

RESPONSES TO THE CONSULTATION PAPER ON THE REVIEW OF THE OECD ANTI-BRIBERY INSTRUMENTS

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1. What are your general impressions concerning the effectiveness and implementation of the OECD anti-bribery instruments over the last ten years?
2. What additional insights do you have on any of the specific issues raised in this Consultation Paper?
3. What steps do you believe should be taken to address any of the specific issues raised in this Consultation Paper, including suggestions regarding the effectiveness of the OECD anti-bribery instruments?

The process of decision-making seems to be very well mastered by OECD; throughout the years, instruments are becoming more and more efficient and the approach is becoming more practical.

Phase 2 (p.24) addressed in the document is a very realistic approach towards the implementation of the instruments. Actual visits and examinations of not only public officials, but also of a civil society, create a good overview of the implementation process. Phase 2, when completed, will also give effective hints for further improvements.

Independent External Audit (p.33), if implemented and recognized, will be a very strong anti-bribery instrument. It would be interesting to see Independent External Audit being applied not only to companies, but also to governments. Government Officials are Public Officials with the capabilities to engage in international transactions; they do become Foreign Public Officials when outside the borders of their countries, falling under the category of *Foreign Public Officials in International Business Transactions* and as such, should be addressed by OECD. Capabilities to engage in international transactions, as identified by OECD, have a potential to result in bribery. OECD very cleverly recognizes the importance of examination of the police, prosecutors, key ministry officials and representatives from the private sector (p.24) throughout Phase 2; why not propose to act similarly in relation to Independent External Audit?

OECD does not underestimate the value of conferences, dialogues and publications of various natures - truly important for raising the awareness. However, these should not be the final goals; they should be a very important part of the implementation procedure, but not the results in themselves. Such stages of decision-making as are conferences, conventions (amendments and translations), reports etc. even though important, are quite time and budget consuming; on the other hand, the ways of addressing the problem of bribery through financing examinations and investing in strengthening the structures of organizations are often referred to as impossible due to the expenses (p.14 par.34). We should be very carefully, while standing behind the ideas of raising awareness and sharing experiences, not to make our organisations responsible for Public Procurement.

Trust, with which OECD rewards its members, is admirable. However, the reason why the *Convention for the Protection of Human Rights and Fundamental Freedoms* was established was to protect individuals from state parties. Thus, when OECD leaves it entirely up to governments to produce rules and reports, it should be ready to interpret the results accordingly.

Territorial and national jurisdictions over the bribery of a foreign public official allow the concept of corruption to be perceived relatively, leaving a room for tolerance towards acts of bribery. Treating the concept in this manner will not facilitate the creation of efficient tools for eradication, since societies and governments tend to justify bribery as a cultural phenomenon. Bribery and corruption in general, has enough traits and consequences to qualify for universal crime (e.g. terrorism).

OECD sees one of the causes of bribery in lack of awareness. A problem might also be seen in the officials' lack of desire to cooperate and the society's lack of belief in their own capability to make a change. Those responsible for such crime as bribery of foreign public officials in business transactions are rarely ordinary citizens, since they are not in the position to afford the luxury of bribery of such level. Even if they were, they are not in a position to deceive those on top; simple man gets caught even for the most insignificant crime. The difficulty is in tracing the ones on top, with enough power and network to keep the concept of bribery and corruption going. However, an aspect where awareness is truly important is very well addressed by the OECD Group (p.28, par.89) - it is indeed vital to make public officials see reporting of the act of bribery as their obligation and duty.

Thus, the tools in themselves are efficient; the decisions made do address the core of the problem. However, it is important to keep in mind the individual characters of the OECD member-states, as well as the final goal of the proposed decisions and give the guidance for the implementation-process accordingly.