp.br/rj/sala-de-imprensa/docs/pr-rj/TCAC%20Embraer%20MPF%20CVM.pdf

197 http://www.justica.gov.br/sua-protecao/cooperacao-internacional/estatisticas

198 Each phase of the investigation has a particular focus, for example, the illegal exchange market and its operators, different state-owned enterprises, and specific projects. For the 52nd phase, see: http://agencia-brasil.ebc.com.br/geral/noticia/2018-06/policia-federal-cumpre-11-mandados-na-52a-fase-da-lava-jato.

199 http://www.mpf.mp.br/para-o-cidadao/caso-lava-jato/entenda-o-caso

200 http://www.mpf.mp.br/atuacao-tematica/sci/car-

wash-case/car-wash-case-brasilia-april-2016.pdf

201 http://fcpamericas.com/english/brazil/brazilian-federal-prosecutors-issue-guidance-leniency-agreements/#

202 http://www.cgu.gov.br/assuntos/etica-e-integridade/empresa-pro-etica

203 http://www.cgu.gov.br/noticias/2018/04/cgu-e-anvisa-firmam-parceria-de-combate-ao-suborno-transnacional

204 https://politica.estadao.com.br/blogs/fausto-macedo/controladoria-e-cade-firmam-cooperacao-para-combater-suborno-transnacional/

205 The agreement was reached under the auspices of an AGU-CGU Ordinance, signed in December 2016, regulating leniency agreement procedures within the federal government: https://www.conjur.com.br/dl/portaria-interministerial-acordo.pdf

206 https://www.jota.info/justica/acordos-de-leniencia-ainda-geram-inseguranca-juridica-28112017; http://www.lecnews.com/artigos/2017/07/17/a-ausencia-de-seguranca-juridica-na-colaboracao-com-as-autoridades/; https://www.conjur.com.br/dl/portaria-interministerial-acordo.pdf

207 http://www.cgu.gov.br/noticias/2018/07/acordo-de-leniencia-com-a-odebrecht-preve-ressarcimento-de-2-7-bilhoes

208 https://www.reuters.com/article/us-brazil-corruption-odebrecht/odebrecht-signs-new-leniency-deal-with-brazil-authorities-idUSKBN1JZ2U9

209 https://www1.folha.uol.com.br/mercado/2018/07/ministra-da-agu-faz-periplo-para-evitar-suspensao-de-acordo-com-odebrecht.shtml

210 https://www25.senado.leg.br/web/atividade/materias/-/materia/106404

211 Federal Law 12.846/2013 (Corporate Liability Law)

212 As of 26 January 2018, only 14 of Brazil's 27 state governments had issued local regulations concerning administrative liability for companies in corruption cases: http://www.migalhas.com.br/Quentes/17,MI273127,51045-Apos+quase+5+anos+metade+dos+Estados+regulamentou+lei+anticorrupcao

213 As of 26 May 2018: http://www.portaltransparencia.gov.br/cnep

214 http://opiniao.estadao.com.br/noticias/geral,o-futuro-dos-acordos-de-leniencia,70002129994

215 https://www.jota.info/justica/acordos-provas-moro-13062018

216 https://portal.tcu.gov.br/data/files/83/A7/EC/6E/70625510F5E781552A2818A8/034.365-2014-1%20_BNDES-exporta__o_.pdf

217 PL1701/2011 and PLS 664/2011; Both the leniency agreement regulations and the whistleblower protection legislation were included in "New Measures against Corruption", advocated by Transparency International Brazil.

218 https://www.oecd.org/daf/anti-bribery/Brazil-Phase-3-Report-EN.pdf

219 http://www.mpf.mp.br/para-o-cidadao/caso-lava-jato/entenda-o-caso

220 https://oglobo.globo.com/brasil/cooperacao-internacional-cresce-lava-jato-ja-mobiliza-55-paises-22678724; https://www.correiobraziliense.com.br/app/noticia/politica/2017/12/04/interna_politica,645204/paises-atingidos-lava-jato-cooperacao-internacional.shtml

221 http://www.justica.gov.br/sua-protecao/cooperacao-internacional/cooperacao-juridica-internacional-em-materia-penal/acordos-internacionais/acordos-bilaterais-1

222 http://www.justica.gov.br/sua-protecao/lavagem-de-dinheiro/institucional-2/publicacoes/cooperacao-em-pauta/cooperacao-em-pauta-n38

223 The sheer number of requests also points to a focus on asset recovery – most of the MLA requests from Brazil are directed to Switzerland: https://oglobo.globo.com/brasil/cooperacao-internacional-cresce-lava-jato-ja-mobiliza-55-paises-22678724

224 https://politica.estadao.com.br/noticias/geral,pasta-da-justica-trava-acordo-com-suica,70001636982

225 Transparency International Brazil, in partnership with Getulio Vargas Foundation, developed an anti-corruption package with 70 bills of law, including whistleblower protection, reforms to the Corporate Liability Law to improve regulation of leniency agreements, and improvement of asset recovery instruments, among others: http://www.unidoscontraacorrupção.org.br/

226 http://www.unidoscontraacorrupção.org.br/

227 This is in relation to Art. 301 para 5 (passive bribery) and Art. 304 para 3 (active bribery), Criminal Code. A new methodology for collecting statistics was developed in 2015 (http://profile-op.vss.justice.bg/?q=page&id-d=index&porachkaid=20150331PmRx2374167) and is periodically updated by the SJC (latest, February 2018: www.vss.justice.bg/root/f/upload/18/Metodika-13.02.2018.docx)

228 Art. 304b and art. 304c, Criminal Code. All statistics on courts' activities published by SJC are available at: http://www.vss.justice.bg/page/view/1082. Since 2016 there is a separate line for cases under Criminal Code Art. 301 para 5 and art. 304 para 3. Art. 304b Criminal Code is in regard to trading in influence including over foreign officials; and Art. 304c is for cases when the bribery is promised/given to a third party.

229 Order no. 474/ 01.03.2017

230 https://legalacts.justice.bg/

231 Latest report for 2017: https://www.prb.bg/media/filer_public/99/95/9995681f-b103-4140-956f-18bf-3c8e94fb/GD%20-%202017%20-%20PRB.pdf, page 74

232 An inquiry to the Ministry of Justice for the purposes of this report received the reply that no MLA requests regarding foreign bribery cases had been made or received in 2014-2017.

233 There were two amendments. First, Art. 304c criminalises bribery of a third person. Second, Art. 93 point 15 let. d) adds persons functioning as arbiters pursuant to any foreign law within the definition of "foreign

public official".

234 Art. 83a para 1. The fine payable used to be 5,000-100,000 BGN.

235 Art. 83a para 2

236 Available at: http://rai-see.org/wp-content/uploads/2015/08/Bulgaria_Anti-corruption_strategy_-2015.pdf

237 See: http://rai-see.org/bulgaria-adopts-new-anti-corruption-legislation/. The new Commission encompasses several previously existing bodies and departments. In this sense, it is not an entirely new authority, but is rather the result of a restructuring.

238 NJN Activity Report for the period 17.03.2016 – 24.02.2017: http://www.vss.justice.bg/root/f/upload/14/otcet-2016.pdf

239 Media searches did not reveal any investigations commenced during the period 2014-2017.

240 Court Case: R. v. Karigar, 2013 ONSC 5199, http://canlii.ca/t/g03dw (conviction); Court Case: R. v. Karigar, 2014 ONSC 3093, http://canlii.ca/t/g6zz0 (sentencing); https://www.canlii.org/en/on/onca/doc/2017/2017onca576/2017onca576.pdf; http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/corr-18.aspx?lang=eng

241 http://www.cbc.ca/news/rcmp-charge-u-s-u-k-execs-in-air-india-foreign-bribery-case-1.2663295

242 https://www.scc-csc.ca/case-dossier/info/dock-regi-eng.aspx?cas=37784

243 http://www.cbc.ca/news/rcmp-charge-u-s-u-k-execs-in-air-india-foreign-bribery-case-1.2663295

244 http://www.cbc.ca/news/former-snc-lavalin-vp-charged-in-bangladesh-bribery-probe-1.1858961

245 The case is suspended indefinitely. The Court found that the prosecution could seek to lift the stay at a future date if the Crown obtained jurisdiction over the applicant (i.e. custody of him): Chowdhury v. H.M.Q., 2014 ONSC 2635, http://canlii.ca/t/g6npq

246 http://www.cbc.ca/news/canada/snc-lavalin-supreme-court-bribery-case-1.3558811

247 https://www.theglobeandmail.com/report-on-business/former-snc-lavalin-executives-businessman-acquitted-in-corruption-case/article33979762/; http://www.cbc.ca/news/canada/toronto/ex-snc-lavalin-execs-acquitted-of-bribery-charges-after-wiretap-evidence-nixed-1.3977655/; http://canlii.ca/t/gwqf6

248 https://www.theglobeandmail.com/report-on-business/sncs-fraud-corruption-hearing-set-for-2018/article28929552/; http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/corr-18.aspx?lang=eng

249 http://business.financialpost.com/news/rcmp-charges-snc-lavalin-with-fraud-and-corruption-linked-to-libyan-projects

250 https://www.thestar.com/news/canada/2016/11/24/calgary-man-charged-over-allegedly-trying-to-bribe-foreign-officials-in-jet-sale.html

251 http://www.cbc.ca/news/canada/calgary/rcmp-bribery-larry-kushniruk-canadian-general-aircraft-thai-airways-charge-stayed-1.4436289; http://www.cbc.ca/news/canada/calgary/rcmp-bribery-larry-kushniruk-canadian-general-aircraft-thai-airways-1.3866073

252 Available at: http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/corruption.aspx?lang=eng

253 Available at: http://canlii.org/

254 While this information could be made available through a request under the Access to Information Act, most requests would be exempt from the provisions of the act because the information requested relates to criminal investigations: http://www.justice.gc.ca/eng/cj-jp/emla-eej/db-gs.html#sec322/

255 https://www.canada.ca/en/public-services-procurement/news/2018/02/results_of_publicconsultationsonexpandingcanadastoolkittoaddress.html; https://www.enr.com/articles/44300-canada-moves-to-enact-deferred-prosecution-legal-remedy#.WtlTDRm-WAmU.twitter

256 http://www.rcmp-grc.gc.ca/en/news/2017/20/government-canada-launches-tip-line-help-canadians-report-federal-contracting-fraud

257 https://www.canada.ca/en/global-affairs/news/2017/10/canada_repeals_facilitationpaymentsexceptionincorruptionofforeig.html

258 http://www.oas.org/juridico/PDFs/mesicic5_canada_inf_ingles.pdf; https://buyandsell.gc.ca/policy-and-guidelines/policy-notifications/PN-107R1

259 http://www.oas.org/juridico/PDFs/mesicic5_canada_inf_ingles.pdf; https://buyandsell.gc.ca/policy-and-guidelines/policy-notifications/PN-107R2

260 https://www.newswire.ca/news-releases/results-of-public-consultations-on-expanding-canadas-toolkit-to-address-corporate-wrongdoing-674881473.html; https://www.osler.com/en/resources/regulations/2018/government-of-canada-announces-significant-expansion-of-integrity-regime-for-federal-contracting

261 https://www.nrcan.gc.ca/mining-materials/estma/18180. Under the Extractive Sector Transparency Measures Act, extractive sector businesses must report payments of Can$100,000 or more made to any government in Canada (including, as of 1 June 2017, indigenous government entities) or in a foreign state (or similar bodies conducting government functions) and to state-owned entities.

