



DIRECTORATE FOR FINANCIAL, FISCAL AND ENTERPRISE AFFAIRS

**REPORT BY THE COMMITTEE ON INTERNATIONAL INVESTMENT AND
MULTINATIONAL ENTERPRISES: IMPLEMENTATION OF THE CONVENTION ON
COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL
BUSINESS TRANSACTIONS AND THE 1997 RECOMMENDATION**

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EXECUTIVE SUMMARY

Ratification of the Convention and incorporation into the national law of signatory countries, is almost complete. Many national governments have praised the Organisation for this achievement. As one of the most effective tools against foreign bribery, the Convention is expected to contribute to reducing corruption in international business transactions and maintaining the integrity of the financial system.

A major challenge now is to ensure the credibility of the Convention. One way to meet this challenge is through rigorous monitoring to ensure that legislation implementing the Convention is adequate and effectively applied. This calls for completion of Phase 1 monitoring to assess whether the standards set by the Convention have been adequately transposed in national law. Thirty countries have been examined so far and in certain cases, recommendations have been made calling for improvements to existing laws. Countries should take action, as soon as possible, to address issues of concern identified during the Phase 1 reviews.

Another element affecting credibility is the degree of openness of the Convention. The Group has discussed seriously how to reconcile the fundamental principle of openness of the Convention with both the challenges of rigorous monitoring to ensure that legislation implementing the Convention is adequate and effectively enforced and the pursuit of other aspects of the mandate given by the Council to the Working Group within the resources available.

Three years after its entry into force, it is imperative that all countries that have signed and ratified the Convention be in a position to fulfil obligations arising therefrom. Those that have not yet enacted the necessary implementing legislation (Brazil, Chile, and Turkey) should do so as a matter of urgency.

Countries have agreed that monitoring should also take account of the structures in place to enforce these laws and rules so as to assess their application in practice, including compliance with the broader commitments of the 1997 Revised Recommendation on Combating Bribery in International Business Transactions. Phase 2 monitoring began this year with the examination of Finland and the United States. The Working Group has reviewed and approved the report on Finland and will be examining the United States at its session in June 2002. Two additional countries will be examined before the end of the year. Making information on country performance available to the public is a key element in enhancing the credibility of the Convention.

Credibility also requires that the Convention be strengthened whenever weaknesses or gaps risk to undermine its objectives. OECD Ministers have repeatedly called on the Organisation to move ahead on other issues relating to corruption. Having studied these issues, it is time that the Organisation reflects on actions that may be necessary to address them. Review of the 1997 Recommendation as required by that instrument, would present the opportunity to re-examine the adequacy of existing instruments as concerns these areas.

Countries have reaffirmed the importance of effectively enforcing the Convention and related instruments. This underlines the need to make sufficient resources available both at the national level, particularly as

concerns the capacity to investigate and prosecute foreign bribery, and at the multinational level in support of the Group's monitoring process.

**IMPLEMENTATION OF THE CONVENTION ON COMBATING BRIBERY OF FOREIGN
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**REPORT BY THE COMMITTEE ON INTERNATIONAL
INVESTMENT AND MULTINATIONAL ENTERPRISES**

I. Introduction

Three years after its entry into force, the Convention has been ratified by 33 of the original 34 signatories¹. Slovenia deposited its instrument of accession in September 2001, thus bringing to 34 the total number of contracting Parties to the Convention. Ministers called on the Organisation to rigorously pursue and reinforce monitoring implementation of the Convention and the Recommendations and to move ahead on related issues².

Fighting corruption remains a high priority of the Organisation. Monitoring, provided for by the Convention and the Recommendation³, remains the single most effective tool to ensure that the goals of the Convention are met. Brazil, Chile, and Turkey still have not adopted implementing legislation and are requested to do so as a matter of urgency.

II. OECD Convention and Progress in Implementation

(i) Status of ratification and implementation

The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions entered into force on 15 February 1999. All thirty OECD countries signed the Convention as well as four non-members (Argentina, Brazil, Bulgaria, and Chile). Slovenia became the fifth non-member to join the Convention, depositing its instrument of accession with the Secretary-General in September 2001.

1. As of 25 April 2002, Ireland has not deposited its instrument of ratification.

2. OECD Ministerial Communiqué, Paris, 17 May 2001, paragraph 28.

3. Article 12 of the Convention provides that “The Parties shall co-operate in carrying out a programme of systematic follow-up to monitor and promote the full implementation of this Convention. Unless otherwise decided by consensus of the Parties, this shall be done in the framework of the OECD Working Group on Bribery in International Business Transactions and according to its terms of reference...”. The 1997 Recommendation, Section VIII, states that: “[The Council] INSTRUCTS the Committee on International Investment and Multinational Enterprises, through its Working Group on Bribery in International Business Transactions, to carry out a programme of systematic follow-up to monitor and promote the full implementation of this Recommendation, in co-operation with the Committee for Fiscal Affairs, the Development Assistance Committee and other OECD bodies, as appropriate...”

The Working Group on Bribery regularly reviews the progress of countries in ratifying and implementing the Convention. As of May 2002, thirty-four countries have deposited their instruments of ratification/accession with the Secretary-General (see Table in Annex 1). Of these, thirty have had their implementing legislation examined by the Working Group to assess conformity with the Convention⁴. Three others (Brazil, Chile, Turkey) will be reviewed once implementing legislation is enacted. Slovenia has announced a revision of its foreign bribery offence and will be examined once its modifications are passed by Parliament.

Based on information supplied by the countries, Annex 1 sets out the steps which participating countries have taken to ratify and implement the Convention as well as steps taken to address issues raised during the evaluation of countries' implementing legislation.

(ii) Results of Monitoring of member countries' commitments

Monitoring Process

Phase 1

In April 1999, the Working Group on Bribery began a programme of systematic follow-up to monitor and promote the full implementation of the Convention. Phase 1 of the monitoring process examines each country's legislation (including case law) to assess whether the standards of the Convention have been adequately transposed in national law. The principal objective of Phase 1 is to evaluate whether the legal texts through which participants implement the Convention meet the standards set by the Convention.

All but one of the countries that have implementing legislation have now been reviewed. The findings and conclusions are summarised in the Report to the OECD Council and the Phase 1 evaluations of the countries examined this year (New Zealand and Portugal) are described below⁵. Ireland's implementing legislation will be reviewed by the Working Group in June 2002 and its evaluation report is expected to be finalised and approved by October 2002. The country reports will be made publicly available after transmission to the Council.

General Findings

The monitoring process confirmed that, generally, the legislation of the countries reviewed conforms to the standards of the Convention. While there is overall compliance with the Convention's obligations, there are issues that need to be followed up in Phase 2 to assess the real effectiveness of some provisions of the national laws. In one country, the Group found that the non-prohibition of tax deductibility for bribes does not fully implement the 1997 Recommendation and called on that country to speed up the adoption of adequate legislation. The requirement of dual criminality for nationality jurisdiction and extradition is an issue that has already previously been identified as requiring further analysis and monitoring.

4 . Ireland's implementing legislation will be reviewed by the Group in June 2002.

5. The previous 28 country reports can be found at the following address:
<http://www.oecd.org/oecd/pages/home/displaygeneral/0,3380,EN-document-88-nodirectorate-no-no-16889-31,00.html>.

In some cases there may be uncertainties relating to the transposition in national law of certain elements of the offence, including the definition of foreign public official and bribery through intermediaries which should be followed up in Phase 2 to see how courts have interpreted the provisions. Case law may also help to determine the exact scope of certain exceptions to the offence such as those relating to routine governmental actions. The countries reviewed have provided for criminal responsibility of legal persons, however, it may be necessary to evaluate in Phase 2 whether the sanctions for legal persons, including confiscation, are effective. Furthermore, it is not clear in all cases whether state-owned or state-controlled companies would be covered by this liability. The Group noted that liability of state-owned or controlled enterprises is an issue which should be reviewed horizontally.

The Group has been studying the issue of the responsibility of legal persons, particularly how countries have implemented article 2 of the Convention in comparison to other international agreements that also provide for the liability of legal persons in respect of bribery offences. While further analysis of this issue is necessary, delegations called for attention to be paid, during Phase 2 examinations, to whether and how legal persons are prosecuted in view of assessing whether a level playing field is achieved through the different legal approaches.

Follow-up to Phase 1 Reviews

In adopting its Phase 2 procedures, the Group recognised the importance of analysing those issues identified in Phase 1 as requiring attention by certain countries, especially remedial action in some areas. Countries agreed to periodically report on progress made to implement the recommendations arising from Phase 1.

