



2006 TI PROGRESS REPORT:

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

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TABLE OF CONTENTS

| | |
|---|-------|
| INTRODUCTION | p. 1 |
| Table of Foreign Bribery Prosecutions and Investigations | p. 2 |
| I. OVERVIEW | p. 3 |
| II. FOREIGN BRIBERY PROSECUTIONS AND INVESTIGATIONS | p. 4 |
| A. Prosecutions | p. 4 |
| B. Investigations | p. 5 |
| C. No Prosecutions or Investigations | p. 5 |
| D. Public Access to Information about Enforcement | p. 5 |
| III. ACTIONS TO PROMOTE ENFORCEMENT | p. 6 |
| A. Organisation of Enforcement | p. 6 |
| B. Available Resources | p. 8 |
| C. Complaint Procedure | p. 8 |
| D. Whistleblower Protection | p. 10 |
| E. Public Awareness | p. 11 |
| F. Accounting and Auditing Requirements | p. 12 |
| G. Private Sector Efforts | p. 13 |
| H. Statutory and Other Legal Inadequacies | p. 14 |
| IV. TI RECOMMENDATIONS TO INCREASE ENFORCEMENT | p. 15 |
| A. Continue Strong OECD Monitoring Programme | p. 15 |
| B. Publish Information about Enforcement | p. 16 |
| C. Strengthen Organisation of Government Enforcement | p. 16 |
| D. Increase Awareness that Foreign Bribery is a Crime | p. 17 |
| E. Improve Access to Enforcement Systems and Reporting | p. 18 |
| F. Promote Corporate Compliance Programs | p. 18 |
| G. Improve Statutory Framework to Ensure Effective Enforcement | p. 19 |
| H. Raise Accounting and Auditing Requirements | p. 19 |
| Acknowledgements | p. 20 |
| IV. APPENDICES | |
| Appendix A: List of Experts from TI National Chapters | |
| Appendix B: TI Questionnaire and Guidelines | |

INTRODUCTION

This is the second TI Progress Report on OECD Convention Enforcement and examines the enforcement performance of 31 of the 36 countries that have ratified the OECD Convention on Combating Bribery of Foreign Public Officials. The previous report, was issued on 7 March 2005 and covered 24 countries. TI's progress reports are intended to provide an annual assessment of government performance. Enforcement of the OECD Convention is crucially important to the fight against international corruption. Most major multinational companies have their headquarters in signatory states and effective enforcement would significantly reduce the supply side of international corruption.

The report is based on information provided by TI national experts in each country, who are highly qualified professionals selected by TI National Chapters (Appendix A lists TI experts and their qualifications.) They responded to a questionnaire (Appendix B), after consulting with government officials and other knowledgeable persons in their country. They were aided in their work by the valuable Phase I and Phase II country reports prepared by the OECD Working Group on Bribery in the course of its reviews of government compliance with the Convention.¹ There are seven new countries covered in this report that were not included last year.

The table which follows lists foreign bribery prosecutions and investigations for 2006 and 2005 for the 31 participating countries. Section I summarises TI's key findings. Section II analyses progress and shortcomings in national enforcement. Section III assesses government efforts to overcome obstacles to enforcement. Section IV provides TI's recommendations.

¹ The published reports can be found at:
http://www.oecd.org/document/24/0,2340,en_2649_34859_1933144_1_1_1_1.00.html

FOREIGN BRIBERY PROSECUTIONS AND INVESTIGATIONS
(as of June 2006)

| Country | Prosecutions | | Investigations | | Share of World Exports |
|-----------------|--------------|------|----------------|------|------------------------|
| | 2006 | 2005 | 2006 | 2005 | % for 2005 |
| Argentina | 0 | 0 | 0 | 0 | 0.35 |
| Australia | 0 | 0 | 1 | 0 | 1.07 |
| Austria* | U | - | 0 | - | 1.23 |
| Belgium | 3 | 1 | 0 | 3 | 2.55 |
| Bulgaria* | 3 | - | 0 | - | 0.13 |
| Canada | 1 | 1 | U | 3 | 3.34 |
| Czech Rep. | 0 | 0 | 0 | 0 | 0.69 |
| Denmark | 1 | 0 | 21** | 3 | 0.99 |
| Estonia* | 0 | - | 0 | - | 0.09 |
| Finland | 0 | 0 | 1 | 1 | 0.59 |
| France | 8 | 3 | U | 1 | 4.39 |
| Germany | 3 | 1 | 22 | 12 | 8.84 |
| Greece | 0 | 0 | U | 0 | 0.38 |
| Hungary* | 22 | - | 3 | - | 0.59 |
| Ireland* | U | - | U | - | 1.28 |
| Italy | 1 | 1 | 1 | 1 | 3.73 |
| Japan | 0 | 0 | U | 0 | 5.10 |
| Korea | 5 | 3 | 0 | 0 | 2.66 |
| Mexico | 0 | 0 | 0 | 1 | 1.84 |
| Netherlands | 0 | 0 | 0 | 0 | 3.43 |
| New Zealand | 0 | 0 | 0 | 0 | 0.24 |
| Norway | 2 | 1 | U | 2 | 1.02 |
| Poland | U | 0 | U | 0 | 0.87 |
| Portugal* | 0 | - | 2** | - | 0.41 |
| Slovak Republic | 0 | 0 | 1** | 0 | 0.28 |
| Spain | 2 | 2 | U | 0 | 2.22 |
| Sweden | 1 | 1 | 12 | 1 | 1.36 |
| Switzerland | 1 | 1 | 4 | 2 | 1.39 |
| Turkey* | 0 | - | 0 | - | 0.84 |
| United Kingdom | 0 | 0 | 4 | 4 | 4.50 |
| United States | 50 | 35 | 55 | 17 | 10.33 |

