



DIRECTORATE FOR FINANCIAL, FISCAL AND ENTERPRISE AFFAIRS

**Roundtable on Corporate Responsibility:
Enhancing the Role of Business in the Fight against Corruption
– Making the most of the OECD Guidelines for Multinational Enterprises**

SUMMARY OF THE ROUNDTABLE DISCUSSION

25 June 2003

This document reproduces the summary of the Roundtable discussion which was held on 25 June 2003. It will form part of the forthcoming publication "Annual Report on the OECD Guidelines for Multinational Enterprises: 2003 Edition".

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The OECD Roundtable on Corporate Responsibility is held every year in conjunction with the annual meeting of the National Contact Points (NCPs). The 2003 Roundtable invited leading anti-corruption practitioners to discuss how the business sector's contribution to the fight against corruption might be enhanced. It focused, in particular, on governments' roles in this effort and on how the OECD Guidelines for Multinational Enterprises can be used in synergy with other anti-corruption instruments¹.

The Roundtable was chaired by, Elaine Drage, the Head of the United Kingdom's delegation to the OECD Working Group on Bribery in International Business Transactions (WGB). NCPs and delegates to the WGB attended the meetings. The Roundtable was held under the Chatham House rule² to allow for a candid and constructive discussion.

During the Roundtable, representatives of the business, labour and NGO communities were invited to present their views on three topics:

- Current business practices in the fight against corruption;
- Governments and business – forming effective partnerships;
- The contribution of the OECD Guidelines to the fight against corruption.

This summary is organised into four sections. The first section – “Background” – sets the scene by reviewing such issues as business incentives and allocation of responsibilities in the anti-corruption field. This is followed by three sections covering the topics listed above.

Background

In her opening address to the Roundtable, Deputy Secretary General Asgeirsdottir – who heads OECD work on sustainable development, including its follow-up on the Johannesburg Summit – noted the relevance and timeliness of the Roundtable. In order to meet the Summit's goals in such areas as clean water, sanitation, adequate shelter and food, energy and health care, the world will need both honest governments and honest companies. Roundtable participants stressed the high human and economic costs of corruption and its “devastating” impact on economic and political processes. One participant cited a recent speech by Kenya's Minister of Justice, who stated that all the average Kenyan has to do to measure the costs of corruption is to look out his front door. Likewise, private sector corruption has disrupted investment processes, inflicted heavy losses on shareholders and disrupted financial planning in millions of OECD households.

Corruption is now high on political agendas. This is underscored by the June 2003 G8 Evian Summit's “Action Plan on fighting corruption and improving transparency”. Participants noted large number of anti-corruption initiatives that are being undertaken by the business community and other actors. International organisations' efforts were also cited, including the United Nations Convention currently under negotiation. The role of the Phase II reviews under the OECD Convention in raising awareness of anti-

corruption issues in the 35 signatory countries was highlighted³. These efforts and many others have moved the issue onto the centre stage of public policy. This, in itself, is a form of progress.

While participants were encouraged by the high priority now being assigned to the fight against corruption, the overall tone of the Roundtable was mixed. In terms of coming to grips with the reality of corruption on the ground, one NCP noted that he was impressed by “how little progress had been made so far and how much remained to be done.” Despite the large number of important initiatives undertaken to date, further sustained efforts by many actors will be required to win the fight against corruption. Broad cultural change needs take place and the conditions must be created that will permit the emergence of the basic components of effective anti-corruption systems (rights, institutions, know-how) to emerge.

Is corruption a good business strategy?

Participants pondered the question of whether or not corrupt business practices are profitable for businesses. As pointed out by one NCP-WGB delegate, this question is crucial for understanding how governments and other actors can address the problem most effectively. If corruption is rarely or never a profitable business strategy for individual employees or companies, then the fight against corrupt business practices becomes a self-enforcing proposition -- through trial and error, companies will tend to converge on a set of non-corrupt practices. On the other hand, if corruption is highly profitable, then strong deterrence – including highly punitive penalties (fines and jail sentences) and supporting detection efforts – is needed to offset the strong economic incentives favouring corruption.

