

Progress Report

OECD Anti-Bribery Convention

2009

Enforcement of the OECD Convention on Combating Bribery
of Foreign Public Officials in International Business Transactions

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Transparency International is the global civil society organisation leading the fight against corruption. Through more than 90 chapters worldwide and an international secretariat in Berlin, Germany, TI raises awareness of the damaging effects of corruption and works with partners in government, business and civil society to develop and implement effective measures to tackle it.

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Enforcement
of the OECD Convention on
Combating Bribery
of Foreign Public Officials
in International Business
Transactions

Fritz Heimann and Gillian Dell
23 June 2009

ABBREVIATIONS USED IN THE COUNTRY REPORTS IN SECTION 3:

AML	Anti-money laundering
CDD	Customer due diligence
FATF	Financial Action Task Force
FCPA	United States Foreign Corrupt Practices Act, 1977
GRECO	Council of Europe Group of States against Corruption
KYC	Know your customer
MLA	Mutual legal assistance
Moneyval	Council of Europe Committee of Experts on the Evaluation of Money laundering Measures
OECD Phase 2 Report	Phase 2 Report of the OECD Working Group on Bribery
PEP	Politically exposed person
SEC	United States Securities and Exchange Commission
UNCAC	United Nations Convention against Corruption

UN OIL-FOR FOOD PROGRAMME

Many of the cases and investigations mentioned in Section III of this report relate to the Oil-for-Food Programme that was established by the United Nations (UN) Security Council in 1995 and began operation at the end of 1996. The Programme was intended to allow Iraq to sell oil to pay for food, medicine and other humanitarian needs of Iraqi citizens, in order to ease the impact of UN sanctions. Some 3.4 billion barrels of Iraqi oil valued at about US \$65 billion were exported under the Programme between December 1996 and March 2003. The programme was terminated in late 2003. Following allegations of improprieties in the Programme, in 2004 the UN Secretary General established the Independent Inquiry into the UN Oil-for-Food Programme under the chairmanship of Paul Volcker, former US Federal Reserve Board Chair. The Commission completed its report "the Volcker Report" in 2005. It is alleged that 2,253 companies from 66 countries paid bribes totalling about US \$1.8 billion in exchange for contracts for delivery of goods to meet humanitarian needs. There were another 139 companies from 40 countries that reportedly paid illicit surcharges on oil purchases from Iraq. The government of Iraq filed a lawsuit in a US court in June 2008, seeking damages of US \$10 billion against companies and people alleged to have illegally benefitted from the Oil-for-Food programme.

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Introduction

In 1997, the member states of the Organisation for Economic Cooperation and Development (OECD) adopted the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (the OECD Convention). The adoption of the Convention was a landmark event in the fight against international corruption representing a collective commitment to ban foreign bribery by the governments of the leading industrialised states - countries accounting for the majority of global exports and foreign investment. Because most major multinational companies are based in OECD Convention countries, the Convention was hailed as the key to overcoming the damaging effects of foreign bribery on democratic institutions, development programmes and business competition. The Convention now has 38 parties. It requires parties to make it an offence to "intentionally offer, promise or give any undue pecuniary or other advantage, whether directly or through intermediaries, to a foreign public official, for that official or for a third party, in order that the official act or refrain from acting in relation to the performance of official duties, in order to obtain or retain business or other improper advantage in the conduct of international business."

This is the fifth annual *Progress Report on Enforcement of the OECD Convention* prepared by Transparency International (TI) the global coalition against corruption. The 2009 report covers 36 of the 38 parties. It shows that enforcement has been extremely uneven. There is active enforcement in only four countries and little or no enforcement in 21 of the parties. Increased efforts are also needed in countries with moderate enforcement because their level of enforcement is not high enough to provide effective deterrence.

The present situation is dangerous because it is unstable: if enforcement does not improve it is likely to deteriorate. The Convention is based on the collective commitment of all the parties to end foreign bribery. Failure to enforce the Convention undermines that commitment. There are already signs of backsliding, with some government efforts to curtail the ability of investigative magistrates to bring cases, shorten statutes of limitations, and extend immunities from prosecution. The risk of backsliding has grown more acute during a time of worldwide recession when competition for decreasing numbers of orders has intensified greatly.

Based on TI's in-depth reviews of enforcement programmes over five years, we are convinced that lack of political will is the major cause of lagging enforcement. The outstanding monitoring programme of the OECD Working Group on Bribery has helped improve laws and enforcement programmes in countries where there is committed political leadership. However, in the absence of political will, even the highest-quality monitoring reports have little effect. An example is the decade-long failure of the UK government to amend its antiquated bribery laws; a new law has still not been enacted by Parliament. Lack of political will can also take other forms including failure to provide adequate funding and staffing for enforcement.

This problem of lagging enforcement can only be overcome by addressing the issue at a higher political level, thereby reinforcing the efforts of the Working Group on Bribery. That will require active involvement by the OECD Ministerial Council, the Secretary-General, as well as pressure on the laggards from governments committed to enforcement.

The tables on pages 10-12 show the classification of 36 OECD Convention countries into categories of active, moderate and little or no enforcement. Section 1 sets forth the conclusions and recommendations of the report. Section 2 provides findings on selected enforcement issues including statutory obstacles, access to information, complaint procedures, accounting and auditing, and anti-money laundering programmes. Section 3 summarises the country reports on enforcement systems in OECD Convention countries. Section 4 provides information on anti-bribery programmes in China, India and Russia, which are not parties to the OECD Convention but have been invited to become parties.

Overview of process and method

The 2009 Progress Report, like past ones, is based on information provided by TI experts in each country who are highly qualified professionals selected in most cases by TI chapters. Appendix A lists the experts and their qualifications. They responded to the Questionnaire, shown in Appendix B, taking into account the views of government officials and other knowledgeable persons in their countries. They were aided in their work by the valuable monitoring reports prepared by the OECD Working Group on Bribery in the course of its reviews of government compliance with the Convention. No TI reports were prepared for three countries, Estonia, Iceland and Luxembourg, since TI lacks experts in those countries, but TI Estonia provided current data on cases and investigations.

In the report, the term "cases" encompasses prosecutions, civil actions and judicial investigations (i.e. investigations conducted by investigating magistrates in civil law systems). The term "investigations" excludes judicial investigations. Cases are considered "major" if they involve bribery of senior public officials by important companies. Foreign bribery cases (and investigations) shall include cases involving bribery of foreign public officials, criminal and civil, whether brought under laws dealing with corruption, money laundering, tax evasion, fraud, or accounting and disclosure.

The report introduces a three-tier classification system: Active Enforcement, Moderate Enforcement, and Little or No Enforcement. This recognises variations in levels of enforcement which were not revealed by the two-tier classification used in previous reports, namely: Significant Enforcement and Little or No Enforcement. The three-tier classification is based on the number and importance of cases and investigations, taking into account the size of the country's exports. The three categories are defined as follows:

Active Enforcement: Countries with a share of world exports over two per cent (the 11 largest exporters) that have at least ten major cases on a cumulative basis, of which at least three were initiated in the last three years, and at least three were concluded with substantial sanctions.

Countries with a share of world exports less than two per cent that have brought at least three major cases including at least one concluded with substantial sanctions and have at least one case pending that was initiated in the last three years.

Moderate Enforcement: Countries that do not qualify for active enforcement but have at least one major case as well as active investigations.

Little or No Enforcement: Countries that do not qualify for the previous two categories. This includes countries that have only brought minor cases, countries that only have investigations and countries that have neither.

Scope of Report

This report deals with a number of issues that go beyond the requirements of the Convention. For example, it covers the adequacy of anti-money laundering systems, the need for corporate criminal liability, public access to information and whistleblower protection. These issues are important to the success of foreign bribery enforcement and have also been considered in OECD country reviews. The report also takes note of cases of domestic bribery by foreign companies. Such cases do not constitute foreign bribery, as defined by the Convention, because they are brought domestically by the country whose officials were bribed. However, they are important indicators of foreign bribery and should be of interest to prosecutors in the home countries of the companies that allegedly paid the bribes. These cases are not included in the numbers in the tables of foreign bribery cases.

Major Findings, Conclusions and Recommendations:

Enforcement in Lagging States Must be Accelerated

KEY FINDINGS OF THE 2009 REPORT

- **Active Enforcement:** 4 countries: Germany, Norway, Switzerland, the United States
- **Moderate Enforcement:** 11 countries: Belgium, Denmark, Finland, France, Italy, Japan, Korea (Republic of), the Netherlands, Spain, Sweden, the United Kingdom
- **Little or No Enforcement:** 21 countries: Argentina, Australia, Austria, Brazil, Bulgaria, Canada, Chile, Czech Republic, Estonia, Greece, Hungary, Ireland, Israel, Mexico, New Zealand, Poland, Portugal, Slovak Republic, Slovenia, South Africa, Turkey

The data on which these findings are based is shown in the tables on pages 10-12. The basis for the individual country findings is shown at the beginning of each country report in Section 3.

CONCLUSIONS

THE KEY CONCLUSIONS WHICH FLOW FROM THESE FINDINGS ARE:

- The Convention is still far from achieving the goal of ending bribery in international business transactions. During the five years that TI has published annual progress reports, enforcement has increased from eight to fifteen countries. However, there are great disparities in levels of enforcement even among the largest exporters. Germany and the United States each have more than one hundred cases, while the United Kingdom has four and Japan and Italy have two each. The disparity in levels of enforcement shows how far there is to go.
- Enforcement in the 11 countries with moderate enforcement has not reached a high enough level to provide effective deterrence against foreign bribery. Companies in the 21 countries with little or no enforcement will feel even less constrained, and many are not even aware of the Convention.
- The present situation is dangerously unstable. Unless enforcement is sharply increased, existing support will erode and the Convention will fail. Danger signals include the United Kingdom's termination of the BAE case, claiming that national security concerns overrode the commitment to stop foreign bribery. This was a grave blow to the Convention because it opened a loophole that other governments could also exploit. Other examples include efforts to eliminate the role of anti-corruption commissions and investigative magistrates.
- This risk of backsliding has grown more acute during a time of worldwide recession when competition for decreasing numbers of orders has intensified greatly.
- In sum, the Convention is at a critical juncture. Proponents of the Convention must press hard for greater enforcement. Otherwise, proponents of corruption will prevail and the Convention will go into reverse.

CAUSE OF LAGGING ENFORCEMENT: LACK OF POLITICAL COMMITMENT

Based on the reviews conducted by the country experts, we are convinced that the principal cause of lagging enforcement is a lack of political will. In countries where there is committed political leadership, the OECD's outstanding monitoring programme has helped improve laws and enforcement programs. However, in the absence of political will, even repeated monitoring reviews have little effect. Lack of political commitment can take a passive form: failure to provide adequate funding and staffing for enforcement. It can also take an active form: political obstruction of investigations.

The OECD Working Group can do little to compel action by governments that fail to respond to critical monitoring reports. This problem must be addressed at a higher level. That will require active involvement by the OECD Ministerial Council and the Secretary-General, as well as bilateral pressure on the laggards from governments committed to enforcement.

RECOMMENDATIONS

TI's recommendations are addressed to OECD Secretary-General Angel Gurría; the OECD Council at Ministerial Level; the OECD Working Group on Bribery; and to the governments of the parties to the Convention. Additionally, specific recommendations to individual governments can be found in the country reports in Section III.

- The Ministerial should exercise regular oversight to ensure that the Convention succeeds in meeting its objectives. This should include a review of annual reports from the Working Group on the status of enforcement. Such reports should cover foreign bribery cases brought by each party to the Convention, as well as the number of investigations underway. The Working Group is in a much better position than TI to prepare such reports.
- The Secretary-General should meet with the Justice Ministers of laggard governments to reach agreement on steps for achieving active enforcement. Failure to take such steps should result in suspension of membership in the Convention.
- Governments should assign responsibility for foreign bribery cases to specialised staffs with adequate resources. Experience has shown that investigating and prosecuting foreign bribery cases is extremely challenging and time-consuming work, and that it is unrealistic to expect overburdened local prosecutors to bring such cases. It is encouraging that many governments have already organised specialised staffs.
- The Ministerial should adopt a declaration reaffirming the broad scope of Article 5 of the Convention and making clear that claims of national security exceptions violate Article 5. This is important to ensure that the action of the United Kingdom in the BAE case does not become a precedent.
- The Ministerial should encourage accession to the Convention by China, India and Russia. To achieve a level playing field all major exporters should play by the same rules. It is encouraging that South Africa and Israel have joined in the last two years.
- It is essential that the Working Group begin Phase 3 of its monitoring programme by the end of this year. Top priority should be given to conducting country visits to ensure that deficiencies in laws and enforcement programmes, as identified in prior reviews, are corrected. To keep pace with changes in forms of corruption, increasing attention needs to be devoted to combating indirect forms of bribery such as the use of intermediaries, subsidiaries, contractual and joint venture partners.
- The Working Group should conduct annual meetings with prosecutors to obtain their views on how to overcome obstacles to enforcement. Recent meetings with prosecutors were very productive and such meetings should become a regular practice.
- The Working Group should, as soon as possible, begin to address unresolved issues and potential loopholes in the Convention and national implementing legislation, including bribe payments to political parties, lack of corporate criminal liability, inadequate statutes of limitations, and private-to-private corruption.

Tables

A: FOREIGN BRIBERY ENFORCEMENT IN OECD CONVENTION COUNTRIES

CATEGORY	COUNTRIES	SHARE OF WORLD EXPORTS % FOR 2007	SHARE OF FDI FLOW % FOR 2007 (OUTWARD)
ACTIVE ENFORCEMENT (4 COUNTRIES)	Germany	8,80	8,39
	Norway	1,04	0,56
	Switzerland	1,31	2,55
	United States	9,84	15,72
MODERATE ENFORCEMENT (11 COUNTRIES)	Belgium	2,90	2,49
	Denmark	0,97	0,85
	Finland	0,64	0,43
	France	4,11	11,25
	Italy	3,44	4,55
	Japan	5,15	3,68
	Korea (Republic of)	2,20	0,77
	Netherlands	3,69	1,56
	Spain	2,11	5,99
	Sweden	1,34	1,89
	United Kingdom	4,56	13,31
LITTLE OR NO ENFORCEMENT (21 COUNTRIES)	Argentina	0,36	0,06
	Australia	1,06	1,21
	Austria	1,25	1,57
	Brazil	1,06	0,35
	Bulgaria	0,14	0,01
	Canada	3,14	2,70
	Chile	0,45	0,19
	Czech Republic	0,73	0,17
	Estonia	0,09	0,08
	Greece	0,38	0,27
	Hungary	0,58	0,21
	Ireland	1,23	1,04
	Israel	0,44	0,35
	Mexico	1,80	0,41
	New Zealand	0,20	0,14
	Poland	0,88	0,17
	Portugal	0,41	0,31
	Slovak Republic	0,32	0,02
	Slovenia	0,17	0,08
	South Africa	0,44	0,19
	Turkey	0,72	0,11

*Countries are listed alphabetically according to category

B: FOREIGN BRIBERY CASES AND INVESTIGATIONS

COUNTRY	ENFORCEMENT				SHARE OF WORLD EXPORTS % FOR 2007 (UNCTAD)
	CASES		INVESTIGATIONS		
	To end 2008	2007	To end 2008	2007	
1. Argentina	1	1	0	0	0,36
2. Australia	6	1	1	s	1,06
3. Austria	0	0	2	2	1,25
4. Belgium	3***	2**	s	s	2,90
5. Brazil	1	u	4	s	1,06
6. Bulgaria	3	3	1	0	0,14
7. Canada	1	1	1	s	3,14
8. Chile	0	0	0	0	0,45
9. Czech Republic	0	0	4	1	0,73
10. Denmark	13	13**	1	0	0,97
11. Estonia	0	0	0	0	0,09
12. Finland	2	1	4	3	0,64
13. France	17	17**	9	16	4,11
14. Germany	110	>43	>150	>88	8,80
15. Greece	0	0	0	1 or 0	0,38
16. Hungary	24	23	≥1	1	0,58
17. Ireland	0	0	4	4**	1,23
18. Israel*	0	-	0	-	0,44
19. Italy	2	2	s	3	3,44
20. Japan	2	1	2	u	5,15
21. Korea (Republic of)	9	9**	u	1	2,20
22. Mexico	0	0	0	0	1,80
23. Netherlands	7	7	4	3	3,69
24. New Zealand	0	0	6	s	0,20
25. Norway	5	4	u	u	1,04
26. Poland	0	0	0	0	0,88
27. Portugal	0	u	2	u	0,41
28. Slovak Republic	0	0	u	0	0,32
29. Slovenia	0	0	1	0	0,17
30. South Africa*	0	-	1	-	0,44
31. Spain	3	2	2	0	2,11
32. Sweden	2	1	6	15	1,34
33. Switzerland	16	16	s	36	1,31
34. Turkey	0	0	0	1	0,72
35. United Kingdom	4	0	approx. 20	20	4,56
36. United States	120	103	110	69	9,84

* First year covered in report

** Number corrected from last year's report.

*** Belgium has brought ten additional cases on behalf of the EU

u = unknown

s = some

NOTE: In past years the year given in the column heading was the year of publication of the report. In this year's report, the year given reflects the year for which the data was collected; 2009 data was taken into consideration for Finland and Sweden

C: STATUS OF FOREIGN BRIBERY CASES

COUNTRY	TOTAL CASES	MAJOR CASES	RECENT MAJOR CASES	MINOR CASES	SIGNIFICANT PENALTIES
ACTIVE ENFORCEMENT					
Germany	110	>10	2008	many	yes
Norway	5	≥3	2008	some	yes
Switzerland	16	>3	at least 2007	many	yes
United States	120	>10	2008	many	yes
MODERATE ENFORCEMENT					
Belgium	3	≥1	2008	≥1	no
Denmark	13	some	2008	some	no concluded cases
Finland	2	1	2009	1	unknown
France	17	some	2008	some	no
Italy	2	1	2004	1	unknown
Japan	2	1	2008	1	no
Korea (Republic of)	9	≥1	2004	9	unknown
Netherlands	7	7	2007	0	no
Spain	3	2	2008	1	yes
Sweden	2	1	2009	1	unknown
United Kingdom	4	2	2008	2	yes
LITTLE OR NO ENFORCEMENT					
Argentina	1	1	2006	0	-
Australia	6	6	2008	0	-
Austria	0	0	-	0	-
Brazil	1	unknown	-	1	-
Bulgaria	3	0	-	3	no
Canada	1	0	-	1	no
Chile	0	0	-	0	-
Czech Republic	0	0	-	0	-
Estonia	0	0	-	0	-
Greece	0	0	-	0	-
Hungary	24	unknown	-	unknown	unknown
Ireland	0	0	-	0	-
Israel	0	0	-	0	-
Mexico	0	0	-	0	-
New Zealand	0	0	-	0	-
Poland	0	0	-	0	-
Portugal	0	0	-	0	-
Slovak Republic	0	0	-	0	-
Slovenia	0	0	-	0	-
South Africa	0	0	-	0	-
Turkey	0	0	-	0	-

Detailed Findings

This year, as in previous years, the Progress Report Questionnaire covers statutory obstacles, access to information about cases and investigations, political control over enforcement and complaints procedures. This year's Questionnaire also covers two additional aspects of the enforcement system: effectiveness of accounting and auditing standards and anti-money laundering efforts. This section summarises data and evaluations provided by country experts and follows the order of questions in the 2009 TI Questionnaire, which can be found in Appendix B. More detailed information can be found in the country reports in Section 3.

ACCESS TO INFORMATION ISSUES

Access to information about foreign bribery cases is important in order for the public to know how laws are being enforced and how their companies are behaving abroad, as well as to ensure equitable treatment. Statistics on cases and investigations are also important in order to assess allocations of resources, determine success rates and identify trends. However, TI experts in 23 of the 36 countries surveyed report insufficient access to information about prosecutions and/or investigations: **Argentina, Australia, Austria, Belgium, Brazil, Canada, Czech Republic, France, Hungary, Ireland, Italy, Japan, Korea (Republic of), the Netherlands, Norway, Poland, Portugal, Slovenia, Spain, Switzerland, Turkey, the United Kingdom and the United States.**

The governments of most of the countries covered in this Report do not compile and publish official statistics on foreign bribery-related cases and investigations, although some provide information on an informal basis. In very few countries is information about prosecutions and court decisions accessible to the public, much less information on out-of-court settlements, despite the fact that the public has a legitimate interest in this information. Furthermore, there may be policy reasons for not disclosing names of those under investigation, but there are no good reasons for not disclosing numbers of investigations under way.

STATUTORY AND OTHER LEGAL OBSTACLES

Statutory and other legal obstacles are legal provisions that make it difficult to bring a case or bring it to a conclusion with substantial sanctions. Statutory obstacles, sometimes numerous, were reported in the following 25 countries: **Argentina, Australia, Belgium, Brazil, Bulgaria, Canada, Chile, Czech Republic, Denmark, France, Germany, Greece, Ireland, Italy, Japan, Korea (Republic of), Mexico, the Netherlands, Poland, Slovak Republic, Slovenia, Spain, Sweden, Switzerland and the United Kingdom.**

Lack of corporate criminal liability was cited in 12 countries, namely: **Argentina, Brazil, Bulgaria, Chile, Czech Republic, Germany, Greece, Portugal (in practice), Slovakia, Spain, Turkey and the United Kingdom.** Without corporate liability it is much harder to hold companies responsible for foreign bribery and the penalties are likely to be less severe.

Short statutes of limitation, jurisdictional limitations and low sanctions were also cited as a problem in numerous countries.

POLITICAL INFLUENCE OVER ENFORCEMENT

Political influence over enforcement can result in cases not being brought where high level officials or influential companies or individuals are involved. In seven countries, experts mentioned the risk of political influence over enforcement decisions, namely: **Argentina, Czech Republic, Hungary, Poland, Portugal, Sweden, Turkey and the United Kingdom.** The South African expert also referenced a particular instance in **South Africa** where a case involving a high level official was terminated. The expert in **France** expressed concerns for the future about the potential for political influence if investigating magistrates are eliminated. Additionally, **Canada** has made a reservation to Article 5 of the Convention. This means that in making decisions about investigations or prosecutions, its law enforcement personnel may give consideration to questions of national economic interest and foreign policy, something which has been called into question by the OECD *Phase 2 Report* on Canada.

COMPLAINT PROCEDURES

Clear channels for individuals to report information about foreign bribery is one way for law enforcement authorities to receive information needed to initiate an investigation. Experts in 12 countries reported unsatisfactory complaints procedures: **Belgium, Chile, Greece, Hungary, Ireland, Italy, the Netherlands, Norway** (not totally satisfactory), **Portugal, Russia, Spain** (but improving) and **Sweden**. Particular concerns were expressed by the experts in **Italy** and **the Korea (Republic of)**. Many experts considered the availability of a hotline and the opportunity for anonymous reporting to be key elements of an adequate system for reporting.

EFFECTIVENESS OF ACCOUNTING AND AUDITING

Strong accounting and auditing standards can help prevention and detection of foreign bribery and this is reflected in Article 8 of the OECD Convention. However, TI experts in the following 11 countries found country standards unsatisfactory in law and/or practice: **Argentina, Australia, Austria, Chile, Greece, Ireland, Mexico, Portugal, Slovenia** and **the United Kingdom**. Additionally, some deficiencies were found in accounting and auditing systems in a further 12 countries including: **Belgium, Canada, Czech Republic, Denmark, Finland, Hungary, Italy, Japan, New Zealand, Poland, Sweden** and **Turkey**. The expert from the United Kingdom noted that UK accounting and auditing standards represent best practice but the methods used by companies to bribe foreign public officials can circumvent these standards or indeed not be regarded as material. The Australian expert commented that although the accounting laws are satisfactory there is still opportunity to conceal bribery through disguised payments and other benefits given through intermediaries and joint ventures.

ANTI-MONEY LAUNDERING EFFORTS

Anti-money laundering (AML) preventive measures to identify suspicious transactions offer an important avenue for identifying foreign bribery transactions and foreign bribery-related money laundering. Experts from the following countries reported flaws in one or more aspects of their anti-money laundering laws or measures: **Belgium, Bulgaria, Chile, Czech Republic, Denmark, Finland, France, Germany, Greece, Ireland, Israel, Italy, Japan, Mexico, the Netherlands, New Zealand, Slovenia, South Africa, Spain, Switzerland, Turkey, the United Kingdom** and **the United States**.

Common to many countries was a lack of adequate provisions or practice regarding customer due diligence, including lack of enhanced due diligence for Politically Exposed Persons (PEPs). Additionally, inadequate information about beneficial ownership of accounts was an often-cited problem as was lack of adequate resources for the authorities charged with anti-money laundering oversight and enforcement.

WHISTLEBLOWER PROTECTION AND OTHER ENFORCEMENT ISSUES

Many countries reported that a failure to protect whistleblowers meant that their overall complaint procedures were weak. These included: **Argentina, Bulgaria, Chile, Czech Republic, Denmark, France, Germany, Hungary, Ireland, Italy, the Netherlands, Norway, Portugal, Slovenia, Spain, Sweden, Switzerland** and **Turkey**. This echoes the conclusion in last year's report that lack of whistleblower protection is one of the main weaknesses in enforcement systems in OECD Convention countries. Another issue frequently mentioned was lack of resources for enforcement efforts as well as a need for specialised units and training.

CURRENT CASES AND TRENDS

Cases referred to in this section are also discussed in more detail in the country reports in Section 3.

Broad range of foreign bribery should be covered: The cases show a wide range of recipients of payments intended to influence a public official. Payments to political parties have been cited in cases or investigations concerning alleged bribery in countries including Greece, Hungary, Nigeria, Poland, Portugal, Spain and South Africa. In a recent case in Turkey, one of two contractual partners allegedly bribed a public official in order to deliver what had been promised to the other foreign partner. In Argentina, Austria and other countries, there were allegations that payments were made or offered to family members of decision-makers. In Poland alleged payments to charities run by government decision-makers or their relatives have been mentioned. Other cases suggest that bribery of private sector entities that perform public services under government contracts should be covered under the Convention.

Key sources of information should be used: The cases show that evidence can be uncovered through a whole range of sources of information including audits associated with takeovers, as in the recent self-reporting by **Statoil**. Bank audits and AML due diligence are also important ways for foreign bribery-related money laundering to be detected. Liechtenstein bank auditors detected allegedly suspicious transactions in **Siemens** accounts and auditors of a Swiss private bank found allegedly suspicious transactions in **Alstom** accounts.

Adequate resources and statutes of limitation are needed: Numerous cases show the importance of adequate resources for law enforcement authorities and long statutes of limitation, in light of the complexity of international bribery cases and the vigorous efforts of companies and public officials to cover up evidence of bribes, and to use all legal means of recourse available against a conviction. The allegations in the **Thales Spectrum Argentina** case and the **Siemens** cases reference numerous actors working across many borders requiring time and effort to investigate. The saga with **Alstom** in Mexico, which reportedly filed multiple appeals from a lower court judgment, illustrates the persistence needed by prosecutors pursuing such cases. Investigators may need to make mutual legal assistance (MLA) requests in numerous jurisdictions to follow the trail of transactions and money—among the most oft-cited locations for bank accounts used in bribery-related transactions are British overseas territories but others are also cited, many of which are not responsive to MLA requests. Among the other complications enforcement authorities face are the ever-changing names and owners of companies. Given the resulting delays, statutes of limitations provisions should provide that they do not begin to run until date of discovery of the offence and provide for the possibility for enforcement authorities to apply for extensions where justification can be provided.

Bribery and other anti-competitive activities: Other cases demonstrate that there is sometimes a nexus between bribery and other anti-competitive activities such as price-fixing and market-sharing cartels or that the same companies may engage in different kinds of anti-competitive activities including bribery. This implies a need for cooperation between the government bodies handling anti-corruption and those responsible for antitrust enforcement. This is notable about the **Bridgestone** case which was brought in the United States by the Antitrust Division of the Justice Department against a former employee of the Bridgestone company and the debarment cases brought by the World Bank against a cartel in the Philippines. Often the same companies are investigated for a range of anti-competitive activities, as is illustrated by **Siemens's** own reports on legal proceedings against it.

Challenges of mutual legal assistance: International cooperation difficulties are often an obstacle to enforcement. Numerous cases show how failure to provide mutual legal assistance, sometimes apparently influenced by political considerations, can block international investigations. The United Kingdom has yet to respond to a 2007 request from the United States for mutual legal assistance in relation to the **BAE Systems Al Yamamah** case. The United States was criticised by a Spanish judge investigating the **BBVA** case. It took Portugal three years to respond to a request for cooperation from the United Kingdom in the **Freeport** case and the UK also faced difficulties in obtaining assistance from South Africa in an investigation of **BAE Systems** in connection with the 1999 South African arms deal. India reportedly had difficulties in obtaining mutual legal assistance from Australia and was denied an extradition request by Argentina due to the lack of a bilateral treaty. Argentina was denied extradition requests by both Chile and the US due to incompatibilities in legal systems. In a number of cases, problems were mentioned with respect to mutual legal assistance requests to locations known as tax havens, which have served to protect not only ordinary tax evaders but also those channelling bribes paid or received.

Reports on enforcement in OECD Convention countries

The following summarises the assessments by the expert respondents of their countries' enforcement systems. This year the TI Questionnaire again asked country experts to provide information on foreign bribery cases and investigations as well as about specific aspects of the enforcement system. Additionally, the experts were requested to provide information about domestic bribery cases and investigations involving foreign companies or their subsidiaries.

ARGENTINA

LITTLE OR NO ENFORCEMENT: One major judicial investigation since 2006 involving alleged bribery by an important Argentinian multinational company. No police investigations. Share of world trade is 0,36 per cent.

Foreign bribery cases and investigations: There is one ongoing major foreign bribery case in Argentina, brought in 2006 and still under judicial investigation. The case involves **CBK Power Company**, whose shareholders include the US company **Edison Mission Energy (EME)** and the Argentine company **Industrias Metalurgicas Pescarmona S.A. (IMPISA)**. CBK allegedly bribed a former Minister of Justice of the Philippines, in connection with a permit for the construction of a hydroelectric plant. There are no known police investigations currently under way.

