

# Fighting Corruption

## WHAT ROLE FOR CIVIL SOCIETY? THE EXPERIENCE OF THE OECD



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ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT

## **ORGANISATION FOR ECONOMIC CO-OPERATION AND DEVELOPMENT**

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## FOREWORD

Since 1989 the OECD has played a leading role in the battle against international bribery and corruption. The fight gathered momentum in 1999 with the entry into force of the *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*. Responding to non-member countries from all regions which demonstrated an interest in associating themselves with the OECD's action against corruption, the Organisation developed outreach initiatives, making the experience of member countries more widely available. In the development of almost all of these efforts, the OECD has worked with business associations, trade unions, non-governmental organisations (NGOs) and the media.

This report takes stock of the OECD's thirteen years of experience working with civil society to fight corruption. The important contribution civil society organisations have made to the process which led to the adoption and implementation of the *Convention* is acknowledged and several lessons are drawn from this rich experience. This work also underlines the irreplaceable role civil society can play in non-member countries' initiatives against corruption. It shows how the anti-corruption initiatives developed with non-member countries contribute to strengthen the role played by civil society actors.

Drawing lessons from the OECD's experience, this report will help policy-makers in OECD member and non-member countries, as well as anti-corruption experts in aid agencies and other international organisations, make the most of civic forces. Furthermore, civil society actors will find practical suggestions to define their strategy.

This report was prepared by Irène Hors of the OECD Anti-Corruption Division. It is published on the responsibility of the Secretary-General of the OECD.



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## INTRODUCTION

Since its creation in 1961, the Organisation for Economic Co-operation and Development (OECD) recognises the valuable contribution that civil society can make to the public policy-making process, and attaches great importance to the Organisation's own consultation and dialogue with civil society organisations (CSOs), particularly through its social partners BIAC (the Business and Industry Advisory Committee to the OECD) and TUAC (the Trade Union Advisory Committee to the OECD). This continuing dialogue builds trust in public institutions and promotes public understanding of the benefits and challenges of global economic and social change. The collaboration with civil society has been particularly rich in the anti-corruption field: in the development of almost all of its anti-corruption activities, the OECD has worked with business associations, trade unions, non-governmental organisations (NGOs) or the media.

Civil society plays a key role in fighting corruption. Today, this statement is unchallenged: it has become a leitmotiv of anti-corruption discourses. But what does it mean in practice? To what extent is it true in all contexts? What is the nature of civil society's involvement? What can be learned from past experience? These are some of the questions that this report will address, by taking stock of the experience the OECD has developed working with civil society organisations on corruption.

The core of the OECD's action against corruption is dedicated to curbing bribery in international transactions. To this end, its 30 member countries plus five non-member countries<sup>1</sup> have adopted the *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions* and the *Revised Recommendation on Combating Bribery in International Business Transactions*<sup>2</sup>. These countries agreed that this phenomenon "raises serious

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<sup>1</sup> Argentina, Brazil, Bulgaria, Chile and Slovenia.

<sup>2</sup> Hereafter the Convention and the Revised Recommendation or the Recommendation, respectively.



moral and political concerns, undermines good governance and economic development, and distorts international competitive conditions"<sup>1</sup>.

The first part of this report will analyse civil society's role in the process which led to the adoption of the Convention and the Recommendation and its contribution to the implementation of these instruments. The OECD has developed extensive contacts with non-member economies, which aim to further economic integration by making the OECD's experience available to other countries and at the same time enable the OECD to profit from the insights and perspectives of non-members. The second part of this report will show how the anti-corruption initiatives developed with non-member countries contribute to strengthen the role played by civil society actors.

Drawing lessons from the OECD's activities on corruption, this report will help policy-makers in member and in non-member countries, as well as anti-corruption experts in aid agencies and other international organisations, make the most of civic forces. Furthermore, civil society actors will find practical suggestions to define their strategy.

## **I. The Contribution of Civil Society to OECD's Work against International Bribery**

The participation of non-governmental actors in the elaboration and in the implementation of the Convention and of the Recommendation has contributed to their success. Any civil society organisation active in the fight against corruption is welcome to participate in this process. But four organisations have been particularly active partners since the beginning of the OECD's work on corruption: the Business and Industry Advisory Committee to the OECD (BIAC), the Trade Union Advisory Committee to the OECD (TUAC), the International Chamber of Commerce (ICC) and Transparency International (TI). We will focus here on their contribution.

These four organisations are major representatives of civil society at the global level. The BIAC was constituted in March 1962 as an independent organisation officially recognised by the OECD as being representative of business and industry. Its members and associate expert groups include the principal industrial and employers organisations in OECD countries. BIAC's role is to provide the OECD and its member governments with comments and recommendations that reflect the practical experience and needs of the business community. TUAC is an international organisation which serves as the labour

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<sup>1</sup> See the text of the Convention.

unions' interface with the OECD. As such, it has a consultative status with the OECD and its various committees. TUAC's affiliates consist of over 56 national trade union centres in the 30 OECD countries, which together represent some 70 million workers. Both BIAC and TUAC have accompanied the OECD's work on the regulation of international business since its start, in the mid 70s.