The Roundtable discussion of this fundamental question did not produce clear-cut answers. Indeed, the range of participants’ answers – covering individual employee interests versus company interests; individual companies versus the interests of the business sector as a whole and short-run versus long-run considerations – suggests that the benefits and costs of corruption for business are multi-faceted and multi-layered:

- ***The collective interests of the business sector.*** In the words of one participant, companies are looking for “business opportunities, not corruption opportunities.” Many business opportunities are lost when corruption is so commonplace that it undermines basic business functions – resources are misallocated; consumers pay higher prices for lower quality goods; investment processes are undermined. In addition, public policies are re-shaped in the interests of “hidden stakeholders”. For business, this means that basic public inputs to its activities – e.g. contract enforcement, prudential surveillance, investment in public infrastructure used by business – may also be undermined. Thus, in a macroeconomic sense, corruption does not pay for the business sector as a whole. Indeed, its costs in terms of foregone business opportunities are certainly enormous.
- ***Sectoral interests.*** Some of the participants cited the collective interests of companies in sectors that are widely viewed by the outside world as being prone to corrupt practices. In such sectors (extractive industries were cited by one participant), highly visible episodes of corruption can undermine the reputation of all companies in the sector. Thus, the costs of corruption can include externalities that are borne by other companies operating in the same sector.
- ***Individual employees in individual companies.*** Depending on the sector of activity, the operating environment, legal frameworks in home and host countries and companies’ anti-corruption compliance system the decision to bribe might be a good “career move” for individual employees and possibly also a profitable investment for the company that employs

him. A trade union representative cited research documenting the use of bribes for such lucrative purposes as securing large scale procurement contracts, reducing prices of state assets to below fair market value or shaping public policy in ways favourable to the company. Alternatively, depending on the incentive system he faces (part of which is controlled by the company), the interests of an individual employee might diverge from the interests of shareholders -- an employee's decision to bribe could lower the value of the company (one business representative mentioned the problem of controlling "cowboy" employees). On the whole, though, the Roundtable's message was there are circumstances where corruption is a profitable strategy, both for individual employees and for their companies.

- ***Corruption also has costs for companies, even for those operating in environments where corruption is commonplace.*** Some participants mentioned longer term considerations and reputation effects – once a company starts paying bribes, it may find itself subject to escalating pressures to pay more. In contrast, if the company establishes a credible policy of not paying bribes, it realises longer term benefits -- lower vulnerability to extortion and solicitation; improved positioning in the honest segments of the company's market. However, some participants noted that, while reputation is important for some companies, it is a negligible competitive asset for others (e.g. enterprises operating in niche markets with little visibility outside their market segment). In addition, some participants noted that external actors (such as trade unions, NGOs, government officials) have a role to play in ensuring that reputation effects do exist (that is, reputation effects only exist if they are nourished by a supporting market and institutional framework).

The general thrust of the Roundtable discussion was that the challenge for business and other actors is to escape from their "corruption trap" – it may be in some companies' interests to engage in corrupt practices, but a coordinated and credible decision by all companies to forego such practices would enhance welfare, both for the business sector as a whole and for surrounding societies.

An NCP-WGB delegate noted that this situation poses a problem of "collective action" – how can individual incentives to engage in corrupt practices be altered so that societies and their business sectors can enjoy higher welfare? As is often the case in such circumstances, governments can play a role in helping companies achieve a co-ordinated, welfare-enhancing response (through regulation, law enforcement, information provision, etc.).

In addition, business associations can help to provide responses to the business sector's collective action problem. Business associations (including those organised along sectoral lines) and certain NGOs play an important role in helping companies meet their collective needs. Roundtable participants noted that business associations and NGOs are already active in this area – their roles in developing best practices manuals for anti-corruption compliance programmes and due diligence standards for vetting agents were cited as examples. Governments and trade unions have co-operated with the business community in many of these efforts.

