



OECD ANTI-BRIBERY MINISTERIAL MEETING

PROGRAMME

16 MARCH 2016

OECD CONFERENCE CENTRE
PARIS

The OECD Anti-Bribery Convention
and its role in the global fight against corruption

TOWARDS A NEW ERA OF ENFORCEMENT

PROGRAMME

08:30 – 9:30 Registration

09:45–10:30 **Opening Remarks [session open to media]** CC 1

Mr. Angel Gurría
Secretary-General, OECD

Mr. Andrea Orlando
Minister of Justice, Italy / *Chair of the Ministerial Meeting*

Ms. Loretta E. Lynch
Attorney General, United States / *Co-Vice-Chair of the Ministerial Meeting*

Mr. Drago Kos
Chair of the Working Group on Bribery in International Business Transactions

10:30–12:30 **Fighting Foreign Bribery in an Increasingly Complex World:
Towards a New Era of Enforcement [session open to media]** CC 1

Session Chair

Mr. Andrea Orlando
Minister of Justice, Italy / *Chair of the Ministerial Meeting*

Objectives

This will be the main session of the meeting, it is hoped that all participating ministers will be present for this plenary, open to the media. Ministers will reaffirm strong political commitment to implementation and enforcement of the Convention and related instruments. The session will provide an opportunity to recognise the accomplishments of the first three phases of monitoring of the Convention. Phase 4 monitoring, with its focus on robust enforcement by all WGB member countries, will be formally launched. Ministers will discuss combating foreign bribery and related issues, in particular: whistleblower protection, international co-operation, voluntary disclosure and negotiated settlements, and anti-corruption compliance, as well as the role of the Convention and the WGB in the broader, global anti-corruption framework. Ministers may also reflect on how the WGB can better achieve its objectives by strengthening efforts to engage with other OECD bodies that contribute to combating bribery (for example in the areas of tax, public procurement, development aid and competition) and the Financial Action Task Force in relation to anti-money laundering. Overall, Ministers will provide support and vision for the future activities of the WGB.

12:30–12:45 **Ministerial Declaration [session open to media]** CC 1

Mr. Andrea Orlando
Minister of Justice, Italy / *Chair of the Ministerial Meeting*

12:45–13:00 Group photo (if time allows)

13:00–14:00 *Lunch break*

14:00–15:15 **Breaking down Barriers: International Co-operation in Combating Foreign Bribery** CC 1

Moderator

Mr. Michael Lauber, Attorney General, Switzerland

Panellists

Mr. Rodrigo Janot, Prosecutor General, Brazil

Mr. Gerd Billen, State Secretary, Federal Ministry of Justice and Consumer Protection, Germany

Mr. Agus Rahardjo, Chief Commissioner, Corruption Eradication Commission (KPK), Indonesia

Ms. Anca Jurma, Chief Prosecutor of the National Anti-corruption Directorate, Romania

Objectives Fostering better international co-operation in foreign bribery cases is a top priority for both the WGB and the G20. In this session, Ministers will discuss how to improve international co-operation in foreign bribery cases and explore possible measures aimed to address this ongoing challenge. Ministers may identify areas for possible further discussion by the WGB in this domain.

15:15–15:45 *Coffee break*

15:45–17:00 **New Frontiers in Detection: Empowering whistleblowers and facilitating voluntary disclosure** CC 1

Moderator

Mr. Goran Klemenčič, Minister of Justice, Slovenia

Panellists

Ms. Amy Adams, Minister of Justice, New Zealand

Mr. David Green, CB, QC, Director, Serious Fraud Office, United Kingdom

Ms. Olivia Kirtley, President, International Federation of Accountants

Ms. Elena Panfilova, Vice-Chair, Transparency International

Objectives

Encouraging reporting by whistleblowers and protecting them from retaliation is central to early and efficient detection of bribery in international business as well as many other crimes. The importance of strong public and private whistleblower protection measures is underlined in the 2009 OECD Anti-Bribery Recommendation, the OECD Guidelines for Multinational Enterprises and the G20/OECD Principles of Corporate Governance.

This session will allow ministers to reflect on the level of implementation of OECD whistleblower protection standards, based on the findings of a forthcoming OECD publication on whistleblower protection frameworks in the public and private sectors. Noting that few countries have enacted effective whistleblower protection measures in either the public or private sectors, ministers could discuss the need for additional tools to encourage whistleblowing.

