

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

Comments from Public Concern at Work (United Kingdom)

Kirstine Drew of UNICORN has just drawn our attention to this consultation reviewing the efficacy of the OECD's anti-bribery instruments.

Public Concern at Work is a UK-based charity that promotes whistleblowing. We were consultants to the OECD in 1999 on the relationship between whistleblowing and bribery (see report at *PAC/AFF/LMP(2000)1*). We have since worked on this matter with the Council of Europe's GRECO, the European Commission, the World Bank and the UN in advance of its convention. I attach to the accompanying email a recent review and good practice guide which explain what we do and our approach in more detail.

While we are not experts on bribery or on how these OECD instruments have been working in practice, we do believe they have been extremely important in changing public and organisational attitudes to bribery over the last decade. This is not to suggest that the battle is won only that it is now joined. Whatever the fluctuating state of the economy, globalisation and competition mean that the opportunities for bribery are greater than they have ever been and the rewards too are greater. It is for these reasons that the principles underlying the Convention need to be reasserted and shown to be working effectively.

To assist with this, we recommend that the instruments be amended to include a provision that states should protect from reprisals those who properly report breaches of the Convention. While primarily our concern is with the position of a public official or employee of a private company, we do recognise that there may be a case for consulting on whether such protection might also be extended to others.

The reason that we maintain whistleblower protection laws are so important is not just that they will help detect bribery but, more importantly, they help deter such offences and underpin the resolve of responsible organisations. This is evident from the accompanying survey data on combating bribery that Ernst & Young published last year (FIDS Europe Survey 2007).

This survey asked senior executives in multi-nationals across Europe about attitudes and reactions in their companies to suspected bribery. As the multi-nationals had themselves introduced common policies and procedures against bribery, the survey data highlighted any underlying differences in attitudes in various countries. As the table overleaf shows, there was a significant difference between attitudes in the UK and other European countries. The only explanation that we can – or Ernst & Young could - give for such difference was the existence of legislation that protects whistleblowers.

	UK	Europe
Proportion who say people in their company feel free to report suspected fraud, bribery or corruption	86%	57%
Proportion who would report suspected fraud, bribery or corruption to the police	44%	27%
Proportion who say their company would protect them if they reported suspected fraud, bribery or corruption	84%	68%
Proportion who say that a case of fraud, bribery or corruption occurred in their company in 2006	53%	61%

This data clearly suggests that a good whistleblowing law will help

- deter bribery,
- reassure people that there is a safe alternative to silence, and
- ensure that the commitment of responsible businesses to combat bribery works in practice

I also attach to the covering email a report from the Council of Europe's GRECO last year which records the unimpressive results of the measures various states have hitherto relied on which require public officials to report bribes and corruption. This report sets out the various issues to consider in whistleblower protection laws and it also summarises article 6 on the Council's Civil Law Convention on Corruption which provides that parties should ensure appropriate protection against any unjustified sanction for employees, both in the public or private sectors, who report their suspicion in good faith internally to responsible persons or externally to authorities.

We request that the OECD consults among states and interested bodies on a proposal that the instruments be amended to include protection against reprisals for those who report breaches of it. In our view such a provision can sensibly be framed along the approach of the UK, Japanese and South African legislation as follows:

Whistleblowing

Each Party shall provide effective and proportionate protections for reprisals against persons who disclose in good faith to

- I. their employer,
- II. an appropriate authority, or
- III. where justified and reasonable, the wider public

that in their reasonable belief an offence of bribery of a foreign public official has occurred, is occurring or is likely to occur.

If this is something you see merit in and wish to discuss with us further, we will be happy to provide such assistance as we can.