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**REPORT BY THE CIME: IMPLEMENTATION OF THE CONVENTION ON BRIBERY IN  
INTERNATIONAL BUSINESS TRANSACTIONS AND THE 1997 REVISED RECOMMENDATIONS**

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## EXECUTIVE SUMMARY

1. Two years after its entry into force, ratification of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions is almost complete. Thirty-two of the original thirty-four signatories have deposited instruments of ratification. With ratification by the remaining countries expected soon, the Parties to the Convention are close to attaining the objective of criminalising the bribery of foreign public officials and ending tax deductibility for bribes paid to foreign public officials.

2. The enforcement mechanism of the Convention, through monitoring and peer pressure, makes it one of the most effective tools to combat international bribery and corruption. All twenty-eight countries that have implementing legislation have been reviewed<sup>1</sup>. While the Working Group on Bribery is satisfied with the degree of overall compliance with the Convention's standards, it has also noted some significant deficiencies and recommended remedial action. To ensure credibility and provide a firm basis for assessing enforcement, countries are urged to implement the recommendations for improving compliance with the Convention. The Working Group will periodically examine progress in addressing weaknesses or gaps in national legislation.

3. The Working Group has launched the process of examining application of the Convention in practice (Phase 2 monitoring). It adopted terms of reference for on-site visits as part of the Phase 2 monitoring as well as a self-evaluation questionnaire which has been sent to all members of the Convention. The Group intends to carry out these examinations as expeditiously as possible and will report to Ministers next year on the results of Phase 2 examinations completed during the year.

4. The success of the Convention has attracted increasing attention on the part of non-member countries interested in associating themselves with OECD efforts to fight bribery and corruption. This year, Slovenia will become the first non-member country to join the Convention since its adoption in 1997. Pursuant to the Council's mandate for a technical opinion on Slovenia's request to accede to the Convention and participate in the Working Group, the Working Group determined that Slovenia is committed to fully meeting the obligations and commitments inherent in joining the Working Group and the Convention. The Council is expected to invite the government of Slovenia to become a full participant in the Working Group on Bribery. Thereafter, Parties to the Convention will welcome Slovenia's accession and the deposit of its accession instrument.

5. Several important outreach events took place this year, including an informal meeting with Russian officials and civil society representatives to assess current efforts to fight corruption in the Russian Federation. The Anti-Corruption Network for Transition Economies which focuses on strategies to reduce corruption in the public sector, was re-activated this year with a successful meeting in Istanbul on 20-22 March. Participants agreed to pursue a more systematic approach to anti-corruption efforts in four

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<sup>1</sup> See paragraphs 6-22 of the attached Report.

strategic areas including the rule of law and civic action. Two important anti-corruption programmes, the Asia-Pacific Initiative and the Stability Pact Initiative for South East Europe, continue to provide a framework for diagnosing regional corruption problems and identifying solutions.

6. In continuing its work to strengthen the fight against corruption, the Working Group has been examining five issues mandated by Ministers including: bribery acts in relation to foreign political parties, advantages promised or given to any person in anticipation of that person becoming a foreign public official, bribery of foreign public officials as a predicate offence for money laundering legislation, the role of foreign subsidiaries in bribery transactions and the role of offshore centres in bribery transactions.

7. This year, the Group has begun to re-examine the issue of bribery transactions in relation to political parties, or candidates, and the role of foreign subsidiaries in bribery transactions. The Group is considering possible future actions, taking account of views expressed by civil society, including non-governmental organisations, as well as representatives of the private sector and trade unions. Previous work has confirmed that the Convention would cover bribery of a public official who is also a party official, and the bribery of a public official where a political party/party official is involved as an intermediary or third party beneficiary. The remaining gap that is relevant is the bribery of a foreign political/party official for the purpose of influencing government decision-making. The Group acknowledged that this is potentially a serious problem and that there is a need to determine its scope. It was agreed to do this via a questionnaire which would also ascertain the nature and the extent of the issues concerning bribery transactions that involve foreign subsidiaries. Conclusions will be forwarded to Ministers.

8. The Committee on Fiscal Affairs (CFA) regularly conducts a self-evaluation of countries' progress in implementing the 1996 Recommendation on the Tax Deductibility of Bribes of Foreign Officials. Significant progress has been made in disallowing the deductibility of bribes to foreign public officials. This self-evaluation should be seen in the context of the Working Group's reviews of how well each country's legislation meets the standards set by the Convention and the Recommendation. The Committee will provide its technical opinion on any tax issue that may arise in the Working Group's reviews, particularly in Phase 2 which requires the evaluation of the implementation of domestic legislation denying tax deductibility of bribes.

9. In recognition of the Convention and the 1997 Recommendation, the Members of the OECD Working Party on Export Credits and Credit Guarantees (ECG) adopted an "*Action Statement on Bribery and Officially Supported Export Credits*" in November 2000. This Statement commits members to take appropriate measures to deter bribery in officially supported export credits and in appropriate cases to take action that may include informing applicants about the legal consequences of bribery in international business transactions under their national legal systems, including national laws that prohibit such bribery. An applicant or exporter could be invited to provide an anti-bribery undertaking or declaration if this is in accordance with the practices followed in the Member's export credit system. Credit, cover, or other support might be denied if there is sufficient evidence that such bribery was involved in the award of the export contract. Members also agreed to review periodically actions taken pursuant to the Action Statement.

10. The Working Group continues to co-operate with the Public Management Committee (PUMA) in efforts to increase public integrity and standards of conduct on the part of public officials. Co-operation with the Development Assistance Committee (DAC) is assured particularly with a view to ensuring implementation of the DAC Recommendation on anti-corruption proposals for aid-funded procurement.

11. Recent achievements concerning the Convention should serve to confirm, or re-adjust, priorities. It is particularly important to avoid complacency and to maintain momentum. The framework to fight

bribery in international business transactions, consisting primarily of the Convention, the 1996 Tax Deductibility Recommendation and the 1997 Revised Recommendation, needs to be evaluated to determine whether measures to consolidate, strengthen and improve it are required.

12. Countries that have not ratified the Convention or enacted implementing legislation need to do so urgently. To strengthen the Convention's effectiveness, deficiencies in legislation should be remedied as a matter of priority. Monitoring will continue to ensure that legislation meets the standards of the Convention and that such legislation is enforced. It is essential to examine issues of a horizontal nature that arise in the monitoring context including the responsibility of legal persons, the effectiveness of sanctions, and the effectiveness of jurisdiction and to study the implications of these issues for the efficacy of the anti-bribery instruments.

**IMPLEMENTATION OF THE CONVENTION ON COMBATING BRIBERY OF FOREIGN  
PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS  
AND THE 1997 RECOMMENDATION**

**REPORT BY THE COMMITTEE ON INTERNATIONAL  
INVESTMENT AND MULTINATIONAL ENTERPRISES**

**I. Introduction**

1. Considerable progress has been made in the ratification, implementation and monitoring of the Bribery Convention since its entry into force in February 1999. At last year's Ministerial meeting, OECD Ministers confirmed that the fight against corruption is a high priority. Ministers urged all remaining countries to ratify and implement the Convention and called on the Working Group to begin monitoring of enforcement of the Convention. They recommended that deficiencies identified in current implementing legislation be remedied as soon as possible.

2. Monitoring of the Convention and the Recommendation is provided for in Article 12 of the Convention and Section VIII of the 1997 Revised Recommendation on Combating Bribery in International Business Transactions<sup>1</sup>. The Negotiating Conference on the Convention noted that further work was needed on a number of related corruption issues. Last year, Ministers confirmed that work on these further issues should be advanced (see section III, below).

**II. OECD Convention and Progress in Implementation**

**(i) Status of ratification and implementation**

3. The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions entered into force on 15 February 1999. All thirty OECD countries have signed the Convention as well as four non-members (Argentina, Brazil, Bulgaria, and Chile).

4. The Working Group on Bribery regularly monitors the progress of countries in ratifying and implementing the Convention. As of May, 2001, thirty-two countries have deposited their instruments of ratification with the Secretary-General (see Table in Annex 1). Of these, twenty-eight have been examined by the Working Group on Bribery to assess conformity with the Convention. Four others (Brazil, Chile,

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1. Article 12 of the Convention provides that "The Parties shall co-operate in carrying out a programme of systematic follow-up to monitor and promote the full implementation of this Convention. Unless otherwise decided by consensus of the Parties, this shall be done in the framework of the OECD Working Group on Bribery in International Business Transactions and according to its terms of reference...". The 1997 Recommendation, Section VIII, states that: "[The Council] INSTRUCTS the Committee on International Investment and Multinational Enterprises, through its Working Group on Bribery in International Business Transactions, to carry out a programme of systematic follow-up to monitor and promote the full implementation of this Recommendation, in co-operation with the Committee for Fiscal Affairs, the Development Assistance Committee and other OECD bodies, as appropriate..."

Portugal, Turkey) will be reviewed once implementing legislation is enacted. New Zealand has recently enacted implementing legislation. Ireland's implementation bill is awaiting Parliamentary approval.

5. Based on information supplied by the countries, Annex 1 sets out the steps which participating countries have taken to ratify and implement the Convention as well as steps taken to address issues raised during the evaluation of countries' implementing legislation (see paragraphs 17-19 below).

## **(ii) Results of Monitoring of member countries' commitments**

### **Monitoring Process**

#### **Phase 1**

6. In April 1999, the Working Group on Bribery began a programme of systematic follow-up to monitor and promote the full implementation of the Convention. Phase 1 of the monitoring examines each country's legislation (including case law) to assess whether the standards of the Convention have been adequately transposed in national law. The principal objective of Phase 1 is to evaluate whether the legal texts through which participants implement the Convention meet the standards set by the Convention.