*= Reporting for first time in 2006

Source= OECD (2005 data)

U= Information unavailable

**= These investigations involve allegations arising out of the UN Oil for Food programme and may not involve violations of the foreign bribery prohibition.

I. OVERVIEW

Overall Trend

- There is now significant foreign bribery enforcement² in over 1/3 of the 31 countries covered by this report, an increase to twelve countries from eight in TI's 2005 report. However, there is as yet little or no enforcement in almost 2/3 of the countries covered.
- While the trend is positive, the success of the Convention is not assured. At present limited levels of enforcement, much of the international business community is not yet convinced that foreign bribery laws must be obeyed. Enforcement must increase substantially.

Positive Indicators

- Enforcement in the US has increased to 50 prosecutions in 2006, compared to 35 prosecutions in 2005.
- France now has eight prosecutions, compared to three in 2005. This includes several against major multinational companies,
- There is also significant enforcement in Belgium, Bulgaria, Denmark, Germany, Hungary, Korea, Norway, Spain, Sweden and Switzerland.

Negative Indicators

- There is little or no enforcement in five countries that play a major role in international trade. There are no prosecutions in Japan, the Netherlands and the UK. There is only one prosecution in Italy and one in Canada, the latter a minor case.
- There are nine countries with smaller shares of international trade which have no prosecutions: Argentina, Australia, Austria, Czech Republic, Estonia, Greece, Ireland, New Zealand, Slovak Republic and Turkey.
- There are significant deficiencies³ in the enforcement systems of 2/3 of the countries covered

Recommendations

- Governments must increase enforcement substantially in 2/3 of the countries covered. That will require clear demonstration of political will to prosecute foreign bribery and strengthening of enforcement systems.
- It is particularly urgent that Japan, the UK, Italy, Netherlands and Canada meet their commitments under the OECD Convention, because they play a major role in international trade.
- OECD must continue a strong follow-up monitoring programme beyond 2007, without budget reductions. With little or no enforcement in almost 2/3 of the countries covered, it is essential to build additional momentum for enforcement. This requires a strong monitoring programme. Unless this is done, there is serious danger that the Convention could fail.

² Enforcement refers to prosecutions and investigations. Significant enforcement refers to two or more prosecutions in a country with more than 2% of world exports and one or more prosecutions in a country with a smaller share of exports.

³ This refers to countries where there is an unsatisfactory rating for four or more of the eight categories of actions to promote enforcement listed Section II of this Report.

II. FOREIGN BRIBERY PROSECUTIONS AND INVESTIGATIONS

TI country experts were asked to provide information on prosecutions⁴ and investigations. The number of foreign bribery prosecutions and investigations brought in each OECD Convention signatory country provides the best indicator of the extent to which the Convention is being enforced.

A. Prosecutions

Foreign bribery prosecutions have been brought in **fourteen** out of thirty-one countries, as compared with eleven out of twenty-four last year. As compared with last year, this group now includes Bulgaria, Denmark and Hungary. In addition, Belgium, Canada, France, Germany, Italy, Korea, Norway, Spain, Sweden, Switzerland and the United States have also brought prosecutions.

- Prosecutions involving major multinationals: Based on the written information obtained, as well as phone interviews, **eight** countries have brought major cases involving a multinational company. These are: Belgium, Denmark, France, Germany, Italy, Norway, Spain, and the United States.
- Multiple prosecutions: The number of countries where more than one case has been brought has increased from four to **nine**: Belgium, Bulgaria, France, Germany, Hungary, Korea, Norway, Spain, and the United States. However, only in five of these countries were the prosecutions against major multinationals.
- New prosecutions: There is information on new prosecutions only in **seven** countries: Belgium, Denmark, France, Germany, Korea, Norway, and the United States.
- No prosecutions: In **fourteen** of thirty-one countries there have been no foreign bribery prosecutions, compared with fourteen of twenty four countries last year: Argentina, Australia, Czech Republic, Estonia, Finland, Greece, Japan, Mexico, the Netherlands, New Zealand, Portugal, Slovak Republic, Turkey and the United Kingdom.
- No information: Experts in **three** countries have reported that they are unable to obtain information on prosecutions: Austria, Ireland, and Poland.

