



# EXPORTING CORRUPTION

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**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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Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of June 2018. Nevertheless, Transparency International cannot accept responsibility for the consequences of its use for other purposes or in other contexts.

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.

# TABLE OF CONTENTS

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Figure 1: Changes in enforcement levels: 2015-2018	05
<b>EXECUTIVE SUMMARY</b>	<b>06</b>
<b>I. GLOBAL FINDINGS AND RECOMMENDATIONS</b>	<b>09</b>
i. Table 1: Investigations and cases: 2014-2017	10
A. Status of enforcement	12
B. Availability of enforcement data and case information	13
ii. Figures 2 and 3: Publication of foreign bribery enforcement data, and data on mutual legal assistance	13
C. Mutual legal assistance	16
D. Status of legal framework and enforcement system	18
E. Settlements	21
F. The role of China and other major exporters not party to the OECD convention	23
<b>II. METHODOLOGY AND TABLE 2: INVESTIGATIONS AND CASES: 2011-2014</b>	<b>24</b>
<b>III. COUNTRY/REGION EXPERTS</b>	<b>29</b>

Read the full report: <https://bit.ly/2x2QLXe>

# KEY FINDINGS

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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

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## 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

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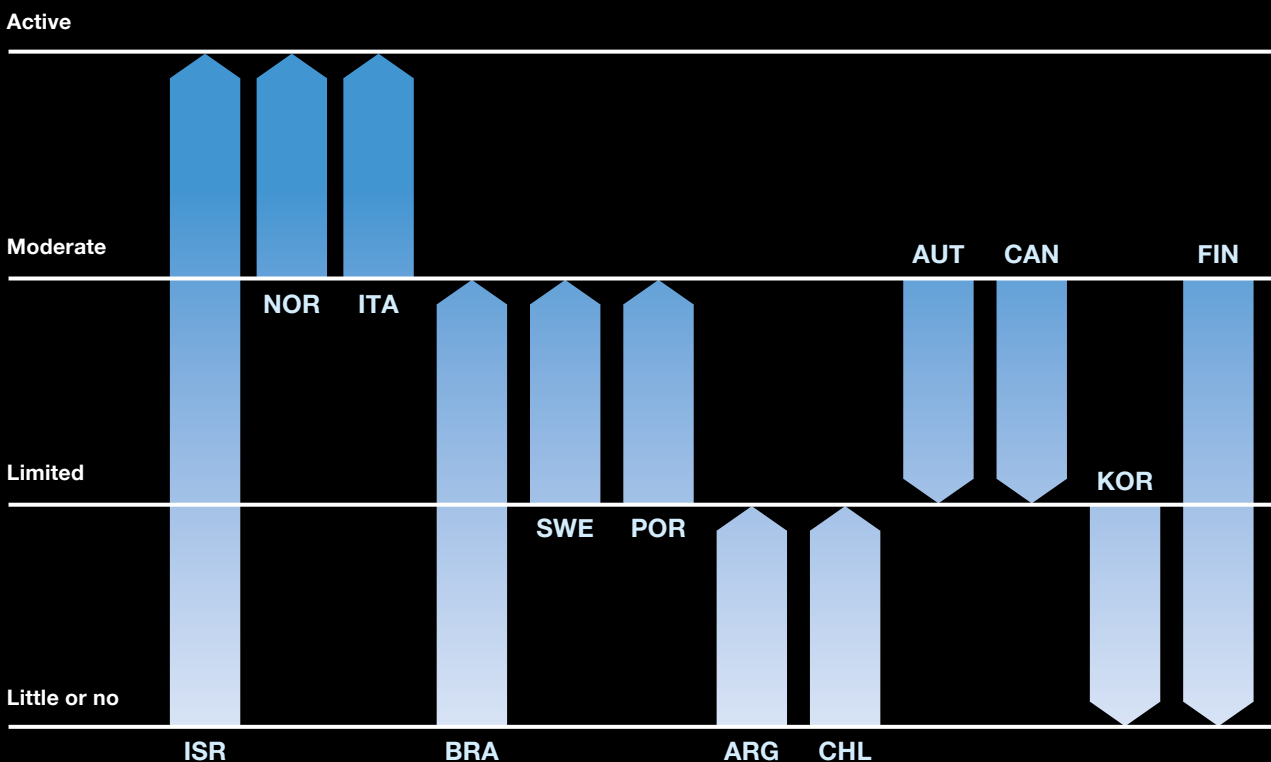
Costa Rica, Iceland and Latvia could not be classified, as their very low shares in world exports do not permit distinctions between the enforcement categories. Peru became party to the Convention in July 2018, too recently for inclusion in this report.

