

OECD Anti-Bribery Convention and the Country Monitoring Process

1 OECD Anti-Bribery Convention: Country monitoring process

Countries' implementation and enforcement of the [OECD Anti-Bribery Convention](#) and related instruments is monitored by the OECD Working Group on Bribery through a rigorous peer-review monitoring system. The Parties to the Convention are subject to review by their peers, with experts from different Working Group on Bribery countries serving as examiners of each evaluated country. Transparency International has described this monitoring mechanism as the “gold standard” of monitoring.

The Process

The monitoring process is subject to specific agreed-upon evaluation procedures. The monitoring process is compulsory for all Parties and includes meetings with non-government actors including civil society, the private sector and academia. The evaluated country cannot veto the final report and recommendations, and all evaluation reports are made public on the OECD website.

Monitoring reports by country

Country monitoring takes place over several successive phases:

- Phase 1 evaluates whether the legal texts through which participants implement the OECD Anti-Bribery Convention meet the standard set by the Convention.
- Phase 2 examines the structures in place to enforce these laws, assesses countries' application and implementation of the Convention and related instruments, and recommends concrete actions for improvement.
- Phase 3 focuses on progress made by Parties to the Convention on weaknesses identified in Phase 2, issues raised by changes in the domestic legislation or institutional framework of the Parties and enforcement efforts and results, and other key group-wide cross-cutting issues.
- Phase 4 focuses on enforcement efforts and results, unimplemented recommendations from Phase 3, cross-cutting issues while taking a tailored approach considering each country's unique situation and challenges, and reflecting positive achievements.

Following the adoption of the evaluation report, the OECD Working Group on Bribery monitors by way of follow-up reports the evaluated country's efforts to implement the Working Group's recommendations. In the event that the country has failed to take action to effectively implement these recommendations, the OECD Working Group on Bribery can employ additional measures to address an evaluated country's inadequate implementation or continued failure to implement the OECD Anti-Bribery Convention.

Country Monitoring Principles for the OECD Anti-Bribery Convention

The Working Group has agreed that the monitoring procedure should conform to a number of general principles:

- Purpose. The purpose of monitoring is to ensure compliance with the Convention and related instruments including the 2021 Recommendation on Further Combating Bribery of Foreign Public Officials in International Business Transactions (2021 Anti-Bribery Recommendation). Monitoring also provides an opportunity to consult on difficulties in implementation and to learn from the experiences of other countries.
- Effectiveness. Monitoring must be systematic and provide a coherent assessment of whether a participant has implemented the Convention and related instruments.
- Equal treatment. Monitoring must be fair and this means equal treatment for all participants.
- Efficiency and effectiveness. The monitoring procedures should be efficient, realistic, concise and not overly burdensome. Monitoring must also be effective to guarantee a level playing field.
- Co-ordination within the OECD. The monitoring of practical applications of some issues might require specific expertise that may be found in other parts of the Organisation. In conducting its evaluation work, the Working Group will endeavour to draw on information and expertise developed by other OECD bodies - particularly the Economic Policy Committee, the Committee on Fiscal Affairs, the Development Assistance Committee, and the Working Party on Export Credits and Credit Guarantees - on implementation of elements of the Recommendations in their respective fields.
- Co-ordination with other organisations. International organisations such as the Council of Europe (GRECO and MONEYVAL), the United Nations (UNODC), OAS, and FATF, share the goal of combating corruption and money-laundering, although the scope of their respective efforts and their objectives may differ. The OECD Secretariat will communicate regularly with the Secretariats of relevant organisations, with a view to avoiding duplication among respective exercises to monitor commitments to combat bribery in international business transactions.
- Public information. The [2021 Anti-Bribery Recommendation](#) calls on the Working Group to provide regular information to the public on its work and activities and on implementation of the Recommendation. This general responsibility must be balanced against the need for confidentiality during the evaluation process until a report is adopted by the Working Group and made public on the OECD Website.

Phase 1: country monitoring of the OECD Anti-Bribery Convention

The principal objective of Phase 1 is to evaluate whether the legal texts through which participants implement the OECD Anti-Bribery Convention meet the standard set by the Convention. Phase 1 also evaluates initial actions to implement the 2021 Recommendation (originally the 1997 revised Recommendation and then the 2009 Recommendation later replaced by the 2021 Recommendation) and provides an opportunity for countries to learn from the experiences and approaches of others.