⁴ TI's questionnaire uses a broad definition to include all prosecutions relating to bribery of foreign public officials, whether brought under laws dealing with corruption or under other laws, such as laws dealing with fraud, money laundering, tax evasion, or accounting violations. It should be recognised that the number of prosecutions reported is subject to some uncertainty, because many countries do not publish information on foreign bribery prosecutions. In those prosecutions, the information was obtained from contacts with government and other sources.

B. Investigations

Foreign bribery investigations⁵ have been conducted in **seventeen** countries of thirty-one as compared with thirteen of twenty-four last year. The **twelve** countries currently conducting investigations are: Australia, Denmark, Finland, Germany, Hungary, Italy, Portugal, Slovak Republic, Sweden, Switzerland, the United Kingdom and the United States.

- No investigations: There are **eleven** countries where there are apparently no foreign bribery investigations: Argentina, Austria, Belgium, Bulgaria, Czech Republic, Estonia, Korea, Mexico, the Netherlands, New Zealand, Slovak Republic. In one country, Mexico, the number has gone from 1 to 0.
- Increased investigations: In **five** of the countries where there are investigations, the number has gone up, including substantial increases in some cases. These are: Australia, Denmark, Germany, Switzerland, and the United States.
- No information: In an additional **eight** countries there is no data available on investigations: Canada, France, Greece, Ireland, Japan, Poland, Spain, Turkey

C. No Prosecutions or Investigations

There are **ten** countries where there are apparently no foreign bribery prosecutions or investigations: Argentina, Austria, Czech Republic, Estonia, Ireland, Japan, the Netherlands, New Zealand, the Slovak Republic and Turkey. Of those countries with no prosecutions or investigations, experts in **two** countries assessed that their country's overall performance on enforcement was nonetheless satisfactory. These were Estonia and New Zealand.

D. Public Access to Information about Enforcement

A new question was asked this year about whether there is adequate public access to information about foreign bribery prosecutions.

Yes: 18 countries. Australia, Belgium, Bulgaria, Canada, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Korea, New Zealand, Mexico, Norway, Slovak Republic, Switzerland, United States.

No: 12 countries. Austria, Argentina, Czech Republic, Ireland, Italy, Japan, the Netherlands, Poland, Portugal, Spain, Turkey, United Kingdom

⁵ Reliable information about investigations is harder to obtain than about prosecutions. Governments generally do not disclose ongoing investigations. Information about investigations is frequently available through lawyers, the media and from public disclosure by companies under investigation. The number of investigations is also subject to some uncertainty because in some countries there is no clear line between formal investigations and preliminary inquiries. The following numbers reflect the judgment of TI's experts.

Selected comments from TI experts:

The TI expert in **Ireland** notes that information on the number of prosecutions brought for foreign bribery is unavailable. The annual crime statistics produced by the Irish police force do not list the offence of bribery of foreign public officials. The annual report does contain statistics for corruption, embezzlement, falsification of accounts and a variety of offences relating to fraud. Furthermore, the Office of the Director of Public Prosecutions does not make information available on specific prosecutions for the public to access. Judgements of cases, where given, are accessible through a variety of sources.

In **Italy**, states the TI expert, due to secrecy provisions, it is not possible to obtain detailed information until the end of the 3 levels of judgement. As the Judiciary is fully independent from any other power, it is in its right to give or not to give information, even to the Ministry.

The **Portuguese** TI expert proposes that the government should organise in a systematic and comprehensive manner the collection, treatment and publication of all official information dealing with corruption and related crimes. He also suggests the creation of a single database accessible for public consultation in a use-friendly manner (online).

According to the TI expert, in the **United Kingdom**, there is no ready source of information about foreign bribery cases. The statistics are made available on request to the Serious Fraud Office (SFO), which maintains the register of allegations... There is however no publicly accessible register or database. There are no known arrangements or sources for recording foreign bribery offences prosecuted under other laws.

III. ACTIONS TO PROMOTE ENFORCEMENT

The TI country experts were asked a range of questions about government actions that are important to the conduct of effective enforcement.⁶

A. Organisation of Enforcement

Because investigation and prosecution of foreign bribery is highly specialised work, it is desirable to establish a centralised office and not rely on local prosecutors with large caseloads of domestic crime.

1. Centralised national office or unit for foreign bribery enforcement?

Yes: 14 countries. Austria, Belgium, Czech Republic, Denmark, France, Hungary, Korea, the Netherlands, Norway, Spain, Switzerland, United Kingdom (partial), United States

2. If not centralised, what level of coordination and supervision is provided for foreign bribery enforcement?

Of the 16 countries without a centralised office, the following considered coordination satisfactory or unsatisfactory:

⁶ No 2006 data is available for Sweden for these questions.

Satisfactory: 8 countries. Bulgaria, Canada, Estonia, Finland, Germany, Greece, Mexico, New Zealand, Slovak Republic

Unsatisfactory: 7 countries. Argentina, Australia, Italy, Japan, Poland, Portugal, Turkey

Cannot assess: Ireland

Selected comments from TI experts:

As noted by the TI expert in **Canada**, in February 2005 the Canadian government established a dedicated Officer in Charge of National Interests and International Corruption with responsibility for monitoring all cases alleged, under investigation or being enforced in the courts relating to international corruption.

