Working Group on Bribery in International Business Transactions (CIME)

SUMMARY RECORD

INFORMATION MEETING WITH NON-MEMBERS ON OECD EFFORTS TO COMBAT BRIBERY AND CORRUPTION

(5 JUNE 2000)

This document is distributed for reference at the meeting of the Working Group to be held on 4-5 October 2000.
Summary Record

Information Meeting with Non-Members on
OECD Efforts to Combat Bribery and Corruption (5 June 2000)

1. The Working Group on Bribery in International Business Transactions held an informal information meeting with non-OECD members on ‘OECD Efforts to Combat Corruption’ on 5 June 2000. The meeting was opened by Mr. Kondo, Deputy Secretary General of the OECD and chaired by Professor Mark Pieth, Chairman of the OECD Working Group on Bribery in International Business Transactions.

2. Almost all the non-members invited¹ were represented by government officials or representatives that have responsibility for implementing or enforcing anti-corruption laws or policies. Delegates from OECD Member countries were also present (see list of participants attached).

3. The information meeting aimed at giving a comprehensive overview of the underlying commitments and obligations of the anti-corruption instruments developed under the auspices of the OECD to representatives from non-OECD countries having expressed an interest in learning more about OECD actions to combat bribery. The meeting further provided non-members an opportunity to present their most recent national initiatives to combat corruption. Finally, participants could explore together ways to associate non-member countries with the OECD efforts to fight international corruption and develop joint actions for combating corruption.

4. Following the opening presentation, during which concerted government actions were underlined as a means of gaining control over complex phenomena such as international corruption, money laundering and organised crime, participants engaged in a mutual exchange of information. The first session addressed national and sub-regional OECD and non-members’ actions to combat domestic and international corruption and bribery. In session two, different speakers presented the OECD instruments to combat bribery and corruption, the work carried out by the Working Group and different means of participating in these initiatives. The last two sessions addressed the procedures and criteria for participating in the Convention and Working Group and co-operation in international initiatives².

5. This note summarises the discussions of the informal meeting and the proposed follow-up actions, which the Working Group endorsed at its plenary session on 6-7 June 2000.

Session I. International Efforts to Combat Bribery and Corruption

A. OECD Actions: Main Elements

6. Professor Mark Pieth, Chairman of the Working Group on Bribery in International Business Transactions, introduced the various actions undertaken under the auspices of the OECD to fight corruption and improve integrity. He recalled that the OECD put international corruption on its agenda in 1989. This work evolved according to two basic objectives: fight corruption in international business, and help level the competitive playing field for all companies. Later, the focus of the Organisation’s work

¹ Benin, Colombia, Croatia, Estonia, Hong Kong-China, Latvia, Lithuania, Malaysia, Peru, Romania, Russia, Slovenia, South Africa, Thailand, and Venezuela and the members of the WG participated. Only Singapore was not able to attend.

² Documentation by the OECD Secretariat or by participating countries was distributed to participants in DAFFE/IME/BR/WD(2000)24/REV1.
broadened to also cover governance, including work on corporate governance, public management and public ethics, as well as corruption prevention.

7. Three major instruments address the “supply” (i.e. offer, promise, or payment) of bribe payments. The Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, which entered into force on 15 February 1999, requires parties to criminalise bribery of foreign public officials in executive, legislative, and judicial branches, levy significant penalties on those who bribe, and tighten up accounting procedures to make it harder to hide illegal payments. The two related recommendations deal with the non-tax deductibility of bribes, accounting and auditing requirements, public procurement, and developing or strengthening ant-corruption clauses in aid procurement contracts.

8. One of the ways to fight the “demand” for bribes (i.e., the public officials who demand or accept a bribe) is through the promotion of an effective framework to increase public integrity and standards of conduct on the part of public officials. The recent survey of the 1998 Recommendation on Improving Ethical Conduct in the Public Service indicates that promotion of integrity in the public service is prominent on the OECD countries’ agenda.

