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Labour/Management Programme

**MEETING OF TRADE UNION EXPERTS ON:
IMPLEMENTING THE OECD ANTI-BRIBERY CONVENTION: THE ROLE OF TRADE UNIONS**

**Background report by Kirstine Drew, Co-ordinator, Global Unions Anti-Corruption Network
(UNICORN)**

Monday 23 January 2006 at the OECD - Paris (Room 4)

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1. INTRODUCTION AND STRUCTURE

This background paper examines the role of trade unions in combating grand corruption - corruption involving OECD Multinational Companies (MNCs) operating overseas.

It describes how trade unions can support the *OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* (the *OECD Anti-bribery Convention*), and use the *OECD Guidelines for Multinational Enterprises* (MNEs) to report allegations of foreign bribery.

It also describes trade union anti-corruption activities that are being undertaken *independently* of these instruments.

The remainder of this report is structured as follows:

- *Section 2* sets out a brief overview of corruption and MNCs;
- *Section 3* describes key anti-corruption instruments;
- *Section 4* provides a summary of the OECD Anti-bribery Convention;
- *Section 5* identifies the role of trade unions in supporting the OECD Convention;
- *Section 6* gives examples of trade union anti-corruption activities;
- *Section 7* describes the role and use of the OECD Guidelines for MNEs;
- *Section 8* provides a series of discussion points.

2. CORRUPTION AND THE ROLE OF MULTINATIONAL COMPANIES

2.1. Corruption and Bribery

“We state our strong conviction that there is absolutely no substance in the myth that corruption is a matter of culture. Rather, it offends the beliefs and traditions of us all”

(11th International Anti-corruption Conference, Korea, 2003)

Corruption is a universal phenomenon found in developed, developing and transitional countries.

The original definition of corruption - ‘abuse of *public* office for private gain’ - reflects a historical focus on the bribe-taker. This casts the bribe-payer, the company, in a passive role as an unwilling victim of a ‘corrupt’ or ‘difficult’ environment, with bribes being extracted by ‘rent-seeking’ *public* officials through solicitation or extortion.

In reality, there have been numerous examples of corruption in environments which are far from ‘difficult’: water privatisations in the USA (New Orleans¹,², Bridgeport³), Italy (Milan⁴) and France (Grenoble)⁵; construction projects in Japan⁶, France⁷, Singapore⁸ and the Netherlands⁹.

¹ See collection of references at <http://www.againstcorruption.org/BriefingsItem.asp?id=8668>

² [http://www.citizen.org/documents/Big_Greedy_\(PDF\).PDF](http://www.citizen.org/documents/Big_Greedy_(PDF).PDF)

³ [http://www.citizen.org/documents/Big_Greedy_\(PDF\).PDF](http://www.citizen.org/documents/Big_Greedy_(PDF).PDF)

⁴ See collection of references at: <http://www.againstcorruption.org/BriefingsItem.asp?id=8509>

⁵ <http://www.psir.org/reports/2001-08-W-Grenoble.doc>

⁶ Collection of references at: <http://www.againstcorruption.org/BriefingsItem.asp?id=8559>

⁷ See collection of reference at: <http://www.againstcorruption.org/BriefingsItem.asp?id=8515o>

There is also a considerable volume of research indicating that MNCs actively pursue bribery as a means to enhance their own economic interests¹⁰.

Bribery, however, does have victims. Decision-making reflects the private interests of the few, rather than the public interest. The effect is to undermine democracy, misallocate resources, impede development and distort international trade. The outcomes range from lower quality products and public services, to higher prices, to environmental damage, to the funding of inappropriate and expensive projects, with basic needs remaining un-met. Citizens, consumers, workers and, most of all, the poor all pay the price.

The now accepted definition of corruption – ‘the *misuse of trusted power for private gain*’ – reflects a fundamental shift in the focus of the anti-corruption agenda, which today seeks to hold MNCs that pay bribes to account wherever they operate in the world.