7. Between April 1999 and May 2000, the Bribery Working Group carried out reviews of the legislation of twenty-one countries. The report, C/MIN(2000)8, summarising the results of the monitoring process, as well as the individual country assessments, were declassified and made available to the public on the Organisation's web-site. Since June 2000, seven additional countries have been reviewed. The results of the examinations of these seven countries are summarised below, paragraphs 8-16, and the individual country reports are available as a separate attachment [C/MIN/(2001)5/ADD]. The country reports will be made publicly available after transmission to the Council at Ministerial level.

#### **General Findings for countries evaluated in June-2000-May 2001<sup>2</sup>**

8. The monitoring process this year confirmed the general finding of the Working Group that in the great majority of countries reviewed, legislation implementing the Convention in national law meets the standards of the Convention. The Working Group remains satisfied that there is at present overall compliance with the Convention's obligations.

9. For the most part, the issues arising from the evaluation of the seven countries reviewed this year reflect the same concerns as those identified by the Group previously. The Group found that two countries failed to correctly transpose the requirements of the Convention as concerns the responsibility of legal persons for bribery of foreign public officials. The Group recommended that one country take remedial action to fully cover the case of benefits that go to third parties. Implementation of the 1996 Recommendation on tax deductibility of bribes was found to be unsatisfactory in one case where the denial of tax deductibility is dependent on a criminal conviction or a settlement to avoid criminal prosecution although that country has announced that it will introduce legislation to change this situation. In one country, draft legislation addressing some of the elements of the offence and providing for the liability of legal persons is pending. The Group urged the country concerned to make the necessary amendments as soon as possible.

10. Specific follow-up in Phase 2 evaluations will be necessary to accurately assess the effectiveness of provisions implementing certain elements of the offence, including where countries have not expressly provided in their legislation for cases where the advantage is for a third party beneficiary or, as in one case,

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2. France, Denmark, Luxembourg, Poland, Netherlands, Italy, and Argentina.

where the law does not explicitly mention the act of giving a pecuniary or other advantage. How courts will interpret the concept of “foreign public official” where the country’s legislation does not provide an autonomous definition will need to be monitored as well as the concept of small facilitation payments where there are no guidelines. The Working Group was concerned that a provision referring to solicitation of bribery may be used to weaken the effective application of the Convention in one country although this may be relevant for other countries as well.

11. Implementation of Article 2 of the Convention which provides for the criminal, or non-criminal, responsibility of legal persons, has given rise to particular concerns. Meeting the goal of functional equivalence in this area will be difficult to ascertain given the different legal systems pertaining to the responsibility of legal persons, including the conditions that trigger responsibility, be it of a criminal or administrative nature and in some cases the discretionary nature of such responsibility. The Group will be examining the issues concerning responsibility of legal persons in a meeting in June to determine how to make the Convention more effective in this respect.

12. Concerns of a horizontal character also relate to the overall level of sanctions whether in terms of imprisonment for natural persons or the amount of fines for legal persons which may, in certain cases, be too weak. Although the evaluation of any individual country concerning the effectiveness of sanctions cannot be made solely on the basis of minimum or maximum penalties, sanctions that are too low may impact adversely on a country’s ability to provide effective mutual legal assistance and extradition in accordance with the Convention. In other cases, there may be discretion to impose certain sanctions such as confiscation or forfeiture of the bribe or proceeds of bribery as required by the Convention, leaving uncertainty as to whether these sanctions will be effective, proportionate and persuasive.

13. Countries which have extended their jurisdiction to prosecute nationals for offences committed abroad (nationality jurisdiction) often require dual criminality as a condition for exercising such jurisdiction. The Commentaries to the Convention clarify that this requirement should be deemed to be met if the act is unlawful where it occurred even if under a different criminal statute. This last round of Phase 1 country evaluations confirms that certain conditions attaching to the exercise of nationality jurisdiction might restrict the effectiveness of such jurisdiction and that different interpretations of dual criminality may impede the effectiveness of this basis of jurisdiction. This matter will require a horizontal review by the Group.

14. Phase 2 will be particularly attentive to the effectiveness of enforcement. Some conditions which introduce differential treatment for the prosecution of foreign bribery cases under the Convention may impact on the effectiveness of prosecutions and will be re-examined in Phase 2.

15. Phase 2 should also carefully examine whether the statutes of limitations relating to foreign bribery offences, in practice, allow an adequate period of time for investigation and prosecution, particularly in countries where the statute of limitations applying to legal persons is relatively short. The nature of the offence and the difficulty that might arise in investigating it, requires that the Group address this issue on a horizontal basis as well as on a country-specific basis. For some countries, effective application of the tax non-deductibility of bribes will also be reviewed in Phase 2. One country still has to enact a decree denying tax deductibility for legal persons.

16. Some of the Parties to the Convention include dependent territories. Recognising the importance of this issue, the Group recalled that extending application of the Convention to these territories should be studied on a horizontal basis.

## **Follow-up to Phase 1**

17. In adopting its Phase 2 procedures, the Group recognised the importance of analysing those issues identified in Phase 1 as requiring attention by certain countries, especially remedial action in some areas. In its Report to Ministers last year, the Group expressed concerns about deficiencies in some countries' implementing legislation and made recommendations for remedial action. In the case of the United Kingdom, the Group noted that it was not in a position to determine that the UK's laws are in compliance with the standards under the Convention and agreed that it will re-examine that country in Phase 1 as soon as appropriate legislation is enacted. The Working Group will periodically examine progress made by countries to implement its recommendations.

18. The Group found that in a few cases, countries have adopted, or taken steps to introduce to Parliament amendments to their legislation addressing the issues raised in their Phase 1 examinations. However, the Group is of the opinion that not all countries have been diligent in implementing the recommendations by the Working Group, especially regarding major areas of concern.

19. The Group therefore called on countries once again to take action to address deficiencies. In particular, it recommended that appropriate legislation specifically prohibiting the bribery of foreign public officials be adopted and that exceptions to the foreign bribery offence which were found to be inconsistent with the standards of the Convention be removed. The Group identified certain loopholes or provisions in the elements of the offence that present a potential for misuse and requested countries to take remedial measures. Countries that fall short of the requirement to establish criminal or non-criminal responsibility of legal persons should adopt legislation in conformity with the Convention. In some countries, laws or decrees are pending that would address some of the serious deficiencies noted in the evaluations and the Group has urged these countries to speed up the enactment of adequate legislation.

## **Phase 2**

20. Ministers have reaffirmed the importance of effectively applying anti-bribery legislation. Monitoring will also play a key role in determining whether countries are effectively implementing their laws in practice. Phase 2 will therefore study the structures and the institutional mechanisms in place to enforce the implementing legislation. It should broaden the focus of monitoring to encompass more fully the non-criminal aspects of the 1997 Recommendation. The Group has adopted procedures for carrying out Phase 2 evaluations which includes a questionnaire and on-site visits to the country examined<sup>3</sup>. Finland will be the first country to be evaluated in Phase 2 before the end of 2001.

## **Conclusion**

21. Countries that have not yet ratified the Convention or adopted implementing legislation should do so by the end of the year so that next year's report to Ministers will conclude the Phase 1 examinations. Countries that have been examined in Phase 1 should give serious consideration to addressing any gaps or deficiencies in their national legislation. Overall, greater efforts are needed to implement the recommendations for improving compliance with the Convention. This will help to ensure credibility of the Convention and provide a firm basis for assessing enforcement of the Convention in Phase 2.

22. The Working Group intends to carry out Phase 2 examinations as expeditiously as possible. The Report to Ministers in 2002 should include a summary of the results of Phase 2 examinations carried out during the year. In addition, the Group will periodically review steps taken by countries to implement the recommendations concerning Phase 1 deficiencies and will report to Ministers on progress made.

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3. See DAFPE/IME(2000)2 and DAFPE/IME(2000)3

### III. Five Issues Relating to Corruption

23. In December, 1997, the OECD Council decided [C(97)240/FINAL] that the Committee on International Investment and Multinational Enterprises, through its Working Group on Bribery in International Business Transactions, should examine on a priority basis the following five issues: bribery acts in relation with foreign political parties, advantages promised or given to any person in anticipation of that person becoming a foreign public official, bribery of foreign public officials as a predicate offence for money laundering legislation, the role of foreign subsidiaries in bribery transactions and the role of offshore centres in bribery transactions.

24. Last year, special emphasis was placed on corruption issues relating to offshore financial centres as a result of several international initiatives focusing on this area. To strengthen the fight against corruption, OECD Ministers recommended that bribery of foreign public officials should be made a serious crime triggering the application of money laundering legislation. They also mandated the Steering Group on Corporate Governance to conduct analytical work on the misuse of corporate vehicles<sup>4</sup> which the Bribery Working Group had identified as possible impediments to successful anti-corruption investigations.

25. The Group is currently examining other issues relating to corruption particularly bribery in relation to political parties, or candidates, and the role of foreign subsidiaries in bribery transactions. An informal consultation with civil society, the private sector, and trade union representatives was held last February to consider possible future actions on the bribery of foreign political parties and candidates. Transparency International's (TI) recommendations to prohibit bribe payments to foreign political parties, adopted at La Pietra in October 2000, were also discussed.

26. Previous work has confirmed that the Convention would cover bribery of a public official who is also a party official, and the bribery of a public official where a political party/party official is involved as an intermediary or third party beneficiary. The remaining gap that is relevant to the issue of influence over government decision-making is the bribery of a foreign political/party official for the purpose of influencing government decision-making. The Group acknowledged that this is potentially a serious problem and that there is a need to determine its scope. It agreed to do this via a questionnaire which would also ascertain the nature and the extent of the issues concerning bribery transactions that involve foreign subsidiaries. Conclusions will be forwarded to Ministers.