262 Based on the authors' direct experience and exchanges with police investigators, Crown prosecutors and defence counsel. These views are widely shared and have been the topic of panels at Transparency International Canada annual conferences.

263 Based on the authors' direct experience and exchanges with police investigators, Crown prosecutors and defence counsel.

264 http://www.international.gc.ca/trade-agreements-accords-commerciaux/topics-domaines/other-autre/corr-18.aspx?lang=eng. Prior to 2017, one legal counsel from the federal Department of Justice's International Assistance Group was designated as

responsible for corruption-related MLA requests. Since 2017, responsibility for such requests has been shared among counsel within the assistance group, under the supervision of the designated legal counsel.

265 http://www.fiscaliadechile.cl/Fiscalia/estadisticas/index.do

266 Judicial File RUC 0700091359-0, RIT: 60-2016; see also media report on the case at Caso Fragatas: http://www2.latercera.com/noticia/caso-fragatas-fiscalia-oriente-obtiene-primera-condena-chile-soborno-funcionario-publico-extranjero/

267 http://www2.latercera.com/noticia/caso-fragatas-condenan-205-dias-carcel-efectiva-general-r-victor-lizarraga/

268 http://www.chiletransparente.cl/noticias-nacionales/fiscalia-obtiene-el-primer-fallo-por-cohecho-transnacional/

269 http://www.chiletransparente.cl/noticias-nacionales/fiscalia-obtiene-el-primer-fallo-por-cohecho-transnacional/

270 http://www.fiscaliadechile.cl/Fiscalia/estadisticas/index.do

271 www.fiscaliadechile.cl and www.uaf.cl

272 http://www.pjud.cl/consulta-unificada-de-causas

273 http://www.oecd.org/daf/anti-bribery/CHILE-Phase-3-Written-Follow-Up-Report-ENG.pdf

274 http://www.oecd.org/daf/anti-bribery/CHILE-Phase-3-Written-Follow-Up-Report-ENG.pdf

275 http://www.oecd.org/daf/anti-bribery/CHILE-Phase-3-Written-Follow-Up-Report-ENG.pdf

276 http://www.oecd.org/daf/anti-bribery/CHILE-Phase-3-Written-Follow-Up-Report-ENG.pdf

277 https://www.camara.cl/pley/pley_detalle.aspx?prmID=11173

278 http://www.oecd.org/daf/anti-bribery/CHILE-Phase-3-Written-Follow-Up-Report-ENG.pdf

279 https://www.elconfidencial.com/espana/2017-05-22/directivos-del-canal-usaban-sacas-con-dinero-para-dar-mordidas-a-politicos-suramericanos_1385406/

280 https://www.elespectador.com/noticias/judicial/las-claves-para-entender-el-caso-inassa-articulo-746714

281 https://www.supersociedades.gov.co/Noticias/Paginas/2018/supersociedades-impone-multa-de-5-078-millones-a-inassa-por-soborno-transnacional.aspx; http://www.grupoinassa.com/?p=2029

282 It is not clear in which countries the misconduct is alleged to have taken place: http://www.portafolio.co/economia/supersociedades-investiga-a-10-empresas-por-posible-soborno-transnacional-515191

283 http://www.portafolio.co/economia/supersociedades-investiga-a-10-empresas-por-posible-soborno-transnacional-515191

284 http://fcpamericas.com/english/anti-corruption-compliance/tca-colombias-foreign-bribery-law/#

285 http://www.oecd.org/daf/anti-bribery/Colombia-Phase-2-Report-ENG-follow-up.pdf

286 http://www.oecd.org/daf/anti-bribery/Colombia-Phase-2-Report-ENG-follow-up.pdf; Under the bill, the relevance and effectiveness of offering monetary rewards to whistleblowers has been questioned: http://www.elpais.com.co/politica/funcionara-el-proyecto-de-pagar-a-quienes-denuncien-corrupcion.html

287 Proyecto de Ley 005 de 2017

288 http://www.oecd.org/daf/anti-bribery/Colombia-Phase-2-Report-ENG-follow-up.pdf

289 According to Andres Hernandez, Executive Director of Transparencia por Colombia, Transparency International's national chapter in Colombia

290 http://www.oecd.org/daf/anti-bribery/Colombia-Phase-2-Report-ENG-follow-up.pdf

291 http://www.oecd.org/daf/anti-bribery/Colombia-Phase-2-Report-ENG-follow-up.pdf

292 https://www.poder-judicial.go.cr/planificacion/index.php/estadistica/estadisticas-judiciales

293 http://jurisprudencia.poder-judicial.go.cr/SCIJ_PJ/busqueda/jurisprudencia/jur_indice_despachos_x_anno.aspx?param1=IA&cmbDespacho=0006&strNomDespacho=Sala%20Tercera%20de%20la%20Corte&param01=Sentencias%20por%20Despacho&txtRelevante=0

294 In order to find the information, the annual work report of the Public Prosecution Service must be accessed at the following website: https://www.pgr.go.cr/transparencia/informes/informe-de-labores-2/

295 http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/WGB(2017)40&docLanguage=En

296 http://fcpamericas.com/english/costa-rica/costa-rica-adopts-oecd-anti-bribery-convention/#

297 http://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?cote=DAF/WGB(2017)40&docLanguage=En

298 http://www.pgrweb.go.cr/SCIJ/BUSQUEDA/NORMATIVA/PRONUNCIAMIENTO/PRO_FICHA.ASPX?PARAM1=PRD&PARAM6=1&NDICTAMEN=14508&STRTIPM=T

299 http://www.pgrweb.go.cr/SCIJ/BUSQUEDA/NORMATIVA/PRONUNCIAMIENTO/PRO_FICHA.ASPX?PARAM1=PRD&PARAM6=1&NDICTAMEN=14508&STRTIPM=T

300 http://www.oecd.org/corruption/anti-bribery/Czech-Republic-Phase-4-Report-ENG.pdf; https://www.oecd.org/daf/anti-bribery/Czech-Republic-Phase-3-Written-Follow-Up-Report-ENG.pdf

301 http://www.policie.cz/statistiky-kriminalita.aspx

302 http://www.oecd.org/daf/anti-bribery/Czech-Republic-Phase-4-Report-ENG.pdf

303 http://www.oecd.org/daf/anti-bribery/Czech-Republic-Phase-4-Report-ENG.pdf

304 www.psp.cz/sqw/text/tiskt.sqw?O=7&CT=925&CT1=0

305 https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup4/2017-August-21-23/Contributions_NV/CzechRepublic_EN.pdf

306 http://www.nsz.cz/index.php/en/about/regulations-r/public-prosecution-act; http://www.oecd.org/czech/low-awareness-in-privatesector-is-an-obstacle-to-the-fight-against-foreign-bribery-in-the-czech-republic.htm. Czech articles regarding the moves for more independence of public prosecutors: http://tablet.epravo.cz/4-2015/z-praxe-cil-noveho-zakona-o-zalobcich-posilit-nezavislost-ale-i-odpovednost-statnich-zastupcu/; https://zpravy.idnes.cz/statni-zastupitelstvi-novy-zakon-robert-pelikan-ministerstvo-spravedlnosti-top-09-gmw-/domaci.aspx?c=A180109_104043_domaci_jkk; https://echo24.cz/a/iJQce/nastal-odklon-jsou-tendence-nas-omezit-rika-nejvyssi-statni-zastupce-zeman/; https://www.info.cz/pravo/posileni-nezavislosti-zalobcu-navrh-top-09-u-vlady-neprosel-26413.html; http://www.ceska-justice.cz/2018/01/pelikan-planuje-novym-zakonem-presoutezit-pozice-vsech-vedoucich-statnich-zastupcu/

307 http://www.oecd.org/corruption/anti-bribery/Czech-Republic-Phase-4-Report-ENG.pdf

308 http://www.oecd.org/corruption/anti-bribery/Czech-Republic-Phase-4-Report-ENG.pdf

309 http://www.oecd.org/corruption/anti-bribery/Czech-Republic-Phase-4-Report-ENG.pdf

310 Information received by Transparency International Denmark from the International Division for the State Prosecutor for Serious Economic and International Crime.

311 https://shippingwatch.com/carriers/article7722075.ece

312 https://www.traceinternational.org/TraceCompendium/Detail/810?class=casename_searchresult&type=1

313 https://dab.dk/node/119

314 The fee is 175 Danish kroner.

315 http://www.oecd.org/daf/anti-bribery/Denmark-Phase-3-Written-Follow-Up-Report-EN.pdf

316 https://www.fafpi.com/

317 FAFPI members will use a reporting system developed for them to report – in a secure, anonymous manner – demands for facilitation payments they and their employees encounter. Each member receives a unique log-in to the crypto-tech system and cannot access other members' unique data. The total, aggregate reported data is visible for all members and cannot be tracked back to any individual member.