Domestic bribery by foreign companies: There are eight pending prosecutions or judicial investigations allegedly related to domestic bribery involving foreign companies, with several new developments. These major cases may stretch the resources of domestic law enforcement. They allegedly involve subsidiaries of French, German, Italian, Spanish, Swedish and US companies, as well as Brazilian, Irish and Swiss companies and banks in France, Luxembourg, Uruguay and the US. They cover the sectors of telecommunications, information technology and construction and engineering. Cases reported include the following: the **Telefonica Argentina** case about the alleged purchase of fake invoices from shell companies and payments of US \$3 million (case filed February 2009); the **Accor Services** case involving an alleged bribe to the son of an Argentinian parliamentarian (case filed 2007); the **Skanska** case involving allegations of improper payments in connection with a contract to build a pipeline and alleged use of fake invoices¹ (initiated 2006); the **Thales Spectrum** case (filed 2001, see box below); the **Ansaldo Energia SpS** case in relation to the construction of the Yacyreta Dam and associated allegedly questionable tax return arrangements (initiated 2001); the **Siemens Argentina** case (initiated in 1998, see box below); the **IBM Argentina** retirement funds case, allegedly involving intermediaries disguised as IBM suppliers (case filed against former company president, 1996); the **IBM/Deloitte-Touche** case concerning Banco Nacion's acquisition of a US \$250 million computer system, allegedly influenced by manipulated bidding documents and associated payments made to a ghost company via banks in Uruguay and the US to accounts in Switzerland and Luxembourg (case filed against IBM Argentina officials, 1994). It has also been reported that in 2008 the Argentine Anti-Corruption Office opened an investigation of the French company **Dumez**² and the Italian company **Impregilo**, in relation to the construction of the Yacyreta Dam.³

LONG-RUNNING CASES AGAINST SIEMENS AND THALES SUBSIDIARIES

In August 2008, the Argentine Anti-Corruption Authority and police executed searches at the premises of **Siemens Argentina** and **Siemens IT Services SA** in Buenos Aires as part of an investigation into corruption allegations relating to a US \$1 billion identity card contract concluded in 1998.⁴ Not long after that, the Argentine Internal Audit Agency found that other companies' bids on the contract offered prices five times lower than that of Siemens, and an investigation was initiated in 1998. In 2001, then-President Fernando de la Rúa declared the contract null and void. This led Siemens to file a claim with the International Centre for the Settlement of Investment Disputes (ICSID) seeking damages of US \$418 million and in 2007 it won an award of US \$217 million. In December 2008, Siemens Argentina pleaded guilty in the US to FCPA charges relating to alleged multi-million dollar payments to high level Argentinian officials from 1998 to

2007, in connection with the 1998 contract. Siemens also settled charges brought by the US Securities and Exchange Commission (SEC) in connection with the case. Entities in the Bahamas, China and Dubai were mentioned as the conduits of funds. Argentine media reported that the officials receiving payments from Siemens included former President Carlos Menem, his interior minister and his immigration chief.⁵ There is a current request by an Argentine investigating judge for MLA from the US and Germany to gain access to the documentation provided by Siemens to the SEC and the Munich prosecutor.⁶ Argentina is also reportedly asking the ICSID to reopen the award to Siemens in light of new evidence.⁷

Indictments in the **Thales Spectrum** case, involving a **Thales** subsidiary, were first brought in 2001 against Thales's board of directors, two intermediaries and a government official and were confirmed by the Argentine Court of Appeals in December 2008. Allegations were reported of US \$25 million improperly paid in connection with a 1997 contract to privatise Argentine radio electrical spectrum, with transfers allegedly made through an Irish and a Swiss corporation to bank accounts in the US and France. Allegedly the banks included Brown Brothers Harriman, Bank of New York, Citibank, Standard Chartered Bank and Société Générale.⁸ The privatisation award was annulled in 2004 by the administration of President Nestor Kirchner leading Thales to bring a claim against Argentina at the ICSID for US \$600 million for breach of contract. That claim was rejected by the ICSID in December 2008. In March 2009, it was reported that former Argentine President Carlos Menem had been charged with administrative fraud in Argentina in relation to the granting of a contract. Judge Norberto Oyarbide reportedly charged Menem with knowing of irregularities in a contract awarded to the local subsidiary of a French defence technology company and of failing to act against those irregularities.⁹

Statutory obstacles: There is no effective liability or sanctions for corporations and an absence of nationality jurisdiction. The statute of limitations, six years from the day the crime was committed or from when it stopped (if it was a continuous crime), is too short.

Political influence over enforcement: There have been no allegations of political influence over the enforcement of transnational bribery. However, in 2007 the government changed the composition of the Judicial Council, which governs the selection and removal of judges, in a way that allegedly reinforced the influence of the political branches.

Complaint procedures: The Ministry of Foreign Affairs has issued instructions to its staff to report suspicions of foreign bribery. Prosecutors' offices and police stations are open to receive reports, but there are no specific channels, hotlines, or websites for reporting foreign bribery that provide anonymity. The prosecutor's office does not guarantee anonymity to citizens who file complaints.

Accounting and auditing requirements: The legal framework is satisfactory, but the system is unsatisfactory in practice. It is very easy to buy fake receipts from third parties, documenting services that were not provided in order to disguise a bribe in the accounts. There is inadequate government oversight of accounting and auditing provisions.

Tax deductibility of bribes: Deduction of bribes is not explicitly prohibited in the tax code. However, it is implied and the implication has been confirmed by the Taxation Agency officers. The June 2008 OECD *Phase 2 Report* recommended that Argentina make explicit the prohibition on deducting foreign bribes from taxable revenue.

Anti-money laundering efforts: As a result of the international economic crisis, a new law was passed to provide people with an "incentive" to disclose and repatriate money that they might have unregistered in foreign countries (most commonly, deposited in foreign bank accounts). The FATF's 2004 report on Argentina raised a number of concerns including one regarding the adequacy of sanctions.

Other enforcement issues: There are significant delays in judicial investigations, mainly due to delays in MLA requests and reports from expert witnesses. This can lead to cases being thrown out for exceeding the six-year statute of limitations. Prosecutors have inadequate investigation skills. There is unsatisfactory whistleblower protection in the public and private sectors. The OECD noted that certain allegations that appeared in the public domain in 2002 were not investigated until 2006.

Recommendations: Strengthen complaint procedures. Pass a whistleblower protection law for corruption cases both in the public and private sectors. Train prosecutors and court officials in investigation techniques and asset recovery. Strengthen oversight capacity of national institutions regarding accounting and audit provisions. Provide information and training for the private sector.

AUSTRALIA

LITTLE OR NO ENFORCEMENT: There was a Royal Commission inquiry into allegations of large-scale improper payments by a major Australian company, and six civil actions were brought in 2008. Also, one investigation. Share of world trade is 1,06 per cent.

Foreign bribery cases and investigations: There have been no foreign bribery prosecutions in Australia, but a government-appointed Royal Commission was established in 2005 to inquire into alleged illicit Oil-for-Food-related payments of US \$220 million made in Iraq by the **Australian Wheat Board (AWB)**, and a set of civil cases are pending against six AWB executives for alleged breach of director's duties, brought by the Australian Securities and Investment Commission just before expiry of the six-year statute of limitations. In November 2008, almost all those cases were frozen pending the findings of a task force set up to examine whether any of the executives should be criminally prosecuted. There are five reported investigations under way, including one new investigation started in 2008. (See also the report on India that mentions an Indian investigation into **AWB** and the report on Portugal that refers to a prosecution of an Australian company.)

Domestic bribery by foreign companies: No information is separately available about domestic bribery by foreign companies.

Statutory obstacles: Maximum financial penalties are not high enough for those found guilty of foreign bribery.

Complaint procedures: The government has made a serious effort to publicise the need to report foreign bribery. The major states (except Victoria) each have well-funded and independent standing commissions against corruption with hotlines, and all have ombudsman offices, with hotlines, to receive complaints. The federal government has an ombudsman and independent commissioner but that position is currently being reviewed, and legislative action is expected in 2009.

Accounting and auditing requirements: The laws are satisfactory, but in practice their scope is not nearly deep or detailed enough to pick up bribery unless there is a tip-off. There is still considerable opportunity for concealing bribery of foreign officials through disguised payments and other benefits given through intermediaries or overseas joint venture parties. The auditors rely upon formal assurances by the finance director of the company that nothing of that type has come to their attention during the year. A 2008 study by the Association of Chartered and Certified Accountants showed that Australian companies are deficient in bribery and corruption reporting.¹⁰ The 2008 OECD *Phase 2 Report* faulted Australia for having failed to take any specific action to require auditors to report to management indications of possible acts of bribery.

Tax deductibility of bribes: Prohibited in law. However, there is considerable scope to conceal bribes made through offshore affiliates, not all of which are subject to Australian taxation. Deductions may be allowable for facilitation payments to foreign public officials under subsections 26-52(4)-(5) of the Income Tax Assessment Act 1997, but only those facilitation payments which are lawful under the criminal code provisions implementing the OECD Convention.

Anti-money laundering efforts: A new legislative framework has been put in place through the Anti-Money Laundering and Counter-Terrorism Financing Act 2006 following the 2005 FATF report on Australia which found some deficiencies, particularly in the area of preventive measures. The efforts are administered by a highly regarded federal agency, AUSTRAC. However, AUSTRAC does not attempt to track the predicate offences for what they identify as suspicious transactions; that investigation is left to the Australian Financial Police.

Other enforcement issues: Whistleblower protection is unsatisfactory in the public and private sectors. The current government has promised full cooperation in the Indian government's investigation of an AWB wheat deal in 1998. Allegedly cooperation in that case was not forthcoming in the past.¹¹ (See also report on India).

Recent developments: The federal government has held a parliamentary inquiry into the need for greater whistleblower protection. Its report recommends that a number of far reaching measures be enacted. A bill that includes these recommendations is expected in the second half of 2009.

Recommendations: Increase financial penalties for bribery for corporations and individuals. All companies with operations in high risk and less developed countries should introduce externally monitored hotlines.

AUSTRIA

LITTLE OR NO ENFORCEMENT: No known cases. Two investigations reported in the press in 2008. Share of world exports is 1,25 per cent.

Foreign bribery cases and investigations: In January 2008, the Austrian public prosecutor in Vienna announced an investigation of **Siemens AG Austria** and its subsidiary **VAI** regarding payments for which valid consideration could not be identified.¹² Austrian authorities were also reportedly involved in multi-jurisdictional investigations into alleged bribery by **BAE Systems**.¹³ In March 2009, an alleged lobbyist for BAE Systems was arrested in Austria reportedly on suspicion of bribing officials in Hungary and the Czech Republic.¹⁴ There are investigations under way in Hungary relating to activities of **Rail Cargo Austria** and **Strabag**. (See Hungary report.)

Domestic bribery by foreign companies: The number of cases is unknown. A parliamentary inquiry was initiated in Austria in 2006 into that country's 2002 purchase of 18 Eurofighters (the number was later reduced to 15.)¹⁵ The inquiry reportedly uncovered payments made by an alleged Eurofighter lobbyist to a family member of an Austrian general overseeing the deal. The general was reportedly suspended.¹⁶ **Eurofighter**, owned by **EADS**, **BAE Systems** and **Finmeccanica**, said it did not violate anti-bribery rules and had observed the purchase contract's code of conduct.

Statutory obstacles: The new statutory framework introduced in 2007 and just implemented looks promising. However, there is a need to clarify the elements of the bribery offence.

Complaint procedures: The new system promises to be satisfactory. Until now the system has been unsatisfactory due to a lack of a systematic government effort to facilitate complaints.

Accounting and auditing: Though the new Austrian legislation aims to create clear and effective regulations, some essential terms are not clearly defined, creating confusion about their scope. The 2006 OECD *Phase 2 Report* called on Austria to require auditors to report all suspicions of bribery by any employee or agent of the company to management and, as appropriate, to corporate monitoring bodies. It also suggested that Austria consider requiring auditors, in the face of inaction after appropriate disclosure within the company, to report all such suspicions to the competent law enforcement authorities.

Tax deductibility of bribes: Not prohibited in law but excluded in practice.

Anti-money laundering efforts: There is a well-functioning regulatory body ensuring compliance with corruption-related AML requirements. There are strict obligations for designated entities to report suspicious transfers. However, there are the general difficulties of gathering factual evidence in complex criminal cases, especially in the cross-border context.

Other enforcement issues: The 2006 OECD *Phase 2 Report* called on Austria to ensure that bank secrecy was not used as a basis for denying MLA.

Recent developments: Implementing the law passed in 2007, the new Austrian Central Public Prosecutor's Department for the Prosecution of Corruption (*Korruptionsstaatsanwaltschaft*) has the authority to investigate and prosecute corruption crimes committed after 1 January 2009, and is responsible for international cooperation. In April 2009, the OECD put Austria on a "grey list" of countries that have agreed to improve transparency standards but had not yet signed the necessary double taxation accords. Austria and others have now signed up to standards drawn up by the OECD.¹⁷

Recommendations: Increase the personnel and material resources of the new Public Prosecutors' Department. Introduce legislation that clarifies what constitutes bribery.

BELGIUM

MODERATE ENFORCEMENT: Three cases including one initiated in 2008 relating to companies allegedly involved in the Oil-for-Food scandal. Share of world exports is 2,9 per cent.

Foreign bribery cases and investigations: One of the three cases dates back to 1999 and relates to the 1994 sale of 24 Belgian government **Mirage** jets to Chile with the involvement of the Belgian company **SABCA** and its affiliate **Europavia**. The transaction was allegedly accompanied by substantial improper payments to high ranking military officials, including three generals. The judicial investigation was reportedly still under way in Belgium in 2007 and at that point had benefited from US and Swiss assistance in gaining access to bank records.¹⁸ That investigation was reportedly then closed but may be reopened due to new information emerging from Chile and Switzerland. (See also Chile report.) Apart from that case, the new case in 2008 ironically involves alleged corruption by a Belgian enterprise to win EU framework contracts to develop procurement guidelines for accession countries. The third case relates to Oil-for-Food allegations against a number of companies. In December 2007, it was reported that an official investigation had been opened in Belgium into 15 of the approximately 30 Belgian companies named in the Volcker

report on the UN Oil-for-Food scandal. The companies named in the report include **Airpower**, a Belgian division of the Swedish **AtlasCopco** and **Volvo Construction Equipment**, headquartered in Belgium and a subsidiary of the Swedish **Volvo Group**. (See also report on Sweden).

Domestic bribery by foreign companies: There are no known pending domestic bribery cases or investigations involving foreign companies. There are, however, cases mentioned in other jurisdictions, including Germany and the US, relating to bribery of Belgian public officials by foreigners.

Statutory obstacles: There is a serious limitation on the liability of employees in article 504bis of the Code of Criminal Procedure. This stipulates that malpractice occurs only "when the act is committed without prior knowledge and without authorisation of, depending on the case, the board of directors or the general assembly, the principal or the employer". Thus, if the Board, principal or employer is asked or was informed of the bribe without preventing it, it is not considered as an employee malpractice.

Complaint procedures: The Belgian Central Office for the Repression of Corruption (OCRC) has created a website, which may improve information about corruption practices and create an inducement for reporting, although the website is just for bribery issues. The OCRC accepts anonymous reports. Reporting mechanisms for public officials are still unsatisfactory. All officials and civil servants are under a general obligation to report to the public prosecutor (*Procureur du Roi*) any offence or misdemeanour that comes to their knowledge (article 29 of the Code of Criminal Procedure), including corruption offences. However, they tend not to do so and provisions of article 29 of the Code of Criminal Procedure are almost never used in practice.

Accounting and auditing requirements: Auditors are very much aware of their duties with respect to money laundering but they are reticent to report corruption.

Anti-money laundering efforts: In October 2008, the European Commission announced it would refer Belgium to the European Court of Justice over non-implementation of the Third EU Money Laundering Directive.¹⁹ Belgium does have an advanced legal framework and the penalties provided by law for financial institutions that violate AML regulations are heavy. However, the Banking, Finance and Insurance Commission (CBFA) rarely applies these penalties. More generally, there are difficulties in detecting suspicious operations. Moreover, the Public Prosecutor's Office has insufficient resources for AML cases.

Other enforcement issues: Corporate criminal liability is rarely used in Belgium. Even though the statutes of limitation are not short, there is still a danger of cases being time barred. There is a lack of resources in the justice system and inadequate whistleblower protection in the public and private sectors. The Council of Ministers decided in 2006 to set up a whistleblowing system for civil servants at federal level, but this has not been done. In 2005, the Flemish region, one of three administrative regions in Belgium, introduced a whistleblowing system. In April 2009, the OECD put Belgium on a "grey list" of countries that have agreed to improve transparency standards but have not yet signed the necessary double taxation accords.²⁰

Recent developments: The government has taken steps to implement OECD recommendations to raise awareness among public officials and Belgian citizens about the foreign bribery prohibition, and to educate the private sector on the need for anti-bribery measures. Additionally, in June 2008, an Expert Network on Corruption Matters was set up that includes magistrates, federal police and public prosecutors.

Recommendations: Show greater political will to respond to the recommendations of the OECD and the Council of Europe's Group of States against Corruption (GRECO). At the legislative level, in private corruption, there should be a modification to article 504bis of the Code of Criminal Procedure. Ensure that the OCRC can cope with the workload from "national, regional and international organisations". Ensure that OCRC recruits the specialists it needs. Introduce whistleblower protection measures. Increase awareness-raising of the offence of foreign bribery in the public and private sectors.

BRAZIL

LITTLE OR NO ENFORCEMENT: One case pending and four Oil-for-Food investigations. Share of world exports is 1,06 per cent.

Foreign bribery cases and investigations: Details are not available about the pending case. In another jurisdiction, the Brazilian firm **Odebrecht Contreras** was named in connection with the Skanska investigation in Argentina.

Domestic bribery by foreign companies: There were press reports in 2008 that Brazilian authorities were conducting an investigation of **Alstom SA** for alleged bribery of Brazilian officials in connection with the purchase of São Paulo subway trains.²¹ In April 2009, it was reported that the public prosecutor of São Paulo had dropped charges in three of 29 cases opened against Alstom in 2008.²² The São Paulo Public Prosecutor's Office has launched a **Siemens**-related investigation concerning the use of business consultants and suspicious payments in or after 2000.²³

Statutory obstacles: There are significant statutory obstacles. There is a lack of criminal liability for corpo-

rations (except for environmental crimes) and inadequate penalties.

Complaint procedures: Citizens may report allegations to a number of agencies via the internet, conventional mail, by telephone or in person, and are not required to identify themselves. At the state level there are no agencies specifically in charge of fighting corruption, nor hotlines for reporting allegations.

Accounting and auditing requirements: Brazilian law contains several requirements and procedures that prevent the withholding and omission of accounting information. It also provides for administrative or criminal penalties for those who fail to meet those requirements or commit corruption crimes.

Anti-money laundering efforts: Money laundering is criminalised, and there is a Council for Financial Activity Control responsible for investigating potential crimes and gathering information. The biggest weakness in the system is the lack of funds and personnel for AML prevention and enforcement.

Other enforcement issues: Prosecutions are impeded by a lack of decentralised agencies specialising in corruption. Most subsidiaries of multinational companies have implemented compliance programmes but most of the national companies are still unaware of the need for measures to combat foreign bribery. There is a lack of whistleblower protection in the public and private sectors.

Recent developments: In September 2008, the Office of the Comptroller General of the State made available on its website a National Register of Disreputable or Suspended Companies, a database of suppliers have committed fraud or corruption in public bids or procurement contracts with federal or state governments. A new law bans the engagement or supply of goods by entities where public records show that they have committed irregularities. There is a bill before the Brazilian National Congress to establish the liability of legal entities in corruption cases and another one to guarantee the anonymity of whistleblowers. There is another bill under consideration in the National Congress which aims at improving the criminal code provisions on money laundering by eliminating the list of crimes constituting predicate offences.

Recommendations: Create a specific public agency for investigating and prosecuting foreign bribery cases. Create specific laws on bribery to supplement the current Brazilian penal code which would impose appropriate penalties. Provide tax incentives to companies for anti-bribery efforts. Introduce awareness-raising programmes about the prohibition of foreign bribery in both the private and public sectors.

BULGARIA

LITTLE OR NO ENFORCEMENT: Three known minor cases concluded more than three years ago, none resulting in sanctions. One new investigation. Share of world exports is 0,14 per cent.

Foreign bribery cases and investigations: There were three minor cases in 2004 and 2005 involving charges of bribery of a border patrol in Poland, none of which resulted in sanctions. An investigation is reportedly under way of a Bulgarian citizen, who is charged with paying a US \$270,000 bribe to a state official in the Ministry of Health in the Republic of Zambia.²⁴

Domestic bribery by foreign companies: No known cases or investigations.

Statutory obstacles: Only administrative liability for legal persons. Lack of adequate sanctions.

Complaint procedures: The websites of the Ministry of Justice, Ministry of Economy and the Small and Medium Enterprises Promotion Agency provide information about the OECD Convention.

Accounting and auditing requirements: In the Bulgarian legislation, the accounting and auditing requirements are stipulated in several texts, which are intended to prevent the practice of hiding foreign bribery.

Anti-money laundering efforts: There are weaknesses in the area of preventive measures. The *First Progress Report on Bulgaria* published by the Council of Europe's Moneyval in March 2009 was favourable, but highlighted a number of deficiencies including the lack of legal requirements for determining whether a customer is a PEP, for reviewing correspondent banks, for monitoring transactions and for reporting suspicious transactions. It also noted that sanctions are negligible.

Other enforcement issues: Lack of adequate whistleblower protection in the private sector. Delays in court proceedings.

Recent developments: In March 2008, the EU froze approximately €100 million (US \$155 million) in infrastructure subsidies for Bulgaria due to corruption in a Bulgarian government agency. Also in March 2008, a report released by the UN Office on Drugs and Crime indicated that Bulgaria is a highway for smuggling people, drugs, counterfeit money and pirated goods into Europe. In July 2008, the European Commission took the unprecedented step of suspending €121 million (US \$191 million) in farming aid, €144 million (US \$228 million) in road subsidies and €560 million (US \$887 million) for regional development scheduled for Bulgaria, criticising the Bulgarian government for slow progress in improving the courts, corruption and crime.²⁵

Recommendations: Introduce criminal liability and adequate sanctions for legal persons for foreign bribery. Increase awareness-raising about the foreign bribery offence in the accounting and auditing sectors. Address deficiencies identified in the Moneyval report.

CANADA

LITTLE OR NO ENFORCEMENT: One minor foreign bribery case concluded in 2005 and one known new investigation in 2008. Share of world exports is 3,14 per cent, of which 84 per cent in value terms were made to the United States.

Foreign bribery cases and investigations: In the one minor case, the company **Hydro Kleen**, pleaded guilty to contravening the Canadian Corruption of Foreign Public Officials Act (CFPOA) in connection with allegations of bribery of an American customs agent and in 2005 was fined C\$25,000. Information is generally not available on foreign bribery investigations prior to charges being laid. However, in January 2009, **Niko Resources Ltd.**, a Canadian oil and gas company, announced that the Royal Canadian Mounted Police (RCMP) was investigating allegations that Niko or a Niko subsidiary may have made improper payments to government officials in Bangladesh.²⁶ (In December 2007, the Anti-Corruption Commission in Bangladesh charged government officials, including two former prime ministers as well as an alleged Niko agent in connection with a 2003 joint venture contract between Niko and the Bangladesh government.) In other jurisdictions, there were cases brought against **Acres International** in Lesotho (conviction, fine in 2002 and three-year World Bank debarment in 2004) and a vice president of **SNC Lavalin** (India, case pending)²⁷. In November 2008, **Petro-Canada** reported to the US SEC a potential violation of the US Foreign Corrupt Practices Act (FCPA).

Domestic bribery by foreign companies: Two related minor cases involving the US company ACS Public Sector Solutions Inc., were brought in Alberta in 2007. One case was dismissed at the preliminary inquiry stage while the second case resulted in an acquittal at trial.

Statutory obstacles: There are two statutory obstacles. First, the Canadian law implementing the Convention allows only for territorial jurisdiction and not nationality jurisdiction. (See Recent developments below.) Second, there is a limitation in Canadian law that allows prosecution under the Convention only where there is a for-profit corporation or to secure a business advantage. Additionally, Canada has made a reservation to Article 5 of the OECD Convention, which was called into question in the OECD *Phase 2 Report* on Canada. On the positive side, it is noteworthy that there is no statute of limitations in Canada for foreign bribery offences.

Complaint procedures: The RCMP has well-developed complaint procedures, including 35 liaison officers in 25 countries and a website which anyone can use to make a complaint. The Canadian International Development Agency has in place the Protocol for Dealing with Allegations of Corruption, which outlines internal procedures for assessing and reporting allegations of corruption to the relevant Director and the Director of the Internal Audit Division. The Trade Commissioner Service of the Foreign Affairs and International Trade Canada (DFAIT) in the Ministry of Foreign Affairs has developed specific instructions for embassy personnel about reporting credible allegations.

Accounting and auditing requirements: The CFPOA does not address accounting issues. "Document fraud" and "accessory" provisions exist in the criminal code, although there are conflicting views as to whether these provisions go far enough. Recent amendments to securities legislation in Canada along the lines of the US Sarbanes-Oxley legislation have expanded criminal sanctions, created statutory civil causes of action for breach of securities legislation and imposed more stringent duties on auditors, directors and senior officers of public companies in the area of disclosure and certification of financial statements.

Anti-money laundering efforts: Canada has implemented a comprehensive national initiative to combat money laundering and terrorist financing. In its February 2008 report on Canada's AML regime, the FATF found deficiencies in Canada's due diligence provisions which were then addressed. (See Recent developments below.) The FATF also questioned the effectiveness of Canada's Financial Transactions and Analysis Centre (FINTRAC), pointing out that it has insufficient access to intelligence information from other agencies.

Other enforcement issues: The Canadian Income Tax Act prohibits the Canada Revenue Agency from reporting suspicions of foreign bribery to law enforcement officials.

Recent developments: In a major new development, the Canadian government introduced proposed legislation in Parliament on 15 May 2009 that would amend the Canadian CFPOA to apply nationality jurisdiction to Canadians who engage in bribery or other forms of corruption involving foreign public officials outside Canada. Additionally, two seven-person RCMP International Anti-Corruption Units were established in 2008, with a mandate to investigate transnational bribery, and to deal with requests for foreign assistance. Enhanced CDD provisions came into force in June 2008 to address deficiencies noted in the FATF report of 29 February 2008, and additional requirements for financial institutions were implemented in December 2008.

Recommendations: Adopt the newly proposed legislation providing for nationality jurisdiction in addition to the existing territorial jurisdiction. This would cover the activities of foreign subsidiaries and third party

agents where Canadian nationals are involved. Eliminate the present requirement in the Canadian legislation (CFPOA) that the transaction be 'for profit'. Place the issue of whether 'not-for-profit' transactions should be covered by the Convention on the agenda of the OECD Working Group in Phase 3. Make efforts to promote compliance programmes among small and medium-sized businesses.

CHILE

LITTLE OR NO ENFORCEMENT: No foreign bribery cases or investigations. Share of world exports is 0,45 per cent.

Foreign bribery cases and investigations: The Chilean Public Prosecutor's Office looked into allegations that in February 2007 the Peruvian unit of the Chilean company **Automotores Gildemeister** made illicit payments to public officials in Peru in order to obtain a contract to provide 469 vehicles to the National Police of Peru. The company reportedly said the allegations concerned its executives in Peru and that the company in Chile was not involved. The public prosecutor concluded that the case was outside its jurisdiction because there was no evidence that any activities took place in Chile. The contract was canceled in Peru.

Domestic bribery by foreign companies: There are two known ongoing domestic bribery cases involving foreign companies and one investigation has been reported. The first case, a judicial investigation, involves reported embezzlement charges brought in January 2009 against four former high-ranking officers of the Chilean Air Force who allegedly took illicit payments from a Belgian company, in connection with a contract for the purchase of 24 **Mirage** fighter jets in 1994.²⁸ There is also reportedly a Chamber of Deputies Commission investigating the Mirage jets case.²⁹ (See also report on Belgium). In a second case, the State Defence Council brought charges of bribery and fraud in January 2009 against four high-level executives of Indian **Tata Consultancy Services** and the head of the Chilean Civil Registry Office in connection with an US \$80 million IT contract issued by the Office to Tata.³⁰ An advisor to the Registry Office allegedly provided confidential information to Tata regarding the tender. The contract was later annulled because of the corruption allegations.³¹ (See also Other enforcement issues below.)

Statutory obstacles: Several important deficiencies, identified by the 2007 OECD *Phase 2 Report* on Chile, are currently being addressed. (See Recent developments below). There is an absence of criminal liability for corporations and associated sanctions. There are also jurisdictional limitations, including an absence of nationality jurisdiction and restrictions on territorial jurisdiction.

Complaint procedures: Although the general mechanisms available are appropriate, there are no special mechanisms to facilitate complaints.

Accounting and auditing requirements: Chile adopted the International Financial Reporting Standards in January 2009. There is no general accounting regulation of companies by the state, except for the accounting standards that competent authorities impose on specific narrow categories of corporations. The standard-setting task is assigned to a private organisation, the Accountant's Board, which lacks enforcement powers. Moreover, the regulation of accounting offenses has important vacuums. These deficiencies necessarily result in unsatisfactory practice.

Anti-money laundering efforts: The laws comply with international standards. The *Unidad de Analisis Financiero* can ask for information from different sources and, if there is evidence of money laundering, it sends the case to the public prosecutor. The most important role, however, is played by the Superintendent of Banks and Financial Institutions, an organ that was not designed for the prevention of money laundering. Fines are relatively low, and because sanctions are published only through statistical summaries, it is difficult to track them.

Other enforcement issues: There is no whistleblower protection mechanism in the private sector or for private parties dealing with the government. Other issues include corruption in the police. In January 2009, it was reported that Chile's Investigative Police (PDI) was again in the national spotlight concerning a corruption scandal. A PDI detective and former detective were being held for destroying evidence in a fraud case involving the former head of Chile's Civil Registry Office in the Tata case (see above). One of them reportedly confessed to burning a tape containing investigators' recordings of the private telephone conversations of the Registry Office chief, who was accused of signing questionable contracts to hire services, allegedly with the intention of embezzling state funds.³² The PDI detective has since been sentenced. In 2004, a Chilean judge rejected a request for the extradition of Argentina's former president, Carlos Menem, who was reportedly sought by Argentina for questioning regarding alleged embezzlement of up to US \$60 million during his 10-year presidency (1989-1999). Under Chilean law people cannot be extradited for questioning.³³ The 2007 OECD *Phase 2 Report* found that Chile should ensure that bank secrecy is not an obstacle to enforcement, particularly with respect to requests for MLA from other countries.

Recent developments: Under Presidential leadership, the government has made an effort to implement the recommendations in OECD Reports. The *Coheco a Funcionarios Publicos Extranjeros Law 20341*, which

was enacted in April 2009, reforms the legal framework on foreign bribery, including an increase in penalties, but does not refer to nationality jurisdiction for citizens or residents. In April 2009, the government presented to Congress another bill to address this issue, by extending the jurisdiction of the Chilean courts in foreign bribery cases to cover citizens or residents. Also in April 2009, the Chilean government sent to Congress a bill to allow the Chilean Internal Revenue Service access to bank information for tax purposes. A new bill was introduced in March 2009 regarding corporate liability for money laundering, terrorist financing and bribery.³⁴

Recommendations: Pass the bill introducing criminal liability of corporations. Promote whistleblower protection in the private sector and for private parties dealing with the government. Promote private sector awareness of the OECD Convention. Strengthen enforcement of AML regulations in the financial sector.

