



Directorate for Financial and Enterprise Affairs

**SUMMARY RECORD OF JANUARY 2006
INFORMAL CONSULTATION WITH
REPRESENTATIVES OF THE PRIVATE SECTOR,
TRADE UNIONS AND CIVIL SOCIETY**

**CONVENTION ON COMBATING BRIBERY OF FOREIGN PUBLIC
OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS AND
THE 1997 REVISED RECOMMENDATION ON COMBATING
BRIBERY IN INTERNATIONAL BUSINESS TRANSACTIONS**

This report was approved and adopted by the Working Group on Bribery in International Business Transactions on 14 July 2006.

**Summary Record of January 2006 informal consultation with
Representatives of the private sector, trade unions and civil society**

1. A half-day informal consultation was chaired by Dr. Maria Gavouneli, Vice Chairman of the Working Group on Bribery, on 26 January 2006 during which various non-governmental representatives of the Business and Industry Advisory Committee to the OECD (BIAC), the Trade Union Advisory Committee to the OECD (TUAC), the International Chamber of Commerce (ICC) and Transparency International (TI) presented their actions to implement the OECD Convention and discussed ways to collaborate in the fight against bribery. Working Group delegates from 13 Party countries also attended.

2. Dr. Gavouneli first provided an overview of the Working Group's principal activities since the last consultation which took place almost a year ago. She then presented the Group's main challenges for the coming year: (i) a review of the 1997 Revised Recommendation; (ii) accession of new countries to the Convention; (iii) continued monitoring by the Working Group on Bribery; and (iv) innovative approaches to enhance law enforcement capacity and know-how in dealing with foreign bribery cases.

3. The non-governmental representatives were given the opportunity to comment on and discuss the main themes of particular interest to them: the effectiveness of the OECD Anti-Bribery Convention, bribe solicitation, trade unions' role in the fight against foreign bribery, and the newly revised ICC Rules on extortion and bribery. The meeting concluded following a short exchange on other issues of interest to participants.

1. Introduction by Maria Gavouneli, Vice-Chair of the Working Group on Bribery

4. Dr. Gavouneli stated that the WGB was half-way towards completion of Phase 2 monitoring and that a Mid-Term Study was currently being undertaken to identify common (horizontal) issues, standards and matters for future consideration with a view to enhancing the effectiveness of the OECD Anti-Bribery Convention. One of the principal outcomes of the Mid-Term Study will be to determine whether any changes should be made to the 1997 Revised Recommendation, which could be concluded at the occasion of its 10-year anniversary. Consultations with the private sector and other interested parties will be held during that process. Further, as Phase 2 moves to its conclusion, the issue of outreach and membership enlargement will continue to grow in importance.

5. The Vice-Chair drew the attention of the participants to the Tour de Table process during which Parties report on enforcement actions in their country. The Tour de Table has provided an opportunity for exchange of information and informal mutual assistance within the WGB. Dr. Gavouneli illustrated the importance of this process in the context of the recent references to companies in the final report of the Independent Inquiry Committee (IIC) on the Oil-for-Food program in Iraq. The Vice-Chair noted that the Chair of the WGB was a member of the IIC and the WGB welcomed two members of the Committee staff who explained to Parties how to go about requesting information and approaching the Committee. Finally, Dr. Gavouneli collaboration by the OECD with other international organizations in the fight against corruption, such as the UN, has been particularly active both in outreach and in monitoring efforts.

6. Dr. Gavouneli noted that the Working Group fully acknowledges the important role civil society plays in promoting the awareness of the Convention and called for a more sustained effort on both sides in this shared goal.

2. The OECD Anti-Bribery Convention: Does it work?

7. BIAC opened the discussion by stating that one of the main advantages of the OECD compared to other bodies is the institutionalized dialogue. On the eve of the possible revision of the Revised Recommendation, BIAC stressed the importance of political and governance issues in the fight against corruption. In BIAC's view good governance, free media, a functioning civil society, deregulation, and decentralization are complementary to legal enforcement and should be taken into account by the Working Group when reviewing the Revised Recommendation. Further, in response to a change of perception about the problem of foreign bribery, businesses are introducing stricter policies to counter the threat to public image and shareholder pressure that corruption poses. Multinationals have been at the forefront of such developments. Small and medium-sized enterprises (SMEs), on the other hand, have yet to develop adequate tools to prevent corruption due to fewer resources (see more on this below). BIAC called upon governments to enhance co-operation with national business organizations and to fully involve companies in the Working Group's Phase 2 country review process.