318 https://www.business.dk/finans/laundered-billions-poured-through-danish-banks; https://www.business.dk/global/danske-bank-and-nordea-involved-in-global-corruption-and-bribery-scandals

319 http://www.bechbruun.com/-/media/Files/Viden-center/Nyhedsbreve/Finans+og+kapitalmarked/2017/Den+nye+hvidvasklov+uk_web+(2).pdf

320 http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/MER-Denmark-2017.pdf

321 https://www.bloomberg.com/news/articles/2018-05-16/u-s-sanctions-head-of-hezbollah-in-joint-action-with-qatar-jh9ilw52

322 http://www.ft.dk/samling/20171/almdel/REU/bilag/258/1885338.pdf

323 https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2017_10_21_Denmark_Final_Country_Report.pdf

324 http://www.oecd.org/daf/anti-bribery/Denmark-Phase-3-Written-Follow-Up-Report-EN.pdf

325 http://www.oecd.org/daf/anti-bribery/Denmark-Phase-3-Written-Follow-Up-Report-EN.pdf

326 https://forskning.ruc.dk/da/clippings/regeringsudvalg-giver-whistleblowerordning-d%C3%B8dsst%C3%B8det

327 http://www.oecd.org/daf/anti-bribery/Denmark-Phase-3-Written-Follow-Up-Report-EN.pdf

328 http://www.oecd.org/daf/anti-bribery/Denmark-Phase-3-Written-Follow-Up-Report-EN.pdf

329 http://www.oecd.org/daf/anti-bribery/Denmark-Phase-3-Written-Follow-Up-Report-EN.pdf

330 http://europa.eu/rapid/press-release_MEMO-14-67_en.htm

331 https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2017_10_21_Denmark_Final_Country_Report.pdf

332 http://www.oecd.org/daf/anti-bribery/Denmark-Phase-3-Written-Follow-Up-Report-EN.pdf

333 http://www.baltic-course.com/eng/transport/?doc=136800; https://www.railjournal.com/index.php/europe/latvian-railways-president-arrested-in-corruption-probe.html

334 Reports on annual crime statistics are publicly available in Estonian at: http://www.kriminaalpoliitika.ee/et/statistika-ja-uuringud/kuritegevus-eestis

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for up to three years. The company will also have to indemnify any identified victims within one year, unless it has already done so.

372 French authorities will now be able to prosecute: (i) French citizens who commit acts of bribery or trading in influence abroad, irrespective of whether a complaint is filed by the alleged victims or an official denunciation is made by the state where the offence took place; and (ii) foreign citizens who usually reside in France, for acts of bribery and trading in influence committed abroad, including foreign directors of companies subject to French law. See: Addendum to the Second Compliance Report on France, Adopted by GRECO at its 75th Plenary Meeting (Strasbourg, 20-24 March 2017): https://rm.coe.int/third-evaluation-round-addendum-to-the-second-compliance-report-on-fra/1680750dd9

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384 BGH 1 StR 104/15 of 6 September 2016

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397 Commentary C.2.b., page 67

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403 Commentary A.2, page 20

404 OECD WGB Phase 4 Report on Germany, C.2.a, page 66 et seq.

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421 http://birosag.hu/ugyfelkapcsolati-portal/birosagi-hatarozatok-gyujtemenye

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614 See letter from the Minister of Justice and Safety (20 November 2015): https://www.rijksoverheid.nl/binaries/rijksoverheid/documenten/kamerstukken/2015/11/20/brief-tweede-kamer-ontwerpbegroting-2016-veiligheid-en-justitie/2015-11-20-begrotingsbrief-definitieve-versie.pdf (in Dutch)
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623 According to the New Zealand Serious Fraud Office, in response to requests under the Official Information Act. The exact nature of the allegations was not provided.
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626 Available at: https://www.justice.govt.nz/courts/decisions/ and http://www.districtcourts.govt.nz/
627 "New Zealand updates anti-corruption laws", (24 Aug 2016): http://law-strategy.nz/articles/new-zealand-updates-its-anti-corruption-and-aml-laws/; Organised crime and anti-corruption legislation bill (2014): www.legislation.govt.nz/bill/government/2014/0219/8.0/096be8ed80e67158.pdf
628 http://www.legislation.govt.nz/act/public/2015/0095/19.0/DLM6602019.html
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630 "Number of foreign NZ trusts plunges after new disclosure rules", (5 July 2017): https://www.nbr.co.nz/article/number-foreign-nz-trusts-plunge-after-new-disclosure-rules-204897
631 In June 2018 the Ministry of Business, Innovation and Employment released a consultation paper on increasing the transparency of beneficial ownership in line with commitments made by the New Zealand government at the 2016 London Anti-Corruption Summit.
632 https://www.justice.govt.nz/assets/Documents/Publications/Facilitation-Payments-Guide.pdf
633 Auditors are required to report suspected fraud to the Office of the Auditor General or their professional bodies, under their regulatory standards. These measures are "soft law" in nature.
634 Crimes Act s106(1)
635 https://www.auditnz.govt.nz/transcripts/info-up-

dates/fraud-sfo; In New Zealand, domestic corruption tip-offs are the most common form of detection mechanism. Only 2 per cent of incidents are detected through external mechanisms (Deloitte (Australia/New Zealand) Bribery and Corruption Survey, 2017).

636 Protected Disclosures Act 2000. See Strength of Organisational Whistleblowing Processes – Analysis from Australia & New Zealand, Griffith University, 2017: http://www.whistlingwhiletheywork.edu.au/wp-content/uploads/2017/08/WWTW2-Strength-of-whistleblowing-processes-report-Australia-New-Zealand-Griffith-University-August-2017.pdf

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638 Government Response to Law Commission Report on Modernising New Zealand's Extradition and Mutual Assistance Laws, New Zealand House of Representatives, 29 July 2016

639 https://www.reuters.com/article/us-yara-intl-corruption/former-yara-ceo-acquitted-of-corruption-legal-chief-convicted-idUSKBN13R0YF; https://www.occrp.org/en/daily/5982-norway-american-executive-sentenced-to-seven-years-for-bribery

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644 http://www.seatrade-maritime.com/news/europe/sevan-hands-over-petrobras-corruption-investigation-report-to-norwegian-authorities.html

645 http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries/V1388733e.pdf, page 8

646 https://www.okokrim.no/berammede-rettssaker.422809.no.html

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648 http://transparency.no/wp-content/uploads/dommssamling2017.pdf

649 http://www.wipo.int/wipolex/en/details.jsp?id=17417

650 https://www.transparency.org/exporting_corruption/Norway

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652 https://www.transparency.org/exporting_corruption/Norway

653 http://www.oecd.org/corruption/anti-bribery/Norway-Phase-4-Report-ENG.pdf

654 http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries/V1388733e.pdf, page 12

655 Statistics prepared by the Ministry of Justice: https://isws.ms.gov.pl/pl/baza-statystyczna/opracowania-wieloletnie/

656 For example, the two judgements on foreign bribery have not been published: https://orzeczenia.ms.gov.pl/

657 https://legislacja.rcl.gov.pl/projekt/12312062

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662 http://www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=22564&LangID=E

663 http://europa.eu/rapid/press-release_IP-17-5367_en.htm

664 http://www.oecd.org/newsroom/poland-must-make-urgent-legislative-reforms-to-combat-foreign-bribery.htm

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666 http://www.oecd.org/daf/anti-bribery/Poland-Phase-3-Written-Follow-Up-Report-ENG.pdf

667 http://www.oecd.org/daf/anti-bribery/Poland-Phase-3-Written-Follow-Up-Report-ENG.pdf

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670 https://www.dn.pt/portugal/interior/jose-veiga-passa-a-prisao-domiciliaria-5169030.html; http://

noblat.oglobo.globo.com/geral/noticia/2016/11/surpresa-em-lisboa.htmlhttps://www.publiceye.ch/fileadmin/files/documents/Rohstoffe/PublicEye_Gunvor-in-Congo_report_2017_68p.pdf

671 *Ministério Público* (14 July 2017), "Corrupção ativa com prejuízo do comércio internacional – branqueamento – falsificação de documentos": http://dciap.ministeriopublico.pt/sites/default/files/documentos/pdf/ficha_de_acusacao_nuipc_121_13_0telsb.pdf

672 Franco, Hugo and Rui Gustavo (23 April 2018), "Juiz Ivo Rosa abre guerra ao Ministério Público no caso TAP/Sonangol", Expresso: http://expresso.sapo.pt/sociedade/2018-04-23-Juiz-Ivo-Rosa-abre-guerra-ao-Ministerio-Publico-no-caso-TAP-Sonangol#gs.yWu7h68

673 For the purposes of this report, *Transparência e Integridade* (TI Portugal) sent information requests to the main judicial authorities and Portugal Global – Trade and Investment Agency (AICEP). Only the Council for the Prevention of Corruption, the Directorate-General for Justice Policy and DCIAP replied.

674 Article 86 of the Portuguese Code of Criminal Procedure

675 http://www.dgsi.pt/

676 http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:JOL_2015_141_R_0003&from=ES

677 Law No. 83/2017 of 18 August

678 Article 186 of Law no. 83/2017, which came into force on 17 Septmber 2017.

679 www.oecd.org/daf/anti-bribery/Portugalphase3reportEN.pdf; www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3%282013%2918_Interim_Portugal_EN.pdf; www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2014_05_21_Portugal_Final_Country_Report; https://www.transparency.org/whatwedo/publication/un_convention_against_corruption_progress_report_2013

680 Specifically, Law No. 20/2008 on the criminal regime of corruption in international commerce. Details of the legislative package can be found at: www.parlamento.pt/ActividadeParlamentar/Paginas/DetalheDiplomaAprovado.aspx?BID=18532. Comments by Transparency International Portugal: www.publico.pt/portugal/noticia/reformas-de-pacote-1668846; www.rr.sapo.pt/informacao_detalhe.aspx?fid=25&did=178314

681 Article 2, a) of Law 20/2008, and Article 4 of Law No. 20 of 2008

682 Article 118, a) CP; "Portugal – 9-Corruption", 29 November 2017: https://www.export.gov/apex/article2?id=Portugal-Corruption

683 Law no. 30/2015, 22 April, has modified Article 4 (1) and (3)(c) of Law no. 19/2008, 21 April

684 Law No.30/2017 of 30 May: http://www.pgdlisboa.pt/leis/lei_mostra_articulado.php?nid=1360&tabela=leis

685 www.oecd.org/daf/anti-bribery/Portugalphase3reportEN.pdf, pages 15-16, 18-19

686 http://www.oecd.org/daf/anti-bribery/Portugal-Phase-3-Written-Follow-Up-Report-ENG.pdf. Transparency International Portugal is now working on a two-year advocacy campaign to promote effective whistleblower legislation.