In **France**, the Brigade Centrale de Lutte contre la Corruption (BCLC) started its activities in October 2004, as a special subdivision of the Ministry of Interior. It is composed of civil servants from different ministerial departments, and its sole purpose is the prosecution of corruption, domestic and international. Its personnel is presently 14 people, and in the end will be 20. TRACFIN, the anti-money laundering unit in the Ministry of Finance now has 52 members soon to be increased and its resources are also increasing.

According to the **German** TI expert, the Federal Criminal Police Office (BKA) observes the foreign bribery cases in the federal states and publishes the number of cases in a yearly official report about the crime rate in Germany. Also, the BKA collects information about foreign bribery cases and evaluates international media information. The BKA does not, however, have original investigative or prosecutorial powers.

The situation in **Japan**, according to TI's expert, is that little progress has been made in establishing a special function within the Ministry of Justice, the Prosecutor's Office or the National Police Agency to watch and to collect information on how Japanese companies do business overseas. Coordination exists between the Ministry of Economy Trade and Industry (METI), which is in charge of the foreign bribery legislation, and the Ministry of Justice, responsible for its enforcement. It is not known, however, how much coordination and communication are established in practice among law enforcement authorities, specifically the Prosecutors Office and the National Police Agency in regard to the issue. It is also not known whether any formal communications link was established between law enforcement authorities and the National Tax agency.

The TI expert in the **Netherlands** reports that the National Criminal Investigation Service is the centralized national office for investigating allegations of foreign bribery. If an investigation leads to prosecution, this prosecution is done by the Central Prosecutors' Office. That office has a capacity of 6 full-time person for the investigation of the bribing of foreign public officials. Since June 2004 there is a team "Fighting foreign corruption".

In the **United Kingdom**, says the TI expert, the Serious Fraud Office has agreed to maintain the register of foreign corruption allegations...However, the SFO is set up to deal with serious and complex fraud and cartel cases and can only investigate/prosecute if the facts involve fraud. TI(UK) has been pressing for it to have express powers to take serious and complex cases of corruption. TI(UK) has also expressed concerns that the services of the National Criminal Intelligence Service (NCIS), the National Crime Squad (NCS), that were formerly available to the

SFO (and therefore for investigating foreign bribery), are no longer available for this purpose.

B. Available Resources

Assessment of staffing and resources for foreign bribery enforcement

The TI experts based their assessment on number of staff and other resources in relation to caseload and volume of foreign trade.

Satisfactory: 16 countries. Argentina, Australia, Belgium, Bulgaria, Canada, Denmark, Estonia, Finland, France, Hungary, Korea, Mexico, New Zealand, Slovak Republic, Switzerland, United States

Unsatisfactory: 12 countries. Austria, Czech Republic, Germany, Italy, Japan, the Netherlands, Norway, Poland, Portugal, Spain, Turkey, United Kingdom.

Cannot assess: 2 countries. Greece, Ireland

Selected comments from TI experts:

*The **Belgian** TI expert reports that the federal prosecutor's office, the 27 local prosecutors' offices and the instructing judges are drowning in the total caseload. He also indicates that certain instructing judges complain about the lack of resources at their disposal. The Central Office for the Prevention of Corruption complains about the masses of cases but is fairly well equipped.*

*In **Germany** there is still need for a substantial increase in the resources for foreign bribery enforcement to enable public prosecutors to launch investigations when there is sufficient evidence as required by the Criminal Procedure Code.*

*According to the TI expert in **Korea**, the prosecutorial authorities make efficient use of a total of about 1200 public prosecutors in the nation and the budget allocated for the investigation of foreign bribery cases.*

*The TI expert in **Portugal** comments that the judiciary police and the magistracy are understaffed and lack specialised training to address adequately and promptly the growing complexity and transnational nature of corruption.*

*According to the TI expert in the **United States** the continued increase in cases and voluntary disclosures continues to strain SEC and Department of Justice resources.*

C. Complaint Procedure

Government's efforts to provide publicly-known and accessible procedures for reporting foreign bribery allegations

Satisfactory: 15 countries. Argentina, Bulgaria, Canada, Denmark, Estonia, France, Greece, Hungary, Italy, Korea, Mexico, New Zealand, Slovak Republic, Switzerland, United States

Unsatisfactory: 14 countries. Australia, Austria, Belgium, Czech Republic, Finland, Germany, Japan, the Netherlands, Norway, Poland, Portugal, Spain, Turkey, United Kingdom

Cannot assess: 1 country. Ireland.

In **Canada** and **France** the situation has improved since the last report.

Selected comments from TI experts:

In **Argentina**, through the Anticorruption Office's website or phone numbers, it is possible to report a complaint for any kind of crime, including under conditions of anonymity. It is also possible to file a complaint in those same conditions at the National Prosecutor's Office of Administrative Investigations.

The **Australian** TI expert reports that much better complaint procedures such as hotlines could be established in the public sector and encouraged in the private sector. A limited reporting obligation is imposed by the government on diplomats staffing overseas posts, but only to report to Head of Mission. This may have been strengthened since last year to encourage reporting straight to Canberra.