To continue to ensure that steps are taken to meet the standards of the Convention and to effectively enforce implementing legislation, the Working Group agreed that as part of its monitoring function, the Group should regularly exchange information on Parties' actions to address deficiencies in their legislation as well as on the effective enforcement of implementing legislation. The type of information exchanged should therefore more closely respond to concerns regarding enforcement and steps taken to implement recommendations arising from Phase 1 reviews.

This year, Parliamentary amendments have been made in some countries to address issues raised in their Phase 1 examinations. In the Slovak Republic, legislation was adopted to extend the foreign bribery offence to third party beneficiaries and to raise the level of sanctions and the statute of limitations for this offence. The Group was satisfied that these amendments responded to the recommendations by the Group concerning its Phase 1 evaluation. In Japan, amendments to the Unfair Competition Prevention Law removed the "main office" exception and broadened the definition of public officials in relation to public enterprises. The Group was satisfied that Japan has made significant progress to respond to some of the recommendations by the Group concerning its Phase 1 evaluation but noted that other shortcomings identified in Japan's Phase I evaluation were not addressed by the amended legislation.

In the United Kingdom, Parliament recently passed an Anti-Terrorism Law which includes provisions creating a foreign bribery offence. The Group will review this legislation at its meeting in October 2002 to determine whether it meets the standards of the Convention. It will also examine amendments made in Hungary to delete the defence of solicitation and to introduce the criminal liability of legal persons.

The Group urged those countries that have not taken actions to implement the Phase 1 recommendations to address this as a matter of priority, especially regarding major areas of concern. This will help to ensure credibility of the Convention and provide a firm basis for assessing enforcement of the Convention in Phase 2.

Phase 2

Ministers have reaffirmed the importance of effectively enforcing the commitments under the Convention. Monitoring will play a key role in determining whether countries are effectively implementing their laws in practice. Phase 2, which began in November 2001, studies the structures and the institutional mechanisms in place to enforce the implementing legislation. It broadens the focus of monitoring to encompass more fully the non-criminal aspects of the 1997 Recommendation. The Group adopted procedures for carrying out Phase 2 evaluations which includes a questionnaire and on-site visits to the country examined.

The Group finalised the Phase 2 review of Finland (see below) and undertook the on-site visit to the United States in preparation for the review report which it will examine at its June 2002 meeting. Two additional countries, Germany and Iceland, are to be reviewed before the end of the year.

-- Review of Finland

Finland was the first country to be evaluated in Phase 2. The Phase 2 review reflected an assessment of information obtained from Finland's responses to the Phase 2 questionnaire, consultations with the Finnish government and civil society during the on-site visit, a review of relevant legislation and case law, and independent research. The Working Group commended the Finnish government for the high degree of transparency as well as the consistently low level of perceived corruption in Finland's public service. The Group recommended that more attention should be given to the pressures on Finnish companies and foreign companies located in Finland that compete in sensitive national markets. The Group made specific recommendations concerning the prevention, detection, and prosecution of foreign bribery in order for Finland to be prepared to detect and address foreign bribery cases when they arise. This would include public awareness activities for the purpose of educating and advising the public and private sectors about the Convention.

III. Five Issues Relating to Corruption

In December, 1997, the OECD Council decided that the Committee on International Investment and Multinational Enterprises, through its Working Group on Bribery in International Business Transactions, should examine on a priority basis the following five issues: bribery acts in relation with foreign political parties, advantages promised or given to any person in anticipation of that person becoming a foreign public official, bribery of foreign public officials as a predicate offence for money laundering legislation, the role of foreign subsidiaries in bribery transactions and the role of offshore centres in bribery transactions.

The Group has focused on bribery as a money-laundering offence and off-shore financial centres in past years and has made recommendations to strengthen the fight against corruption. Last June, the Group began to examine issues with regard to bribery in relation to political parties, or candidates, and the role of foreign subsidiaries in bribery transactions. It agreed that given the potential seriousness of the problem, there was a need to determine whether there is a gap in coverage of the Convention and its scope. In order to ascertain information as to the nature and the extent of these issues, the Group circulated a questionnaire, the replies to which will be analysed in the forthcoming months.

IV. Tax deductibility

Section IV of the 1997 Revised Recommendation, drawn from the 1996 Recommendation on the Tax Deductibility of Bribes to Foreign Officials⁶ provides for the non-tax deductibility of bribes. The Committee on Fiscal Affairs (CFA) regularly conducts a self-evaluation of countries' progress in implementing the 1996 Recommendation on the Tax Deductibility of Bribes of Foreign Officials. The most recent results including information provided to the Working Group on Bribery, is reproduced in Annex 2⁷. The Working Group on Bribery assesses, in the context of its mutual evaluation process, how well each country's legislation meets the standards set by the Convention.

It has been agreed that the CFA would provide its technical opinion on any tax issue that may arise in the Working Group's reviews. The CFA has provided input in Phase 1 of the review and assisted in the development of the tax-related questions included in the Phase 2 questionnaire to countries (which requires the evaluation of the implementation of domestic legislation denying tax deductibility of bribes). The CFA has also provided tax experts in the Phase 2 to take part in the on-site reviews of Finland and the United States:

- In September 2001 tax experts took part in the Phase 2 review of Finland and noted that the non-deductibility of bribes is well established in tax practice but that Finnish tax legislation does not expressly prohibit the deductibility of bribe payments. As a result of the review, the Finnish Government presented in Parliament in December 2001 proposals to amend the Act on the Taxation of Business Profits and Income from Professional Activities including a provision which expressly denies the tax deductibility of bribes.
- In March 2002 tax experts took part in the Phase 2 review of the United States which has the longest experience in the OECD in denying the tax deductibility of bribes to foreign public officials. The results of this Phase 2 examination of the US will be discussed by the Group next June.
- The CFA approved in June 2001 an OECD manual to assist tax examiners in identifying suspicious payments likely to be bribes: the “*OECD Bribery Awareness Handbook for Tax Examiners*”. This Handbook can be used by countries both as training material and as a Model when designing their own handbook for tax examiners. It provides useful legal background information as well as practical tips such as indicators of bribery, interviewing techniques, examples (made anonymous) of bribes identified in tax audits as well as a standard form for feedback by the tax examiner to his headquarters in order to facilitate the monitoring of trends and assessing risk. It is available to governments of both Member countries and countries outside the OECD.

6. See OECD web: <http://www.oecd.org/oecd/pages/home/displaygeneral/0,3380,EN-document-88-nodirectorate-no-no-7444-31,00.html>

7. This information is also available on the OECD web <http://www.oecd.org/taxation>

V. Other actions to implement the 1997 Revised Recommendation on Combating Bribery in International Business Transactions

(i) Review of the 1997 Recommendation

Article X provides that the Recommendation be reviewed "within three years after its adoption". The Recommendation was adopted in May 1997. The review should reflect the outcome of discussions on issues that have arisen in the context of Phase 1 monitoring as well as those relating to the five issues mandated by the OECD Ministers. The Group will consider proposals for carrying out this review including whether, and in what way, to address the issue of private to private bribery.

(ii) Activities of the Export Credits and Credit Guarantees Working Party (ECG)

In 2002, the ECG considered the results of its Mapping survey on anti-bribery measures adopted in export credit systems which showed that a significant number of concrete new measures had been put in place since the adoption of the Action Statement on Bribery and Officially Supported Export Credits in November 2000. Members also agreed on a revised in-depth survey which better reflects the specific undertakings set forth in the Action Statement, and which should contribute positively to the ongoing review of the implementation of the OECD Convention on Bribery.

(iii) Development Assistance

Development agencies play a key role in supporting developing countries in their fight against corruption. The Development Assistance Committee (DAC) Network on Good Governance and Capacity Development (GOVNET) is engaged in addressing corruption issues in the context of development assistance in a number of ways. The GOVNET members represent development agencies (both bilateral and multilateral) responsible for anti-corruption and have indicated a strong interest in addressing how their agencies can contribute to their national government's efforts in complying with the OECD Convention on Bribery in International Business Transactions. The GOVNET intends to strengthen its contact with the Working Group on Bribery, including through contacts with the Group's Chairman.