3. CREATING UNIVERSAL STANDARDS

3.1. Legal Anti-corruption Instruments

In recent years, there has been a host of international *legal* instruments aimed at combating corruption and international bribery. Most notably these include:

- *The OECD Anti-bribery Convention* (1999): came into effect on the 15th February 1999 and was the first international instrument specifically targeted at curbing the payment of bribes by MNCs to *foreign public officials*;
- *The United Nations Convention against Corruption* (2003): came into effect on the 14th December 2005 and is the first global, legally binding anti-corruption instrument. Unlike the OECD Anti-bribery Convention it is broad in scope covering *public, private, domestic and international* corruption.

3.2. Voluntary Anti-corruption Instruments

Efforts have also been focused on either *extending existing* codes of conduct or developing new *anti-corruption* codes (at company, sectoral and international level).

Two main examples of codes being *extended* to include anti-bribery provisions are:

- *The OECD Guidelines on Multinational Enterprises*: backed by governments and used by trade unions (and NGOs and companies), the revised version (June 2000) included a new chapter on bribery, thus bringing the code in line with the OECD Anti-bribery Convention;
- *The United Nations Global Compact*: launched in June 2000 and then (exceptionally) extended in June 2004 to include a 10th anti-corruption principle.

Examples of *dedicated anti-corruption codes of conduct* include:

⁸ See collection of references at: <http://www.againstcorruption.org/BriefingsItem.asp?id=8524>

⁹ Het Financieele Dagblad, August 20, 2002

¹⁰ <http://www.worldbank.org/wbi/governance/wp-statecapture.html>

- *Business Principles for Countering Bribery (December 2002)*: a joint initiative of Transparency International (TI) and Social Accountability International (SAI), the Principles apply to the bribery of public officials, as well as private-to-private transactions and aim to provide a practical anti-bribery tool for companies;
- *Partnering Against Corruption Initiatives (PACI)*: established by the World Economic Forum in 2004 and initially focusing on companies from construction, oil, and defence, PACI aims to develop “multi-industry principles and practices that will result in a level playing field, based on integrity, fairness and ethical conduct”¹¹.

4. THE OECD ANTI-BRIBERY CONVENTION

4.1. Overview

The OECD Anti-bribery Convention came into force in 1999. It requires parties to introduce legislation, if not already in place, to make it a crime to pay bribes to *foreign public officials* in international business transactions. This binding instrument is accompanied by the non-binding 1997 Revised Recommendation. Signatories accept the provisions of both.

There are currently 36 signatories to the OECD Anti-bribery Convention: 30 OECD countries representing the main industrialised countries; and 6 non-member countries: Argentina, Brazil, Bulgaria, Chile, Estonia, and Slovenia.

4.2. Risks

The implication of the implementation of the OECD Anti-bribery Convention in 36 countries is that there is a greater likelihood that workers and/or companies who pay bribes overseas will be prosecuted, with the resulting risks for individuals, reputations and jobs.

TABLE 1: FUTURE RISKS (COMPANIES NAMED IN THE OIL-FOR-FOOD SCANDAL¹²)

COUNTRY	COMPANY	SECTOR
DENMARK	Grundfos	Pump-makers
	Bukkehave	Vehicle supplier
	A.P. Møller-Mærsk	Ship-builder
	Novo Nordisk	Pharmaceutical
FRANCE	Peugeot	Automotive
	Renault (now owned by Volvo)	Automotive
	BNP Paribas	Bank
GERMANY	DaimlerChrysler	Automotive
	Siemens	Engineering
NETHERLANDS	Saybolt International	Inspectors
	Petroplus International	Oil
	Vitol Group	Oil

¹¹ http://www.weforum.org/pdf/paci/Paci_Presentation.pdf

¹² On October 27th the Independent Inquiry Committee charged with investigating the Oil-for-Food Programmes alleged that 2200 companies from 66 countries had made illicit payments. These are some examples. <http://www.iic-offp.org/index.html>