CZECH REPUBLIC

LITTLE OR NO ENFORCEMENT: No known cases and four investigations, including two begun in 2008. Share of world exports is 0,73 per cent.

Foreign bribery cases and investigations: One foreign bribery investigation was suspended in January 2008 for lack of evidence. The accused, Michal Kraus, a former head of the parliamentary group of deputies of the Social Democratic Party, was reportedly investigated for alleged money laundering, bribery of Ghanaian clerks, and attempted fraud in connection with the planned purchase of a Ghanaian cocoa factory in 2001. See also reference to **Tschas Trade** in the report on Poland.

Domestic bribery by foreign companies: No cases known. There were three investigations into domestic bribery by foreign companies in 2008, with two of these suspended in January 2009. Two of the suspended investigations involved allegations against pharmaceutical companies, Canada's **Apotex**³⁵ and Iceland's **Actavis**³⁶. There is one investigation currently under way that is part of a multi-jurisdictional investigation of bribery allegations against **BAE Systems/Saab**, which includes allegations that Czech politicians were bribed in connection with a planned purchase of Gripen jets in 2001.³⁷ The Department for Combating Corruption and Financial Crime of the Czech Republic Police (UOKFK) is reportedly providing MLA to the British Serious Fraud Office in this investigation. A police inquiry into the case was originally initiated in 2002 based on a claim by the former chairman of the Czech Senate Committee on Foreign Affairs, Defense and Security that he had been offered a £1 million (US \$1.63 million) bribe to support the acquisition of Gripen jets. The police reportedly closed that inquiry due to lack of evidence and only reopened the case after an exposé on Swedish television in 2007.³⁸ See also the report on Poland referencing bribery allegations against a Polish company in connection with the June 2004 privatisation of the Czech petrochemical company Unipetrol.³⁹

Statutory obstacles: There is no criminal liability of legal persons in the Czech Republic. The TI expert also notes that it would be difficult to establish jurisdiction in foreign bribery cases under the Czech legal framework.

Political influence over enforcement actions: The Supreme Public Prosecutor is politically appointed by the government on the recommendation of the Ministry of Justice and can intervene in the investigation and prosecution of any case. There is an increasing tendency of the political decision-makers to comment publicly on ongoing investigations and prosecutions, which may have an influence and exert pressure on investigation proceedings. Serious allegations appeared in the press that an investigation of domestic bribery involving a former deputy prime minister was closed due to political pressures.

Complaint procedures: Most ministries have hotlines through which anyone can report bribery allegations. Anyone can contact the police and has the right to be informed how his/her complaint is handled. The National Anti-Corruption Hotline 199 operated by TI Czech Republic was set up in March 2008. The number of allegations of corruption on the hotline has increased considerably since this service was outsourced. However, there is ineffective protection for whistleblowers.

Accounting and auditing requirements: The legal requirements are strict and seem to be implemented in practice but there are no known cases or investigations brought for violating these laws.

Anti-money laundering efforts: The legal framework is satisfactory, with strict and high sanctions. The new Act No. 253/2008 Coll. on AML fulfils all international and EU obligations. It covers a larger number of entities and requires financial institutions to identify customers for transactions of €1,000 (US \$1,400) or more and to carry out customer due diligence, identification of beneficial owners and enhanced due diligence for PEPs. There is also a well-functioning regulatory body, the Financial Analytical Unit (FAU), part of the Ministry of Finance, which examines several thousand suspicious transactions each year and presents about 100 criminal complaints each year, but lacks any law enforcement authority. The FAU works closely with the Czech national bank. The legal penalties that can be imposed on financial institutions are satisfactory, as are the levels of KYC and PEP due diligence investigations. There are, however, weaknesses in the

system. There is a lack of capacity (personnel and expertise) in the law enforcement agencies to investigate the reported violations. When the Finance Police was disbanded during the recent police reform many saw this as a major blow to anti-money laundering efforts.

Other enforcement issues: There is a lack of protection for whistleblowers. Law enforcement agencies do not understand the complicated laws relating to corruption crimes and this makes investigations very difficult. There have been five changes of the head of UOKFK since its establishment in 2003, and frequent personnel and organisational changes in the Ministry of the Interior, which has disrupted the government's anti-corruption policy and strategies. It is long overdue for the government to conduct an awareness-raising campaign about foreign bribery.

Recent developments: The new Criminal Code that will come into effect in 2010 will allow prosecution of non-Czech citizens who commit crimes abroad for the benefit of a legal person with its head office in the Czech Republic. There were three new pieces of legislation in 2008: one requiring enhanced reporting of potential money laundering; one adding crimes of corruption to the list of crimes the Police can investigate using undercover agents; and one requiring tax officials to report offences of bribery (a new exception to confidentiality requirements). In addition, there is a proposal to expand the Czech Republic's provisions on territoriality jurisdiction to allow for universal jurisdiction for anti-bribery laws.

Recommendations: Introduce criminal liability of legal entities. Enhance protection of whistleblowers in both the private and public sectors. Increase the independence of the Supreme Public Prosecutor. Increase the independence and expertise of public prosecutors. Build capacity for foreign bribery investigations in law enforcement agencies, especially in the Unit for Combating Corruption and Financial Crime and ensure the Unit's independence and stability. (Avoid changing the head of this unit almost every year.) Create units specialised in corruption crimes among law enforcement agencies such as the Special Court, Special Prosecutor's Office. Conduct an awareness-raising campaign.

DENMARK

MODERATE ENFORCEMENT: Thirteen Oil-for-Food cases were initiated last year, some of them major. There is at least one investigation. Share of world exports is 0,97 per cent.

Foreign bribery cases and investigations: Apart from the Oil-for-Food cases initiated last year, the public prosecutor began and then dropped proceedings against the pharmaceutical company **Novo Nordisk**. Another Danish company **Grundfos**, the industrial pump maker, announced in 2005 that it had discovered improper payments made by employees in 2001-2002 in connection with the UN Oil-for-Food Programme. In spring 2008, **Missionpharma** was formally put under investigation by the Danish authorities for alleged bribery and, in the alternative, alleged unlawful commissions. The investigation was opened at the request of UK counterparts in connection with a Global Fund project managed by United Nations Development Programme in the Democratic Republic of Congo. In late January 2009, the Danish public prosecutor dropped the core charge of bribery.⁴⁰ In other jurisdictions, in May 2009, Novo Nordisk agreed to pay a fine of US \$18 million in an Oil-for-Food case in the US.

Domestic bribery by foreign companies: No known cases or investigations.

Statutory obstacles: The 2006 OECD *Phase 2 Report* called on Denmark to amend the law to increase the penalties for foreign bribery.

Complaint procedures: In 2005, the Ministry of Foreign Affairs established the DANIDA anti-corruption hotline for reporting any misuse of Danish development funds. The hotline guarantees confidentiality and anonymity to whistleblowers who request it.

Accounting and auditing requirements: Denmark complies with EU legislation and OECD recommendations. However, the sanctions for accounting offences should be increased. (See also Recent developments below.)

Tax deductibility of bribes: Tax deductibility of bribes is not explicitly prohibited in law, though it is prohibited in practice.

Anti-money laundering efforts: The preventive measures for financial institutions are set forth in the Act on Measures to Prevent Money Laundering and Financing of Terrorism (Law no. 117 of February 27, 2006), in force since January 2007. The Act redefines the AML/CFT obligations introducing and regulating, *inter alia*, matters such as beneficial ownership of accounts, enhanced and simplified CDD requirements and some elements of a risk-based approach. The FATF report on Denmark in 2006 found fault with the infrequent reporting of suspicious transactions and considered that the authorities should investigate and prosecute a larger quantity of serious money laundering cases. Furthermore, the report recommended that the procedures for ascertaining information relating to a beneficial owner should be strengthened.

Other enforcement issues: There is unsatisfactory whistleblower protection, especially in the private

sector. There is an inadequate framework for reporting by key agencies. There is an absence of prosecution or fines imposed on legal persons for acts of bribery.

Recent developments: The law on auditing has been revised with the purpose of making auditors liable should they fail to report on corruption in audited companies.

Recommendations: Improve whistleblower protection and step up enforcement efforts.

FINLAND

MODERATE ENFORCEMENT: One minor case concluded last year, and one major new one in 2009 involving an important company. Four known investigations, including one started in 2008 into allegations against a defence company. Share of world exports is 0,64 per cent.

Foreign bribery cases and investigations: In May 2009, the Finnish engineering group **Wärtsilä** said in a statement that a prosecutor had charged one of their retired executives with bribery. The indictment related to a power station deal in Kenya a decade ago.⁴¹ The defence and aerospace company **Patria**, majority-owned by the Finnish state, was and still is under investigation by the Finnish National Bureau of Investigation for alleged bribery in Slovenia and Egypt and, more recently, for alleged bribery in Croatia. In Slovenia, Patria allegedly paid €21 million (US \$30 million) through intermediaries to high level Slovenian officials to win a €278 million (US \$298 million) contract to supply 135 armoured vehicles to the Slovenian army.⁴² (See also report on Slovenia.) In another jurisdiction, in 2007, the Bangladesh Anti-Corruption Commission brought a case against a state employee, alleging that the employee helped a foreign company, **Wartsila Power Development Ltd. Consortium** and its partners win a deal for setting up a power plant in Khulna.

Domestic bribery by foreign companies: The most well-known case involved the director of a municipal water company who was found guilty of bribery in the District Court of Helsinki. In addition, two officials of the Federal Maritime Administration were found guilty of accepting free trips from a Norwegian shipping company.

Statutory obstacles: There are no significant statutory obstacles.

Complaint procedures: Even though in Finland there is no special mechanism for reporting foreign and domestic bribery, the normal channels for reporting crimes function quite effectively.

Accounting and auditing requirements: In the 2006 OECD *Phase 2 Follow-Up Report*, it was noted that Finland had not yet explicitly required auditors to report indications of a possible foreign bribery offence to management and, where appropriate, corporate monitoring bodies.

Anti-money laundering efforts: A new AML Act came into force in July 2008 addressing problems raised in the October 2007 Third Mutual Evaluation Report of the FATF. There is a well-functioning regulatory body that ensures compliance, and the police publish annual reports of its results. However, there is a lack of resources.

Other enforcement issues: The 2002 OECD *Phase 2 Report* called on Finland to establish clear guidelines to the effect that tax inspectors are obligated to report cases of suspected foreign bribery and tax fraud to the investigative authorities.

Recent developments: In 2008, the most important issue under public discussion was the funding of candidates in parliamentary elections. Because of the lack of transparency and a critical evaluation by GRECO in 2008, the government has prepared new legislation providing for more transparency in political financing.

Recommendations: Pass legislation regulating political party financing. Enforce existing laws more effectively. Correct areas of non-compliance with FATF AML guidelines.

FRANCE

MODERATE ENFORCEMENT: Seventeen cases including five prosecutions, four of them dismissed, the other on appeal. Twelve judicial investigations, some of them major. Nine police investigations. Share of world exports is 4,11 per cent. The possible elimination of investigative magistrates raises a concern about how that function will be filled.

Foreign bribery cases or investigations: There have been no convictions for foreign bribery. In one prosecution, currently on appeal, the person was convicted on charges other than foreign bribery. In its February 2009 Third Evaluation Round Report on France, GRECO wondered why "despite the economic weight of France and its close historical links with certain regions of the world considered to be rife with corruption, it has not yet imposed any penalties for bribing foreign public officials".

In March 2007, the chief executive of **Total SA**, the French oil and gas group, was placed under formal investigation by a French judge, who was reportedly inquiring into alleged bribery in connection with a 1997

South Pars gas contract in Iran. The investigation began in December 2006, after the discovery by Swiss authorities of SFr95 million (US \$78.6 million) in the Swiss bank account of an alleged intermediary.⁴³ According to press reports Total is also under investigation for alleged bribery in Iraq in connection with the UN Oil-for-Food Programme.

Other foreign bribery investigations in France were reported in the past concerning **Halliburton** (2003), **Alcatel** (2004), **Thales** (2004) and **Alstom** (2007). In May 2008, it was reported that Alstom had declared itself a civil party in the ongoing investigation by French (and Swiss) authorities into bribery claims on the grounds that it "(relates) to possible misuse of company assets detrimental to Alstom". An Alstom lawyer said Alstom "requested civil party status to learn what has already happened in the investigations, and to participate fully in the inquiry."⁴⁴

Prosecutions, investigations and serious allegations about French companies and/or their subsidiaries or executives have been reported in other countries in recent years. These relate to: **Alcatel** in Costa Rica and the US (2007 guilty plea by Alcatel ex-VP Latin America); **Alstom** in Brazil, Italy (two subsidiaries and former executive convicted, 2008), Mexico (fine imposed, confirmed on appeal 2008) and Switzerland (arrest made); **Areva** in Mexico (fine imposed); **Armaris** in India (contract cancelled) and Malaysia; **Dumez** in Argentina, Lesotho and Switzerland; **EADS** in Austria, India and South Africa; **Thales** in Argentina (indictments confirmed), India and South Africa; **Schneider Electric (Spie Batignolles)** in Lesotho (guilty plea and fine, 2004); **Total SA** in Italy and the US (in US regarding Iraq Oil-for-Food); and **Vivendi** (now Aeolia) in Italy (senior executive convicted, 2001). French companies represented the second largest number of those named in the Volcker report on the UN Oil-for-Food scandal.

Domestic bribery by foreign companies: No known cases. But see FCPA cases in the US against **Micrus Corporation** and **Syncor**, both of which contain charges of bribery in the health sector in France.

Statutory obstacles: The statute of limitations is only three years. However, this has been mitigated by the fact that courts have postponed the starting point of the limitation period to the last step in the chain of corruption, and the period may be extended if certain steps are taken. The GRECO Third Evaluation Report of March 2009 also found problematic the rules governing jurisdiction when an offence is committed abroad. GRECO said that "*France has severely restricted its jurisdiction and ability to prosecute cases with an international dimension which, given the country's importance in the international economy and the scale of many of its companies, is regrettable.*" The jurisdiction problem, according to GRECO, is that corruption offences committed abroad can only be investigated by French authorities at the request of the foreign prosecutors and following a complaint from the victim or his or her beneficiaries, or an official report by the authorities of the country where the offence was committed. Complicity in any offence committed by a French person abroad is only investigated if a final decision in foreign courts has been reached. GRECO commented that "*This provision makes it very difficult to prosecute acts of complicity that also include, for example, the instigation by the parent company in France of a corruption offence committed by a local branch abroad.*" GRECO also expressed concern about the fact that fines imposed are apparently not always enforced and recommended that all necessary steps be taken to ensure the penalties imposed are properly enforced in regard to corruption and trading in influence.

Complaint procedures: The government has launched advocacy campaigns about the duty of civil servants to report any violations of the law that they witness. The duty is expressed in the code of criminal procedure. The Ministry of Foreign Affairs had emphasised this issue in its instructions to diplomatic agents abroad.

Accounting and auditing requirements: Auditors apply internationally accepted accounting principles, one of which is the consolidation of companies controlled "in substance". Auditors are under an obligation to report to the public prosecutor any fraud they witness, and this obligation has been enforced. There are many cases where auditors have been convicted as accomplices for failing to report fraud.

Anti-money laundering efforts: The French Commission Bancaire is in charge of the supervision of banks, conducts periodic inspections to verify compliance and has applied penalties for failure to comply with the law. A unit in the Ministry of Finance is responsible for ensuring compliance with corruption-related money laundering. However, it is overwhelmed with suspicious transaction reports as finance-related professionals use this means to protect themselves against the risk of criminal claims.

Other enforcement issues: Whistleblower protection, introduced in 2007 for the private sector, does not extend to the public sector.

Recent developments: The Act of 13 November 2007 is an important new piece of legislation that enhances the previously existing legal framework, including introduction of whistleblower protection in the private sector. The parliamentary Leger Commission prepared a pre-report in March 2009 proposing to eliminate investigative judges and entrust all penal investigations to the public prosecutor, a political appointee. This would create the risk that corruption cases that might embarrass political or economic leaders might not be initiated. Additionally, there is draft legislation, commended by the GRECO team, that would

extend the statute of limitation period from three to seven years for offences punishable by over three years' imprisonment and from three to five years for those punishable by under three years imprisonment.

Recommendations: Keep independent judges or prosecutors able to launch a criminal action and conduct investigations that the executive branch does not necessarily support and ensure that they have adequate resources. Introduce the institution of Public Prosecutor of the Republic, independent of the Ministry of Justice. Provide adequate support and career inducements to investigating judges and prosecutors in the field of corruption. Reinforce the right of NGOs to bring criminal claims on behalf of victims of corruption.

GERMANY

ACTIVE ENFORCEMENT: There were a total of 110 foreign bribery cases to the end of 2008, many major, including 37 that are still pending, and seven brought since 1 January 2008. There have been 16 convictions (seven in 2008), and 57 terminations (27 in 2008). There are over 150 ongoing foreign bribery investigations. Share of world exports is 8,80 per cent.

Foreign bribery cases and investigations: The major developments in 2008 (and early 2009) concerned **Siemens AG**, following a €201 million (US \$275 million) penalty, composed of a €1 million fine and €200 million in "disgorgement of profits", imposed on the company in 2007 in connection with charges against the Communications Group for bribery in Libya, Nigeria and Russia. In December 2008, the Munich prosecutor terminated other proceedings against the company with Siemens' agreement to pay a fine of €250,000 (US \$337,500) plus a disgorgement of profits of €394,750,000 (US \$533 million).⁴⁵ A settlement was reported on the same day by US enforcement authorities. (See also United States report.)⁴⁶ In addition, the convictions of two Siemens managers for breach of trust and bribery of Italian officials were partially overturned and partially upheld and several investigations were terminated for lack of sufficient evidence. This included a proceeding based on suspicion of bribery of Southeast European public officials, and investigations in connection with the UN Oil-for-Food Programme. Additional developments included: (1) a civil suit by the Greek phone company OTE seeking information on alleged bribery; (2) an investigation by the Munich prosecutor announced in May 2008 against the former CEO, Chair and members of the Supervisory and Managing Boards for failure in their supervisory duties; (3) a claim for damages by Siemens against members of the Managing Board's Executive Committee; (4) a civil action for damages in the US brought by the government of Iraq in June 2008 seeking damages against companies, including three Siemens subsidiaries; (5) six-month suspension from the database of the UN Secretariat Procurement Division (UNPD); and (6) World Bank suspension proceedings in connection with allegations of sanctionable practices during the period 2004–2006 relating to a World Bank-financed project in Russia.⁴⁷

Regarding other companies, an investigation by the Frankfurt prosecutor's office against managers of state-controlled **Fraport AG** in connection with, *inter alia*, alleged improper commissions paid to secure a contract to build an airport terminal in the Philippines was closed in October 2006.⁴⁸ In 2003 and 2004 there were reports of an investigation of a senior Fraport executive in relation to allegations of corruption in Uzbekistan. Investigations were reported in 2005–2007 involving the **German Frigate Consortium**,⁴⁹ and **DaimlerChrysler AG**. Another investigation that started in 2007 concerns **fintec Holding GmbH**, a medical equipment supplier. In May 2009, this led to searches and the arrest of a division chief and the managing director, who was also the chairperson of the "Afrikaverein der Deutschen Wirtschaft" until December 2008.⁵⁰ In early 2008, the German company **GILDEMEISTER Aktiengesellschaft** announced that it and its subsidiaries were under investigation by the Public Prosecutor's Office. The inquiries were based on suspicions of tax evasion or the aiding and abetting of this for commission payments abroad. An investigation was reported in 2009 against **Bilfinger & Berger** in connection with the construction of a liquefied natural gas facility in Nigeria in the 1990s, which was allegedly accompanied by multimillion dollar payments to a Nigerian political party.⁵¹ (See Halliburton case in US report.) Also in 2009, **MAN**, a leading German transport engineering company, was reportedly under investigation over suspicious payments to increase sales illegally across Europe. Some of the payments were allegedly made to employees through shadow companies in Malta, the Bahamas, the British Virgin Islands, Cyprus, London and New York, sometimes via the accounts of relatives and friends.⁵²

Cases and investigations have also been brought against German companies in other jurisdictions. **Lahmeyer** was convicted and fined in Lesotho in 2002 (fine increased in 2004) in the Lesotho Highlands Water case and in 2006 was debarred from World Bank contracts for seven years. There are investigations of **Siemens** for alleged bribery under way in numerous jurisdictions including Argentina, Austria, Bangladesh, Brazil, Greece, Hungary, Italy, Nigeria, Norway and Vietnam. **Ferrostaal** is or has been named in investigations in Portugal, South Africa and Switzerland, and the **German Submarine (Frigate) Consortium** has been named in investigations in Portugal and South Africa. **DaimlerChrysler AG** is under investigation in the US and a **Deutsche Telekom** subsidiary is under investigation in Hungary and the US.⁵³

Domestic bribery by foreign companies: According to the TI expert, practically all foreign companies doing business in Germany are acting through subsidiaries established according to German Law that are consequently considered as German domestic companies. **Bristol Myers Squibb** subsidiaries in Germany were reportedly under investigation by a Munich prosecutor in 2006. See also FCPA cases in the US concerning **Bristol Myers Squibb**, **Micrus Corporation** and **Syncor**, all of which contain charges of bribery in the health sector in Germany.

Statutory and other legal obstacles: There are inadequate criminal sanctions and a lack of criminal liability for corporations.

Complaint procedure: Reports of crimes can be lodged with the appropriate state (Länder) prosecutor's offices, which are sometimes difficult to locate, or with the police. In the State of Lower Saxony, a website has been established which allows whistleblowers to provide information about criminal conduct anonymously, and allows the authorities to follow up and question the whistleblower without jeopardising anonymity. Similar efforts are under way in Hamburg, Rheinland Pfalz and Saarland.

Accounting and auditing requirements: In the expert's view the existing legal and tax law provisions are sufficient.

Anti-money laundering efforts: The system is satisfactory apart from the fact that the bribery of a foreign Member of Parliament still does not constitute a predicate offence for the crime of money laundering.

Other enforcement issues: There is only limited access to information about investigations and prosecutions because of German laws protecting the personal rights of defendants.

Recent developments: Whistleblower protection has been enhanced, in line with the Council of Europe Civil Law Convention against Corruption. Two new laws allow civil servants to report serious crimes, including corruption, directly to the public prosecutor instead of to their immediate superior.

Recommendations: Introduce criminal liability of legal persons. Within the German states, strengthen and centralise the entities prosecuting foreign bribery. Establish a Central Register for the purpose of debarring companies convicted of corruption from public contracts. Ratify the UNCAC and introduce stiffer punishments for members of Parliament convicted of corruption. Ratify the two Council of Europe Conventions on Corruption.

GREECE

LITTLE OR NO ENFORCEMENT: No foreign bribery cases or investigations. Share of world exports is 0,38 per cent.

Foreign bribery cases and investigations: No cases or investigations of foreign bribery.

Domestic bribery by foreign companies: Two known cases. In a **Siemens**-related case, an Athens prosecutor filed charges in July 2008 in the magistrate's court in Athens, and as of May 2009, six Siemens officials had been charged. For one of them, an international arrest warrant was issued. The prosecutor's office was reported to be investigating: (1) a telecommunications contract for a security system for the 2004 Olympic Games awarded by the Greek government to Siemens; (2) 1997 purchases of US \$1 billion in telecommunications equipment from Siemens by the Hellenic Telecommunications Organization SA (OTE) involving alleged payments of US \$75 million to OTE executives; and (3) allegations of bribery by Siemens of Greek national railways and of the Greek Ministry of Defence and the Military.⁵⁴ The Athens prosecutor concluded in 2008 that there was not enough evidence to show that Siemens had made illegal payments to political parties or politicians. However, a leading Greek newspaper reported that one party official had admitted to such a payment.⁵⁵

Statutory obstacles: There is no criminal liability for corporations. In addition, in 2005 and 2007 the OECD Working Group on Bribery requested Greece to amend its legislation to exclude from foreign bribery cases the application of article 30(2) of the Code of Criminal Procedure which exempts "political offences" and "offences through which the international relations of the state may be disturbed by prosecution".

Complaint procedures: The complaints procedures are not adequate.

Accounting and auditing requirements: The 2005 OECD *Phase 2 Report* recommended that Greece develop guidelines for accountants and auditors on reporting on foreign bribery and false accounting. The report also recommended that Greece require external auditors to report signs of foreign bribery to monitoring bodies. In response, Greece's Accounting and Auditing Oversight Board (ELTE) issued a Circular to all auditing firms and to the Institute of Certified Public Accounts, to ensure that they are aware of their obligations. ELTE also introduced the Convention into the Greek Accounting Standard 2250, which obliges auditors to report any illegal acts and provides procedures for reporting irregularities.

Tax deductibility of bribes: Explicitly prohibited in law but not in practice.

Anti-money laundering efforts: The June 2007 FATF report on Greece found that Greece is non-

compliant with respect to requirements for enhanced due diligence for PEPs, scope of application of AML requirements, structure and functions of the Financial Intelligence Unit, resources and training of responsible enforcement authorities, and collection of information on beneficial owners of legal persons. FATF also found Greece to be only partially compliant in a great number of other areas of AML.

Other enforcement issues: Lack of guidance for embassies on the reporting of foreign bribery allegations to Greek authorities. Unsatisfactory coordination of decentralised offices for enforcement. Delays in judicial processes. Lack of clarity on the threshold for imposing liability and who can trigger liability of a legal person.

Recommendations: Introduce criminal liability for corporations and ensure compliance with the 2005 OECD *Phase 2 Report's* recommendations.

HUNGARY

LITTLE OR NO ENFORCEMENT: 24 prosecutions (19 of them interrelated), including one initiated in 2008, and one major investigation. Share of world exports is 0,58 per cent.

Foreign bribery cases and investigations: No details are available about the foreign bribery prosecutions. According to newspaper accounts **Magyar Telekom**, a subsidiary of **Deutsche Telekom**, has been investigated by the Hungarian authorities in relation to six contracts awarded to its subsidiaries in Montenegro and Macedonia. According to a recent announcement on the company's website, this investigation is still underway.

Domestic bribery by foreign companies: No cases are known. There were news reports of investigations into alleged domestic bribery by foreign or foreign-owned companies including **Siemens Zrt. Hungary**,⁵⁶ **Gripen International (Saab and BAE Systems)** and **Strabag**, an Austrian construction company. In connection with the investigation against Strabag by the Central Investigative Office of the Attorney General, there were news reports in October 2008 mentioning allegations of millions of euros in illegal funds paid to political parties.⁵⁷ There were also reports in March 2008 that the police were investigating the Hungarian company **Geuronet Bt** concerning an alleged payment of €7.1 million (US \$11 million) in connection with the privatisation of MAV Cargo, which was bought by an Austrian-Hungarian consortium, consisting of **ÖBB** and **Rail Cargo Austria** for about €404 million (US \$626 million).⁵⁸ Following an exposé on Swedish television, a parliamentary committee was instructed to inquire into Hungary's 2001/ 2003 lease/purchase of 14 **Gripen** jets for ten years for US \$ 890 million. However, the committee was not given authority to investigate corruption allegations surrounding the deal.⁵⁹ The UK's Serious Fraud Office is reportedly investigating those allegations.

Statutory obstacles: In Hungary, the problem is not with the lack of legal framework, but the lack of proper enforcement.

Political influence over enforcement: There is no proven evidence of political influence on enforcement, and the independence of the Prosecution Service of the Republic of Hungary is granted by the Constitution. However, the funding of political parties seems to be of concern. Additionally, the September 2007 OECD *Phase 2 Report* noted that Hungary had not taken action to improve the awareness of investigators and prosecutors of Article 5 of the OECD Convention. The Report also encouraged Hungary to remedy this and engage in other awareness-raising activities including promotion of the ethics code for prosecutors. Article 5 provides that investigations and prosecutions shall not take into account considerations of national economic interest, the potential effect on relations with another State, or the identity of the natural or legal person involved.

Complaint procedures: The National Police Department runs a telephone hotline but complainant data are not protected effectively. The National Development Agency used to run a website to enable citizens to report offences like bribery but all the complaints were found groundless and the website was removed after a few months.

Accounting and auditing requirements: The 2007 OECD *Phase 2 Follow-Up Report* noted that there was still a need to change the rules and standards governing the reporting by external auditors of suspicions of foreign bribery. The OECD Working Group had in 2005 recommended that Hungary take appropriate measures to legally oblige auditors to report all suspicions of bribery by any employee or agent of the company to management and, as appropriate, to corporate monitoring bodies. It further recommended that Hungary consider requiring auditors, in the face of inaction after appropriate disclosure within the company, to report all such suspicions to the competent law enforcement authorities.

Tax deductibility of bribes: The 2007 OECD *Phase 2 Report* considered that further training and measures were necessary to ensure that tax officials are aware of the absence of any need for a conviction in order to deny tax deductibility.

Anti-money laundering efforts: On 15 December 2007, a new AML Act entered into force, implementing

the Third EU Directive on AML/CFT. Moneyval's second report on Hungary in December 2008 found significant improvements in Hungary's AML framework and enforcement and that it had addressed deficiencies noted in the first report.

Other enforcement issues: Whistleblower protection is unsatisfactory. According to the Criminal Code of 1978, it is a criminal offence to persecute a whistleblower but there have been no enforcement cases to date. The government announced several times recently plans to strengthen the protection of whistleblowers, although this has not resulted in any specific actions yet. In addition, there is a lack of coordination between entities responsible for foreign bribery enforcement.

Recent developments: In 2006, the Parliament approved new legislation on lobbying, but this does not seem to have improved transparency of government decision-making processes, due to a lack of vigorous investigations and inadequate sanctions. In 2007, the government decided to establish the Anti-Corruption Coordination Committee and to work out an anti-corruption strategy with some NGOs and experts. The Committee finished their report, which the government has not discussed. Since then, the work of the Committee has become unpredictable and irregular and as a consequence some NGOs and experts have resigned. The Act on Public Procurement has been modified approximately five times a year since it came into force in 2004. The latest modification was in December 2008. These constant modifications do not lead to greater transparency.

Recommendations: Strengthen regulations on financing of political parties and campaigns. Improve the legal framework, notably in the area of whistleblower protection and lobbying. Simplify the Act on Public Procurement aiming at transparency and efficient enforcement. Strengthen the regulation of EU-financed programmes and associated enforcement. Resume the work of the Anti-Corruption Coordination Committee. Train officials at the Hungarian Tax and Financial Control Administration (APEH) to recognise bribery. Train prosecutors and judges to provide more effective enforcement. Raise public awareness of the foreign bribery prohibition and establish a website to facilitate reporting of bribery cases.

IRELAND

LITTLE OR NO ENFORCEMENT: No cases and four investigations. Share of world exports is 1,23 per cent.

