

January 2017

## Strategic reflections on OECD work on anti-corruption

*BIAC appreciates the opportunity to provide initial input to the questions that have been shared with us further to our meeting in December on how to enhance a coordinated approach to OECD work on anti-corruption. The following is a non-exhaustive list of issues that we would like to put forward for consideration. We would be pleased to discuss additional ideas and elaborate further on some of the proposals below.*

***Where do you perceive there are gaps in the global work on anti-corruption and integrity that will be relevant in the next 5 years?***

- The OECD Anti-Bribery Convention is a landmark instrument addressing the bribery of foreign officials. However, increased efforts are needed to ensure balanced implementation, adequate enforcement and additional adherence in particular from G20 countries which are not yet parties to the Convention. This is essential for a global level playing field for business.
- With the expansion of anti-bribery laws and enforcement around the world, a concern voiced by the business community revolves around the growing complexity and costs of complying with multiple anti-bribery regimes. The OECD could help promote clarity and greater international consistency.
- In order to avoid duplication of efforts between international anti-corruption initiatives, e.g. by UN and OECD, increased communication, including close dialogue with the business community would be helpful.
- New efforts are needed to address the demand side, i.e. bribe solicitation and extortion by public officials. Addressing the demand side of bribery should be effectively included in work by the OECD, other international organizations and national governments. In this respect, we also encourage further work on High-level Reporting Mechanisms as an important tool for companies to rely on when faced with bribe solicitation. At the same time, in particular when it comes to bribe solicitation at the border, rapid access to adequate reporting mechanisms is essential.

- A perceived gap exists in the degree of focus placed on enforcement by the OECD as compared to the degree of focus placed on prevention and on best practices. In addition to the need for greater attention paid to best practices, there is also a need for more universal and consistent recognition by member countries of compliance programs.
- Further work is needed to encourage companies to invest in well-functioning compliance systems and facilitate voluntary self-disclosure. Good performers should be duly recognized, including in sanction decisions against companies. A coherent international effort in this area would be a major step forward (see [BIAC proposal](#) for further details).
- What companies need is practical guidance and best practice – guidance which is user-friendly and of concrete relevance to companies, including SMEs. The OECD could serve as an important information hub where practical guidance and best practice could be exchanged and made available.
- To achieve real progress on the ground, we need more specific collective action projects. It is in this spirit that we called upon the OECD to work closely with the private sector by overseeing a collective action pilot project in a country facing significant corruption risks, suggesting a series of specific steps as outlined in our proposal which we submitted in July 2016 (click [here](#)).
- There should be more homogenous practices of anti-corruption and integrity work including the global application of *ne bis in idem* to avoid that companies face the risk of double jeopardy and duplicating proceedings for the same offense in several jurisdictions. As this is a truly international/cross border topic, the OECD would be well positioned to take this up.
- Poor levels of transparency and accountability of governments and the public sector should be effectively addressed, including poor reporting practices, inadequate governance arrangements, lack of explanations supporting decision-making, practices of officials to mask corruption and bribery, in areas such as public procurement, among others.
- Fact-based analysis, presented in an accessible format, highlighting the economic case for effectively addressing all aspects of corruption – both the demand and supply side – and effectively distributing such work to countries around the world remains important. We appreciate analysis included in key OECD publications, such as the Foreign Bribery Report, and recent analysis on the impact of the Anti-Bribery Convention on investment, which should be complemented by work on why there is an economic case to address the demand side, why it is important to encourage compliance systems and voluntary self-disclosure, etc.
- While not necessarily an area where the OECD can take the lead, efforts at the global level should be enhanced to adequately safeguard those who are responsible for the fight against corruption, such as auditors-general and other anti-corruption officials. The recent assassination of the NATO auditor-general (who was investigating terrorism financing) and African anti-corruption commission chairs having to flee the continent are examples of where such officials are not being adequately protected.

- The digital economy impact is broad based<sup>1</sup>. The impact of technological advances should be given more attention, including in the area of trade, where information technology can play an important role in enhancing transparency and facilitating checks. Electronic customs and cross-border automated clearance systems for example reduce opportunities for solicitation and enable better tracking of transactions. Another example is the use of e-bidding systems.
- While the focus is often on larger companies, due attention needs to be given to corruption risks faced by SMEs,<sup>2</sup> underlining the importance of user-friendly practical guidance that is of real practical value. Smaller businesses need to be encouraged and supported in their efforts to combat the threats posed by corruption. At the same time, larger companies can play an important role by engaging SMEs through their supply chains.