The TI expert in **Bulgaria** notes that the Ministry of Interior and the Ministry of Finance have established telephone hot lines and e-mails for signals of corruption.

According to the TI expert in **Canada**, the Royal Canadian Mounted Police has 35 liaison officers assigned to Canadian embassies around the world who are briefed on foreign bribery and the Canadian Foreign Public Officials Act before they leave on foreign assignment. The Canadian International Development Agency has in place a Protocol for Dealing with Allegations of Corruption which outlines internal procedures for assessing and reporting allegations of corruption to the relevant Director and the Director of the Internal Audit Division for appropriate action.

In the **Czech Republic**, the authorities have set up three anonymous anti-corruption hotlines and email addresses, in the Ministries of Interior, Justice and Finance. When asked by the TI expert, none of the hotline operators were aware that foreign bribery is a crime in the Czech Republic.

The **Estonian** TI expert notes that public officials in Estonia have an obligation to report any corrupt act that becomes known to them to the head of agency and security police. For the public, there is a website explaining how to report a corruption case and a phone number for making an anonymous phone call.

In **Ireland**, the government has not made efforts to provide publicly known and accessible procedures for reporting foreign bribery offences. The complaint procedure for reporting an alleged offence of foreign bribery is the same as the procedure for other offences. Information should be reported to the police force. Reporting of some offences, such as money laundering, is required by law.

As explained by the TI expert in **Korea**, the Public Prosecutors' office operates a 24-hour hotline and an online report centre to receive reports of alleged corruption and malpractices, including bribery of foreign public officials. Corruption cases can also be reported to the Korea Independent Commission against Corruption by internet, fax or in person. KICAC refers cases requiring investigation to the competent police agency or public prosecutor's office.

The TI expert in **New Zealand** points out that the Ministry of Justice provides information on foreign bribery on the home page of its website. This information includes which agencies to contact when making an allegation of foreign bribery, and their address.

So far as the **United Kingdom** expert is aware, there are no government promoted dedicated “hotlines” or websites for the public or companies to report allegations of bribery. Overseas, reports can be made to diplomatic posts.

D. Whistleblower Protection

1. Whistleblower protection in the public sector

Satisfactory: 14 countries. Austria, Canada, Czech Republic, Estonia, Finland, France, Greece, Hungary, Japan, Korea, New Zealand, Slovak Republic, United Kingdom, United States

Unsatisfactory: 16 countries. Argentina, Australia, Belgium, Bulgaria, Denmark, Germany, Ireland, Italy, Mexico, the Netherlands, Norway, Poland, Portugal, Spain, Switzerland, Turkey

2. Whistleblower protection in the private sector

Satisfactory: 13 countries. Bulgaria (in practice), Canada, Estonia, Finland, France, Greece, Hungary, Japan, Korea, New Zealand, Slovak Republic, United Kingdom, United States

Unsatisfactory: 17 countries. Argentina, Australia, Austria, Belgium, Czech Republic, Denmark, Germany, Ireland, Italy, Mexico, the Netherlands, Norway, Poland, Portugal, Spain, Switzerland, Turkey

The situation moved from unsatisfactory to satisfactory in **Canada** since the last report, with amendment of the Criminal Code in 2005 and introduction of whistleblower protection legislation.

Selected comments from TI experts:

*In **Argentina**, the TI expert notes that there is no law on whistleblower protection. In comparison with last year the situation has worsened because the two bills that were under consideration in Congress lost their parliamentary status. Moreover, Argentinian companies do not have good practices regarding whistleblower protection.*

*The TI expert in **Australia** notes that the recent corporate law amendments do not provide effective corporate whistleblower protection because they do not provide for anonymity.*

*The **Canadian** TI expert reports that the Criminal Code was amended in 2005 to protect employees of both the public and private sectors from reprisal from their employer when reporting breaches of federal or provincial law (including the Canadian Foreign Public Officials Act) to a law enforcement agency.*

*In **Denmark** the TI expert comments that with regard to the private sector, there is no legislation and whistleblowers have been sacked.*

*The **German** TI expert reports that there are plans to introduce a regulation in the German Civil Code (BGB) to protect employees in the private sector who blow the whistle.*

According to the **Hungarian** expert there is no specific law on whistleblower protection for employees, but the provisions of labour law apply and provide some protection.

The TI expert in **Korea** notes that any person reporting bribery complaints is protected against retaliation under the Anti-Corruption Act and the Act on the Prosecution of Informers of Specific Crimes. Anyone who discloses information of a whistleblower without his or her consent is subject to criminal punishment pursuant to these acts. In cases where reporting of bribery allegations results in detection of a crime committed by the person reporting, punishment can be mitigated or remitted. In the private sector, according to a 2005 survey, about 80% of 300 big companies surveyed have established or are currently establishing their own whistle blowing and inspection mechanisms to protect whistleblowers from retaliatory actions.

The TI report on **New Zealand** indicates that there is comprehensive private sector and public sector whistleblower protection in its Protected Disclosures Act. Officials are currently examining whether this applies to people in foreign countries alleging breaches of New Zealand's anti foreign bribery provision. It may be that foreigners resident in another country are only protected if employed by a New Zealand organisation.