UK	GlaxoSmithKline	Pharmaceutical
	Maybey & Johnson ¹³	Bridges
	Weir	Pump-makers

4.3. Loopholes

The OECD Anti-bribery Convention, whilst a highly important instrument, has a number of significant loopholes:

- bribes paid by *foreign subsidiaries* are not covered;
- there is no provision for the protection of *whistleblowers*¹⁴;
- bribes paid to *political parties* are not covered;
- bribes paid to *candidates for public office* are not covered;
- bribes paid to *private sector* officials are not covered.

4.4. Monitoring: Peer Pressure

The *OECD Working Group on Bribery in International Business Transactions* (the *OECD Working Group on Bribery*) is responsible for monitoring governments' implementation of the OECD Anti-bribery Convention. Monitoring is undertaken by a process of 'peer review'. A team of experts made up of representatives of the OECD Anti-corruption secretariat and examiners from two other governments conduct a series of meetings with a range of stake-holders, in order to assess the adequacy of the steps taken to enforce the OECD Anti-bribery Convention. The strength of this 'peer' review process lies in the fact that all those signed up to the OECD Anti-bribery Convention have an interest in ensuring equal enforcement so as to assure a level playing field in international business transactions.

The monitoring consists of two main stages:

- *Phase 1*: aimed to assess whether domestic legislation met the requirements of the OECD Anti-bribery Convention (completed in 2006);
- *Phase 2*: aims to assess the overall *effectiveness* of countries' implementation of the OECD Anti-bribery Convention, is much broader in scope, and therefore more challenging than Phase 1 (ongoing until 2007).

In addition, the OECD Working Group on Bribery meets five times a year and undertakes a "tour de table", or mutual review, where foreign bribery allegations involving nationals or companies of parties to the OECD Anti-bribery Convention are discussed.

4.5. Phase 2 Reviews

The Phase 2 review process (see TABLE 2) provides for consultation with trade unions, giving trade unions the opportunity to make recommendations on a (wide) range of issues relevant to the *effectiveness* of implementation (e.g. whistleblower protection, level of awareness, support for workers, corporate governance).

¹³ Maybey & Johnson has also been the subject of newspaper reports concerning bribery allegations in Ghana, Pakistan, Papua New Guinea, and South Africa

¹⁴ Its Revised *Recommendations 1997* provide that countries put in place mechanisms to encourage auditors to report bribery.

Importantly the OECD publishes its report containing detailed analysis and a set of recommendations for each country. The government concerned is required to respond to the report's recommendations verbally, within 12 months, and then in writing at the end of 2 years.

TABLE 2: PHASE 2 MONITORING PROCESS – AND FOLLOW UP		
PHASE 2 STEPS		
Stage 1:	<i>Standard Questionnaire and Supplementary Questionnaire</i>	The OECD Anti-corruption secretariat requests governments to complete a standard questionnaire and to answer country-specific questions raised by the findings of Phase 1.
Stage 2	<i>In-country Review</i>	Experts from the OECD Anti-bribery secretariat and two other governments hold in-country meetings with government departments, prosecutors, trade unions, civil society and private sector representatives.
Stage 3	<i>Preparation of Preliminary Report</i>	The review team prepares a preliminary report, which contains recommendations for action
Stage 4	<i>Consultation:</i>	The OECD Working Group on Bribery discusses the report's findings and recommendations
Stage 5	<i>Adoption of Country Report</i>	The OECD Working Group on Bribery adopts the country report
Stage 6	<i>Publication of Report on Web Site</i>	All Reports are made available on the OECD Web Site¹⁵
FOLLOW- UP TO PHASE 2		
Stage 1	<i>Verbal Progress Report by Country after 12 months</i>	
Stage 2	<i>Written Progress Report by Country after 24 months</i>	

¹⁵ http://www.oecd.org/topic/0,2686,en_2649_37447_1_1_1_1_37447,00.html

5. SUPPORTING THE OECD ANTI-BRIBERY CONVENTION

5.1. Phase 2 Reviews

Trade unions are invited by their national governments to participate in a consultation meeting as part of the Phase 2 Review.