### IV. Tax Deductibility

27. The Committee on Fiscal Affairs (CFA) regularly conducts a self-evaluation of countries' progress in implementing the 1996 Recommendation on the Tax Deductibility of Bribes of Foreign Officials. The most recent results (<http://www.oecd.org/daf/nocorruption/annex3.htm>), including information provided to the Working Group on Bribery, is reproduced in Annex 2. Significant progress has been made in disallowing the deductibility of bribes to foreign public officials<sup>5</sup>. Nevertheless, New Zealand has yet to pass legislation denying such deductibility and in the Netherlands a draft bill is under

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4. See DAF/CA/CG(2001)2/REV1

5. Section IV of the 1997 Revised Recommendation drawn from the 1996 Recommendation on the Tax Deductibility of Bribes to Foreign Officials, C(96)27/FINAL; reads as follows:

IV. [The Council] URGES the prompt implementation by Member countries of the 1996 Recommendation which reads as follows: "that those Member countries which do not disallow the deductibility of bribes to foreign public officials re-examine such treatment with the intention of denying this deductibility. Such action may be facilitated by the trend to treat bribes to foreign officials as illegal."

preparation in order to make tax non-deductibility independent of a criminal conviction. This overview by the CFA needs to be seen in the context of the Group's review of countries' implementation of the Recommendation on tax deductibility which is conducted under its monitoring process.

28. In carrying out its reviews, the Working Group on Bribery agreed that the CFA would provide its technical opinion on any tax issue that may arise. The CFA has provided input in Phase 1 of the monitoring process and agreed to be involved in Phase 2 which requires the evaluation of the implementation of domestic legislation denying tax deductibility of bribes.

29. The CFA also decided to provide guidance for auditors on the detection of bribes. The CFA commenced work in 2000 on a manual to assist tax examiners in identifying suspicious payments likely to be bribes. The work was intensified in 2001 and the CFA is in the process of finalising the "Bribery Awareness Handbook" which can be used by countries both as training material and as a Model when designing their own handbook for tax examiners. The "Bribery Awareness Handbook" provides useful legal background information as well as practical tips: indicators of bribery, interviewing techniques, examples (anonymous) of bribes identified in tax audits as well as a standard form for feedback by the tax examiner to his headquarters in order to facilitate the monitoring of trends and assessing risk.

30. The exchange of information between tax authorities can be viewed as an important mechanism for counteracting bribery of foreign public officials in international transactions. A recent development in this regard was the adoption on 22 March 2001 by the OECD Council of a Recommendation on the Use of the OECD Model Memorandum of Understanding on Automatic Exchange of Information for Tax Purposes C(2001)28. This Model MOU was designed to assist those countries wishing to engage in automatic<sup>6</sup> exchange of information for tax purposes. The MOU lists different types of information typically gathered by tax authorities that could be exchanged on an automatic basis with their treaty partners.

31. Countries that wish to enhance international co-operation to combat bribery in international transactions may include in the types of information exchanged, "commissions and other similar payments" as stated in Article 2 (n) of the OECD Model MOU. If information on such commissions cannot be exchanged automatically, the Model MOU provides that the competent authorities can agree to intensify other forms of exchange of information (spontaneous and on request) in the case of commissions, fees, brokers' fees and other remuneration paid to natural or legal persons." Exchanges pursuant to the MOU would, of course, be subject to the confidentiality provisions of the tax treaty or other instrument pursuant to which the MOU was agreed.

## **V. Other actions to implement the 1997 Revised Recommendation on Combating Bribery in International Business Transactions.**

### **(i) Review of the 1997 Recommendation on Combating Bribery of Foreign Public Officials**

32. Article X instructs the CIME to review the Revised Recommendation "within three years after its adoption". The Recommendation was adopted in May 1997. The review should reflect the outcome of discussions on issues that have arisen in the context of Phase 1 monitoring as well as those relating to the five issues mandated by the OECD Ministers. The Group will consider proposals for carrying out such a review at its June 2001 meeting, including whether, and in what context, to address the issue of private to private bribery.

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6. Information on one or various categories of income having their source in one Contracting State and received in the other Contracting State is transmitted systematically to the other State

**(ii) Solicitation and Whistle-Blowing**

33. These issues remain of particular concern to the private sector and civil society, BIAC, TUAC, ICC, and non-governmental organisations including Transparency International. In discussing possible further actions that would address the problem of solicitation or the role played by whistle-blowing in the fight against corruption, the Working Group agreed to include questions relating to both topics in the context of the general issues part of the Phase 2 questionnaire.

34. The Group noted that these questions do not imply obligations under the Convention or the Recommendation and are not part of evaluating a country's compliance with those agreements. These questions can, however, contribute to a general overview of the institutional framework affecting how countries implement the Convention and the Recommendation.

**(iii) Accounting**

35. At its June 2001 meeting, the Group will consult informally with representatives of the private sector, BIAC, TUAC, and civil society to examine ways to strengthen the monitoring of accounting and auditing related commitments under the Convention and the 1997 Recommendation. It will take account of the findings of a study by Transparency International, reviewing requirements and current practices of several signatory countries concerning the accounting and auditing provisions of the Convention and the Recommendation which was presented to the Group last year.

**(iv) Activities of the Export Credits and Credit Guarantees Working Party**

36. In recognition of the Anti-Bribery Convention and the 1997 Recommendation<sup>7</sup>, the Members of the OECD Working Party on Export Credits and Credit Guarantees (ECG) adopted an "*Action Statement on Bribery and Officially Supported Export Credits*" in November 2000 (see Annex 3).

37. Members agree to take appropriate measures to deter bribery in officially supported export credits and in appropriate cases to take action that may include informing applicants about the legal consequences of bribery in international business transactions under their national legal systems, including national laws that prohibit such bribery. An applicant or exporter could be invited to provide an anti-bribery undertaking or declaration if this is in accordance with the practices followed in the Member's export credit system. Credit, cover, or other support might be denied if there is sufficient evidence that such bribery was involved in the award of the export contract. Members also agreed to review periodically actions taken pursuant to the Action Statement.

38. The ECG also agreed the continuation of a mapping exercise to review the implementation of the OECD Convention on Bribery in Members' official export credit systems. The ECG also agreed the continuation of an ongoing transparency exercise to map the implementation of the OECD Convention on Bribery into Members' official export credit systems.

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7. Section II of the Revised Recommendation reconfirms the engagement set forth in the 1994 Recommendation, "that each Member country examine the following areas and, in conformity with its jurisdictional and other basic legal principles, take concrete and meaningful steps to meet this goal:

v) public subsidies, licences, government procurement contracts or other public advantages, so that advantages could be denied as a sanction for bribery in appropriate cases, and in accordance with section VI for procurement contracts and aid procurement:"

**(v) The DAC Recommendation on Anti-Corruption Proposals for Aid-Funded Procurement**

39. At its Senior Level Meeting (SLM) on 12-13 December 2000, the DAC adopted the report [DCD/DAC(2000)29 and CORR1] reviewing the implementation of and experience with this Recommendation. The report recalls that all Members have introduced or strengthened anti-corruption provisions in their procurement systems, in full compliance with the Recommendation. The review of experience with these provisions shows that, in different ways, they have made important contributions to Members' efforts to identify and tackle corruption.

- At a general level, the provisions taken pursuant to the Recommendation have sent strong and clear signals that donors, collectively, are resolved to fight corruption through common and co-ordinated approaches. This approach has also facilitated a constructive dialogue with other stakeholders (partner countries, the private sector, civil society).
- At more specific levels, the Recommendation has strengthened the ability and authority of Members to take actions, including legal actions, in cases where there has been evidence of corruption.

40. While the Recommendation specifically targets the area of aid-supported procurement, the review also shows that Members consider combating corruption to be an integral part of the broader development agenda, especially in relation to good governance. In these respects, SLM Participants agreed to pursue work in the following areas:

- Openness and transparency, together with monitoring and review procedures, are critical to combating corruption. With this in mind, the DAC will develop its role as a "clearing house" or forum to exchange information and experiences to strengthen the effectiveness of donor approaches and their dialogues with other stakeholders. Such a function could realise important synergies with other OECD initiatives to tackle the corruption issue and strengthen overall approaches.
- Increasing awareness of the costs and consequences of corruption, and strengthening countries' ability to fight corruption, are regarded as crucial elements of the dialogue with partner countries. Members agree that DAC work in these areas could be strengthened and made more visible, and include initiatives to raise awareness in partner countries (both with government employees as well as with the public and media more generally) as well as to strengthen efforts to improve human and institutional capacities, dovetailing anti-corruption initiatives with good governance programmes.

**VI. Co-operation with Non-Members**

*-- Accession procedures*

41. Co-operation with non-Member countries is an integral part of the OECD anti-bribery instruments. The Convention continues to attract increasing attention from non-members demonstrating an interest in associating themselves with the OECD's fight against corruption in international business transactions. Ministers declared on different occasions their intention to seek to secure the accession of a broad range of non-members to the Convention. While recognising that they have particular responsibility as major trading countries, OECD Members are also aware that it is essential, in an increasingly interdependent world, that all economies share responsibility for combating bribery. OECD governments therefore seek to improve the effectiveness of the agreed international standards by extending the application of the Convention beyond the membership of the Organisation.

42. The Convention is open to any non-member that becomes a full participant in the Working Group and that adheres to the 1996 and 1997 Recommendations<sup>8</sup>. The Working Group adopted a set of procedures [DAFFE/IME(99)39/REV1] to apply Article 13 of the Convention and the corresponding Commentary. These procedures also provide guidance on the interpretation of the Council criteria for participation, taking account of the specific goals and objectives of the Convention and the Working Group. The Group has also considered a Declaration for non-Members which it may re-visit pending future developments in global anti-corruption efforts. The overriding concern given the nature of the legal instruments in force, is that non-member governments must be willing and able to fully meet all obligations and commitments inherent in joining the Working Group and in acceding to the Convention.

43. Last March, the OECD Council asked the Working Group for a technical opinion on the request by Slovenia to accede to the Convention and to participate in the Working Group. Slovenia's request was examined at the Group's meeting on 18-20 April 2001 on the basis of a Secretariat report as well as replies provided by the Slovenian authorities to the questionnaire for non-members seeking participation in the Group's work.

