

OECD Working Group on Bribery

**Annual Consultation with External
Stakeholders**

DRAFT AGENDA

11 December 2018

OECD Conference Centre, Paris



■ Background information

Every year the OECD Working Group on Bribery (WGB) holds a consultation with business, trade unions and civil society. These consultations provide an opportunity for the WGB to receive inputs from all the stakeholders that have an interest in its work programme. The consultation will consist of a two hour general consultation on selected issues proposed by consultation partners and by WGB delegations, and will end with a one hour special consultation on 'Transparency in concluded foreign bribery cases: How much and what kind?'.

The consultation will also provide an opportunity to launch the OECD study, 'Foreign Bribery Enforcement: What Happens to the Public Officials on the Receiving End?'. This study explores whether there is a "flip side" to enforcement actions that ended in sanctions for the supply-side of a foreign bribery transaction. It focuses on what happened on the receiving end of this transaction. That is to say, were the public officials in the demand-side country also sanctioned or otherwise disciplined?

The consultations are held under Chatham House rules.

■ Date, time and venue

11 December 2018, 09:30-13:00, OECD Conference Centre, Paris.



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■ Draft agenda

09:30-11:30 General consultation on selected topics

Opening remarks:

Drago Kos, Chair, OECD Working Group on Bribery

Greg Medcraft, Director, Financial and Enterprise Affairs, OECD

Klaus Moosmayer, Chair, BIAC Anti-Corruption Committee

Representative, Corruption Watch

Representative, Transparency International

Consultation on selected topics:

Topic 1: Preliminary views on the review of the 2009 Recommendation on Further Combating Bribery of Foreign Public Officials .

Topic 2: Why are enforcement levels still so low in many Parties to the Convention, almost 20 years after its entry into force?

Topic 3: Following up on the OECD WGB's study, "[Foreign bribery enforcement: What happens to the public officials on the receiving end?](#)", – can the OECD Working Group on Bribery expedite the flow of information on completed supply-side cases to the relevant demand-side jurisdictions?

11:30-12:00 Coffee break

12:00-13:00 "Transparency in concluded foreign bribery cases: How much and what kind?"

Transparency in concluded foreign bribery cases has emerged as an issue in recent Phase 4 evaluations¹ and in the OECD WGB study, '[Foreign Bribery Enforcement: What Happens to the Public Officials on the Receiving End?](#)'. Transparency in such cases can be said to exist when various parties – including the general public, the media, the bar and legal scholars – are able to monitor resolutions and the sanctions imposed at the conclusion of the case. Although transparency of concluded cases is not expressly covered by the Anti-Bribery Convention, it is, arguably, indirectly covered².

Practitioners' perspectives on transparency of concluded and sanctioned foreign bribery cases (30 minutes)

Members of the OECD Working Group on Bribery have widely varying policies in terms of how much information they provide about concluded foreign bribery cases

¹ See, for example the following Phase 4 reports: Czech Republic, paragraphs 79-84; Germany, paragraphs 15, 17 and 190-191; Norway, paragraph 110 and commentary page 39; Switzerland, paragraph 100, commentary page 52 and paragraph 116; and the United Kingdom Phase 4 paragraphs 155-160.

² For example, sanctions under Article 3 of the Convention are to be "effective, proportionate and dissuasive." If the sanctioning process is not transparent, then dissuasiveness is weakened because, without information, companies and individuals are not in a position to assess the legal risks associated with foreign bribery. See Czech Republic Phase 4 commentary page 36 and Norway Phase 4, paragraph 110.

that end with sanctions. This part of the consultation will explore the rationales for the transparency policies in two countries which have adopted different policy stances in this area: Germany and the United States. In addition, an invited speaker from the UK defence bar (formerly of the UK SFO), will discuss her views of transparency of sanctioned cases.]

- **The German position on transparency in concluded and sanctioned foreign bribery cases:**

Dr. Monika Becker, Federal Ministry of Justice and Consumer Protection, Head of Division Criminal Procedure (investigation proceedings; compulsory measures)

- **The US Position on transparency in concluded and sanctioned foreign bribery cases:**

Charles Cain, Chief, FCPA Unit, U.S. Securities and Exchange Commission

- **The view from the defence bar:**

Hannah Laming, Partner, Peters & Peters, Solicitors; former SFO official

General discussion by WGB members, invited guests and WGB consultation partners (25 minutes)

Possible issues for the discussion:

What transparency considerations are relevant for foreign bribery cases that end with sanctions? Such considerations could include judicial accountability, privacy and protecting the integrity of ongoing, related cases.

Can a sanction that is not made public, including to potential bribers, ever be a “dissuasive sanction”?

Are transparency considerations the same for legal proceedings involving natural persons versus legal persons? For example:

- For natural persons: Does publishing information about convictions and sanctions imposed on individuals impede efforts to ‘rehabilitate’ convicted criminals? Is this a major consideration in foreign bribery cases? If not, why not?
- For legal persons: Some countries do not publish information or publish little information about resolutions involving legal persons. What is the rationale for such policies? Don’t such disclosures provide valuable information about the company’s management and business practices?

For cases that are resolved through non-trial resolutions (e.g. DPAs), are there any special transparency considerations that should be taken into account?

Have developments in technology changed the way transparency policies should be designed?

Summary by the Chair (5 minutes)



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