

The Impact of the OECD Anti-Bribery Convention 15 Years on

BIAC key messages

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Introduction

15 years after the entry into force of the OECD Anti-Bribery Convention, BIAC would like to congratulate the OECD for its contributions to combat bribery and reiterate its support for an effective implementation of the Convention. These legally binding standards have clearly positioned the OECD as a leading institution in the international fight against corruption.

Key achievements

In BIAC's view the following features of the Convention have particularly contributed to its success:

- **Focus:** The Convention addresses one specific aspect of corruption - the bribing of public foreign officials. It has become a recognized international standard against which the performance of governments can be benchmarked.
- **Reach:** All OECD countries and six non-member economies have ratified and implemented the Convention. The 40 parties to the Convention represent a significant proportion of global trade and global outward FDI. High coverage of global trade and investment is critical for the instrument's high relevance and needs to be further pursued. We therefore welcome the G20 leaders' declaration to encourage engagement of all G20 countries with the OECD Working Group on Bribery with a view to explore possible adherence to the OECD Anti-Bribery Convention as appropriate.

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- **Monitoring:** The monitoring process in the form of peer reviews has been of paramount importance and is a true success story. Several countries have amended their legislation following OECD recommendations. Special attention should be given to ensure effective follow-up to monitoring reports.
 - **Private sector involvement:** The OECD has established an informal exchange of views with business and other stakeholders as an integral part of the review process. BIAC regards this dialogue as very relevant to the implementation of the Convention, as it helps to better determine the impact that the laws and enforcement have on actual behaviour.

Next steps

Despite the major achievements of the Convention over the past 15 years, BIAC would like to highlight the following key considerations to effectively curb corruption and provide a real level playing field for international business across OECD countries and outside the OECD.

- **Further enhancing global cooperation** will be essential in order to implement internationally accepted frameworks such as the OECD Anti-Bribery Convention and work towards the objective of a truly global level playing field objective. Several G20 countries, including China and India, are not Party to the Convention which has the potential to undermine the efforts to create a level playing field for international business. We urge the OECD to use its well-established cooperation with key partners to bring them closer to OECD policy standards, and ultimately to work towards their adherence to the Convention.
- **Closing the implementation gap:** Capacity building in emerging and developing countries should be given continued attention. This includes promoting anti-corruption awareness in the business community and within governments and providing training in the area of compliance techniques. Effective enforcement of the Convention should be ensured by continuing the review process and encouraging follow-up to the specific recommendations and areas for action that have been identified. Continued attention should be given to consistent and effective enforcement measures that can discourage

bribe payers, offer incentives and remove disincentives for the corporate sector to take an active role in the fight against corruption.

- **Address the demand side:** The OECD Convention focuses only on the supply side of a bribery transaction and does not address the demand side, i.e. bribe solicitation and extortion by public officials. Including the demand side of bribery effectively in OECD work going forward would represent a significant step towards a more corruption-free business environment. We call upon the OECD to show commitment to combat bribe solicitation and explore options in this area to help establish the necessary confidence of the business community for a comprehensive fight against corruption.
- **Foster compliance:** Compliance should be understood not just as adherence to the law and internal company rules, but as a key component of business integrity. Companies should be encouraged to invest in well-functioning anti-corruption and compliance systems and support projects that work towards the creation of incentives for good performers. Such efforts should be duly recognized. Compliance Incentive Systems should be implemented in national legislations, rewarding voluntary self-disclosure of companies and investment in compliance systems. True compliance efforts should be recognized in any sanction decisions against companies. If companies have done what they are supposed to do, it is the respective individual who has to be held responsible if corruption occurs.
- In this respect, particular vigilance should be given to the ongoing ISO work on currently two separate proposals from Australia and the UK for anti-bribery/compliance management systems. While the proposed standards could be used for demonstration of compliance if properly developed, it could undermine the key achievements to which the OECD Convention has contributed. Moreover, the development of parallel standards could allow companies or countries that are not signatories to the Convention to use them as sufficient proof of compliance, regardless of whether they effectively comply with the Convention.
- **Recognition of "Self Cleaning Measures"** in national public procurement regimes: Companies should have the possibility to mitigate blacklisting/debarment decisions by implementing effective compliance measures after a corrupt activity was detected and remediated.

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- **Efficiency of the legal framework:** What is needed is a well functioning judicial system to effectively address some of the challenges of the complexity of the fight against corruption. There are currently significant discrepancies in the efficiency of legal systems worldwide. We call upon government to create an efficient legal and institutional framework, including for the demand side of corruption. Mutual legal assistance in particular with regard to non-Parties to the Convention would help further increase the effectiveness of the OECD Convention. Governments should consider implementing high-level reporting systems as for example Ombudspersons, which could be used by companies to address corruption concerns already in early stages of public biddings.
 - **Promoting dialogue between the public and the private sector:** Public-private dialogue is important to identify ways of further strengthening national legal systems, identifying current or upcoming corruption risks and the need for reforms and capacity building. Governments and business should promote coordinated partnerships to leverage resources for advancing technical assistance efforts and engage in discussions on how companies can join forces with public institutions of the countries where they do business (“Collective action”) in order to reduce corruption risks.
 - **Education, training and capacity building** should remain a key priority to foster a culture of integrity and promote knowledge sharing between institutions and stakeholders. This would include education and training of current and future managers, engineers, government officials and civil society leaders, but also students from emerging and developing countries. Education is also important when it comes to SMEs, where larger companies can play an important role by engaging SMEs through their supply chains, providing them with support and sharing best practice.
 - **Draw upon OECD’s expertise in related areas:** The OECD has considerable expertise in a wide range of areas which should be given due consideration. For example, the quality of public governance and public procurement frameworks and practices are factors which have a significant influence on the occurrence of corruption. BIAAC therefore welcomes OECD initiatives to improve integrity in public procurement systems. Addressing corruption and bribery is also key for promoting a sound investment environment worldwide and should therefore be given due attention in the OECD outreach activities in this area.