44. In the view of the Working Group, Slovenia meets the criteria of "major player" and "mutual benefit" as interpreted by the Working Group. Overall, the Group was satisfied that Slovenia has committed to fully meet all obligations and commitments inherent in joining the Working Group and in acceding to the Convention, based on a complete understanding of those obligations and commitments. Accordingly, the Group agreed to recommend to the Council that Slovenia be invited to become a full participant in the Working Group. The Group noted that the request by Slovenia was examined entirely on its own merits and that its decision to recommend full participation for Slovenia does not therefore prejudice the outcome of future examinations of non-members wishing to accede to the Convention and to join the Working Group. Depending on the particular circumstances of each qualified applicant country, the Group might equally determine that a period of observership prior to full participation in the Working Group, would be helpful in assisting an applicant country to work towards compliance with the obligations of the Convention and membership in the Group.

*-- Informal meeting with Russian Federation Representatives*

45. On 26 and 27 February 2001, delegates of the OECD Working Group on Bribery met with representatives from the Russian Federation from the private sector and civil society (26 February) as well as government ministries (27 February). During two separate round-tables, the different constituencies discussed and assessed the Russian Federation's current efforts to fight bribery and corruption.

46. Russia has applied to the OECD Secretary-General to accede to the Bribery Convention and to join the OECD Working Group. The Group decided to hold meetings in Russia in order to get a better understanding of Russia's current legal and institutional framework for combating bribery and corruption, domestically and on an international level. These round-tables aimed at facilitating an exchange of information and establishing contacts with Russian representatives.

47. Participants acknowledged the need to find ways to contain the downward spiral of corruption and criminality in Russia that were seriously endangering economic reform and undermining the legitimacy of government and public confidence in democracy. There was a widely shared view that Russia's participation in the Working Group and its accession to the Convention would be premature at

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8. Article 13 of the Convention provides for accession by a non-member "... which [...] has become a full participant in the Working Group on Bribery in International Business Transactions ...". Paragraph 37 of the Commentaries to the Convention states that the current procedures regarding full participation by non-members in the Working Group on Bribery are found in Council Resolution C(96)64/REV2/FINAL.

this stage. Anti-corruption measures need to be better defined and implemented and regulatory as well as judicial and administrative reforms need to be introduced as a matter of urgency. The private sector and civil society should find ways to monitor government's support of and commitment to anti-corruption initiatives.

48. The OECD can provide assistance in identifying intermediate, measurable steps, taking account of the specificity of the Russian situation. As follow-up action, the OECD will summarise the main observations and conclusions of these meetings and send the draft report to the Russian participants for their comments. This report will be brought to the attention of the Bribery Working Group in June and could be discussed in the framework of the co-operation agreement between the OECD and the Russian Federation. These discussions could help identify possible options for closer working relations. Bilateral meetings on specific issues could also be held with the same group of private sector, civil society, and government representatives as a way to maintain momentum and support reform efforts.

*-- Asia-Pacific Anti-Corruption Initiative*

49. The ADB/OECD Anti-Corruption Initiative for Asia-Pacific was established at a workshop on *Combating Corruption in Asian and Pacific Economies*, which was held in Manila, the Philippines, in October 1999, and was officially launched at the ADB/OECD Initiative's 2<sup>nd</sup> annual conference, hosted by the Government of Korea, in Seoul on 11-13 December 2000. The conference addressed a number of key anti-corruption issues, such as bribery of public officials, improvement of public sector ethics, and corporate governance. A number of workshops discussed specific corruption prone areas such as tax administration, police forces, and public procurement.

50. The conference conclusions proposed a number of concrete projects, including a regional anti-corruption statement with a menu of options, fostering the regional policy dialogue by means of annual conferences, anti-corruption training facilities in co-operation with the World Bank East Asia Bureau, and support to the civil society through the Initiative's website (<http://www.oecd.org/daf/ASIAcom/>) and other outreach tools. The regional anti-corruption statement will be developed by an international expert team co-ordinated by ADB and OECD. If feasible, the statement could be presented for endorsement at the Initiative's 3<sup>rd</sup> annual conference in Japan in winter 2001. As the Secretariat of the Initiative, the OECD will, jointly with ADB, continue to manage and expand the existing regional website, and develop the first training sessions, making use of the World Bank's Distance Learning Centre facilities, which are planned for summer 2001.

*-- The Anti-Corruption Network for Transition Economies*

51. In 1998, the OECD created the *Anti-Corruption Network for Transition Economies* in co-operation with, among others, USAID, the World Bank, the Council of Europe, and the European Commission. The Network is a forum for knowledge and experience sharing among donors, government officials, and non-governmental actors, encouraging regional ownership and co-operation. It focuses on strategies to reduce public sector corruption through support for the implementation of appropriate political, institutional, and economic reforms. The Network has since contributed to awareness raising, policy dialogue and alliance building between regional countries and with international partners.

52. Since its launching, significant changes have taken place in the fight against corruption in southern, central, and eastern Europe and the NIS. Legislative changes have been introduced in many countries and some countries have acceded to international anti-corruption initiatives. Transparency International chapters, as well as other anti-corruption NGOs, have become active proponents for change. In this dynamic environment, the annual meeting of the Network which took place in Istanbul on 20-22 March 2001, agreed to pursue a more systematic approach to anti-corruption efforts involving interested

local and international players. It addressed the promotion of the rule of law, including an examination of legal instruments and enforcement mechanisms, improving the quality of public administration and management, and the role of civic action.

53. The annual meeting brought together three Justice Ministers and senior officials representing 24 countries, including 17 transition economies, business and trade union leaders and civil society groups. Participants agreed that the Network must be more demand-driven and responsive to the changing needs and priorities of its members. Participants reaffirmed their commitment to a successful follow-up process to the Annual Meeting and to ensuring that words are translated into actions, and actions into results. In keeping with this commitment, Delegates identified the need for future actions within the Network in the four strategic areas, including the rule of law and the use of legal instruments, good governance, civil society participation, and regional networking.

*-- The Stability Pact Anti-Corruption Initiative (SPAI)*

54. The Stability Pact Anti-Corruption Initiative is the spearhead of the international community to fight corruption in South Eastern Europe. The OECD, the Council of Europe, the World Bank, the European Commission and the United States, with the help of the Office of the Special Co-ordinator, prepared the Initiative. The Stability Pact formally endorsed the SPAI in Sarajevo on 16th February 2000 and asked the OECD and the Council of Europe to act as the Secretariat of the Initiative.

55. The Anti-Corruption Initiative sets out a number of priority measures to fight corruption, which include: taking effective measures on the basis of existing relevant international instruments; promoting good governance and reliable public administrations; strengthening legislation and promotion of the rule of law; promoting transparency and integrity in business operations; and, promoting an active civil society. In addition to acting as the Co-Secretariat, the OECD is responsible for the implementation of two key pillars of the Initiative: promoting good public governance and fighting bribery and corruption in business transactions.

56. The SPAI envisions a three-stage process. The first phase requires participating countries to assess their completion of the seven immediate actions. The phase was completed when the Managing Committee and participating countries reviewed the self-assessments at the first Steering Group meeting held in Strasbourg on 18-19 December 2000.

57. The second phase provides a general assessment related to the five pillars for each participating country. The purpose of the country assessments is to take stock of the anti-corruption performance of each country, assess prospects and trends, identify policy implications for national governments and target technical assistance needs. The results have been discussed at the second meeting of the Steering Group in Tirana on 17-20 April and will soon be published to allow the public at large to know where their country stands in comparison with their neighbours and international standards. The assessments have been serving as a basis for the SPAI for the third phase -- the monitoring and capacity-building process.

58. The third phase is monitoring and peer review and began in Spring 2001. The SPAI monitoring process uses the "peer pressure" technique, already successfully tested under the OECD Convention on Combating Bribery of Public Officials. Under the peer review procedure, the Steering Group systematically monitors the participating countries' adherence to the commitments of the Initiative. The systematic review of commitments under each pillar of the Initiative is being done over a first cycle of four Steering Group meetings to be completed by April 2002. In addition to the monitoring of the implementation of the SPAI in 2001 and early 2002, the Management Committee has been working to develop:

- the identification of technical assistance needs per country;
- the provision of policy and institution-building expertise;
- the implementation of several projects, including a regional conference, specifically dedicated to the involvement of civil society in the fight against corruption; and co-ordination among the international donor community.

**ANNEX 1: STEPS TAKEN AND PLANNED FUTURE ACTIONS BY PARTICIPATING COUNTRIES TO RATIFY AND IMPLEMENT THE CONVENTION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS <sup>1</sup>**

Information as of 20 April 2001

**Thirty-two countries have deposited their instrument of ratification with the Secretary-General of the OECD:** Iceland (17 August 1998), Japan (13 October 1998), Germany (10 November 1998), Hungary (4 December 1998), United States (8 December 1998), Finland (10 December 1998), United Kingdom (14 December 1998), Canada (17 December 1998), Norway (18 December 1998), Bulgaria, (22 December 1998), Korea (4 January 1999), Greece (5 February 1999), Austria (20 May 1999), Mexico (27 May 1999), Sweden (8 June 1999), Belgium (27 July 1999), Slovak Republic (24 September 1999), Australia (18 October 1999), Spain (14 January 2000), the Czech Republic (21 January 2000), Switzerland (31 May 2000), Turkey\* (26 July 2000) France (31 July 2000), Brazil\* (24 August 2000), Denmark (5 September 2000), Poland (8 September 2000), Portugal\* (23 November 2000), Italy (15 December 2000), Netherlands (12 January 2001), Argentina (8 February 2001), Luxembourg (21 March 2001 ), Chile\* (18 April 2001).