Foreign bribery cases and investigations: Four Oil-for-Food-related investigations were reported in 2008.⁶⁰

Domestic bribery by foreign companies: No known cases or investigations.

Statutory obstacles: There are many statutory and other legal obstacles in Ireland. There is no nationality jurisdiction and there are problems with the exercise of territorial jurisdiction.

Complaint procedures: The Garda Síochána, Ireland's police force, do not have the authority to investigate anonymous tips—this has to be authorised by the director of public prosecutions. The Irish Department of Justice set up a website in 2008 with a section for complaints. One year on, the effectiveness and use of this website is still not visible.

Accounting and auditing requirements: The relevant legal framework is the Companies (Auditing and Accounting) Act 2003, in which there is no mention of bribery. As stated in the December 2008 OECD *Phase 2 Follow-Up Report*, there needs to be more awareness of the foreign bribery offence in the accounting and auditing sector. It also recommends that Ireland ensure that tax examiners understand the need to be attentive to any outflows of money that could represent bribes to foreign public officials. Furthermore, the report points out the need for adequate sanctions for false accounting offences in Ireland.

Tax deductibility of bribes: The OECD 2008 report states that the tax legislation should be amended so that it is clear that bribes to foreign public officials are not tax-deductible.

Anti-money laundering efforts: The FATF's 2006 report on Ireland, found that Ireland's legal framework for AML met many FATF standards but in October 2008 Ireland was referred to the European Court of Justice by the European Commission for failing to implement the Third EU Money Laundering Directive. One strength of the system in Ireland is that by law not only individuals but also legal persons can be held liable for money laundering. The Criminal Justice Act partially meets the FATF requirements for customer due diligence, in that a number of bodies are required to identify customers, including legal persons, when establishing business relationships or when working with transactions of more than €13,000 (US \$18,186). Ireland's AML record is unsatisfactory in practice, as there have been too few prosecutions and convictions, according to the FATF. The Financial Intelligence Unit in the Garda Bureau of Fraud receives a steadily increasing number of Suspicious Transaction Reports each year, but has inadequate resources according to the FATF.

Other enforcement issues: There have only been half-hearted efforts to raise awareness of the foreign bribery offence. Certain government departments have not fulfilled their commitments to provide train-

ing for other government departments and private sector individuals. There is a lack of whistleblower legislation.

Recent developments: The Criminal Justice (Money Laundering) Bill 2008 includes additional designated persons with reporting obligations, such as reporting to the Garda Síochána and the Irish Revenue Commissioners if there is reason to suspect activity. The bill focuses on five new features: the use of a risk-based approach by organisations that fall under the EU Third Directive; increased importance to customer due diligence; more emphasis on KYC and monitoring; noting of third parties that undertake monitoring and CDD; and heightened managerial responsibility with regard to money laundering or financing of terrorism.⁶¹ The Prevention of Corruption (Amendment) Bill 2008 is on the debate schedule and will fulfil the recommendations on the OECD Working Group on Bribery but is not likely to be completed until the next session of Parliament.⁶² Whistleblower protection safeguards are being introduced into the new Criminal Justice (Money Laundering) Bill 2009, but there is a problem with the reporting provisions in the bill. The new Finance Bill 2009 contains provisions related to illegal payments such as gifts or illegal bribes, even if the gift was legal in the country in which the transaction took place. However, there is delay in the discussions on these provisions in the bill.

Recommendations: The Garda Bureau of Fraud Investigations should be sufficiently trained and resourced in order to enforce the prohibition of foreign bribery. Statistics should be published relating to enforcement and there is a need for much better coordination of anti-corruption efforts at the departmental level.

ISRAEL

LITTLE OR NO ENFORCEMENT: No cases or investigations reported. Share of world trade is 0,44 per cent. Israel became a party to the OECD Convention in March 2009.

Foreign bribery cases or investigations: None reported.

Domestic bribery by foreign companies: No known cases or investigations.

Statutory obstacles: The statute criminalising foreign bribery was passed in 2008.

Tax deductibility of bribes: The law in this area is unclear. A 2008 Israeli Supreme Court case held that the particular bribes in that case were not tax deductible, but two of the three judges on the panel based their opinion on the absence of the records required for deductibility. The Israeli tax authorities have announced their intention to amend the Israeli tax laws to clarify that expenses related to bribery of foreign officials will not be tax deductible.

Anti-money laundering efforts: An AML law was passed in 2000, which established the criminal offense of money laundering and imposed identification, record retention, and reporting obligations on providers of financial services. It also created an administrative Financial Intelligence Unit with investigatory and monitoring powers. The July 2008 Moneyval report on Israel found a number of deficiencies. It found Israel only partially compliant in many preventive areas including CDD requirements, mentioning such issues as lack of an implementing law or regulation with respect to numbered accounts, lack of coverage of certain institutions and lack of requirements on verification of beneficial owners. It found deficiencies with respect to enhanced due diligence for PEPs and unusual transactions. Moneyval found non-compliance with respect to reporting obligations of certain categories and found partial compliance with respect to regulation, supervision and monitoring. Particular concern was expressed by the Moneyval about the reliance on outsourcing of supervision. Israel was found partially compliant with respect to information about beneficial owners, for reasons including the fact that information in the Companies Register relates only to legal ownership, is not verified and is not necessarily reliable and there is little information on beneficial owners of private or foreign trusts.

Recent developments: In July 2008, the Israeli parliament adopted a law that criminalised the bribery of foreign public officials. Subsequently, the Israeli government ratified the UNCAC, and in March 2009, Israel joined the OECD Convention.

Recommendations: Demonstrate proactive enforcement against foreign bribery.

ITALY

MODERATE ENFORCEMENT: Two cases, including one against employees of a major state-owned company. There are some investigations under way. Share of world trade is 3,44 per cent.

Foreign bribery cases and investigations: One major case involved charges against two senior officials of **Enelpower SpA**, the Italian power generation company. They allegedly paid officials in Abu Dhabi, Oman and Qatar, via an intermediary, to secure construction contracts in 2000 valued at over €1 billion (US \$950

million) for power and desalination plants in those countries. The case resulted from internal audits and a tip from a confidential source, and also involved charges that the two officials themselves took payments from two subcontractors - from Germany's Siemens AG to supply gas turbines and from France's Alstom to provide boilers.⁶³ The outcome of the case against the two employees is not known. (The Enelpower employees were deemed public officials because the Italian government controlled the company.) More recently, in 2007 it was reported that Italy had seized more than US \$100 million in assets of five individuals in connection with an Oil-for-Food investigation and oil refiner **Saras SpA** announced that it was cooperating with Italian investigators on an Oil-for-Food investigation.⁶⁴

Italian companies have also been named in prosecutions and investigations in other jurisdictions, including **Impregilo SpA** in the Lesotho Highlands Water case (agent pleaded guilty, 2003⁶⁵) and in a case in Argentina, both relating to activities in the 1990s. (See Argentina report.) The **Snamprogetti Netherlands** affiliate of **Eni SpA**, a state-owned gas and power group, was part of a joint venture **TKSJ**. The activities of that joint venture in Nigeria have been under investigation in France, Nigeria, the UK and the US, leading to the settlement in the Halliburton case mentioned in the US report. In April 2009, it was reported that **Eni SpA** said it had been in talks with the US Department of Justice and Milan prosecutors regarding an investigation relating to its activities in Nigeria.⁶⁶

Domestic bribery by foreign companies: There are four ongoing domestic investigations, including two new ones in 2008. In March 2008, in connection with the above-mentioned Enelpower case, a Milan court convicted a former executive of **Alstom SA** and two Alstom subsidiaries. The court reportedly found that the US-based **Alstom Power** had ordered the bribes and Swiss subsidiary **Alstom Prom AG** had laundered the funds through Switzerland.⁶⁷ According to a news report, each subsidiary was fined €240,000 (US \$321,600) and had €597,200 (US \$800,248) seized and an Enel spokesperson reportedly said that Alstom paid Enel €4.5 million (US \$6 million) to settle the case. **Siemens AG** faced a Milan court judgement in 2004 concerning the above-mentioned Enelpower case, which included the extraordinary measure of banning Siemens from selling gas turbines to the Italian public administration for a one-year period. In Milan in 2001, a senior executive in **Vivendi's** water division (now Veolia Environnement) was convicted and received a prison sentence⁶⁸ for bribing the president of the Milan city council in order to win the IT€200 billion (US \$100 million) tender for a wastewater treatment plant. In November 2007, prosecutors in Milan filed charges against **Siemens** and two of its employees in an investigation of payments allegedly made to **Eni SpA**.⁶⁹ The French company **Total SA** is the target of an investigation for alleged bribery of the local government of Basilicata in relation to a bid for oil-drilling contracts. In December 2008 the head of Total in Italy was arrested in connection with the case.⁷⁰ The US company **United Defense Industries Inc. (UDI)** is also reportedly under investigation both in Italy and in the US in connection with allegations about its activities in Italy.⁷¹ (UDI was acquired by the **Carlisle Group** in 1997 and is now part of **BAE Systems Land & Armaments**). There have been numerous bribery investigations in Italy relating to the medical sector, including a recent investigation of alleged payments made by lobbyists on behalf of foreign pharmaceutical companies to officials of the Italian Agency for Pharmaceuticals (Aifa).⁷² An investigation ongoing in both Italy (since 2004) and the US concerns allegations against **Immuncor**, manufacturer of medical products;⁷³ and an investigation was reported in 2003 of alleged illegal payments by **GlaxoSmithKline Italy** to doctors who agreed to prescribe its products.⁷⁴

Statutory obstacles: There is a three-year statute of limitations. The March 2007 OECD *Phase 2 Follow-Up Report* on Italy found that Italy had not implemented the Working Group's recommendation to amend its legislation to exclude the defence of *concessione* from the offence of bribing a foreign public official. This defence applies when a payment is made in response to serious psychological pressure. The OECD's report also noted with concern the complexity of the Italian legislation.

Complaint procedures: There is neither a hotline nor a website available for reporting. Italian public officials have an obligation to report suspicions of foreign bribery and are subject to penalties for failing to do so, but there is a lack of awareness-raising by the government in this regard.

Accounting and auditing requirements: The 2007 OECD *Phase 2 Follow-Up Report* found that in order to implement the Phase 2 recommendation on false accounting, Italy will have to eliminate the following two criteria for the application of the offence: (i) that the false accounting appreciably distorted the trading, balance sheet or financial situation of the company; and (ii) that there was an intent to deceive the shareholders, creditors or the public.

Tax deductibility of bribes: Tax deductibility of bribes is not prohibited explicitly in law, but is prohibited in practice.

Anti-money laundering efforts: The regulations and penalties are satisfactory. However, there is no well-functioning regulatory body ensuring compliance with corruption-related money laundering. The levels of KYC and due diligence investigations for PEPs in financial firms are unsatisfactory. In short, the laws are

good, but enforcement is not. The FATF's Third Evaluation Report on Italy in February 2009 found that a number of deficiencies had been addressed but some remained.

Other enforcement issues: There is a lack of whistleblower protection in the public and private sectors. There is also an insufficient level of available resources and awareness-raising efforts by government. There are also questions about political will and the extent of support for the work of investigating magistrates. In March 2009, Prime Minister Silvio Berlusconi was quoted in connection with a domestic corruption case involving the company Impregilo as saying: *"The dramatic thing about this court ruling is that the Impregilo managers, after constructing the route Bologna-Florence, which demands very complex works, were absolved by the court in Bologna but found guilty by the court in Florence. This is pathologic, and shows that the judiciary is a metastasis against which we need to react because it is not possible that certain people use the law as a weapon only to hit. We need to react because otherwise there will not be any companies willing to invest in Italy."*⁷⁵

Recent developments: There was an ongoing public and parliamentary debate about the regulation of telephone tapping and the publication of telephone tapping in mass media. There was also public debate about a new law passed on 22 July 2008 granting immunity from prosecution to Italy's top four officials, including the prime minister. The law, which led to a suspension of a legal proceeding against Prime Minister Berlusconi, has been challenged in Italy's Constitutional Court (which struck down a similar law in 2004.)

Recommendations: Ratify UNCAC. Encourage the use of integrity pacts more widely. Introduce more effective whistleblower protection regulation and regulations on conflicts of interest.

JAPAN

MODERATE ENFORCEMENT: Two concluded cases, one minor and one major. Both resulted in weak sanctions. Two major investigations. Share of world exports is 5,15 per cent.

Foreign bribery cases or investigations: The past year witnessed a step forward in the Japanese government's efforts against foreign bribery as law enforcement authorities prosecuted **Pacific Consultants International (PCI)**, a major Japanese construction consultancy. The company allegedly channelled ¥500 million (US \$5.1 million) in payments in connection with development assistance projects, including road projects, funded by the Japanese government in Southeast Asian countries, including Vietnam.⁷⁶ In January 2009, a Japanese court convicted three former PCI executives who had admitted to bribing in Vietnam and fined PCI over US \$770,000.⁷⁷

Previously, in March 2007, Japan successfully prosecuted its first, albeit relatively minor, foreign bribery case against two executives of **Kyudenko Needs Creator IT Corp.**, an electrical and engineering firm affiliated with **Kyushu Electric Power Co.** Prosecutors reportedly charged the executives with bribing two Philippine government officials in an attempt to promote Kyudenko's fingerprint identification system in the Philippines. The two executives were fined a combined ¥700,000 (US \$6,000).⁷⁸ Also in 2007, the Japanese Fair Trade Commission (FTC) began an investigation of **Bridgestone Corp.**, the biggest Japanese tyre producer, in relation to allegations that the company was involved in an international bid-rigging cartel⁷⁹ (See box below).

BRIDGESTONE: CARTEL PLUS BRIBERY

The cartel that the Japanese FTC began investigating in May 2007, allegedly ran from 1999 to May 2007 and was allegedly organised by Bridgestone together with **Yokohama Rubber** and four foreign firms. The illegal practices under investigation related to sales of marine hoses, which are used to transport oil from tankers to storage facilities. The practices were under investigation from 2007 by Japanese, EU competition⁸⁰ and US antitrust authorities. In 2007, the US Justice Department arrested an employee of Bridgestone's US subsidiary in connection with the case and Japan's FTC conducted on-site inspections of Bridgestone and Yokohama Rubber premises⁸¹. In February 2008, Bridgestone publicly admitted that during an internal inquiry into an international cartel, it had uncovered improper monetary payments to foreign agents, all or a part of which may have been provided to foreign government officers, and other possible forms of improper payments. It also announced that it had found similar instances in relation to other industrial products sold by Bridgestone and said the investigation was continuing and could expand. In the same communication, it announced its withdrawal from the marine hose market (in which it had a 40 per cent share) and a range of efforts to prevent such occurrences in future. The case involved alleged payments by foreign subsidiaries to boost sales to agents in Latin America and South East Asia, allegedly with knowledge that the money would be used to bribe foreign civil servants.⁸² In December 2008, a Japanese former Bridgestone executive pleaded guilty in the US to charges of conspiracy to rig bids in violation of the Sherman Act, and to bribe foreign officials in Argentina, Brazil, Ecuador, Mexico and Venezuela in violation of the US FCPA. He was sentenced to two years in jail in the US and fined US \$80,000.

In July 2008, Tokyo prosecutors were reportedly investigating a claim by a former executive of **Nishimatsu Construction Co.** that in 2003 the firm gave bribes of more than ¥400 million (US \$4.5 million) to officials of the Bangkok Metropolitan Administration "in return for favours to secure a US \$77.5 million drainage tunnel construction project in Thailand".⁸³ The contract was reportedly awarded to a consortium composed of Nishimatsu and its local partner, the **Italian–Thai Development Public Co.** In January 2009, the Tokyo Public Prosecutor's Office reportedly arrested a former president and vice president of Nishimatsu Construction Co. on suspicion of smuggling ¥70 million (US \$710,000) into Japan from abroad without reporting it to customs. A separate case that was in the media in March 2007, involved nine Japanese shipping companies engaged in transporting lumber from Malaysia and allegations that their failure to report income had a link to bribery payments. The Japanese tax authorities determined that the companies' remuneration payments to a Hong Kong agent were not legitimate expenses and required them to pay ¥400 million (US \$4.5 million) in back taxes along with penalties.

In other jurisdictions, two Japanese companies, including the engineering business **JGC Corporation**, have been named in a US (Halliburton) case concerning the Bonny Island construction contract in Nigeria. JGC was a joint venture partner in the project. In a case in China in 2002, an employee of **Mitsui & Co** was reportedly convicted of bribery.⁸⁴ Also in China in November 2006, **Hitachi** was one of three foreign companies reportedly identified in a Beijing court verdict as having worked through a Chinese middleman in an effort to sell information technology services in 2003–2004 to the state-owned **China Construction Bank**. The court verdict concerned the head of the bank, who was sentenced to 15 years in prison for allegedly accepting more than US \$500,000 in bribes.⁸⁵

Domestic bribery by foreign companies: There are no known concluded domestic bribery cases involving foreign bribery.

Statutory obstacles: The March 2007 OECD *Phase 2 Follow-Up Report* called on Japan to consider whether territorial jurisdiction in Japan is adequate for covering the acts of Japanese parent companies (e.g., incitement and authorisation) in relation to foreign bribery by subsidiaries. The report also called for Japan to clarify the application of the foreign bribery offence to cases where the bribe is transferred directly to a third party, such as a charity or political party, in accordance with an agreement between the briber and the foreign public official.

Complaint procedures: The Ministry of Economy, Trade and Industry (METI) has a website with information on the OECD Convention with a help-line and a hotline for complaints. The OECD in its 2007 *Phase 2 Follow-Up Report* found that the role of METI in receiving foreign bribery allegations needs to be clarified.

Accounting and auditing requirements: Following recommendations of the 2005 OECD *Phase 2 Report*, the Japanese government took several measures to meet the objectives of Article 8 of the Convention. The Working Group noted, however, in its March 2007 report that 'the standard of materiality for fraudulent accounting offences under the Securities Exchange Law still applies, and the penalties for fraudulent accounting pursuant to the new Corporate Code are very low'. The standard of materiality problem remains identified as one of the areas where recommendations have only been partially implemented. (See Recent developments below.)

Anti-money laundering efforts: The 2007 OECD *Phase 2 Follow-Up Report* noted that the bribery of a foreign public official is not a predicate offence for the purpose of applying money laundering legislation, which is a serious deficiency. The October 2008 report of the FATF found Japan to be non-compliant in a number of areas, including regulations regarding CDD, enhanced PEP due diligence, correspondent banking, internal controls, compliance and audit, special attention for higher risk countries, foreign branches and subsidiaries, and identification of beneficial ownership (serious deficiencies mentioned in this area). The report also found Japan to be only partially compliant in other areas. Financial institutions are not required under Japanese law to identify whether a customer is a PEP, nor are they required to take specific steps to mitigate the increased risk accompanying dealings with PEPs by seeking senior management approval, establishing source of wealth, and conducting enhanced ongoing monitoring of the relationship.

Other enforcement issues: There is a lack of awareness-raising about the foreign bribery offence, especially among the legal profession, and about the Whistleblower Protection Act. Japanese investigators reported MLA difficulties with Vietnamese and Thai counterparts in the two cases mentioned above.

Recent developments: In the AML area, the Japanese government has encouraged the Diet to pass a bill to amend the Anti-Organised Crime Law (AOCL), the Penal Code and the Criminal Procedure Law to remove the deficiencies in Japanese legislation. The bill, which amends the definition of "crime proceed" to include the proceeds of bribing a foreign public official, has been before the Diet for some time. As the bill also purports to incorporate the controversial concept of conspiracy, which is totally new to the Japanese legal system, it has faced strong opposition, which has prevented it from passing the Diet for almost three years. A bill has been introduced which enhances the penalties for the falsification of disclosure statements and raises the penalty to up to 10 years of imprisonment or less than ¥10 million (US \$102,000) in fines.

Recommendations: The Japanese Diet should pass the amendment to AML legislation as soon as possible to introduce foreign bribery as a predicate offence. This will strengthen AML and pave the way for ratifying UNCAC.

KOREA (REPUBLIC OF)

MODERATE ENFORCEMENT: Nine known prosecutions and no information on investigations. Share of world trade is 2,2 per cent. The Korean government declined to provide information this year on enforcement and there are other concerns about its commitment to anti-bribery enforcement.

Foreign bribery cases and investigations: There were five prosecutions in the period 2002-2004 relating to illicit payments by Korean companies in connection with US military procurement. Another case was reported in 2008 involving bribes of US \$20,000 to Chinese immigration officials, with three persons prosecuted. At international level, Korean companies including **Daewoo International** were named in the Volcker report on the UN Oil-for-Food scandal. A World Bank investigation of a road improvement project in the Philippines in 2008 led to the debarment of the Korean **Dongsung Construction Co. Ltd.** for four years for fraudulent and corrupt practices, with the possibility of reducing the debarment to two years upon introduction of a satisfactory compliance programme. In other national jurisdictions, in April 2009, a former US Army and Air Force Exchange Service official reportedly pleaded guilty in Texas to charges of bribery in connection with a multi-million dollar military contract in Korea. He was charged with receiving improper payments and benefits from **Samsung Rental Ltd.** The CEO of that company was also indicted in the case in Texas.⁸⁶

Domestic bribery by foreign companies: No data was provided by the government. In February 2004, three former officers of **IBM Korea** were reportedly given jail sentences for bribery and illegal business activities in a case involving US \$55 million in government contracts for computer parts and services.⁸⁷

Statutory obstacles: The current anti-bribery law does not provide an adequate definition of bribery. Furthermore, the sanctions for foreign bribery are inadequate, as the fines cannot exceed 20 million won (US \$16,000). On the other hand, corporations can be held criminally liable and statutes of limitation are adequate, with the standard being five years, or ten years for bribes larger than 50 million won (US \$40,000).

Complaint procedures: The Corruption Reporting Center of the previous Korea Independent Commission against Corruption (KICAC) was satisfactory but concerns remain about the Anti-Corruption and Civil Rights Commission (ACRC) that replaced KICAC in February 2008.

Accounting and auditing requirements: The laws for accounting transparency are comparatively rigorous and include the External Audit of Joint Stock Company Law, the Commercial Code and the Capital Market and Financial Investment Services Act. In its March 2007 *Phase 2 Follow-Up Report* the OECD Working Group continued to be of the view that Korea could enhance its ability to detect foreign bribery by requiring auditors to report wrongdoing by anyone, not just directors, to competent authorities.

Anti-money laundering efforts: The expert reports that there is a well-functioning regulatory body, the Financial Intelligence Unit (KoFIU) under the Financial Services Commission ensuring compliance with corruption-related AML in Korea and that the penalties imposed on companies who violate AML regulations are adequate. Korea's legal and regulatory system and advanced information technology are the main strengths in dealing with money laundering. However, further human and infrastructural resources are needed to maintain the ability to successfully monitor and enforce relevant laws and regulations. From 2001 until 2008, KoFIU detected a total of 188,874 cases of suspected money laundering, and among these referred 13,162 cases to the police or prosecutors. A total of 2,424 were prosecuted. Financial institutions that submit false information to KoFIU face up to one year imprisonment or a five million won (US \$4,000) criminal fine; those that fail to submit required information face up to a ten million won (US \$8,000) penalty. Korea is an observer to the FATF and was evaluated jointly by the FATF and Asia Pacific Group (APG) on Money Laundering in November 2008. The report of that evaluation will be considered at the FATF Plenary Meeting in June 2009 and at the APG Annual Meeting in July 2009.

Other enforcement issues: The 2007 OECD *Phase 2 Follow-Up Report* found that whistleblower protection under the Anti-Corruption Act (ACA) continues to apply only to domestic and not foreign bribery. In February 2008, the ACA was amended to include whistleblower protection in the private sector. Concerns remain about the merger of the anti-corruption agency KICAC with the Ombudsman of Korea and Administrative Appeals Commission to establish a combined agency called the Anti-Corruption and Civil Rights Commission (ACRC), whereas the KICAC should have remained separate and independent. The current government also has effectively renounced the K-PACT (Korean Pact on Anti-Corruption and Transparency), ended funding for K-PACT Council and it has failed to offer an effective and comprehensive anti-corruption policy.

Recent developments: The newly elected government's efforts to promote deregulation have generated

concerns that transparency and enforcement against white collar crime are being deemphasised and are becoming a lower priority.

Recommendations: Engage in enforcement. Conduct more awareness-raising in the private sector about the foreign bribery offence. Reorganise the ACRC and establish a separate, independent anti-corruption agency like the original KICAC. Increase access to and disclosure of information.

MEXICO

LITTLE OR NO ENFORCEMENT: No cases or investigations. Share of world exports is 1,80 per cent.

Foreign bribery cases and investigations: There was one investigation in 2001 of alleged bribery by a Mexican company of a high public official in Nicaragua.

Domestic bribery by foreign companies: The number of cases is unknown. Penalties were imposed in 2004 on **Areva** and an **Alstom International** subsidiary respectively in connection with two bribery cases. Alstom filed a series of appeals in the case involving its subsidiary with the sanctions confirmed in August 2008.

Statutory obstacles: The main statutory obstacle is the limited statute of limitations. It runs from the time the bribery occurred for a period of three years. There is not enough evidence to date to evaluate jurisdictional limitations. Additionally, there are restrictions on the liability of legal persons and there is lack of adequate provision for witness protection in investigations of transnational bribery.

Complaint procedures: The Secretaría de la Función Pública (SFP) and the federal Attorney General's Office (PGR) receive complaints of wrongdoing committed by federal public servants for any illicit act, including bribery of foreign public servants. These can be filed in person, by telephone using a 24-hour local and toll-free hotline, electronically, by post, or in mailboxes installed in the agencies of the SFP. The Mexican government has also incorporated as an objective in a National Agreement for Security, Justice and Legality the creation of an observation mechanism for citizens to monitor the procedures for reporting corruption by federal public servants as well as the sanctions procedures.

Accounting and auditing requirements: Article 83 of the Federal Fiscal Code prohibits practices that could be used for hiding foreign bribery, such as failure to maintain accounts, to audit inventories or to provide proof of payments as well as using off-the-books accounts and making wrong entries. The Mexican Institute of Public Accountants' Code of Ethics adequately addresses practices for concealing bribery, both domestic and foreign, and defines the sanctions for accountants who violate these provisions. However, in practice, accountants and auditors are professionally bound to confidentiality, and are often reluctant to report cases of criminal wrongdoing. The 2007 OECD *Phase 2 Follow-Up Report* recommended requiring that accountants and auditors have an obligation to report suspicions of foreign bribery to law enforcement authorities.

Tax deductibility of bribes: No explicit prohibition, but bribes are not deductible on the grounds that they are not expenses strictly related to the taxpayer's activity.

Anti-money laundering efforts: The October 2008 FATF report found Mexico non-compliant in some areas, notably that some entities are not covered by its AML measures. It also found Mexico only partially compliant in areas including the definition of the money laundering offence, CDD, suspicious transaction reporting, sanctions, supervision and monitoring, and resources of law enforcement authorities. Sanctions can be fines or administrative sanctions like barring individuals from participating in the financial system. The fines range from about US \$1,000 to US \$500,000. These amounts are not large enough to dissuade large financial institutions from engaging in money laundering activities. Most of the money laundering cases relate to drug trafficking.

Other enforcement issues: There is a low conviction rate for corruption and money laundering offences due to an inefficient legal system. There is unsatisfactory whistleblower protection in the public and private sectors. The OECD *Phase 2 Follow-Up Report* criticised the fact that the export credit agency (Bancomext) remains reluctant to require details on agents' commissions when providing credits.

Recent developments: The federal government has launched a National Program on Accountability, Transparency and Fight against Corruption, in which it set a goal of investigating all reported cases of foreign bribery by 2012. The current administration has also increased its efforts to coordinate the different agencies and design new strategies to fight crime.

Recommendations: Increase coordination of the agencies of the Federal Administration with the legislative and judicial branches, and with local governments. Develop an information system that combines all available information regarding the enforcement of the international anti-corruption conventions that Mexico has ratified, and make it accessible to the public.

NETHERLANDS

MODERATE ENFORCEMENT: Seven Oil-for-Food cases, all settled out of court in 2007 with weak sanctions. Four foreign bribery investigations begun in 2008, two of which have been concluded without result. Share of world exports is 3,69 per cent.

Foreign bribery cases and investigations: In July 2008, it was announced by the Dutch Public Prosecution Service that seven companies had paid over €1.3 million (US \$2.05 million) to settle allegations that they bribed Saddam Hussein's government in Iraq to win contracts under the UN Oil-for-Food Programme.⁸⁸ The companies fined included four that manufacture equipment for oil storage and delivery – **Flowserve Corp.**, **Solvochem Holland B.V.**, **OPW Fluid Transfer Group** and **Prodetra B.V.**, as well as **Organon** (a unit of Schering-Plough Corp. and previously, until 2007, of AkzoNobel N.V.), **Alfasan International B.V.** and **Stet Holland B.V.** The 2001 legislation implementing the OECD Convention was not applied in the seven cases, as most of the offences predated that legislation.

Two other Dutch companies named in the Volcker report on the UN Oil-for-Food scandal and reportedly under investigation are **Trafigura (Beheer B.V.)**, a Dutch-headquartered oil and gas trading company with the bulk of its operations in London, and **Saybolt International Group B.V.**, an oil industry testing company that conducted inspections for the Oil-for-Food Programme.⁸⁹ Both these companies have also been named in connection with bribery cases in other jurisdictions: **Trafigura** in connection with a US \$200 million oil deal in South Africa in 2000 (see also South Africa report) and in an Oil-for-Food settlement in the US⁹⁰; and **Saybolt** pleaded guilty in a 1998 FCPA case in the US relating to bribery in Panama and paid a fine of US \$4.9 million. The Dutch former head of **Saybolt North America**, a subsidiary, was also found guilty in that case and sentenced to three months in jail, and reportedly in May 2008 the Netherlands was still wrestling with the question of whether or not to extradite him to the US, in response to a US request made in March 2000.⁹¹ Cases in other jurisdictions also include a US Department of Justice deferred prosecution agreement with Dutch pharmaceutical company **AkzoNobel N.V.** in December 2007, concerning alleged kickbacks paid by two subsidiaries in connection with the Oil-for-Food Programme.⁹²

Additionally, there have been reports of investigations in other jurisdictions involving **Royal Dutch Shell plc.**, including one in the US for alleged payments made on its behalf by the Swiss company Panalpina to customs officials in Nigeria,⁹³ and one reported in the UK in 2007, for alleged improper payments in Nigeria.⁹⁴ In 2006, the company was named in an investigation of improprieties at the Minerals Management Service of the US Interior Department.⁹⁵

Domestic bribery by foreign companies: No known cases or investigations.