Pursuant to the DAC Recommendation on Anti-Corruption Proposals for Aid Funded Procurement and the 2001 DAC Recommendation on Untying ODA to the Least Developed Countries, the DAC is undertaking work to strengthen developing country responsibility for procurement. This work will identify ways and means by which donors can assist developing countries to strengthen capacities to take full responsibility and ownership for their aid supported procurement. It will also seek to harmonize donor requirements concerning aid procurement to reduce the burden of these aid management requirements. Combining efforts to strengthen capacities and ownership with reduced donor controls will require, inter alia, that corruption is effectively tackled through appropriate guarantees for accountability, probity and transparency.

VI. Co-operation with Non-Members

-- Accession procedures

Article 13 of the Convention provides that the "... the Convention shall be open to accession by any non-signatory which is a member of the OECD or has become a full participant in the Working Group on Bribery in International Business Transactions or any successor to its functions..."⁸.

Upon invitation by the OECD Council, the Working Group submitted a technical opinion on the request by Slovenia to accede to the Convention and to participate in the Working Group. Pursuant to this opinion, the Council invited Slovenia to become a full participant in the Working Group. Following the exchange of letters between the Slovenian authorities and the OECD Secretary-General, Slovenia joined the Working Group in June 2001 and deposited its accession instrument on 6 September 2001.

In March 2001, the Council requested the Working Group to examine the requests for accession by Croatia, Estonia, Latvia, Lithuania, Romania and Russia and to provide a technical opinion on these requests as soon as sufficient information was available to fully assess their application. This request was reiterated at the Council meeting in November 2001. The Group met on 21 November and discussed these requests based on reports by the Secretariat analysing information provided by the countries. There were diverging views on whether Croatia, Estonia, Latvia, Lithuania, and Romania met the Council criteria for participation in subsidiary bodies of the OECD. It was agreed that Russia was a distinct case that should not be assessed together with the other five applicants. The discussion revealed that delegations had different opinions concerning the interpretation of the Council criteria and how they should be applied. Delegates recognised the need to strike the right balance between enlargement of the Group and maintaining efficiency. The Group will make an interim report on these requests to the Council, via the Committee on Co-operation with non-members (CCN), by the end of May. Requests for accession by Colombia, Peru, Benin and Cyprus have been forwarded to the CCN in February 2002.

-- Outreach Initiatives (see Annex 3)

Outreach activities take place in the broader context of co-operation with non-members. These activities, funded by voluntary contributions, include the Asian Development Bank/OECD Anti-Corruption Initiative for Asia-Pacific, the Stability Pact Anti-Corruption Initiative, The Anti-Corruption Network for Transition Economies, the Baltic Anti-Corruption Initiative, and the Governance Outreach Initiative for Latin America. Work with the Russian Federation to assist and support anti-corruption efforts takes place in the framework of the OECD/Russia Liaison Committee programme under the Centre for Co-operation with Non-Members (CCNM).

8. To apply Article 13 of the Convention and the corresponding Commentary, the Working Group adopted a set of procedures [DAFFE/IME(99)39/REV1].

ANNEX 1

STEPS TAKEN AND PLANNED FUTURE ACTIONS BY PARTICIPATING COUNTRIES TO RATIFY AND IMPLEMENT THE CONVENTION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS

Information as of 25 April 2002

- Argentina** The Argentine Republic approved the Convention by Law N° 25.319 on 18 October 2000 and deposited the instrument of ratification on 8 February 2001 with the OECD Secretary-General.
To conform to the Working Group's recommendations, a draft bill has been prepared to amend Article 258 bis of the Penal Code adapting the offence of bribery of a foreign public official to the standards of the OECD Convention. The draft bill has been sent to Parliament on 26 March 2002.
On another related issue, the Ministry of Justice and Human Rights elaborated a draft bill on the criminal liability of legal persons, in accordance with the standards of the Convention, which is now being considered by a working group in order to report conclusions on the subject to the Minister.
- Australia** Legislation to implement the Convention has been passed by the Australian Parliament and received Royal Assent on 17 June 1999. The instrument of ratification has been deposited with the OECD Secretary-General on 18 October 1999. The legislation came into effect on 18 December 1999.
The domestic offences of bribery have been updated and the penalties raised to those imposed on bribery of foreign public officials.
- Austria** The legislation implementing the Convention is in force in Austria since 1 October 1998. The First Chamber of Parliament passed the bill for ratification on 24 March 1999. The ratification process was finalised and the instrument of ratification deposited with the OECD Secretary-General on 20 May 1999.
The discussion process on reviewing the status of legal persons will take longer than expected. The Government parties have decided to organise a consultation in Parliament in early June with experts, Members of Parliament, and private sector representatives to consider further how to address this issue. Austria has to adopt legislation on the status of legal persons in order to conform to the Second Protocol to the Convention for the Protection of the Financial Interest of the European Union and other EU instruments as well as the Council of Europe Criminal Law Convention on Corruption, signed on 13 October 2000.

- Belgium** Ratification and implementation of the Convention involved two different steps. With respect to revision of penal law to comply with the obligations under the Convention, the legislative proposal was passed by Parliament at the beginning of February 1999, it was published on 23 March and entered into force on 3 April. The ratification bill was adopted by Parliament on 22 April and it received royal sanction on 9 June 1999. The instrument of ratification has been deposited with the OECD Secretary-General on 27 July 1999.
- Brazil** Brazil ratified the Convention in 2000. The Senate approved the ratification bill on 12 June 2000. The President signed the bill on 6 August and the instrument of ratification was deposited with the OECD Secretary General on 24 August 2000. The Convention text was published in the Official Gazette on 30 November 2000. The draft implementation bill was submitted to Congress and approved by the Federal Chamber of Deputies last October. It was tabled for discussion by the Senate, on 1 November 2001, and is currently under examination, with the request of urgency by the President, in that House of Congress. It is expected that the Senate will approve the bill before the June meeting of the Working Group.
- Bulgaria** Bulgaria ratified the Convention on 3 June 1998 and deposited its instrument of ratification on 22 December 1998 with the Secretary-General of the OECD. The implementing legislation, including the definition of foreign public official, was passed by Parliament on 15 January 1999 and came into force on 29 January 1999. The text of the Convention was published in the Official State Gazette on 6 July 1999. From this date on, it is considered part of the domestic legislation. Subsequent to the Working Group's recommendations, Parliament adopted on 8 June 2000, amendments to the Penal Code relating to the criminalisation of “offering” and “promising” of a bribe as well as the abolition of the concept of “provocation” as a defence. The draft supplementing the Law on Administrative Offences and Sanctions whereby monetary sanctions and forfeiture can be imposed on legal persons that are found to bribe or commit some other crimes as well as the draft amendment to the Penal Code whereby non-material (non-valuable) advantages are included in the scope of bribery were still under parliamentary consideration at the time of dissolution of Parliament for elections. The new government, which has made the fight against corruption one of its top priorities, will submit the two bills to parliament in early 2002. Bulgaria ratified both the Council of Europe Civil Law Convention on Corruption (June 2000) and the Criminal Law Convention on Corruption (November 2001).
- Canada** The Corruption of Foreign Public Officials Act (CFPOA) was adopted by the Senate on 3 December 1998 and by the House on 7 December 1998; it received Royal Assent on 10 December 1998. The Convention was ratified on 17 December 1998. The law came into force on 14 February 1999, a day before the entry into force of the Convention. As the result of revisions to Canada's Criminal Code, consequential amendments were made to the CFPOA which were necessary as part of more general changes to the Criminal Code. The text of Bill C-24, which includes amendments to the CFPOA, is found at: http://www.parl.gc.ca/37/1/parlbus/chambus/house/bills/government/C-24/C-24_4/C-24TOCE.html. Bill C-24 received Royal Assent on 18 December 2001, and came into force on 7 January 2002.

Chile

The draft ratification law of the Convention was presented to the Chamber of Deputies on 5 January 1999 which approved it on 23 March 2000. The draft bill, which had been sent to the Senate on 4 April, was approved in March 2001. Chile deposited its instrument of ratification with the OECD Secretary-General on 18 April 2001.

A bill to implement the Convention has been drafted by the State Defence Council ; it has been submitted to the Ministry General of President who forwarded it to the Ministry of Justice. The bill was submitted to Parliament in December 2001. The Executive requested in March 2002 that the bill be given urgency status.

Chile has currently no provisions criminalising bribery of foreign public officials. The draft therefore establishes the offence of bribery of foreign public official, provides for a definition of "foreign public official", introduces criminal liability of legal persons as well as penalties for omissions and falsifications by companies of their books and records.

Czech Republic

The draft amendment to the Criminal Code was adopted by Parliament and came into force on 9 June 1999. The ratification process was finalised and the instrument of ratification deposited with the OECD Secretary-General on 21 January 2000. The Convention entered into force internally on 21 March 2000.