5.1.1. *Participants and Format*

Participants in the consultation meeting include:

- members of the OECD Anti-corruption secretariat;
- representatives of two other OECD governments as examiners ('peers');
- representative of the host government;
- invited members of civil society, trade unions and the private sector.

The format of the meeting is a '*Question and Answer*' session. There is no need to prepare a formal presentation. Participants are sent an agenda with a list of issues in advance of the meeting. In practice, participants are also free to raise their own issues.

The representative of the host government has observer status only and is unable to participate in the meeting. In the past there was a case of a participant asked for a private audience with the review team. This was granted, but as no record appears in the final report, the value of this type of consultation is limited.

5.1.2. *Trade Union Participants*

In the majority of reviews undertaken to date, trade unions have been represented by the national centres. Given the relevance of the issues to those working either in corruption prone industries such as defence, oil and construction, or in exporting industries operating in corruption prone regions, in later reviews efforts have been made to include representatives from these sectors.

5.1.3. *Use Global Networks*

Trade unionists in *transitional and developing countries* - or indeed other EU and OECD countries - potentially provide a valuable source of information on the activities of OECD MNCs operating overseas. They can participate in the review in the following ways:

- attending the review in person (there is no budget from the OECD for this);
- submitting written information either directly to the OECD, within the examination period, or through trade unions or civil society organisations that are attending the meeting;
- participating in a conference call (this needs to be organised in good time).

5.1.4. Raising Issues

There is a range of issues that could be raised by trade unions at the review, including:

- the protection of whistleblowers;
- linking compliance with the OECD MNE Guidelines to the provision of export credits;
- awareness of the offence of bribing a public official in the workplace;
- the role of trade unions in raising awareness/monitoring compliance in the workplace;
- corporate governance issues;
- debarment (black-listing) of companies with corruption convictions from public procurement;
- lack of guidance on how workers/citizens around the world can report bribery.

TABLE 3: ISSUES ADDRESSED BY TRADE UNIONS IN PHASE 2 REVIEWS

ISSUES		COUNTRY
CONSULTATION ON THE OECD ANTI-BRIBERY CONVENTION		
	<i>“The German authorities explain that trade unions were involved in the consultation process leading up to the legislative proposals concerning the Convention... the German Trade Union Federation (DGB) stated that it had had difficulty in communicating with the government about the ACIB.”</i> <u>Sweden</u> <i>“Note that the proposal from the Government to ratify the OECD Convention was circulated widely for comment, including to many Government authorities, labour unions, business organisations and NGOs.”</i>	Germany Sweden
GENERAL AWARENESS OF CORRUPTION ISSUES		
High	<u>Hungary</u> <i>“Trade union representatives explained at the on-site visit that although awareness of corruption in general is high, employees rarely report concrete cases to the law enforcement authorities.”</i>	Hungary
Low	<i>“A Swedish official acknowledged that many Swedish companies are active in corruption-prone countries... Many have moved their operations to Eastern European countries... Yet... bribery does not appear to be a major issue. Representatives of two labour unions expressed similar opinions.”</i>	Sweden
TRADE UNION AWARENESS OF THE CONVENTION		
Low	<u>UK</u> <i>“Representatives of trade unions interviewed at the on-site visit demonstrated a low level of awareness of the OECD Convention”.</i>	Nearly all
LEVEL OF PROMOTION BY GOVERNMENT		
	<u>Finland</u> <i>“A representative of the trade unions was of the opinion that the government has not made a sufficient effort to inform companies about the Convention and the OECD Guidelines.”</i>	Finland
WILLINGNESS OF TRADE UNIONS TO PROMOTE THE CONVENTION		
High	<i>“The Lead examiners...feel that with sufficient awareness of the CFPOA, CLC has the potential to effectively disseminate information about the foreign bribery offence to a wide audience.”</i>	Bulgaria Canada
Low		Hungary
WHISTLE BLOWER PROTECTION		