Statutory obstacles: The legislation is clear and comprehensive but as noted in the 2006 OECD *Phase 2 Report*, there are concerns about jurisdiction, and the penalties for legal persons are too low. The report also noted that Dutch ratification in 2000 limited the territorial application of the Convention to the "Kingdom in Europe" and excluded, until further notice, its application to the "Netherlands Antilles and Aruba". The OECD expressed concern that the Netherlands Antilles and Aruba had not ratified, stating: "Given that the Netherlands Antilles and Aruba did not participate in the on-site visit, it is not possible to assess whether they are being sufficiently proactive in taking the necessary steps to enable the Kingdom of the Netherlands to ratify the Convention for them. A review of the relevant laws indicates that in the absence of making certain key amendments, ratification will not be possible. For instance, fundamental issues, such as the criminalisation of bribery of a foreign public official and the prohibition on the tax deductibility of bribes, have not been adequately addressed in either Aruba or the Netherlands Antilles. The lead examiners have not been satisfied that the liability for legal persons has been effectively established in law and in practice within the Netherlands Antilles and Aruba. Against that background, it is also possible that the Netherlands would not have grounds to establish jurisdiction, based on the nationality principle, over legal persons incorporated in the Netherlands Antilles and Aruba. As previously mentioned, another concern is that because the Netherlands Antilles and Aruba have not criminalised the offence of the bribery of foreign public officials, the effectiveness of MLA and extradition procedures for this type of offence could be frustrated due to the requirement of dual criminality".

Complaint procedures: The Dutch government has no special hotline or website for reporting foreign bribery allegations. The normal ways for reporting crime can be used, including an anonymous phone hotline.

Accounting and auditing requirements: Adequate rules are in place. Auditors are required to report suspicions to law enforcement authorities. If an auditor fails to do so and a case of false accounting becomes public, the auditor can lose his or her license. Further, the requirement to report also applies to banks and other financial service providers. If, for example, a bank reports a suspicion, but the auditor does not (when he or she should), the auditor can be fined. This way, a form of self-policing is established.

Tax deductibility of bribes: This has been officially prohibited since August 2006, but it is unclear whether companies comply with the prohibition, or find ways to get around it. The tax authorities have introduced some measures to detect criminal conduct. However, as long as they are well hidden, bribes can still be deducted from taxes. It is unclear how much effort the Dutch Tax Authority puts into stopping this practice.

Anti-money laundering efforts: The legislation against money laundering is strict and comprehensive, but the definition of asset-laundering is extremely broad, making it practically impossible to apply the concept in full. Further, financial institutions have extensive duties to report suspicious transactions to the Financial Intelligence Unit of the Netherlands, but the legal definition of "suspicious transactions" is both broad and vague.

Other enforcement issues: There is still unsatisfactory whistleblower protection in the public and private sectors. Furthermore, the institution that is currently tasked with investigating cases of alleged foreign bribery might not always be the most suitable, because of the complex financial constructions that are used in cases of foreign bribery.

Recent developments: Last year a bill was submitted to the parliament raising the maximum penalties for active bribery, lifting the maximum penalty for legal persons from €74,000 (US \$103,600) to €740,000 (US \$1 million). A regulation relating to the protection of whistleblowers is (still) under preparation by the government with the aim of enactment by the end of 2009. The Act on the Prevention of Laundering and the Financing of Terrorism entered into force on 1 August 2008, which brings the Dutch AML legislation in line with the Third European Anti-Money Laundering Directive. The Netherlands Antilles and Aruba are both in the process of revising their criminal codes. The ratification of the OECD Convention will be part of that revision. It is expected that a bill will be submitted to both their parliaments towards the end of 2009.

Recommendations: Establish a special organisation to detect bribery working closely with the tax authorities. Introduce whistleblower protection. Undertake more proactive investigation, with more follow-up action, which could involve reviving a project to that end that was started in 2004 but closed down in 2007.

NEW ZEALAND

LITTLE OR NO ENFORCEMENT: No cases but six investigations, one recently initiated. Share of world exports is 0,20 per cent.

Foreign bribery cases or investigations: No cases but six investigations, including one begun in 2008 following news reports containing allegations that **Radiola Aerospace** violated UN rules when it obtained a contract to install runway lights at an airport in Kadugli, Sudan. It was alleged that this coincided with the company sponsoring the immigration application of a UN official's wife. That investigation has now been concluded with no further action being taken.

Domestic bribery by foreign companies: No known cases or investigations.

Statutory obstacles: No major statutory obstacles.

Complaint procedure: More could be done to promote the issue, but there is a significant amount of information regarding how complaints may be raised on a dedicated Ministry of Justice website.

Accounting and auditing requirements: New Zealand's accounting practices are in line with major international recommendations, and include protections against matters such as "off-the-books" accounting. It appears that the principal risk arises in the inconsistent and superficial manner in which expenses can be recorded by organisations, and the fact that expenses which are not tax-deductible are not closely scrutinised as a matter of course to determine their source and nature.

Anti-money laundering efforts: New Zealand has failed to implement any significant changes in its AML regime for some time. There is a well functioning police unit dealing with AML, but limited prosecution of money laundering offenses, due to limited resources. Not all industries are covered, nor all steps in financial transactions. The 2003 report on New Zealand by the FATF and the Asia Pacific Group on Money Laundering (APG) found a number of deficiencies including a lack of competent supervision. It also found that there are no explicit requirements to identify the owners or controllers of legal persons such as companies, nor any explicit requirement (including in the Financial Transactions Reporting Act 1986 for financial institutions) to pay special attention to either: (a) complex and unusually large transactions, or unusual patterns of transactions that have no apparent or visible economic or lawful purpose; or (b) business relations and transactions with persons in jurisdictions that do not have adequate systems in place to prevent or deter money laundering or terrorist financing. Reforms since 2003 have addressed some of the FATF concerns, and it is anticipated that legislative reforms being introduced in 2009 will address many more, although that may be too late to avoid further FATF/APG criticism in their latest report, due later this year.

Other enforcement issues: Lack of guaranteed confidentiality for whistleblowers in the public and private sectors. Insufficient resources to detect and investigate alleged misconduct.

Recent developments: It is expected that new draft legislation will be put before parliament strengthening the AML regime in mid-2009. New changes to the core foreign corruption and bribery legislation should also strengthen the anti-bribery laws. The Serious Fraud Office was reportedly going to be disbanded, but that did not happen following the 2008 general election. Accordingly, it will now co-exist with the planned new Organised and Financial Crime Division Police (OFCANZ). Thus, it appears that the number of organisations dealing with white collar crimes is increasing. With the upcoming change in legislation for AML, there will also be a change in regulatory oversight. This will mean that there will be a number of regulatory agencies responsible for enforcing AML requirements, although the police will continue to take a lead role in criminal matters. Overall, this suggests an increased focus by government on financial crime (including AML), and it is hoped that such an increased focus will be reflected in a similar increase in funding and resources.

Recommendations: Develop an overall anti-corruption strategy and identify the best institutional models for detection, investigation and prosecution of foreign corruption and related white collar misconduct once the numerous reforms currently planned are implemented. Introduce best practices in the public sector, to limit risks of corruption and bribery, such as establishing mandatory, best-practice, procurement policies. Consideration should be given to an amnesty or cooperation policy to encourage reporting of corruption, and whistleblowers' identities should be better protected.

NORWAY

ACTIVE ENFORCEMENT: Five cases, some of them major, with two initiated in 2008. Share of world exports is 1,04 per cent.

Foreign bribery cases and investigations: In 2004, **Statoil ASA** paid a fine of €2.4 million (US \$3.02 million) in Norway after Økokrim, the economic crime unit of the police, brought criminal bribery charges in connection with a Statoil contract with the Iranian government to develop a significant oil and gas field. One of the new cases involves the firm **Norconsult AS**, the largest consulting engineering company in Norway. The case concerns alleged bribery in connection with a water project in Tanzania, where Norconsult was reportedly acting as part of a joint venture with a Dutch and a Tanzanian company. In 2008, there were also serious allegations about **Discover Petroleum International AS (DPI)**, in relation to payments purportedly made to a lobbyist in Peru in connection with the award of five oil concession contracts. The company has denied any wrongdoing.⁹⁶ The scandal in Peru led to the resignation of Prime Minister Jorge del Castillo and the rest of his cabinet in October 2008. Additionally, in October 2008, **StatoilHydro** released an independent report revealing that improper payments had been made by Hydro to secure oil fields in Libya in 2000 – 2001.⁹⁷ A surprising report in 2007 referenced a civil case brought in Norway by **Scancem International ANS**, a cement producer, against Tor Egil Kjelsaas, a former Scancem Director of Africa. The case was for the recovery of NOK25 million (US \$ 4.3million) allegedly intended for bribing top African officials in the 1990s, including in Ghana, that were allegedly stolen by Mr. Kjelsaas.⁹⁸ There were reports that the case might be settled.

Domestic bribery by foreign companies: In January 2008, **Siemens** said that Norway's Department of Defense had stopped doing business with the company following an investigation of alleged bribes to ministry members.⁹⁹ In July 2008, police in Norway reportedly said they were imposing a fine of about US \$400,000 on the local unit of Siemens for corruption in defence contracts.¹⁰⁰ Additionally, a Norwegian official in the National Employment Service was convicted in December 2008 of taking a bribe from a Finnish company for the award of contracts for language training of Finnish nurses. The case is on appeal. In October 2008, Norway's national operator Telenor banned the Chinese **ZTE Corporation** from participating in tenders for 6 months due to breaches of Telenor's code of conduct.¹⁰¹

Statutory obstacles: No significant obstacles.

Complaint procedure: Information about a complaint hotline is provided on Økokrim's website. Økokrim mostly receives information about corruption allegations from the media, tax authorities and whistleblowers. Anonymous reports and complaints are not unusual. However, other government entities such as the Ministry of Foreign Affairs and the National Agency for Development Cooperation still lack adequate procedures for reporting foreign bribery allegations although there are plans to improve their systems.

Accounting and auditing requirements: The legal framework is satisfactory.

Anti-money laundering efforts: At the time of the FATF's June 2005 report on Norway, there were deficiencies in Norway's customer due diligence obligations, including insufficient requirements to identify beneficial owners and non-compliance with regard to measures for relationships with PEPs. FATF also found there was no prohibition on correspondent banking relationships with shell banks. Norway's Money Laundering Unit was deemed ineffective, thereby impeding the whole system. The Unit was considered to lack adequate staffing to deal with the volume of suspicious transactions reports and was found to use inefficient manual processes.

Other enforcement issues: Insufficient whistleblower protection and inadequate resources for police and prosecutors.

Recommendations: Provide more resources to police and prosecutors. There is a need for more case law that can help illustrate which acts are prohibited under law. Provide more and better information and training about the legal provisions on corruption and the seriousness of bribing foreign public officials. Government ministries and embassies abroad must play a more proactive role in that respect, together with business associations. Ensure effective implementation of the legal provisions on the protection of whistleblowers.

POLAND

LITTLE OR NO ENFORCEMENT: No foreign bribery cases or investigations. Share of world exports is 0,88 per cent.

Foreign bribery cases and investigations: There have been no foreign bribery cases and there are no current investigations. In 2005, the Polish Public Prosecutor's Office reportedly said that it was planning to question Czech politicians in connection with the June 2004 privatisation that year of the Czech petrochemical company Unipetrol, which was bought by Poland's **PKN Orlen** for US \$540 million. There were allegations of possible bribes in connection with the sale.¹⁰²

Domestic bribery by foreign companies: There are domestic bribery cases ongoing, but the information is not available from the authorities. According to official statistics, between 1999 and 2007, a total of 265 foreigners were convicted of bribery, but none in 2008. In December 2008, the Polish Agency of Internal Security (AWB) remanded into custody an employee of **Siemens Healthcare Poland** in connection with an alleged manipulation of a public tender issued by a hospital in Wroclaw in 2008.¹⁰³ The Chairman of the Czech coal trading company **Tschas Trade** was reportedly arrested in Poland in January 2008 on suspicion of bribing a public official.¹⁰⁴ In 2006, a news report referenced findings of a Polish parliamentary investigation, informed by Polish intelligence operations, that a former Russian intelligence officer offered Poland's richest man, Jan Kulczyk, US \$5 million in 2003 to influence the then-president of Poland in connection with the sale of Polish refineries. One of the people conducting the inquiry reportedly said that a major Russian oil company had paid a bribe to a Polish minister in connection with the privatisation of an oil refinery in Gdansk.¹⁰⁵ A parliamentary inquiry in Poland in 2004 looked into whether the Irish company **CRH** was involved in illicit payments benefiting a minister in connection with the 1995 privatisation of the Ozarow cement factory. In other jurisdictions, in 2004, the US pharmaceutical company **Schering Plough** settled SEC charges that its Polish subsidiary had violated the FCPA books and records provisions by inaccurately recording payments made to a charitable foundation to influence the purchase of pharmaceutical products.

Statutory obstacles: There is no criminal liability for corporations and there are significant barriers to non-criminal sanctions against legal entities, including the low cap on fines. Additionally, there is an impunity provision that allows offenders to escape prosecution by notifying authorities of the offence. Under the Polish legal system many public office-holders enjoy immunity from prosecution.

Political influence over enforcement actions: The office of the Prosecutor General is occupied by the Minister of Justice, a political officeholder and thus is not independent.

Complaint Procedures: The website of the National Police Office provides phone numbers, email addresses and street addresses where anyone can report cases of bribery. However, Polish public officials are not always aware of the channels for reporting foreign bribery to law enforcement officials or even of their obligation to do so.

Accounting and auditing requirements: The 2007 OECD *Phase 2 Follow-Up Report* expressed concern about the low number of prosecutions for false accounting offences in Poland. It recommended that Poland encourage the accounting and auditing professions to develop further awareness-raising initiatives and publicise within both professions the obligation to report suspicions of foreign bribery to the appropriate bodies.

Tax deductibility of bribes: The OECD 2007 report called on Poland to change its law to confirm that bribes to foreign public officials are not tax deductible and new, clearer provisions are being drafted by the Minister of Finance.

Anti-money laundering efforts: The Polish Financial Intelligence Unit's General Inspector of Financial Information (GIFI) is the central body in the Polish AML/CFT regime and it processes a large number of suspicious transactions reports. The 2008 report by Moneyval found that in practice the identification of customers is generally in line with international standards but the major difficulty is that several key elements of the CDD process, as set out in the FATF Recommendations, are insufficiently embedded in law or regulation. There are also no legal requirements to take reasonable measures to determine the beneficial

owner in transactions. Moneyval also found that parts of the financial sector and non-financial businesses are insufficiently informed about their reporting responsibilities. The OECD expressed concerns about the flow of information to GIFI and the feedback from GIFI to financial institutions under their jurisdiction on the use of suspicious transaction reports.

Other enforcement issues: There is a need for awareness-raising about the foreign bribery offence in the public and private sectors. There is insufficient whistleblower protection in the public and private sectors.

Recent developments: Several institutions have started working on the recommendations of the 2007 OECD *Phase 2 Follow-Up Report*. The Ministry of Justice is working on both implementation of legislative changes concerning the responsibility of collective entities and on dividing the functions of the Ministry of Justice and the National Prosecutor. The Ministry of Finance is revising the tax law to clarify the non-deductibility of bribes.

Recommendations: Ensure that the financial sector is made fully aware of its reporting obligations. Introduce and adopt legislation that would legally oblige accountants and auditors to report suspicions of bribery.

PORTUGAL

LITTLE OR NO ENFORCEMENT: No cases of foreign bribery but two investigations, one concluded. Share of world exports is 0,41 per cent.

Foreign bribery cases and investigations: The two foreign bribery investigations conducted by the Public Ministry were both initiated following receipt of a request for MLA.

Domestic bribery by foreign companies: There was one known prosecution of domestic bribery by a foreign company in 2008 and at least two ongoing investigations, both of them into major scandals.¹⁰⁶ The prosecution involves government procurement of medical equipment in which an Australian company has been charged. One investigation into the so-called "Submarines Affair" concerns procurement in the defence sector. The **German Submarine (Frigate) Consortium**¹⁰⁷ is alleged to have influenced the 2007 purchase of two submarines via contributions to the political party of the Defence Minister.¹⁰⁸ The second investigation, based on an anonymous complaint, concerns allegations against British property development company, **Freeport**, (a subsidiary of the **Carlyle Group** since 2007) and alleged payments to the then-environment minister, now prime minister, to obtain a 2002 waiver of environmental restrictions for a licence to build a shopping centre. There is also an investigation of these allegations by UK authorities, who requested legal assistance from Portugal through a rogatory letter (a letter of request) in 2005, which was granted in 2008. The Portuguese law enforcement authorities criticised the lack of juridically relevant facts in the UK request. As of January 2009, in connection with this investigation, there was reportedly a disciplinary process initiated by the Portuguese general prosecutor against the Portuguese head of Eurojust for allegedly trying to put pressure on Portuguese magistrates to stop the investigation.¹⁰⁹ A serious allegation reported in the press relates to the Spanish company **Indra** and an alleged bribe in 2004 made to the jury deciding an international bid on the supply of information technology to the Portuguese Customs Office (SEF).

Statutory obstacles: Issues were raised by the 2007 OECD *Phase 2 Report* about the definition of foreign public official and the provisions on criminal liability of legal persons, as well as the practical application of provisions on corporate criminal liability and sanctions.

Political influence over enforcement actions: There is no hard evidence of political interference with potential or ongoing investigations. The TI expert noted, however, that there is media and public mistrust of the impartiality of the Portuguese judicial system.

Complaint procedures: The prohibition of foreign bribery remains unknown to the wider public.

Accounting and auditing requirements: Financial auditing and fiscal controls are still fragile, although the category of "confidential company expenses" has now been prohibited following the OECD 2007 *Phase 2 Report* on Portugal. The Working Group also found that the prevention and detection function performed by accountants is likely to be diminished by the lack of precise directives or training on certain accounting irregularities associated with foreign bribery. The TI expert commented that the arm's length relationship of auditors to their paymaster is not respected and situations of conflict of interest are frequent.

Anti-money laundering efforts: The current legal framework compels financial institutions to follow detection procedures, but AML controls are based on voluntary declarations by financial institutions. AML regulations include serious penalties, but the controls are so weak that the majority of financial institutions do not feel obliged to obey the law. National levels of KYC and PEP due diligence investigation in financial

firms have been improving. The April 2007 report by the FATF on Portugal found Portugal non-compliant in terms of requirements for appropriate risk management systems to determine whether a potential customer, a customer or the beneficial owner is a PEP and noted insufficiencies regarding access to information about beneficial owners.

Other enforcement issues: Whistleblowers are officially protected, but in practice private sector employees remain weakly protected from reprisals for reporting their employer's involvement in corruption or fraud. The TI expert in Portugal estimates that it takes Portuguese authorities an average of two to three years to respond to MLA requests.

Recent developments: Several legislative changes in 2008 clarify the law on important concepts like "foreign public official," "official of an international organisation," and "foreign politician." Additionally, a new Money Laundering Law 25/2008 was recently passed as was an amendment of article 368 of the Portuguese penal code.

Recommendations: Ensure a more proactive approach to enforcement. Establish a new autonomous entity focused on corruption and similar crimes with specialized capacities for investigation. Compile and publish accurate and accessible information on foreign bribery cases and investigations. Provide for more severe sanctions for illicit enrichment, including bribery.

SLOVAK REPUBLIC

LITTLE OR NO ENFORCEMENT: No cases of foreign bribery and one possible investigation, yet to begin. Share of world exports is 0,32 per cent.

Foreign bribery cases and investigations: The Bureau of the Fight against Corruption has ordered a special prosecutor to start an investigation, but the investigation has not begun, and the authorities will not disclose more information.

Domestic bribery by foreign companies: No known cases or investigations.

Complaint procedure: There is a standard system of reporting bribery complaints in Slovakia, including hotlines and websites, but the TI expert notes that it is difficult to judge if the hotlines and websites are effective complaint mechanisms as there are no cases.

Statutory obstacles: There is no criminal liability for corporations. There was draft legislation prepared on this subject but it has been shelved. There is also a lack of adequate sanctions and there exists a defence of "effective regret", whereby someone who reports a crime receives immunity.

Accounting and auditing requirements: Accounting and auditing requirements are embedded in the law, and there are criminal sanctions that should dissuade potential wrongdoers.

Tax deductibility of bribes: Prohibited in law and practice.

Anti-money laundering efforts: There is new legislation, Act No. 297/2008 Coll. on the prevention of money laundering and terrorist financing. It represents major progress in AML efforts, introducing requirements for CDD, including enhanced due diligence for PEPs, obligations to identify beneficial owners, and a duty to conduct ongoing monitoring of transactions. The penalties range from approximately €3,320 to €332,000 (US \$4,648 to US \$464,800).

Recent developments: A new act focused on AML was passed in 2008.

Recommendations: Establish the liability of legal persons without delay, and put in place sanctions that are effective, proportionate and dissuasive. Amend the legislation to exclude the defense of "effective regret" from the offence of foreign bribery, and ensure the provision of immunity to co-operating offenders is not an impediment to the effective enforcement of the foreign bribery offence. Ensure that accounting and auditing issues related to bribery are regularly examined, specifically by providing mandatory training for auditors, including those of the Supreme Audit Office. Implement legal requirements to restrict the upper limit of cash payments to €5,000 (US \$7,000) and ensure that all the payments above that are made through banks or other financial institutions. Make whistleblower protection under Section 13 of the Labor Code more widely known among companies and the general public.

SLOVENIA

LITTLE OR NO ENFORCEMENT: One foreign bribery case in 1999, and one known new investigation. Share of world exports is 0,17 per cent.

Foreign bribery cases and investigations: There was one case in 1999, prior to Slovenia's becoming a party to the OECD Convention and none since. There is one known foreign bribery investigation, which began in 2008.

Domestic bribery by foreign companies: There have been 58 cases since 1999 involving a foreigner suspected of giving a bribe, including two new cases in 2008. One of the new cases in 2008 involved a Finnish defence company **Patria**, accused of bribing Slovenian officials in order to win a defence contract in 2006 for the purchase of 135 armoured vehicles.¹¹⁰ (See also report on Finland.) The deal with Patria was the subject of an administrative investigation by the Commission for the Prevention of Corruption from 2006 to 2008 and is also reportedly being investigated by a Slovenian parliamentary commission. A complaint was brought by the second bidder in the tender, Slovenian defence contractor **Sistemska Technika**.¹¹¹

Statutory obstacles: The law does not clearly criminalise bribery through intermediaries or bribery for acts not falling within a foreign official's regular duties. There is a waiver of punishment for "effective regret," whereby immunity is given to a person involved in bribery who reports it. Members of parliament have immunity from prosecution and proceedings against them can only be commenced with permission of the National Assembly.

Political influence over enforcement: The media has reported that Slovenian authorities at the Ministry of Interior and the police concealed messages or dispatches from the Austrian Police for 15 months in the Patria case.

Complaint procedures: Since the June 2007 OECD *Phase 2 Report*, the Slovenian government has made efforts to broadcast information about how to make a complaint, and individuals can report a case online, anonymously. Additionally, the government has sent information about reporting transnational bribery to foreign embassies, diplomatic missions and overseas businesses.

Accounting and auditing requirements: Slovenian tax law, company law, accounting standards and criminal law place extensive accounting obligations on businesses, sole traders and their accountants. Offences in connection with accounting falsifications and omissions – which can also serve to cover up corrupt practices – are liable to penalties. The penalties outlined in the new laws, which came into effect on 21 January 2008, are considered to be satisfactory. However, since the implementation of the new law is so recent, there have been few administrative sanctions. More political will and training is required to enforce the legal framework. There are not enough employees in the tax office and other state institutions that carry out monitoring. Internal controls, standards and monitoring bodies are not strong and efficient. The role of company audit committees is not well understood. Auditors interviewed during the OECD's Phase 2 on-site visit indicated that although they sometimes come across suspicious consultancy contracts that could conceal bribery payments, they usually do not report such suspicions to management or supervisory boards. They indicated that company management in Slovenia views such contracts as inevitable to conduct business in certain markets. Auditors often do not consider these irregularities significant enough to report. Auditors can waive client confidentiality when confronted with criminal offences, but this waiver is not well known.

Anti-money laundering efforts: The situation is improving after the 2007 OECD *Phase 2 Report* and recommendations. That report recommended that Slovenia take measures to ensure that the offence of money laundering can be effectively enforced in cases where the predicate offence is foreign bribery regardless of sector and this has been addressed.

Other enforcement issues: The 2007 OECD *Phase 2 Report* on Slovenia noted that there has only been one conviction of a company since the introduction of the Liability of Legal Persons Act in 1999. The report also noted that measures to prevent foreign bribery were introduced after the latest state elections in 2008. However, there is no consensus or clarity around next steps. Politicians tend to favour criminal law solutions, and preventive measures are not supported. The Slovenian parliament has been presented with the draft Law on Integrity in Public Sector. This Law will regulate lobbying, provide whistleblower protection, adopt integrity plans, reform political party funding, require transparency of property and funds ownership for politicians, and require public tenders to be monitored closely.

Recommendations: Ensure that the law criminalises bribery through intermediaries and bribery for acts not falling within the foreign official's regular duties. Increase the liability of companies implicated in crime. Introduce new regulations on whistleblower protection, lobbying, monitoring the financing of political parties. Establish the position of the Commission for the Prevention of Corruption, clarify its authority and ensure its funding. Require declarations of property and bank accounts for civil servants. Enhance the expertise and resources available to police and prosecutors to fight complex economic crimes.

SOUTH AFRICA

LITTLE OR NO ENFORCEMENT: No known foreign bribery cases and one investigation. Share of world exports is 0,44 per cent. South Africa became a party to the OECD Convention in 2007.

Foreign bribery cases and investigations: In 2005, predating South Africa's becoming a party to the OECD Convention, the Indian government reportedly cancelled all deals with **Denel**, the South African state arms manufacturing company due to the use of agents and agency commissions in relation to a contract.¹¹² (See report on India)

Domestic bribery by foreign companies: Two interconnected cases of foreign bribery of domestic officials relating to alleged events in 2001 were pending in 2008 but stricken from the court roll in April 2009. Then Deputy President, now President Jacob Zuma and **Thint (Pty) Ltd.**, a subsidiary of the French defence company **Thales International** (formerly Thomson CSF),¹¹³ were charged by the Director of Public Prosecutions with racketeering, corruption, and money laundering. It was alleged that Thint paid Zuma in exchange for protection from investigation into the country's 1999 multi-billion rand arms deal. The case was stricken on the recommendation of the Acting Director of Public Prosecutions on the grounds of abuse of process by the National Prosecuting Authority. In another case brought in 2004 against Schabir Shaik, a Thint director, **Thint (Pty) Ltd.** and **Thint Holding**, Shaik was convicted of corruption and sentenced to fifteen years in prison. There is currently one investigation under way into the allegation that the British arms manufacturer, **BAE Systems**, paid "commissions" to various agents, including the special advisor to the South African Defence Minister, in connection with a £1.5 billion (US \$2.4 billion) purchase of Saab Gripen jet fighters in 1999. A preliminary study by South Africa's Auditor General found the deal to have serious flaws and called for a review. Allegedly bribes totalling £103 million (US \$164.8 million) were paid to ensure that BAE and Swedish **Saab** were awarded the contract.¹¹⁴

A past domestic case involved the offer of a Mercedes Benz car at a discount from **EADS** to the head of the Defence Committee of the South African Parliament. In 2004, the parliamentarian was convicted of fraud, reportedly in exchange for acquittal on corruption charges.¹¹⁵ The German head of EADS in South Africa also faced fraud and corruption charges but these were dropped by the National Prosecuting Authority, apparently without explanation.¹¹⁶ In another case, the former chairman of the state-owned Central Energy Fund, was convicted of accepting bribes from **High Beam Trading International**, a consortium that included the Dutch firm **Trafigura** in connection with a US \$200 million oil deal which effectively privatised the state's oil trading operations.¹¹⁷ The oil deal was reportedly terminated by the Fund in 2001 and both a criminal investigation of High Beam and a civil proceeding were reported in the press.¹¹⁸

In 2001, the Parliamentary Public Accounts Committee began an investigation into the South African government's purchase of US \$5.5 billion in arms in 1999. Apart from the charges against the Thales subsidiary and allegations against BAE Systems and Saab, there were also serious allegations against the Italian company **Agusta** and German companies including the **German Frigate Consortium**, **MAN Ferrostaal**, **ThyssenKrupp** and **DaimlerChrysler** in connection with the deal, as well as against **EADS**.¹¹⁹

Statutory obstacles: The Prevention and Combating of Corrupt Activities Act (PCCA) is well drafted and comprehensive. It provides for adequate sanctions, statutes of limitations and definitions of foreign bribery. The statute of limitations runs 20 years from the time when the offence was committed. There is a range of sanctions, including up to life imprisonment, or a fine up to five times the value of the gratification involved in the offence. There are no jurisdictional limitations. However, the OECD's Phase 1 Report in June 2008 noted a number of issues to monitor.

Political influence over enforcement: A case involving domestic bribery by a foreign company was withdrawn in April 2009 on the recommendation of the Acting National Director of Public Prosecution. He considered that the prosecution of the case was an abuse of process. The accused public official in the case is current President Zuma.

Complaint procedures: Though there is no specific hotline for foreign bribery complaints, various government departments have hotlines and reporting procedures to report corruption in general, including the National Anti-Corruption hotline. However, it is unclear how aware the public is of this option and thus the most-used channel to report corruption is the South African Police Service (SAPS).

Accounting and auditing requirements: The Companies Act, which regulates all corporate entities and the Public Finance Management Act (PFMA), which regulates national, provincial, local and other government agencies, both contain comprehensive provisions on account keeping. They reflect internationally approved financial reporting standards. All auditors adhere to these standards when examining an entity's annual financial statements. They are expected to report any irregularities and/or any suspicious activity to the Independent Regulatory Board for Auditors (IRBA). Should the problem persist after the client is advised of the irregularity, the IRBA should report the matter to the relevant law enforcement official. Furthermore, South Africa's anti-money laundering legislation, the Financial Intelligence Centre Act (FICA), places certain

obligations on auditors to report irregularities, such as fraud or theft or a material breach of any fiduciary duty. A practising auditor interviewed believes that the strict compliance expected from auditors in relation to reporting on irregularities and suspicious activities is rigorously followed.

Anti-money laundering efforts: The regulations for the financial sector and other sectors listed in the Financial Intelligence Centre Act (FICA) are extensive. However, KYC and PEP due diligence standards are unsatisfactory, as are sanctions for AML regulation violations. There is no agreement on who is a PEP, nor is there an explicit legal obligation to conduct enhanced due diligence on PEPs and it is therefore done on an ad hoc basis. Although the FICA states that failure to comply with any reporting obligation carries a fine or imprisonment, there has been a lack of criminal prosecution for non-compliance. The resources for complex cross-border crime cases are inadequate, as are efforts at tracing cross-border funds. Some of the bodies responsible for the administration of the Act do not have the capacity to properly carry out their functions. There are also loopholes for some sectors.