Founded in 1919, the ICC is a business association with the purpose to promote an open international trade and investment system. It groups thousands of associations and member companies from all sectors of over 130 countries. National committees in all major capitals co-ordinate with their membership to address the concerns of the business community and to put across to their governments the business views formulated by the ICC. Finally, Transparency International is an international non-governmental organisation devoted to combating corruption. Through its International Secretariat and more than 90 independent national chapters around the world, TI works at both the national and international level to curb the supply and demand of bribes.

This part is structured as follows. I.1 analyses how these four civil society organisations supported the process which led to the adoption of the Convention and of the Recommendation; I.2 shows how they contribute to the implementation of these instruments; and I.3 describes, their role in the development of complementary activities.

### ***1.1 Civil Society's Support of the 1997 Convention***

Before turning to the contribution of civil society, let us recall the evolution of the context in which the OECD developed its action against international bribery.

#### ***a) From tolerance to condemnation***

If today 35 countries have agreed to impose criminal penalties on those who bribe foreign public officials in order to obtain business deals, twenty years ago, the corruption of international deals was broadly tolerated. Only companies from one country, the United States, were forbidden to bribe foreign public officials: after the Lockheed Aircraft scandal in 1977, the US Congress passed the *Foreign Corrupt Practice Act* (FCPA), which made companies liable to fines of up to \$2 million per violation and individuals up to \$100,000 and imprisonment for up to five years. Apart from this exception, several arguments would be put forward regularly to justify bribery in foreign markets. For instance, in the name of the principle of State sovereignty, States are to bear individually the principal responsibility to assure that their own houses are in

order; foreign States should not interfere with local affairs. Or: if corruption was the de facto norm in developing countries, then foreign firms were only adapting to the local customs.

The OECD's work on international bribery began in 1989, at the initiative of the United States, whose companies, constrained by the FCPA, complained to be at disadvantage with competitors. Eight years later, the major exporting countries of the world adopted the Convention. The evolution of the global context of the 1990s helped bring OECD efforts to a successful conclusion. The end of the cold war eroded support for kleptocratic regimes. Scandals exposed in the press heightened public awareness of the damages caused by corruption. As the price of bribery in proportion to the contract's value continued to escalate, companies found it increasingly difficult to compete internationally.

*b) Civil society's role in generating political will*

Within this context, BIAC, TUAC, the ICC and TI continuously advocated against international bribery. Each organisation has a different perspective and approach. BIAC and the ICC advance three main arguments to justify the need to fight international bribery from the private sector perspective. First, bribery causes competitive disadvantage for honest business. Second, within the firm itself, bribery affects the quality of management. As two ICC representatives, Heimann and Hirsch, explain<sup>1</sup>: "Off-the-book 'slush funds' are often established and masking book entries becomes the norm. The moral deceptions involved lead to awkward questions. (...) How much is told to top officers, to corporate accountants and to the company's lawyers? Can the company terminate relations with a sales representative who paid bribes? All of this has a destructive impact on the company's culture." Third, the short-term gains of winning a contract by bribery can be quickly negated by the consequences of a reputation loss in case of exposure. TUAC encouraged the mobilisation of trade unions, showing the links between corruption and abuses of freedom of association and other core labour standards<sup>2</sup>. Finally, the fight against corruption in international business transactions was TI's primary *raison d'être*. TI's founders saw these practices to cause great economic and political damage to developing countries.

These four organisations, supported by their constituencies, helped generate the needed political will to criminalise the bribery of foreign public

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<sup>1</sup> See OECD (2000) "No Longer Business As Usual – Fighting Bribery and Corruption", OECD, Paris: p. 170.

<sup>2</sup> See Roy Jones, *Ibid.* 3: p. 181.

officials through efficient multilateral action. Examples of their actions include the following. The International Chamber of Commerce published in 1996 the *ICC Rules of Conduct to Combat Extortion and Bribery* which officially expressed support to the OECD process. This document also encouraged member companies to adopt self-regulation programmes through stringent rules of conduct. Transparency International made regular interventions in the media in favour of the OECD's work. Also, a letter endorsing the work of the OECD was sent in May 1997 to European governments. The letter was prepared under the auspices of TI and ICC, and signed by 16 of the most important European business leaders.

The support from representatives of the business community was particularly important as it countered the widely accepted idea that companies were the first to benefit from the existence of corruption in international transactions. It became possible to call on this voice against sceptical opponents, that argued that the OECD instruments would not succeed in levelling the playing field and would adversely affect export opportunities.

## ***1.2 Civil society's Role in the Implementation of the OECD Instruments***

To ensure the correct implementation of the Convention, Parties adopted a monitoring process based on the OECD peer-review principles. The modalities of this monitoring process, in which the performance of each Party in implementing the anti-bribery instruments is evaluated by its peers, were defined and agreed upon by the Working Group on Bribery in International Business Transactions, which is the OECD body responsible for the implementation of the Convention and of the Recommendation (hereafter the Working Group on Bribery or the Working Group).

Firstly, this section describes the monitoring process and gives information on the steps taken by countries to implement the Convention, as of January 2003. Secondly, it describes the rules governing the transparency of the monitoring process and the participation of civil society. Finally, it presents the contribution made by BIAC, TUAC, ICC and TI in the monitoring process and in the implementation of OECD instruments more generally.