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688 https://www.publico.pt/2018/02/03/sociedade/noticia/mais-de-200-milhoes-apreendidos-no-inquerito-que-deu-origem-ao-caso-rangel-1801857/amp

689 https://observador.pt/especiais/o-relatorio-que-conta-as-origens-do-caso-jose-veiga/

690 http://dciap.pgr.pt/textos/NOVA_ESTRUTURA_DCIA_Pag_Internet.pdf; http://dciap.pgr.pt/textos/Plano_actividades_2014_Pag_INTERNET.pdf

691 www.fatf-gafi.org/media/fatf/documents/reports/mer/MER%20Portugal%20full.pdf

692 Letter to Transparency International Russia from the Judicial Department under the Supreme Court of Russia, received 16 March 2018

693 https://sudrf.ru/

694 Federal Law No. 262-FZ of 22 December 2008 (as amended on 28 December 2017) "On providing access to information on the activities of courts in the Russian Federation": http://cis-legislation.com/document.fwx?rgn=25774

695 https://ria.ru/world/20170714/1498540947.html; http://www.genproc.gov.ru/smi/news/news-674756/

696 http://sozd.parlament.gov.ru/bill/286313-7

697 https://wp.nyu.edu/compliance_enforcement/2017/11/03/russia-considers-enhanced-whistleblower-protections/

698 Draft bill on criminalising bribery: http://sozd.parlament.gov.ru/bill/235984-7; Explanation of the bill: http://sozd.parlament.gov.ru/download/8ABB1356-DFCF-4F51-826C-02E42A624C80

699 http://www.asozd2.duma.gov.ru/main.nsf/%28SpravkaNew%29?OpenAgent&RN=750443-6&02

700 https://www.lexology.com/library/detail.aspx?g=f338c734-6ffd-4c4b-8eff-44451680d41c

701 https://genproc.gov.ru/smi/news/news-1068911/

702 http://www.oecd.org/daf/anti-bribery/Russia-Phase-2-Written-Follow-up-Report.pdf; The OECD WGB Phase 2 report in October 2013 states: 'A note to Article 291 CC stipulates the following: "The person giving the bribe shall be exonerated from criminal liability, if such person actively facilitated the detection and/or investigation of the crime and if the bribe was extorted by the public official, or such person after committing the crime has voluntarily reported to the body authorised to initiate criminal proceedings"', (page 73). See the Phase 2 report at http://www.oecd.org/daf/anti-bribery/RussianFederationPhase2ReportEN.pdf

703 http://www.oecd.org/daf/anti-bribery/Russia-

Phase-2-Written-Follow-up-Report.pdf
704 http://www.wipo.int/edocs/lexdocs/laws/en/ru/ru080en.pdf
705 http://www.oecd.org/daf/anti-bribery/Russia-Phase-2-Written-Follow-up-Report.pdf
706 See, for example, the National Crime Agency's 2016 annual report: https://www.minv.sk/swift_data/source/policia/naka_opr/opr/inf_o_cinnosti_naka/Informacia%20o%20cinnosti%20NAKA%20P%20PZ%20za%20rok%202016%20public.pdf
707 https://obcan.justice.sk/infosud/-/infosud/zoznam/rozhodnutie; Section 82a (3) of the Act No. 757/2004 Coll. on Courts
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709 http://www.oecd.org/corruption/anti-bribery/Slovak-Republic-Phase-1bis-Report-ENG.pdf
710 Section 128a of the Criminal Code
711 https://www.oecd.org/gov/ethics/Assessment-anti-corruption-legislation-Slovak-Republic.pdf; http://www.epi.sk/zz/2014-307
712 https://nam01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.bojprotikorupcii.vlada.gov.sk%2Fnovinky-v-oblasti-prevencie-korupcie-%25E2%2580%2593-spravy-a-oznamy%2F&data=02%7C01%7C%7C60bd68b6400d4ff3789808d5b04426b0%7C84df9e7fe9f640afb435aaaaaaaaaaaa%7C1%7C0%7C636608729111303044&sdata=SEQOB%2B4jTV%2BgBTDk1Gtr0qedu2PrkY1cGBNRcMCUtGw%3D&reserved=0
713 http://www.oecd.org/corruption/anti-bribery/Slovak-Republic-Phase-1bis-Report-ENG.pdf
714 https://ec.europa.eu/info/sites/info/files/2018-european-semester-country-report-slovakia-en.pdf
715 http://www.oecd.org/corruption/anti-bribery/Slovak-Republic-Phase-1bis-Report-ENG.pdf
716 Transparency International Slovenia's request for details from the Office of the State Prosecutor General and the Commission for the Prevention of Corruption is pending.
717 https://www.policija.si/images/stories/Statistika/LetnaPorocila/PDF/LetnoPorocilo2016.pdf; https://www.dt-rs.si/files/documents/POROCILO-2016-koncno-min.pdf
718 Separate requests must be made for each institution: the police, the Office of the State Prosecutor General and the Commission for the Prevention of Corruption (which gathers statistics from all relevant stakeholders on the issue).
719 http://www.sodnapraksa.si/
720 https://siol.net/novice/slovenija/prihaja-sodni-supervizor-jeseni-bodo-vse-sodbe-javno-objavljene-421208
721 http://www.oecd.org/daf/anti-bribery/Slovenia-Phase-3-Written-Follow-Up-Report-ENG.pdf
722 http://www.mju.gov.si/fileadmin/mju.gov.si/pageuploads/Tretje_vmesno_porocilo_Vlade_RS_za_preprecevanje_korupcije_september_2016.pdf
723 http://www.mju.gov.si/fileadmin/mju.gov.si/pageuploads/SOJ/2017/Program_2017_2019_8junij2017.pdf
724 http://www.oecd.org/daf/anti-bribery/Slovenia-Phase-3-Written-Follow-Up-Report-ENG.pdf
725 When contacted for research purposes, judicial officials responsible for keeping data on foreign bribery demonstrated in several instances a lack of understanding of the concept and related legal provisions. While this was not tested on all members of the judicial system, it shows a certain lack of awareness.
726 http://www.oecd.org/daf/anti-bribery/Slovenia-Phase-3-Written-Follow-Up-Report-ENG.pdf
727 http://www.regulatelobbying.com/images/Slovenia_Lobbying_Law-3.pdf
728 This is a national document that provides an assessment of the anti-corruption field and sets guidelines for policy and programmes. It is accepted by the National Assembly and is a framework on which strategy and action plans are based.
729 http://www.oecd.org/daf/anti-bribery/Slovenia-Phase-3-Written-Follow-Up-Report-ENG.pdf
730 http://www.oecd.org/daf/anti-bribery/Slovenia-Phase-3-Written-Follow-Up-Report-ENG.pdf
731 http://www.oecd.org/daf/anti-bribery/Slovenia-Phase-3-Written-Follow-Up-Report-ENG.pdf
732 http://www.oecd.org/daf/anti-bribery/Slovenia-Phase-3-Written-Follow-Up-Report-ENG.pdf
733 http://www.mju.gov.si/fileadmin/mju.gov.si/pageuploads/SOJ/2017/Program_2017_2019_8junij2017.pdf
734 http://www.oecd.org/daf/anti-bribery/SloveniaPhase3ReportEN.pdf
735 https://techcentral.co.za/hawks-raid-mtn-offices-in-turkcell-dispute/81621/; https://www.moneyweb.co.za/news/companies-and-deals/hawks-raid-mtn-offices-in-turkcell-dispute/
736 http://www.oecd.org/corruption/anti-bribery/South-Africa-Phase-3-Written-Follow-Up-Report-ENG.pdf
737 http://www.saflii.org/content/south-africa-index
738 http://www.oecd.org/corruption/anti-bribery/South-Africa-Phase-3-Written-Follow-Up-Report-ENG.pdf
739 http://www.justice.gov.za/legislation/bills/20171114-PRECCABill(B).pdf
740 A regional court may in respect of the more serious corruption offences (including corruption relating to foreign public officials) impose a fine not exceeding 50 million rand, or imprisonment for a period not exceeding 18 years, or both a fine and such imprisonment; and (ii) a magistrate court may impose a fine not exceeding 10 million rand or imprisonment for a period not exceeding five years, or both a fine and such imprisonment. It is proposed that section 26(3) of the Prevention and

Combating of Corrupt Activities Act should be amended to provide for an appropriate sentence to be imposed in respect of corporate bodies.

741 https://www.gov.za/sites/www.gov.za/files/40821_2-5_Act1of2017FCAmendmentAct.pdf

742 https://www.corruptionwatch.org.za/wp-content/uploads/2017/09/PDA-Amendments-2017_005.pdf

743 https://star.worldbank.org/star/sites/star/files/accountability_report_questionnaire_2014_south-africa.pdf

744 https://www.oecd.org/corruption/anti-bribery/South-Africa-Phase-3-Written-Follow-Up-Report-ENG.pdf; In 2014 the Constitutional Court handed down its judgment in Helen Suzman Foundation v President of the Republic of South Africa and Others: Glenister v President of the Republic of South Africa and Others (CCT 07/14 and CCT 09/14). The court held that the primary constitutional obligation was to create an anti-corruption unit which enjoyed structural and operational independence. As such, the Directorate for Priority Crime Investigations (DPCI) is not required to be absolutely independent, but has to be adequately independent, evidenced by both its structural and operational autonomy. The Constitutional Court did not follow the normal procedure of referring back to parliament, but itself amended the provisions which it considered in conflict with this obligation. The order of constitutional invalidity by the Western Cape Division of the High Court, Cape Town, was confirmed from the date of the order (27 November 2014). Consequently these amendments entered into effect immediately on handing down the judgment and do not require any amendment to the act to become operational.

745 Email of 25 June with commentary by Dr Salomon Hoogenraad-Vermaak, the Department of Public Service and Administration and OECD Working Group liaison in South Africa. He commented that the existing Extradition Act would allow for extradition even where the foreign bribery occurred outside the requested state.

746 Commentary on 4 April 2018 by Dr Salomon Hoogenraad-Vermaak, the Department of Public Service and Administration and OECD Working Group liaison in South Africa. He commented that South Africa has always had criminal liability of corporate entities (see the Criminal Procedure Act, 51 of 1977). On 1 June 2014, the National Director of Public Prosecutions issued Prosecution Policy Directives i.t.o section 179 of the Constitution. Part 42 deals exclusively with the prosecution of corporations and members of associations and is binding on all prosecutors and must be observed in the prosecution of corporate bodies for any offences. This ensures that prosecutors, make full use of the broad possibilities available under section 332 of the Criminal Procedure Act to effectively enforce the liability of legal persons for acts of foreign bribery and economic offences in general.

747 https://www.oecd.org/corruption/anti-bribery/South-Africa-Phase-3-Written-Follow-Up-Report-ENG.pdf

748 https://www.oecd.org/corruption/anti-bribery/South-Africa-Phase-3-Written-Follow-Up-Report-ENG.pdf

749 Interview with Dr Salomon Hoogenraad-Vermaak, the Department of Public Service and Administration and OECD Working Group liaison in South Africa, 4 April 2018.

