

## High-Level Anti-Corruption Conference for G20 Governments and Business

Paris, 25-26 April 2013

### Background paper for panel 2:

#### *Carrots or Sticks?*

#### *Balancing sanctions with incentives to promote clean business*

**Corruption is a major obstacle to economic and social development** around the world. It distorts markets, stifles economic growth and undermines the rule of law. Corruption is not only a question of ethics, it also considerably adds to the total cost of doing business globally and to the cost of procurement contracts in developing countries. We simply cannot afford such waste. This is why both policy makers and business leaders around the world have been pressing for greater transparency and coordination.

The legal framework that companies are facing is changing fast and has been strengthened during recent years. Governmental instruments are increasingly being adopted at the national level, and discussions at the international level, including at the OECD and the G20, place a major emphasis on fighting corruption. Many countries have achieved significant results, but **the anti-corruption battle has not yet been won**. It is obvious in particular that governments and international organizations have not yet managed to create a level playing field as regards anticorruption practices.

**Fostering international cooperation** will therefore be essential in order to implement internationally accepted frameworks such as the OECD Anti-Bribery Convention. The OECD has a crucial role to play in this area. Going forward, close

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cooperation with non-member economies will be increasingly important to work towards this level playing field objective.

There is no doubt that **sanctions have a fundamental role to play** in addressing corrupt behavior of business. If set at an appropriate level, sanctions serve as an important deterrent for non-compliant companies in several respects: the importance of the fine; the time of a pending legal process; and the impact on the company's image, which can have far-reaching effects.

Sanctions are also important to **address corrupt behavior of government officials**. Governments should recognize the problem of **solicitation of bribes** and engage themselves to forcefully act against it. In this context, international recognition and effective prosecution of international solicitation through national anti-corruption laws should be promoted. Actionable recommendations to help business resist solicitation should be proposed.

It is to be underlined that the existence of sanctions is not sufficient in itself. 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, as is among others illustrated by the differing numbers of cases that are being brought up and finalized, with condemnations and sanctions for non compliant companies and individuals.

The legal systems have to become both more sophisticated, in order to cope with extraterritorial cases, and more simple, in order to solve some criminal offences quickly through plead guilty type procedures.

While sanctions have a role to play, it should also be recognized that **an increasing number of companies are demonstrating leadership** by implementing effective anti-corruption programs within their companies. Therefore, an important question to be raised is how a healthy balance can be found between sanctions for corrupt behavior as well as **incentives** for clean business practices. In this respect, it is important to give due consideration to the following issues:

- Governments should consider giving **formal recognition** to companies which have successfully followed a structured training program. Companies should be encouraged to invest the time and resources in well functioning anti-corruption and compliance systems and support projects that work towards the creation of incentives for good performers. If companies have done what they are supposed to do, it is the respective individual who has to be held responsible if corruption occurs.

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- An important point in this respect is that law needs to define what is “**adequate procedure**” so that judges can assess if companies have respected them, bearing in mind that the size of the respective companies needs to be given due consideration.
  - Due attention needs to be given to protecting those who report in good faith suspected acts of corruption. Countries that do not already have whistleblower protections should enact **whistleblower protection rules**.
  - Governments should support **business coalitions**, which can play an important role and contribute to a more level playing field by encouraging and promoting the engagement of its members in effective compliance programs and provide capacity-building assistance to facilitate their development.
  - Companies should be encouraged to play a proactive role by **engaging SMEs through their supply chains** while providing them with support in resisting corruption and learning from best practice. This is particularly important for certain global sectors. SMEs have of course the obligation to abide by anti-bribery laws, but do not have the same human and financial resources as multinational companies.
  - The **role of export credit agencies** in encouraging companies to develop adequate anti-corruption programs should be considered.

Particular attention needs to be given to **prevention of bribery and corruption, which is the best way of reducing the need of sanctions:**

- **It is essential to create platforms for dialogue between the public and the private sector on anti-corruption** with the aim of strengthening national legal systems, identifying the need for reforms and capacity building. Governments and business should develop and promote coordinated partnerships between the public and private sectors to leverage resources for advancing technical assistance efforts and engage in discussions how companies can join forces with public institutions of the countries where they do business.
- A platform for dialogue should facilitate an exchange of knowledge between practitioners from all sectors. **Business associations and coalitions** can play an important role in this area. Sharing best practices in executing compliance programs within the private sector, and between business and

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governments, could be an immediate measure to improve the compliance environment.

- **Education & training** should be supported to build capacity, foster a culture of integrity and promote knowledge sharing between institutions and stakeholders. This would include education and training of future and current managers, engineers, government officials and civil society leaders through short-term and long-term courses. It should also include students from emerging and developing countries and enable them to participate in courses or studies related to anti-corruption.
- Closing the implementation and enforcement gap remains an important priority. **Capacity building** in emerging and developing countries, including in the area of high-level reporting mechanisms and whistleblowers, should therefore be given continued attention.

Overall, it is important to create fair conditions for all market participants, foster consistent implementation of existing rules to create a level playing field and fight corruption and fraud through collective action, education, training, and partnership approaches that are of mutual benefit. The OECD can and should play an important role in this respect by developing global frameworks and standards to address problems of corruption against bribery and continuing its active involvement in the G20 process. The OECD can also play an important role in initiating a discussion on specific issues, such as the principle “*ne bis in idem*” (the prohibition to condemn the same legal subject twice for one and the same criminal offence).

Efficiency of the legal framework and defining adequate procedure are key. At the same time, the private sector has a key role to play, both by supporting governments to take action and by taking appropriate measures to address the challenges of corruption. We call upon government to create an efficient legal and institutional framework, including for the demand side of corruption; encourage capacity building and partnership; establish a good balance between punishing wrongdoing and encouraging compliant behavior; and recognize the fundamental and pro-active role many companies have been playing in this area.