In **Portugal** public officials have a duty to inform their principal of any criminal offence of which they are aware, unless the principal is involved, in which case they should report to the General Inspectorate, the Attorney General or the judicial authorities. Overall, in the private sector employees are weakly protected from recrimination for reporting on their employers' involvement in corruption or fraud, whether in relation to national or foreign officials.

In **Turkey**, reports the TI expert, under Article 254 of the Criminal Law, the person who receives or gives a bribe or accessory thereof may not be sentenced if he/she reports the bribery before commencement of the legal investigation and returns the bribe, if any bribe was submitted. The Criminal Law also protects the person who had an agreement on payment of the bribe or an accessory thereof if he or she reports such agreement before commencement of the investigation.

The TI expert in the **United States** notes that Sarbanes-Oxley legislation increased the protections for whistleblowers in the private sector. These protections have been invoked in recent high profile cases.

E. Public Awareness

Government efforts in the last year to create public awareness that foreign bribery has become a crime

Satisfactory: 17 countries. Australia, Bulgaria, Canada, Estonia, Finland, France, Germany, Greece, Hungary, Italy, Korea, Mexico, the Netherlands, Spain, Switzerland, United Kingdom, United States

Unsatisfactory: 13 countries. Argentina, Austria, Belgium, Czech Republic, Denmark, Ireland, Italy, Japan, New Zealand, Norway, Poland, Portugal, Slovak Republic, Turkey

In **Germany** the situation has moved from unsatisfactory to satisfactory since the last report.

Selected comments from TI experts:

The **Australian** TI expert notes that many government agencies are involved in the awareness programs including the overseas aid body AusAID; the foreign affairs department DFAT; the anti money-laundering body AUSTRAC; and the Attorney General's Department. Just recently, the government issued a warning to all major companies to comply with the legislation.

According to the **Bulgarian** TI expert, a special letter was sent from the Minister of Justice to Bulgarian Business Associations and the Association of Certified Accountants in view of stimulating their activities in promoting information and raising awareness about the crime of bribery.

In **Canada**, the TI expert comments that since his previous report, considerable additional efforts have been made by the Canadian government to increase awareness of legislation prohibiting foreign bribery and government officials continue to make presentations on the subject at conferences and meetings around the country.

In the **Czech Republic**, reports the TI expert, no one knows that foreign bribery has become a crime, except for some lawyers and experts.

The TI report on **Ireland** notes that there is little public awareness in relation to the offence of foreign bribery and enforcement thereof. No easily accessible and understandable information is available informing the public that bribing a foreign public official has become a crime.

In **Turkey**, according to the TI expert, there are no specific efforts on the part of the government to increase public awareness that foreign bribery is a crime. On the contrary, there is still widespread belief among some of the officials in and out of country that Turkish companies should use every possible means to be competitive in a global business world.

F. Accounting and Auditing Requirements

Assessment of accounting and auditing requirements intended to prevent practices for hiding foreign bribery

Satisfactory: 21 countries. Argentina, Australia, Belgium, Bulgaria, Denmark, Estonia, Finland, France, Greece, Hungary, Ireland, Italy, Korea, the Netherlands, New Zealand, Norway, Slovak Republic, Spain, Switzerland, United Kingdom, United States

Unsatisfactory: 9 countries. Austria, Canada, Czech Republic, Germany, Japan, Mexico, Poland, Portugal, Turkey

Selected comments from TI experts:

The **Argentinian** TI expert considers that it would be desirable to strengthen the control capacity of the National Securities Commission and the General Inspectorate of Companies, concerning accounting and audit provisions.

The TI expert in **Belgium** notes the lack of encouragement in the law and in the norms of the Institute of the External Auditors, for the external auditors to bring corrupt practices to the attention of prosecutors. There is also no obligation for the auditor to report corrupt practices to the Board of Directors or the General Meeting of Shareholders, although there is an obligation to report any infringement of the Corporations' Code and the By-laws and Articles of incorporation, as well as violations of Anti-Money Laundering legislation.

The **Bulgarian** TI expert reports that the Bulgarian Institute of Certified Public Accountants has issued a clear statement regarding the priority to be accorded to the civic obligation under the Criminal Procedure Code to report suspicions of foreign bribery detected in companies' records to the law enforcement authorities.

According to the **Czech** TI expert, under Czech legislation auditors are obliged to notify suspicion of bribery only to the Board of Directors and Supervisory Board of the audited company, not to the police or other state bodies.

The **Japanese** TI expert comments that according to FY2006 Tax Reforms Basic Policies released in December 2005, the government plans to make legally clear the non-tax deductibility of expenses used for bribes paid for officials, at home and abroad.

The TI expert in **Germany** notes that German auditors are legally obliged to notify legal representative or supervisory board of the audited company of any irregularities and violations of statutory provisions or facts that constitute serious violation of law. However, neither auditors nor statutory bodies have an obligation to report suspicion of corruption to prosecutorial authorities.