An amendment to the Income Tax Act stating explicitly that bribes are not deductible expenses entered into force on 1 January 2001. A new Act on Auditors also entered into force on 1 January 2001. Accordingly, auditors have to notify immediately any indications of possible acts of bribery to the statutory and supervisory bodies of the company. The Parliament approved an amendment to the Accounting Act in September 2001. This amendment, which explicitly prohibits off-the-book accounts as well as off-the-book transactions and increases fines, entered into force on 1 January 2002.

The government approved, on 9 April 2001, the legislative concept of re-codification of the Criminal Code, which will include the introduction of criminal responsibility of legal persons. The draft Criminal Code should be finalised before the end of 2002.

The Czech Republic ratified the Council of Europe Criminal Law Convention on Corruption (8 September 2000) and signed the Civil Law Convention (9 November 2000).

Denmark

The Government submitted draft legislation on both ratification and implementation of the Convention in Spring 1999 to Parliament. The draft legislation was re-submitted to Parliament in October and went through the first reading on 27 October 1999. On 30 March 2000, the draft law to implement the Convention was adopted by Parliament and came into force 1 May 2000. The instrument of ratification was deposited with the OECD Secretary General on 5 September 2000. The legislation is publicly available, including on the Internet.

Finland

The legislation for ratification and implementing legislation were approved by Parliament on 9 October 1998 and Finland deposited its instrument of ratification on 10 December 1998. The amended Penal Code entered into force on 1 January 1999. The Convention entered into force internally on 15 February 1999.

- France** The law authorising the ratification of the Convention was adopted on 25 May 1999 (law n° 99-424 of 27 May 1999). The National Assembly adopted the implementing legislation on 30 June 2000. France deposited its instrument of ratification on 31 July 2000. The Convention entered into force together with the implementation law on 29 September 2000.
- Germany** Germany ratified the Convention on 10 November 1998. The implementing legislation contained in the Act on Combating International Bribery of 10 September 1998 entered into force together with the Convention on 15 February 1999.
Draft legislation implementing the European anti-corruption instruments, notably the Second Protocol to the Convention for the Protection of the Financial Interest of the European Union as well as the European Joint Action on bribery in the private sector, has been passed to the Federal Government. The latter decided mid-April to submit the relating bill to Parliament, declaring it as urgent. It is very likely that the bill will come into force during the current legislative period, which will end in September 2002. The bill contains small amendments to the Penal Code, extending the domestic private bribery offence to international bribery, as well as to the Administrative Offences Act, adjusting the provisions on liability of legal persons to EU standards.
- Greece** The Convention was ratified by Parliament on 5 November 1998. The implementing legislation was passed by Parliament the same day. Greece deposited its instrument of ratification on 5 February 1999.
To conform to the Working Group's recommendations, draft amendments to the implementing legislation are at the final stage of preparation by the Ministry of Justice. The amendments aim at including a definition of foreign public officials by reference to Art. 1 of the Convention and to address the responsibility of legal persons in order to refer to "enterprises and legal persons" and not only to enterprises. The amendments will be submitted to Parliament at a later stage.
The Ministry of Justice circulated a questionnaire to all prosecutors' offices during the summer 2000 in order that they report back about every possible case concerning the application of the Convention.
- Hungary** The texts of ratification of the Convention and implementing legislation (the Amendment of the Criminal Code) were submitted to Parliament in May 1998. The text for ratification was approved on 29 September 1998 and Hungary deposited its instrument of ratification on 4 December 1998. The Amendment of the Criminal Code was passed in December 1998 and came into force on 1 March 1999.

The government adopted in March 2001 a resolution to fight corruption. This resolution is broadly designed, including measures relating to criminalisation of corruption, to political parties' financing and accounting practices as well as public procurement rules.

A bill with amendments to the penal code has been adopted by Parliament in December 2001. These amendments relate notably to the elimination of the defence in the case of the bribe being given upon the initiative of the foreign public official, penalties and statute of limitations, the confiscation regime and the sanctioning of legal persons. A bill on the responsibility of legal persons has also been approved in

December 2001 by Parliament. The bill provides for criminalisation of legal persons and of their managers that have committed criminal acts for the account of the legal person or that have omitted to control their personnel.

Iceland

The Icelandic government deposited its instrument of ratification on 17 August 1998 and the implementing legislation was passed by Parliament on 22 December 1998.

On 27 April 2000, the Icelandic Parliament passed legislation amending the General Penal Code. The amendments came into effect on 9 May 2000. The ceiling on the level of fines for legal persons was removed and the statute of limitations for legal persons was increased to up to five years.

Ireland

The Prevention of Corruption (Amendment) Act, 2001 is the legislation which enables Ireland to ratify a number of Conventions dealing with corruption, drawn up by the European Union, the Council of Europe and the OECD respectively. It was signed into law by the President on 9 July, 2001.

The Act commenced by Ministerial order with effect from 26 November 2001 with the exception of one subsection, i.e. section 4(2) (c) relating to the planning process, which is dependent on the commencement of the relevant section of the Planning and Development Act, 2000.

Preparations for ratification of the three Conventions have commenced. Government approval for ratification has been obtained and the necessary motion will be tabled before Parliament following the forthcoming General Election.

Italy

The law of ratification and implementation of the Convention was enacted by the Italian Parliament, together with three other European Union instruments against corruption and bribery, on 29 September and was published in the Official Journal on 25 October 2000. The law came into force on 26 October. The instrument of ratification was deposited with the OECD Secretary-General on 15 December 2000.

The law provides for non-criminal sanctions of legal persons - whose application is however entrusted to the penal judge. Sanctions include fines of up to Euro 1.5 million. In addition, various penalties can be imposed in most serious cases such as ineligibility, exclusion from public benefits, revocation of authorisations. This new approach will also apply to domestic corruption and some other offences by companies. The text of the decree, through which the provision on the liability of legal persons enters into force, was approved by the Council of Ministers in May 2001. On 8 June 2001, the President of the Republic and the government signed the decree. The legislative decree of 8 June, nr. 231, was published in the official gazette nr. 140 on 19 June. It came into force on 4 July 2001, 15 days after its publication.

A code of conduct for public employees as well as a statute providing for the immediate dismissal of corrupt public officials have been published in the official gazette in April 2001.

In autumn 2001, the Italian parliament adopted two laws in areas covered by the Convention: one on mutual legal assistance and another one empowering the Government to issue a legislative decree on company law. The legislative decree, issued on 11 April 2002, contains among others, provisions on accounting offences

by legal persons and on criminalisation of private-sector bribery.

Japan

On 10 April 1998, the Government of Japan formally submitted the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, along with its implementing legislation (amendments to the Unfair Competition Prevention Law) to the National Diet. The National Diet approved the conclusion of the Convention on 22 May 1998. The implementing legislation was adopted on 18 September 1998. The instrument of acceptance was deposited on 13 October 1998. The implementing legislation – the Unfair Competition Prevention Law – entered into force together with the Convention on 15 February 1999.

The Anti-Organised Crime Law, which contains provisions making money laundering an offence in relation to bribery of foreign public officials, was adopted in August 1999 and entered into force in February 2000. A new policy excluding companies involved in bribery transactions from official development assistance contracts has been adopted in April 2000.

In view of conforming to the Working Group's recommendations, the Diet adopted a bill amending the Unfair Competition Prevention Law on 22 June 2001. The aim of the amendment is to remove the "main office" exception and to broaden the definition of public officials in relation to public enterprises.

Korea

The Korean Government formally submitted the bill to ratify the Convention along with its implementing legislation to the National Assembly in October 1998, which approved both bills on 17 December 1998. Korea deposited its instrument of ratification on 4 January 1999. Korea's implementing legislation – the Act on Preventing Bribery of Foreign Public Officials in International Business Transactions - came into effect at the time of the entry into force of the Convention, i.e. on 15 February 1999.

National Assembly adopted on 3 September 2001 two anti-money laundering bills - the Financial Transaction Reports Act and the Proceeds of Crime Act, expected to come into force on 28 November 2001. The Financial Transaction Reports Act stipulates the establishment of a Financial Intelligence Unit (FIU) whereby financial institutions will be required to provide the FIU with information on suspicious financial transactions. The Proceeds of Crime Act makes money laundering an offence in relation to bribery of domestic and foreign public officials.

Luxembourg

The Chambre des Députés (Parliament) approved the bill to ratify and implement the Convention on 15 January 2001. The bill was published in the Mémorial (Official Journal) on 7 February 2001 and entered into force on 11 February. The instrument of ratification was deposited with the OECD Secretary-General on 21 March 2001.

