

18 May 2021

Key issues for the revision of the 2009 Anti-Bribery Recommendation

Dear Members of the OECD Working Group on Bribery,

I am writing on behalf of Transparency International and its chapters in OECD Convention countries. We welcome that the OECD Working Group on Bribery (WGB) is reviewing its 2009 Anti-Bribery Recommendation and were pleased to make a [written submission](#) with proposals in May 2019. We also included proposals for revisions to the Recommendation in our [Exporting Corruption – Progress report 2020: Assessing enforcement of the OECD Anti-Bribery Convention](#) publication in September 2020. With this letter, we would like to emphasise a number of key issues that we urge you to cover in the revisions to the 2009 Recommendation.

We believe it is of vital importance that the following issues be covered in the revisions:

1. **Lack of enforcement.** Our [Exporting Corruption](#) analysis in 2020 found a lack of active enforcement in most OECD WGB member countries and a decline in some countries. Only in a few countries had enforcement increased. The revised Recommendation should provide for the OECD WGB to create an annual list of non-enforcing countries and countries that have not acted on OECD WGB recommendations in a reasonable time.
2. **Beneficial ownership transparency.** Anonymous shell companies hamper the detection and investigation of foreign bribery and related money laundering, and we are convinced that the revisions to the 2009 Recommendation must address this problem. We covered this subject both in our 2019 submission and in the Exporting Corruption Report 2020. We would also like to bring to your attention our February 2021 [petition to the UNGASS against Corruption](#), with 700 signatory organisations and individuals, which calls for the establishment of central, public registers of beneficial ownership of legal persons in all countries. The [evidence is strong](#) that the current standard on the subject set by the Financial Action Task Force is inadequate and, for this reason, it is currently under review by the FATF. The European Union has recognised the problem and has introduced an anti-money laundering directive requiring countries to establish beneficial ownership registers and make them publicly accessible. Several other countries have also taken important steps towards establishing central registers, showing that this option is feasible. With the revisions to the 2009 Recommendation, the OECD WGB has the opportunity to acknowledge the importance of central public registers in all jurisdictions to ensure timely access by competent authorities to verified data on companies' beneficial owners for foreign bribery enforcement.
3. **Recognition and compensation of victims of corruption.** Compensation of victims is a key subject in relation to foreign bribery enforcement that has been neglected in OECD WGB standards and reviews. We covered this subject in our 2019 submission and in the Exporting Corruption 2020 report. We urge the OECD WGB to include in the revisions to the 2009 Recommendation, a recognition that foreign bribery causes harm to the populations where it occurs, including negative human rights impacts, and an acknowledgement of the relevance of the UN Guiding Principles on Business and Human Rights for foreign bribery enforcement. The revisions should recommend that OECD Convention parties have in place frameworks for awarding direct, collective and public-interest damages to victims and for allowing

standing for qualified non-state public interest representatives to make compensation claims on behalf of victim populations. The OECD WGB's revisions should also recommend mandatory confiscation of the proceeds of corruption in foreign bribery cases and their placement in separate accounts to be used for the benefit of victim populations. Where possible, these funds should be administered by regional or international organisations. The revisions should further recommend liability of parent companies for harm caused by subsidiaries and affiliated companies involved in foreign bribery and related money laundering.

4. **Problems with non-trial resolutions (settlements):** Systems of non-trial resolutions are more and more common in OECD WGB member countries. In some countries, they are used in a way that almost eliminates the role of duly appointed judges and trials, fails to hold to account individual senior level company employees, results in low sanctions, lacks transparency and fails to provide compensation for victims. We made recommendations on these problem areas in a December 2018 [letter to Secretary General Gurria](#) and urge that these be taken into account in the revision of the 2009 Recommendation.
5. **Annex II on Good practice guidance on internal controls, ethics and compliance.** We propose revision of Annex II of the 2009 Recommendation to bring it in line with the 2018 OECD Due Diligence Guidance for Responsible Business Conduct. Enterprises should conduct foreign bribery risk assessments following the six steps outlined in the 2011 OECD Guidelines for Multinational Enterprises. We draw your attention to a recent expert opinion [Anticorruption is essential for due diligence](#), prepared by Prof. de Schutter for Transparency International EU and Global Witness. It argues that anticorruption should be part of the human rights and environmental due diligence laws under consideration in the European Union. Annex II should be based on the concept of due diligence, given that there are no material differences between anti-corruption compliance and anti-corruption due diligence. (See pages 6 et seq. of the expert opinion.)
6. **Broad jurisdiction in foreign bribery and related money laundering cases.** In foreign bribery and related money laundering cases, the justice systems in jurisdictions with a high nexus – such as where the public officials, the bribing companies and private sector accomplices are located – may be unwilling or unable to carry out enforcement. This may be due to factors including weaknesses in country legal frameworks, lack of independence of justice officials or enforcement authorities' lack of resources and skills. The revisions to the Recommendation should encourage OECD WGB members to assist the countries in question to enable them to carry out the required enforcement work. If this proves impossible, OECD WGB countries should have in place frameworks allowing the exercise of very broad jurisdiction to enable them to conduct proceedings against all suspected offenders, whether the officials receiving bribes, the companies paying bribes or financial institutions and other entities assisting with the laundering of bribes and proceeds of corruption.

Best wishes,



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