### ***a) Ensuring the implementation of the anti-bribery instruments: a monitoring process based on self- and mutual evaluation***

The monitoring process is divided into two phases: Phase 1 and Phase 2. The purpose of Phase 1 is to evaluate whether the legal texts through which State Parties implement the Convention meet the standard set by the

Convention. The purpose of Phase 2 is to study the structures put in place to enforce the laws and rules implementing the Convention and to assess their application in practice.

For all countries, Phase 1 and Phase 2 evaluations are organised in five steps:

- Step 1: Preparation of a preliminary report on country performance by an examining team. This report is based on the examined country's reply to a questionnaire, an analysis of corresponding legal material, research undertaken by the examining team and, in the case of Phase 2 evaluations, on-site visits. These on-site visits are conducted by the examining team, who assesses the implementation structures in place, the resources made available, the personnel's training, etc. The examiners also inquire about existing cases and the extent to which companies have introduced compliance structures.
- Step 2: Consultation: the Working Group on Bribery discusses the questions raised by the examiners in the draft report and assesses the answers given the country examined.
- Step 3: Adoption by the Working Group of a final evaluation report, which identifies the weak points, of the implementation law in the case of Phase 1, of the implementing means and structures in the case of Phase 2, and recommends appropriate solutions.
- Step 4: Publication of the reports.
- Step 5: Review of the implementation of the recommendations made by the Working Group.

In January 2003, 31 of the 35 State Parties have gone through the Phase 1 evaluation. Most of the countries have adopted satisfactory legislation: overall compliance with standards has been found. Phase 2 started in 2001. Four countries have been assessed in January 2003: Iceland, Finland, United States and Germany. Five countries will be examined during the year 2003. The objective is to have examined all countries by the end of 2007.

b) *Rules governing the transparency of the monitoring process and the participation of civil society*

The broad lines of the rules governing the transparency of the monitoring process and the participation of civil society are set in the Revised Recommendation. Section VIII, paragraph v) instructs the Working Group on Bribery to "provide regular information to the public on its work and activities and on the implementation of the Recommendation"; Section XIII invites the Working Group on Bribery to "consult regularly with the non-governmental organisations and representatives of the business community active in the field [of the fight against corruption]."

The procedures defined by the Working Group on Bribery to define the monitoring process further develop these general guidelines.

- Transparency

The Working Group recognised the need to make as much information available as possible. Indeed, transparency is crucial to ensure the credibility of the monitoring process. Access to information is also obviously necessary to allow civil society organisations to make well documented contributions.

Several key documents are therefore public and can be found on the OECD web site.<sup>1</sup>

- Procedures of self and mutual evaluation of implementation of the Convention and the Revised Recommendation
- Schedule of country examinations
- Schedule of country visits
- Questionnaires for Phase 1 and Phase 2
- Terms of reference for the on-site visits
- Phase 1 and Phase 2 final reports: these reports are made public as soon as they are adopted by the Working Group. A country concerned can, however, take whatever steps it feels appropriate to release information concerning its report, or to make it publicly available. The OECD Secretariat encourages Parties to do so. In January 2003, thirty Phase 1 and two Phase 2 country reports, that of Finland and the US, had been put on the OECD website.

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<sup>1</sup> <http://www.oecd.org/daf/nocorruption/>

- Participation of civil society

In order to facilitate frank and efficient exchanges between those conducting the evaluation and the government being evaluated, Parties judged that the review process of evaluation required a certain measure of confidentiality. Therefore non-governmental actors do not participate in the evaluation meetings of the Working Group on Bribery.

Parties nevertheless acknowledged that civil society representatives should have opportunities to express its views and that these views should be taken into consideration in the monitoring process. The Parties therefore agreed on three channels of communication with civil society:

- Civil society is invited to express its views to the Working Group on Bribery in writing.
- Consultation meetings allow to have civil society's views on specific issues.
- Civil society is formally invited to participate in the Phase 2 on-site visits. In this framework, different options for involvement, or opportunity to express views, can be considered by the country to be examined.

c) *What has civil society done to support the implementation of the anti-bribery instruments?*

The following paragraphs present the main contributions of BIAC, TUAC, ICC and TI. These groups took advantage of the three channels of communication mentioned in the previous part to support the monitoring process. Civil society actions either contributed directly to the monitoring mechanism (first three paragraphs), or supported the implementation of the anti-bribery instruments more generally (last two paragraphs).

- Preparing and analysing the implementing legislations

TI chapters from a number of countries contributed to the elaboration and analysis of the legislations implementing the OECD Convention. For instance, the Portuguese chapter consulted the OECD Secretariat on what would make a good law and then worked with the parliamentary committee in charge of the drafting of the legislation. Chapters in Australia, Canada, France, Germany, Hungary, Mexico, the Netherlands, Poland, the Slovak Republic, South Korea, Spain, Switzerland, United Kingdom and the United States submitted

preliminary analyses to the Working Group of their country's implementing legislation. For instance, in the case of France, the comments provided by TI to the Working Group highlighted the fact that the implementing law provided special rules of prosecution, which left the decision of initiating a prosecution procedure entirely to the discretion of the public prosecutor. The Working Group took note of this issue and decided to assess the effectiveness of prosecution in Phase 2.