Phase 1 includes elements of both self and mutual evaluation. The approach is “vertical” or based on examinations country-by-country. In consultation with the country examined, two countries are chosen to lead the examination. The countries acting as lead examiners choose the experts who take part in the preparation of the preliminary report. The entire group of countries Party to the Convention evaluates each country’s performance and adopts conclusions.

Elements of the Phase 1 mutual evaluation procedure:

- Preparation of the evaluation in the Working Group on Bribery.
- Appointment of two countries to act as lead examiners.
- Country's reply to an evaluation questionnaire.
- Preparation of a provisional report on the country's performance.
- Evaluation by the Working Group on Bribery.
- Adoption of a report, including conclusions, on the examined country's performance.

Preparation of the evaluation

A [questionnaire](#) is sent to the country, soliciting information on implementation of the Convention and the 1997 Revised Recommendation.

The replies to the questionnaire must be precise and provide sufficient detail to permit an assessment of conformity of laws with the Convention and consistency of laws and practice with the 2021 Recommendation. Replies must reflect all relevant elements of the legal system (including other relevant laws, regulations, judicial precedent, other treaties, the constitution) to provide a complete picture of the legal implementation of the Convention and the 2021 Recommendation.

Replies to questions concerning the Convention must also take into account information in the 2021 Recommendation. They must be provided in one of the two official languages of the OECD: English or French. The replies are then circulated to all participants in the Working Group. The lead examiners and OECD Secretariat examine the replies to ensure they are complete and, if necessary, requests additional information from the examined country.

Working Group evaluation and adoption of report

The evaluation has as its objective to clarify questions, adopt a final report, and formulate conclusions addressed to the examined country. The country being examined has the opportunity to make an initial presentation of its approach.

The lead examiners may also be called upon to make preliminary comments or ask initial questions during the evaluation. Although the lead examiners can help initiate the discussion, all delegates are invited to participate in the evaluation.

The report is adopted by consensus minus one.

Phase 2: country monitoring of the OECD Anti-Bribery Convention

After an initial assessment of countries' national legislation to determine its conformity with the Convention (Phase 1), the second phase of the monitoring process examines the structures in place to enforce these laws, assesses countries' application and implementation of the Convention and the Revised Recommendation, and recommends concrete actions for improvement.

Objective. 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. The [Phase 2 Monitoring Information Resources booklet](#) contains the text of the Phase 3 procedure and questionnaire

As for Phase 1, the evaluations in Phase 2 will be country examinations in order to obtain an overall impression of the functional equivalence of participants' efforts.

Elements in Phase 2 Evaluations:

- Reply to a questionnaire;
- On-site visits to country examined;
- Preparation of a preliminary report on country performance;
- Consultation in the Working Group;
- Adoption by the Working Group of a report, including an evaluation, on country performance

Questionnaire. The Working Group adopted a questionnaire for Phase 2 at its December 2000 session. The time limits for countries to be examined will be fixed by the Secretariat in co-ordination with the country concerned and the lead examiners.

Supplementary questions, specific to the country concerned, would take account of the results of the evaluation of that country in Phase 1 in order to follow up on issues identified in its review. The questionnaire should also elicit information concerning implementation of the 2021 Recommendation.

On-site visits by the Secretariat and lead examiners

On-site visits, which would be approximately 2-3 days, would be carried out in accordance with pre-determined terms of reference. The terms of reference for all on-site visits is set out in the Annex to this note. During on-site visits, a country should not be required to disclose information that is otherwise protected by a country's laws and regulations

On-site visits by the Secretariat and lead examiners would be an effective way to obtain information on practice with respect to a number of elements such as enforcement and prosecution. It also offers the possibility to talk with magistrates, police, tax and other authorities responsible for applying the law. The on-site visits would also be an opportunity to consult on other matters covered by the Recommendation.

There would be an overall benefit in Phase 2 from an informal exchange of views with key representatives of the private sector and civil society which could contribute to determining the impact that the laws and enforcement have had on behaviour, including compliance schemes. Each country would be consulted on the best manner of obtaining input from the private sector and civil society.