***Why do you think those gaps exist? What would be the causes of the lack of effective global work to address them so far?***

- There can be a number of reasons for this, including among others lack of political will, conflicts of interest, lack of underlying policy, insufficient coordination, as well as lack of training of current and future managers, government officials and civil society leaders, to name just a few.
- Another reason might be lack of alignment among policy makers. In the area of development for example, financial support by the donor community should take into account integrity and transparency requirements. As highlighted by last year's OECD Integrity Forum, the objective of corruption-free trade can only be achieved by a truly comprehensive approach, bringing together experts and decision-makers from several policy fields including business.
- There is a clear need to move from word to action. Recommendations from high-level meetings, including the G20 should be consistently reviewed to ensure effective implementation on the ground. The same is true for follow-up to the implementation of the recommendations from the 2016 OECD Anti-Bribery Ministerial. It is in this spirit that BIAC followed up with two specific proposals for further OECD work in the areas of voluntary self-disclosure and specific collective action work.
- The approach to anti-corruption in some administrations or companies can in certain cases be rather legalistic. However, in addition to having good compliance systems in place, those on the front lines (sales managers, customs officials, etc.) have to be trained for integrity in a range of different countries and settings and how to resist solicitation. In addition, due emphasis should be given to addressing the broader environment in which customs officials and other civil servants work, which might be encouraging corruptive behaviour.

<sup>1</sup> ACCA will release a report on the impact of the digital economy on ethics in June 2017

<sup>2</sup> See also [ACCA research paper](#) on combatting bribery in the SME sector

- Enhanced public sector financial management is not always given sufficient priority. It should be made a primary policy objective, providing the appropriate incentives for enhancements, e.g., the FSB could be encouraged to add International Public Sector Accounting Standards (IPSAS) to its compendium of twelve sets of standards. IPSAS, which have been adopted by over 80 jurisdictions, governments, and international organizations, provide a robust set of standards to prepare national public accounts/financial statements.

***Do you have an opinion on who may be better placed to more effectively develop work to address some of those gaps, considering the causes you have suggested?***

As the official advisory committee to the OECD, BIAC would like to focus on the role we would see for the OECD in the important fight against corruption. In BIAC's view, the OECD has clear added value to address the above-mentioned issues, among others for the following reasons:

- The OECD Anti-Bribery Convention has clearly positioned the OECD as a leading institution in the international fight against corruption.
- Thanks to its strong economic capacity, the OECD is ideally placed to produce economic analysis to make a clear case for the fight against corruption.
- Thanks to its multi-disciplinary nature, the OECD has the capacity to take a coordinated approach to the fight against corruption (including in areas such as trade, investment, development, etc.).

We therefore see a prominent role for the OECD in the various work areas identified above, working closely with the business community as well as key stakeholders and other international organizations, where appropriate.

***Do you have any views about what the role of the OECD could be in this context? Please add any specific suggestions on added value of the OECD in the field of anti-corruption (also beyond the specific activities of the Working Group on Bribery).***

As mentioned above, we see a clear role for the OECD in the fight against corruption and appreciate discussions on a more coherent and cross-cutting OECD approach. Specific work areas recommended by the business community have been identified above, including among others compliance programs and voluntary self-disclosure, best practice and incentives, effectively addressing demand-side pressures, etc. In addition to the areas mentioned under the questions above, we would like to underline the following overarching considerations:

- Expand OECD outreach to key non-OECD countries by involving non-member countries, in particular G20 countries, to get actively involved.

- The OECD could facilitate greater coordination among OECD member countries in addressing inconsistencies in definitions and guidelines of anti-bribery laws.
- Foster a more cross-cutting approach to OECD's work on anti-corruption and integrity by enhancing communication among Directorates and Committees and supporting a comprehensive OECD anti-corruption strategy and platform.
- Communicate the work that OECD is already engaged in across different Directorates in a user-friendly manner. We therefore appreciate current efforts to develop a platform/website to inform policy makers, companies and stakeholders about legal instruments, economic analysis, best practices and practical tools that companies can use. The private sector is ready to contribute with its broad knowledge in the field of anti-corruption compliance to this effort.
- Use the ministerial and government departmental links and representatives to act as advocates for promoting enhanced integrity and public sector financial management to their own governments, leaders, and politicians.
- Present compelling information on the importance of enhanced governance and integrity. OECD work should emphasise the cross border and wider benefits to society of dealing with corruption at all levels in government and business.

BIAC considers the OECD, with its outstanding expertise, convening power and ability to work in a cross-cutting way, a key organization in the fight against bribery and corruption and supports an ambitious role of the OECD in the areas identified above. Recognizing that the private sector is an indispensable partner in the fight against bribery and corruption, we call upon the OECD to explore opportunities for further cooperation on key projects and to continue to involve the private sector in shaping anti-corruption strategy.