ISSUES	COUNTRY	
Obstacle to Reporting	<p><u>Finland</u>. “trade union representative explained that one of the main reasons that employees of companies are reluctant to report is the absence of protection of whistle blowers in labour legislation and companies’ codes of conduct. The representative was not aware of any initiatives on the part of the Finnish government to address the situation”</p> <p><u>Germany</u> “Representatives from civil society, particularly the DGB, cite the absence of legal protection for whistle blowers as the biggest obstacle to the reporting of bribery offences to authorities.”</p> <p>“Another reason for the lack of reporting in Hungary may be inadequate protection for whistleblowers against reprisals by their employers”.</p> <p><u>Japan</u> “public disclosure is still rare because many employees continue to fear retaliation.”</p>	Finland France Germany Hungary Italy Japan Switz.
Role of Trade Unions	<p><u>France</u> “... a vigilant employee may appeal to...a trade union. Such organisations may then bring a civil party petition as part of the criminal proceedings (“se constituer partie civile”), collectively demanding an investigation. But applications of this kind are rarely made, despite the fact that all the trade-union representatives met during the on-site visit said they were prepared to take up revelations of this kind.”</p> <p><u>Japan</u> ... a trade-unionist considered that they could play a role in the new legal framework by... receiving information from whistleblowers</p> <p><u>Slovakia</u> “...at least some trade unions have organised training activities to raise awareness.”</p> <p><u>Sweden</u> The two union representatives... believe that whistleblowers are more likely to report wrongdoing to his/her union than an employer. The union may then in turn report the matter to the company through its representative on the board of directors.”</p>	France Japan Slovakia Sweden
Need for better legislation	<p><u>France</u> “Although the labour code (code du travail) makes provision for an employee who reports health and safety issues or instances of sexual harassment, it makes no provision for an employee who wishes to denounce an act of bribery or accounting fraud.”</p>	Nearly all
Improve Promotion	<p><u>UK</u> “...trade unions and NGOs...expressed disappointment that insufficient publicity had been given...and that, although whistleblowing procedures and hotlines have been put in place in many companies, these are not being backed up by...information and training.”</p>	UK
Lack/ inadequacy of company procedures	<p><u>Sweden</u> “According to ...two labour unions, however, whistle blowing procedures are not common among Swedish enterprises”</p> <p><u>Sweden</u> “The Commission on Business Confidence considered but eventually decided against including whistleblower provisions in its Code of Corporate Governance.”</p> <p><u>Greece</u>. “The Code of Civil Servants (Law 2683/1999), which applies to most civil servants, and the Code of Conduct for Companies Listed on the Athens Stock Exchange and Connected Persons (CMC Rule 5/204/14/14.11.2000) do not refer to reporting of crimes. A representative of a labour union believed that there would be sufficient protection only if an allegation is true ”</p>	Sweden
Collective Agreements - Adequacy	<p>“The trade union representative... did not consider protection of whistleblowers to be a major issue, as collective agreements may be used to cover such cases; the representative of the Confederation of Norwegian</p>	Norway