Encouraging individuals and companies to come forward and voluntarily disclose bribery in their international business operations is also an innovative means of detection that has been adopted in certain jurisdictions. This session will include presentations from countries with legal frameworks to facilitate voluntary disclosure in bribery cases (and accompanying settlement arrangements).

17:00–18:15

Prevention: Frameworks to encourage and recognise anti-bribery compliance

CC 1

Moderator

Sir Eric Pickles MP, UK Government Anti-Corruption Champion / *Co-Vice-Chair of the Ministerial Meeting*

Panellists

Mr. Raffaele Cantone, President of the Italian Anticorruption Authority, Italy

Mr. Andrew Weissmann, Chief of the Fraud Section, Criminal Division, Department of Justice, United States

Ms. Anna Bossman, Director, Integrity and Anti-Corruption Department, African Development Bank

Ms. Corinne Lagache, Vice-Chair, Anti-Corruption Task Force, BIAC

Objectives

In this session, ministers and other high-level guests will discuss the vital role of the private sector in taking measures to prevent, detect and address bribery in international business.

18:15–18:30

Closing Remarks

CC 1

Mr. Andrea Orlando

Minister of Justice, Italy / *Chair of the Ministerial Meeting*

18:30–20:00

Cocktail for all participants

Breaking down Barriers: International Co-operation in Combating Foreign Bribery

Key Facts

- A December 2015 OECD survey found 70% of anti-corruption law enforcement officials report that mutual legal assistance challenges have had a negative impact on their ability to carry out anti-corruption work.
- 13% of foreign bribery cases were brought to the attention of law enforcement authorities through the use of formal and informal mutual legal assistance between countries for related criminal investigations accounts. (OECD Foreign Bribery Report, 2014).
- Article 9 of the Anti-Bribery Convention provides that Parties should use all tools available to provide “prompt and effective legal assistance” to other Parties.
- Article 46 of the United Nations Convention against Corruption requires Parties to render to one another the “widest measure” of mutual legal assistance.

Why is international co-operation important?

International co-operation in the law enforcement and regulatory contexts can include formal mutual legal assistance (MLA), extradition, and informal exchanges of information for intelligence gathering purposes where lawfully allowed. Effective international co-operation between countries is crucial for the successful investigation, prosecution and sanction of international corruption offences.

Fast and efficient responses to requests for international co-operation can greatly increase the success of investigations and prosecutions. When the MLA and extradition system works efficiently, prosecutors and investigators have a greater chance of finding suspects, tracing and seizing proceeds, and bringing to justice those who participated in the crime. Delays are significant impediments.

MLA requests in anti-corruption cases commonly seek:

- Documents, e.g. bank or company records
- Statements and interviews
- Asset tracing
- Search and seizure
- Asset freezing, restraining, confiscating and forfeiting

What is being done at the international level to help?

The OECD is a hub for bringing together anti-corruption practitioners from around the world to share experiences, learn from each other and build stronger networks. The Working Group on Bribery has long supported biannual meetings for its law enforcement officials, to which non-members are regularly invited. This initiative could help to explain why the majority of successfully finalised foreign bribery cases involve only members of the Working Group.

In addition, in December 2015, the OECD hosted the first meeting of the Global Network of Law Enforcement Practitioners against Corruption. It brought together over 100 anti-corruption law enforcement practitioners from over 50 countries who identified good enforcement practices, discussed real-life corruption cases, and established direct professional contacts. Other similar groupings at the regional level include the OECD’s Anti-Corruption Network for Eastern Europe and Central Asia, the Asian

Development Bank/OECD Asia-Pacific Law Enforcement Practitioners Network, and the Network of Anti-Corruption Authorities and Law Enforcement Agencies of Asia-Pacific Economic Co-operation.

Key areas to discuss

Despite national and international efforts, obtaining effective MLA remains a significant obstacle to enforcement of corruption offences for many practitioners. Poor communication, weak law enforcement ties between countries, inadequate MLA requests, differing legal systems and criminal justice standards, and varied legal processes, are commonly cited by practitioners as major barriers to effective MLA. There are many factors underlying these problems, such as limited financial means for covering the costs of a request; limited availability of personnel; inadequate language resources; lack of technical capacity necessary to respond, for example relating to telecommunications interception; and the use of slow methods of transmitting information, such as through formal diplomatic channels.

Stronger networks among law enforcement and central authorities would lead to better communication and better understanding of legal systems and procedures. The resources, tools, expertise and capacity of central authorities and law enforcement authorities must be sufficient to provide prompt and full responses to MLA requests. For example, some countries have built effective electronic database systems to track requests at the national level. Technology could also be used expedite exchanges of MLA and to enhance access to information, such as the legal and procedural requirements that must be met for a country to provide assistance.