# 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

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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<sup>1</sup> and more than 75 per cent of total foreign direct investment outflows.<sup>2</sup> This twelfth such report also assesses enforcement in China, Hong Kong Special Administrative Region of the People's Republic of China,<sup>3</sup> India and Singapore, which are not parties<sup>4</sup> 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,<sup>5</sup> 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.<sup>6</sup> 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 full 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 full 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.

In the full report, 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.<sup>7</sup>**

- » 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,<sup>8</sup> 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<sup>9</sup> 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<sup>10</sup>

- 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

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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<sup>11</sup>, 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 full report has six sections:**

Section I presents an overview table reflecting the status of enforcement in 40 of the 44 parties to the Convention,<sup>12</sup> 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 of the full report presents detailed country reports for 41 of the countries party to the Convention (excluding Iceland, Latvia and Peru) and its third section covers China, Hong Kong, India and Singapore. Section IV of the full report profiles five major foreign bribery cases with global reach arising during the four-year period covered by the report. The last two sections explain the methodology and list country and regional experts who contributed to the report. This printed version contains sections I, V and VI of the full 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
<b>Active Enforcement (7 countries) 27% global exports</b>													
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
<b>Moderate Enforcement (4 countries) 3.8% global exports</b>													
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
<b>Limited Enforcement (11 countries) 12.3% global exports</b>													
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
<b>Little or No Enforcement (22 countries) 39.6% global exports</b>													
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 Past 4 years	Minimum points required for enforcement levels depending on share of world exports		
	2014	2015	2016	2017	2014	2015	2016	2017		Active	Moderate	Limited
<b>Active Enforcement (7 countries) 27% global exports</b>												
United States	16	8	30	12	8	7	10	7	899	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
<b>Moderate Enforcement (4 countries) 3.8% global exports</b>												
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
<b>Limited Enforcement (11 countries) 12.3% global exports</b>												
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
<b>Little or No Enforcement (22 countries) 39.6% global exports</b>												
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.<sup>13</sup> 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

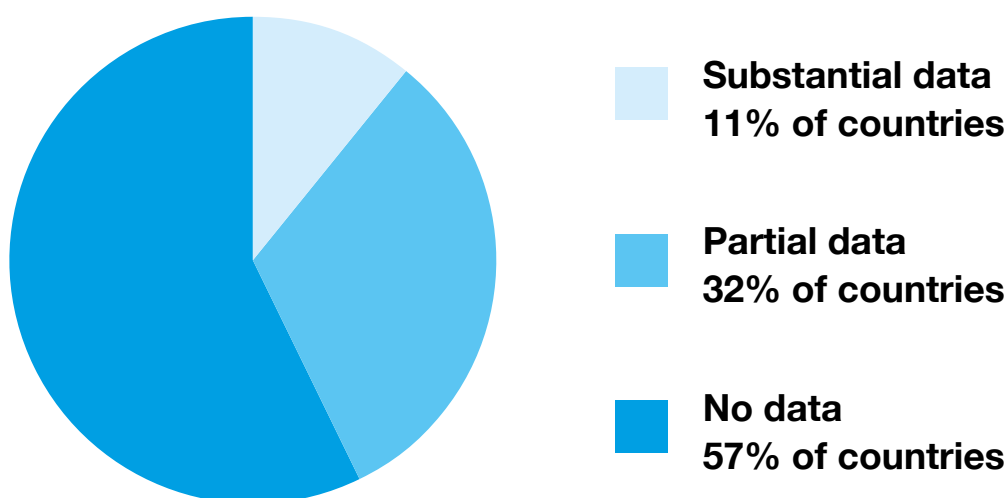
To enable informed debate and decision-making on a country's enforcement system, it is essential that the state regularly publish updated statistics on criminal, civil and administrative investigations, charges, proceedings, outcomes and mutual legal assistance activity. These statistics should be disaggregated 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.<sup>14</sup> 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.<sup>15</sup> 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.