8. BIAC strongly felt that Phase 2 should be followed by Phase 3 and ultimately other monitoring phases but that future monitoring could focus on only certain issues such as good governance and solicitation. Concerning the planned revision of the Revised Recommendation, BIAC called for a clearer definition of solicitation as well as BIAC and TUAC's involvement at the outset of the review process, just as they had been initially.

9. TUAC welcomed its participation in the phase 2 monitoring process. This being said, TUAC also noted that the enforcement of the Convention has been weak and special attention must be paid to promoting awareness by those persons most affected by corruption including people in the South so that they can effectively use and promote the Convention. (See further details below.)

10. TI stated that OECD monitoring is the "gold standard" due to the Secretariat's high professionalism, excellent country reports, peer review techniques such as the Tour de Table, willingness to criticize important governments, dependable funding and participation by the private sector and civil society. In TI's view, it is essential that this strong program maintain momentum beyond 2007 and added that a lot more needs to be done as illustrated by the reports all of which show deficiencies. Country reviews on a 5-year track and continuous monitoring requires funding at current levels. TI welcomed the Mid-Term Study and expressed its support for the review of the Revised Recommendation for its 10-year anniversary.

11. For TI, the revision of the Revised Recommendation should reflect the major changes in accounting, auditing and internal controls that have taken place since 1997. Further, the TI representative said that the commentaries are a useful tool which he opined could be further utilized to address the issue of foreign subsidiaries without needing amendments to the Convention; in such respect, TI suggested the following: "*Parent companies based in OECD countries are expected to apply the same policies for anti-bribery compliance to their controlled subsidiaries*". Moreover, it is TI's view that the bribery of party officials is within the remit of the OECD and can be addressed with a commentary or a clearer recommendation. TI also recommends a continued attention to export credits in view of the fact that recommendations for clearer rules have met with stiff resistance.

12. TI plans to issue its 2006 progress report on enforcement in OECD countries in the summer, after the WGB has had an opportunity to review it, possibly at the June WGB meeting. TI stated that this second progress report will build on the first one and closely follow the 2005 methodology. However, more countries are covered and some methodological concerns have been redressed.

13. A representative of CornerHouse was concerned about consistency of treatment in respect of certain issues in the Phase 2 country reports and asked whether the Mid-Term Study would address this problem. Consistency would provide a benchmark for comparative analysis and accountability. Also, in the event there is a Phase 3 monitoring process, which CornerHouse felt was absolutely essential, it suggested that the OECD look at specific issues such as export credits, public procurement, corporate liability and foreign subsidiaries so that a more uniform picture of practices could be gleaned from the peer review process. Greater transparency in oral and written follow-up was considered to be a key aspect for reinforcing the role civil society could play in holding governments accountable to satisfy recommendations by the WGB. CornerHouse also noted that valuable commentary by the Lead Examiners in the Phase 2 Reports is at times lost resulting in fewer obligations for compliance by governments. Finally, it asked whether, with a view to consolidating such commentary, the Mid-Term Review would identify best practices for countries to follow.

14. Dr Gavouneli welcomed the various comments and clarified that the review of the Revised Recommendation will take into account whether and how means to curb bribery in international business transactions can be reinforced. This in turn is expected to have an impact on governance although this is not a core issue. The Chair also invited private sector, trade union and civil society representatives to transmit observations they may have on the Mid-Term Study to the Secretariat within the following ten days.

3. Solicitation of Bribes and SMEs

15. BIAC noted that awareness of the problem of bribery is evolving among SMEs more slowly than expected and that further assistance by business organizations is necessary. In the context of its bribe solicitation program, BIAC will be posting an information base (responses to its questionnaire to governments and the private sector) on its website, along with contact addresses.

16. Participants were briefed on a related but separate initiative currently developed by a consultant for the Danish International Development Agency (Danida). According to the consultant, Danida's aim is to make an internet-based corruption portal available for SME's operating in developing countries. The portal will include data such as country information to enable a company to assess the risk of bribery in one of the 20 countries covered initially (50 over time). One of its components is a "do-it-yourself" checklist addressing bribe-prone situations such as seeking an agent or a consultant, setting up a Joint Venture (JV) or launching one's own project. To keep information up to date, Danida has created local networks (e.g., local embassies, government agencies, civil society, and trade unions) in countries where it operates. The portal is currently being tested by three focus groups: SMEs, NGOs, and a group of larger companies (to be used as a tool by their partners or sub-contractors). Danida will also provide a training module for the portal whose first version is expected to be operational in the summer of 2006. The proposal raised some interest among delegates who asked a number of practical questions regarding the operation of the portal.