750 https://www.news24.com/SouthAfrica/News/scopa-shocked-by-plea-bargains-in-corruption-cases-20170614

751 https://www.oecd.org/corruption/anti-bribery/South-Africa-Phase-3-Written-Follow-Up-Report-ENG.pdf

752 https://www.oecd.org/corruption/anti-bribery/South-Africa-Phase-3-Written-Follow-Up-Report-ENG.pdf

753 https://www.sfo.gov.uk/2016/05/11/former-securency-manager-convicted-corruption/

754 https://www.justice.gov/usao-sdny/pr/former-embraer-sales-executive-pleads-guilty-foreign-bribery-and-fraud-charges

755 Information provided to Transparency International Spain by the Spanish National Prosecutor's Office.

756 http://www.poderjudicial.es/search/contenidos.action?action=contentpdf&databasematch=AN&reference=7959125&links=APYCE&optimize=20170314&publicinterface=true

757 http://www.poderjudicial.es/search/contenidos.action?action=contentpdf&databasematch=AN&reference=7959125&links=APYCE&optimize=20170314&publicinterface=true

758 https://www.constructioncayola.com/rail/article/2016/04/11/105117/corruption-tramway-ouargla-dans-tourmente.php; http://www.elmundo.es/espana/2016/09/06/57cdc814ca4741d5448b45b5.html

759 http://www.elmundo.es/espana/2016/09/06/57cdc814ca4741d5448b45b5.html; https://algeria-watch.org/fr/article/eco/corruption/justice_espagnole.htm

760 https://www.irishtimes.com/news/world/europe/investigators-claim-spanish-politicians-used-irish-company-as-a-front-1.3003186; https://politica.elpais.com/politica/2017/03/07/actualidad/1488842546_505762.html

761 https://politica.elpais.com/politica/2018/03/27/actualidad/1522159729_243293.html; http://www.publico.es/politica/tribunales/cupula-defex-consiguio-20-millones-mordidas-venta-armas.html

762 https://politica.elpais.com/politica/2018/03/27/actualidad/1522159729_243293.html

763 https://www.huffpostm aghreb.com/2018/01/30/lespagnole-fertiberia-a-t-elle-paye-des-pots-de-vin-pour-fertiliser-ses-affaires-en-algerie-_n_19112684.html; https://www.huffpostmaghreb.com/2016/09/23/villar-mir-corruption-alg_n_12150740.html; http://cadenaser.com/ser/2018/01/11/tribunales/1515707383_242732.html

764 https://elpais.com/elpais/2017/04/21/inenglish/1492758688_985633.html
765 http://www.elmundo.es/grafico/madrid/2017/10/14/59e1019b46163fde398b462b.html
766 https://www.bnamericas.com/en/news/spain-sisolux-accused-of-bribery-in-public-works-contracts; https://www.reuters.com/article/isolux-bonds/isolux-corsan-bonds-crash-after-renewed-corruption-allegations-idUSL8N0ZO1ST20150708; http://www2.latercera.com/noticia/fiscalia-de-espana-investiga-a-endesa-en-chile-por-presunto-cohecho-internacional/
767 Information provided to Transparency International Spain by the Spanish National Prosecutor's Office.
768 In 2017 the Spanish telecommunications company Telefonica SA disclosed in a US filing that it was investigating possible violations of anti-corruption laws in Brazil and the US. In February 2018, the Brazilian Federal Prosecutor opened an investigation to determine if the National Telecommunications Agency (Anatel) had favoured the Telefonica Group, owner of the Vivo brand: https://globalinvestigationsreview.com/article/jac/1138616/telef%C3%B3nica-conducting-internal-investigation-into-possible-fcpa-violations; http://www.brazilmonitor.com/index.php/2018/02/26/federal-prosecutor-opens-investigation-into-anatel-deal-with-telefonica/. OHL Mexico SAB was fined US$1.4 million in 2016 in an accounting probe by Mexico's securities regulator that began after audio recordings were posted on YouTube that purported to show executives discussing payoffs to judges and a free luxury hotel stay for a public official. The regulator found no evidence of fraud: https://globalinvestigationsreview.com/chapter/1067464/anti-corruption-enforcement-in-latin-america
769 http://www.poderjudicial.es/cgpj/es/Temas/Transparencia/Repositorio-de-datos-sobre-procesos-por-corrupcion/Informacion--general/
770 http://www.poderjudicial.es/search/indexAN.jsp
771 http://www.poderjudicial.es/cgpj/es/Temas/Estadistica-Judicial/Estadistica-por-temas/Aspectos-internacionales/
772 Project of reform of the Penal Code through the modification of Organic Law 10/1995 of 23 November: http://www.mjusticia.gob.es/cs/Satellite/es/1200666550194/DetalleInicio.html; Ley Orgánica 1/2015, de 20 de marzo, por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, de Código penal. BOE No. 77, de 31 de marzo de 2015, Sec. I, p. 27061 ss. Entrada en vigor: 1 de julio 2015: www.boe.es/boe/dias/2015/03/31/pdfs/BOE-A-2015-3439.pdf
773 http://www.mjusticia.gob.es/cs/Satellite/Portal/1292428454719?blobheader=application%2Fpdf&blobheadername1=Content-Disposition&blobheadername2=Grupo&blobheadervalue1=attachment%3B+filename%3DTriptico_ORGA_en_ingles.PDF&blobheadervalue2=Docs_ORGA
774 According to data from the Public Prosecutor's Office, the staff of the Special Unit against Corruption and Organised Crime consists of one Chief Prosecutor, one Lieutenant Prosecutor and 18 specialised prosecutors. There are also eight seconded staff prosecutors, 22 permanent prosecutors in the field and nine temporary prosecutors: https://www.fiscal.es/memorias/memoria2017/FISCALIA_SITE/index.html
775 See recommendation 6 of the OECD WGB Phase 3 Follow-up Report (March 2015), http://www.oecd.org/daf/anti-bribery/Spain-Phase-3-Written-Follow-Up-Report-EN.pdf
776 https://rm.coe.int/fourth-evaluation-round-corruption-prevention-in-respect-of-members-of/1680779c4d
777 http://www.oecd.org/daf/anti-bribery/Spain-Phase-3-Written-Follow-Up-Report-EN.pdf
778 https://www.teliacompany.com/en/news/press-releases/2017/9/telia-company-reaches-a-global-settlement-with-the-authorities-regarding-uzbekistan-investigation/
779 https://www.teliacompany.com/en/news/press-releases/2017/9/telia-company-reaches-a-global-settlement-with-the-authorities-regarding-uzbekistan-investigation/; https://www.justice.gov/opa/pr/telia-company-ab-and-its-uzbek-subsidiary-enter-global-foreign-bribery-resolution-more-965; https://www.thelocal.se/20170922/swedish-telecom-firm-telia-to-settle-bribery-case-involving-billions-in-payments-to-uzbek-official
780 https://www.reuters.com/article/telia-company-prosecutor/update-2-former-telia-ceo-charged-with-bribery-in-uzbekistan-probe-idUSL5N1M31D5
781 http://www.ijuridik.se/?s=hovr%C3%A4tten+F%C3%A4ngelse+Sweco+Ukraina
782 https://www.reuters.com/article/us-bombardier-appeal/swedish-prosecutor-appeals-bombardier-employee-acquittal-idUSKBN1CU1CO; http://www.businessinsider.com/ap-swedish-prosecutor-appeal-bombardier-acquittal-2017-10
783 https://www.business-anti-corruption.com/news/swedish-court-acquits-russian-in-bombardier-bribe-trial
784 http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries/V1403536e.pdf
785 https://www.bna.com/sweden-whistleblowing-law-n57982084714/
786 http://www.oecd.org/corruption/oecd-says-swedish-progress-combatting-foreign-bribery-insufficient-to-warrant-phase-4-evaluation.htm
787 http://www.oecd.org/corruption/oecd-says-swedish-progress-combatting-foreign-bribery-insufficient-to-warrant-phase-4-evaluation.htm
788 2015 and 2016 data comes from the OAG. 2014 data comes from Transparency International's 2015

Exporting Corruption report. Data on investigations for 2017 is not available, so the number of investigations may well be higher.

789 https://thelawreviews.co.uk/chapter/1151867/switzerland

790 http://www.oecd.org/corruption/anti-bribery/Switzerland-Phase-4-Report-ENG.pdf

791 http://www.swissinfo.ch/eng/businessman-who-bribed-ex-dictator-s-son-sentenced/40826956

792 The payment was for disgorgement, the fine was limited to one Swiss franc, due to self-reporting, conducting an internal investigation and cooperating with the authorities: https://www.swissinfo.ch/eng/business/kba-notasys_chf35-million-corruption-fine-for-printing-press-firm/42986930; https://globalinvestigationsreview.com/article/1129364/switzerland-imposes-ususd35-million-penalty-on-kba-notasys-following-self-report; https://www.tdg.ch/economie/deux-expatrons-notasys-vises-justice/story/23903018

793 The French company Vinci is a shareholder in Dredging and was involved in the consortium in Nigeria.

794 http://www.oecd.org/corruption/anti-bribery/Switzerland-Phase-4-Report-ENG.pdf; http://saharareporters.com/2017/06/04/jonathan%E2%80%99s-aide-three-other-ex-nigerian-officials-named-20million-bribery-scandal

795 http://www.oecd.org/corruption/anti-bribery/Switzerland-Phase-4-Report-ENG.pdf; https://uk.reuters.com/article/swiss-addax/addax-to-pay-31-mln-sfr-to-settle-swiss-bribery-charges-idUKL8N1JW3G4

796 https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-65077.html; https://www.thelocal.ch/20161222/swiss-convict-brazilian-construction-giant-in-bribery-case

797 https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-65077.html

798 OAG Annual Report 2016, page 19, paragraph 3.8: https://www.bundesanwaltschaft.ch/mpc/en/home/taetigkeitsberichte/taetigkeitsberichte-der-ba.html

799 https://thelawreviews.co.uk/chapter/1151867/switzerland

800 The data is limited to the number of pending investigations on 31 December 2015 and 2016. The OAG Annual Report 2017 is still outstanding. See OAG Annual Reports at: https://www.bundesanwaltschaft.ch/mpc/en/home/taetigkeitsberichte/taetigkeitsberichte-der-ba.html

801 https://bstger.weblaw.ch/index.php

802 https://www.bundesanwaltschaft.ch/mpc/en/home/zugang-zu-amtlichen-dokumenten/strafbefehle--einstellungs--und-nichtanhandnahmeverfuegungen.html

803 http://www.oecd.org/corruption/anti-bribery/Switzerland-Phase-4-Report-ENG.pdf

804 http://www.oecd.org/corruption/anti-bribery/Switzerland-Phase-4-Report-ENG.pdf

805 The data is limited to the number of pending requests on 31 December 2015 and 2016: http://www.oecd.org/corruption/anti-bribery/Switzerland-Phase-4-Report-ENG.pdf

806 http://www.oecd.org/corruption/anti-bribery/Switzerland-Phase-4-Report-ENG.pdf, pp. 56-58