The five most significant systemic barriers to obtaining effective MLA

- Use of slow methods of transmitting information, e.g. through formal diplomatic channels
- Different legal systems or criminal justice standards, such as dual criminality requirements or due process
- Legal procedures, such as legal challenges or difficult processes to obtain bank records
- Poor communication or weak law enforcement ties/networks between the countries involved
- Insufficient resources, expertise or capacity for countries to respond to requests for MLA

Source: 2015 OECD Survey on Business Integrity and Corporate Governance

Discussion questions

- What tools do countries and international organisations currently have available to help streamline the MLA process? What advances can be made?
- What modern techniques are being used to overcome international co-operation obstacles?
- What are the benchmarks for adequate resources and tools for managing MLA requests? Are they being met?

New Frontiers in Detection: Empowering whistleblowers and facilitating voluntary disclosure

Key Facts

- The OECD has launched a new publication, *Committing to Effective Whistleblower Protection* which analyses countries' approaches to protecting whistleblowers.
- Voluntary disclosure or whistleblowing was the primary detection method in 33% of foreign bribery cases (OECD Foreign Bribery Report, 2014). Of the cases detected through voluntary disclosure, an internal whistleblower reported allegations in 17% of cases.
- Despite progress, 58% of Working Group on Bribery members still have inadequate whistleblower protection frameworks.
- Countries have recently adopted novel tools, such as monetary incentives for whistleblowers or reduced sanctions for voluntary disclosure, to promote reporting.

Protecting whistleblowers from retaliation is essential to promote public and private sector integrity and encourage the detection of misconduct.

The OECD is a leader in intergovernmental whistleblower protection instruments. In 1998 the OECD released a Recommendation on Improving Ethical Conduct in the Public Service. This was the first soft law instrument to put in place a dedicated principle on whistleblower protection. This was followed in 2009 with the OECD Anti-Bribery Recommendation which requires Member countries to "protect from discriminatory or disciplinary action public and private sector whistleblowers who report [foreign bribery] in good faith and on reasonable grounds".

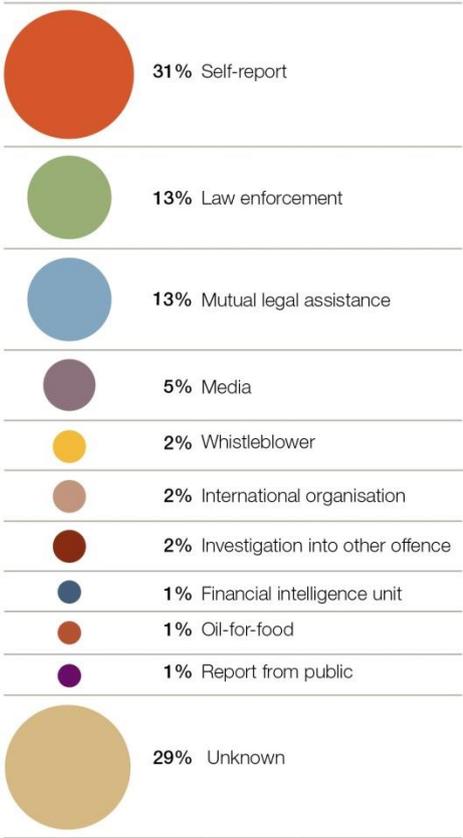
Why protect whistleblowers?

Whistleblower protection is essential to promoting the detection and reporting of misconduct, including bribery and corruption. The OECD Foreign Bribery Report (2014), which analysed all concluded foreign bribery cases between 1999 and 2014, found that 33% of cases were detected through voluntary disclosure (self-reporting to law enforcement) or whistleblowing.

What do countries need to do?

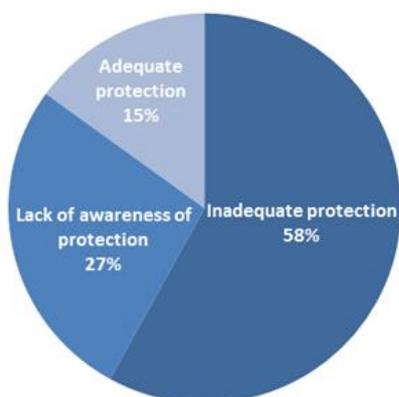
Recent years have seen significant developments in whistleblower protection in OECD countries. More OECD countries have put in place dedicated whistleblower protection laws in the past five years than in the previous quarter century.