Two lead examiners for each country undergoing evaluation would be chosen, in consultation with the country examined. The countries acting as lead examiners will choose the experts who take part in the on-site visits as well as preparation of the preliminary report and the conduct of the examination in the Group.

Preliminary reports assessing performance

As for Phase 1, the report would have a standard format that follows the order of issues raised in the questionnaire. The format could include sections on description, evaluation and recommendations for improvement. The preliminary report would be based on the reply to the questionnaire and information obtained during the on-site visit to the examined country. The country undergoing evaluation would have an opportunity to comment on the preliminary report.

Consultation in the Working Group

The mutual evaluation would be undertaken through a consultation in the Working Group. The consultation would provide an opportunity to discuss difficult issues, to listen to the country evaluated explain its legal system and approach, and to formulate the recommendations that the Group would agree to make.

The examined country may bring a number of experts to the session, including from the enforcement community, in order to be able to respond to questions from the Group.

Adoption of a report on the performance of the country evaluated

The Working Group would formulate an evaluation concerning the country's performance which would be incorporated in a report. Discussions in the Working Group, as well as interaction between Secretariat, lead examiners, and the country examined, should ensure that the evaluation reflects the fullest possible understanding of the country's approach. The examined country will not block the Group's decision to adopt the evaluation. However it has the right to have its views, comments, and explanations fully reflected in the report and the evaluation.

Phase 3: country monitoring of the OECD Anti-Bribery Convention

The Working Group on Bribery adopted a post-Phase 2 assessment mechanism in December 2009, to act as a permanent cycle of peer review, involving systematic on-site visits as a shorter and more focused assessment mechanism than for Phase 2. The aim of the mechanism is to improve the capacity of Parties to fight bribery in international business transactions by examining their undertakings in this field through a dynamic process of mutual evaluation and peer pressure. The first cycle of review under this mechanism is known as Phase 3.

The purpose of Phase 3 is to maintain an up-to-date assessment of the structures put in place by Parties to the OECD Anti-Bribery Convention to enforce the laws and rules implementing the Convention and the 2009 Recommendations. Phase 3 involves a shorter and more focussed evaluation than Phase 2, and concentrates on the following three pillars:

- progress made by Parties to the Convention on weaknesses identified in Phase 2
- issues raised by changes in the domestic legislation or institutional framework of the Parties
- enforcement efforts and results, and other key group-wide cross-cutting issues

As for Phase 1 and 2, the approach for Phase 3 evaluations is “vertical” (based on evaluations for each country). The Working Group on Bribery established a schedule of Phase 3 examinations from 2009 to 2014, which includes the designation of two countries to act as lead examiners in each evaluation. The countries acting as lead examiners choose the local/national experts who take part in the on-site visits and they prepare the preliminary country report. The entire Working Group on Bribery, made up of representatives from all States Parties to the Anti-Bribery Convention, evaluates each country's performance and adopts conclusions.

Elements of the Phase 3 evaluation:

- Appointment of two countries to act as lead examiners.
- Replies to an evaluation questionnaire by the country being evaluated.
- On-site visit to the country being evaluated.
- Preparation of a preliminary report on country performance.
- Evaluation in the Working Group on Bribery.
- Adoption by the Working Group of a report, including recommendations, on country performance.

The [Phase 3 Monitoring Information Resources booklet](#) contains the text of the Phase 3 procedure and questionnaire, and the Convention.

Questionnaire

The Working Group has adopted a [questionnaire for Phase 3](#), which is sent to the country to be evaluated. Supplementary questions specific to the country concerned take into account the results of the Phase 2

evaluation of that country. The questionnaire elicits information concerning implementation of the Convention and the 2009 Recommendations.

On-site visit

On-site visits are normally conducted over a three-day period (as opposed to approximately one week in Phase 2), and are carried out in accordance with the Phase 3 procedure. During on-site visits, a country is not required to disclose information that is otherwise protected by a country's laws and regulations, and/or professional rules of conduct.

On-site visits by the lead examiners and OECD Secretariat are an effective way to obtain information on enforcement and prosecution. They also offer the possibility to talk with magistrates, police, tax and other authorities responsible for applying the law.