807 https://www.ejpd.admin.ch/ejpd/de/home/aktuell/news/2016/2016-04-20.html

808 http://www.oecd.org/corruption/anti-bribery/Switzerland-Phase-4-Report-ENG.pdf

809 Financial intermediaries include banks; fund managers; investment companies with variable capital, limited partnerships for collective investments, investment companies and asset managers; insurance institutions; securities dealers; central counterparties and central securities depositories; payment systems that require authorisation from the Swiss Financial Market Supervisory Authority; casinos, and persons who on a professional basis accept or hold on deposit assets belonging to others or who assist in the investment or transfer of such assets: https://www.admin.ch/opc/en/classified-compilation/19970427/index.html

810 https://www.admin.ch/opc/en/classified-compilation/19970427/index.html; https://transparency.ch/illegale-finanzfluesse/

811 In 2016, there were 125 reports on the platform, of which 29 were for facts in relation to corruption: https://www.fedpol.admin.ch/fedpol/en/home/kriminalitaet/korruption.html; https://www.fedpol.admin.ch/fedpol/de/home/kriminalitaet/korruption/meldungen.html

812 The enforcement system for foreign bribery has improved, with the OAG identifying international money laundering and corruption as one of three priorities. OAG 2016-2019 Strategy: https://www.bundesanwaltschaft.ch/mpc/en/home/die-bundesanwaltschaft/strategie-2016-2019-breit.html

813 http://www.oecd.org/corruption/anti-bribery/Switzerland-Phase-4-Report-ENG.pdf

814 http://www.oecd.org/corruption/anti-bribery/Switzerland-Phase-4-Report-ENG.pdf

815 Federal Act on Mutual Assistance in Criminal Matters (IMAC) enables beneficiaries to take part in the proceedings and have access to the files, provided this is necessary to safeguard their interests (Article 80(b) IMAC). It also offers them a right of appeal against the ruling of the executing authority (Article 80(e) IMAC).

816 For example, each person being granted the right to be heard and the requirement to exhaust all available legal recourses resulting in months passing before evidence can be sent to the requesting country. OAG Annual Report 2016, page 7: https://www.bundesanwaltschaft.ch/mpc/en/home/taetigkeitsberichte/taetigkeitsberichte-der-ba.html

817 http://www.oecd.org/corruption/anti-bribery/Switzerland-Phase-4-Report-ENG.pdf

818 https://gettingthedealthrough.com/area/2/jurisdiction/54/anti-corruption-regulation-turkey/
819 See "Turkey: Follow-Up to the Phase 3 Report and Recommendations", OECD, May 2017, page 4: https://www.oecd.org/corruption/anti-bribery/Turkey-Phase-3-Written-Follow-Up-Report-ENG.pdf
820 https://www.theage.com.au/interactive/2016/the-bribe-factory/day-1/iraq-feature.html; https://www.theage.com.au/interactive/2016/the-bribe-factory/day-2/global-investigation.html. The joint venture GATE (Insaat Taahhut Sanayi ve Ticaret A.S.) is formed by Gama Endustri Tesisleri Imalat ve Montaj A.S. and Tekfen Insaat ve Tesisat A.S.: https://www.gama.com.tr/en/news/11/gate-has-been-awarded-the-epc-contract-for-the-ka-zakhstan-kashagan-power-plant-new-units#h11
821 For example: https://www.sfo.gov.uk/cases/unaoil/; https://www.theage.com.au/interactive/2016/the-bribe-factory/day-1/iraq-feature.html
822 The ex-ministers were not charged. The Grand Assembly voted not to send the then-ministers to the Supreme Court to be judged, thereby dismissing the charges: www.bbc.co.uk/turkce/haberler/2014/12/141212_17_25_aralik_operasyonu_neler_oldu_10_soruda; www.hurriyet.com.tr/gundem/28012968.asp; https://www.transparency.org/exporting_corruption/Turkey
823 http://www.dw.com/en/reza-zarrab-testifies-he-gave-bribes-to-turkey-minister/a-41589059
824 https://www.reuters.com/article/us-usa-turkey-zarrab/u-s-jury-finds-turkish-banker-guilty-of-helping-iran-dodge-sanctions-idUSKBN1ES1D0
825 https://www.oecd.org/corruption/anti-bribery/Turkey-Phase-3-Written-Follow-Up-Report-ENG.pdf
826 https://gettingthedealthrough.com/area/2/jurisdiction/54/anti-corruption-regulation-turkey/; http://etik.gov.tr/Portals/0/en/U%C4%9Fur%20%C3%96m%C3%BCrg%C3%B6n%C3%BCl%C5%9Fen-Reviev%20Of%20National%20Ethics%20And%20%C4%B0ntegrity%20System%20%C4%B0n%20Turkey%20And%20The%20Role%20Of%20Council%20Of%20Ethics%20For%20Public%20Officials%20(CEPO)%20in%20This%20System.pdf
827 https://www.oecd.org/corruption/anti-bribery/Turkey-Phase-3-Written-Follow-Up-Report-ENG.pdf
828 https://www.oecd.org/corruption/anti-bribery/Turkey-Phase-3-Written-Follow-Up-Report-ENG.pdf, page 5
829 http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries/V1601608e.pdf
830 http://www.haber7.com/yazarlar/prof-dr-ersan-sen/2244011-son-cmk-degisiklikleri
831 https://gettingthedealthrough.com/area/2/jurisdiction/54/anti-corruption-regulation-turkey/
832 https://www.oecd.org/corruption/anti-bribery/Turkey-Phase-3-Written-Follow-Up-Report-ENG.pdf, page 5
833 http://www.hurriyetdailynews.com/turkish-government-to-extend-state-emergency-for-seventh-time-130267
834 https://www.oecd.org/corruption/anti-bribery/Turkey-Phase-3-Written-Follow-Up-Report-ENG.pdf
835 https://www.oecd.org/corruption/anti-bribery/Turkey-Phase-3-Written-Follow-Up-Report-ENG.pdf
836 https://www.oecd.org/corruption/anti-bribery/Turkey-Phase-3-Written-Follow-Up-Report-ENG.pdf
837 https://www.oecd.org/corruption/anti-bribery/Turkey-Phase-3-Written-Follow-Up-Report-ENG.pdf
838 This includes investigations by the Serious Fraud Office and the National Crime Agency's International Corruption Unit, among others
839 The SFO is a specialist prosecuting authority tackling the top level of serious or complex fraud, bribery and corruption.
840 https://www.sfo.gov.uk/cases/standard-bank-plc/
841 The company has not been named due to ongoing and related criminal proceedings.
842 https://www.sfo.gov.uk/2016/07/08/sfo-secures-second-dpa/
843 Specifically Rolls-Royce plc and Rolls-Royce Energy Systems Inc.
844 https://www.sfo.gov.uk/cases/rolls-royce-plc/
845 https://www.sfo.gov.uk/2017/09/26/sfo-secures-7-convictions-20m-f-h-bertling-corruption-case/
846 https://www.sfo.gov.uk/2017/11/16/two-charged-sfos-unaoil-investigation/; https://www.sfo.gov.uk/2017/11/30/two-individuals-charged-sfos-unaoil-investigation/
847 https://uk.reuters.com/article/uk-sfo-alstom/sfo-brings-charges-against-alstom-uk-head-idUKKCN-0WV1WP; http://www.cityam.com/237709/seventh-individual-charged-by-serious-fraud-office-sfo-in-investigation-into-alstom-and-alleged-bribery
848 These agencies include the National Crime Agency's International Corruption Unit, The Crown Office and Procurator Fiscal Service (COPFS), and the Financial Conduct Authority.
849 https://www.sfo.gov.uk/cases/enrc/
850 https://www.sfo.gov.uk/cases/glaxosmithkline-plc/
851 https://www.sfo.gov.uk/cases/gpt-special-project-management-ltd/
852 https://www.sfo.gov.uk/cases/unaoil/
853 https://www.sfo.gov.uk/cases/airbus-group/
854 https://www.sfo.gov.uk/cases/rio-tinto-group/
855 https://www.sfo.gov.uk/cases/british-american-tobacco/
856 https://www.sfo.gov.uk/2018/01/18/chemring-group-plc-and-chemring-technology-solutions-ltd/
857 OECD WGB Phase 4 Report, page 103, Annex 3. This includes two investigations by the Crown Prosecution Service and one by authorities in Scotland: http://www.oecd.org/corruption/anti-bribery/UK-Phase-4-Re-