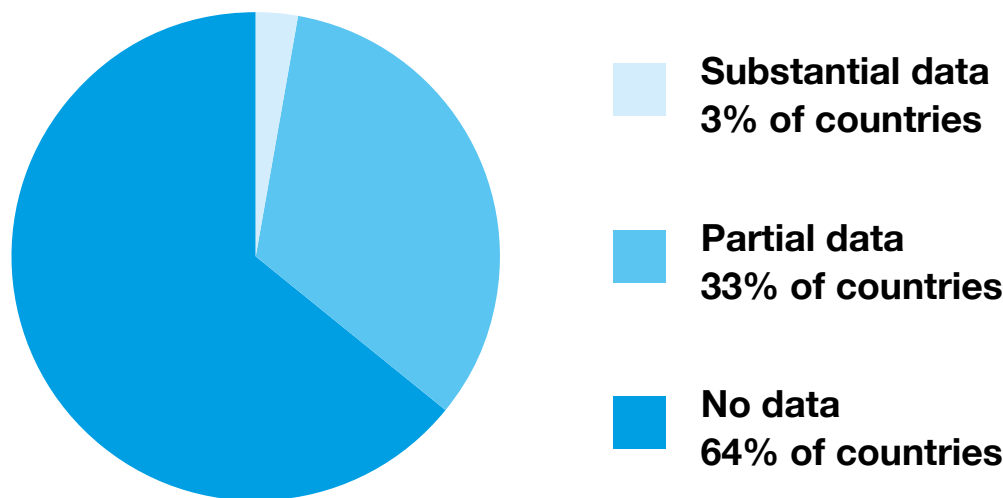
Those proceedings are normally public, in line with the principles of fair trial, with a few narrow limitations (for the protection of victims' rights, juvenile offenders and national security). Naming perpetrators both in the courtroom and in written case resolutions is a basic element of due process.

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.<sup>16</sup> **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.<sup>17</sup> **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<sup>18</sup> 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.<sup>19</sup> 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.<sup>20</sup> 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.<sup>21</sup> Some court decisions are only available online via subscription (**Israel** 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.<sup>22</sup>

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.<sup>23</sup> 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.<sup>24</sup> 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<sup>25</sup> and publishes a chart containing all signed leniency agreements and conduct adjustment agreements.<sup>26</sup> It also hosts a dedicated website containing all sentences and criminal charges regarding its major investigative *Lava Jato* (Car Wash) Operation.<sup>27</sup>

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.<sup>28</sup> 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.<sup>29</sup> In **Estonia**, all court decisions that have entered into force are available electronically.<sup>30</sup>

## 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.<sup>31</sup> 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 WGB should assess enforcement 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.<sup>32</sup> 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<sup>33</sup> (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.<sup>34</sup> 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.<sup>35</sup> 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.<sup>36</sup> **South Africa** has assigned a specialised unit to handle MLA and track response times for processing incoming requests.<sup>37</sup>

**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.<sup>38</sup>

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**.<sup>39</sup>

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 bodies.

## 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.<sup>40</sup>

In June 2015, the European Union’s 4<sup>th</sup> 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,<sup>41</sup> 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.<sup>42</sup> Argentina’s law on corporate criminal liability for corruption entered into force in March 2018.<sup>43</sup> 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.<sup>44</sup> **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<sup>45</sup>. 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”<sup>46</sup> 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.<sup>47</sup> **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.<sup>48</sup> The same is true of numerous other OECD Convention countries.<sup>49</sup>

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.<sup>50</sup>

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.<sup>51</sup> In Sweden, the maximum fine for companies engaged in international bribery is approximately €1.2 million, which the OECD WGB considers "inadequate".<sup>52</sup> 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.<sup>53</sup>

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.<sup>54</sup> The Finnish Prosecution Service has stretched resources.<sup>55</sup> 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.<sup>56</sup> 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,<sup>57</sup> 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.<sup>58</sup> 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<sup>59</sup> and its postponement of Sweden's Phase 4 review due to its failure to implement key recommendations<sup>60</sup> 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.<sup>61</sup>

- **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.<sup>62</sup> 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**,<sup>63</sup> **Canada**,<sup>64</sup> **Finland**,<sup>65</sup> **France**<sup>66</sup> and **Japan**.<sup>67</sup> 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.<sup>68</sup>

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.<sup>69</sup> 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.<sup>70</sup> 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.<sup>71</sup> 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 domestic corruption cases ended with plea bargains and reduced sentences,<sup>72</sup> 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.<sup>73</sup>

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"<sup>74</sup> (**see case study on page 111**). Similar

“ability to pay” issues have been factored into recent resolutions, including the Odebrecht case in 2016<sup>75</sup>. 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.<sup>76</sup>