ISSUES		COUNTRY
	<i>Business and Industry expressed his agreement....”</i>	
Collective Agreements Inadequacy	<i>“Collective agreements and corporate codes also appear to provide little if any real protection”.</i>	Bulgaria France Greece Italy
Loyalty as a disincentive	<i>“Traditionally corporate culture in Japan was characterised by the complete loyalty of employees to their company in exchange for lifetime employment.”</i>	Bulgaria (cs ¹⁶) Japan
SHIFTING RISK		
	<i>Japan “A trade union representative indicated that so far employees have been left alone to decide whether to bribe a foreign public official...and when caught... companies have usually declared that they were not involved. He believes that due to the UCPL offence...companies will now have to face their social responsibility as they can be sanctioned for the bribery...perpetrated by their employees”.</i>	Japan
CORPORATE FINES		
	<i>Sweden “trade union thinks that it is only possible to apply a corporate fine for environmental and health and safety crimes.”</i>	Sweden
CHECKS AND BALANCES		
	<i>“A trade union representative welcomed...giving an oversight role to the Federal Public Administration.... he acknowledged that full participation is needed for such a mechanism to function properly and recognised the challenges posed in changing a culture...insisted on the need for assessment to ensure its effectiveness.”</i>	Mexico
CORPORATE COMPLIANCE PROGRAMMES		
	<i>“... two academics, a trade unionist and experts from the private sector on control risk, was that large Japanese companies are beginning to introduce internal compliance systems. They emphasised that the compliance effort is in a preliminary stage, but were optimistic that the efforts are gaining momentum.”</i>	Japan

5.1.5. Follow-up

In the case of the UK, the Phase 2 review proved to be spring-board for further activities:

- preparation of NGO/TU joint statement calling for action by the UK Government;
- presentations by UNICORN on the OECD Anti-bribery Convention at trade union events;
- writing of articles on the OECD Anti-bribery Convention for trade union Press;
- meetings between trade unions and anti-corruption campaigners on sectoral initiatives;
- organising a seminar to consider how to implement the recommendation in the Phase 2 Report on broadening the level of persons that can engage corporate liability.

¹⁶ Civil servants

5.2. Reporting International Bribery

A second important role for workers and citizens in supporting the OECD Anti-bribery Convention is to report allegations or suspicions of bribery involving OECD MNCs operating overseas to the relevant authorities. There is, however, still no clear information on how to report international bribery.

The process would involve:

- deciding where to report to: *host* or *home* country;
- (if home) identifying the *home* country of the MNC involved;
- identifying the relevant authority to which to report the offence in the home country.

An alternative, or additional, strategy is to report to the media. News coverage serves to raise the profile and disseminate information, which may encourage others with information to come forward. It also increases the pressure on governments to act.

6. TRADE UNIONS COMBATING CORRUPTION

6.1. The Concerns and Role of Trade Unions

Trade unions are committed players in local and international efforts to combat corruption due to concerns over the:

- threat to workers/trade union rights;
- impact on the role and integrity of public service services
- need to protect workers who disclose information in the public interest.

Trade unions have a potentially unique role to play in combating corruption given their dual function as representatives of public and private sector workers on the one hand, and (mass) members of civil society on the other. Furthermore, they are globally connected and financially independent of both government and of corporations.

Overall, there is considerable overlap between the anti-corruption agenda and trade unions' core activities as negotiators with companies on behalf of workers, and as campaigners for democracy, social reform and corporate accountability.

Trade unions are thus well-placed to undertake a range of activities aimed at raising awareness, deterring, and detecting international bribery, both in the workplace and through trade union campaigns.

6.2. Campaigning for Transparency

In Romania, the National Trade Union Block (BNS) is campaigning to increase the transparency of the privatisation process and demanding the application of the EU Directive on rights of information in relation to privatisation.

6.3. Monitoring Public Procurement

In the Philippines the public service trade union, PSLINK, has established a regional procurement watch to scrutinise the results of public bidding. Members receive training from an organisation called Transparency and Accountability Network (TAN), which has been accredited by the government to provide training on the new procurement law established in the Philippines. These members scrutinise the bidding process when results of bids are announced to ensure that the proper process is followed.

6.4. Using Social Dialogue

“Successful social dialogue structures and processes have the potential to resolve important economic and social issues, encourage good governance, advance social and industrial peace and stability and boost economic progress.”¹⁷

Since 1998, the Global Union Federations (GUFs) have been involved in negotiating *International Framework Agreements (IFAs)* with MNCs at a global scale. IFAs establish a formal relationship between the GUF and the central management of the company. These union-management agreements are based on social dialogue, provide for conflict resolution and are qualitatively different from most company codes of conduct.