port-ENG.pdf
858 https://www.sfo.gov.uk/publications/corporate-information/annual-reports-accounts/
859 http://www.oecd.org/corruption/anti-bribery/UK-Phase-4-Report-ENG.pdf, page 59, paragraph 156
860 http://www.oecd.org/corruption/anti-bribery/UK-Phase-4-Report-ENG.pdf, page 60, paragraph 159
861 Such data is only released when it would not breach the confidentiality of any individual request. The most recent dataset available is for MLA requests between January 2012 and December 2013, published subject to a May 2014 Freedom of Information request: https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/302347/FOI_30607_-_Annex_A.pdf
862 http://www.oecd.org/corruption/anti-bribery/UK-Phase-4-Report-ENG.pdf, page 68, paragraph 179
863 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/667221/6_3323_Anti-Corruption_Strategy_WEB.pdf
864 In March 2018, Skansen Interiors was convicted of failure to prevent bribery under Section 7 of the Bribery Act in charges brought by the Crown Prosecution Service. The company was accused of bribing a project manager at a property company to award it refurbishment contracts worth £6 million. A jury determined that Skansen did not have controls in place in order to constitute adequate procedures. The Law Society Gazette, "CPS secures first conviction for failure to prevent bribery", 9 March 2018: https://www.lawgazette.co.uk/law/cps-secures-first-conviction-for-failure-to-prevent-bribery/5065201.article
865 http://www.oecd.org/corruption/anti-bribery/UK-Phase-4-Report-ENG.pdf, page 26, paragraph 57
866 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/667221/6_3323_Anti-Corruption_Strategy_WEB.pdf
867 Corporate criminal liability for tax evasion was introduced under the Criminal Finances Act 2017: http://www.legislation.gov.uk/ukpga/2017/22/contents/enacted
868 http://www.oecd.org/corruption/anti-bribery/UK-Phase-4-Report-ENG.pdf, page 35, paragraph 83
869 https://www.ft.com/content/addd777e-de43-11e7-a8a4-0a1e63a52f9c
870 https://cw-uk.org/single-post/2017/01/19/A-Failure-of-Nerve-The-SFO's-Settlement-with-Rolls-Royce
871 https://judiciary.uk/wp-content/uploads/2017/01/sfo-v-rolls-royce.pdf, page 1, paragraph 2
872 https://judiciary.uk/wp-content/uploads/2017/01/sfo-v-rolls-royce.pdf, page 16, paragraph 58
873 http://www.oecd.org/corruption/anti-bribery/UK-Phase-4-Report-ENG.pdf, page 37, paragraph 91
874 Under the Anti-Corruption Strategy, the Crown Commercial Service has now re-committed the UK government to trialling a new conviction check, to complement existing provisions in the Public Contracts Regulations 2015, as well as to publishing guidance on applying exclusions in the procurement process.
875 http://www.oecd.org/corruption/anti-bribery/UK-Phase-4-Report-ENG.pdf, page 70
876 http://www.oecd.org/corruption/anti-bribery/UK-Phase-4-Report-ENG.pdf, page 73
877 http://www.oecd.org/corruption/anti-bribery/UK-Phase-4-Report-ENG.pdf, page 42, paragraph 106
878 https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/415038/MLA_Guidelines_2015.pdf, page 15
879 https://seekingalpha.com/filings/pdf/12337371.pdf; https://www.sec.gov/Archives/edgar/data/1000229/000100022918000025/clb-20171231_10k.htm; https://www.sec.gov/Archives/edgar/data/1000229/000119312516587092/d190526ds3asr.htm; https://www.wsj.com/articles/justice-department-investigates-whether-uber-violated-u-s-foreign-bribery-laws-1504040457; http://www.marketwired.com/press-release/vantage-drilling-international-announces-closing-of-fcpa-investigation-by-the-doj-2230509.htm; http://www.marketwired.com/press-release/vantage-drilling-international-announces-closing-of-fcpa-investigation-by-the-doj-2230509.htm; https://www.sec.gov/Archives/edgar/data/861878/000156459017017033/srcl-10q_20170630.htm; https://www.sec.gov/Archives/edgar/data/1471261/000156459017004239/cie-10k_20161231.htm; http://www.globallegalchronicle.com/sec-investigation-of-cobalt-international-energy-inc/; https://www.sec.gov/Archives/edgar/data/816761/000081676117000033/tdc-063017x10q.htm; http://investors.qg.com/phoenix.zhtml?c=231687&p=irol-SECText&TEXT=aHR0cDovL2FwaS50ZW5rd2l6YXJkLmNvbS9maWxpbmcueG-1sP2lwYWdlPTEwOTE0OTcwJkRTRVE9MCZTRVE9MCZTUURFU0M9U0VDVElPTI9FTlRJUkUmc3Vic2lkPTU3; https://seekingalpha.com/filing/2991576; https://www.streetinsider.com/Corporate+News/FMC+Technologies+%28FTI%29+10-Q+Shows+DOJ+Inquiry/11556067.html); https://www.sec.gov/Archives/edgar/data/1145460/000095015716001735/form8k.htm; https://yaledailynews.com/blog/2015/11/09/doj-investigates-alexion-for-bribery/
880 Statistics from SEC and DoJ press releases on individual cases.
881 These statistics are gathered from SEC and DoJ press releases on individual cases.
882 https://www.justice.gov/opa/pr/louis-berger-international-resolves-foreign-bribery-charges; https://www.justice.gov/opa/file/631351/download; DPA (https://www.justice.gov/opa/file/631346/download; https://www.justice.gov/criminal-fraud/file/642081/download;

https://www.justice.gov/criminal-fraud/file/642086/download; https://www.justice.gov/criminal-fraud/file/642086/download; https://www.justice.gov/criminal-fraud/file/642051/download

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884 https://www.sec.gov/news/pressrelease/2015-170.html; https://www.sec.gov/litigation/admin/2015/34-75720.pdf

885 https://www.sec.gov/news/pressrelease/2015-212.html; https://www.sec.gov/litigation/complaints/2015/comp-pr2015-212.pdf

886 https://www.justice.gov/opa/pr/odebrecht-and-braskem-plead-guilty-and-agree-pay-least-35-billion-global-penalties-resolve; https://www.justice.gov/opa/press-release/file/919901/download); https://www.justice.gov/opa/press-release/file/919906/download; https://www.sec.gov/news/pressrelease/2016-271.html; https://www.sec.gov/litigation/complaints/2016/comp-pr2016-271.pdf

887 https://www.complianceweek.com/sites/default/files/OdebrechtFines.pdf

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889 https://www.sec.gov/news/pressrelease/2016-203.html; https://www.sec.gov/litigation/admin/2016/34-78989.pdf; https://www.justice.gov/opa/pr/och-ziff-capital-management-admits-role-africa-bribery-conspiracies-and-agrees-pay-213; https://www.justice.gov/opa/file/899306/download; https://www.justice.gov/opa/file/899316/download

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893 https://www.justice.gov/opa/pr/keppel-offshore-marine-ltd-and-us-based-subsidiary-agree-pay-422-million-global-penalties; https://www.justice.gov/opa/press-release/file/1020706/download); https://www.justice.gov/opa/press-release/file/1020716/download; https://www.justice.gov/opa/press-release/file/1020711/download; https://www.justice.gov/opa/press-release/file/1020721/download; https://lta.reuters.com/article/marketsNews/idLTAL1N1OR0KR?src=ilaw

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895 https://www.justice.gov/criminal-fraud/related-enforcement-actions; https://www.sec.gov/spotlight/fcpa/fcpa-cases.shtml

896 https://www.justice.gov/news; https://www.sec.gov/news/pressreleases

897 https://www.justice.gov/criminal-fraud/statutes-regulations

898 https://www.pacer.gov/

899 https://www.sec.gov/edgar/searchedgar/companysearch.html

900 These include the FCPA Professor: http://fcpaprofessor.com/; the FCPA Scorecard Blog: https://buckleysandler.com/fcpa-scorecard, and the FCPA Blog: http://www.fcpablog.com/

901 https://www.fbi.gov/news/stories/fbi-establishes-international-corruption-squads. FBI Corruption Squad members are experienced white-collar crime investigators who have at their disposal a set of powerful investigative tools, including financial analysis, court-authorised wiretaps, undercover operations and informants. The three squads are based in New York City, Los Angeles and Washington, D.C.

902 https://www.fbi.gov/news/stories/fbi-establishes-international-corruption-squads

903 https://www.justice.gov/archives/dag/file/769036/

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904 https://www.gibsondunn.com/2015-year-end-fcpa-update/
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906 https://www.justice.gov/archives/opa/blog-entry/file/838386/download
907 https://create.org/news/declination-disgorgement-doj-pilot-program/
908 https://www.justice.gov/opa/speech/deputy-attorney-general-rosenstein-delivers-remarks-34th-international-conference-foreign. Deputy Attorney General Rosenstein also reported that "during the year and a half that the Pilot Program was in effect, the FCPA Unit received 30 voluntary disclosures, compared to 18 during the previous 18 month period."
909 https://www.sec.gov/news/pressrelease/2016-128.html
910 https://www.sec.gov/news/pressrelease/2016-164.html
911 https://www.sec.gov/news/pressrelease/2016-196.html
912 http://www.fcpablog.com/blog/2016/8/30/report-sec-pays-its-first-fcpa-whistleblower-award.html
913 https://www.supremecourt.gov/opinions/16pdf/16-529_i426.pdf
914 When a company voluntarily discloses an FCPA internal investigation to the DOJ or SEC and the agencies do not bring an enforcement action, they should disclose the facts the company disclosed and why, based on those facts, they decided not to bring an action.

III. REPORTS ON NON-OECD CONVENTION COUNTRIES

915 OECD WGB Annual Report 2007, page 3: https://www.oecd.org/daf/anti-bribery/40896091.pdf
916 OECD WGB Annual Report 2010, page 2: https://www.oecd.org/daf/anti-bribery/45460981.pdf
917 OECD WGB Annual Report 2011, page 3: http://www.oecd.org/daf/anti-bribery/AntiBriberyAnnRep2011.pdf
918 OECD WGB Annual Report 2011, page 3: http://www.oecd.org/daf/anti-bribery/AntiBriberyAnnRep2011.pdf
919 https://www.mofa.go.jp/files/000185882.pdf
920 https://www.transparency.org/whatwedo/publication/progress_report_2010_enforcement_of_the_oecd_anti_bribery_convention at pages 66-67
921 This is based on searches in major Chinese legal databases and related databases, including: http://caseshare.cn (maintained by the Peking University Research Center); http://law.wkinfo.com.cn/; http://wenshu.court.gov.cn; https://splcgk.court.gov.cn/gzfwww/; http://zhixing.court.gov.cn; the websites of relevant Chinese government or party agencies; search engines (Google, Baidu and Lexis Advance News).
922 For example, at the opening ceremony of the Belt and Road Forum for International Cooperation in May 2017, Chinese President Xi Jinping called for strengthening "international counter-corruption cooperation" so that the Belt and Road initiative has "high ethical standards".
923 https://www.forbes.com/sites/alexandrawrage/2017/10/12/companies-engaging-in-chinas-belt-road-projects-must-address-bribery-risks/#732d26bd4f52; http://www.chinadaily.com.cn/beltandroadinitiative/2017-05/14/content_29337406_2.htm
924 https://www.reuters.com/article/china-economy-odi/update-1-china-issues-guidelines-for-overseas-investment-by-private-firms-idUSL4N1OI2IV.
925 http://www.sasac.gov.cn/n2588030/c8374815/content.html.
926 http://dz.jjckb.cn/www/pages/webpage2009/html/2018-01/23/content_40328.htm.
927 https://www.reuters.com/article/us-china-corruption-g-idUSKCN0YH0UT; http://www.ejinsight.com/20160421-china-said-to-have-suspended-g20-anti-corruption-task-force/
928 http://www.loc.gov/lawweb/servlet/lloc_news?disp3_l205402612_text. For individuals responsible, penalties range from criminal detention and a monetary fine to imprisonment for 10 years with monetary fines depending on the amount of bribe. For business entities, penalties are monetary fines.
929 http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries/V1609720e.pdf
930 See for example, https://www.oecd.org/cleangovbiz/Integrity-Forum-2017-Lang-China-transnational-bribery.pdf and https://globalanticorruptionblog.com/2018/05/14/its-time-for-china-to-show-its-foreign-bribery-law-is-not-a-paper-tiger/
931 https://assets.kpmg.com/content/dam/kpmg/cn/pdf/en/2017/06/china-evolving-anti-money-laundering-regulatory-landscape.pdf
932 https://assets.kpmg.com/content/dam/kpmg/cn/pdf/en/2017/06/china-evolving-anti-money-laundering-regulatory-landscape.pdf
933 https://www.oecd.org/cleangovbiz/Integrity-Forum-2017-Lang-China-transnational-bribery.pdf
934 http://www.scmp.com/business/companies/article/2043215/agricultural-bank-china-pay-us215-million-new-york-state-money
935 http://www.globaltimes.cn/content/1106039.shtml
936 "Mutual Legal Assistance in Asia and the Pacific: Experiences in 31 Jurisdictions", the Asian Development Bank and OECD: http://www.unodc.org/documents/

treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries/V1609720e.pdf

937 http://www.spiegel.de/international/business/airbus-corruption-scandal-threatens-ceo-tom-enders-a-1171533.html

938 Although the UNCAC first cycle review covered the People's Republic of China, it did not review Hong Kong separately, and therefore did not publish observations on Hong Kong's corruption-related statistical data.