How are foreign bribery cases detected by law enforcement?



Source: OECD Foreign Bribery Report (2014)

Do OECD countries have adequate whistleblower protection laws?



However, there remain only a handful of OECD countries that have enacted widespread dedicated whistleblower protection laws that apply to both public and private sector whistleblowers. Protection of private sector whistleblowers remains a particular issue; many countries provide dedicated protection only to public sector whistleblowers. A majority of countries lack any dedicated whistleblower protection legislation, depending instead upon ad hoc protection through fragmented provisions in a range of laws. The absence of a broad, dedicated framework risks providing less comprehensive protection which may discourage reporting and leave fraud and corruption undetected. Countries should strive to establish a consolidated, dedicated law for the protection of both public and private sector whistleblowers.

In addition to an effective legislative framework, it is also vital that companies and organisations adopt internal whistleblower protection mechanisms. Whistleblowing is a vital tool by which companies can detect misconduct; of all self-reported foreign bribery cases, 17% were detected internally by an internal whistleblower. Unfortunately, internal whistleblower protections are rare: a third of companies surveyed in the OECD Business Integrity Survey had no written policy whistleblower protection or were unaware of such a policy. Countries therefore need to increase efforts to promote and incentivise the establishment of internal company whistleblower protection mechanisms.

Some countries have taken novel steps to encourage whistleblowing or voluntary disclosure. Awareness-raising campaigns to promote protections and reporting have had positive effects and are frequently recommended by the Working Group on Bribery. Other incentives, such as offering monetary awards to whistleblowers or taking voluntary disclosure into account when deciding on sanctions or whether to prosecute, have also had positive results. These efforts can be particularly valuable in countries where the public is generally reluctant to blow the whistle.

Discussion questions

- Given countries' lack of compliance with the 2009 OECD Anti-Bribery Recommendation, is further encouragement needed to enact effective whistleblower protection laws and to achieve stronger implementation? How can civil society, business and international organisations contribute to this agenda?
- Are additional tools (such as monetary incentives or reduced sanctions for self-reporting) required to promote whistleblowing? What are the pros and cons of such tools?
- What can be done to overcome public reluctance to blow the whistle on acts of corruption?
- How important is voluntary disclosure to detecting and fighting economic crime? What are the major incentives and disincentives for companies to voluntarily disclose wrongdoing?
- How can legal frameworks, such as deferred prosecution agreements and other settlement procedures, be used to facilitate effective voluntary disclosure? What types of safeguards are necessary to ensure the proper administration of justice in this context?

A new OECD publication, **Committing to Effective Whistleblower Protection**, provides an in-depth analysis of the evolution of standards in whistleblower protection in both the public and private sectors. www.oecd.org/corruption/whistleblower-protection.htm

DISCUSSION PAPER 3: 17:00 - 18:15, CC 1

Prevention: Frameworks to Encourage and Recognise Anti-Bribery Compliance

Key Facts

- Robust anti-bribery compliance procedures are essential to ensuring that businesses are well placed to prevent, detect, and respond to bribery in international business.
- In Ernst & Young’s 2015 survey of 3800 respondents across 38 countries, 42% reported that their company did not have an anti-bribery policy in place, or did not know if there was one.
- The Working Group on Bribery promotes the development and implementation of anti-bribery compliance programmes through its peer monitoring and its government-endorsed guidance for businesses.
- Mitigated sanctions, deferred prosecution agreements, and partial or full legal defences are used by some countries to incentivise companies to develop compliance programmes.
- Article 2 of the Anti-Bribery Convention requires countries to hold companies liable for foreign bribery.