Whilst to date, *IFAs* have focused on traditional areas of trade union rights and collective bargaining, the preamble of the model IFA of the International Federation for Building and Wood Workers (IFBWW) does make reference to corruption (see *Box 1*). This clause appears in the preamble of some, but not all, of the international agreements of the IFBWW.

6.5. Building Quality Public Services/Reducing Solicitation

In the Philippines, in order to safeguard the merit and fitness of civil servants, the trade union PSLINK trains members who are representatives on the selection and employment boards in interview techniques and qualification standards, so that the employment of staff will be based on merit and fitness rather than political patronage.

6.6. Trade Union Policies/Resolutions

In its 2004, Fourth World Congress, held in Porto Alegre, Brazil, the international trade union Education International (EI), passed a Resolution calling for affiliates to become active in combating corruption (see *Box 2*).

¹⁷ <http://www.ilo.org/public/english/dialogue/themes/sd.htm>

BOX 1: IMPREGILO AND IFBWW FRAMEWORK AGREEMENT

Framework Agreement between IMPREGILO S.p.A. and IFBWW /FENEAL-UIL/ FILCA-CISL/ FILLEA/CGIL ¹⁸

Impregilo S.p.A. is an international company operating in the sector of the building of large infrastructures, of civil building and of concessions for the environment resulting from the merger of the major Italian companies operating in the building sector (Cogefarimpresit, Girola, Lodigiani).

The International Federation of Building and Wood Workers (IFBWW) is an international trade union secretariat organising workers in the construction, building, wood, forestry and allied trades and industries. The IFBWW represents 289 affiliates in 125 countries throughout the world.

Impregilo S.p.A, and IFBWW, together with the Italian Federations Feneal-UIL, Filca-CISL and Fillea-CGIL

- Recognise that sustainable¹⁹ industrial development of the construction industry is in the company's and workers interest.

- Recognising the need for open and democratic industrial relations and fair collective bargaining procedures with representative trade unions;

- **Recognising that corruption, bribery and unfair anti-competitive actions distort markets and hamper economic, social and democratic development.**

- The parties acknowledge the need to promote and observe the fundamental principles of Human Rights, as defined by the "Universal Declaration of Human Rights" (1948), the "ILO Declaration on Fundamental Principles and Rights at Work" (1998), the "ILO Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy" (2000) and the "OECD Guidelines for Multinational Enterprises" (2000).

- The parties commit themselves to work in this direction to achieve social justice and sustainable development in the activities and undertakings of Impregilo and its contractors, subcontractors and suppliers.

-In this spirit Impregilo S.p.A and the IFBWW shall work together to verify the effective application by all activities and undertakings of the following social criteria.

BOX 2: EI RESOLUTION ON THE ROLE OF EDUCATION IN COMBATING MISMANAGEMENT AND CORRUPTION

The Resolution

“1. Notes that mismanagement and corruption tend to develop at several levels in our societies, in both the private and public sectors, with an adverse impact on the economy, social activities and education

2. Recalls the major scandals – recently brought to the notice of the public – that have erupted in several multinational companies (unsound investments, embezzlement, false financial statements, etc.) with particularly negative consequences for employment and pensions of many workers within the education sector.”

7. THE OECD GUIDELINES FOR MNES

7.1. Using Codes in Relation to Bribery

When considering the use of codes of conduct in relation to international bribery it is important to note that it is illegal for MNCs from countries that have signed the OECD Anti-bribery Convention to pay bribes to foreign public officials. Allegations should be reported to the relevant authorities.