**Argentina**            The Argentine Republic approved the Convention by Law N° 25.319 on 18 October 2000 and deposited the instrument of ratification on 8 February 2001 with the OECD Secretary-General.

To conform to the Working Group's recommendations, a draft bill will soon be sent to Congress amending Article 258 bis of the penal code adapting the criminal offence of bribery of a foreign public official to the standards of the OECD Convention, and to provide an autonomous definition of "foreign public official".

The Ministry of Justice and Human Rights is also preparing a bill on the issue of criminal liability of legal persons, in accordance with the standards of the Convention. It is estimated that the bill will be ready by the second semester of 2001.

**Australia**            Legislation to implement the Convention has been passed by the Australian Parliament and received Royal Assent on 17 June 1999. The instrument of ratification has been deposited with the OECD Secretary-General on 18 October 1999. The legislation came into effect on 18 December 1999.

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1 .            Countries also provided information on steps taken to implement the Working Group's recommendations concerning issues identified in the course of Phase 1 evaluations

\*.            These countries have not yet enacted implementing legislation

The domestic offences of bribery have been updated and the penalties raised to those imposed on bribery of foreign public officials.

- Austria** The legislation implementing the Convention is in force in Austria since 1 October 1998. The First Chamber of Parliament passed the bill for ratification on 24 March 1999. The ratification process was finalised and the instrument of ratification deposited with the OECD Secretary-General on 20 May 1999. The discussion process on reviewing the status of legal persons was started and a governmental bill is expected to be issued early next year. It is foreseen that the legislation will come into force by mid 2002. In adopting this legislation, Austria will conform to the Second Protocol to the Convention for the Protection of the Financial Interest of the European Union and other EU instruments as well as the Council of Europe Criminal Law Convention on Corruption, signed on 13 October 2000.
- Belgium** Ratification and implementation of the Convention involved two different steps. With respect to revision of penal law to comply with the obligations under the Convention, the legislative proposal was passed by Parliament at the beginning of February 1999, it was published on 23 March and entered into force on 3 April. The ratification bill was adopted by Parliament on 22 April and it received royal sanction on 9 June 1999. The instrument of ratification has been deposited with the OECD Secretary-General on 27 July 1999.
- Brazil** Brazil ratified the Convention in 2000. The Senate approved the ratification bill on 12 June 2000. The President signed the bill on 6 August and the instrument of ratification was deposited with the OECD Secretary General on 24 August 2000. The Convention text was published in the Official Gazette on 30 November 2000. The draft implementation bill has been finalised and approved by the President, who submitted the bill to Congress on 20 February 2001. The bill provides for criminalisation of active bribery in international business transactions as well as trafficking in influence. It has been submitted to the Constitutional and Justice Commission of the Chamber of Deputies (lower house of Congress). Congress is expected to act on the bill by the end of the current year.
- Bulgaria** Bulgaria ratified the Convention on 3 June 1998 and deposited its instrument of ratification on 22 December 1998 with the Secretary-General of the OECD. The implementing legislation, including the definition of foreign public official, was passed by Parliament on 15 January 1999 and came into force on 29 January 1999. The text of the Convention was published in the Official State Gazette on 6 July 1999. From this date on, it is considered part of the domestic legislation. Subsequent to the Working Group's recommendations, Parliament adopted on 8 June 2000, amendments to the Penal Code relating to the criminalisation of "offering" and "promising" of a bribe as well as the abolition of the concept of "provocation" as a defence. On 13 September 2000, a draft supplementing the Law on Administrative Offences and Sanctions whereby monetary sanctions and forfeiture can be imposed on legal persons that are found to bribe or commit some other crimes went through first parliamentary reading. On 8 February 2001, the government also submitted a draft amendment to the Penal Code whereby non-material (non-valuable) advantages are included in the scope of bribery. Bulgaria ratified the Council of Europe Criminal Law Convention on Corruption (12 April 2001).

- Canada** The new legislation was adopted by the Senate on 3 December 1998 and by the House on 7 December 1998 and received Royal Assent on 10 December 1998. The Convention was ratified on 17 December 1998. The law came into force on 14 February 1999, a day before the entry into force of the Convention.
- Chile** The draft ratification law of the Convention was presented to the Chamber of Deputies on 5 January 1999 which approved it on 23 March 2000. The draft bill, which had been sent to the Senate on 4 April, was approved in March 2001. Chile deposited its instrument of ratification with the OECD Secretary-General on 18 April 2001.  
Chile has no provisions criminalising bribery of foreign public officials. Studies to determine the necessary amendments to national law to implement the Convention are still being carried out by the Ministerio Secretaria General de la Presidencia and other government agencies.
- Czech Republic** The draft amendment to the Criminal Code was adopted by Parliament and came into force on 9 June 1999. The ratification process was finalised and the instrument of ratification deposited with the OECD Secretary-General on 21 January 2000. The Convention entered into force internally on 21 March 2000.  
An amendment to the Income Tax Act stating explicitly that bribes are not deductible expenses entered into force on 1 January 2001. A new Act on Auditors also entered into force on 1 January 2001. Accordingly, auditors have to notify immediately any indications of possible acts of bribery to the statutory and supervisory bodies of the company.  
The government approved, on 9 April 2001, the legislative concept of re-codification of the Criminal Code, which will include the introduction of criminal responsibility of legal persons. The final draft of the new Criminal Code has to be submitted to the government before the end of 2002.  
The Czech Republic ratified the Council of Europe Criminal Law Convention on Corruption (8 September 2000) and signed the Civil Law Convention (9 November 2000).
- Denmark** The Government submitted draft legislation on both ratification and implementation of the Convention in Spring 1999 to Parliament. The draft legislation was re-submitted to Parliament in October and went through the first reading on 27 October 1999. On 30 March 2000, the draft law to implement the Convention was adopted by Parliament and came into force 1 May 2000. The instrument of ratification was deposited with the OECD Secretary General on 5 September 2000. The legislation is publicly available, including on the Internet.
- Finland** The legislation for ratification and implementing legislation were approved by Parliament on 9 October 1998 and Finland deposited its instrument of ratification on 10 December 1998. The amended Penal Code entered into force on 1 January 1999. The Convention entered into force internally on 15 February 1999.
- France** The law authorising the ratification of the Convention was adopted on 25 May 1999 (law n° 99-424 of 27 May 1999). The National Assembly adopted the implementing legislation on 30 June 2000. France deposited its instrument of ratification on 31 July 2000. The Convention entered into force together with the implementation law on 29

September 2000.

- Germany** Germany ratified the Convention on 10 November 1998. The implementing legislation contained in the Act on Combating International Bribery of 10 September 1998 entered into force together with the Convention on 15 February 1999. Legislation implementing the European anti-corruption instruments, notably the Second Protocol to the Convention for the Protection of the Financial Interest of the European Union, is under preparation.
- Greece** The Convention was ratified by Parliament on 5 November 1998. The implementing legislation was passed by Parliament the same day. Greece deposited its instrument of ratification on 5 February 1999. To conform to the Working Group's recommendations, draft amendments to the implementing legislation have been prepared to include a definition of foreign public officials by reference to Art. 1 of the Convention and to address the responsibility of legal persons in order to refer to "enterprises and legal persons" and not only to enterprises. The amendments will be submitted to Parliament at a later stage. The Ministry of Justice circulated a questionnaire to all prosecutors' offices during the summer 2000 in order that they report back about every possible case concerning the application of the Convention.
- Hungary** The texts of ratification of the Convention and implementing legislation (the Amendment of the Criminal Code) were submitted to Parliament in May 1998. The text for ratification was approved on 29 September 1998 and Hungary deposited its instrument of ratification on 4 December 1998. The Amendment of the Criminal Code was passed in December 1998 and came into force on 1 March 1999. Draft amendments to the penal code are under preparation; they should be submitted to Parliament in autumn 2001. These amendments relate notably to the elimination of the defence in the case of the bribe being given upon the initiative of the public official, penalties and statute of limitations, the confiscation regime and the sanctioning of legal persons.
- Iceland** The Icelandic government deposited its instrument of ratification on 17 August 1998 and the implementing legislation was passed by Parliament on 22 December 1998. On 27 April 2000, the Icelandic Parliament passed legislation amending the General Penal Code. The amendments came into effect on 9 May 2000. The ceiling on the level of fines for legal persons was removed and the statute of limitations for legal persons was increased to up to five years.
- Ireland** The Prevention of Corruption (Amendment) Bill, 2000, which completed Second Stage in the Dáil (Lower House) on 15 December, 2000 is the legislation which will enable Ireland to ratify a number of Conventions dealing with corruption, drawn up by the European Union, the Council of Europe and the OECD respectively. The Bill is currently awaiting consideration by the relevant Select Committee of the House. It is hoped that the Bill will be adopted before parliament's summer 2001 recess.
- The Bill will criminalise corruption of or by foreign office holders and officials as well as national office holders and officials. It also provides that the offence of corruption will cover not only corruption of or by an office holder or official, but also indirect corruption e.g. where that person's spouse receives a benefit with the

intention of influencing him/her. Further provisions relate to aspects of jurisdiction, corruption in office and increasing the penalties upon conviction.

**Italy**

The law of ratification and implementation of the Convention was enacted by the Italian Parliament, together with three other European Union instruments against corruption and bribery, on 29 September and was published in the Official Journal on 25 October 2000. The law came into force on 26 October. The instrument of ratification was deposited with the OECD Secretary-General on 15 December 2000.

The law provides for non-criminal sanctions of legal persons - whose application is however entrusted to the penal judge. Sanctions include fines of up to Euro 1.5 million. In addition, various penalties such as ineligibility, exclusion from public benefits, revocation of authorisations can be imposed in serious cases. This new approach will also apply to domestic corruption and some other offences by companies. The Italian authorities informed the Working Group that the Council of Ministers adopted the legislative decree (through which the provision on the liability of legal persons shall enter into force) in its final and legally binding form on 2 May, 2001 after the (non binding) opinion of Parliament had been issued the week before. The decree will enter into force with its publication in the Official Journal which takes about three to four weeks.