9. Other actions undertaken by OECD countries in support of more transparent, predictable and stable conditions for business growth include the Review to update the Guidelines for Multinational Enterprises as well as the agreed OECD Principles of Corporate Governance.

B. Globalising Anti-Corruption Efforts: The Interests of Non-Members

10. Representatives of non-member countries presented actions taken to fight bribery and corruption either domestically or at the international level during this session. Some also took the opportunity to underline their interest to adhere to the Convention and participate in the Working Group.

11. Participants noted the interventions by representatives from South Africa, Russia and Hong Kong, Benin and Croatia and Columbia. All these countries have set up independent structures to fight domestic bribery and have adopted corresponding laws. However only some address international bribery, notably as parties to other international agreements. In particular, the countries made the following statements:

- **South Africa** has a comprehensive set of laws allowing it to fight national corruption. The President, who is very committed to improving national means to investigate and prosecute cases, has sent a bill to parliament calling for the creation of the Investigating Directorate for Corruption (‘Scorpion’). The President shall be directly responsible for the nomination of the 'Scorpions'. South Africa’s Corruption Act provides for criminalising corruption; provides for criminal responsibility over legal persons, does not allow the tax deductibility of bribes, prohibits money laundering which is considered a criminal offence, and facilitates mutual legal assistance for

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4. Trust in Government: Ethics Measures in OECD countries (OECD, 2000), reports progress made in the implementation of the 1998 Recommendation on Improving Ethical Conduct in the Public Service and gives a comprehensive overview of ethics measures in all 29 OECD countries, including overall trends, models, promising practices and innovative solutions.


countries requesting it. The country is not a party to any international agreement but is considering applying for accession to the 1997 Bribery Convention.

- **Russia** has officially applied to the OECD to become a Party to the 1997 Bribery Convention and accede to the Working Group. Despite efforts to pass comprehensive anti-corruption measures, these have not succeeded due in part to weak institutional supervision that was unable to enforce the federal anti-corruption laws. They acknowledged that Russian corruption is increasingly cause of international instability and it is this international dimension of corruption that countries need to address.

- **Hong-Kong** has a wide arsenal of national instruments to fight both public and private corruption. It has notably set up the 'Independent Commission Against Corruption' (ICAC), entrusted with powers distinct from the police. As special administrative region of the People's Republic of China it is not empowered to accede to the 1997 Bribery Convention but Hong-Kong would be interested in engaging in international partnerships to fight cross-boarder corruption.

- **Benin** has started to engage itself in the fight against national corruption. Recently two special units, which are directly reporting to the President, have been set up to identify the magnitude of the phenomena, judges have been entrusted with new powers, and an ethical code has been adopted to fight corruption in public procurement. Benin is also, together with the World Bank, in the process of identifying all elements necessary to set up a comprehensive anti-bribery strategy. Benin is considering acceding to the Convention.

- **Croatia** has adopted different national and international provisions to fight corruption. In particular, it has ratified and implemented the Council of Europe Convention against money laundering and is in the process of ratifying the Council of Europe Criminal law Convention Against Corruption [see also DAFFE/IME/BR/WD(2000)27]. Croatia formally applied to become Party to the 1997 Bribery Convention and to accede to the OECD Working Group on Bribery.

- **Colombia** has a special presidential program to fight corruption and is interested in acceding to the 1997 Bribery Convention. As a Party to the Inter-American Convention, it already criminalises bribery. It also committed to fighting money laundering as signatory to the 1988 Vienna Convention and through it’s co-operation with the Financial Action Task Force.

### Session II  The OECD Working Group on Bribery in International Business Transactions: Overview of activities

12. Professor Giorgio Sacerdoti, Vice-Chairman of the OECD Working Group on Bribery presented the activities of the Working Group on Bribery in International Business Transaction. He explained how the effective implementation of the Bribery Convention and the related recommendations is ensured through a self- and mutual monitoring process as well as regular exchanges with other OECD bodies. The support of the private sector, trade unions and civil society also ensures effective implementation of the OECD instruments. Reference was further made to the Group’s work in related areas i.e. bribery and political parties and political party candidates, bribery through foreign subsidiaries, the link between bribery and money laundering, and the use of offshore centres. Finally, he mentioned the consideration given to issues of particular concern to the private sector, trade unions and civil society i.e. the “demand” of bribes, bribery transactions between private individuals or entities as well as whistle-blowing.