Mexico

The Convention was approved by the Mexican Senate as an international treaty on 22 April 1999; on 12 May, the promulgation decree was published in the "Official Gazette of the Federation"(D.O.F.). The implementing legislation was approved by the two Chambers in Congress at the end of April, as part of a comprehensive package of reforms to the Criminal code in Mexico. The respective decree was promulgated in the D.O.F. on 17 May 1999. The instrument of ratification was deposited with the OECD Secretary-General on 27 May 1999.

To conform to the Working Group recommendations, the government is currently preparing a draft bill to fully implement the Convention.

- Netherlands** The bills to ratify and implement the Convention were enacted, together with three other European Union instruments against corruption and bribery, on 13 December 2000 and came into force on 1 February 2001. The instrument of ratification was deposited with the OECD Secretary-General on 12 January 2001.
- New Zealand** The Crimes (Bribery of Foreign Public Officials) Amendment Act 2001 implementing the Convention was passed by the Parliament and received the Royal Assent on 2 May 2001. The Act was published in the Public Act 2001 n°28 and came into force on 3 May 2001. The ratification followed the enactment of legislation and the ratification instrument was deposited with the OECD Secretary-General on 25 June 2001.
- Norway** After consultation with the relevant private and public authorities, at the end of May 1998, the Government submitted to Parliament the bills to ratify and implement the Convention. The amendments to the Penal Code were passed on 27 October 1998 and came into force on 1 January 1999. The instrument of ratification was deposited on 18 December 1998.
An expert committee has been established to review the current legislation and propose new legislation on bribery, including that of foreign public officials. The committee shall pay particular attention to the level of penalties as well as to the period of limitation.
- Poland** The ratification bill, which was approved by the two chambers of Parliament in January 2000, has received Presidential approval and has been published in the Official Journal. The instrument of ratification was deposited with the OECD Secretary General on 8 September 2000.
The implementing legislation was enacted on 9 September. It was signed by the President and published in the Official Journal on 3 November 2000. It entered into force on 4 February 2001.
The most important elements of the implementing act are the criminalisation of active and passive bribery of foreign public officials, the administrative responsibility of legal persons, the provision allowing better mutual legal co-operation, and the exclusion of companies having been found to bribe from public orders.
- Portugal** After the Convention was approved and ratified by the Parliament (February 2000) and by the President of the Republic, the instrument of ratification was deposited with the OECD Secretary General on 23 November 2000.

In June 2001, Portugal enacted implementing legislation (*Law no. 13/2001 of 4 June*). The law entered into force on 9 June, 2001.

The new implementing law aims at meeting the requirements of the Convention; it is part of a more general concern to address economic and financial crime. The law covers foreign public officials, including of international organisations and foreign and national holders of political positions not considered officials. It provides for criminal sanctions for natural persons, with imprisonment ranging from 1 to 8 years and for criminal liability of legal persons. It also establishes bribery as a predicate offence for money laundering purposes.

Slovak Republic Slovak Parliament approved the ratification of the Convention on February 11, 1999. The implementing legislation, which included the amendment of the Penal Code, entered into force on 1 September 1999. On 1 November 1999, the amendment to the Code of Criminal Procedure came into effect. The instrument of ratification was deposited with the OECD Secretary-General on 24 September 1999.

In June 2001, the National Council of the Slovak Republic adopted the law 253, amending the Penal Code in line with the recommendations of the Working Group. The law came into force on 1 August 2001. Accordingly, the offence of bribery of foreign public official includes third parties, the level of sanctions is increased to those imposed for bribery of domestic public officials, the statute of limitations is extended to up to 5 years.

The full re-codification of the Penal Code and Code of Criminal Procedure will include a provision on criminal liability of legal person and a revised provision on effective regret regarding corruption. These Articles, expected to come into force in 2002, are still under preparation.

Following approval by the Government in mid-April 2002, the draft law on accounting, designed to adapt domestic accounting rules to international standards, has been submitted to the National Council of the Slovak Republic. A draft law on Auditors, approved by the Government on 24 April, awaits to be sent to the Parliament. It is expected that both Acts will come into effect early 2003.

Slovenia Slovenia enacted the law authorising accession to the Convention in December 2000; it was published in the official gazette 1/2001 on 8 January 2001. Slovenia deposited its accession instrument with the OECD Secretary-General on 6 September 2001.

To conform to the provisions of the Convention, the Slovenian Parliament adopted a new anti-money laundering legislation in late September 2001. The government also established the "Prevention of Corruption Office", which has well advanced in the drafting of the national anti-corruption policy as well as in the drafting of the anti-corruption law. The new draft legislation is to be submitted to Government before submission to Parliament for adoption by the end of 2002. Furthermore, the government started revising the criminal procedure code and will soon commence revision of the criminal code in the light of complete adaptation of the definitions of foreign public official and trading in influence to the standards set by the Convention. Finally, a new law on the incompatibility of public functions with profit-making activities is under preparation.

Spain The ratification law was submitted to Parliament in the fall 1998. Spain deposited the instrument of ratification with the OECD Secretary-General on 14 January 2000. On 12 January 2000, the implementing legislation was published in the State Official Journal; it came into force on 2 February 2000.

The Working Group recommendations to fully implement the Convention are currently being examined by the Ministry of Justice.

Sweden The bill embracing the necessary amendments of Swedish legislation in order to be able to ratify and implement the Convention was passed by Parliament on 25 March 1999. The instrument of ratification was deposited with the OECD Secretary-General on 8 June 1999. The implementing legislation entered into force on 1 July 1999.

Switzerland Draft ratification and implementing legislation was approved by the upper Chamber of Parliament on 7 October 1999 and by the lower Chamber of Parliament on 9 December 1999. The law entered into force on 1 May 2000, after the mandatory three month period for possible referenda had expired and publication requirements were fulfilled. The instrument of ratification was deposited with the OECD Secretary-General on 31 May 2000.

The draft corporate liability bill was approved by the lower Chamber of Parliament (7 June 2001) after having been approved by the upper Chamber of Parliament (14 December 1999). The remaining differences between the two Chambers were resolved in September 2001. The bill provides that in corruption cases penal sanctions can be imposed independently from the criminalisation of natural persons and independently from the act or the negligence of a body of the corporation. The corporate liability bill is part of a general revision of the Penal Code currently under way. Consideration is given to the possibility of advancing entry into force of the bill by introducing it independently from the new Penal Code.

The government decided in February 2001 to sign the Council of Europe Criminal Law Convention. Switzerland may consider joining, at a later stage, the GRECO.

Turkey The Convention was ratified on 1 February 2000 by the Turkish Grand Nation Assembly and the ratification bill entered into force on 6 February 2000. The instrument of ratification was deposited with the OECD Secretary General on 26 July 2000.

The draft bill on the implementation of the Convention, which was approved by the Ministry of Justice and the Prime Minister, was submitted to Parliament on 3 November 2000. It has been approved by the Justice Commission and is awaiting to be scheduled for discussion by the General Assembly.

United Kingdom The United Kingdom deposited its instrument of ratification on 14 December 1998. A public discussion document on proposals for new legislation on corruption was published in June 2000. Legislation to meet two points raised by the OECD Working Group (application of the law to the bribery of foreign officials and to acts by UK nationals and companies abroad) was included into the Anti-terrorism, Crime and Security Act 2001, which came into force on 14 February 2002.

The Convention was extended to the Isle of Man in June 2001; negotiations are still under way to bring the Channel Isles within the scope of the Convention. To achieve the latter, the Channel Isles need to enact new legislation to ensure their domestic laws match the provisions of the Convention.

Also, the process to bring UK's Overseas Territories under the scope of the Convention has begun. This involves bilateral consultative process with each Territory. The UK will inform the Group of the extension of the applicability of the Convention to Overseas Territories.

The results of an independent study by consultants into financial regulation in 6 Overseas Territories (Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Montserrat and Turks and Caicos Islands) were published in October 2000 and are available from <http://www.offical->

documents.co.uk/document/cm48/4855/4855.htm. Implementation of the recommendations is proceeding and will ensure that all the Overseas Territories fully meet international standards of financial regulation.

United States

On 31 July 1998 the Senate approved both the Convention and the implementing legislation. Congress completed action on implementing legislation in October 1998. The implementing legislation was signed by the President on 10 November 1998; the ratification instrument was signed by the President on 20 November 1998. The US deposited its instrument of ratification with the OECD Secretary-General on 8 December 1998. The legislation is available on the Internet at www.usdoj.gov/criminal/fraud/fcpa.html.