In addition, informal exchanges with key representatives of the private sector and civil society can contribute to determining the impact that the laws and enforcement have had on behaviour, including compliance schemes. Each country is consulted on the best manner of obtaining input from the private sector and civil society.

Preliminary report assessing performance

Reports include an evaluation and recommendations for improvement. Each report is based on the replies to the questionnaires, information obtained during the on-site visit to the evaluated country, and independent research carried out by the lead examiners and Secretariat. The country undergoing evaluation has an opportunity to comment on the preliminary report. The preliminary report is drafted by the lead examiners and the Secretariat.

Evaluation by the Working Group on Bribery

The mutual evaluation is undertaken through an evaluation by the Working Group on Bribery in International Business Transactions. The evaluation provides an opportunity to discuss difficult issues, to listen to a country explain its legal system and approach, and to formulate the recommendations that the Group agree to make.

The evaluated country may bring experts to the session, including from the enforcement community, to respond to questions from the Group.

Adoption of a report

The Working Group formulates recommendations concerning the country's performance, which is incorporated in the report. Discussions in the Working Group and interaction between the lead examiners, Secretariat and the country being evaluated ensure that the evaluation reflects the fullest possible understanding of the country's approach. The evaluated country cannot block the Group's decision to adopt the evaluation and its recommendations. However it has the right to have its views, comments and explanations fully reflected in the report and the evaluation.

Follow-up reports

Like Phase 2, evaluated countries will be asked to provide follow-up reports on the implementation of recommendations adopted by the Working Group. Oral reports will not be automatic, however. Instead, during the adoption of the Phase 3 report and recommendations, the Working Group may determine that an evaluated country should be required to report orally within 12 months on specific recommendations or follow up issues. In all cases, the evaluated country is required to submit a written report within 24 months

of the adoption of the evaluation report explaining steps taken by it concerning all Phase 3 recommendations and follow-up issues. When considering those steps taken, the Working Group may require the evaluated country to give a further oral report within a further 12 months on key outstanding recommendations.

Phase 4: country monitoring of the OECD Anti-Bribery Convention

Countries' implementation and enforcement of the OECD Anti-Bribery Convention is monitored by the OECD Working Group on Bribery through a rigorous peer-review monitoring system. Monitoring is subject to specific agreed-upon principles and takes place in several phases. Phase 4 monitoring was launched in March 2016 and focuses on enforcement of the Convention.

Overview

Phase 4 focuses on key group-wide cross-cutting issues; the progress made by Parties on weaknesses identified in previous evaluations; enforcement efforts and results; and any issues raised by changes in the domestic legislation or institutional framework of the Parties. Phase 4 endeavours to take a tailored approach, considering each country's unique situation and challenges, and reflecting positive achievements.

- The [Phase 4 Monitoring Guide](#) contains the full procedures.
- The [Country monitoring schedule](#) is provided here for 2016 – 2026.

The Phase 4 monitoring process was launched at the OECD Anti-Bribery Ministerial Meeting held in Paris on 18 March 2016. The Working Group on Bribery has established [a schedule of Phase 4 evaluations from 2016 to 2026](#), which includes the designation of two countries to act as lead examiners in each evaluation.

Key elements of the Phase 4 evaluation process

- Response by evaluated country to a standard and supplementary questionnaire.
- On-site visit to the evaluated country, two to four days in length.
- Preparation by lead examiners and Secretariat, in consultation with evaluated country, of a preliminary evaluation report on country performance, including recommendations and issues for follow-up, and a press release.
- Evaluation in the Working Group on Bribery, with adoption by the Group of the evaluation report, including recommendations, issues for follow-up and press release.
- Publication of evaluation report and press release on OECD website.

Involvement of private sector and civil society

When launching a new evaluation, the OECD publishes a call for written submissions on the evaluated country. This also includes a call for expressions of interest from relevant civil society and private sector representatives to participate in the on-site visit in the evaluated country. Any submissions/reports received from interested parties are shared with the Working Group on Bribery, used to inform the evaluation process, and subsequently published on the OECD website, subject to agreement from the evaluated country.