- Providing information on accounting standards and practices

At the suggestion of some of their private sector members, Transparency International and the International Chamber of Commerce undertook research on how State Parties fulfil the provisions on accounting and auditing of the Convention and Recommendation. The purpose of this initiative was to complement the Working Group's expertise with that of actors from the business and accounting community. Shortly after the Convention came into force, TI and the ICC invited representatives of major international accounting firms and global corporations to form a task force on these issues. This task force collected data on current practices in 16 countries and compared these to the standards of the OECD instruments. The resulting report<sup>1</sup>, which was presented to the Working Group, provides information useful for the second phase evaluations. It also allows countries to learn about the recent measures taken by other members of the Group in the areas of accounting and auditing.

- Participating in Phase 2 on-site visits

In August 2001, BIAC, TUAC, ICC and TI drafted a joint statement to co-ordinate their participation in the country visits<sup>2</sup>. For each visit, these four organisations help identify civil society experts from the country being reviewed who will express their views and respond to questions from the examiners.

Through these consultations, the examiners check whether the law implementing the Convention is well known by local firms and that these have taken complying measures. Consulting civil society actors also allows to have access to information on how things happen in practice. Businesses are in the

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<sup>1</sup> See Transparency International (2000) "Financial Transparency and Accountability Initiative", OECD Official Document.

<sup>2</sup> See BIAC, ICC, TUAC and TI (August 6, 2001) "Statement of BIAC, ICC, TUAC and TI Regarding Consultations in Phase 2 of the OECD Monitoring Process", [www.biac.org](http://www.biac.org).



best position to answer questions such as: Are competitors still bribing? Are foreign officials still soliciting bribes? Feedback also comes from other civil society groups: trade unions, non-governmental organisations and journalists can provide an independent perspective on whether their government is doing enough.

In all the reviews conducted so far, (Finland, US and Germany) the examining teams had constructive exchanges with representatives from companies, trade unions and other civil society groups. Local chapters of Transparency International helped in organising the country visits. Civil society actors provided their views on the situation, which contributed to the overall evaluation made by the Working Group.

- Making sure governments comply with their commitments

TI and the press put pressure on governments on several occasions to comply with their commitments. In the case of the United Kingdom for instance, several articles in the press echoed the Working Group's assessment and put pressure on the government to introduce some legislative changes. Transparency International - UK proposed the wording of an amendment to draft legislation that was before Parliament, in order to answer the Working Group's earlier criticisms. While the proposed amendment was dropped in the course of the debate, new legislation was subsequently adopted and found by the Working Group to meet the Convention's standards. In France, just before the parliamentary debate, TI and the press pinpointed the fact that a provision in the draft legislation expressly excluded ongoing corrupt arrangements. This public pressure contributed to the deletion of this provision.

- Encouraging private companies to adopt compliance measures

BIAC, TUAC, ICC and TI have also been instrumental in changing attitudes in the business community. These four organisations have stressed regularly the need for companies to change business attitudes and internal procedures, and to develop compliance mechanisms in accordance with the OECD Convention and Recommendation. The revised *OECD Guidelines for Multinational Enterprises* have been an important instrument in this respect. The Guidelines are recommendations addressed by governments to multinational enterprises operating in or from adhering countries. They provide voluntary principles and standards for responsible business conduct, including on combating bribery. BIAC and TUAC, together with other key civil society actors such as Anped, Oxfam and Friends of the Earth have been very supportive partners of the revision process. In addition, both BIAC and TUAC are closely involved in the implementation of the Guidelines.

The 1996 ICC Rules of Conduct for Companies list a number of measures which go even further than the OECD instruments, as they call for the prohibition of all practices of bribery, for any purpose, not only to obtain or retain business as in the Convention. As for TI, many of the national chapters have been working very actively to bring to the attention of their business communities the new legal situation resulting from the implementation of the OECD anti-bribery instruments by their respective governments. In addition, TI, as well as various business associations, associations of accountants and bar associations, assist companies that want to learn about successful models of codes of conduct and compliance programmes.

### ***1.3 Complementing the OECD Convention and Recommendation: Civil Society's Role***

When the Convention was negotiated, the future State Parties were aware that the adoption and implementation of this text would not be the end of their efforts. The OECD Convention focused on a precise, but narrow, definition of bribery in the interests of reaching a consensus that would eliminate distortions and introduce a more level playing field for international business transactions. In doing so, it did not address certain areas, such as bribery acts in relation with foreign political parties or candidates for foreign public office, or the use of foreign subsidiaries in bribery transactions which could create potential loopholes. Furthermore, the OECD Council mandated the Working Group to examine "the feasibility of broadening the scope of the work of the OECD to include *private sector corruption* in international business transactions." It was considered that further examination of these issues was required before these could be included in an international policy document.

