

27 February 2015

OECD Trust and Business Project

Initial BIAC comments

Background

At the 2014 OECD Ministerial Council Meeting, Ministers underlined the importance of rebuilding trust in governments as well as in private actors and called on the OECD to develop a “Trust Strategy” that will help rebuild public trust towards markets, public institutions and governments.

In response to the call from Ministers, the OECD launched a project on trust in public institutions, which aims to define a conceptual and statistical framework to measure trust in public institutions. It will operationalize this framework through a survey module, refine alternative measures, improve the frequency and comparability of trust measures across OECD countries and help them link better to the policy agenda.

At the end of last year, the second pillar was launched, focusing on trust and business, to explore ways to bridge the gap between international rules and standards for business and their active implementation. Ultimately, the project aims to promote smarter, more integrated compliance by companies, rooted in efficient corporate governance frameworks, combined with smarter, more integrated enforcement by governments, based on inter-agency coordination and effective international cooperation.

Initial comments on the project outline

Efficient governance and effective enforcement of legal frameworks are important for trust among business and for the economy as a whole. To operate and be successful, business depends upon stable, transparent, predictable and efficient legal frameworks. These elements are the basis for a level playing field and for a competitive, confidence-inducing business environment. The fair and consistent implementation of rules is another key element for trust in business. Essential internal procedural safeguards should include transparency of the process and non-discriminatory application regarding nationality of the parties concerned as well as fairness of enforcement actions. Rule of law is also an indispensable prerequisite for fostering investment and predictability for business.

In order for markets to be able to grow and produce wealth, trust is an indispensable precondition. Without trust, governments will face difficulties to implement and secure acceptance of policies needed to address today's challenges. This could lead to short-termism and expedient rather than strategic decision-making by policy makers. It is therefore important to build trust through better governance and more efficient institutions and increase international cooperation and dialogue.

It is equally important to ensure trust in business. BIAC therefore welcomes the objective of the project, bearing in mind that the following overarching comments should be given due consideration:

- The OECD as a multi-disciplinary and internationally recognized organization is well-placed to lead such a project, which should be carried out in close cooperation with business experts and include non-OECD countries in the discussions. Rebuilding trust is crucial for promoting a sound investment environment and should therefore also be given due attention in OECD outreach activities.
- The two pillars of the Trust Project, i.e. "Trust in Public Institutions" and "Trust and Business" should not be considered in isolation. Both governments and business must work together to re-establish trust. The OECD should therefore ensure that when communicating the final outcome of the project, they are not considered as two separate issues, but as equally important and mutually supporting.
- Bearing in mind that separate OECD Directorates are in charge of the two pillars, it is important that there be a high-level oversight mechanism to communicate consistent messages on the overall outcome. The governance structure and accountability mechanisms for the project, which is horizontal and cross-cutting in nature, should be clarified.
- We understand that the aim of the trust and business project is not to create new standards. Clear procedures that continuously include all Directorates and key stakeholders that have been involved and contributed should be in place to ensure that the original objective be kept in mind throughout the development of the project.
- The focus of the project should be on providing companies, including SMEs, with practical information and examples, e.g. how business units implement compliance actions into daily business or how to collaborate with local officials in collective action programs. BIAC urges the OECD not to duplicate work that exists in large quantities in the form of consultant advice, reports from seminars, publicly available anti-corruption manuals, etc.
- The project could help support collective action projects between business and governments. Drawing upon experience from existing projects supported by individual businesses and groups, projects could focus on specific challenges in specific locations and serve as input for potential further measures. Concise, clear, practical templates could be useful for commercial and operations employees in companies, especially in SMEs, in implementing anti-corruption practices into daily operations.

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- We strongly recommend that the overall tone of the papers to be prepared on trust and business be balanced and not sensational, also duly highlighting the proactive role that the private sector has been playing. The project should not just address companies' action from the perspective of looking mainly at alleged bad behaviour. It should clearly underline that while cases of misconduct do exist, they are the exception, not the rule, and they do not mean that implementation is defective across the board. The project should especially make use of the experience and knowledge accumulated by the private sector in building effective compliance programs. It should also examine examples of integrity pacts and other types of collective action for integrity which are driven by the private sector.
 - Regarding the section in the OECD document about the Foreign Bribery Report (para 9), we would like to reiterate that the data stating that developed economies present a significant problem is the result of an analysis of enforcement actions. While the actual OECD report includes this caveat, the excerpt chosen for this document does not. Further, the point regarding public procurement contracts "clearly placing business at the heart of the problem" (para 9) does not acknowledge that the OECD Anti-Bribery Convention largely concerns itself with the supply side and does not address the demand side of bribes, which is naturally also reflected in the enforcement actions. Again, while the Foreign Bribery Report acknowledges that the demand side is worthy of consideration going forward to provide a complete picture, such caveat should also be added to the trust and business project document.
 - The discussion of company failures should also be balanced with how governments can do a better job in promoting and facilitating compliance. The project might therefore also benefit from analysis regarding the practical drivers of compliance.
 - The private sector has long-standing experience in many of the issues addressed by the OECD Trust Strategy. Its innovative approaches including codes of conduct, self-regulation, or governance principles should be recognized and highlighted as important complementary measures to help rebuild trust. We encourage policy makers to engage with the private sector in order to share practical experience and create new synergies.
 - BIAC supports the need for improved monitoring and enforcement. 'Hard law' and 'soft law', formal and informal enforcement mechanisms should be considered. We recognize the fact that in many countries, regulators are not well equipped for effective enforcement - either in monetary or human resource terms. We support the need for a 'level playing field' for enforcement across jurisdictions. This is particularly pertinent to emerging markets, where collective action between companies and governments can be particularly useful. Cross border collaboration is therefore an essential element to achieve effective regulation.
 - An important step towards increasing trust in both business and public institutions is more transparent governance of state-owned enterprises (SOEs) or controlled entities, and in conducting public tenders. This aspect should be more clearly underlined in the project outline and should be included as an integral part of the work going forward.

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- Exemplary behaviour should be demonstrated by governments, government agencies and entities (national and local) as a means to display best practice. At the same time, it must be ensured that national jurisdictions treat public and private actors on the same foot.
 - The project outline should more clearly underline that public and private sectors are not two completely separate spheres. There are many intertwined cases, and some specific examples might be added.
 - With key OECD instruments already in place, BIAC calls for the Trust Strategy to seek consistency while recognizing the specific and focused objectives of specific instruments, including the OECD Anti-Bribery Convention, the OECD Guidelines for Multinational Enterprises and the OECD Principles of Corporate Governance.
 - With tight deadlines and Phase 1 already ending in June of this year, we express our wish that there will be substantive consultations on all of the parts of Phase 1 to which the business community will be able to contribute effectively.
 - BIAC has facilitated contacts between the OECD Secretariat and members of various BIAC policy groups to provide practical input based on their concrete experience. In addition, BIAC would appreciate the opportunity to be consulted as the project is further developed to ensure that in addition to the specific input provided, the overall outcome reflects broader business considerations. BIAC looks forward to remaining actively involved and making a constructive contribution as the project further develops.