Other enforcement issues: Media reports indicated that the British Serious Fraud Office (SFO) complained about the difficulty they had with the South African Department of Justice with respect to their request for assistance in the BAE investigation. According to the reports, the Department of Justice took months to respond to a request for MLA. Even after the story was reported in the media, the Department of Justice passed the request to the SAPS rather than deal with the request as mandated by legislation. The MLA was eventually granted.

Recent developments: The Directorate for Special Operations (Scorpions) was dissolved in 2008/2009 and the impact remains to be seen. This was the body responsible for investigating and prosecuting serious criminal and unlawful conduct, including foreign bribery, and its dissolution may have an effect on the prosecution of foreign bribery. Additionally, on 9 May 2009, South Africa witnessed the inauguration of Zuma as president. Zuma and his ruling party, the African National Congress, have listed the fight against corruption as one of their priorities. South Africans are anxious to see if this ANC Resolution is fulfilled.

Recommendations: Raise awareness of the PCCA and carry out training, particularly for business associations. Organise Foreign Affairs missions to conduct training for South African businesses trading outside the country. SAPS and/or the NPA should be more proactive and investigate allegations in the media about foreign bribery. Prosecution should move beyond fiscal sanctions and include criminal prosecutions of corporate executives.

SPAIN

MODERATE ENFORCEMENT: Three foreign bribery cases, including one major case brought and one major case concluded in 2008. Two recently initiated investigations. Share of world exports is 2,11 per cent.

Foreign bribery cases and investigations: The Spanish conglomerate **Abengoa SA**, active in the areas of energy, telecommunications and transportation, is charged with bribing the former president of Costa Rica, Miguel Ángel Rodríguez. The case is pending in the Central Court of Instruction. Abengoa's unit **Instalaciones Inabensa SA** allegedly paid US \$200,000 from 1998 to 2002 to the former President Rodríguez in order to obtain a US \$55 million public contract to provide electricity to the city of San Jose. Another case concerns **BBVA** (see box below) and there was also a case brought in 2006 based on the Volcker Report on the UN Oil-for-Food scandal but the charges were dismissed in March 2007. There are two known foreign bribery investigations, both begun in 2008.

THE BBVA CASE

In April 2002, the Spanish Judge Baltasar Garzon opened a criminal case investigating Spain's second-largest bank BBVA (Banco Bilbao Vizcaya Argentaria) over allegations that secret accounts were used to make political pay-offs at home and abroad.¹²⁰ The secret accounts were allegedly in Liechtenstein, the Cayman Islands, Jersey and elsewhere. Allegations linked BBVA to multibillion-dollar bank privatisations in the late 1990's in Mexico, Venezuela, Colombia and Peru. The investigation began with a US FBI investigation into a whistleblower's allegations of money laundering at BBVA's Puerto Rico subsidiary and this led to claims that BBVA had US \$227 million in secret accounts. A trail reportedly led from that account to Latin America.¹²¹ Judge Garzon stated in 2002 that he had not received solid responses to his formal requests for information from the Cayman Islands, Gibraltar, Liechtenstein, Monaco, Puerto Rico, Jersey and the US state of Delaware.¹²² The case against BBVA had different areas of investigation. One of them concerned allegations of money laundering at BBVA's Puerto Rico subsidiary and was dismissed by Judge Grande Marlaska in March 2005, during a leave of absence of Judge Garzon (he was teaching in the USA). Judge Marlaska referred to the "absolute lack of evidence" against the BBVA and supported his decision with an audit by KPMG and the

testimony of BBVA executives. Another set of allegations concerned secret accounts and false book keeping and led to a conviction in December 2005, with the former president of BBVA was sentenced to six months in prison. Best information suggests that the allegations of corruption are no longer under investigation.

There have been investigations abroad and serious allegations against a number of Spanish companies. The Argentine subsidiary of the Spanish oil multinational **Repsol YPF** (Refinería de Petróleos de Escombreras Oil) was named in a cash-for-votes scandal in 2000 involving the Argentine Senate. A senator claimed she was offered cash to vote for a law favouring oil firms. More recently in October 2008, Repsol was linked to an alleged bribery scheme in Libya starting in 2000.¹²³ In Argentina, there is a case against a **Telefonica** subsidiary. There have also been serious allegations against Spanish companies, including **Endesa**, **Indra** and **BOSCH**.

Domestic bribery by foreign companies: There was one case brought in the 1990s charging **Siemens** with bribery of members of the Socialist Party, based on events that occurred before the OECD Convention was adopted. After 17 years, the case concluded with conviction of a party official in November 2008. The Supreme Court meted out a sentence of six months in prison to the former finance coordinator of the Socialist Party for false bookkeeping related to bribes from Siemens.

Statutory obstacles: There are several obstacles including inadequate definition of foreign bribery, a lack of criminal liability for corporations, short statute of limitations, jurisdictional limitations, and inadequate sanctions. There is uncertainty concerning which courts can hear foreign bribery cases (see also Recent developments below).

Complaint procedure: The Public Prosecutor General's Office has modified its website homepage to clarify how to complain, and to highlight the legal requirement for those aware of bribery to report it.

Accounting and auditing requirements: The Accounting and Auditing Institute (ICAC) and representatives of auditors' offices joined efforts to raise awareness in the accounting and auditing professions. They are also working on improvement of applicable measures to require auditors to report any suspicions of foreign bribery, including production of an Explanatory Public Note. However, the law and the ICAC Technical Standards are not clear and contradictions remain, notably on the question of when the duty of confidentiality may be disregarded. Similarly, the legal framework has no provisions on how to proceed if no action is taken by a company following allegations of bribery.

Anti-money laundering efforts: With regard to money laundering, Spain has not finished reviewing its legislation for the purposes of implementing the Third EU Money Laundering Directive. Consequently, the European Commission referred Spain to the European Court of Justice in October 2008 over non-implementation of that Directive.¹²⁴ There is no legislation that requires reporting financial institutions to refuse to establish a customer relationship or carry out a transaction if customer identification (including beneficial owner identification) cannot be carried out or if identification documents believed to be incorrect cannot be verified. In addition, the Guidelines on Money Laundering issued by the Ministry of Economy and Finance have not been amended concerning PEPs. The 2006 FATF Report on Spain identified other weaknesses, including definitions of the entities covered, requirements on correspondent banking relationships (no prohibition on correspondence with shell banks) and disclosure of beneficial ownership (no disclosure is required and there is no registry maintaining such information). There is also unsatisfactory enforcement and unsatisfactory performance in the area of KYC and PEP due diligence. According to the Drug and Money Laundering Special Prosecutor's Office, the lack of resources is their main difficulty, although resources have been increased. Lack of statistics on investigations prevents assessment of their effectiveness. Additionally, sanctions are inadequate and legal persons cannot be held criminally liable. Almost 70 per cent of large Spanish companies invest in fiscal havens and the body to prevent money laundering (SEPBLAC) does not have enough political support or resources for the full implementation of the AML strategy or for imposing sanctions.

Other enforcement issues: Awareness-raising about the prohibition of foreign bribery has been limited, partly because new legislation is still pending. There is lack of whistleblower protection in the public and private sectors.

Recent developments: In December 2006, the Spanish authorities undertook a major legislative initiative to implement 11 of the recommendations made to Spain by the OECD Working Group on Bribery, namely on the foreign bribery offence, the liability of legal persons, the available sanctions and the related statute of limitations, and on removing the uncertainty concerning which courts are competent to hear foreign bribery cases. However, this initiative was aborted with the dissolution of Parliament in January 2008. In 2008, the Spanish export credit agency adopted a new anti-bribery policy and organised internal meetings to present the policy to its staff. Exporters must now declare that neither they nor anyone acting on their behalf have failed to comply with the Convention or any related Spanish laws. Proven acts of bribery result in the denial of official support. On its side, the Ministry of Industry continues to provide information

and training to personnel posted in embassies abroad. It has also developed, together with the Ministry of Justice, an informative brochure that is being distributed to Spanish business organisations. Spain has also taken measures to enhance the institutional framework for the enforcement of the foreign bribery offence. The Public Prosecutor's Office Against Corruption and Organised Crime now has the power to investigate and prosecute all significant foreign bribery cases without the intervention of the Prosecutor General for a case-specific determination of the special significance criteria.

Recommendations: Resubmit the bill amending the penal code. Provide training for police, prosecutors, the judiciary, lawyers and the private sector once the amendments to the penal code are adopted. Introduce measures to protect whistleblowers. Improve the flow of information from the judiciary to the authorities responsible for administrative sanctions in bribery cases. Improve the fight against money laundering. Financial institutions should not be permitted to open accounts, commence business relations or perform transactions when CDD has not been conducted. Adopt clear measures directed at the financial institutions that fail to complete CDD satisfactorily. Introduce legislation that requires additional identification and KYC measures for higher risk transactions and customers. Spain should also review its supervisory regime and better coordinate the inspection of reporting entities to increase the number of inspections.

SWEDEN

MODERATE ENFORCEMENT: One minor case concluded, a significant new case in 2009 and six investigations, four of them Oil-for-Food cases involving major companies. Share of world exports is 1,34 per cent.

Foreign bribery cases and investigations: In March 2009, three executives from **Volvo Construction Equipment**, a subsidiary of Volvo, were charged with paying bribes in Iraq to evade restrictions related to the United Nations' Oil-for-Food Programme.¹²⁵ Other Oil-for-Food-related investigations of larger companies are under way.¹²⁶ Apart from Volvo, Swedish companies named in the Volcker report include **AstraZeneca**, **Atlas Copco** and **Scania**.

In October 2008, the Swedish Prosecution Authority began investigating allegations of bribery in connection with the sale of **Saab** Gripen fighter jets to South Africa in 1999.¹²⁷ In January 2009 it was announced that an investigation of **Sanip**, a wholly-owned subsidiary of Swedish company **Saab Aerospace**, was under way, also in connection with the sale of Gripen jets to South Africa. Sanip's offices were reportedly searched in November 2008.¹²⁸ In June 2009, however, the investigation was closed as the prosecutor reportedly said that he was unable to prove that representatives of Sweden's **Saab AB** and **Gripen International** had intentionally assisted alleged bribe payments by BAE Systems after July 2004.

The Swedish company **Ericsson** has reportedly been the target of investigations in other countries including Costa Rica in 2004 relating to alleged bribery of officials at the National Institute of Electricity,¹²⁹ and Switzerland in 2003 relating to alleged bribery of officials in Bulgaria, Libya, Poland and Slovenia to obtain mobile phone contracts. There are also serious allegations against Ericsson relating to deals in Oman¹³⁰ and Turkey.¹³¹ In other jurisdictions, cases and/or investigations are under way or concluded relating to **ABB** in the US; **AstraZeneca** in the UK and US; **Skaanska** in Argentina; and **Volvo** in the US.¹³² (On ABB, see also the report on Switzerland)

Domestic bribery by foreign companies: No known cases or investigations.

Statutory obstacles: The Swedish Chief Prosecutor Van der Kwast has said that Sweden does not have laws that effectively cover arrangements between middlemen and consultants. The prerequisite of dual criminality may sometimes restrict effective crime control. There is provision for fines for corporations and other legal entities.

Complaint procedures: There are no specific government efforts to provide publicly-known and accessible procedures for reporting foreign and domestic bribery allegations.

Accounting and auditing requirements: Chartered accountants seem to be satisfied with the requirements and aware of their obligation to report any illicit practice. Some prosecutors are of the opinion that it may be difficult for an accountant to detect such practices and that even if he or she does, it could be difficult to determine if there is sufficient information available to make a report. There is now a legislative proposal under consideration that requires auditors to report suspicions of bribery of foreign public officials to law enforcement authorities.

Anti-money laundering efforts: In October 2008, the European Commission referred Sweden to the European Court of Justice over non-implementation of the Third Anti-Money Laundering Directive.¹³³ Subsequently, a new Swedish law against money laundering and financing of terrorism entered into force on 15 March 2009. (See also Recent developments below.) The Swedish Financial Authority, (Finansinspektionen) thereafter decided on Regulations and Guidelines governing measures against money laundering and financing of terrorism and these entered into force on 15 May 2009.

Other enforcement issues: There are insufficient resources for investigations and prosecutions. There is also a lack of whistleblower protection in the private sector and a need for more awareness-raising about the foreign bribery offence.

Recent developments: The National Anti-Corruption Unit has received some additional resources, in the form of four qualified investigators. In March 2009, the Government appointed a committee to present proposals for more modern anti-bribery legislation.

Recommendations: Introduce new coherent legislation about corruption, both bribe-paying and bribe-taking.

SWITZERLAND

ACTIVE ENFORCEMENT: At least 16 foreign bribery cases, many major, and 36 investigations reported in 2007. Share of world exports is 1,31 per cent.

Foreign bribery cases and investigations: New numbers were not available for 2008. In 2007, it was reported that there had been eight prosecutions and convictions relating to the Oil-for-Food Programme and that CHF17 million (US \$13.77 million) was confiscated. Six additional cases were pending, awaiting international judicial assistance. About 40 Swiss companies were named in the Volcker Report, including engineering firm **ABB Ltd.**, **Novartis AG** and **Roche Ltd.**

The Swiss have initiated numerous investigations relating to foreign bribery-related money laundering by companies with subsidiaries or bank accounts in Switzerland. One of the latest is an investigation relating to French engineering company **Alstom SA**, initiated in 2004, following the discovery during a bank audit of documentation detailing money transfers to agents in other countries. In August 2008, the authorities seized documentation kept in Alstom's Swiss offices and detained a former Alstom executive for interrogation. The investigation is ongoing and no charges have been pressed. Swiss prosecutors claim to have evidence that money was paid to foreign officials, including payments for projects in Italy, Mexico and Zambia.¹³⁴

A Swiss investigation into **BAE Systems** was launched in 2007 and expanded in 2008 to include three criminal investigations into possible money laundering relating to payments to officials in Saudi Arabia.¹³⁵ Swiss money laundering investigations also triggered the **Siemens** probe in Germany and investigations into **Total SA** in France. In 2003, in a money laundering case against an intermediary, the Attorney General of Geneva found that several companies had made improper payments in Nigeria, including **Dumez Nigeria**, **Ferrostaal** and **Tata Overseas Sales and Services Limited SA**.¹³⁶

Swiss companies have been named in investigations in other countries. The Swiss-Swedish engineering company **ABB** was charged in the US concerning activities in Angola, Nigeria and Kazakhstan (2004 and 2006 cases) and was also under investigation for alleged offences in other countries.¹³⁷ It was also reportedly under investigation in China (2007).¹³⁸ In July 2007, ABB announced that it was investigating payments made by employees overseas in Asia, South America and Europe (with a particular focus on Italy).¹³⁹ Another company, a US subsidiary of **Panalpina World Transport Holding, Ltd.**, provider of freight forwarding and logistics services, is also reportedly under investigation in relation to services provided in Kazakhstan, Nigeria and Saudi Arabia for a limited number of customers.¹⁴⁰

Domestic bribery by foreign companies: No known cases or investigations.

Statutory obstacles: There is a CHF5 million (US \$4.6 million) limit for fines, which is not adequate for companies. The amount of the fine should reflect the profit derived from the corrupt transaction.

Complaint procedures: Police offices on local, cantonal and federal levels all have websites with contact addresses. However there are no specific tools for reporting bribery cases such as hotlines and websites. There is, however, the opportunity to report relevant evidence of malpractice on the homepage of the Swiss Federal Audit Office, although this is not widely known. In February 2007 the Swiss Agency for Development and Cooperation opened a compliance office to receive reports of bribery allegations.¹⁴¹

Accounting and auditing requirements: New provisions on auditors in the Swiss Code of Obligations came into force in 2008. The Swiss Institute of Chartered Accountants also modified its standards NAS 890, 700 and 260. Further amendments to the accounting rules were submitted to the parliament on 21 December 2007 and are under consideration.

Tax deductibility of bribes: The federal law of 22 December 1999, which came into force on 1 January 2001, does not mention bribes specifically but forbids companies from deducting any illicit payments from their taxable profits. The federal authorities have drawn attention to this ban in two circulars, dated 22 June 2005 and 13 July 2007.

Anti-money laundering efforts: The Swiss AML legislation is modern and strictly implemented. However, the 2005 FATF Report on Switzerland found Switzerland non-compliant in the area of transparency of

the beneficial owners of some types of legal entities and in the provisions on correspondent banks. The FATF Report also found deficiencies in Swiss CDD requirements, suspicious transaction reporting, sanctions regime, regulation of foreign branches and subsidiaries, oversight regime and coverage of entities. Moreover, despite the importance of the country's financial sector, the Swiss AML unit has only eight staff. The system for supervising compliance with AML requirements (client identification, reporting, internal policies, retaining customer files and information) is mainly outsourced to independent auditors acting on behalf of financial and other supervisory bodies, who do not therefore have a direct view of any inadequacies. Furthermore, under article 305bis of the Criminal Code only serious offences are predicate offences. In the opinion of the Swiss expert, the offence of money laundering should be extended to the more serious acts of corruption in the private sector.

Other enforcement issues: Lack of whistleblower protection is a problem. Certain initiatives launched by specific federal departments to protect whistleblowers are little known or used, including one such initiative by the financial surveillance and control body (CDF). Responses to MLA requests are often unduly delayed by the recourse possibilities against these requests available to individuals in the Swiss courts.

Recent developments: New auditing legislation entered into force in January 2008. In December 2008, the government presented a bill for better whistleblower protection and opened the consultation process (Vernehmlassung) to interested groups. In March 2009, parliament approved ratification of the UNCAC. No changes in Swiss law are foreseen.

Recommendations: Introduce an appropriate body to coordinate all measures to counter corruption. Implement effective whistleblower legislation in both the public and private sectors, with more severe penalties for dismissals following whistleblower reports and greater protection from reprisals. The legislation should require federal employees to report well-founded suspicions of criminal offences to the competent authorities. All possible measures should be undertaken to raise awareness about the CDF as a Corruption Reporting Office. Provide better access to information (federal register) for interested groups about foreign and domestic corruption cases, with detailed information about the parties involved. Make MLA requests easier and faster.

TURKEY

LITTLE OR NO ENFORCEMENT: No foreign bribery cases and no investigations in 2008. Share of world exports is 0,72 per cent.

Foreign bribery cases and investigations: One previous major investigation into alleged bribery by a **Barmek Holding** subsidiary in Azerbaijan was dropped. In 2007, the Turkish company **Kiska Construction Corporation** was named in a bribery case in New York City.¹⁴² (See US report) The Volcker Report on the UN Oil-for-Food Programme listed over 130 Turkish companies allegedly involved in illicit payments in the context of the Programme.

Domestic bribery by foreign companies: No cases are known in Turkey but there are cases mentioned in other jurisdictions concerning bribery by foreign companies in Turkey.

Statutory obstacles: The defence of "effective remorse," that gives immunity to wrongdoers who confess, has been retained. There is no liability for legal persons for the foreign bribery offence. The OECD Phase 2 examiners were very surprised in 2007 to discover that the 2005 penal code repealed such liability and concluded that Turkey is no longer in compliance with Article 2 of the OECD Convention.

Political influence over enforcement action: The Minister of Justice currently has discretion to decide on whether to request the application of universal jurisdiction (including nationality jurisdiction). The 2007 OECD *Phase 2 Report* indicated that the examiners were not satisfied that Turkey's decision to terminate an investigation was warranted, based on the rationale provided by the Ministry of Justice. This observation appeared to refer to the termination of the Barmek Holding investigation.

Complaint procedures: There is an easily accessible link in the homepage of the Ministry of Justice called "OECD Coordination" and a specific hotline for complaints relating to bribery of public officials. There are also several other hotlines easily accessible to the public, such as the Hotline of the National Security Department.

Accounting and auditing requirements: There is a need for tighter accounting and auditing requirements. The OECD Phase 2 review team expressed concerns about whether the penalties for false accounting are adequate. New regulations in the Tax Code and Commercial Code cover all default risks of companies. Tax deductions and documentation of all accounting transactions are strictly regulated. In addition, public limited companies (PLCs) and other types of companies traded on the stock exchange are closely regulated in order to avoid manipulation. Both internal and external auditors are under an obligation to report any fraudulent acts, tax evasion and suspicious transactions. However, an August 2008 survey by Ernst & Young found that only 52 per cent of executives in Turkey believe that auditors are sufficiently informed about

bribery, and corruption, risks and indicators. The rate of success of internal audits in detecting and preventing corruption is believed to be only 52 per cent, compared to a global average of 72 per cent.¹⁴³

Tax deductibility of bribes: Turkish law does not explicitly address the non-deductibility of bribe payments and the OECD Phase 2 examiners expressed concerns about this. They considered that some categories of deductible expenses contained under article 40 of the Income Tax Law might be used to conceal bribe payments and felt that tax examiners should be provided training on the detection of bribe payments disguised as legitimate expenses.

Anti-money laundering efforts: The structure of the economy is open to a high level of unregistered transactions, which makes the system vulnerable. The new altered Code for Counteracting Illegal Crime Revenues defines the regulatory system for AML and calls for public institutions, legal persons and entities to provide all necessary documents and pass codes in electronic form when requested by Financial Crimes Investigation Board, which tracks money laundering. The 2007 OECD *Phase 2 Report* on Turkey found that specific steps were needed to improve suspicious transaction reporting, in particular relating to foreign bribery. The February 2007 report of the FATF found Turkey to be non-compliant with regard to requirements of CDD in general but also in regard to PEPs, as well as in the areas of correspondent banking, unusual transactions, use of third parties, entities covered by AML requirements, special attention for high risk countries, and coverage of foreign branches and subsidiaries. They also found Turkey only partially compliant in many other areas including the definition of the money laundering offence; suspicious transaction reporting; internal controls; compliance and auditing; sanctions; regulation, supervision and monitoring; resources; the training and function of enforcement authorities; and the provision of information about beneficial ownership of legal entities.

Other enforcement issues: There is a lack of whistleblower protection in the public and private sectors. There is also a need for a greater allocation of resources to improve enforcement and a need to ensure that adequate sanctions are imposed for foreign bribery. The 2007 OECD *Phase 2 Report* on Turkey expressed serious concerns about the lack of policies and practices to combat foreign bribery in foreign aid “given the nearly ten-fold growth in Turkish Overseas Development Aid (ODA) reported over only two years and the serious potential for bribery in the partner countries where Turkish ODA is delivered”. The OECD report also expressed serious concerns about the lack of awareness-raising and training for personnel in Turkish foreign diplomatic representations.

Recent developments: From the beginning of 2008, the Ministry of Justice began coordinating a national task force for enforcement of the OECD Convention with the participation of other related institutions. MASAK (Institution for Investigation of Financial Crimes) is expected to play a key role in foreign bribery investigations and its staffing is expanding.

Recommendations: Conduct public-awareness campaigns about the need for ethical behaviour. Enforce legislative measures to prevent and punish foreign bribery and domestic bribery.

UNITED KINGDOM

MODERATE ENFORCEMENT: Four foreign bribery cases were concluded in the past year, two of them major and with sanctions imposed, and about 20 investigations currently under way. Share of world exports is 4,56 per cent. Uncertainty about when a new anti-bribery bill will be passed by Parliament is a major concern.

Foreign bribery cases and investigations: The UK successfully closed its first foreign bribery case against **CBRN Ltd.** in September 2008, when the Danish Managing Director of the British company **CBRN Ltd.** pleaded guilty to bribing a Ugandan official and was given a five-month suspended prison sentence. Although a small case, this was a major development. In October 2008, the Serious Fraud Office (SFO) used its new civil law powers in a case against **Balfour Beatty Plc** leading to a civil settlement of £2.5 million (US \$4.2 million) representing confiscation of the proceeds of crime (and costs). The company was also required to implement a compliance programme. The company had reported that one of its subsidiaries, in a joint venture with an Egyptian company, kept inaccurate accounting records during the construction of the Bibliotheca Project in Alexandria, Egypt, completed in 2001. The **Aon Ltd.** case followed in January 2009¹⁴⁴ (see box below). A further case, involving UK solicitor Nigel Heath, relates to conspiracy to bribe in relation to the release of frozen investment funds abroad. Investigations reportedly continue into bribery allegations against **BAE Systems** in connection with sales in the Czech Republic, Hungary, Tanzania and South Africa. (See also below the discussion of the termination of the **BAeS Al Yamamah** investigation in the section on political influence over enforcement.) In 2007, investigations were reported in connection with foreign bribery allegations against **Mabey & Johnson, Astra Zeneca, Eli Lilly and Company Ltd., De la Rue, Anglo Leasing, Chevron Texaco** and **Royal Dutch Shell**.¹⁴⁵ A UK investigation into the **Freeport** scandal in Portugal has also been reported.¹⁴⁶ In November 2008, the SFO announced that it would not

initiate a formal investigation of **Mott MacDonald**, the UK's leading consulting engineering firm, in relation to the Lesotho Highlands Water project, in which the company was a joint venture partner of the German firm Lahmeyer.¹⁴⁷

FSA FINE IN AON CASE

In January 2009, the UK Financial Services Authority imposed a record fine of £5.25 million (US \$7.6 million) on **Aon Ltd.**, a British insurance company, a wholly-owned subsidiary of the US company **Aon Corporation**. The fine was imposed for failure to have effective systems and controls in place to counter the risks of bribery and corruption associated with making payments to overseas firms and individuals. The FSA found that business units within Aon Ltd.'s Energy and Aviation divisions paid overseas third parties to secure or retain reinsurance business from entities that were state-owned or had government connections. The fine arose from Aon's admission that between January 2005 and September 2007 it made suspicious payments to overseas intermediaries in connection with securing or retaining insurance business. Payments amounting to approximately US \$7 million were made to firms and individuals in Bahrain, Bangladesh, Bulgaria, Burma, Indonesia and Vietnam. Aon brought the payments to the attention of the authorities in 2007 after an overseas law enforcement agency made inquiries about payments in Indonesia. Internal investigations identified a number of other suspect payments, including one to the Swiss bank account of a British Virgin Islands company in connection with securing some business from a Bulgarian insurance company, and another to an intermediary in advance of securing work from a Burmese state-owned insurance company. In all cases the genuine business case for making the payments was unclear. Aon avoided prosecution by cooperating throughout the FSA investigation, admitting its errors and agreeing to a fine. The fine was reduced by 30 per cent to reflect this. Aon has since implemented a very robust anti-corruption system regarded by the FSA as a model of best practice, and disciplined those responsible for the failings identified.¹⁴⁸

Domestic bribery by foreign companies: Number unknown. One case was reported in 2007 involving a senior Ministry of Defence official Michael Hale and the American company **Pacific Consolidated Industries**.

Statutory obstacles: There are many deficiencies in the UK law, including an inadequate working definition of foreign bribery. Also, while criminal liability for corporations is provided for in law, it is difficult to enforce in practice because it is necessary to attribute the offence of foreign bribery to a central "directing mind" in a company. This is very difficult except in the case of quite small companies. Additionally, it is unclear whether the OECD Convention has been extended to the UK's Crown Dependencies and Overseas Territories. If this has not been done, it should be given a high priority by the UK government.

Political influence over enforcement: The premature termination by the Serious Fraud Office (SFO) of its investigation of the **BAeS Al Yamamah** case in 2006 relating to the UK-Saudi defence contract has become a major issue in the UK. The UK government and the Director of the SFO claimed that the decision was taken on grounds of national and international security and not for any reasons prohibited by Article 5 of the OECD Convention. On 10 April 2008, the Administrative Court held that the SFO Director was wrong to discontinue the investigation. In July 2008, the House of Lords, the highest appellate court of law in the country, upheld the SFO's appeal and overturned the Administrative Court decision. At present, special consent of the Attorney General is required for the prosecution of bribery offences and as long as this is the case there will remain the perception that Article 5 of the OECD Convention will be breached. The government's Constitutional Renewal White Paper and draft bill provides for corruption offences to be removed from those needing the Attorney General's consent. However, it also contains a disturbing new general power for the Attorney General to intervene in investigations/prosecutions on grounds of safeguarding national security.

Complaint procedures: The Overseas Anti-Corruption Unit of the City of London Police operates a 24/7 confidential answer phone service, which allows callers to report their suspicions either openly or anonymously. Reports can also be made to the SFO and UK diplomatic posts abroad.

Auditing and accounting requirements: Generally, UK accounting and auditing standards represent best practice, and the adoption of International Financial Accounting Standards will bring greater consistency. However, the methods used by companies to bribe foreign public officials may circumvent these standards or indeed be regarded as not material. In its 2005 Phase 2 evaluation of the UK's implementation of the OECD Convention, the OECD Working Group on Bribery said there were big question marks over the "adequacy of UK accounting requirements to prevent and detect bribery of foreign public officials". The report added that there was a "failure to consider the existence of possible accounting offences linked to bribery" in the UK, and questioned whether there was sufficient case law in place to punish accounting offences linked to bribery. There have been no reported cases of false accounting being used as a charge related to or founded upon alleged corruption/bribery. Auditors are required to report suspicions of a crime to law

enforcement authorities. Under the Money Laundering Regulations 2007, businesses and professions are required to maintain ID procedures, record keeping procedures, and internal reporting procedures. Businesses regulated by the FSA are subject to disciplinary procedures when they have failed to meet FSA requirements i.e. failure to have effective anti-corruption procedures in place.

Tax deductibility of bribes: There is no explicit legal prohibition. However, Section 577A of the Income and Corporation Taxes Act 1988 provides that tax deductibility is denied for any payment the making of which constitutes the commission of a criminal offence in the UK. The Finance Act 2002 has further clarified this position by ensuring that the prohibition also applies to payments that take place wholly outside the jurisdiction of the UK.

Anti-money laundering efforts: Some improvements needed. The UK's AML regulations comprise the 2002 Proceeds of Crime Act (POCA) and the 2007 Money Laundering Regulations (MLR). The 2007 FATF evaluation of the UK's adherence to its Recommendations stated that, while there was a high level of awareness of PEP issues and of compliance with the guidance of the Joint Money Laundering Steering Group (JMLSG), there remained some gaps. Some of these have been addressed but in the opinion of TI (UK) there are weaknesses. Firstly, the guidance provided by the JMLSG does not make it an absolute requirement for reporting institutions to determine if a person is a PEP and thus fails to meet the terms of FATF Recommendation 6, which requires enhanced due diligence on PEPs. Secondly, the MLR do not require reporting institutions to identify a beneficiary of a trust as a matter of routine. Thirdly, although trusts and company service providers (TCSPs) are now subject to AML requirements, the criteria for determining whether TCSPs are 'fit and proper' are weak.

Particular AML challenges arise in respect of some of the UK Overseas Territories (OTs) that are offshore financial centres. They are constitutionally not part of the UK and in some of them, the Governor General is accountable for financial services. All the OTs have implemented AML regimes. However, some of the smaller OTs have very limited regulatory and law enforcement capacity making it difficult to address money laundering risks effectively. This vulnerability has serious implications for the UK's reputation and needs to be addressed urgently. Recent allegations of fraud and corruption in Turks and Caicos have underlined the need for urgent action to mitigate risks.