Victims or perpetrators of crime?

Companies are often victims of crimes of extortion ranging from minor incidents to serious episodes which endanger or take the lives of employees. Because companies are both victims and potential perpetrators of crime, they find themselves in an inherently ambivalent position. At several points during the Roundtable discussions, the question of who bears responsibility for corruption – for example, the official soliciting money or the corporate actors who pay it – was raised. Several participants felt uncomfortable with the premise that appeared at times to underpin the business sector's perspective on this issue. They reminded

the Roundtable that, after all, corruption is a crime and that companies that give bribes are as guilty as the officials who accept them. Lack of responsibility in the public sector cannot be used as excuse for corporate irresponsibility.

While recognising that extortion is an important consideration, several participants stressed that companies often do have a choice. In environments in which recourse to corruption is essential for survival, companies can choose not to conduct business or not to invest. By criminalising bribery of foreign officials, the OECD Convention implicitly asks companies to forego business that cannot be conducted without bribery. An NCP acknowledged that this is extremely costly for some companies in some circumstances, but he also stated that it will strengthen the motivation for companies to call on governments to establish conditions in which business can be conducted with integrity.

Current business practices in the fight against corruption

Participants described the growing interest in the managerial component of the fight against corruption. Three recent initiatives were presented to the Roundtable that provide guidance to companies in organizing their anti-corruption efforts – the International Chamber of Commerce’s recently revised “Corporate Practices Manual⁴” on fighting corruption, Transparency International’s “Business Principles for Countering Bribery⁵” and the “TRACE Standard for Doing Business with Intermediaries Internationally”.⁶ These aim to provide practical tools to which companies can look for a comprehensive reference for good anti-corruption practice.

The Roundtable discussion of business practices focused on corporate policies, management systems and reporting.

Corporate policy and problems of definition

At a conceptual level, corruption is easy to define – “misuse of entrusted power for personal gain” was the definition proposed by one participant. But moving from generalities to useful behavioural guidance for employees confronted with corruption in their immediate business dealings poses serious problems for many companies. One delegate noted that corruption is a multilayered phenomenon that may not always lend itself to neat definitions – lack of clarity and need to account for specific circumstances may be permanent features of the fight against corruption (he also noted that this creates a role for flexible instruments such as the Guidelines). Nevertheless, Roundtable participants stressed the value of ongoing efforts to clarify the meaning of corrupt business practices in the many grey zones encountered in this area. Facilitation payments were described as “a dinosaur from the Foreign Corrupt Practices Act”. Legislation that permits such payments may create ambiguities when companies try to define permissible practices and management problems in global companies’ where employees of different nationalities might be subject to different legal constraints. The list of other issues identified by participants as requiring clarification includes: 1. use of agents, other business partners and subsidiaries; 2. political contributions; and 3. integrity of private-public transactions in such areas as outsourcing of public services and privatisation.

Management systems

The purpose of anti-corruption management systems is to shift the balance of incentives facing employees in favour of non-corrupt practices and to allow for credible management of corruption-related risks. The systems deploy a wide range of management tools including: communication of company policies (e.g. through codes of conduct); training programmes; ombudsman facilities; internal and external monitoring;

control systems vis-à-vis business partners (agents, suppliers, etc.); and human resources management (hiring, firing, promotion, compensation).

Participants noted that anti-corruption management systems needed to combine top-down components (involvement of the Board of Directors; leadership from top executives) and bottom-up components (in recognition of the fact that lower level personnel often make the decisions that determine anti-corruption outcomes). An NGO representative stated that most companies' management efforts are shallow; for example, few give concrete advice to employees who are on the front lines facing bribe solicitors. He suggested that there is an urgent need for companies to deepen their management practices in this field – going beyond codes of conduct and integrating anti-corruption considerations into the basic management processes of the company.