A code of conduct for public employees as well as a statute providing for the immediate dismissal of corrupt public officials have been published in the official gazette in April 2001.

**Japan**

On 10 April 1998, the Government of Japan formally submitted the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, along with its implementing legislation (amendments to the Unfair Competition Prevention Law) to the National Diet. The National Diet approved the conclusion of the Convention on 22 May 1998. The implementing legislation was adopted on 18 September 1998. The instrument of acceptance was deposited on 13 October 1998. The implementing legislation – the Unfair Competition Prevention Law – entered into force together with the Convention on 15 February 1999.

The Anti-Organised Crime Law, which contains provisions making money laundering an offence in relation to bribery of foreign public officials, was adopted in August 1999 and entered into force in February 2000. A new policy excluding companies involved in bribery transactions from official development assistance contracts has been adopted in April 2000.

In view of conforming to the Working Group's recommendations, the Government submitted on 27 March 2001 a draft bill to the Diet amending the Unfair Competition Prevention Law. Accordingly, the "main office" exception is to be removed and the definition of public officials in relation to public enterprises is to be broadened.

**Korea**

The Korean Government formally submitted the bill to ratify the Convention along with its implementing legislation to the National Assembly in October 1998, which approved both bills on 17 December 1998. Korea deposited its instrument of ratification on 4 January 1999. Korea's implementing legislation – the Act on Preventing Bribery of Foreign Public Officials in International Business Transactions - came into effect at the time of the entry into force of the Convention, i.e. on 15 February 1999.

Two draft bills were submitted to the National Assembly in November 2000. One aims at making money laundering an offence in relation to bribery of domestic and foreign public officials, the other is aimed at creating a Financial Intelligence Unit (FIU) whereby financial institutions will be required to provide the FIU with information on suspicious financial transactions. The two draft bills are currently under review by the National Assembly.

- Luxembourg** The Chambre des Députés (Parliament) approved the bill to ratify and implement the Convention on 15 January 2001. The bill was published in the Mémorial (Official Journal) on 7 February 2001 and entered into force on 11 February. The instrument of ratification was deposited with the OECD Secretary-General on 21 March 2001.
- Mexico** The Convention was approved by the Mexican Senate as an international treaty on 22 April 1999; on 12 May, the promulgation decree was published in the “Official Gazette of the Federation”(D.O.F.). The implementing legislation was approved by the two Chambers in Congress at the end of April, as part of a comprehensive package of reforms to the Criminal code in Mexico. The respective decree was promulgated in the D.O.F. on 17 May 1999. The instrument of ratification was deposited with the OECD Secretary-General on 27 May 1999. To conform to the Working Group recommendations, the government is currently preparing a draft bill to fully implement the Convention.
- Netherlands** The bills to ratify and implement the Convention were enacted, together with three other European Union instruments against corruption and bribery, on 13 December 2000 and came into force on 1 February 2001. The instrument of ratification was deposited with the OECD Secretary-General on 12 January 2001.
- New Zealand** In early 1999, the former New Zealand Government approved the policy to amend New Zealand law to enable it to ratify the Convention. New Zealand’s treaty-making procedure then required the Convention to be examined by a Parliamentary Committee, which was done in September 1999. A Bill to implement the Convention was introduced into the New Zealand Parliament also in September 1999. After a General Election and re-consideration of the substance of the Bill by the current Government, another Parliamentary Committee considered the Bill during 2000. The Committee reported the Bill back to Parliament in November 2000. Parliament finalised the detail of the Bill in April 2001. The Bill was enacted in early May 2001. The Government’s objective is to ratify the Convention in June 2001.
- Norway** After consultation with the relevant private and public authorities, at the end of May 1998, the Government submitted to Parliament the bills to ratify and implement the Convention. The amendments to the Penal Code were passed on 27 October 1998 and came into force on 1 January 1999. The instrument of ratification was deposited on 18 December 1998. An expert committee has been established to review the current legislation and propose new legislation on bribery, including that of foreign public officials. The committee shall pay particular attention to the level of penalties as well as to the period of limitation.
- Poland** The ratification bill, which was approved by the two chambers of Parliament in January 2000, has received Presidential approval and has been published in the

Official Journal. The instrument of ratification was deposited with the OECD Secretary General on 8 September 2000.

The implementing legislation was enacted on 9 September. It was signed by the President and published in the Official Journal on 3 November 2000. It entered into force on 4 February 2001.

The most important elements of the implementing act are the criminalisation of active and passive bribery of foreign public officials, the administrative responsibility of legal persons, the provision allowing better mutual legal co-operation, and the exclusion of companies having been found to bribe from public orders.

### **Portugal**

The Convention, which was approved and ratified by the Parliament (19 February 2000) and by the President of the Republic, is in force as national law. The instrument of ratification was deposited with the OECD Secretary General on 23 November 2000.

The draft implementing legislation has been submitted to Parliament, which approved it during a first reading on 5 April 2001. The draft legislation, which has been submitted for examination to a special parliamentary committee, should be adopted during the Parliament's second and final reading at the end of May or early June 2001. The law is expected to come into force before the summer break.

The implementing law will consider this offence as an 'economic crime', allowing to extend criminal liability to legal persons. The law will be applicable to public and political officials and makes corruption of foreign public officials a predicate offence for money laundering purposes.

### **Slovak Republic**

Slovak Parliament approved the ratification of the Convention on February 11, 1999. The implementing legislation, which included the amendment of the Penal Code, entered into force on 1 September 1999. On 1 November 1999, the amendment to the Code of Criminal Procedure came into effect. The instrument of ratification was deposited with the OECD Secretary-General on 24 September 1999.

Draft amendments to the Penal Code, in line with the recommendations of the Working Group, have been approved by the Government ; they are expected to be adopted by the Parliament in May and come into force in July 2001. Accordingly, the offence of bribery of foreign public official is to include third parties, the level of sanctions is to be increased to those imposed for bribery of domestic public officials, the statute of limitations is to be extended up to 5 years.

The full re-codification of the Penal Code and Code of Criminal Procedure will include a provision on criminal liability of legal person and a revised provision on effective regret regarding corruption. These Articles, expected to come into force in 2002, are still under preparation.

### **Spain**

The ratification law was submitted to Parliament in the fall 1998. Spain deposited the instrument of ratification with the OECD Secretary-General on 14 January 2000. On 12 January 2000, the implementing legislation was published in the State Official Journal; it came into force on 2 February 2000.

The Working Group recommendations to fully implement the Convention are currently being examined by the Ministry of Justice.

- Sweden** The bill embracing the necessary amendments of Swedish legislation in order to be able to ratify and implement the Convention was passed by Parliament on 25 March 1999. The instrument of ratification was deposited with the OECD Secretary-General on 8 June 1999. The implementing legislation entered into force on 1 July 1999.
- Switzerland** Draft ratification and implementing legislation was approved by the upper Chamber of Parliament on 7 October 1999 and by the lower Chamber of Parliament on 9 December 1999. The law entered into force on 1 May 2000, after the mandatory three month period for possible referenda had expired and publication requirements were fulfilled. The instrument of ratification was deposited with the OECD Secretary-General on 31 May 2000.  
The draft corporate liability bill was approved by the lower Chamber of Parliament but is still to be examined by the upper Chamber of Parliament.  
The government decided in February 2001 to sign the Council of Europe Criminal Law Convention. Switzerland may consider joining, at a later stage, the GRECO.
- Turkey** The Convention was ratified on 1 February 2000 by the Turkish Grand Nation Assembly and the ratification bill entered into force on 6 February 2000. The instrument of ratification was deposited with the OECD Secretary General on 26 July 2000.  
The draft bill on the implementation of the Convention, which was approved by the Ministry of Justice and the Prime Minister, was submitted to Parliament on 3 November 2000. It has been forwarded to the Justice Commission and is awaiting to be scheduled for discussion.
- United Kingdom** The United Kingdom deposited its instrument of ratification on 14 December 1998. A public discussion document on proposals for new legislation on corruption was published in June 2000. In April 2001, the UK Government announced its response to the comments made in the consultation process and its intention to legislate at the earliest opportunity. The legislation will put beyond doubt the UK's compliance with the Convention and will give UK courts jurisdiction over UK nationals committing bribery offences abroad.  
  
The UK Government introduced into Parliament in January 2001 the Criminal Justice and Police Bill which will, when enacted, allow the Inland Revenue to disclose information relevant to actual or potential criminal proceedings whether in the UK or elsewhere.  
  
Negotiations have started to bring the Channel Isles and the Isle of Man within the scope of the Convention. Whilst these territories have indicated their willingness to do this, they need to enact new legislation to ensure their domestic laws match the provisions of the Convention.  
  
Also, the process to bring UK's Overseas Territories under the scope of the Convention has begun. This involves bilateral consultative process with each Territory. The UK will inform the Group of the extension of the applicability of the Convention to Overseas Territories.  
  
The results of an independent study by consultants into financial regulation in 6 Overseas Territories (Anguilla, Bermuda, the British Virgin Islands, the Cayman Islands, Montserrat and Turks and Caicos Islands) were published in October 2000

and are available from:

<http://www.offical-documents.co.uk/document/cm48/4855/4855.htm>. Implementation of the recommendations is proceeding and will ensure that all the Overseas Territories fully meet international standards of financial regulation.

#### **United States**

On 31 July 1998 the Senate approved both the Convention and the implementing legislation. Congress completed action on implementing legislation in October 1998. The implementing legislation was signed by the President on 10 November 1998; the ratification instrument was signed by the President on 20 November 1998. The US deposited its instrument of ratification with the OECD Secretary-General on 8 December 1998. The legislation is available on the Internet at [www.usdoj.gov/criminal/fraud/fcpa.html](http://www.usdoj.gov/criminal/fraud/fcpa.html). This site is regularly visited, and it proves to be very useful to promote the existing obligations as well as to obtain information on potential violations of the law.