Other enforcement issues: On the subject of MLA, in September 2007 the Home Office confirmed that it was considering a US government request for MLA received in July in the latter's anti-corruption investigation into BAeS. It was reported that the UK was giving the matter due consideration. TI (UK) understands that the government has yet to respond to this request.

Recent developments: The SFO can now recover property obtained by unlawful conduct using new civil laws that came into effect in April 2008, under an amendment to the Proceeds of Crime Act 2002. The government has published a draft bribery bill for pre-legislative scrutiny. The bill is based on proposals made by the Law Commission in November 2008. Although the government's draft bill is not perfect, it represents the best consensus that can be attained among a range of stakeholders and provides a good foundation for fast tracking the adoption of a bill in the fourth session of this Parliament. TI (UK) fears that if this is deferred to the fifth session (2009/10), which will be a short session because of a general election in 2010, there is a danger that other issues may encumber consideration of the bill.

Recommendations: Adopt urgently (with some refinements) the bribery bill in the fourth session of this Parliament. Strengthen provisions in the bribery bill on corporate liability for active and passive bribery. However, TI (UK) believes this issue should not delay adoption of the bill. This area should be addressed after the bill is enacted. Increase resources for the Overseas Anti-Corruption Unit, the SFO and the Proceeds of Crime Unit. Increase awareness of the OECD Anti-Bribery Convention, particularly among small and medium-sized enterprises.

UNITED STATES

ACTIVE ENFORCEMENT: 120 foreign bribery cases through the end of 2008, including 21 initiated in 2008, and many major ones; additionally 110 investigations involving bribery of foreign officials. Share of world exports is 9,84 per cent.

Foreign bribery cases and investigations: There have been 120 cases since the OECD Convention entered into force (71 cases, discounting for overlapping Department of Justice and SEC cases), including 21 begun in 2008. The US has increasingly focused on FCPA violations by foreign companies with 13 of the 29 new investigations during 2007 involving foreign corporations.

There were major breakthroughs in the criminal proceedings against **Halliburton** and **Kellogg, Brown & Root** for bribery of Nigerian officials. Record fines were imposed on **Siemens** in relation to worldwide and specific charges of bribery in Argentina, Venezuela and Bangladesh (see box below).

HALLIBURTON AND SIEMENS: CONCLUSION OF TWO MAJOR CASES

In September, 2008, Albert J. Stanley, the former chairman of **Kellogg, Brown & Root (KBR)**, a Halliburton subsidiary, pleaded guilty to US Department of Justice (DoJ) and SEC charges that he conspired to pay US \$182 million in bribes to Nigerian officials in return for contracts to build a US \$6 billion liquefied natural gas complex. Stanley agreed to a minimum seven-year prison term and the payment of US \$10.8 million in restitution to his former employer. In February 2009, the US Department of Justice announced that KBR had pleaded guilty to foreign bribery charges and agreed to pay a US \$402 million criminal fine. On the same day, both **Halliburton** and **KBR** settled a civil complaint brought by the SEC agreeing to pay jointly US \$177 million in disgorgement of profits, for a total of US \$578 million.¹⁴⁹ Nigerian law enforcement authorities are also investigating the case.¹⁵⁰ In May 2009, it was reported that US authorities were launching extradition proceedings against British citizen Jeffrey Tesler, a London-based solicitor reportedly called the "bagman" in the Halliburton/KBR case in Nigeria.¹⁵¹

In December 2008, in response to DoJ charges of global bribery, **Siemens AG** pleaded guilty to a violation of internal controls, books and records provisions and three of its subsidiaries, **Siemens S.A. – Argentina**, **Siemens Bangladesh Limited** and **Siemens S.A. – Venezuela** also pleaded guilty to violations of the FCPA. The SEC also announced the settlement of books and records charges that alleged more than US \$1.4 billion in bribes to government officials in Asia, Africa, Europe, the Middle East, and the Americas. Siemens will pay a criminal fine of US \$448.5 million to the DoJ and will pay the SEC US \$350 million in disgorgement, and its three charged subsidiaries will each pay US \$500,000. Siemens also agreed to appoint a compliance monitor. The charges against Siemens AG included charges relating to its handling of the books and records of several of its subsidiaries that participated in the UN Oil-for-Food Programme, including subsidiaries in France and Turkey. The fines imposed on Siemens are, in total, almost twenty times the previous record fines in an FCPA case of US \$44 million imposed on Baker Hughes in April 2007.

A further case involving alleged bribery in the oil sector in Nigeria was concluded in November 2008, when **Aibel Group Ltd.**, a UK corporation, pleaded guilty to violating the US FCPA and agreed to pay a US \$4.2 million fine. The Department of Justice and SEC also concluded a number of Oil-for-Food investigations, including a settlement with **Volvo** in March 2008; and another in December 2008 with the Italian corporation **Fiat SpA**, which entered into a deferred prosecution agreement with the Department of Justice and a settlement with the SEC, including total penalties of US \$10.6 million and US \$7 million in disgorgement of profits. More recently, in May 2009, the Danish company **Novo Nordisk** reached settlements with the SEC and Department of Justice and agreed to pay a total of US \$18 million in fines, disgorgement and interest.¹⁵² In another Oil-for-Food case, **Chevron** agreed to pay US \$30 million in fines and disgorgement in a 2007 settlement (US \$20 million to the US Attorney's Office; US \$5 million to the New York County District Attorney's Office; US \$2 million to the United States Office of Foreign Asset Control; US \$3 million in monetary penalties to the SEC; payments to the US Attorney's Office and the New York County District Attorney's Office satisfy the SEC disgorgement).

Another oil-related prosecution was initiated in 2003, based on information from Switzerland in 2000, and is still pending. This involves FCPA charges against James Griffen, a merchant banker who was adviser to the President of Kazakhstan. The charges relate to his alleged role in making payments to two very senior Kazakh government officials in connection with the sale, to major oil companies of interests in Kazakh oil fields and pipelines. (Also indicted was a former **Mobil Corporation** executive.) Oil companies that were reportedly referenced in the Griffen indictment and subpoenaed in the case in 2003 include **Mobil** (now **ExxonMobil**), **Texaco** (now part of **ChevronTexaco**) and **Amoco** (now part of **BP**)¹⁵³ and **Phillips Petroleum** (now **ConocoPhillips**).¹⁵⁴ ChevronTexaco's partners to develop the Karachaganak field were Russia's LUKoil, Italy's Agip and British Gas.¹⁵⁵ The funds were allegedly paid into the escrow accounts at Banque Indosuez and its successor Credit Agricole Indosuez.

Of the numerous ongoing investigations, one of the longer-running ones includes an inquiry commenced by the SEC in July 2004 into alleged unlawful payments to senior government officials of Equatorial Guinea. A separate Senate subcommittee hearing into US \$700 million in Equatorial Guinea bank accounts at the Riggs Bank in Washington D.C. found in its 2004 report that large payments had been made by US oil companies into accounts controlled by Equatorial Guinea officials and their relatives. Five companies are reportedly under investigation: **ExxonMobil Corp**, **Amerada Hess Corp**, **ChevronTexaco**, **Devon Energy Corp** and **Marathon Oil Corp**.¹⁵⁸ Other investigations initiated in 2004 include investigations of allegations against **Alltel Corp** in China, **IBM Korea**, and **Bristol Myers Squibb** in Germany.

In April 2009, it was announced by the DoJ that six former executives of a Californian engineering firm, manufacturing valves for power plants, had been charged with paying approximately US \$7 million in bribes (approximately 236 bribes) between 1998 and 2007 to officials at foreign state-owned companies in

over 30 countries, including China, Malaysia, Korea and the United Arab Emirates.¹⁵⁶ In another 2008 development, a criminal investigation was opened into allegations of bribery by **Alcoa Inc.** in Bahrain and halted a civil lawsuit brought by Aluminium Bahrain pending the outcome of that investigation.¹⁵⁷

Domestic bribery by foreign companies: The number of cases of domestic bribery by foreign companies is not known, but some cases have been reported in the press. In March 2008, two New York City transportation officials pleaded guilty to charges of bribery by the Turkish company **Kiska Construction Corporation** in connection with a bridge renovation.¹⁵⁹ In another case in 2008, the Inspector General of the US Interior Department found that improper gifts had been made to employees of the US Department of Interior by oil companies including **Royal Dutch Shell**.¹⁶⁰ In November 2008, it was announced that the German pharmaceutical company **Bayer** had agreed to pay US \$97.5 million to settle a DOJ lawsuit claiming bribery. The lawsuit alleged that Bayer paid bribes to 11 medical suppliers to induce them to switch to its diabetes products from other brands, including a payment of around US \$2.5 million to Liberty Medical Supply over a period of four years. The payments were allegedly often disguised as payments for advertising.¹⁶¹

Statutory obstacles: There are no significant obstacles or inadequacies in the legal framework. Some anti-corruption advocates have proposed expanding the definition of "foreign official" in the FCPA to include other persons, such as close business associates, who are included in the definition of a "senior foreign political figure" in the US AML regulations.

Complaint procedures: The Sarbanes-Oxley Act requires publicly-traded companies to establish a mechanism for the confidential receipt of employee complaints. The government also encourages corporate hotlines and reporting procedures. Each year the SEC receives hundreds of thousands of tips of potential violations of the securities laws including the FCPA via the Internet, email, phone calls, messengers, mail, and faxes. The Fraud Section of the Criminal Division of the DOJ publishes its address, fax number, and email address for "specific questions" related to the FCPA. In March 2009, the SEC began an internal review of its procedures for evaluating tips, complaints, and referrals.

Accounting and auditing requirements: These are among the strongest worldwide. Significant penalties for their violation create a strong incentive for companies to maintain complete and accurate books and records, internal controls, and full disclosure of material information to auditors.

Anti-money laundering efforts: The US Bank Secrecy Act (BSA) and its implementing regulations impose broad and detailed AML requirements for financial institutions relating to recordkeeping, customer identification procedures, suspicious activity reporting (SARs), and other compliance procedures and assessments. The BSA statute and regulations are among the most complex federal laws. In some areas, such as laws governing "money businesses", the scope of the terms is vague. Bank examiners regularly evaluate compliance with these laws by financial institutions. There was criticism by the FATF (in their report of June 2006) and others of the lack of exhaustiveness and comprehensiveness of certain US AML efforts in relation to processing of SARs and transparency requirements as they pertain to beneficial ownership of corporations in certain states, notably Delaware,¹⁶² Nevada and Wyoming. Additionally the FATF found the US only partially compliant in the area of CDD and non-compliant as far as coverage of entities. Unlike in Europe, the United States has not required lawyers acting in certain roles to report suspicious client activities to US authorities.

Other enforcement issues: The MLA offered to the US is not always ideal depending on the capacity of the country requested. At the same time, the US State of Delaware was faulted by an investigating judge in Spain for failing to cooperate in an MLA request and there were problems in the MLA with Argentina in the IBM case due to incompatibilities in legal systems. In numerous recent prosecutions, however, the US authorities have benefitted from MLA.

Recent developments: As a result of the US financial crisis, the US Congress is in the process of appropriating substantial additional resources to give to US enforcement authorities to pursue financial crime, including FCPA cases. The government's enforcement efforts have increased since last year, particularly with respect to enforcement against individuals, and with respect to the magnitude of penalties. US authorities are preparing to reorganise and streamline the BSA regulations, which should address the problem of their complexity.

Recommendations: Clarify the nature of the benefit for voluntary disclosures, and in particular the policies and bases for setting of fines and penalties in relation to the range established by the US Sentencing Guidelines. Continue to aggressively prosecute non-US-based offenders and to improve collaboration with counterpart authorities in other countries. Continue to protect attorney-client privilege to encourage prospective resolution of potential violations. Improve transparency of information regarding closed cases and pending investigations.

Reports from Three Non-OECD Countries

This section contains reports on China, India and Russia, which have been invited to become parties to the OECD Convention because they have an important share of export trade. China and Russia have ratified and India has signed the UN Convention against Corruption, which requires parties to criminalise foreign bribery.

CHINA

Foreign bribery cases or investigations: There have been no cases brought in China for foreign bribery, but Chinese companies and individuals have been charged in other jurisdictions. In Ethiopia, in April 2009, a federal court sentenced a Chinese businessman and a customs officer to long jail terms for bribery in connection with the importation of undeclared goods.¹⁶³ **ZTE Corporation**, a major Chinese supplier of telecommunications equipment and network solutions, has been the target of several allegations including reports of a parliamentary investigation of alleged corruption in the Philippines. In October 2008, Norway's national operator Telenor banned ZTE from participating in tenders for six months due to breaches of its code of conduct. ZTE admitted that an employee in a subsidiary had committed a breach.¹⁶⁴ An employee of ZTE was reportedly charged with bribery in Liberia in 2006.

Regarding other companies, in a World Bank debarment proceeding relating to a World Bank-funded road improvement project in the Philippines, four Chinese companies **China Geo-Engineering Corp.**, state-owned **China Road & Bridge Corp.**, **China State Construction Engineering Corp.** and **Wu Yi Co. Ltd.** were among 17 companies found to have run a cartel, which included corrupt payments to politicians. These four companies were among five singled out for enhanced sanctions due to being "the perpetrators of fraudulent and corrupt practices." These five "had the greatest extent of corrupt relationships with government officials, directed the submission of fraudulent bids, and controlled the fraudulent distribution of contract awards." In January 2009, the World Bank announced that the firms had been debarred for periods ranging from five to eight years. Also, in January 2009, the US Department of Justice alleged that in 2005 another subsidiary of **China Communication Construction, China Harbour Engineering**, had paid bribes totalling US \$1.76 million to the Singapore account of the youngest son of a former Bangladesh prime minister in connection with the Bangladesh Chittagong Port project.

Domestic bribery by foreign companies: There are many reports of cases brought against public officials in relation to bribery by multinational companies. The companies **IBM**, **NCR** and **Hitachi** were reportedly named in a court verdict in November 2006 against the former president of the China Construction Bank, who was sentenced to 15 years in jail for receiving over US \$500,000 in bribes.¹⁶⁵ The companies were identified as having worked through a middleman to sell IT services to the bank in 2003–2004.

Statutory obstacles: Lack of prohibition of foreign bribery. In 2007 a senior court official suggested establishing the crime of bribing foreign officials and officers of international organizations based in China, to help fulfil the country's obligations under the UNCAC.¹⁶⁶

Complaint procedures: China has established corruption hotline reporting systems with many government entities including the Public Security Bureau, the Bureau of Administration Industry and Commerce, and various court and prosecution departments. Hotline numbers and email addresses are easily accessible and have been made public in many regions.

Accounting and auditing requirements: China has worked to bring its regulations into line with international standards and strengthen enforcement. As of 2006, auditors did not have a duty to report illegal or improper transactions to a company's board, shareholders or law enforcement authorities. However, according to the Law on Chinese Certified Public Accountants, enacted in 1994, an auditor shall reveal in the audit report illegal or improper transactions. China has revised and strengthened its accounting and auditing regulations that offer support in curbing bribery. China's Accounting Law, revised in 1999, requires enterprises to maintain complete and accurate accounting books and statements. In its penalty provisions,

units and individuals found to have been involved in falsifying, tampering, concealing or intentionally destroying accounting books or statements can be prosecuted depending on the gravity of the actions. Units found to have engaged in this behaviour will be fined, individuals in charge will be incriminated and accountants will face suspension of their license if found to be involved in accounting malpractice. China's Enterprise Income Tax Law and its implementing guidelines, which were revised in 2007, have established clear guidelines for tax deductions. According to article 6 on enterprise income tax, issued by the State Tax General Bureau in 2000, illegal expenses such as bribery payments shall not be deducted before taxation. However, foreign bribes are not covered by this provision.

Anti-money laundering efforts: Foreign bribery is not an offence and thus not a predicate offence. China has established a relatively complete legal framework for AML efforts but compliance management is unsatisfactory. China's 2006 revised Criminal Code and AML law have extended the AML definition to include laundering of proceeds of corruption. However, the 2007 FATF report on China found deficiencies with regard to the definition of the offence and the lack of corporate criminal liability. The FATF report found there are no enhanced due diligence requirements for PEPs or for high risk categories of customers or complex, unusual transactions. It also concluded there was a lack of due diligence and reporting requirements for some designated persons or entities, and faulted the level of access to information about beneficial ownership. It found China only partially compliant with respect to restrictions on correspondent banking. It also found that the level of sanctions was low for major deficiencies. Institutional structures were largely compliant, according to the FATF, but the report found that they did not have enough staff to effectively manage the high volume of suspicious transactions reports. Overall, the FATF expressed significant concerns about the effectiveness of the reporting system and found that the AML provisions are not effectively implemented, as witnessed by the low number of convictions.

Other enforcement issues: In early 2006, the Shanghai Municipal People's Procuratorate set up a free, public database of people and enterprises with bribery convictions in the local courts. China's relevant Regulation on Whistleblowers, enacted in 1996 and revised in April 2009 by the Supreme People's Procuratorate, has stipulated provisions for the protection and rewarding of whistleblowers. According to the new regulations, the People's Procuratorate is required to follow strict measures in dealing with whistleblower issues to ensure the confidentiality and the safety of whistleblowers. Whistleblowers will receive awards of around 10 per cent of economic loss recovered or up to RMB200,000. Those who attempt retaliation against a whistleblower shall be punished. However, actual enforcement remains an issue in cases where whistleblowers faced retaliation from those being informed against. China has no special law on the protection of witnesses but there have been calls for the enactment of such legislation.

Recent developments: On 28 February 2009, the seventh revision of Chinese criminal law was passed. The revised law carries tougher penalties, including increased prison sentences. In November 2008, China's Supreme People's Court and the Supreme People's Procuratorate released official opinions to clarify China's anticorruption laws, including clarification of what constitutes a bribe. For example, these opinions specifically made clear that doctors, medical staff and teachers all face charges if they take advantage of their position to obtain bribes from companies seeking to sell or supply materials to their hospitals or schools.

Recommendations: China should sign and ratify the OECD Convention and take necessary steps to implement its provisions. For a developing country, China has made good progress but the achievements in legislation need to be supported by sufficient resources directed towards enforcement. In addition, the central government needs to continue its efforts to ensure that regional and local governments are fully aware of and prepared to follow these laws or face the consequences. Finally, the Chinese government needs to continue to work on perfecting and completing the existing legal framework including the enactment of comprehensive whistleblower and witness protection regulations and strengthening international cooperation on anti-corruption and AML measures.

INDIA

Foreign bribery cases or investigations: None.

There are a number of cases and investigations against Indian companies reported in other jurisdictions. In December 2003, a Swiss court judgment in a money laundering case against an intermediary concerning millions of dollars in payments to Nigerian government officials found that **Tata Overseas Sales and Services Limited SA (TOSS)** had paid roughly US \$40 million into this account.¹⁶⁷ The payments allegedly related to a 1996 contract awarded to supply armoured personnel carriers for the police and trucks to the Ministry of Defence and the Independent National Electoral Commission. Nigeria's Economic and Financial Crimes Commission (EFCC) began further investigation of the alleged payments paid by TOSS to the former military administrator of Lagos, with some of the money allegedly passing through the Cayman Islands.¹⁶⁸ A **Tata** subsidiary, **Tata Consultancy Services**, is currently under investigation in Chile. (See report on Chile.) In 2007, the World Bank debarred three Indian companies and their affiliates, namely **Satyam Computer Services**, **Wipro Technologies**, and **Megasoft Consultants**. The first two companies allegedly provided improper benefits to World Bank staff and the third company allegedly participated in a joint venture with World Bank staff while conducting business with the Bank. Additionally, at international level, the Volcker report on the the UN Oil-for-Food Programme in Iraq named over 120 Indian companies.

Domestic bribery by foreign companies: There have been investigations into several arms deals starting with the **Bofors** case, which involved allegations of bribery in connection with the Indian government's 1987 US \$1.4 billion purchase of 400 artillery guns from the Swedish defence company Bofors. Proceedings continued in this case into May 2005 when the Hinduja brothers were acquitted due to lack of evidence.¹⁶⁹ In recent years, India cancelled a 2005 deal worth about US \$2 billion with the South African state arms manufacturer **Denel**, due to use of a UK-based intermediary, who allegedly provided Denel with confidential information and received payments of over US \$3 million.¹⁷⁰ A 2005 deal for the purchase of six Scorpene submarines worth €2.4 billion (US \$2.9 billion) from the European company **MBDA** and the French **Armaris** (owned by France's **Thales**) was challenged in a civil action brought in 2006 by a public interest organisation.¹⁷¹ In July 2008 the Central Bureau of Investigation applied for that case to be dismissed for lack of evidence.

A case against **Xerox Modicorp Ltd.**, the Indian subsidiary of the **Xerox Corporation**, was reportedly initiated by the Ministry of Company Affairs in May 2005, for violations including of the Prevention of Corruption Act, following Xerox's disclosure to the SEC in 2002 that it had made improper payments for high-value orders.¹⁷² More recently, the Indian Monopolies and Restrictive Practices Commission has initiated an investigation of Xerox as well. An investigation is also reportedly under way into the 1998 purchase by the Indian government of two million tonnes (US \$300 million) of wheat from the **Australian Wheat Board** allegedly accompanied by payment of US \$2.5 million in commissions to bank accounts in the Cayman Islands. In July 2008, two top Indian civil servants, including the former head of India's State Trading Corporation, and an American were arrested in this case. The current Australian government has promised full cooperation in the Indian government's investigation.¹⁷³

Statutory obstacles: There is no definition of foreign bribery in India, and there are no provisions on foreign bribery in the Prevention of Corruption Act, 1988. Even if foreign bribery were a criminal offence, obstacles would exist including jurisdictional limitations and lack of liability for corporations. Furthermore, gifts, travel expenses, facilitating payments and grease payments are not considered an offence under the Prevention of Corruption Act.

Complaint procedures: The Central Vigilance Commission (CVC) is an independent agency of the Indian government and has the authority to receive complaints. Though foreign bribery is not explicitly described as within their scope, the CVC would be the appropriate body for such complaints. The CVC website does have a section dedicated to complaints.

Accounting and auditing requirements: The Foreign Exchange Management Act is the principal tool for responding to improper accounting and auditing practices. However, bribery is not clearly enough addressed in Indian accounting and auditing regulations.

Anti-money laundering efforts: AML efforts are generally unsatisfactory, including lack of a well-functioning regulatory body. The Prevention of Money Laundering Act (PMLA) 2002 came into force in 2005. This explicitly recognises money laundering as an offence but the predicate offences recognised by law do not include many offences recommended by the FATF.¹⁷⁴ The Asia-Pacific Group on Money Laundering (APG) evaluation report in March 2005, expressed concern over India's lack of a central record of statistics to allow for interdepartmental cooperation, and its lack of suspicious transaction reporting (STR) obligations.¹⁷⁵ India's rules on CDD and record-keeping, overseen by the Ministry of Finance and drafted in consultation with the Reserve Bank of India, have also merited concern from the APG, which said in 2005 that these guidelines do not seem to fulfil the standards to be considered "law or regulation."

Other enforcement issues: There are foreign bribery cases in which the Indian government has not responded in a satisfactory way to MLA requests from other states. In at least two domestic foreign bribery cases, India has itself been denied MLA. First, in the **Bofors** case the Indian government sought the extradition of Mr. Ottavio Quattrocchi from Argentina, and a lower court there denied the request because there was no bilateral extradition treaty between the two states. In the **Australian Wheat Board** investigation, the Australian media reported that India's Central Bureau of Investigation wanted to investigate the scandal in 2001, 2004 and 2006, but claimed that the Australian government at the time refused to offer assistance. After the change of administration in Australia, the case was reopened in India and very shortly thereafter, three arrests were made.

Recent developments: In April 2009, the State Bank of India began the implementation of a new AML technology, AMLOCK, which will be implemented in the Bank and its group of associates, with 16,000 branches across the country. This will bring the banks in line with the AML regulatory requirements established by the Reserve Bank of India and the Financial Intelligence Unit of India.¹⁷⁶

Recommendations: India should become a party to the OECD Convention and take necessary steps to comply with the Convention's requirements. Enact legislation providing for the offence of foreign bribery and related money laundering crimes. Establish an independent enforcement agency to investigate and prosecute bribery cases. Ensure independent trial courts.

RUSSIA

Foreign bribery cases and investigations: No cases, and no known investigations. Access to information on cases and investigations is an issue in Russia. The Law on Public Access to Information was adopted in Russia in January 2009 and will only be enforced starting 1 January 2010. Therefore it has been and still is difficult to obtain official information on corruption-related cases from any official body. In the Volcker report on the UN Oil-for-Food Programme in Iraq, Russian companies and individuals reportedly topped the list of those allegedly benefiting from illegal contracts. Companies named in the report included leading Russian oil companies, such as **Alfa Eco**, **Gazprom**, **LUKoil**, state-owned **Zarubezhneft**, and **Tyumen Oil Company**. Russian companies accounted for about 30 per cent of oil allocations under the Oil-for-Food Programme.¹⁷⁷ (See also report on Poland referencing a parliamentary inquiry into alleged attempted bribery by a former Russian intelligence officer.¹⁷⁸)

Domestic bribery by foreign companies: No known cases or investigations. In December 2006 there were reportedly raids at three IT companies, namely **IBM (Eastern Europe and Asia)**, **R-Style**, and **Lanit** in connection with an investigation by the Russian Interior Ministry of the Russian Pension Fund, which was suspected of purchasing IT equipment at inflated prices from these companies.¹⁷⁹ It is suspected that those involved in these inflated contracts then shared among themselves the difference between the market price and the price paid.¹⁸⁰ The Russian Interior Ministry claimed that 1 billion roubles (US \$37 million) earmarked for the purchase of computers were embezzled in connection with this scandal.¹⁸¹ The **Siemens** cases in the US and Germany cited bribery in Russia.

Statutory obstacles: As of early December 2008, bribery of various foreign public officials or members of foreign public assemblies was not criminalised as a separate offence under Russian law. Giving a bribe to a foreign public official could only be prosecuted as a private sector offence (bribery in a profit making organisation) if the act took place in the Russian Federation (Article 11 CC) or outside Russia if the bribe-giving was contrary to Russian interests (Article 12 CC). Russia adopted a legislative package of anti-corruption measures on 25 December 2008, which included the Basic Law against Corruption and three legislative acts amending existing legislation to bring Russian law in line with UNCAC and the Council of Europe Criminal Law Convention. In order to create the liability of legal entities for corruption offences, the Law against Corruption establishes the general rule that when a bribe is offered or commercial bribery takes place on behalf of or in the interests of a legal entity, that entity may face sanctions such as an administrative fine. To implement this general requirement, the government proposes to amend the Code of the Russian Federation on Administrative Offences.

Complaint procedures: Special features for reporting corruption and bribery started to emerge recently, including the website of the Prosecutor General Office. These new tools have been developed for reporting petty and administrative domestic bribery and there is no information of their use for reporting of the foreign and business bribery.

Accounting and auditing requirements: The requirements are satisfactory in law but not in practice. There are no known cases or investigations brought for violation of these requirements. There is a saying in Russia that "The severity of Russian laws is balanced by the fact that their enforcement is optional". The low number of prosecutions for violation of the accounting and auditing rules suggests that this area is a weak link as far as foreign bribery detection and deterrence is concerned. According to GRECO, Russian accountants reported that they were not permitted to check accounts with a view to discovering corruption. GRECO recommended that the government encourage auditors and other advisory and legal professions to report suspicions of corruption to the authorities.

Anti-money laundering efforts: The Russian Federal Service for Financial Monitoring (RFSFM) was established in 2001 and conducts a permanent monitoring of financial institutions. RFSFM is efficient in imposing sanctions on credit institutions, which can include recalling the license and opening administrative procedures. It does this in co-operation with the Ministry of Finance and the Central Bank of Russia. However, the FATF report in June 2008 said that the maximum fines were too low and that the system to sanction financial institutions other than credit institutions was not effective. The comprehensive system of control over operations of financial institutions is a definite strength of Russia's AML regulatory system. However, the levels of KYC and PEP due diligence investigations in financial firms are unsatisfactory. Control over PEPs is probably the weakest part of the system of AML monitoring in Russia. There is no specific prohibition on maintaining existing accounts in fictitious names. The FATF noted that the number of money laundering investigations rose from 618 in 2003 to nearly 8,000 in 2006.

Other enforcement issues: The GRECO December 2008 report found that further improvements are needed in the area of independence of the judiciary, in order to come to terms with the popular perception that the judiciary is affected by undue influence and corruption. It also found that improved coordination is needed between the various branches of law enforcement involved in the investigation of corruption. It recommended the introduction of a centralised support mechanism. GRECO also found that too many categories of persons are immune from prosecution and that decisions on immunity could be influenced by political considerations. Based on informal discussions with law enforcement officers, the TI expert concludes that there are serious difficulties with maintaining MLA in corruption related cases.

Recent developments: A Presidential Council on Counteracting Corruption was established in May 2008 with the president of the Russian Federation as chair. In July 2008, the National Anti-Corruption Plan was approved by the Council and the legislative package that was introduced thereafter established a completely new legal framework in the fight against corruption. Russia stated its intention to become a party to the OECD Convention at the last G8 Summit in July 2008.

Recommendations: The government should sign and ratify the OECD Convention and adopt relevant legislative amendments to the national legislation. Strengthen implementation of the existing laws and regulations regarding domestic bribery. Make information public regarding domestic bribery and make the work of the law enforcement agencies more transparent.