Effective August 2000, the Civil Asset Forfeiture Reform Act, expands the grounds for civil and criminal forfeiture, making the proceeds of violations of the Foreign Corrupt Practices Act (FCPA) forfeitable.

In March 2002, the President signed an executive order to define the European Union's organisations and Europol as public international organisations, thereby extending the application of the FCPA to bribery of officials from these organisations.

To conform to the Working Group's Phase 1 recommendation, amendments to the U.S. Sentencing Guidelines have been submitted to Congress in order to adjust the sanctions for the bribery of foreign public officials to those applicable to bribery of domestic public officials. It is expected that this proposal will come into effect, subject to Congress's approval, in November 2002.

A number of civil and criminal cases were prosecuted under the FCPA in 2001 and early 2002.

- Civil cases: complaints have been filed by the SEC against several enterprises and individuals, including American Banknotes Holographics and two former officers (SEC Litigation Release 17068A); KPMG Siddharta Siddharta & Harsono and Sonny Harsono (SEC Litigation Release 17127); Baker Hughes and two former officers (SEC Litigation Release 17126 and Administrative Action n° 3-10572); Chiquita Brands International (SEC Litigation Release 17169 and Administrative Action n° 3-10613); and Bell South Corp. (SEC Litigation Release 45279 and Administrative Action n° 3-10678). The KPMG/Harsono case was brought jointly by the SEC and the Department of Justice.
- Criminal cases : four defendants were charged in the Western District of Missouri with violating the FCPA by agreeing to offer bribes to political parties in Costa Rica; two of these defendants pled guilty, trial is pending for the third, and the fourth is a fugitive; a World Bank official pled guilty in the District of Columbia to a violation of the FCPA and other offences in connection with acting as an intermediary for payment from a Swedish company to an African official; an officer of American Banknotes Holographics pled guilty in the Southern District of New York to a violation of the FCPA and securities fraud charges based on payments to an official of the Saudi Arabian Treasury. Sentencing of an individual is pending in the Southern District of Texas for having caused a publicly-held US company to falsely book payments to a

Russian government official. Two individuals were charged in the Southern District of Texas with violating the FCPA by authorising payments to Haitian customs officials to obtain substantially reduced import duties and sales taxes. In April 2002, however, the trial court dismissed the indictment, finding that such payments were not “to obtain or retain business” and were therefore outside the scope of the FCPA. The US Department of Justice is contemplating whether to appeal this decision to the Court of Appeals.

The United States deposited the instrument of ratification of the Inter-American Convention on Corruption on 29 September 2000 and signed the Council of Europe Criminal Law Convention on Corruption (10 October 2000) as well as the GRECO (19 September 2000).

Countries having ratified/acceded to the Convention*

	Country	Date of Ratification
1.	Iceland	17 August 1998
2.	Japan	13 October 1998
3.	Germany	10 November 1998
4.	Hungary	4 December 1998
5.	United States	8 December 1998
6.	Finland	10 December 1998
7.	United Kingdom	14 December 1998
8.	Canada	17 December 1998
9.	Norway	18 December 1998
10.	Bulgaria	22 December 1998
11.	Korea	4 January 1999
12.	Greece	5 February 1999
13.	Austria	20 May 1999
14.	Mexico	27 May 1999
15.	Sweden	8 June 1999
16.	Belgium	27 July 1999
17.	Slovak Republic	24 September 1999
18.	Australia	18 October 1999
19.	Spain	14 January 2000
20.	Czech Republic	21 January 2000
21.	Switzerland	31 May 2000
22.	Turkey**	26 July 2000
23.	France	31 July 2000
24.	Brazil**	24 August 2000
25.	Denmark	5 September 2000
26.	Poland	8 September 2000
27.	Portugal	23 November 2000
28.	Italy	15 December 2000
29.	Netherlands	12 January 2001
30.	Argentina	8 February 2001
31.	Luxembourg	21 March 2001
32.	Chile**	18 April 2001
33.	New Zealand	25 June 2001
34. (accession)	Slovenia	6 September 2001

* In order of ratification/accession received by the Secretary General.

** These countries have not yet enacted implementing legislation.

ANNEX 2

UPDATE ON THE IMPLEMENTATION OF THE OECD RECOMMENDATION ON THE TAX DEDUCTIBILITY OF BRIBES TO FOREIGN PUBLIC OFFICIALS IN COUNTRIES PARTIES TO THE BRIBERY CONVENTION

(update January 2002 ⁹)

Argentina does not allow the deductibility of bribes to foreign public officials since only expenses covered in the tax laws are deductible and the tax laws do not include a specific reference to bribes.

Australia: In early 2000, the Australian Parliament enacted the *Taxation Laws Amendment Act (No.2) 2000* which provided that bribes paid to public officials (whether foreign or not) would not be deductible expenses for the purposes of Australian tax laws. The amendments implement the OECD's recommendations that member countries should deny tax deductibility for such bribes. The amendments apply to the 1999/2000 and later years of income.

In essence, that Act amends the *Income Tax Assessment Act 1997* to disallow deductions for bribes made to public officials. Schedule 4 provides that a taxpayer will be regarded as having made a bribe to a foreign public official to the extent that:

- an amount is incurred in providing a benefit to another person; and
- the benefit is not legitimately due to that person; and
- the amount is incurred with the intention of influencing a foreign public official in the exercise of the officials duties in order to obtain or retain business or an advantage in the conduct of business.

Austria: Legislation was passed by Parliament in late October 1998. Section 20 paragraph 1 subparagraph 5 of the Income Tax Act, which already provided for non-deductibility of payments subject to criminal prosecution under certain conditions, was amended by deleting those former conditions. According to this new legislation any cash or in kind remuneration whose granting or receipt is subject to criminal punishment is not deductible from taxable income. Already in August 1998 the Criminal Code had been amended in a way which extended criminal prosecution also to bribes granted to foreign officials. Since this Act entered into force on 1st October 1998, bribes paid to foreign officials became generally no longer deductible for income tax purposes as soon as the new income tax legislation entered into force.

Belgium: A bill aiming at the criminalisation of bribes to foreign public officials and at denying the deductibility of so called "secret commissions" paid directly or indirectly in order to obtain or maintain public contracts or administrative authorisations has been adopted and entered into force on 3 April 1999. « Secret commissions » paid for contracts other than public contracts may be deductible provided that

9. Recent developments are in bold, submission by the Netherlands and the United Kingdom date from 25 April 2002

such commissions do not exceed reasonable limits, that they are necessary to fight against foreign competition, and that they are recognised as a normal customary practice in the relevant country or sector (i.e., necessary usual and normal in the given economic sector). The taxpayer must present a request and disclose to the tax administration the amount and the purpose of the commissions for the tax administration to appreciate whether the commission is deductible or not. In any case, a tax equal to at least 20,6 percent of the commission must be paid. If these conditions are not simultaneously fulfilled, the deductibility of the commissions is denied and they are added back to the taxable income of the payer. If the payer is a company, it is liable to a special tax equal to 309 percent of the amount of the bribe. For the period 1988-1992, 109 applications for authorisation were made to the Belgian Ministry of Finance.

Brazil does not allow tax deductibility of bribes to foreign public officials.

Bulgaria: Bulgarian tax legislation does not allow the deductibility of bribes to foreign public officials.

Canada: No deduction can be made in respect of an outlay made or expense incurred for the purpose of bribing a foreign public official or conspiring to do so.

Chile: not available

Czech Republic does not allow deductions of bribes paid to foreign public officials. Deductibility is not possible even in cases where the bribe could be treated as a gift. Gifts are deductible only in exceptional cases under two specific conditions. The gift must be made for one of the following specific purposes: science, education, culture, fire protection and some other social, charitable or humanitarian purposes; and the gift must not be over a strictly determined percentage of the tax-basis. Only if both conditions are fulfilled, can the gift be treated as deductible for tax purposes. Under an amendment to Income Taxes Act No. 586/1992 Coll. ratified by the Czech parliament on 12th of December 2000 is stipulated, that for tax purposes a discharge provided to foreign public official or to a foreign public authority or with their agreement to another person, in relation with their office shall not be recognised as expense incurred in generating, assuring and maintaining income, even in the cases, concerning a foreign public official or a foreign public authority of the state, where provision of such discharge is tolerated or is not considered to be an offence or is usual.

