

FIGHTING BRIBERY AND CORRUPTION

It has been five years since the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the “Anti-Bribery Convention”) entered into force. Today, the social, political and economic costs of corruption are widely recognised. As a result, governments, NGOs and many international organisations are mobilised to fight corruption, especially as the links between corruption and terrorism, organised crime, drugs and human trafficking are becoming more apparent. Governments need to act collectively to counter this threat by adopting and respecting international agreements that address all aspects of corruption. The UN Convention against Corruption, which was signed in December 2003, is a welcome addition to the existing arsenal of anti-corruption instruments of the OECD, the Council of Europe, the Organization of American States, the European Union and others. These instruments are mutually reinforcing and can have a cumulative impact on anti-corruption efforts.

The OECD Anti-Bribery Convention

These legal instruments vary in scope and geographical representation. What distinguishes the Anti-Bribery Convention of the OECD is that it is exclusively focused on the supply side of the bribery transaction in the context of international business and that it has an integrated mechanism to monitor compliance with the Convention’s obligations. All 30 OECD members, as well as five non-member countries (Argentina, Brazil, Bulgaria, Chile and Slovenia) are parties to the Convention and take part in the OECD Working Group on Bribery in International Business Transactions (the “Working Group”).

The Working Group is responsible for implementation of the Convention and has carried out extensive and rigorous monitoring of countries’ compliance. Monitoring takes place in two phases: the first phase evaluates the adequacy of countries’ legislation to implement the Convention and the second assesses whether a country is applying this legislation effectively. Thirty-four countries have now been examined in Phase 1 and at the end of 2003 eight countries had undergone Phase 2 examinations, including three G7 countries. These country reviews result in recommendations aimed at improving the legislative and institutional framework for detecting, investigating and prosecuting foreign bribery offences. In 2004 and through 2007, the pace of monitoring will accelerate, with seven country reviews scheduled for each year.

Monitoring shows results

The practical impact of the monitoring process is evident in several ways. Tax deductibility for bribes paid to foreign public officials is no longer possible in any OECD country or other country party to the Convention. The specific recommendations resulting from the review reports have obliged several countries to introduce legislative

amendments in order to strengthen their anti-bribery laws. Pressure is also building on countries to step up enforcement of these laws. Some cases have already been successfully prosecuted and, more recently, several investigations have been opened against companies alleged to have violated the foreign anti-bribery laws. The reviews also pinpoint areas where countries need to apply more effort and focus: raising awareness of the Convention and the national foreign bribery laws and removing obstacles to mutual legal assistance. It is clear that governments must pro-actively support the aims of the Convention, including by encouraging greater compliance in the private sector, and strengthening co-operation with non-member countries and with civil society.

The monitoring process has also succeeded in making information on governments' actions to fight corruption and bribery more easily accessible through the systematic publication of all review reports, including recommendations to countries to remedy deficiencies. This has helped to empower civil society to call for changes and demand more accountability. By explaining the measures taken by countries that are parties to the Convention and by frankly assessing their effectiveness, the reports add to the growing understanding of the factors impacting on the fight against corruption and can be used by countries that are not parties to the Convention as tools for identifying best practices.

Co-operation with non-members

Co-operating with non-member countries includes developing partnerships with local governments, the business community, NGOs and civil society, and the media. Regional initiatives such as those carried out in Asia-Pacific (in collaboration with the Asian Development Bank), in the Baltic countries, in Latin America, and in the transition economies of Eastern Europe, central Asia and the Caucasus can be an effective means to build regional co-operation, country ownership, citizens' involvement, and support from the international donor community.

Future challenges

Despite the many successes, challenges remain. One of these is to welcome new members to the Convention while preserving its effectiveness. A recent OECD Council decision should help respond to that challenge by addressing the criteria to be used in accepting new members, the kind of monitoring they will undergo, the governance structure to assist the Working Group in managing new members, and by providing the budgetary stability needed to ensure the continued effectiveness of the Convention. Countries must also be vigilant that certain acts, such as bribery in relation to foreign political parties, or candidates for foreign office, or the use of foreign subsidiaries in bribery transactions are not used to circumvent the Convention. Increasing concern with what are seen as prevalent acts of bribery in the private sector should also be addressed.

With monitoring well under way, more attention is being paid to the role of the private sector in fighting corruption. Recent scandals have raised awareness of the financial losses and damage to reputation that can result from allegations of bribery, corruption or other forms of misconduct by companies. The OECD Guidelines for Multinational Enterprises, which provide a voluntary code of responsible business conduct and contain a mechanism involving "National Contact Points" to promote its observance, can assist countries in managing these risks. In particular, the Guidelines' anti-corruption chapter covers a broad range of corrupt transactions as well as the use of agents, employee awareness, anti-corruption management systems and political contributions.