13. Non-member representatives showed particular interest in the Group’s capacity to ensure the effective implementation of the Convention. They wondered whether the Convention would be endangered if many of the remaining signatories did not ratify; and how and whether the common standard
set by the Convention can be reached by all. Malaysia also raised concern about the adoption of laws that are not enforced and mentioned that, in its national context, enterprises solicited to bribe do not seek assistance by the authorities despite an act of 1971 that criminalises domestic bribery.

14. The Working Group confirmed that considerable progress has been made in ratification and implementation but that, to ensure the creation of a level playing field for international commerce, the Convention will need to be ratified and effectively implemented by all signatories. To reach a common standard, the Convention relies on the notion of functional equivalence. This means that the fundamental legal structure and principles of the parties is respected provided that the measures taken comply with the standards of the Convention. The Group also noted that, despite an overall positive assessment of the countries’ implementing legislation, deficiencies and potential gaps have been identified in some cases.

**Session III. Procedure and criteria for participating in the Convention and the Working Group**

15. Mr. Tom Delare, Chairman of the Ad Hoc Group on non-members, confirmed that the 1997 Bribery Convention is open to non-members which become full participants in the OECD Working Group on Bribery in International Business Transactions (Art.13 and related commentary) and described the procedures and criteria for joining [see DAFFE/IME/BR/WD(99)30/REV2]. In particular, governments of non-member countries interested in acceding to the Convention must be willing and able to fully meet all obligations and commitments inherent to this accession. After having received a formal application, the OECD will assess how well the applicant country meets the eligibility criteria, notably that of "major player" and of "mutual benefit".

**Session IV. Co-operating in anti-corruption initiatives**

16. All countries committed to fighting corruption are not expected, or may not consider it appropriate, to accede to the Convention. Nevertheless, there might be a shared desire to further intensify actions to improve links and co-operation in the fight against corruption. Non-members listened to different options envisaged by the OECD to improve links and co-operation without formal participation, including: the organisation of joint regional seminars and workshops, the expansion of the information-sharing process through new or extended anti-corruption networks, and the intensified collaboration with different bodies active in the field. Mr. Tom Delare also briefly introduced a proposal to develop an anti-corruption declaration. Non-members were invited to indicate whether they would consider participating in the elaboration, and the signature, of such declaration. Adherence to the proposed Declaration would formally commit to adopt specific anti-corruption measures and signal the commitment to international standards to combat bribery.

17. South Africa's proposal to hold a regional seminar in Africa was well received. Working Group delegates however underlined that the organisation of such a seminar would require active participation of regional partners.

18. Most non-members reserved their positions regarding the draft anti-corruption [DAFFE/IME/BR/WD(2000)25] until such time that have been able to give it serious consideration. A few countries expressed concern that the Declaration should not hold up or prevent accession to the Convention.

**Conclusions and Follow-up**

19. The Chairman concluded that the meeting had provided an interesting opportunity for all participants to learn more about the anti-corruption actions undertaken in the different parts of the world. It had also allowed delegates to the Working Group on Bribery in International Business Transactions to
note non-member countries interest in, as well as their questions and inquiries about, the anti-corruption work carried out under the auspices of the OECD.

20. He recommended that the Working Group give consideration to ways to continue the dialogue that was begun on the basis of the information submitted by non-member countries, in particular their replies to the questionnaire contained in the Information Note [DAFFE/IME/BR(99)30/REV2].

21. Non-member countries were asked to submit relevant information on national and international anti-corruption actions. They were further invited to send written comments to the OECD Secretariat to signal their desire to be associated with this effort to develop an Anti-Corruption Declaration.

22. The Working Group had a follow-up discussion in its plenary meeting to decide how to implement the outcome of this informal session [see DAFFE/IME/BR/M(2000)4].