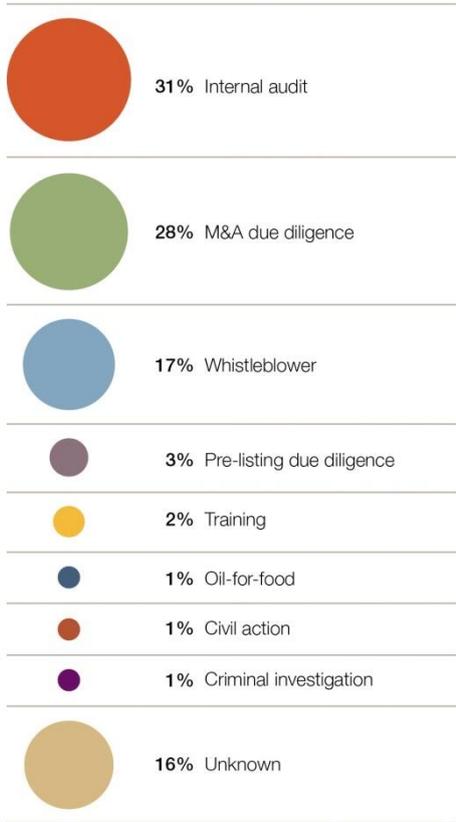
Setting the Scene

The OECD and the Working Group on Bribery have been instrumental in promoting the idea of punishing companies for many types of wrongful conduct, not just foreign bribery. Prior to the ratification of the Convention, most countries, including much of Europe, had no concept of criminal responsibility for companies in their national legal systems, despite the fact that corporate structures were increasingly being used as conduits for illegal activity. Now, all Parties to the Convention, with the exception of two, have in place a corporate liability regime for foreign bribery. However, the level of enforcement of corruption laws against companies is uneven across the Parties to the Convention. Higher enforcement levels would lead to stronger compliance.

The private sector has a central role to play in preventing, detecting, and responding to bribery in international business. Recognising this, in 2009 the OECD and the Working Group on Bribery released Good Practice Guidance on Internal Controls, Ethics, and Compliance. This was the first inter-governmental anti-corruption guidance for businesses and sets out the fundamental elements that - at a minimum - should be included in companies’ anti-bribery compliance programmes in order to effectively prevent and detect bribery. Countries efforts to raise awareness of this guidance are closely monitored by the Working Group on Bribery.

In addition, the OECD has provided input as a “liaison organisation” on the soon to be released ISO 37001 on Anti-Bribery Management Systems, to ensure that it builds on work done on this area at the OECD.

How did self-reporting companies become aware of foreign bribery in their business operations?



Source: OECD Foreign Bribery Report (2014)

How can the private sector prevent, detect, and respond to bribery in international business?

Foreign bribery is a crime that is by its very nature complex and covert. Therefore, detecting foreign bribery cases is one of the major obstacles to effective enforcement of anti-bribery legislation. Of the 427 enforcement actions studied in the OECD's Foreign Bribery Report, 31% were detected through self-reporting compared with only 13% by law enforcement. Of those that self-reported to law enforcement authorities, 137 were companies that discovered foreign bribery in their international business operations. The two main sources of detection for these companies were internal audits (31%) and due diligence in the context of mergers and acquisitions where foreign bribery was detected in the target company (28%).

These figures demonstrate the vital role played by the accounting and auditing profession in detecting bribery, and the importance of raising awareness of foreign bribery among these professions. It also highlights the need for effective compliance programmes with clear reporting mechanisms that enable the company to elicit early, bona fide information of suspected bribery.

Despite the known benefits of robust anti-corruption policies, their low prevalence among the private sector remains a concern. Ernst and Young's 2015 fraud and corruption survey found that while more than half of all respondents believed that bribery and corruption is widespread in their country, 42% reported that their company did not have an anti-bribery policy in place, or did not know if one was in place.

What can countries do to encourage corporate compliance?

Many countries have adopted what are commonly referred to as "compliance incentives". These are measures taken by governments to acknowledge the efforts made by a corporation to promote business integrity. These measures can vary from taking compliance programmes into account in deciding whether to prosecute or enter into a deferred or non-prosecution agreement, consideration of an organisation's anti-bribery controls as a complete or partial defence to foreign bribery, or a mitigating factor in sentencing. Anti-bribery programmes may also be considered in a decision to award public advantages or lift debarment measures.

Countries need to actively encourage the private sector to develop procedures in line with the OECD's Good Practice Guidance on Internal Controls, Ethics, and Compliance. Awareness-raising activities should also highlight the benefits of compliance, including potentially saving the company from both the risk of bribery and the costs involved in exposure and sanctioning.

Discussion questions

- In light of the high number of companies that either do not have, or are not known to have, anti-bribery compliance programmes, how can countries better incentivise businesses to develop and implement such controls?
- How have countries and the private sector successfully collaborated in the fight against foreign bribery?
- What does the private sector, including small to medium sized enterprises, view as the main challenge to implementing effective anti-bribery compliance programmes?
- Given the vital role played by accountants and auditors in detecting foreign bribery, how can countries better assist and work alongside these professions in combating corruption?

www.oecd.org/corruption/anti-bribery/