In addition to these criminal law matters, several other issues have been brought to the attention of the Working Group on Bribery. The private sector, through BIAC and the ICC, has been continuously calling for the development of international solutions to the problem of the *solicitation of bribes*. According to these organisations, governments should assist companies when these are confronted with demands or requests of bribes. BIAC has recommended for instance that governments exchange information about reported attempts of solicitation of bribes and co-operate in joint investigations on substantiated cases of solicitation of bribes. TUAC, with the support of BIAC, pushed for the need to *protect whistle-blowers*, i.e. the employees who expose corruption in organisations, as these may suffer victimisation. Both organisations called on the OECD to address whistle-blowing issues in the future review of the Recommendation. Besides, all four organisations, BIAC and TUAC, ICC and

TI, have been strong advocates of the need to extend the Convention to include private sector corruption.

Civil society organisations have provided analyses and organised debates on several of these complementary issues. In October 2000, TI organised a seminar in La Pietra in Italy to review issues relating to corruption and political party financing. The meeting concluded with the issuance of recommendations to the OECD on how to extend the Convention to cover the bribery of foreign political parties and party officials, which were then submitted to the OECD Working Group<sup>1</sup>. The recommendations also stressed the need to develop effective mechanisms to deal with bribery within the private sector, as action in this area would contribute to address aspects of political party corruption.

BIAC has proposed a Programme for Combating Solicitation of Bribes, which suggests an inter-governmental co-operation to assist firms when they face a demand to pay bribes. On the issue of private to private bribery, the ICC conducted a study on "Measures to curb bribery in the private sector." This study comprises a comparative analysis of national regulations designed to curb private sector corruption, based on thirteen country reports. These reports review domestic civil and criminal provisions on private sector bribery, including foreign bribery, and a report on supra-national measures to curb corruption. A day of informal consultation took place in April 2002, during which the ICC presented the findings of this study and concluded on the need for the OECD to engage action to address this problem.

Finally, in December 1999, the OECD organised a joint meeting of management and trade union experts on "Whistle-blowing to Combat Corruption". The purpose was to define "whistle-blowing" and determine the role this issue might possibly play in the fight against corruption.

## **II. Fighting Corruption in Non-Member Countries: Working with Civil Society**

Since the entry into force of the Convention in February 1999, non-members from all regions have demonstrated an interest in associating themselves with the OECD's action against corruption. While recognising that they have a particular responsibility as major trading countries, OECD members are aware that it is essential that all countries take part in the battle against

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<sup>1</sup> See TI Press Release (October 19, 2000) "Bribes to Political Parties an Increasing threat to Democracy", [http://www.transparency.org/pressreleases\\_archive/2000/2000.10.19.p\\_funding.html](http://www.transparency.org/pressreleases_archive/2000/2000.10.19.p_funding.html).

bribery. The OECD therefore seeks to improve the effectiveness of its instruments by extending the application of the Convention and diffusing the standards it embodies beyond the membership of the Organisation.

To this end, outreach initiatives have been developed, which make the experience of member countries and of the OECD Secretariat available to non-member countries. One dimension of these initiatives is the promotion of the participation of civil society organisations in the anti-corruption efforts of non-member countries, as described in section II.3. This civil society component of the outreach initiatives is designed to overcome the factors limiting the development of civil society and its involvement in the fight against corruption described in section II.2. As for the Convention, civil society organisations are invited to contribute to the development and implementation of these outreach initiatives (section II.1).

### ***II.1 Civil Society's Contribution to the OECD's Outreach Initiatives***

The outreach work comprises five main regional initiatives: the Stability Pact Anti-Corruption Initiative for South Eastern Europe (SPAI), the ADB/OECD Asia-Pacific Anti-Corruption Initiative and the Baltic Anti-Corruption Initiative (BACI), the Anti-Corruption Network for Transition Economies (ACN) and the Governance and Anti-Corruption Forum for Latin America. The OECD assists them in meeting international anti-corruption standards and supports their own domestic reform efforts, by enhancing their capacity to fight corruption and by helping disseminate successful experiences and techniques. These initiatives represent the acceptance of new norms of anti-corruption behaviour and the emerging standards as embodied in the Council of Europe Criminal and Civil Law Conventions, the European Union instruments, the Inter-American Convention against Corruption and the OECD anti-bribery instruments.

The following box gives further information on the objectives of these initiatives, their regional scope and names the activities which have a strong civil society component.

## Five Regional Outreach Initiatives

- The Stability Pact Anti-Corruption Initiative for South Eastern Europe (SPAI)

The Stability Pact Anti-Corruption Initiative for South Eastern Europe (SPAI) assists eight South Eastern Europe countries in implementing the *Anti-Corruption Compact*. These eight countries are Albania, Bosnia and Herzegovina, Croatia, the Former Yugoslav Republic of Macedonia, Moldova, FRY/Montenegro, Romania, FRY/Serbia, and Bulgaria which participates as an observer. The Civil Society Programme is one of SPAI's five pillars of action. Under this programme, conferences are organised regularly; SPAI countries underwent an assessment exercise which led to the adoption of action plans; and a small-grant programme supports the implementation of these action plans.