COUNTRY	EXPERT RESPONDENT(S)
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Chile	Héctor Hernández Basualto Professor, Criminal Law, Law School, Diego Portales University
China	Samuel Porteous Asia Regional Manager, Navigant Consulting Ltd. Vice Chair, International Bar Association's Anti-Corruption Committee
Czech Republic	Vaclav Laska Lawyer, journalist and former investigator specialising in corruption and financial crime Chairman of the Board, TI Czech Republic Eliska Cisarova, David Ondracka TI Czech Republic
Denmark	Jens Berthelsen Consultant; Board Member, TI Denmark
Finland	Pentti Mäkinen Board Member, TI Finland

France	Jacques Terray, Lic. and LLM Vice Chairman, TI France Former partner of Gide Loyrette Nouel law firm, expert in French and European regulatory matters and securitisation
Germany	Dr. jur. Max Dehmel, MCL Ministerialrat a.D., former head of section for media, film and book policy in the Federal Ministry of Economics and with the Federal State Minister for Culture and Media Head of Working Group on International Conventions, TI Germany
Greece	Thanos Gekas Lawyer
Hungary	Dr. David Vig Assistant Researcher, National Institute of Criminology
Ireland	Gaye B. Muderrisoglu, PhD Visiting Scholar, Trinity College Dublin
Israel	Ori Rosen Attorney, Ori Rosen & Co Law Offices
Italy	Fabrizio Sardella Lawyer Michele Calleri Lawyer Maria Teresa Brassiolo, Davide del Monte TI Italy
Japan	Prof. Toru Umeda Professor of international law and Deputy Director of Business Ethics and Compliance Research Centre at Reitaku University, Japan; Vice Chair, TI Japan
Korea	Professor Joongi Kim, PhD Founding Executive Director of Hills Governance Center and Professor of Law, College of Law, Yonsei University Attorney, Foley & Lardner, Washington, D.C., Assistant Professor, Business Administration Department, Hongik University, Visiting Associate Professor, Faculty of Law, National University of Singapore
Mexico	Lucía Cortés Anti-Corruption Conventions Program Coordinator, TI Mexico Eduardo Bohórquez Executive Director, TI Mexico
Netherlands	Gerben Smid, LLM Secretary to the Board, TI Netherlands; PhD Student in Criminal Law
New Zealand	Aaron Lloyd Partner, Minter Ellison Rudd Watts Barrister & Solicitor of the High Court of New Zealand, Convenor of the Minter Ellison Rudd Watts' White-Collar Practice Group
Norway	Jan Borgen Lawyer; Former Secretary General, TI Norway
Poland	Aleksandra Demczyszak PhD candidate in Management Theory, Warsaw School of Economics; TI Poland

Portugal	<p>Luís de Sousa, PhD Researcher, Centro de Investigação e Estudos de Sociologia, ISCTE, Lisbon Head of the Portuguese Observatory of Ethics in Public Life, Coordinator of expenditure monitoring programmes of the Entidade das Contas e Financiamentos Políticos of the Portuguese Constitutional Court</p> <p>Patricia Calca Field researcher</p> <p>Jerusa Costa Field researcher</p>
Russia	<p>Elena Panfilova Director, Center for Anti-Corruption Research; TI Russia</p>
Slovak Republic	<p>Pavel Nechala Advocate, Pavel Nechala & Co.; Individual Member, TI Slovakia</p>
Slovenia	<p>Bojan Dobovsek, PhD Lawyer, Professor, University of Maribor</p> <p>Simona Habic CEO of Integriteta – Association for Ethics in Public Service</p> <p>With help of:</p> <p>Jure Škrbec, Consultant at the Commission for the Prevention of Corruption Vid Doria, Integriteta volunteer Urban Satler, Integriteta volunteer</p>
South Africa	<p>Teboho B. Makhalemele Lawyer, TMB Legal Consultants, Trustee, Women's Legal Centre</p>
Spain	<p>Manuel Villoria Professor, Department of Public Law and Political Science at the University Rey Juan Carlos, Madrid, Spain; Individual Member, TI Spain</p>
Sweden	<p>Thorsten Cars, LL.D Former Head of Department at the Office of the Prosecutor General, former Counselor at the Ministry of Justice (responsible for legislation concerning corruption), former Chief Judge at the Stockholm District Court, former Chief Justice at the Svea Court of Appeal (Stockholm), former Chairman of the Swedish Institute to Combat Corruptive Practices (Institutet Mot Mutor)</p>
Switzerland	<p>Dr. jur. Jean-Pierre Méan Lawyer; Member of the Board, TI Switzerland</p> <p>Dr. jur. Pertrand Perrin Lawyer; designated member of the Board, TI Switzerland</p>
Turkey	<p>E. Oya Cetinkaya International lawyer; Chair, TI Turkey</p>
United Kingdom	<p>Chandrashekhhar Krishnan Executive Director, TI United Kingdom</p>
United States	<p>Lucinda A. Low Lawyer, Steptoe & Johnson LLP (FCPA practitioner); Board of Directors, TI USA</p> <p>Owen Bonheimer Lawyer, Steptoe & Johnson, LLP</p>

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Questionnaire for
(Name of country):

Date:

I. CURRENT STATUS

A. FOREIGN BRIBERY AND DOMESTIC BRIBERY BY FOREIGN COMPANIES

PLEASE NOTE: Foreign bribery cases (and investigations) shall include all cases involving bribery of foreign public officials, criminal and civil, whether brought under laws dealing with corruption, money laundering, tax evasion, fraud, or accounting and disclosure.

PLEASE ALSO NOTE: Domestic bribery by foreign companies here refers to the bribery of domestic public officials by foreign companies or subsidiaries of foreign companies.

1. TOTAL CASES

a. Foreign bribery cases, pending and concluded: _____
(=Sum total of numbers under 2.a, & 3.a.)

b. Cases of domestic bribery by foreign companies, pending and concluded: _____
(=Sum total of numbers under 2.b. & 3.b.)

c. Is information unavailable? _____ Yes No

If so, please indicate the reasons why: _____

2. PENDING CASES

a. Total number of pending foreign bribery cases _____

Please list all pending foreign bribery cases brought since the OECD Convention became effective in your country.

Cases pending brought since 1 January 2008: _____

b. Total number of pending cases of domestic bribery by foreign companies _____

For each NEW foreign case or any domestic case, please list if possible the following:

(1) Name of case, including principal parties

(2) Is this a major case? (See Guidelines for definition) _____ Yes No

NOTE: For major cases please provide as much detail as possible to the questions below. Less detail is needed for minor cases.

(3) Is it a FOREIGN or DOMESTIC bribery case?

(4) Is it a criminal or civil case?

(5) Summary of principal charges, including name of the country whose officials were allegedly bribed

(6) Penalties or other sanctions imposed

(7) To your knowledge has a case involving the same facts or defendants been brought in another country? If so where and when?

PLEASE NOTE: State source of information for each case.

3. CONCLUDED CASES:

Including convictions, settlements, dismissals or other final dispositions of cases.

a. Total number of concluded foreign bribery cases _____

Please list all pending foreign bribery cases brought since the OECD Convention became effective in your country.

Cases pending brought since 1 January 2008: _____

b. Total number of concluded cases involving domestic bribery by foreign companies _____

For each NEW case (since the last report) of foreign bribery and for EACH case of domestic bribery by foreign companies, please list if possible the following:

- (1) Name of case, including principal parties (Please indicate if major multinationals involved)
- (2) Is this a major case? (See Guidelines for definition) _____ Yes No
- (3) Is it a FOREIGN bribery case or a case of DOMESTIC bribery by a foreign company?
- (4) Is it a criminal or civil case?
NOTE: For major cases please provide as much detail as possible to the questions below. Less detail is needed for minor cases.
- (5) Summary of principal charges, including name of the country whose officials were allegedly bribed
- (6) Disposition of case, including penalties or other sanctions imposed including (a) penalties against individuals or companies; (b) requirements for compliance programmes
- (7) To your knowledge has a case involving the same facts or defendants been brought in another country? If so where and when?

PLEASE NOTE: State source of information for each case.

4. INVESTIGATIONS UNDER WAY

Please provide available information on government investigations of allegations of bribery of foreign public officials which were commenced since the OECD Convention became effective in your country.

a. Total number of known foreign bribery investigations: _____

b. Total number of known investigations of domestic bribery by foreign companies: _____

c. Number of foreign bribery investigations since 1 January 2008: _____

PLEASE NOTE: State source of information for each case

5. SERIOUS ALLEGATIONS OF FOREIGN BRIBERY

Please provide information about serious allegations of foreign bribery or related offences by companies or individuals based in your country, that (a) have been published in reputable international or domestic publications since the OECD Convention became effective in your country, and (b) with respect to which, as far as you know, no investigation or prosecution has been undertaken.

a. Total number of serious allegations of foreign bribery: _____

For each matter, where available, please list the following:

- (1) Names of companies and/or individuals involved
- (2) Date of publication
- (3) Nature of allegations
- (4) Name of country whose officials were allegedly bribed/Name of multinational or company involved in bribery process

6. ACCESS TO INFORMATION:

Information available about foreign bribery cases.

a. Is there adequate public access to information about foreign bribery cases? Yes No

b. Is there adequate public access to information about domestic bribery cases? _____ Yes No

c. Is there adequate public access to information about foreign bribery investigations? _____ Yes No

d. Is there adequate public access to information about domestic bribery investigations? _____ Yes No

II. ACTIONS TO PROMOTE ENFORCEMENT

1. COMPLAINT PROCEDURE

How would you assess your government's efforts to provide publicly-known and accessible procedures for reporting foreign and domestic bribery allegations, such as hotlines and web-sites?

Please circle one of the following: _____ UNSATISFACTORY SATISFACTORY

Explanation for choice, including any difference from last year: _____

2. STATUTORY AND OTHER LEGAL OBSTACLES

a. Are there significant inadequacies in the legal framework for foreign bribery prosecutions in your country? _____ Yes No

b. If so, please indicate if these include the following:

- Inadequate definition of foreign bribery _____ Yes No
- Jurisdictional limitations _____ Yes No
- Lack of (criminal) liability for corporations _____ Yes No
- Inadequate sanctions _____ Yes No
- Statutes of limitation: _____ Yes No

Please provide a *short explanation of your choice* for EACH OF THE FIVE ITEMS ABOVE

3. POLITICAL CONTROL OVER ENFORCEMENT ACTIONS/INDEPENDENCE PROSECUTORS

Are you aware of any instances where a foreign bribery investigation or prosecution has been terminated by political decision-makers?

4. ACCOUNTING AND AUDITING REQUIREMENTS

a. How would you assess accounting and auditing requirements intended to prevent practices for hiding foreign bribery (such as the prohibition of off-the-books accounts or the use of other practices for hiding foreign bribery) in law?

Please circle one of the following: _____ UNSATISFACTORY SATISFACTORY

Explanation for choice. Are you aware of any cases or investigations brought for violation of these requirements? If already mentioned above please indicate.

b. How would you assess accounting and auditing requirements intended to prevent practices for hiding foreign bribery (such as the prohibition of off-the-books accounts or the use of other practices for hiding foreign bribery) in practice?

Please circle one of the following: _____ UNSATISFACTORY SATISFACTORY

Explanation for choice.

5. TAX DEDUCTIBILITY OF BRIBES

a. Is tax deductibility of bribes prohibited explicitly in law? _____ Yes No

b. Is tax deductibility prohibited in practice? _____ Yes No

Explanation for choice.

6. MUTUAL LEGAL ASSISTANCE (MLA)

a. Are there cases in which your government has not responded in a satisfactory way to MLA requested by other states in foreign bribery cases? _____ Yes No

If yes, please elaborate: _____

b. Are there cases in which your government has not received a satisfactory response to its requests for MLA from other states in foreign bribery cases? _____ Yes No

If yes, please elaborate: _____

7. ANTI-MONEY LAUNDERING EFFORTS

a. How would you assess the regulations in place for the financial sector regarding Anti--Money Laundering (AML) procedures?

Please circle one of the following: _____ UNSATISFACTORY SATISFACTORY

Explanation for choice.

b. Is there a well-functioning regulatory body or financial intelligence unit ensuring compliance with corruption-related AML? _____ Yes No

c. Are the penalties imposed on financial institutions that violated AML regulations satisfactory? If not, please explain why.

Please circle one of the following: _____ UNSATISFACTORY SATISFACTORY
Explanation for choice.

d. Please describe the main strengths and weaknesses of the AML regulatory system in your country:

Strengths: _____

Weaknesses: _____

III. RECENT DEVELOPMENTS, ACTIONS NEEDED

1. NOTEWORTHY RECENT DEVELOPMENTS

Please describe recent developments in the areas covered in this report or any other areas that you feel are relevant, e.g. new legislation, institutional changes in the last 1 - 2 years.

2. ACTIONS NEEDED IN YOUR COUNTRY

a. Your suggestions and recommendations

Please list, in order of importance, the most important actions the government in your country should take to promote enforcement and compliance. Please consider the actions listed above, but feel free to add other recommendations.

1) _____

2) _____

3) _____

3. ENFORCEMENT TRENDS

a. How would you assess the current level of foreign bribery enforcement in your country?

Please circle one of the following: _____ UNSATISFACTORY SATISFACTORY

b. Did your government's enforcement efforts increase since last year?

Please choose one of the following:

1 Decreased enforcement 2 No change 3 Increased Enforcement

c. I have shown this report to a member of my country's delegation to the OECD Working Group on Bribery and taken into account their feedback: ___ Yes No

Report prepared by: _____
(signature)

Name of respondent: _____

Affiliation: _____

Professional experience: _____

APPENDIX

List of persons consulted (with affiliation): _____

List of references and sources used in responding to this questionnaire: _____

Endnotes

- 1 Buenos Aires Herald, 5 May 2009; Reuters, 17 May 2007; Skanska has terminated the employment relationship with its Argentine management and has publicly announced that it will no longer do business with the Argentine Government. *Diario Perfil*, 27 November 2006
- 2 Now called Vinci Construction Grands Projets
- 3 *RegionNorteGrande*, 25 June 2008
- 4 *DW-World.de*, 16 August 2008
- 5 *AFP*, 17 December 2008
- 6 Siemens, Legal Proceedings—Fourth Quarter Fiscal 2008
- 7 *Fdmagazine.com*, 28 August 2008
- 8 *La Nacion*, December 31, 2008, December 23, 2008; February 28, 2008; February 7, 2006; January 31, 2006; January 26, 2004; January 27, 2004; June 15, 2004; June 26, 2004; *Le Point*, October, 2003; *Clarín*, October 12, 2003; Reports of the internal audit agency (*Sindicatura General de la Nación*) and of the external audit agency (*Auditoria General de la Nación*)
- 9 Reuters, 23 March 2009
- 10 Association of Chartered and Certified Accountants & Net Balance Foundation, Bribery and Corruption Report, 2008, <http://www.accaglobal.com/allnews/national/australia/3132100>
- 11 *The Age*, 28 May 2006; *The Australian*, 23 July 2008
- 12 Siemens, Legal Proceedings—Third Quarter Fiscal 2008, 29 July 2008
- 13 *New York Times*, 1 March 2008; *The Guardian*, 2 March 2008; *The Daily Telegraph*, 1 October 2008; *The Austrian Times*, 30 September 2008
- 14 *New York Times*, 1 March 2009
- 15 *Defense News*, April 2009
- 16 Reuters, 26 June 2007
- 17 Reuters, 3 April 2009
- 18 *Santiago Times*, 17 December 2007
- 19 EU Press Release, 16 October 2008
- 20 Reuters, 3 April 2009
- 21 *The Wall Street Journal*, 19 May 2008; *Clarín.com*, 7 June 2008
- 22 *Journal Extra Alagoas*, 29 April 2009
- 23 Siemens, Legal Proceedings—First six months of fiscal 2009, 29 April 2009
- 24 In 2003, it was reported that the Task Force on Corruption in Zambia had arrested a Health Ministry official who was under investigation in connection with a contract awarded to a Bulgarian company. *Business Anti-corruption Portal*, www.business-anti-corruption.com
- 25 *Wall Street Journal*, 4 August 2008; *Times Online*, 23 December 2008
- 26 *Financial Post*, 16 January 2009
- 27 *Times of India*, 6 May 2009; See also allegations against BC Hydro and SNC Lavalin in Pakistan in 1998. *CBC News*, 13 November 1998
- 28 *Santiago Times*, 17 December 2007; citing *La Nacion*; *EFE News Service*, 7 February 2002
- 29 *Santiago Times*, 12 June 2009. The article says that Belgian Deputy Boulet was in Chile in June 2009 and reportedly told the Chamber of Deputies that she possesses documents that are public in Belgium but unknown in Chile that show how the bribes were made. Boulet was due to meet with the judge heading the investigation, Omar Astudillo
- 30 *Hoy Online* 28 April 2008; *The Guardian*, 10 October 2008
- 31 *Indopia*, 21 April 2009
- 32 *Santiago Times*, 29 January 2009
- 33 *BBC News*, 30 April 2004; *New York Times*, 28 May 2004
- 34 Previously, in May 2007, a bill was also presented to Congress to modify Law 19,913 that created the Financial Intelligence Unit. The bill proposed to modify several articles related to the criminal liability of legal persons connected to money laundering. It provides that criminal responsibility is imputable to a legal person when the breach of the law has been made by the board; a member of the board; or the representative of a legal person or an individual company; or by whom, without having those qualities, manages the company or has powers of independent decision making. The legal person will also be liable when there is no possibility to individualise the people mentioned above, or when, because of deficiencies in the organisation's processes, the violation cannot be imputed to a certain person. The legal liability of the natural person is independent, compatible, and complementary to that of the legal person. Sanctions can be imposed up to a 50 percent of the sum that has been laundered; prohibition to carry out certain activities for a term of five years or definitively; and the dissolution of the company.
- 35 *The Economist Intelligence Unit*, 29 April 2008
- 36 A news report claimed that Actavis provided doctors with a trip to Sharm el Sheik. *Radio Praha*, 23 September 2008
- 37 *The Guardian*, 28 February 2007
- 38 *The Prague Post*, 7 March 2007
- 39 *Radio Praha*, 29 August 2005
- 40 www.missionspharma.com
- 41 *Helsinki Times*, STT, 14 May 2009; The company reportedly said that the executive had denied any wrongdoing and that it had launched an internal probe.
- 42 *Bloomberg*, 17 September 2008
- 43 *The Times Online*, 22 March 2007; Reuters, 23 March 2007
- 44 *Thomson Financial News*, 16 May 2008; *New York Times*, 16 May 2008
- 45 Siemens, Legal Proceedings –First six months of fiscal 2009, 29 April 2009
- 46 Siemens, Legal Proceedings –First six months of fiscal 2009, 29 April 2009
- 47 *DW-World.de*, 2 August 2008, Siemens, Legal Proceedings—Third Quarter Fiscal 2008
- 48 *Frankfurter Allgemeine Zeitung*, 19 October 2006; *beck-aktuell-Redaktion*, 3 January 2008; *Der Spiegel*, 27 October 2003; *Welt online*, 13 January 2003. The contract was cancelled by the government of the Philippines and a challenge to the cancellation brought by Fraport at ICSID was rejected in August 2007 referencing the Anti-Dummy law in the Philippines.
- 49 German prosecutors reportedly wrote to Swiss authorities about this case in 2007 and the investigation was reportedly continuing, according to *News24* article on 19 March 2008. Millions of rand allegedly went through a company registered in Liberia.
- 50 SZON, 15 May 2009. The Afrika Verein is the main business organisation for German companies dealing with Africa. The fintec managing director resigned her post as chair when the investigation became known.
- 51 *Forbes.com/Thomson Financial News*, 25 May 2008
- 52 *New York Times*, 12 May 2008
- 53 *DaimlerChrysler* is under investigation in the US for possible violation of the FCPA in connection with the UN Oil-for-Food scandal in Iraq.
- 54 Siemens, Legal Proceedings – Third Quarter Fiscal 2008, 29 July 2008; *DW-World.de*, 2 July 2008
- 55 *Kathimerini*, 2 July 2008. *Kathimerini* reported that former PASOK cadre Theodoros Tsoukatos admitted to accepting more than €400,000 in cash from the former head of Siemens Hellas. It also claimed that Siemens company officials allegedly earmarked more than € 12 million (US \$19 million) for Greece's main political parties between 1998 and 2005.

- 56 Siemens, Legal Proceedings – Third Quarter Fiscal 2008, 29 July 2008; The Budapest Times, 6 August 2008
- 57 Profil, as reported in hvg.eu on 9 November 2008. In a separate case, it was reported by the International Law Office on 26 February 2009 that the Hungarian Competition Authority had imposed fines totaling around €10 million on the Hungarian subsidiaries of construction companies Strabag and Colas for participating in bid-rigging and market-sharing arrangements over a number of years.
- 58 Heti Valasz, 9 October 2008; The Budapest Times, 12 March 2008
- 59 New York Times, 25 November 2007
- 60 See 2007 news report saying that the Garda Bureau of Fraud Investigation was investigating Oil-for-Food allegations. Three companies named in the Volcker report with dealings or bases in Ireland, including Bula Resources, Nycomed Imaging AS (now a part of GE Healthcare) and Pentag Power Transmissions Ltd. Sunday Business Post, 15 July, 2007
- 61 www.deloitte.com/dtt/article/0,1002,cid%253D253541,00.html
- 62 www.justice.ie/en/JELR/Pages/Criminal_law_reform_proposed_legislation
- 63 National Defense, August 2006
- 64 Wall Street Journal, 30 November 2007
- 65 The Guardian, 13 June 2003
- 66 Dow Jones, 30 April 2009
- 67 Bbs.econchina.org.cn, 13 September 2008, Wall Street Journal, 11 November 2008
- 68 The Guardian, 14 July 2002
- 69 Bloomberg.com, 24 January 2008
- 70 AFP, 16 December 2008
- 71 Shearman & Sterling, FCPA Digest, 21 October 2008; Bloomberg, 22 February 2007
- 72 Pharamlot.com, Pharma Times, 23 May 2008 citing La Repubblica
- 73 Shearman & Sterling, FCPA Digest, 21 October 2008
- 74 The Guardian, 13 February 2003; The British Medical Journal, 22 February 2003; Le Monde Diplomatique, November 2003. GSK allegedly had an annual budget €100 million for promotion purposes.
- 75 La Repubblica, 25 March 2009
- 76 Daily Yomiuri Online, 4 June 2008
- 77 AFP, 31 January and 13 February 2009
- 78 Jacobson & Garrett of Fullbright & Jaworski, November 2008
- 79 Bridgestone Press Release, 12 February 2008
- 80 The EU fined Bridgestone €58.5 million for price fixing. Large fines were also imposed on a Swedish and an Italian company. Business Standard, 28 January 2009
- 81 Japan Times, 8 December 2007
- 82 Reuters, 12 February 2008
- 83 Bangkok Post, 7 July 2008
- 84 Japan Times, 2 March 2002. There were also serious allegations of bribe payments by Mitsui in Mongolia. The Yomiuri Shimbun, 4 June 2008
- 85 New York Times, 30 November 2006
- 86 Reuters/ PR Newswire, 6 May 2009
- 87 China Daily, 7 January 2004
- 88 Law 360, 16 July 2008
- 89 Voice of America, 18 March 2005; Wall Street Journal, 11 March 2004; The Telegraph, 6 October 2004. Saybolt is part of a multinational group of companies and typically performs testing and inspection services for oil and gas refiners and importers.
- 90 Wall Street Journal, 30 November 2007
- 91 DutchNews.nl, 2 May 2008 quoting Het Financieele Dagblad
- 92 Shearman & Sterling, FCPA Digest of Cases, 21 October 2008
- 93 Times Online, 17 March 2009
- 94 The Guardian, 1 October 2007
- 95 Wall Street Journal, 11 September 2008, 19 September 2008
- 96 Los Angeles Times, 11 October 2008, Norway Post, 12 October 2008, Platts Latin American Wire, 31 March 2009
- 97 Norsk Hydro has been involved in a consortium in Libya together with Repsol YPF of Spain, OMV of Austria and Total of France. The allegations relate to the Murzuq and Mabruk developments run respectively by the Spanish company Repsol YPF and the French company Total. Financial Times, 7 October 2008
- 98 The Ghanaian Journal, 9 August 2007, The Statesman 16 August 2007. The judge in the case, Trine Standal, reportedly held that "the two parties" in the case "agree that the bribery had not been contrary to Norwegian, Ghana or Nigerian law." The judge also reportedly observed in the ruling, "Scancem itself established a system of bribery and corruption. The system required payments to be untraceable. The system can only be based on trust, and producing evidence in retrospect can be difficult. Kjelsaas finds it hard to prove he is innocent, and Scancem has a problem proving him guilty."
- 99 Bloomberg.com, 24 January 2008
- 100 DW-World.de, 2 July 2008
- 101 Reuters, 13 October 2008; Interfax China, 15 October 2008
- 102 Radio Praha, 29 August 2005 and 1 September 2005
- 103 Siemens, Legal Proceedings—First Quarter Fiscal 2009, 27 January 2009
- 104 Interfax Central Europe, 25 January, 2008
- 105 The Independent, 8 January 2006
- 106 The OECD Phase 2 follow-up report of 2007 refers to eight investigations in the last five years of which seven were still under investigation in 2007.
- 107 HDW, Ferrostaal and Thyssen
- 108 Público, 8 July 2007
- 109 Press Release, Portuguese Attorney General's Office, 29 January 2009; EU Observer, 13 May 2009; Reuters, 12 May 2009; The Independent, 31 January 2009, AFP, 24 January 2009; Sol, 10 January 2009
- 110 AFP, 15 May 2009, AFP 13 August 2008
- 111 STA, 10 October 2008: Volksgruppen.org.at, 27 May 2009, Die Presse.com, 8 September 2008 Sitemska Technika is a member of the Viator & Vektor group and reportedly bid on the panzer deal together with an Austrian firm, Steyr Daimler Puch Fahrzeuge (SPF), which is a subsidiary of the US company General Dynamics Corp. One of the suspects in the case is reportedly a former Steyr employee.
- 112 Mail and Guardian Online, 3 October 2005
- 113 The judgements in these cases can be found at www.saflii.org.za or on the Constitutional Court website www.constitutional-court.org.za;
- 114 Mail and Guardian Online, 5 December 2008
- 115 BBC News, 13 February 2003
- 116 Mail and Guardian, 29 August 2003
- 117 The Guardian, 20 February 2001
- 118 Energy Compass, 21 February 2003
- 119 BBC News, 28 May 2001, in April 2001, EADS admitted that it had "rendered assistance" to about 30 government officials in acquiring luxury Mercedes cars.
- 120 BBC News, 9 April 2002. See also, New York Times, 12 July 2002
- 121 Latin Trade, October 2002
- 122 Inter-Press Service, 30 April 2002
- 123 Financial Times, 7 October 2008
- 124 EU Press Release, 16 October 2008
- 125 The Local, 9 March 2009
- 126 Development Today, 22 February 2008
- 127 Mail Online, 2 October 2008. BAE owns a 21 percent stake in Sweden's Saab, which builds the Gripen. Van der Kwast, the Swedish prosecutor, told Swedish TV: 'The work is very difficult, since (this is) big money. The possible beneficiaries are senior representatives of the government or sit in other high posts. They wish, of course, no transparency.'
- 128 The Local, 29 January 2009
- 129 Les Echos, 4 October 2004

- 130 Radio Sveriges, 21 November 2007, Le Monde, 23 November 2007
- 131 Radio Sveriges, 19 December 2007, Business Week, 21 December 2007
- 132 In the US, in March 2008, Volvo entered into a deferred prosecution agreement and a settlement of a civil action brought by the SEC in relation to charges against two subsidiaries, Renault and Volvo Construction Equipment for payments in Iraq between 2000 and 2003.
- 133 EU Press Release, 16 October 2008
- 134 Wall Street Journal, 11 November 2008
- 135 The Guardian, 26 November 2007. In November 2007, the Swiss Prosecutor's office reportedly agreed to hand over financial records linked to the Saudi Royal family to US authorities investigating bribery allegations against BAE Systems. Swissinfo.ch, 10 July 2008
- 136 Swiss officials in 1999 notified US authorities about suspicious transactions in 30 accounts diverting payments made by major oil companies in Kazakhstan—the companies named included BP, ExxonMobil and Shell. The Swiss arrested a former executive of Credit Agricole in the course of the inquiry. Wall Street Journal, 11 November 2008
- 137 BBC News, 19 April 2005, Shearman & Sterling, FCPA Digest of Cases, 21 October 2008
- 138 New York Times, 20 January 2007
- 139 Swissinfo.ch, 27 August 2007. In December 2008 ABB reportedly created a reserve of about US \$850 million to cover possible costs relating to price-fixing and bribery investigations. Seattle Times, 19 December 2008. EU antitrust regulators said in December 2008 that they had charged several makers of electricity generation equipment with forming a price-fixing cartel. Germany's Siemens, France's Areva and Swiss engineering group ABB confirmed that they had received the charges.
- 140 On 25 May 2007 Panalpina announced an internal investigation and in September 2007 announced that it had suspended parts of its service offered in Nigeria (company press releases).
- 141 www.deza.admin.ch/index.php?navID=151109&langID=6
- 142 New York Times, 29 November 2007
- 143 Ernst & Young, 10th Global Fraud Survey, June 2008
- 144 In 2000, the company now known as Aon Ltd. was censured and fined £300,000 (US \$435,000) by Lloyd's Disciplinary Board in relation to payments, including to government officials, in Ghana, Nigeria and the Philippines in the 1990's. These incidents occurred in Alexander Howden Group Limited and Nicholson Leslie Limited, two predecessor companies of Aon Ltd.
- 145 See 2008 TI *Progress Report on Enforcement of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*
- 146 Press Release, Office of the Attorney General of Portugal, 29 January 2009
- 147 The Guardian, 7 November 2008
- 148 Baker Platt 2009, FSA Press Release, 9 January 2009; Independent, 9 January 2009; Guardian, 8 January 2009
- 149 US Department of Justice Press Release, 11 February 2009
- 150 AFP, 2 April 2009
- 151 The Guardian, 7 May 2009
- 152 Reuters, 11 May 2009. News reports in 2003 mentioned DoJ subpoenas to ExxonMobil, Chevron Texaco and BP Amoco.
- 153 Sherman & Sterling, FCPA Digest of Cases (21 October 2008). See also, Washington Times, 17 May 2003, San Francisco Chronicle, 7 April 2003
- 154 New York Times, 23 December 2007; New York Times, 5 November 2006; See also Ariel Cohen, Kazakhstan: The Road to Independence (Johns Hopkins SAIS / ISDP Sweden, 2008)
- 155 The Financial Times, 11 September 2003
- 156 Associated Press, 9 April 2009
- 157 Dow Jones, 21 March 2008
- 158 Washington Post, 7 September 2004
- 159 New York Times, 25 March 2008
- 160 Wall Street Journal, 11 September 2008
- 161 Associated Press, 25 November 2008
- 162 Delaware, where 50 percent of publicly-traded US companies are registered, does not require or permit access to a registry of the shareholder, members and partners of legal entities located there. See The Guardian, 10 April 2009 describing Delaware as "tax-dodge city" and the New York Times, 29 May 2009 noting that critics call Delaware a tax haven.
- 163 AllAfrica.com, 6 April 2009
- 164 Reuters, 14 October 2008
- 165 New York Times, 20 January 2007
- 166 China Daily, 20 October 2007
- 167 Online Nigeria, 28 December 2005
- 168 Financial Times, 22 December 2003, rediff.com, 24 December 2003
- 169 BBC News, 31 May 2005
- 170 Cape Times, 17 April 2005
- 171 The Times of India, 17 July 2008
- 172 The Hindu, 11 May 2005
- 173 Previously there were some problems. See, The Age, 28 May 2006; The Australian, 23 July 2008
- 174 APG Mutual Evaluation, March 2005
- 175 See also 2005 report ranking India low in STRs. Business Standard, 12 January 2009
- 176 Express Computer Online, 6 April 2009
- 177 Times Online, 27 October 2005
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