## 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.<sup>77</sup> 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.<sup>78</sup> 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,<sup>79</sup> Ethiopia,<sup>80</sup> Kenya,<sup>81</sup> Sri Lanka,<sup>82</sup> the United States<sup>83</sup> and Zambia.<sup>84</sup>

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. METHODOLOGY

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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.<sup>85</sup>

## **FACTOR 3: POINT SYSTEM WEIGHTING FOR DIFFERENT ENFORCEMENT ACTIVITIES**

The weighting used is as follows: one point for commencing investigations<sup>86</sup>, 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.<sup>87</sup> The definition of “major case” includes the bribing of senior public officials by major companies, including state-owned enterprises.<sup>88</sup> 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
<b>Share of world exports</b>				
<b>Enforcement categories</b>	0.5%	1%	2%	4%
<b>Active Enforcement</b>	20	40	80	160
<b>Moderate Enforcement</b>	10	20	40	80
<b>Limited Enforcement</b>	5	10	20	40
<b>Little or No Enforcement</b>	< 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 2: 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 2: 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
<b>Active Enforcement: (4 countries) 22.8 %</b>													
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
<b>Moderate Enforcement: (6 countries) 8.8%</b>													
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
<b>Limited Enforcement: (9 countries) 12.7%</b>													
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	
<b>Little or No Enforcement: (20 countries) 20.4%</b>													
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 2: 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
<b>Active Enforcement: (4 countries) 22.8 %</b>												
United States	15	18	13	16	20	11	7	8	<b>949</b>	390	195	98
Germany	3	5	0	2	16	24	13	11	<b>490</b>	297	148	74
United Kingdom	7	1	2	2	1	0	0	0	<b>185</b>	142	71	36
Switzerland	2	0	3	1	1	1	8	4	<b>208</b>	81	41	20
<b>Moderate Enforcement: (6 countries) 8.8%</b>												
Italy	0	1	0	2	1		0	0	<b>106</b>	108	54	27
Canada	1	0	1	1	0	0	0	0	<b>74</b>	97	49	24
Australia	0		0	0	0	1	1	0	<b>40</b>	54	27	14
Austria	0	0	0	0	0	0	0	0	<b>24</b>	40	20	10
Norway	0	0	0	2	1	0	0		<b>31</b>	36	18	9
Finland	0	0	0	0	0	0	1	0	<b>17</b>	18	9	5
<b>Limited Enforcement: (9 countries) 12.7%</b>												
France	0	0	0	0	1	1	1	0	<b>60</b>	139	70	35
Netherlands	0	1		1	0	0	1	0	<b>32</b>	123	61	31
South Korea	0	0	0	0	0	0	0	5	<b>39</b>	122	61	30
Sweden	0	1	0	0	0	0	0	0	<b>21</b>	45	23	11
Hungary	0	0	0		1	0	0	0	<b>7</b>	21	10	5
South Africa**	0	0	0	0	0	0	0	0	<b>20</b>	20	10	5
Portugal**	0	0	0	0	0	0	0		<b>8</b>	15	8	4
Greece **	0	0	0	0	0	0	0	0	<b>6</b>	13	6	3
New Zealand	0	0	0		0	0	0		<b>3</b>	9	5	2
<b>Little or No Enforcement: (20 countries) 20.4%</b>												
Japan	0		0	0	0		1	0	<b>13</b>	149	74	37
Russia***	0	0	0	0	0	0	0	0	<b>0</b>	67	34	17
Spain	0	0	0		0	0	0		<b>3</b>	76	38	19
Belgium	1			0				0	<b>15</b>	76	38	19
Mexico	0	0	0		0	0	0		<b>0</b>	69	34	17
Brazil	0	0	0	0	0	0	0	0	<b>12</b>	50	25	13
Ireland	0	0	0	0	0	0	0	0	<b>0</b>	43	22	11
Poland	0	0	0	0	0	1	0	0	<b>6</b>	42	21	10
Turkey	0	0	0	0	0	0	0	0	<b>5</b>	36	18	9
Denmark	0	0	0	0	0	0	0	0	<b>3</b>	32	16	8
Czech Republic	0	0	0	0	0	0	0	0	<b>3</b>	29	14	7
Luxembourg	0	0	0		0	0	0		<b>3</b>	20	10	5
Argentina	0	0	0	0	0	0	0	0	<b>1</b>	15	8	4
Chile	0	0	0	0	0	0	0	0	<b>0</b>	16	8	4
Israel	0	0	0	0	0	0	0	0	<b>1</b>	16	8	4
Slovak Republic	0	0	0	0	0	0	0	0	<b>0</b>	15	8	4
Colombia***			0	0			0	0	<b>0</b>	6	3	1
Slovenia	0	0	0	0	0	0	0	0	<b>1</b>	6	3	2
Bulgaria	0	0	0		0	0	0		<b>0</b>	8	4	2
Estonia	0	0	0	0	0	0	0	0	<b>0</b>	4	2	1