Participants identified management of the supply chain and of other business partners as a crucial consideration – business participants suggested that there is a need for greater “due diligence” in this area. One company represented at the Roundtable does media searches, examines financial records; and conducts personal interviews when vetting its business partners. Participants felt that this is an area where best practices and cost effective standards might be disseminated.

Reporting and information disclosure

One participant described what he saw as the “huge demand” for corporate disclosure in the anti-corruption field – a demand that has to date remained largely unmet (the background documentation for the Roundtable found that only a handful of the top 100 multinational enterprises report on their performance in this area). Several possible explanations for this were proposed:

- ***Lack of widely-accepted behavioural norms.*** One participant stated that performance reporting might be premature in the anti-corruption field. He stressed the need to work on developing consensus on the behavioural and management norms that underpin performance reporting. Reporting will come later once this basic infrastructure is in place. Not all participants agreed with this point of view – they thought it exaggerated the obstacles encountered by companies in this area. Another participant thought that companies might be reluctant to report because of the patchy nature of the national legal frameworks they face -- in publishing policies and performance, companies are placed in the uncomfortable position of either having to adopt the highest common denominator of available legal frameworks or to be seen as picking and choosing from among existing legal norms or as applying different integrity standards in different countries.
- ***“Lack of charm”.*** A WGB delegate noted the “lack of charm” of corporate anti-corruption reporting compared with performance reporting in such areas as environment (where companies can point to environmental initiatives and local projects that have wide public appeal). One participant guessed that companies are “put off by the atmosphere of self indictment” that appears to accompany anti-corruption disclosure – there are potential legal repercussions and few positive stories to tell. However, with the raising of the profile of corruption as a corporate responsibility issue and the growing recognition that reputation and integrity can be an important asset, companies may find that incentives are becoming stronger to inform the public about the anti-corruption policies, systems and performance.
- ***Lack of legal incentives.*** One participant noted that, in the United States, most of the anti-corruption cases that are prosecuted are self-reported and that companies may feel that they are not sufficiently rewarded for “coming clean” (companies that cooperate with the

enforcement authorities may, but are by no means certain to, benefit from reduced sentences in some national systems).

Governments and business – forming effective partnerships

Roundtable participants considered how governments, business and other actors might join forces in their common fight against corruption.

Complex interplay between corporate responsibility and government responsibility

One of the traditional themes of the OECD Corporate Responsibility Roundtables is the close link between corporate responsibility and government responsibility – business cannot do its job properly if governments do not do theirs. The 2003 Roundtable reaffirmed the relevance of this theme and identified corruption as an area where government and corporate responsibilities are particularly tightly inter-twined. One NCP noted that further progress in enhancing government responsibility – e.g. through more disciplined fiscal policies, appropriate regulation and social policies, improved public sector transparency and, more generally, a sharpened focus of governments’ areas of core competence and the elimination of government-created barriers to entry that foster cultures of rent-seeking and rent-protection – would facilitate the fight against corruption.

A trade union representative stated that the ongoing re-shaping of the public sector – virtually across the globe -- was having a major impact on opportunities for corruption. He noted that privatisation and outsourcing of formerly public sector activities had, in some cases, created windfalls for corrupt actors. NGO participants corroborated the view that privatisation and outsourcing of public services had created such windfalls. An NCP suggested that, in principle, privatisation should be an important measure for enhancing transparency and combating corruption. The Roundtable did not explore the common ground that might link these apparently divergent perspectives, but it did identify the management of public-private alliances, partnerships, privatisations and other dealings between governments and private businesses as a topical anti-corruption issue.

Private initiatives, law enforcement and other pillars of anti-corruption systems

The Roundtable discussions exposed doubts about how serious and credible the actions of both business and government actors are in the anti-corruption field -- both appear to suffer from serious credibility gaps. Participants recognised that there are no fail-safe approaches to law enforcement and private compliance. However, business, trade unions and NGOs largely agreed that, despite ongoing progress, there is a need to strengthen the current array of anti-corruption measures.