4. Trade Unions' role in implementing the Convention

17. TUAC presented its perception of the strengths and weaknesses of the OECD Phase 2 monitoring of the Anti-Bribery Convention. Strengths include country visits involving trade unions and other civil society, flexibility permitting the presentation of oral and written evidence, website access to self-evaluation tools such as the questionnaire, published reports and recommendations, and follow-up in the form of oral and written reports. TUAC noted room for improvement in respect of the notification of reviews, contact by the Secretariat concerning trade unions' participation in on-site panels, representation in reviews, government discretion over public access to the questionnaires, access to on-site meetings and "come-back" on reports, i.e., the right to rectify information or provide feedback. Further, TUAC noted

that trade unions are not usually cited in the Recommendations when country reports state that they have a role to play in promoting the Convention. One exception is the UK Report which recommends that government raise awareness among trade unions. However, the UK government has so far not approached TUAC in this regard.

18. TUAC stated that the credibility of the Phase 2 process has been enhanced by civil society and trade union consultation and supported BIAC's statement that the continuation of this process is crucial. TUAC specifically expressed its desire to be consulted in connection with the review of the Revised Recommendation and the importance of addressing the issues of foreign subsidiaries and whistleblower protection which is not in the Revised Recommendation or the Convention. In TUAC's view, these lacunae make the Convention lag behind other international conventions. Lastly, TUAC asked that the recipient of bribes include private parties. A representative of Public Services International, the global federation of public sector trade unions, intervened to say that there was a need for strong whistleblower protection to ensure that the whistleblower does not become a victim of criminal liable or harassment.

19. TUAC briefly discussed the outcome of a meeting held on 23 January in Paris within the framework of the OECD Labour Management Programme (LMP) on the role of trade unions in implementing the Convention. It was clear that trade unions were keen about further raising awareness and using the Convention in their activities. Training trade union members emerged as a key issue, requiring support by governments perhaps through outreach. The main findings were the lack of awareness of the Convention, the importance of knowing how to use this legal instrument especially in the south, the significant loophole on foreign subsidiaries and the issue of reporting. TUAC commented that international framework agreements between management and unions were a vehicle by which trade unions could work with multinationals by sector through mechanisms like monitoring and conflict resolution.

20. Dr. Gavouneli was pleased to note trade unions' strong interest. She acknowledged that the Working Group would need to consider the comments made on the Phase 2 country reviews. She furthermore stated that the Group would take account of TUAC's suggestion to give attention to the importance of foreign subsidiaries and whistleblower protection in the framework of the review of the Revised Recommendation. She also reminded non-governmental participants that while awareness-raising is an important duty of governments and of the OECD, it is a responsibility shared with the private sector, trade unions and civil society.

5. New ICC Rules of Conduct and Recommendations to Combat Extortion and Bribery

21. Noteworthy changes to the new ICC Rules which received significant support from business are as follows: "enterprise" is defined to include all controlled subsidiaries; "bribery" includes private to private bribery and bribes paid to politicians; bribes to intermediaries has been strengthened to include record-keeping of the names, terms of employment and payments to agents; a new section on joint ventures and outsourcing agreements; "facilitation payments" uses the FCPA definition; and companies are required to publish their corporate anti-bribery policy which must be subject to internal controls. Further, the ICC encourages governments to sign the UNCAC and recommends the coordination of international and regional anti-bribery conventions. Meetings in Paris and elsewhere have been scheduled to promote the new Rules.

22. Working Group delegates showed interest in the enhanced ICC Rules and how they would impact the business community. Some concerns regarding certain new provisions were voiced but there was overall agreement that the different conventions and civil society initiatives are testimony to the high level of attention given to bribery and corruption-related issues.

6. Other Issues

23. At the end of the meeting, representatives from the private sector, trade unions and civil society raised several questions some of which related to the work of the Working Group on Bribery.

24. In reply to the question whether and how the OECD would follow up on the 2004 “Global Forum on Fighting Corruption and Promoting Integrity in Public Procurement,” it was explained that the Working Group on Bribery will undertake work to enhance the understanding of the methods and techniques used to corrupt public procurement processes. The outcome of that work could stimulate further reflection in connection with the review of the relevant provisions of the Revised Recommendation. This review process may in turn be enhanced by the work of the two other OECD bodies which are currently developing best practices and assessment tools for increased transparency, integrity and efficiency of Member and non-Member public procurement systems¹.

25. The Vice-Chair assured participants that the OECD Working Group liaises with in-house bodies (e.g., Export Credit and Guarantees Working Party) as well as other international organizations (e.g., UNODC, Council of Europe) to explore new ways to co-ordinate within international anti-corruption frameworks to ensure optimal cooperation within and between governments.

¹ The two bodies concerned are: (i) the Public Governance Committee (GOV), and (ii) the Development Assistance Committee (DAC).