939 http://www.icac.org.hk/en/rc/figure/prosecute/index.html

940 http://www.icac.org.hk/en/law/case/index.html

941 https://www.scmp.com/news/hong-kong/law-crime/article/2098312/rafael-hui-case-hong-kong-court-final-appeal-judgment-brief

942 Tsang was originally given a 20 month prison sentence in February 2017, which was reduced to 12 months by the Court of Appeal in July 2018. Tsang filed a further appeal with the Court of Final Appeal in July 2018 to overturn the conviction.

943 https://www.lexology.com/library/detail.aspx?g=34392107-5fdd-4a2d-967a-556ceb9e94e1

944 http://www.corporatecomplianceinsights.com/a-safe-haven-from-which-to-plan-foreign-bribes-the-lack-of-extra-territoriality-of-hong-kongs-anti-bribery-laws/. Section 4 of POBO expands the jurisdiction of the POBO to cover conduct beyond the borders of Hong Kong. However, the provision only applies to dealings with Hong Kong public servants, and not foreign government officials or private persons: https://thelawreviews.co.uk/edition/the-anti-bribery-and-anti-corruption-review-edition-6/1151853/hong-kong

945 POBO s 2(1)

946 [2010] 3 HKC 118-129, Court of Final Appeal. This is the case B v. Commissioner of the Independent Commission Against Corruption, decided in 2010, often-cited by commentators and practitioners, in which the Court of Final Appeal decided that where an advantage was offered in Hong Kong, POBO s 9(2) applied even if the recipient was a foreign official, and the act or forbearance was in relation to his public duties as a foreign official. In a more controversial judgment related to foreign bribery [2014] HKEC 1323 HKSAR v. Lionel John Kreiger & Anor, decided in 2013, the Court of Appeal set aside convictions for a conspiracy in Hong Kong to bribe a foreign public official on the grounds that the conspiracy did not constitute the offering of a bribe. The criminal act of offering a bribe took place outside Hong Kong and therefore Hong Kong courts had no jurisdiction over the conspiracy.

947 POBO s 30A

948 https://www.icac.org.hk/en/rc/guide/index.html

949 https://www.lexology.com/library/detail.aspx?g=8d692490-8204-48fc-b94a-302fccf9cf49

950 In the Queen v. Lee Tsat Pin (CACC000315/1985), the Hong Kong Court of Appeal held that "[I]n order to attach liability to a limited company for the act of an officer of [the] company[,] the officer who committed the offense must be a person who was in control of the company so that his criminal act could be identified as that of the company."

951 https://globalcompliancenews.com/white-collar-crime/corporate-liability-in-hong-kong/

952 https://thelawreviews.co.uk/edition/the-anti-bribery-and-anti-corruption-review-edition-6/1151853/hong-kong

953 https://www.doj.gov.hk/eng/laws/table3ti.html; https://www.doj.gov.hk/lawdoc/mla.pdf; https://www.doj.gov.hk/lawdoc/mla2.pdf

954 http://www.oecd.org/site/adboecdanti-corruptioninitiative/39984764.pdf

955 ADB/OECD (2017), Mutual Legal Assistance in Asia and the Pacific: Experiences in 31 Jurisdictions: https://www.oecd.org/corruption/ADB-OECD-Mutual-Legal-Assistance-Corruption-2017.pdf

956 See for example, The Guptas in South Africa: http://www.france24.com/en/20180214-south-africa-gupta-family-zuma-india-corruption

957 https://www.aljazeera.com/news/2018/03/india-carries-raids-gupta-brothers-180307110513378.html

958 http://lawcommissionofindia.nic.in/reports/Report258.pdf

959 See Times of India, "Bill soon to criminalize bribery in private sector", 2 March 2015, http://www.timesofindia.indiatimes.com/india/Bill-soon-to-criminalize-bribery-in-private-sector/articleshow/46424950.cms. A bill to criminalise foreign bribery, the Prevention of Bribery of Foreign Public Officials and Officials of Public International Organizations Bill (2011), was introduced in the Lok Sabha (the lower parliamentary house) on 25 March 2011, Prevention of Bribery of Foreign Public Officials and Officials of Public International Organizations Bill (2011), see www.prsindia.org/billtrack/the-prevention-of-bribery-of-foreign-public-officials-and-officials-of-public-international-organisations-bill-2011-1601/; However, the bill lapsed with the dissolution of the 15th Lok Sabha in 2014. The lapsed bill provided a mechanism to deal with bribery among foreign public officials and officials of public international organisations, and would have empowered the central government to enter into agreements with other countries (contracting states) to enforce the new offence and exchange investigative information.

960 https://www.thehindu.com/news/national/lok-sabha-passes-anti-graft-amendment-bill/article24506028.ece

961 In addition to India, a further three G20 countries (China, Indonesia and Saudi Arabia) have yet to ratify the OECD Convention and criminalise foreign bribery. OECD Convention Ratification Status as of 21 May 2014, www.

oecd.org/daf/anti-bribery/WGBRatificationStatus.pdf.
962 Section 11, Whistleblowers Protection Act 2014 (WPA).
963 Section 3(i), WPA
964 India's Draft Questionnaire - Country self-assessment report on implementation and enforcement of G20 commitments on foreign bribery, pages 6-7
965 http://www.mea.gov.in/mutual-legal-assistance-in-criminal-matters.htm
966 In Singapore, The Corruption Practices Investigation Bureau (CPIB) is the organisation tasked with receiving complaints of corruption practices, investigating malpractices and corruption-related misconduct committed by public officers, preventing corruption by examining practices and procedures in the public service sector, and minimising opportunities for corrupt practices in both the private and public sectors. CPIB does not have prosecutorial functions. If CPIB believes that an investigation warrants further prosecution, it will transfer the case to the Attorney General's Chambers, which will then initiate and handle any subsequent criminal proceedings.
967 https://www.straitstimes.com/singapore/bribes-for-overseas-deals-2-local-firms-charged-since-1997
968 https://www.wsj.com/articles/keppel-to-pay-422-million-to-settle-bribery-probe-1513987892
969 https://www.agc.gov.sg/docs/default-source/newsroom-doucments/media-releases/2017/joint-press-release-by-agc-and-cpib---conditional-warning-issued-to-keppel-offshore-marine-ltd8c1000354d-cc63e28975ff00001533c2.pdf?sfvrsn=0
970 See https://www.straitstimes.com/singapore/former-key-keppel-execs-arrested-in-corruption-probe. At the time of the new report, Tay Kim Hock had been released from custody on bail, and it was unclear if AGC would file charges against the arrested individuals.
971 In total, Keppel was fined US$422 million dollars in criminal bribery by government authorities in Singapore, Brazil and the US: https://www.justice.gov/opa/pr/keppel-offshore-marine-ltd-and-us-based-subsidiary-agree-pay-422-million-global-penalties
972 http://www.spiegel.de/international/business/airbus-corruption-scandal-threatens-ceo-tom-enders-a-1171533.html
973 http://www.stuff.co.nz/business/world/78400439/worlds-biggest-bribery-scandal-the-oil-the-powerful-and-the-multinationals; "New Zealand shell company linked to Unaoil scandal", (31 March 2016): https://www.stuff.co.nz/business/78436709/new-zealand-shell-company-linked-to-unaoil-global-oil-industry-bribery-scandal; and https://www.transparency.org.nz/unaoil/
974 https://www.cnn.com/2018/01/31/politics/us-navy-fat-leonard-bribery-scandal-asia-intl/index.html
975 https://www.stripes.com/news/pacific/fat-leonard-is-ailing-and-the-feds-are-keeping-his-whereabouts-a-secret-1.528517
976 https://www.reuters.com/article/us-malaysia-scandal-falcon-idUSKCN12B03Y; http://www.fcpablog.com/blog/2016/10/11/singapore-closes-falcon-bank-arrests-local-manager-for-1mdb.html
977 http://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2016_07_06_Singapore_Final_Country_Report.pdf
978 https://www.cpib.gov.sg/research-room/corruption-situation-singapore
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981 https://gettingthedealthrough.com/area/2/jurisdiction/58/anti-corruption-regulation-2018-singapore/, pages 41-54
982 https://globalcompliancenews.com/anti-corruption/anti-corruption-in-singapore/
983 https://www.straitstimes.com/opinion/singapore-needs-stronger-anti-bribery-laws
984 http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries/V1505040e.pdf
985 https://www.businesstimes.com.sg/companies-markets/boardroom-matters/responding-to-anonymous-whistleblowers
986 For example, Section 36 of the PCA, entitled "Protection of Informers", specifies that the name, address and other identifying information of an informer in a corruption case may not be disclosed in any civil or criminal proceeding, unless the court believes that the informer made a false or untrue material statement, or that justice "cannot be fully done" without discovery of the informer: https://sso.agc.gov.sg/Act/PCA1960#pr36-
987 https://www.cpib.gov.sg/sites/cpibv2/files/CPIB%20Annual%20Report%202017.pdf
988 The former director is Edwin Yeo Seow Hiong, https://www.todayonline.com/singapore/former-cpib-assistant-director-jailed-10-years-0
989 https://www.mlat.info/country-profile/singapore; http://www.oecd.org/site/adboecdanti-corruptioninitiative/40072367.pdf; and http://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinal Reports/2016_07_06_Singapore_Final_Country_Report.pdf
990 https://sso.agc.gov.sg/Act/MACMA2000

IV. CASE STUDIES

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V. METHODOLOGY

1160 Data on share of world exports (goods and services) is provided by the OECD.
1161 For the purposes of this report, "investigation" is used to refer to the pre-trial phase and "case" is used to refer to the trial phase of a legal procedure.

1162 "Substantial" sanctions include deterrent prison sentences, large fines, the appointment of a compliance monitor, and/or disqualification from engagement in future business activities.

1163 The level of seniority of public officials would depend, *inter alia*, on their ability to influence decisions. Characterisation of a case as a "major case" involves discretion, which is exercised narrowly; thus, where there is a degree of doubt, a case should not be characterised as "major".

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