# III. COUNTRY/REGION EXPERTS

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United States	<b>Neil Gordon</b> , Investigator, Project On Government Oversight

## 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](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](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](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](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](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.fiscalia.dechile.cl](http://www.fiscalia.dechile.cl) and [www.uaf.cl](http://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](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](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](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-authorized 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](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](https://www.transparency.org/whatwedo/publication/can_justice_be_achieved_through_settlements)

- 63** <http://www.fcpablog.com/blog/2018/1/16/jorge-and-basch-argentina-introduces-deferred-prosecution-ag.html>
- 64** [https://www.canada.ca/en/public-services-procurement/news/2018/02/results\\_of\\_publicconsultationsonexpandingcanadastoolkittoaddress.html](https://www.canada.ca/en/public-services-procurement/news/2018/02/results_of_publicconsultationsonexpandingcanadastoolkittoaddress.html);
- 65** <http://www.merilampi.com/new-legislation-on-plea-bargaining-introduced-in-the-beginning-of-this-year/?lang=en>
- 66** <https://wp.nyu.edu/compliance/enforcement/2017/11/24/a-french-court-authorizes-the-first-ever-french-dpa/>
- 67** <https://www.japantimes.co.jp/news/2018/01/24/national/crime-legal/japan-plans-introduce-right-plea-bargain-june/#.WrusOljwZnJ>
- 68** Department of Justice, “New Compliance Counsel Expert Retained by the DoJ Fraud Section”, November 2015: <https://www.justice.gov/criminal-fraud/file/790236/download>
- 69** <http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries/V1605773e.pdf>
- 70** <http://www.oecd.org/corruption/anti-bribery/Switzerland-Phase-4-Report-ENG.pdf>
- 71** Section 153a Code of Penal Procedure; OECD WGB Phase 4 Report, page 35
- 72** <https://www.news24.com/SouthAfrica/News/scopa-shocked-by-plea-bargains-in-corruption-cases-20170614>
- 73** <http://www.oecd.org/corruption/anti-bribery/UK-Phase-4-Report-ENG.pdf>
- 74** <https://www.justice.gov/opa/press-release/file/1014801/download>
- 75** [https://www.cov.com/-/media/files/corporate/publications/2018/01/trends\\_and\\_developments\\_in\\_anti\\_corruption\\_enforcement\\_winter\\_2018.pdf](https://www.cov.com/-/media/files/corporate/publications/2018/01/trends_and_developments_in_anti_corruption_enforcement_winter_2018.pdf)
- 76** <http://www.oecd.org/corruption/anti-bribery/Finland-Phase-4-Report-ENG.pdf>
- 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](https://www.transparency.org/whatwedo/publication/can_justice_be_achieved_through_settlements)
- 78** Data provided by OECD Statistics and Data Directorate
- 79** <http://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>; <http://www.epochtimes.com/gb/18/1/20/n10074672.htm>
- 80** <http://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>
- 81** <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>
- 82** <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>
- 83** <http://www.scmp.com/news/china/society/article/2104421/macau-billionaire-ng-lap-seng-convicted-us-jury-un-bribery-case>; <https://www.cnn.com/2015/09/26/macau-billionaire-jailed-in-us-subpoenaed-in-foreign-bribery-probe.html>
- 84** Relating to Guinea <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>; Relating to Chad and Uganda: <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>; Relating to Nigeria: <https://www.bloomberg.com/news/articles/2017-08-30/sinopec-is-said-to-be-probed-by-u-s-over-nigeria-payments>

## II. METHODOLOGY

- 85** Data on share of world exports (goods and services) is provided by the OECD.
- 86** 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.
- 87** “Substantial” sanctions include deterrent prison sentences, large fines, the appointment of a compliance monitor, and/or disqualification from engagement in future business activities.
- 88** 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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