- The ADB/OECD Asia-Pacific Anti-Corruption Initiative

The ADB/OECD Anti-Corruption Initiative for Asia and the Pacific covers all the countries that are members of the Asian Development Bank (ADB). Its Anti-Corruption Action Plan for Asia-Pacific has been endorsed so far by 18 countries: Bangladesh, Cook Islands, Fiji, India, Indonesia, Japan, Kazakhstan, Korea, Kyrgyz Republic, Malaysia, Mongolia, Nepal, Pakistan, Papua New Guinea, Philippines, Samoa, Singapore and Vanuatu. Supporting active public involvement is one of the three pillars of action of the plan. Activities of this initiative include assistance for the implementation of reforms in priority areas and the Global Distance Learning Program on Combating Corruption.

- The Baltic Anti-Corruption Initiative (BACI)

At the 2001 Annual Meeting of the Anti-Corruption Network for Transition Economies, the three Baltic countries, Estonia, Latvia and Lithuania, agreed to launch a two-year initiative, the Baltic Anti-Corruption Initiative. The purpose of the initiative is to build capacity and institutions in the anti-corruption field and to work towards meeting international standards, including those set by the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. BACI activities include technical workshops, policy dialogue meetings and diagnosis surveys.

- The Anti-Corruption Network for Transition Economies (ACN)

The Anti-Corruption Network for Transition Economies (ACN) links policy-makers and non-governmental actors in 23 countries of Central and Eastern Europe and the CIS: Albania, Armenia, Azerbaijan, Belarus, Bosnia and Herzegovina, Bulgaria, Croatia, Estonia, Georgia, Kazakhstan, Kyrgyz Republic, Latvia, Lithuania, the Former Yugoslav Republic of Macedonia, Moldova, Romania, the Russian Federation, Tajikistan, Turkmenistan, Slovenia, Ukraine, Uzbekistan, and the Federal Republic of Yugoslavia. Activities of the ACN include the Annual Meetings and the Donors' Standards for Anti-Corruption Assistance Project.

- The Governance and Anti-Corruption Forum for Latin America

The Governance and Anti-Corruption Forum for Latin America works with all countries in Latin America and the Caribbean. Its objective is to support the implementation of the OECD instruments and of the Inter-American Convention against Corruption. Its activities include the organisation of conferences and technical workshops.

The contributions made by civil society organisations to the OECD's work with non-member countries are of two types.

First, civil society organisations take part in the development and in the management of the initiatives themselves. For instance, Transparency International and another international NGO, the Open Society Institute, were part of the international coalition that created in 1998 the Anti-Corruption Network for Transition Economies. Representatives from civil society (Transparency International) and regional business organisations (the Pacific Basin Economic Council) constitute, together with representatives of the donor community, an Advisory Group to the Asia-Pacific Initiative. As such, they are members of the Action Plan Steering Group and have a consultative say on the national anti-corruption efforts undertaken in the framework of the Action Plan.

Second, civil society is involved in the implementation of some activities. For instance, for the *ACN Donors' Standards for Anti-Corruption Assistance Project*, civil society actors are closely involved in the collection and analysis of information. The purpose of this project is to draw lessons from past experience to make foreign aid for the fight against corruption more efficient. In the framework of BACI, representatives from civil society organisations are the main actors of the community-based surveys undertaken in the three Baltic countries. The purpose of these surveys is to diagnose corruption in two key public service sectors, the health and the licensing sectors, and to provide recommendations for remedial action. Local NGOs were consulted to define the objectives and the methodology of the surveys.

## ***II.2 What Limits the Contribution of Civil Society in Non-Member Countries' Anti-Corruption Efforts?***

Ideally, civil society organisations that enjoy a relationship with their members or the group of individuals they represent based on trust will be able to channel information between these and public actors both ways. For instance, based on the practical experience of their members, business associations may have insights on how to reform the public procurement system or the customs administration in order to reduce corruption practices. Conversely, business associations will be able to inform their members of new laws and measures, and encourage them to adapt their management and increase the transparency of their operations in consequence.

In addition, civil society organisations that have successfully avoided questionable allegiances around the State sphere or in political parties, will enjoy a position that allows them to act as watchdogs. Free of the governmental

obligation of balancing interests, such independent civil society organisations can relentlessly recall the need to fight corruption. They can monitor whether politicians comply with their commitments in terms of fighting corruption, or through the media, expose cases of corruption and put pressure for investigations and sanctions.

Finally, a well developed civil society will represent a wide variety of interests. Civil society organisations with varied organisational cultures will allow to see the problem of corruption from different perspectives which will bring together diverse viewpoints to design a strategy and increase its chances of success. Besides, a political will to fight corruption based on a broad support from various sources in civil society ensures that the measures taken are not politically biased. The variety of interests ensures that the anti-corruption drive responds, in the end, to the public interest.

But not all civil societies, be it in member countries or in non-member countries, present these ideal characteristics. Civil society is more or less developed from one country to another, and its involvement in the fight against corruption can be more or less important.

Several factors can be identified as limiting the development of civil society and its involvement in the fight against corruption. Limits may come from the State. In certain countries, public rules limit basic civil rights and do not facilitate the development of civil society organisations. The lack of transparency of public operations and difficult access to information do not encourage the direct participation of citizens in the conduct of public affairs. This participation is not perceived as a normal component of political life.

