

**Transparency International statement:
Recommendations for robust action against foreign bribery**
On the occasion of the OECD Anti-Bribery Ministerial Meeting (16 March 2016)

The OECD Anti-Bribery Convention is a milestone accomplishment, representing a joint commitment by developed countries to stamp out foreign bribery and thus address the supply side of international bribery. However, nearly twenty years since its adoption, the goal of the convention to provide for corruption-free competition in international business is still far from being realised, to the detriment of people and private sector in both developing and developed countries.

There are only four countries out of the 41 that are actively enforcing the Convention, six countries are moderate and nine countries are limited enforcers. About half of the Convention countries have failed to prosecute any foreign bribery case since they joined the Convention.¹

That means that the majority of the Parties to the Convention do not take action despite the seriousness of cross-border bribery, which is often part of grand corruption schemes.² It is often seen as a victimless crime because the main victims are outside their country's borders. Where foreign bribery contributes to grand corruption it causes serious and widespread harm to individuals and society.

Examples of grand corruption are well known. A raft of court documents and studies describe the networks and schemes of high-level officials around the globe who have been involved. The 2014 OECD Foreign Bribery Report showed that in five per cent of the foreign bribery cases that reached a final law enforcement outcome heads of states or ministers took the bribes. These heads of state or ministers received eleven per cent of the total amount of bribes. Additional data shows that high-level officials in state-owned enterprises are also often the recipients of foreign bribes. And while these numbers are of great concern, the cases reaching a final outcome do not even give a full picture of the extent of the high level corruption.

The harm caused by foreign bribery, especially in cases of grand corruption, is often ignored and victims are neglected by the judicial systems in OECD Convention countries that mete out sanctions to the supply side perpetrators. US\$ 43.7 million has been paid in compensation since the entry into force of the Convention. This amount compares to the US\$ 5.4 billion imposed as monetary sanctions.

Governmental anti-corruption programmes to prevent foreign bribery and the private sector's efforts to that end must be matched with proper accountability measures targeting senior management but this is not the case in many OECD Convention countries.

Various forms of settlements are used by all the active enforcers to impose sanctions and 69 per cent of all foreign bribery cases have been resolved through settlements.³ However, in many cases the deterrent effect of these settlements is questionable and in numerous cases there is lack of transparency, dissuasive sanctions and sufficient judicial oversight. In many cases, individuals responsible for bribing are able to hide behind the settlement agreed between the company and the

¹ See Transparency International's Exporting Corruption reports: www.transparency.org/exporting_corruption

² Transparency International understands grand corruption as *the abuse of high-level power that benefits the few at the expense of the many, and causes serious and widespread harm to individuals and society.*

³ OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials (2014), pp. 19-20.

authorities and escape justice. On balance, it can lead to the public perception of justice not being done.

The critical role of whistleblowers in uncovering and addressing corruption is widely acknowledged, and consensus has emerged among all relevant international and regional bodies⁴, that effective legislation is required to protect whistleblowers. Nevertheless, implementation of these commitments is also lacking: Most OECD countries do not have comprehensive whistleblower laws, and even where such legislation exists, it often falls behind good practice⁵.

To address the above concerns Transparency International makes the following recommendations to the OECD Convention's Parties and to the OECD Working Group on Bribery:

1. **Increase enforcement against bribery of foreign public officials**, including against money-laundering related to these offences. TI experts in non-enforcing countries have identified specific enforcement roadblocks that need to be removed. First and foremost is lack of political will. Other obstacles that should be addressed include inadequacy of resources for investigations and enforcement of measures against foreign bribery; undue influence over investigations and prosecutions of foreign bribery; and lack of adequate mutual legal assistance. Strengthen anti-corruption programmes of public, private sectors and civil society organisations, and provide companies with tools for the development of robust integrity measures.
2. **Improve settlement rules and practices.**⁶ The Working Group on Bribery should undertake a review of settlement practices in foreign bribery cases. The Working Group should ensure that settlement agreements receive judicial approval, that their terms are transparent, that they do not pre-empt prosecutions by other jurisdictions and that penalties are effective, proportionate and dissuasive (as provided by Article 5.1 of the Convention).
3. **Address the demand side of foreign bribery.** The Working Group on Bribery should give high priority to the implementation by the Parties of the 2009 Recommendation on curbing the demand side of bribery.
4. **Involve affected countries.** The Working Group on Bribery should convene meetings with countries substantially affected by foreign bribery to discuss how their interests can be better represented in foreign bribery proceedings, that currently mainly address sanctions and do not take into account the victims. These meetings should include the private sector and civil society. This issue is reflected in Resolution 6/2 of the UNCAC Conference of States Parties.⁷
5. **Make it harder to hide, transfer and benefit from the proceeds of corruption by making available full beneficial ownership information.** Governments should adopt central, public registries containing beneficial ownership information. To support the collection and use of this information, governments should support the adoption of a multi-stakeholder led Global Public Beneficial Ownership Register to aggregate information from government registries as well as collate that released by proactive companies and via sectoral initiatives such as the Extractive Industries Transparency Initiative. This registry could provide a welcome solution for smaller

⁴ See the United Nations' Convention against Corruption (Article 33), the G20's Anti-Corruption Action Plan 2010, Council of Europe Recommendation CM/Rec(2014)7, among others.

⁵ 40% of OECD countries have a dedicated law, but only a small minority of these laws comply with good practice as defined by the OECD, the Council of Europe, Transparency International and others.

⁶ See also Transparency International, Policy Brief #01 / 2015, Can justice be achieved through settlements?, at http://www.transparency.org/whatwedo/publication/can_justice_be_achieved_through_settlements

⁷ <http://www.unodc.org/documents/treaties/UNCAC/COSP/session6/V1508646e.pdf>

states to save the cost of collecting information from scratch as well as allowing companies to publish the information once, rather than multiple times.

6. **Adopt and implement effective whistleblower legislation:** All OECD countries should live up to their commitments and pass whistleblower legislation that encompasses the public and the private sectors and ensures the effective protection of whistleblowers against retaliation and prosecution. Whistleblower legislation should follow good practice standards. It should encourage private and public organisations to facilitate reporting and to provide effective mechanisms to follow up on disclosures. By 2018 the OECD should publish a report, taking stock of progress in this field.
7. **Improve availability of, and access to enforcement information.** OECD Convention signatory countries should revise their laws and practices regarding accessibility of information on investigations and prosecutions, including access to information about settlements and judgements. The OECD should update its 2014 Foreign Bribery Report and publish the underlying database.
8. **Define OECD steps in case of ongoing failure to enforce:** Determine when a country's continued failure to adequately implement its obligations under the Convention can be considered as definite. In such event, first refer the case to the OECD Working Group on Bribery. If this is to no avail then the matter should be referred to the OECD Council at Ministerial level, which should ask the delinquent State Party to provide a timetable for steps they will take to come into compliance. In the event that this timetable is not followed, the Council should meet with the State Party to discuss its termination or suspension from the Convention. In case of termination, the OECD should issue a public announcement.