Denmark: The Danish Parliament has adopted a bill from government denying the deductibility of bribes to foreign public officials. The new legislation entered into force on 1 January 1998. Up to 1997 Denmark did not allow deductions for bribes paid to foreign officials, except where bribes were recognised as a customary business practice in the country of the recipient. The burden was on the taxpayer to establish that bribes are a customary business practice in a foreign state. The acceptance of the bribe by a foreign public official was not enough to establish a customary practice. In practice Danish enterprises requested the deduction of bribes in only a small number of cases. The Danish tax authorities were also reluctant to grant deductions because of the difficulty of certifying the deduction.

Finland: The Finnish Government presented in Parliament in December 2001 proposals to amend the Act on the Taxation of Business Profits and Income from Professional Activities including a provision which expressly denies the tax deductibility of bribes. Up to now Finland had no statutory rules concerning bribes paid to foreign officials. Corresponding payments to domestic public officials have been non-deductible on the basis of case law and practice of the tax authorities. The same rule was expected to apply to bribes paid to foreign public officials in case law and the same rule is applied already in the practice of the tax authorities.

France: The French Parliament passed legislation (article 39-1 of the French Tax Code) denying the tax deductibility of bribes to foreign public officials on 29 December 1997 as part of the Corrective Finance

Bill for 1997. For contracts concluded during tax years opened as of the entry into force of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, amounts paid or advantages granted, directly or through intermediaries, to public officials within the meaning of article 1 § 4 of the convention or to a third party in order that this official act or refrain from acting in the performance of his official duties, in order to obtain or retain a contract or other improper advantage in international business transactions, are not admitted as a deduction of taxable profits". The law authorising the ratification of the Convention was adopted on 25 May 1999. The engagements of the Convention were transplanted into domestic law on 20 June 2000 with a change to the tax legislation adopted in 1997. The denial of tax deductibility of bribes to foreign public officials will apply immediately after the entry into force of the Convention whatever the date of signature of the contract. The instrument of ratification of the Convention was deposited on 31 July 2000. The Convention shall enter into force on the sixtieth day following that date that is on 29 September 2000. Bribes to foreign public officials will not be deductible as of that day.

Germany does not allow the deductibility of bribes to foreign public officials. Under previous German tax law, deductions for bribes were not allowed if either the briber or the recipient had been subject to criminal penalties or criminal proceedings which were discontinued on the basis of a discretionary decision by the prosecution. New legislation adopted on 24 March 1999 deleted these procedural conditions and denied the tax deductibility of bribes.

Greece does not allow the deductibility of bribes to foreign public officials.

Hungary does not allow the deductibility of bribes to foreign public officials since only expenses covered in the tax laws are deductible and the tax laws do not include a specific reference to bribes.

Iceland does not allow the deductibility of bribes to foreign as well as domestic public officials and officials of international organisations on the basis of law from June 1998. Previously, bribes to foreign officials were not deductible except if they were considered as a customary business in the country of the recipient.

Ireland does not allow deductions for bribes paid to foreign officials. On the basis of legal advice received, bribes paid to foreign public officials would not be deductible on public policy grounds. It is also considered that the conditions in the Irish Taxes Acts for deductibility of expenses could never be met in the case of bribes paid to foreign officials. Accordingly, it has not been considered necessary to introduce specific legislation to deny a deduction

Italy does not allow deductions for bribes paid to foreign officials. Legislation enacted in 1994 made moreover gains from illicit sources taxable. The non-deductibility of bribes remained unaffected.

Japan does not allow deductions for bribes paid to foreign officials. Bribes are treated as an "entertainment expense" under Japanese law, which expenses are not deductible. In practice Japan treats bribes of foreign public officials in the same way as bribes of domestic public officials and therefore as non-deductible.

Korea does not allow deductions for bribes paid to foreign government officials since they are not considered to be business-related expenses.

Luxembourg: Legislation denying deductibility of bribes was adopted by Parliament on 14 December 2000. Previously Luxembourg allowed deductions for bribes paid to foreign public officials as any business expense. To be deductible the recipient of the bribe had to be clearly identified. Payments to companies domiciled in tax havens and to persons, which were not clearly identified, were not deductible.

Mexico does not allow the deductibility of bribes to foreign public officials since they would not meet the general requirements to qualify as deductible expenses, which have to be strictly essential for the purposes of the taxpayers, activities and formally documented. Considering that bribes are treated as illicit activities, such payments cannot meet the requirements set forth in the Mexican Commerce Code. Therefore the payment of a bribe is not a business activity and is not a deductible item.

Netherlands: The Netherlands incorporated the provisions of the Convention on Bribery into Dutch law by amending the Penal Code. This amendment entered into force on 1 February 2001. The Netherlands implemented the Convention by extending the offences under the Penal Code of bribing a domestic public servant and bribing a domestic judge to the bribery of "persons in the public service of a foreign state or an international institution" and "a judge of a foreign state or an international institution" respectively. The Netherlands has ratified the Convention relatively late due to the desire to produce an omnibus Bill that implements several anti-corruption related international instruments, rather than to take a piecemeal approach to implementing its international obligations in this regard. The Council of State is currently examining a draft legislative proposal for denying tax deductibility of bribes. It is expected that the draft bill will soon be submitted to Parliament and it is hoped that Parliament will adopt it by the end of 2002.

New Zealand enacted the Crimes (Bribery of Foreign Public Officials) Amendment Act 2001 in early May 2001. Legislation making bribes paid in business non-deductible for tax purposes has been introduced in New Zealand on 3 December 2001. The proposed amendment, in Clause 19 of the Taxation (Relief, Refunds and Miscellaneous Provisions) Bill, will make bribes paid to foreign and domestic public officials in the conduct of business non-deductible. More information about the proposed amendment can be found on page 45 of the Commentary accompanying the Bill available on the internet at <http://www.taxpolicy.ird.govt.nz/publications/index.php?catid=1>

Norway does not allow deductions for bribes paid to foreign private persons or public officials, on the basis of a law passed by the Norwegian Parliament on 10 December 1996. Before this law was enacted, the deduction was disallowed except where bribes were recognised as a customary business practice in the country of the recipient of the bribe.

Poland: does not allow the deductibility of bribes to foreign public officials. According to Polish law, bribery is illegal and an offence for both the briber and the recipient of the bribe and both are punishable. The provisions of the Corporate Tax Act and Personal Income Tax Act are not applicable to illegal activities. Therefore gains and expenses connected with the offence of bribery cannot be taken into account by the tax authorities. As a result, the taxpayer is not allowed to deduct from his income expenses concerning bribes to foreign officials.

Portugal: does not allow the deductibility of bribes to foreign public officials. The Parliament has adopted on 20 December 1997 new legislation effective 1st January 1998 to disallow any deduction referring to illegal payments such as bribes to foreign public officials. Previously payments to foreign officials were never accepted as a deductible business expense.

Slovak Republic does not allow deductions of bribes to foreign public officials or private persons. Bribes are not considered as business-related expenses. Recipients of bribes are liable to criminal prosecution. Expenses that are related to any bribes are not deductible for taxation purposes.

Spain does not allow deductions for bribes paid to foreign public officials. A bill aiming at the criminalisation of bribes paid to foreign public officials (including those working for international organisations) has been passed on 11 January 2000. It was published in the State Official Journal on 12 January 2000 and entered into force on 2 February 2000. Such bribes are now considered a criminal offence as provided by the new article 445 bis added to the Penal Code. This reinforces the traditional

position of not allowing tax deductions for bribes paid to foreign public officials. The bill invokes specifically the OECD 1997 Convention on Bribery.

Sweden does not allow deductions for bribes paid to foreign public officials. A bill explicitly denying the deductibility of bribes and other illicit payments was adopted by the Parliament on 25 March 1999. The new law on tax non-deductibility entered into force on 1 July 1999. Up to then Sweden was dealing with the issue on a case by case basis. Bribes may resemble fees or entertainment expenses. If they were assimilated to a fee, the deductibility was determined as for any other business expense. The burden of proving that it was a necessary expense was on the taxpayer and the fact that bribes were recognised as a normal customary practice in the country of the recipient was likely to have some impact on the deductibility. If the bribe resembled an entertainment expense, it was deductible provided it did not exceed reasonable limits.

Switzerland A bill denying the deductibility of secret commissions to Swiss or foreign public officials was adopted by the Federal Chambers on 22 December 1999 after consultation of the Cantons and other interested parties. The new law was enacted and came into force on 1 January 2001.

Turkey does not allow deductions for bribes paid to foreign officials because there is no explicit rule allowing the deductibility of bribes.