Citizens may also impose limits. In certain countries, citizens are not sufficiently aware of the costs of corruption, and/or of the existence of tools and methods to curb this phenomenon. Citizens do not always make the link between some positive objectives they may have for their personal life or professional activity (for instance access to quality health services) and the fight against corruption. They do not see how they could contribute.

Limits may also come from a lack of resources. The fight against corruption is a relatively new area compared to other issues traditionally addressed by non-governmental organisations. Therefore civic actors do not always have the information, experience or technical capacities required for an efficient action. Financial resources are also often a problem.

### ***II.3 Outreach Activities to Strengthen Civil Society's Contribution to the Fight Against Corruption***

Several activities in the OECD's outreach initiatives contribute to strengthening the role played by civil society in non-member countries' anti-corruption efforts. In light of the analysis proposed previously, activities have been mainly developed along four lines of action<sup>1</sup>:

- to encourage an institutional environment conducive to the development of civil society and to its participation in public affairs;
- to promote the co-operation of public and civil society actors in anti-corruption efforts;
- to encourage a broad mobilisation against corruption; and
- to strengthen the capacities of civil society organisations.

*How to create an institutional environment conducive to the development of civil society and to its participation in public affairs?*

The SPAI provides an example of a project which pursues this objective. In the framework of this initiative, the governments of South East Europe committed to creating the necessary conditions in their countries to promote the development of civil society. They committed to:

- ensure the basic civil liberties that allow for an active public participation in anti-corruption activities and other public affairs;
- adopt laws that facilitate the establishment of civil society organisations;
- promote the development of independent media, able to scrutinise government operations freely;
- increase the transparency of government operations and a sincere willingness to co-operate with civil society.

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<sup>1</sup> OECD's outreach initiatives are tailored to the different regional situations and deriving needs. Not all comprise activities along the four directions of action.



The situation in each SPAI country was assessed in 2001 (this assessment exercise also addressed other issues, as explained hereafter)<sup>1</sup>. This allowed to identify areas where reform was needed and led to the design of action plans, which governments involved endorsed at the Cavtat Conference in September 2001.

### *How to promote co-operation between public and civil society actors?*

All outreach initiatives contribute to this objective. The five initiatives hold policy dialogue meetings, to which both public officials and representatives of civil society are invited. Bringing citizen representatives and public officials around one table sends a strong signal about the need to recognise civil society actors as crucial partners in anti-corruption efforts. For instance, the Annual Meetings of the Anti-Corruption Network, traditionally held in Istanbul, have been important to improve the collaboration between civil society actors and governments.

The Baltic initiative helped demonstrate the benefits of collaboration with civil society partners. The workshop on denying tax deductibility of bribes to foreign public officials (Riga, 27-28 August 2002) showed why civil society consultations were needed to address such policy issues. A government - civil society workshop was then organised in Tallinn (5-6 December 2002) to strengthen government - civil society co-operation in the anti-corruption field. Civil society experts from the Baltic countries and from OECD countries were invited to this event. It is hoped that these co-operations will continue after the end of the BACI.

Governments who adopted the SPAI Anti-Corruption Compact or the Asia-Pacific Action Plan explicitly committed to support and promote the active involvement of civil society in anti-corruption efforts. Indeed, as mentioned in II.1, civil society's participation is one of the pillars of these two action plans.

### *How to create a broad mobilisation against corruption?*

The objective here is two-fold: to strengthen citizen support for existing anti-corruption NGOs, and to increase the participation of organisations, whose primary interest is not the fight against corruption.

To this end, several awareness-raising projects have been undertaken. For instance, SPAI countries assessed how citizens reacted to the problem of

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<sup>1</sup> See OECD (2002) "Anti-Corruption Measures in South Eastern Europe - Civil Society's Involvement".

corruption. Through the Cavtat action plans, SPAI governments committed to increase public intolerance toward corruption. In the framework of the Baltic Anti-Corruption Initiative, the surveys on corruption in the health and licensing sectors show citizens the price they pay for corruption. This is a very powerful tool to mobilise citizens: talking about the damages of corruption in general terms is not enough. Similarly, in the framework of the Asia-Pacific Initiative, several countries are implementing projects to raise awareness. For instance Pakistan is undertaking public awareness campaigns at national, provincial and district level through schools and universities.

Furthermore, several projects aim at enrolling groups of actors whose primary objective is not the fight against corruption. For instance in Albania, a seminar was held in October 2002 to foster the participation of trade unions in the fight against corruption. In Latin America, the regional conference organised in Mexico in September 2002 discussed the costs of corruption for private companies and encouraged them to adopt prevention measures.

### *How to strengthen the capacities of civil society organisations?*

Strengthening the capacities of civil society organisations means to:

- i) provide these organisations with information and expertise;
- ii) support training programmes;
- iii) contribute to the raising of funds; and
- iv) encourage partnerships between civil society actors.