The **Mexican** TI expert recommends producing guidelines for prosecutors on how the accounting standards provisions can be effectively used.

The **Portuguese** TI expert notes that although there have been substantial improvements in accounting and auditing requirements, companies can still create slush funds from which non-documented expenses are incurred. These funds can be created off the record through fraudulent accounting practices or they can be legally constituted as "Confidential Expenses".

In **Turkey**, reports the TI expert, since the economy is heavily based on unregistered transactions, payments for foreign bribery are usually generated from unregistered income of the companies or from off-shore holdings.

G. Private Sector Efforts

Assessment of the effectiveness of corporate anti-bribery compliance programmes

Satisfactory: 11 countries. Bulgaria, Canada (for large companies), Finland, France, Italy, Japan, Korea, the Netherlands, Switzerland, United Kingdom, United States

Unsatisfactory: 16 countries. Argentina, Australia, Austria, Belgium, Czech Republic, Denmark, Estonia, Germany, Mexico, New Zealand, Norway, Poland, Portugal, Slovak Republic, Spain, Turkey

Cannot assess: 3 countries. Greece, Hungary, Ireland

Selected comments from TI experts:

*It is suggested by the **Canadian** TI expert that Federal agencies such as the development agency and export credit agency should adopt a requirement that their customers have in place an appropriate and effective code of conduct and compliance program.*

*The TI expert from **Denmark** comments that only very few companies are known to have anti-corruption programmes.*

*In **Hungary** the TI expert notes that a few Hungarian companies have developed ethics codes but these do not address foreign bribery.*

*The TI expert in **Korea** reports that according to a survey by the Federation of Korean Industries approximately 90% of the 500 major Korean companies surveyed have adopted and are currently operating internal codes of ethics or codes of conduct. A majority of the codes contain comprehensive anti-bribery provisions.*

*The **Slovakian** TI expert states that Slovak corporations do not generally put emphasis on the application of corporate anti-bribery compliance programmes. Average awareness of the OECD Anti-Bribery Convention is rather insufficient.*

*According to the **Swiss** TI expert, the implementation of anti-bribery compliance programmes is making slow headway especially in publicly quoted corporations. SMEs generally continue to lag behind due to a perceived lack of resources.*

*The **Turkish** TI expert states that to his knowledge no anti-bribery compliance programme has been developed or implemented by any business organisation in Turkey.*

*The TI expert in **Mexico** observes that there is still no evidence of corporate anti-bribery compliance programmes, except for banks and other financial institutions in connection with money laundering provisions.*

H. Statutory and Other Legal Inadequacies

Significant inadequacies in the legal framework for foreign bribery prosecutions

TI experts report inadequacies in the following 11 countries: Argentina, Austria, Belgium, Canada, Czech Republic, Germany, Ireland, Poland, Spain, Turkey, United Kingdom

The legal inadequacies reported include:

- *Inadequate definition of foreign bribery:* Austria, Ireland, Turkey, United Kingdom
- *Short statutes of limitation:* Czech Republic
- *Jurisdictional limitations:* Argentina, Austria, Belgium, Canada, Ireland, Spain
- *Lack of criminal liability for corporations:* Argentina, Czech Republic, Germany, Poland (partially), Spain (partially), United Kingdom (in practice) (Note: Criminal liability of corporations is not an OECD Convention requirement but in TI's view it is important because it provides a stronger deterrent than personal liability.)

- *Inadequate sanctions: Austria*

Selected comments from TI experts:

According to the **Argentinian** TI expert, jurisdictional limitations exist because there is no nationality jurisdiction for foreign bribery

In the view of the **Australian** TI expert, the tax office should immediately investigate the claiming of tax deductions by corporations and their overseas subsidiaries operating in countries where bribe paying to officials is notorious.

The **Austrian** TI expert reports that there are significant inadequacies in the legal framework in Austria in the form of inadequate definition of foreign bribery, jurisdictional limitations, and inadequate sanctions. Moreover, the right of the Minister of Justice to give directives directly to prosecutors is a very powerful legal instrument by which the Minister can stop prosecution of specific cases. Separation of the Minister/political level from prosecution decisions should be required.

The **Czech** TI expert notes that the 5-year statute of limitation begins to run from the time the bribery occurs.

The TI expert in **Canada** points out that there is no nationality jurisdiction for the foreign bribery offence and the **Irish** expert notes some limitations in that regard in the Irish legislation.

The **French** TI expert mentions that there is a short statute of limitations: 3 years from the fraudulent action. This is the rule for all misdemeanors (délits) under French law. Such period may however be extended by a court investigation. The courts have also extended the period in cases where corruption is composed of several consecutive actions.

In the view of the **Hungarian** TI expert, the government should make provision for the suspension of licences and disqualification from holding public office as a measure against foreign bribery.

In **Mexico**, the TI expert reports, the Public Prosecutor cannot bring charges without a formal complaint filed. This limits proactive investigation of corruption.

IV. TI RECOMMENDATIONS TO INCREASE ENFORCEMENT

TI makes the following recommendations to the OECD and to governments of signatory states.