Follow-up

Following the adoption by the Working Group of the evaluation report, each evaluated country will report back to the Group in writing within 24 months of the adoption of the report, and at any other time as required by the Working Group.

Inadequate implementation of the OECD Anti-Bribery Convention

In cases where there is continued failure to adequately implement the Convention following a Phase 4 evaluation, Phase 4bis evaluation or any follow-up to the Phase 4 or 4bis evaluation, the Working Group may consider any appropriate measures, such as:

- ***Expedited reporting.*** The Working Group could require the evaluated country to provide regular reports on an expedited basis of its progress in implementing the Convention or related legal instruments. The evaluated country could thus be asked to report to each meeting of the Working Group on its progress and it would be expected to be significantly in compliance within a fixed timeframe. The reports could be accompanied by a brief analysis of the progress that has been made, which could be prepared by the Secretariat and, following approval by the Working Group, published online.
- ***Monitoring sub-group.*** A group of Working Group members, selected by the plenary, could in conjunction with the Secretariat be given responsibility for reviewing any progress, including holding face to face meetings with the evaluated country, and making recommendations to the Working Group on the next steps to be taken.
- ***Letter from the Chair.*** A letter could be sent from the Chair of the Working Group to the relevant Minister(s) in the evaluated country to draw attention to the Working Group's concerns about the failure to implement adequately the Convention or related legal instruments.
- ***Diplomatic engagement.*** The Working Group could invite the evaluated country to arrange for its ambassador or other diplomatic representative to attend an upcoming plenary to discuss the Working Group's concerns and possible solutions for better implementing the Convention or related legal instruments, with the aim of fostering political will and conveying the Working Group's concerns to all relevant national authorities.
- ***Action Plan.*** The Working Group could invite the evaluated country to develop a draft plan of proposed measures to address specific deficiencies in implementing the Convention or related legal instruments. The draft plan should provide sufficient detail to enable the Working Group to assess whether the proposed measures adequately address each deficiency. If the measures seem inadequate, the Working Group could invite the evaluated country to submit a revised draft plan for consideration. If the measures seem adequate, the Working Group could invite the evaluated country to report back on their implementation.
- ***Technical mission.*** A technical mission could be arranged to the evaluated country to discuss the Working Group's concerns about, as well as possible solutions for facilitating, the evaluated country's implementation of the Convention or related legal instruments.
- ***High-level mission.*** A high-level mission (typically comprised of the Chair of the Working Group, the Head of the Anti-Corruption Division, and several Heads of Delegation of Working Group members) could be arranged to the evaluated country to express the Working Group's concerns. The mission would meet with Ministers and senior officials.
- ***Public statement.*** The Working Group could issue a formal public statement to express concern about the evaluated country's insufficient compliance with the Convention or related legal instruments and to request their expeditious implementation.
- ***Due diligence warning.*** The Working Group could issue a public statement advising that the evaluated country's inadequate implementation of the Convention or related legal instruments may

justify enhanced due diligence on companies from that country. The evaluated country should first receive a confidential warning during a Working Group plenary before this measure is applied.

- **Designating high-priority recommendation.** The Working Group could label any significant or long-outstanding unimplemented recommendation made to the evaluated country as a high-priority recommendation. The recommendation would be included in an online list of high-priority recommendations in order to highlight its unimplemented status. It would be removed from the online list once the Working Group decides that it has been implemented or rendered obsolete by developments.
- **Suspending start of next monitoring phase.** The Working Group could publicly suspend the evaluated country's advancement to the next monitoring phase when warranted by the evaluated country's continuous or repeated failure to adequately implement the Convention or related legal instruments. During the suspension, the evaluated country would remain subject to monitoring within the context of the last monitoring phase that it had already commenced, including any additional measures that the Working Group may decide to impose during the suspension. The Working Group will consider whether to prolong the suspension every two years or earlier at the request of any Working Group member. To facilitate its deliberation on whether to end or prolong the suspension, the Working Group could invite the evaluated country to provide any additional information it deems relevant and ask the Secretariat and the relevant lead examiner countries to prepare a preliminary analysis.

In appropriate cases, the Working Group could decide, after hearing the evaluated country's views, to publish online details concerning any measure imposed.