All outreach initiatives seek to facilitate access to technical information by providing through their web sites<sup>1</sup> and newsletters relevant legal and analytical resources to both public and civil society actors. In addition, the OECD created one of the world's largest information centres on corruption and bribery, the OECD *Anti-Corruption Ring Online* or *AnCorR* (<http://www.oecd.org/daf/nocorruption/>). This site contains more than 3000 references to books, journals, papers and other articles as well as anti-corruption documentation such as laws, international conventions and anti-corruption strategies.

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<sup>1</sup> Web sites: ACN and BACI: [www.anticorruptionnet.org/](http://www.anticorruptionnet.org/) ; SPAI : [www.oecd.org/daf/SPAI.com/](http://www.oecd.org/daf/SPAI.com/) ; Asia-Pacific Initiative : [www.oecd.org/daf/ASIA.com/](http://www.oecd.org/daf/ASIA.com/) ; Latin America Initiative : [www.oecd.org/daf/nocorruption/outreach/](http://www.oecd.org/daf/nocorruption/outreach/).

In Asia, the ADB/OECD supports the World Bank East Asia-Pacific Regional Bureau's Global Distance Learning Program on Combating Corruption. This programme is open for participation to government officials as well as civil society actors.

In the framework of the Governance and Anti-Corruption Forum for Latin America, the OECD<sup>1</sup> organised in October 2001<sup>2</sup> a workshop to encourage the participation of civil society in the follow-up mechanism to the Inter-American Convention against Corruption. The workshop analysed the experience developed by civil society organisations in other follow-up mechanisms.

To facilitate the financing of civil society's participation and to co-ordinate donors, the structures of the Anti-Corruption Network, of the SPAI and of the Asia-Pacific Anti-Corruption Initiative provide an interface between countries and aid agencies. Donors are invited to fund project proposals designed in reference to these initiatives. For instance, in the framework of the SPAI, the OECD has been administering small grants made available by the United States and Swiss Governments to support civil society projects to implement the Cavtat action plans.

Finally, co-ordination allows making the most of existing resources. To this end, outreach activities encourage a close collaboration between public officials and civil society actors and promote the idea of networks of non-governmental actors. The initiatives' web sites include databases with the names and contact addresses of the main government, civil society and international anti-corruption actors in the countries covered. Another type of database compiles past, ongoing and planned anti-corruption projects implemented in these regions. These sources of information have proved to be extremely useful to facilitate the collaboration of stakeholders.

## **Conclusion**

At a time when several inter-governmental instruments on corruption, such as the UN Global Convention against Corruption or the Organisation of African Unity Convention on Combating Corruption, are being negotiated, it is important to take stock of the lessons learned in the framework of the OECD's

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<sup>1</sup> In collaboration with Transparency International for Latin America and the Caribbean and UNDP.

<sup>2</sup> At the occasion of the 10th International Conference Against Corruption, which took place in Prague.

work on international bribery. The experience of the OECD has shown that civil society has an important role to play in the negotiation and in the implementation of inter-governmental instruments against corruption. Indeed, various civil society organisations have supported the process which led to the adoption of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and of the Revised Recommendation on Combating Bribery in International Business Transactions. As these instruments are being implemented, civil society organisations provide useful links between public actors and the business community and contribute to maintain pressure on governments to fulfil their commitments. It is therefore important that the negotiation and implementation of future conventions be as transparent as possible and that civil society be consulted on a regular basis.

In efforts against domestic corruption, the contribution civil society can make will be all the more important if CSOs are well integrated into society, and not compromised by questionable political allegiances. Civil society can then fulfil irreplaceable functions such as channelling information from citizens to the State to design appropriate strategies, enrolling the participation and support of citizens and enterprises in the implementation of anti-corruption policies, maintaining pressure for a political commitment against corruption, while ensuring that anti-corruption drives are really rooted in public interest. Through its anti-corruption outreach initiatives, the OECD has developed various activities that contribute to strengthening the contribution of civil society in non-member countries' efforts against corruption. These activities aim at creating an institutional environment conducive to the development of civil society and to its participation in public affairs; promoting co-operation between public and civil society actors; mobilising broadly against corruption; and strengthening the capacities of civil society organisations.

Finally, by outlining it clearly in the context of the OECD's work, this paper has also contributed to show the limits of the role of civil society. Civil society can and should contribute to the fight against corruption. But governments continue to have the bulk of responsibility, as they are entrusted with citizens' power.

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# Fighting Corruption

## What Role for Civil Society? The Experience of the OECD

Civil society plays a key role in fighting corruption. Today, this statement is unchallenged: it has become a leitmotiv of anti-corruption discourses. But what does it mean in practice? To what extent is it true in all contexts? What is the nature of civil society's involvement? What can be learned from past experience? These are some of the questions that this report addresses by taking stock of the experience that the OECD has developed working with civil society organisations on corruption.

This report provides an analysis of civil society's role in the process which led to the adoption of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the Recommendation on Combating Bribery in International Business Transactions and its contribution to the implementation of these instruments. It also shows how the anti-corruption initiatives developed with non-member countries contribute to strengthen the role played by civil society actors.

Drawing lessons from the OECD's experience, this report will help policy-makers in member and in non-member countries, as well as anti-corruption experts in aid agencies and other international organisations, make the most of civic forces. Furthermore, civil society actors will find practical suggestions to define their strategy.