Effective August 2000, the Civil Asset Forfeiture Reform Act, expands the grounds for civil and criminal forfeiture, making the proceeds of violations of the Foreign Corrupt Practices Act (FCPA) forfeitable.

The United States deposited the instrument of ratification of the Inter-American Convention on Corruption on 29 September 2000 and signed the Council of Europe Criminal Law Convention on Corruption (10 October 2000) as well as the GRECO (19 September 2000).

The interested US government agencies have agreed to support an amendment to the FCPA to conform the penalties for domestic and foreign bribery offences.

**Countries having ratified the Convention\***

	<b>Country</b>	<b>Date of Ratification</b>
1.	Iceland	17 August 1998
2.	Japan	13 October 1998
3.	Germany	10 November 1998
4.	Hungary	4 December 1998
5.	United States	8 December 1998
6.	Finland	10 December 1998
7.	United Kingdom	14 December 1998
8.	Canada	17 December 1998
9.	Norway	18 December 1998
10.	Bulgaria	22 December 1998
11.	Korea	4 January 1999
12.	Greece	5 February 1999
13.	Austria	20 May 1999
14.	Mexico	27 May 1999
15.	Sweden	8 June 1999
16.	Belgium	27 July 1999
17.	Slovak Republic	24 September 1999
18.	Australia	18 October 1999
19.	Spain	14 January 2000
20.	Czech Republic	21 January 2000
21.	Switzerland	31 May 2000
22.	Turkey**	26 July 2000
23.	France	31 July 2000
24.	Brazil**	24 August 2000
25.	Denmark	5 September 2000
26.	Poland	8 September 2000
27.	Portugal**	23 November 2000
28.	Italy	15 December 2000
29.	Netherlands	12 January 2001
30.	Argentina	8 February 2001
31.	Luxembourg	21 March 2001
32.	Chile**	18 April 2001

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\*. In order of ratification received by the Secretary General.

\*\*.. These countries have not yet enacted implementing legislation.

## ANNEX 2: TAX TREATMENT OF BRIBES TO FOREIGN PUBLIC OFFICIALS

(update 4 April 2001)

**Argentina :** not available

**Australia:** In early 2000, the Australian Parliament enacted the *Taxation Laws Amendment Act (No.2) 2000* which provided that bribes paid to public officials (whether foreign or not) would not be deductible expenses for the purposes of Australian tax laws. The amendments implement the OECD's recommendations that member countries should deny tax deductibility for such bribes. The amendments apply to the 1999/2000 and later years of income.

In essence, that Act amends the *Income Tax Assessment Act 1997* to disallow deductions for bribes made to public officials. Schedule 4 provides that a taxpayer will be regarded as having made a bribe to a foreign public official to the extent that:

- an amount is incurred in providing a benefit to another person; and
- the benefit is not legitimately due to that person; and
- the amount is incurred with the intention of influencing a foreign public official in the exercise of the officials duties in order to obtain or retain business or an advantage in the conduct of business.

**Austria:** Legislation was passed by Parliament in late October 1998. Section 20 paragraph 1 subparagraph 5 of the Income Tax Act, which already provided for non-deductibility of payments subject to criminal prosecution under certain conditions, was amended by deleting those former conditions. According to this new legislation any cash or in kind remuneration whose granting or receipt is subject to criminal punishment is not deductible from taxable income. Already in August 1998 the Criminal Code had been amended in a way which extended criminal prosecution also to bribes granted to foreign officials. Since this Act entered into force on 1st October 1998, bribes paid to foreign officials became generally no longer deductible for income tax purposes as soon as the new income tax legislation entered into force.

**Belgium:** A bill aiming at the criminalisation of bribes to foreign public officials and at denying the deductibility of so called "secret commissions" paid directly or indirectly in order to obtain or maintain public contracts or administrative authorisations has been adopted and entered into force on 3 April 1999. « Secret commissions » paid for contracts other than public contracts may be deductible provided that such commissions do not exceed reasonable limits, that they are necessary to fight against foreign competition, and that they are recognised as a normal customary practice in the relevant country or sector (i.e., necessary usual and normal in the given economic sector). The taxpayer must present a request and disclose to the tax administration the amount and the purpose of the commissions for the tax administration to appreciate whether the commission is deductible or not. In any case, a tax equal to at least 20,6 percent of the commission must be paid. If these conditions are not simultaneously fulfilled, the deductibility of the

commissions is denied and they are added back to the taxable income of the payer. If the payer is a company, it is liable to a special tax equal to 309 percent of the amount of the bribe. For the period 1988-1992, 109 applications for authorisation were made to the Belgian Ministry of Finance.

**Brazil** does not allow tax deductibility of bribes to foreign public officials.

**Bulgaria:** Bulgarian tax legislation does not allow the deductibility of bribes to foreign public officials.

**Canada:** No deduction can be made in respect of an outlay made or expense incurred for the purpose of bribing a foreign public official or conspiring to do so.

**Chile:** not available

**Czech Republic** does not allow deductions of bribes paid to foreign public officials. Deductibility is not possible even in cases where the bribe could be treated as a gift. Gifts are deductible only in exceptional cases under two specific conditions. The gift must be made for one of the following specific purposes: science, education, culture, fire protection and some other social, charitable or humanitarian purposes; and the gift must not be over a strictly determined percentage of the tax-basis. Only if both conditions are fulfilled, can the gift be treated as deductible for tax purposes. Under an amendment to Income Taxes Act No. 586/1992 Coll. ratified by the Czech parliament on 12th of December 2000 is stipulated, that for tax purposes a discharge provided to foreign public official or to a foreign public authority or with their agreement to another person, in relation with their office shall not be recognised as expense incurred in generating, assuring and maintaining income, even in the cases, concerning a foreign public official or a foreign public authority of the state, where provision of such discharge is tolerated or is not considered to be an offence or is usual.

**Denmark:** The Danish Parliament has adopted a bill from government denying the deductibility of bribes to foreign public officials. The new legislation entered into force on 1 January 1998. Up to 1997 Denmark did not allow deductions for bribes paid to foreign officials, except where bribes were recognised as a customary business practice in the country of the recipient. The burden was on the taxpayer to establish that bribes are a customary business practice in a foreign state. The acceptance of the bribe by a foreign public official was not enough to establish a customary practice. In practice Danish enterprises requested the deduction of bribes in only a small number of cases. The Danish tax authorities were also reluctant to grant deductions because of the difficulty of certifying the deduction.

**Finland** does not have statutory rules concerning bribes paid to foreign officials. Corresponding payments to domestic public officials are non-deductible on the basis of case law and practice of the tax authorities. The same rule is expected to apply to bribes paid to foreign public officials in case law and the same rule is applied already in the practice of the tax authorities.

**France:** The French Parliament passed legislation (article 39-1 of the French Tax Code) denying the tax deductibility of bribes to foreign public officials on 29 December 1997 as part of the Corrective Finance Bill for 1997. For contracts concluded during tax years opened as of the entry into force of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, amounts paid or advantages granted, directly or through intermediaries, to public officials within the meaning of article 1 § 4 of the convention or to a third party in order that this official act or refrain from acting in the performance of his official duties, in order to obtain or retain a contract or other improper advantage in international business transactions, are not admitted as a deduction of taxable profits". The law authorising the ratification of the Convention was adopted on 25 May 1999. The engagements of the Convention were transplanted into domestic law on 20 June 2000 with a change to the tax legislation adopted in 1997. The

denial of tax deductibility of bribes to foreign public officials will apply immediately after the entry into force of the Convention whatever the date of signature of the contract. The instrument of ratification of the Convention was deposited on 31 July 2000. The Convention shall enter into force on the sixtieth day following that date that is on 29 September 2000. Bribes to foreign public officials will not be deductible as of that day.

**Germany** does not allow the deductibility of bribes to foreign public officials. Under previous German tax law, deductions for bribes were not allowed if either the briber or the recipient had been subject to criminal penalties or criminal proceedings which were discontinued on the basis of a discretionary decision by the prosecution. New legislation adopted on 24 March 1999 deleted these procedural conditions and denied the tax deductibility of bribes.

**Greece** does not allow the deductibility of bribes to foreign public officials.

**Hungary** does not allow the deductibility of bribes to foreign public officials since only expenses covered in the tax laws are deductible and the tax laws do not include a specific reference to bribes.

**Iceland** does not allow the deductibility of bribes to foreign as well as domestic public officials and officials of international organisations on the basis of law from June 1998. Previously, bribes to foreign officials were not deductible except if they were considered as a customary business in the country of the recipient.

**Ireland:** It is the view of the Revenue Commissioners, on the basis of legal advice received, that bribes paid to foreign public officials are not deductible in principle. It is also doubtful that the conditions for deductibility could ever be met in practice in Ireland. Accordingly, it has not been considered necessary to introduce specific legislation to deny a deduction.

**Italy** does not allow deductions for bribes paid to foreign officials. Legislation enacted in 1994 made moreover gains from illicit sources taxable. The non-deductibility of bribes remained unaffected.

**Japan** does not allow deductions for bribes paid to foreign officials. Bribes are treated as an "entertainment expense" under Japanese law, which expenses are not deductible. In practice Japan treats bribes of foreign public officials in the same way as bribes of domestic public officials and therefore as non-deductible.

**Korea** does not allow deductions for bribes paid to foreign government officials since they are not considered to be business-related expenses.

**Luxembourg:** Legislation denying deductibility of bribes was adopted by Parliament on 14 December 2000. Previously Luxembourg allowed deductions for bribes paid to foreign public officials as any business expense. To be deductible the recipient had to be clearly identified. Payments to companies domiciled in tax havens and to persons, which were not clearly identified, were not deductible.