United Kingdom: Current UK tax law disallows tax relief on any payment constituting an offence over which the UK has jurisdiction. Since 14 February 2002, the UK has jurisdiction over bribery offences by UK nationals and UK companies abroad. The Government has also announced its intention to amend tax law so that tax relief will be disallowed (with effect from 1 April 2002) on payments which would have constituted an offence if it had been made in the UK.

United States does not allow deductions for bribes paid to foreign government officials if that bribe is a criminal offence. Both before and after the United States criminalised bribery of foreign government officials, it denied tax deductions for such payments. Before the enactment of the Foreign Corrupt Practices Act of 1977, tax deductions were disallowed for payments that were made to an official or employee of a foreign government and that were either unlawful under US law or would be unlawful if US laws were applicable to such official or employee. The denial of the tax deduction did not depend on a conviction in a criminal bribery case. After the United States criminalised bribery of foreign government officials, US tax laws were changed to disallow tax deductions for payments if made to feign government officials or employees and if unlawful under the Foreign Corrupt Practices Act of 1977 (FCPA). With respect to US tax provisions for Controlled Foreign Corporations, any payment of a bribe by a foreign subsidiary is treated as taxable income to the US parent. Also, to the extent relevant for US tax purposes, bribes of foreign officials are not permitted to reduce a foreign corporation's earnings and profits. US denial of tax deductibility or reduction of earnings and profits does not depend on whether the person making the payment has been convicted of a criminal offence. Treasury has the burden of proving by clear and convincing evidence that a payment is unlawful under the FCPA.

ANNEX 3

Outreach Initiatives

--Asian Development Bank/OECD Anti-Corruption Initiative for Asia-Pacific

In November 2001, the ADB/OECD Initiative for Asia-Pacific held its third annual conference, hosted by the Government of Japan. At this conference, seventeen countries¹⁰ from the Asian and Pacific region, including Japan and Korea, endorsed an *Anti-Corruption Action Plan for Asia-Pacific*. This Action Plan was developed by government experts from Asian and Pacific countries and representatives of civil society, the private sector and the international donor community.

Under the Action Plan, endorsing countries will identify priority steps to fight corruption, implement time-bound reforms, and ensure the necessary resources to meet those targets. The Action Plan provides for a review procedure to take stock of progress and donor assistance to increase the capacity of countries to achieve meaningful reform. Other countries have indicated an interest in joining the Action Plan and further steps will be taken in the form of bilateral dialogue and sub-regional workshops in order to encourage their participation.

-- Stability Pact Anti-Corruption Initiative

The Stability Pact Anti-Corruption Initiative (SPAI), adopted in Sarajevo in February 2000, is a regional process through which governments of the region¹¹, local and international civil society organisations, bilateral aid agencies, and international organisations combine their efforts to help curb corruption in South Eastern Europe. Along with the Council of Europe, the OECD acts as the joint Secretariat of the Initiative.

During the first 18 months, the work of the Initiative mainly focused on the preparation of a general assessment of existing legislation, institutions and practices in SPAI countries. The assessment reports analyse the needs of SPAI countries in terms of legal and institutional framework, and propose specific recommendations for reform. They were adopted at meetings held in Tirana and Cavtat in April and September 2001. These assessments have been published in book format and/or are underway.

On completion of the initial assessments, the strategy for 2002 envisages a combination of monitoring progress achieved via the “peer pressure” technique, capacity-building, and the provision by the

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10. Bangladesh, Cook Islands, Fiji, India, Indonesia, Japan, Korea, Kyrgyz Republic, Malaysia, Mongolia, Nepal, Pakistan, Papua New Guinea, Philippines, Samoa, Singapore, and Vanuatu.
 11. Original members of the SPAI include: Albania, Bosnia and Herzegovina, Croatia, FRY/Montenegro, FYR of Macedonia, and Romania. FRY/Serbia and Moldova joined the Initiative in 2001.

international donor community of direct technical assistance to participating countries, with the SPAI playing the role of facilitator. In this context, countries of the region have been invited to identify their anti-corruption priorities, that will be discussed at the next Steering Group meeting of the Initiative to take place in Washington DC from 29 April to 2 May, and up to three technical assistance project proposals that have been circulated to the international donor community for funding. The Washington Steering Group meeting will also review progress achieved in implementing the recommendations adopted in Tirana and Cavtat and aim at increasing knowledge of specific cross-regional issues relating to the fight against corruption and identify effective counter-policies and strategies.

-- The Anti-Corruption Network for Transition Economies

Created in 1998, the *Anti-Corruption Network for Transition Economies (AcN)* is a forum for knowledge and experience sharing among donors, government officials, and non-governmental actors, encouraging regional ownership and co-operation. It focuses on strategies to reduce public sector corruption through support for the implementation of appropriate political, institutional, and economic reforms.

At its most recent Annual meeting in Istanbul on 26-28 March 2002, delegates participated in the evaluation of national anti-corruption strategies, reviewed the status of ongoing Network projects, and discussed new developments in the areas of Good Governance, Rule of Law, and Civil Participation. To encourage concrete reform actions, participants agreed to consider a new Action Plan for Network countries that are not currently part of another regional effort. The Plan would involve a political commitment by governments in Armenia, Azerbaijan, Belarus, Georgia, Russian Federation, Tajikistan, Turkmenistan and Ukraine to a menu of anti-corruption measures from which they would be able to select priorities for technical assistance, monitoring and peer review by the other countries taking part in the Plan. If endorsed and implemented as expected, the next Annual Meeting would be conducted under a new format that would provide an opportunity for the Plan's Steering Group to assess progress and compare results from other regional initiatives (i.e., BACI, below, and SPAI).

-- Baltic Anti-Corruption Initiative

At the AcN 2001 Annual Meeting, Estonia, Latvia and Lithuania agreed to launch the Baltic Anti-Corruption Initiative (BACI). This initiative is meant to support capacity and institution-building in fighting corruption and work towards meeting international standards. It articulates around two mutually reinforcing components.

The first component aims at improving existing anti-bribery programmes and legislation. Following an assessment of the strength and weaknesses of the Baltic States' anti-bribery programmes and legislation¹², the Baltic States will hold several follow-up workshops in 2002 to address areas that were identified as needing further work. The first workshop will focus on the tax treatment of bribes, the second on financial control and public procurement rules, the third will consider issues relating to the 1997 Anti-Bribery Convention.

The second component is a community-based process intended to diagnose corruption in key service sectors and provide recommendations for remedial action. Surveys were commenced in April 2002 and

12. The peer reviews were based on status reports completed by the Baltic States. The status reports together with the assessments are available on the web <http://www.anticorruptionnet.org>

results are expected by the end of the year. Public awareness campaigns will be designed to assist in implementation of the Initiative and to educate the general public on its activities.

-- *Russia*

Last year, members of the Working Group met with Russian government officials and civil society representatives to discuss the rule of law and the fight against corruption in Russia. This meeting underlined Russia's need to further develop and enforce its anti-corruption legislation and to make regulatory, as well as judicial and administrative reforms, effective. Dialogue with the international community was identified as a key element for establishing an efficient anti-corruption mechanism and making progress in the reform process.

Next June, a follow-up meeting will take place with senior Russian government officials from ministries responsible for anti-corruption policies, law enforcement authorities, members of the judiciary and parliamentarians. The purpose of the meeting will be to review recent anti-corruption developments in the Russian Federation, identify actions necessary to ensure that anti-corruption is effective and dissuasive, and identify ways to enhance and facilitate international legal co-operation between the Russian Federation and OECD countries in anti-bribery investigations and prosecutions. The conclusions from this meeting will be submitted to the Working Group which will decide on possible follow-up actions.

-- *The Governance Outreach Initiative for Latin America*

In collaboration with the Organisation of American States (OAS), the OECD developed a Governance Outreach Initiative for Latin America to support the implementation of the mutually reinforcing OAS and OECD Conventions. Three areas of action have been prioritised:

- (i) assistance to the Committee of Experts and the OAS secretariat to launch the follow-up mechanism of the OAS Convention (workshop in Washington in January 2002 to draw lessons from the experience of four international follow-up mechanisms, including the OECD's);
- (ii) policy dialogue and transfer of expertise on the implementation of preventive measures dealing with the demand-side of the corruption problem (forum in Brazil in November 2001, upcoming conference in Mexico in September 2002); and
- (iii) promotion of the OECD and OAS Conventions in the business community and policy dialogue on issues crucial for the private sector: codes of ethics and industry standards, public procurement reform and accounting standards (Conference in Mexico in September 2002).