¹⁸ <http://www.ifbww.org/index.cfm?n=219&l=2&on=189>

¹⁹ http://www.ei-ie.org/worldcongress/docs/WC04Res_Corruption_e.pdf

In this context, codes could usefully be used to:

- extend minimum standards to companies that are headquartered in countries that have not signed up to the OECD Anti-bribery Convention (e.g. China, Russia);
- apply minimum standards to intermediaries/foreign subsidiaries/suppliers/ subcontractors;
- extend the definition of the recipient of bribe to include the full range of public officials, as well as private officials;
- expand the definition of the scope of the offence;
- provide an alternative mechanism for holding companies to account where there is insufficient evidence to use the law.

7.2. Using the OECD Guidelines for MNEs

The OECD Guidelines for MNEs set out recommendations which represent a shared view of what signatory governments consider to be ‘good corporate behaviour’. All MNCs of committed countries are bound to comply with *all* the recommendations. These cover a wide range of issues including: *employment and industrial relations; environment; combating bribery consumer interests; competition; and taxation*. A key strength is that they are endorsed and enforced by government.

The OECD Guidelines²⁰, first adopted in the 1970s, were revised in June 2000. The revised version included a new chapter on bribery, thus bringing the code in line with the OECD Anti-bribery Convention.

The revised Guidelines are also considerably strengthened in relation to:

- *foreign subsidiaries*: MNCs headquartered in adhering countries are now responsible for all their activities *including the activities of foreign subsidiaries*, even when operating in non-adhering countries.
- *suppliers and sub-contractors*: the Guidelines recommend that suppliers and subcontractors apply the Guidelines.

Trade unions or other elements of civil society can bring cases before the NCP for alleged breaches of the Guidelines. The enforcement mechanisms work in entirely the opposite manner from the OECD Anti-bribery Convention. In the case of adhering countries, cases are brought before the NCP of the country in which the offence took place, rather than the host country of the MNCs.

TUAC is able to provide advice on the use of the Guidelines.

8. DISCUSSION POINTS

1. Awareness of the OECD Anti-bribery Convention in OECD countries: the Phase 2 reviews undertaken to date show that awareness of the OECD Anti-bribery Convention among trade unions in OECD countries is low.
 - a. Does this indicate that governments/companies are doing too little to promote the OECD Anti-bribery Convention?

²⁰ <http://www.dti.gov.uk/worldtrade/ukncp.htm> and *User’s Guide on the Guidelines for trade unions published by TUAC*. This is available at: <http://www.tuac.org/publicat/guidelines-EN.pdf>

- b. Should governments provide resources to trade unions to promote the OECD Anti-bribery Convention (N.B. the UK Phase 2 report recommends that action be taken to raise awareness amongst trade unions, but so far no approach has been made by the UK Government)?
 - c. What else should be done to increase awareness?
- 2. Building on the Value of the Phase 2 Consultations: the Phase 2 consultation process has been an extremely important exercise in awareness-raising.
 - a. What is the best way of maintaining momentum after the Phase 2 Reviews?
- 3. Range of Issues: so far trade unions have been engaged in the Phase 2 review process on a relatively narrow range of issues: whistleblower protection and the role of trade unions in campaigning for legislation or negotiating whistleblower protection in collective agreements; and the level of awareness of the OECD Anti-bribery Convention.
 - a. Is this a missed opportunity?
- 4. Social Dialogue: there is now a plethora of codes of conduct/industry-led initiatives aimed at curbing bribery by multinational companies.
 - a. Does it matter that trade unions are not involved in (many of) these initiatives?
 - b. What is the potential to use social dialogue processes (IFAs) for the purposes of deterring international bribery?
- 5. Awareness in non-OECD countries: awareness of trade unions in non-OECD countries is also low.
 - a. How can the Convention be better promoted in non-OECD countries
 - i. Regional Associations (MERCOSUR, APEC, ASEM, NEPAD);
 - ii. Greater promotion through embassies/diplomatic posts/donors;
 - iii. Using trade union networks (resources/funding)?
 - b. How can trade unions from non-OECD countries be brought into the OECD Process?