A. Continue Strong OECD Monitoring Programme

The OECD monitoring programme plays an indispensable role in promoting enforcement of the Convention's prohibition on foreign bribery. It is essential that a strong monitoring programme continue beyond 2007, without budget reductions, because there is little or no enforcement in almost 2/3 of the countries covered by our report. The success of the Convention is still far from assured. The momentum for enforcement must continue to build, or the progress made since 1997 will be undermined.

Without a strong monitoring programme, there would be no pressure on governments that have taken little or no enforcement action. Governments that have taken action would be pressed to stop by their own companies, who would argue that they should not be prosecuted if their competitors in world markets are not prosecuted. Thus there is serious danger that the Convention would unravel.

TI has the following suggestions for the continuation of the monitoring programme:

- Country Visits. Country visits, while demanding and costly, are the most reliable method for obtaining information on the adequacy of enforcement. During the next phase, country visits should be utilized selectively, giving priority to countries with significant international business where there is little or no enforcement. Longer term, all countries should receive repeat visits because governments and their priorities change. The timing and scope of such visits should vary depending on the adequacy of national enforcement.
- Overcoming Obstacles to Enforcement. The Working Group on Bribery should conduct a comprehensive review of obstacles to enforcement, utilising the extensive information contained in its country reports and the information contained in Section III of this Report. This review would be assisted by holding a meeting with prosecutors from signatory states. Based on such a review recommendations should be developed for actions to overcome obstacles to enforcement. Future monitoring reviews should check on progress made in implementing these recommendations.
- Correcting Deficiencies. The Working Group on Bribery must continue to make sure that governments correct the deficiencies in their enforcement programs identified in prior country reviews.

B. Publish Information about Enforcement

To build momentum for increased enforcement governments should make public announcements whenever a foreign bribery prosecution is brought. Governments should also publish an annual list of foreign bribery prosecutions and investigations underway. Where the names of parties under investigation are deemed to be confidential, the number of investigations underway can be published without disclosing the names of the parties.

The Working Group on Bribery should publish an annual report on foreign bribery prosecutions and investigations in all signatory countries.

C. Strengthen Organisation of Government Enforcement

Countries: Argentina, Australia, Czech Republic, Italy, Japan, the Netherlands, Poland, Portugal, Turkey and the United Kingdom.

It is very difficult to bring foreign bribery prosecutions because they are expensive, time-consuming, and require specialised staffing. Such staff includes forensic accountants, anti-money laundering experts, and lawyers experienced with mutual

legal assistance procedures for obtaining evidence from abroad. Marshalling the needed resources is particularly difficult where responsibility for foreign bribery prosecutions is decentralised. Local prosecutors swamped with large caseloads are understandably reluctant to take on foreign bribery prosecutions.

TI recommends that governments in the countries listed above take the following steps:

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

In addition, the following countries should ensure adequate resources and training to enable police and prosecution services to handle complex cross-border cases: Austria, Czech Republic, Germany, Italy, Japan, the Netherlands, Norway, Poland, Portugal, Spain, Turkey and the United Kingdom.

D. Increase Awareness that Foreign Bribery is a Crime

Countries: Argentina, Austria, Belgium, Czech Republic, Denmark, Ireland, Japan, New Zealand, Norway, Poland, Portugal, Slovak Republic, Turkey.

TI recommends that governments in the countries listed above take the following steps:

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

government policy precludes disclosing the names of parties under investigation.

E. Improve Access to Enforcement Systems and Reporting

Countries: Australia, Austria, Belgium, Czech Republic, Finland, Germany, Ireland, Japan, the Netherlands, Norway, Poland, Portugal, Spain, Turkey.

TI recommends that governments take the following steps:

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

F. Promote Corporate Compliance Programmes

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

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

- OECD monitoring reviews should continue to inquire and report on how widely corporate anti-bribery compliance programmes have been adopted in each country.
- The OECD and governments should encourage international financial institutions to make the adoption of corporate anti-bribery compliance programmes a condition for bidding on projects financed by those institutions. The World Bank has introduced a requirement that for large civil works the bidders must certify that they have taken steps to prevent bribery. They should go farther and adopt a general bidder requirement to have a compliance programme.

- Governments should make the adoption of corporate anti-bribery compliance programmes a condition for export financing and for bidding on programmes funded by its development assistance agencies.

G. Improve Statutory Framework to Ensure Effective Enforcement

Countries: Argentina, Austria, Belgium, Canada, Czech Republic, Germany, Ireland, Poland, Spain, Turkey and the United Kingdom

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

TI recommends that governments take the following steps:

- If they do not provide for corporate criminal liability, they should take prompt action to do so. We recognise that several countries that do not have corporate criminal liability provide for civil penalties for corporate misconduct. Nonetheless, we do not believe that civil penalties have the same deterrent effect as criminal liability.
- If they do not provide for nationality jurisdiction, they should take prompt action to do so.
- Governments should also correct the other legal inadequacies listed in section III-H..

H. Raise Accounting and Auditing Requirements

Countries: Austria, Canada, Czech Republic, Germany, Japan, Mexico, Poland, Portugal, Turkey

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

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

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

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