**Mexico** does not allow the deductibility of bribes to foreign public officials since they would not meet the general requirements to qualify as deductible expenses, which have to be strictly essential for the purposes of the taxpayers, activities and formally documented. Considering that bribes are treated as illicit activities, such payments cannot meet the requirements set forth in the Mexican Commerce Code. Therefore the payment of a bribe is not a business activity and is not a deductible item.

**Netherlands:** The Netherlands incorporated the provisions of the Convention on Bribery into Dutch law by amending the Penal Code. This amendment entered into force on 1 February 2001. The Netherlands

implemented the Convention by extending the offences under the Penal Code of bribing a domestic public servant and bribing a domestic judge to the bribery of "persons in the public service of a foreign state or an international institution" and "a judge of a foreign state or an international institution" respectively. The Netherlands has ratified the Convention relatively late due to the desire to produce an omnibus Bill that implements several anti-corruption related international instruments, rather than to take a piecemeal approach to implementing its international obligations in this regard.

As to the non tax deductibility of bribes: The relevant tax laws do not expressly deny the tax deductibility of bribes to foreign public officials. Instead they deny the tax deductibility of expenses related to "crimes" where there has been a conviction by a Dutch court or a settlement by payment of a fine, etc., with the Dutch prosecutor to avoid criminal prosecution. Pursuant to a tax directive there is an obligation on tax inspectors to report suspected crimes, including the bribery of a civil servant, to the head of the Fiscal Information and Investigation Services, who is obliged to report in turn to the prosecution authorities.

On 9 February 2001, however, the Council of Ministers approved the intention of the State Secretary of Finance to prepare a Bill amending the fiscal treatment of bribes. Pursuant to this Bill, tax officials would be able to refuse the deduction of certain expenses where they are reasonably convinced based on adequate indicators that the expenses consist of paid bribes (in the Netherlands or abroad), thus removing the requirement of a conviction.

**New Zealand:** The Crimes (Bribery of Foreign Public Officials) Amendment Bill was reported back from the Select Committee on 29 November 2000. The bill proposed to make bribery of foreign public officials a crime carrying a maximum of 7 years imprisonment. However, the government is still considering some finer points of the bill. The Justice Department has advised that it is trying to get the bill passed in April/May, depending on availability of House time. It looks optimistic for the tax amendments to be made in the next bill in October 2001.

**Norway** does not allow deductions for bribes paid to foreign private persons or public officials, on the basis of a law passed by the Norwegian Parliament on 10 December 1996. Before this law was enacted, the deduction was disallowed except where bribes were recognised as a customary business practice in the country of the recipient of the bribe.

**Poland:** does not allow the deductibility of bribes to foreign public officials. According to Polish law, bribery is illegal and an offence for both the briber and the recipient of the bribe and both are punishable. The provisions of the Corporate Tax Act and Personal Income Tax Act are not applicable to illegal activities. Therefore gains and expenses connected with the offence of bribery cannot be taken into account by the tax authorities. As a result, the taxpayer is not allowed to deduct from his income expenses concerning bribes to foreign officials.

**Portugal:** does not allow the deductibility of bribes to foreign public officials. The Parliament has adopted on 20 December 1997 new legislation effective 1st January 1998 to disallow any deduction referring to illegal payments such as bribes to foreign public officials. Previously deductions for bribes paid to foreign officials were allowed if they were documented and the bribe was shown to have contributed directly to the realisation of income (a standard not frequently met). If the bribe was entered as an undocumented expense, it was not deductible and taxed at a rate of 25 percent.

**Slovak Republic** does not allow deductions of bribes to foreign public officials or private persons. Bribes are not considered as business-related expenses. Recipients of bribes are liable to criminal prosecution. Expenses that are related to any bribes are not deductible for taxation purposes.

**Spain** does not allow deductions for bribes paid to foreign public officials. A bill aiming at the criminalisation of bribes paid to foreign public officials (including those working for international organisations) has been passed on 11 January 2000 and entered into force the following day. Such bribes are now considered a criminal offence as provided by the new article 445 bis added to the Penal Code. This reinforces the traditional position of not allowing tax deductions for bribes paid to foreign public officials. The bill invokes specifically the OECD 1997 Convention on Bribery.

**Sweden** does not allow deductions for bribes paid to foreign public officials. A bill explicitly denying the deductibility of bribes and other illicit payments was adopted by the Parliament on 25 March 1999. The new law on tax non-deductibility entered into force on 1 July 1999. Up to then Sweden was dealing with the issue on a case by case basis. Bribes may resemble fees or entertainment expenses. If they were assimilated to a fee, the deductibility was determined as for any other business expense. The burden of proving that it was a necessary expense was on the taxpayer and the fact that bribes were recognised as a normal customary practice in the country of the recipient was likely to have some impact on the deductibility. If the bribe resembled an entertainment expense, it was deductible provided it did not exceed reasonable limits.

**Switzerland** A draft bill on denial of deductibility of secret commissions to Swiss or foreign public officials was submitted in spring 1998 to cantons and other interested parties for consultation (matters of direct taxation are mostly within the competence of the Cantons). The bill was then submitted to Parliament and was adopted by the Federal Chambers on 22 December 1999. The bill entered into force and became effective as of January 1 2001.

**Turkey** does not allow deductions for bribes paid to foreign officials because there is no explicit rule allowing the deductibility of bribes.

**United Kingdom** does not allow deductions for any bribe paid to foreign officials, if that bribe is a criminal offence. If any part of the offence is committed in the United Kingdom, for example the offer, agreement to pay, the soliciting, the acceptance, or the payment itself, it would be caught by the corruption laws and would then not qualify for tax relief. The UK Finance Act of 1993 disallows tax deductions for all payments -- the making of which constitutes a criminal offence. In addition, UK tax laws also deny relief for all gifts and hospitality given, whether or not corrupt.

**United States** does not allow deductions for bribes paid to foreign government officials if that bribe is a criminal offence. Both before and after the United States criminalised bribery of foreign government officials, it denied tax deductions for such payments. Before the enactment of the Foreign Corrupt Practices Act of 1977, tax deductions were disallowed for payments that were made to an official or employee of a foreign government and that were either unlawful under US law or would be unlawful if US laws were applicable to such official or employee. The denial of the tax deduction did not depend on a conviction in a criminal bribery case. After the United States criminalised bribery of foreign government officials, US tax laws were changed to disallow tax deductions for payments if made to foreign government officials or employees and if unlawful under the Foreign Corrupt Practices Act of 1977 (FCPA). With respect to US tax provisions for Controlled Foreign Corporations, any payment of a bribe by a foreign subsidiary is treated as taxable income to the US parent. Also, to the extent relevant for US tax purposes, bribes of foreign officials are not permitted to reduce a foreign corporation's earnings and profits. US denial of tax deductibility or reduction of earnings and profits does not depend on whether the person making the payment has been convicted of a criminal offence. Treasury has the burden of proving by clear and convincing evidence that a payment is unlawful under the FCPA.

### **ANNEX 3: ACTION STATEMENT ON BRIBERY AND OFFICIALLY SUPPORTED EXPORT CREDITS**

In recognition of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 1997 Revised Recommendation,<sup>1</sup> the Members of the OECD Working Party on Export Credits and Credit Guarantees (ECG) agree:

1. Combating bribery in international business transactions is a priority issue and the ECG is the appropriate forum to ensure the implementation of the Convention and the 1997 Revised Recommendation in respect of international business transactions benefiting from official export credit support.
2. To continue to exchange information on how the Convention and the Recommendation are being taken into account in national official export credit systems.
3. To continue to collate and map the information exchanged with a view to considering further steps to combat bribery in respect of officially supported export credits.
4. To take appropriate measures to deter bribery in officially supported export credits and, in the case that bribery as defined by the Convention was involved in the award of the export contract, to take appropriate action, including:
  - All official export credit and export credit insurance providers shall inform applicants requesting support about the legal consequences of bribery in international business transactions under its national legal system including its national laws prohibiting such bribery.
  - The applicant and/or the exporter, in accordance with the practices followed in each ECG Member's export credit system, shall be invited to provide an undertaking/declaration that neither they, nor anyone acting on their behalf, have been engaged or will engage in bribery in the transaction.

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<sup>1</sup> Based on the Recommendation, but also upon on discussion underway since 1995, OECD countries and several non-members, negotiated the 1997 Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. The Convention, which was signed by 29 OECD Member countries and five non-Members (Argentina, Brazil, Bulgaria, Chile and Slovak Republic) came into force on 15 February 1999. The Convention is open to accession by non-members of the OECD.

Article 12 of the Convention provides for monitoring and follow-up to promote the full implementation of this Convention. The OECD Working Group on Bribery in International Business Transactions considers that insofar as officially supported export credits is concerned, the appropriate forum is the OECD Working Party on Export Credits and Credit Guarantees (ECG); the ECG reports progress to the Working Group on Bribery.

- The applicant and other parties receiving or benefiting from support remain fully responsible for the proper description of the international business transaction and the transparency of all relevant payments.
- The applicant and other parties involved in the transaction remain fully responsible for compliance with all applicable laws and regulations, including national provisions for combating bribery of foreign public officials in international business transactions.
- If there is sufficient evidence that such bribery was involved in the award of the export contract, the official export credit or export credit insurance provider shall refuse to approve credit, cover or other support.
- If, after credit, cover or other support has been approved, an involvement of a beneficiary in such bribery is proved, the official export credit or export credit insurance provider shall take appropriate action, such as denial of payment or indemnification, refund of sums provided and/or referral of evidence of such bribery to the appropriate national authorities.

These actions are not prejudicial to the rights of other parties not responsible for the illegal payments.

5. To continue to exchange views with appropriate stakeholders.
6. To review periodically actions taken pursuant to this Action Statement.

Any of the actions mentioned above have to be realised in accordance with the legal system of each ECG Member country taking into account its specific judicial instruments and institutions to implement its penal laws.