Participants identified the following needs for future action by governments:

- ***Show political will through stronger deterrence.*** Some participants stressed the need for zero tolerance in law enforcement as a way of showing that governments are serious about fighting corruption. Several noted that the OECD Convention is of no real use if it is not enforced – the 34 governments that have ratified the Convention should prosecute whenever they can.
- ***Make better use of existing instruments.*** Many anti-corruption, pro-integrity instruments already exist -- the OECD Convention, private initiatives, the OECD Guidelines. All actors need to work together to use these existing instruments more effectively. In particular,

several participants urged NCPs to “look for complementarities” between OECD anti-corruption efforts and the United Nations Convention currently under negotiation.

- ***Clarifying the definition of corruption.*** Business, trade unions, NGOs and governments need to co-operate and make further investments in clarifying the definition of corruption. They should reflect on and formalise thinking about which business practices are appropriate and which are not. Facilitation payments were identified as being particularly problematic in this respect and as an area where further work is urgently needed to clarify the boundaries of acceptable behaviour. Political contributions, use of agents and other business and subsidiaries were also specifically cited.
- ***Reinforce the rights framework.*** NGO and trade unions stressed the need to strengthen the rights framework – strong and effective trade unions and active civil society organisations are widely recognised as key pillars in the fight against corruption. Trade union representatives urged the NCPs to explore the linkages between freedom of association and corruption and stressed the importance of protection of whistleblowers.
- ***“Telling out of school”.*** The trade union, NGO and business communities all expressed the view that information is available – but not currently used -- that would be useful in the fight against corruption. An NGO representative invited all actors to become more active in “telling out of school” – that is, in ensuring that the information that is available in corporations, governments, trade unions and NGOs is better channelled and used in the fight against corruption. For their part, business representatives noted the procedural difficulties of whistle-blowing in some host countries (e.g. law enforcement authorities may not be receptive to their information) and its potential high costs (e.g. testifying in court against bribe solicitors, when competing companies do not, could be bad for business). They asked for assistance from governments in making information on bribe solicitors available to the appropriate authorities (see below).
- ***Improved public sector transparency.*** The role of improved private and public sector transparency in the fight against corruption was highlighted several times. One participant described on-going efforts to enhance transparency in the context of Chad oil development: the multinational enterprises involved will disclose their payments to the government; the government has agreed to establish a committee involving both government and civil society groups in order to monitor implementation of the government’s commitments on the allocation of oil revenues to pre-agreed development priorities. NGO participants expressed the hope that this approach would prove effective and noted that extractive industry transparency issues continue to be a challenge for governments, businesses and civil society representatives.
- ***Governments and NGOs from the developing world.*** Corruption is not a problem that can be solved by remote control. Governments, NGOs and trade unions from the developing world need to be more involved in OECD-based anti-corruption efforts. Participants urged OECD-based actors to make it clear that they intend to put their own house in order – corruption is not just a problem for developing countries. In addition, some participants felt that OECD governments and international organisations are not always as supportive as they could be of non-member governments’ efforts to investigate corrupt business practices involving OECD-based corporations.
- ***Whole of government approach.*** Governments can raise awareness of the importance of the business sector’s contribution to the fight against corruption through a broad array of

government programmes. They should take steps to see that anti-corruption objectives are fully reflected in such programmes as Overseas Development Aid, Export Credit Arrangements, and Investment Guarantees.

- ***Embed corporate codes of conduct into management processes.*** There is a need to embed anti-corruption policies more deeply in the management processes of the company (e.g. through training programmes). This is mainly a job for business, but governments can also contribute by promoting good practices in this area and by encouraging companies to adopt effective compliance programmes.
- ***Get the message to small- and medium-size enterprises.*** Governments need to enlist the support of small and medium-size companies in the fight against corruption. Larger companies can also help by promoting anti-corruption efforts among their business partners and in their supply chains.

