

Steps taken to implement and enforce the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

SPAIN

(Information as of 12 September 2008)

Date of deposit of instrument of ratification/acceptance or date of accession

On January 14, 2000, Spain ratified the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, signed on 17 December 1997.

Implementing legislation

Anti-bribery rules were incorporated into Spanish Law by Organic Act 3/2000 of January 11, which amended the Penal Code Organic Act 10/1995 of November 23 on the fight against bribery of foreign public officials in international business transactions (published in Spain's State Official Journal number 10, of January 12).

This Act added Title XIX bis to Book II of the Penal Code, under the heading "corruption offences in international business transactions", and a new article 445 bis which completed the traditional bribery offence set forth by article 423 of the Penal Code.

Other relevant laws, regulations or decrees that have an impact on a country's implementation of the OECD Convention or the Recommendations

- a) Such would be the case of the responsibility of legal persons, established in articles 31 and 129 of the Penal Code, recently amended by Organic Act 15/2003, of November 25.
- b) Mention should also be made to Act 19/2003, of July 4, on the legal treatment of foreign capital movements and economic transactions, as well as certain measures aimed at preventing capital laundering, which amends Act 19/1993, of December 28, concerning specific measures for preventing capital laundering. This Act has been amended by Act 36/2006, of November 29, on measures for preventing tax fraud.
- c) Also related are some Framework Decisions adopted by the European Union within the scope of the third pillar, related to police and judicial cooperation in criminal matters. Especially, the Framework Decision of July 22, 2003 to fight corruption in the private sector (OJ L 192 of 31.07.2003), includes a set of provisions intended to unify the legal and penal framework in the Member States in relation to active and passive corruption in the private sector, by establishing unified penal categories and penalty thresholds, while laying down rules on jurisdiction and setting forth the obligation to regulate the criminal responsibility of legal persons. Classifying these types of behaviours is an innovation in our legal and criminal system, which calls for new amendments to existing penal provisions. A working group has been established in order to study this issue in depth and it is the intention of the Spanish Ministry of Justice to fully respect the transposition deadline. The transposition deadline is July 22, 2005.

Other information

Relevant authorities

- a) The key authority is the Special Prosecutor's Office for Corruption-Related Economic Offences, regulated by the Organic Statute of the Attorney General's Office approved by Act 50/1981 of December 30, and amended by Act 14/2003, of May 26, and by Act 24/2007, of October 6.

On 12 July 2006, Direction 4/2006 of Public Prosecutor General's Office came into force, and redefined the competences of Special Public Prosecutor's Office against Corruption.

Relevant internet links to national implementing legislation

- b) The following are internet sites that provide information on the Spanish national law:

www.igsap.map.es

www.boe.es

www.mjusticia.es

www.fiscal.es

www.sepblac.es

<http://juridicas.com>

Signature/Ratification of other relevant international instruments

Spain ratified the UN Convention against Corruption on 19 June 2006.

The Council of Europe has established a Group of States against Corruption, known as Greco, where Spain plays an active role and which has promoted several Conventions in this area. The most relevant are the Criminal Law Convention on Corruption of January 27, 1999 and the Civil Law Convention on Corruption of November 4, 1999. Spain signed both Conventions on 10 May 2005.

Besides the above-mentioned Framework Decision, the European Union is making additional efforts related to these issues. The fight against corruption within the Community institutions led to the adoption of the Convention of July 26, 1995, to protect the European Communities' financial interests, the Additional Protocol of September 21, 1996, dealing with the corruption of officials, and in particular the Council Act of May 26, 1997 approving the Convention to fight acts of corruption involving officials of the European Community or officials of the Member States of the European Union.

Working Group on Bribery Monitoring Reports

Phase 1: Review of Implementation of the Convention and 1997 Recommendation

<http://www.oecd.org/dataoecd/15/60/2389614.pdf>

Phase 2: Report on the Application of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Recommendation on Combating Bribery in International Business Transactions

<http://www.oecd.org/dataoecd/28/35/36392481.pdf>