The contribution of the OECD Guidelines to the fight against corruption

Roundtable participants noted that the Guidelines could become a key component of the OECD drive against corruption and warned against both exaggerating and underplaying their potential contribution. To the extent economic incentives strongly favour corruption, then formal law enforcement and deterrence is necessarily a central element in the overall anti-corruption strategy. However, participants also noted the loopholes in existing legal frameworks and the relative ease with which companies can use agents and other business partners to circumvent law if they are so inclined. In such cases, successful law enforcement will necessarily have to rely on the active cooperation of the business sector -- the Guidelines can be used to help enlist companies in this cooperative effort. In addition, many business actors are willing and highly motivated allies in the fight against corruption. They share the general revulsion at its heavy human and economic toll. "Softer" instruments such as the Guidelines can provide a means for governments to work with the large pro-integrity faction within the business community. Participants also noted the broad scope of the anti-corruption provisions of the Guidelines, meaning that they can be used to address a wider range of issues than legally binding instruments.

Participants provided some concrete advice to NCPs. They urged them to focus their anti-corruption efforts so as to exploit the obvious complementarities between the two instruments. The Guidelines should be used to address the many areas not already well covered by law and by the OECD Convention. A trade union representative suggested that the Guidelines be used to help "plug the loopholes in the OECD Convention" and specifically cited private-to-private corruption; political contributions; use of agents, other business partners and subsidiaries. Promoting disclosure in the supply chain was also highlighted as an important area (a recommendation that was also made at the 2002 Roundtable on responsible supply chain management).

The Roundtable also urged greater efforts by NCPs in the following areas:

- Raising awareness of the OECD Convention and the Guidelines;
- Helping companies understand where they should draw the line between corrupt and acceptable business practices,
- Encouraging companies to show more accountability in their anti-corruption efforts through voluntary reporting, such as that proposed by the Global Reporting Initiative or in the disclosure provisions of the Guidelines.

Perhaps the most innovative proposal – for what might be called a “corporate whistle blowing” facility -- came from the business community. Business representatives challenged the NCPs to assist companies confronted with solicitation of bribes and extortion. In particular, they asked NCPs to help them to store information about notorious bribe solicitors in host countries – at present this information is lost. Business participants explained that pursuing a judicial route for transmitting such information was not an option as no bribe is involved and companies’ appearance in follow-up court testimonies would expose them to a competitive disadvantage and possible retaliation. They argued that NCPs can act as non-judicial gatekeepers into home country governments for multinational enterprises wishing to lodge allegations of serious instances of solicitation. They considered that rendering such services is consistent with the second sentence of Guidelines Chapter VI (which states that enterprises should not be solicited or expected to render a bribe or other undue advantage) and with the provisions in Commentaries 45 and 46 of the Guidelines. In this scenario, NCPs would not investigate the allegations, but would channel information to Foreign Affairs Ministries or to other parts of government. Business argued that the simple fact that it is known that such information is being collected could have an immediate and significant impact on the solicitation.

This is perhaps the first time that business has requested a service from the institutions responsible for the Guidelines – a fact that was welcomed by the NCPs. The practical difficulties surrounding the creation of such a corporate whistle blowing facility were noted by several NCPs, but there was also a clear readiness to give serious consideration to the proposal.

Notes

- 1 Documentation used at the Roundtable included an issues paper, a fact finding study of the top 100 multinational enterprises' anti-corruption policies and management and reporting practices and a review of the strategic positioning of the OECD Guidelines in relation to other major anti-corruption instruments.
- 2 The Chatham House Rule states that "participants are free to use the information received, but neither the identity nor the affiliation of the speaker's, nor that of any other participant, may be revealed."
- 3 More information about the Convention can be found at: <http://www.oecd.org/daf/nocorruption/>
- 4 "Fighting Corruption: A Corporate Practices Manual" edited by Francois Vincke and Fritz Heimann. International Chamber of Commerce. Paris. 2003.
- 5 http://www.transparency.org/building_coalitions/private_sector/business_principles.html
- 6 www.TRACEinternational.org.