



March 2016

Meeting at Ministerial Level on the OECD Anti-Bribery Convention BIAC Key Messages

Corruption continues to affect economies and societies, and while progress has been made in creating cultures of integrity and reducing corruption, much remains to be done to create a corruption-free business environment worldwide. 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 calls upon Ministers to support an ambitious role of the OECD in this area.

The signing of the OECD Anti-Bribery Convention was undoubtedly a major breakthrough, and the legally binding standards have clearly positioned the OECD as a leading institution in the international fight against bribery and corruption. In particular, the monitoring process in the form of peer reviews has been a true success story. However, despite the major achievements of the OECD Convention, BIAC believes that the time has come for the Organization to consider additional steps in the fight against corruption and supports a strong role for the OECD in the following areas:

- **Close the implementation gap:** Effective and consistent monitoring and appropriate implementation and enforcement of the Convention remain crucial and should be ensured through a rigorous review process. We encourage the OECD to consider how future reviews could also address how countries are encouraging a transparent and effective dialogue with business, how they are supportive of modern anti-corruption measures, and how they encourage and incentivize compliance efforts. BIAC's comments on the phase 4 review are available on the BIAC [website](#).
- **Encourage wider adherence to the Convention:** Several G20 countries, including China and India, are not yet parties to the Convention, a fact which has the potential to undermine the efforts to create a level playing field for international business. To ensure a truly global level playing field, we encourage continued

efforts to work closely with major emerging economies, which are not yet adherents to the Convention, to raise them to the level of OECD policy standards and ultimately widen participation in the Anti-Bribery Convention.

- **Address the demand side:** We call upon the OECD to show clear commitment to combat bribe solicitation and explore options for future work in this area, including collective action efforts with the private sector. This would represent a significant step forward towards a more corruption-free business environment that would establish the necessary confidence for the business community (see annex for further details).
- **Duly recognize and incentivize self-reporting:** Building on the findings of the OECD Foreign Bribery Report that found a large number of cases arise from self-reporting, we call upon the OECD to support self-reporting and “self-cleaning” efforts and to underline the importance of compliance incentives for companies at the highest political level. If companies can be given legal certainty of not being punished for their cooperation, this would lead to major improvements in the fight against corruption (see annex for further details).
- **Incentivize compliance efforts:** Companies’ efforts to invest in well-functioning anti-corruption and compliance systems should be recognized and incentivized. We call upon the OECD to consider incentives for companies to implement effective compliance programs, such as the possibility to mitigate blacklisting/debarment decisions. In addition to internal actions, such as conducting risk assessments and due diligence on intermediaries, companies should be encouraged to join collective action efforts to combat corruption, and demonstrable positive results of collective action should be rewarded.
- **Support education and capacity building:** BIAAC encourages the OECD to promote a culture of integrity, including cooperation with education systems, SMEs and developing countries. We also underline the importance of partnerships with companies to join forces to effectively reduce corruption risks. Among these efforts to promote a culture of integrity would be continually providing businesses, in particular SME’s, with practical guidance and tools for building their anti-corruption programs.
- **Recognize existing whistleblower protection efforts:** We underline that a number of countries have already put in place dedicated whistleblower protection laws or have developed a framework for whistleblower protection on a case law basis. The focus should be on countries where such regulation or practice does not exist. Legislators should also encourage self-regulation by granting incentives for companies with an effective compliance system, including whistleblower protection.

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. We also call upon the Working Group on Bribery to explore opportunities of cooperation with other OECD bodies, benefiting from the OECD’s strong capacity to work in a cross-cutting manner and in cooperation with non-member economies. BIAAC supports a comprehensive OECD anti-corruption strategy and looks forward to constructively engaging in these discussions as an active partner.

ANNEX

In December 2015, BIAC organized a roundtable with the OECD Working Group on Bribery, to foster dialogue on the following two issues, where BIAC sees a particularly important role for the OECD, which are further developed below:

- Addressing the demand side
- Encouraging voluntary self-reporting

1. Addressing the demand side

Despite the major successes of the OECD Convention, it must be recognized that it only focuses on the supply side of a bribery transaction and does not address bribe solicitation and extortion by public officials. Including the demand side of bribery effectively in work by the OECD Working Group on Bribery going forward would represent a significant step towards a more corruption-free business environment.

Solicitation poses a serious challenge on firms and discourages them from investing in countries where bribe demands are frequent. The importance of addressing the demand side of bribery has been consistently underlined by BIAC, starting in the very early stages of our contribution to the OECD anti-corruption agenda, as well as by the B20, which has urged G20 governments to promote international recognition and prosecution of international solicitation through national anti-corruption laws, and to propose actionable recommendations to help business resist solicitation.

We were encouraged by the recognition of the 2014 OECD Foreign Bribery Report that future work could analyze the proportion of foreign bribery cases, in which public officials actively solicited the bribes, and examine whether the public officials who solicited or received the bribes were brought to justice. This would be an important first step as reliable data in this area would help to provide a balanced picture of corruption and bribery.

Business recognizes the efforts that have been undertaken by governments to alleviate some of the challenges that result from widespread bribe demands, including laws explicitly prohibiting bribe solicitation by government officials, as well as more broad-based efforts to strengthen the integrity of public service. Governments have also designed programs to help companies resist solicitation. However, additional concrete action is necessary and practical difficulties for firms to communicate the nature of a particular solicitation must be addressed.

In addition to this, strengthening public sector integrity can play an important role. Particular attention must be paid to public procurement, which presents an important interface between the public and private sector and which is unfortunately in some cases subject to significant interference. In this respect, BIAC supports the work of the Public Governance Committee and encourages close cooperation with the Working Group on Bribery.

Business should be encouraged to develop and maintain effective corporate integrity policies and culture. We underline the importance of promoting integrity in public procurement by incentivizing business-compliance programs, instituting digital systems for efficiency and transparency, and utilizing high-level reporting mechanisms to address issues during the procurement process. There is an urgent need for governments to have in place appropriate policies encouraging companies to adopt and implement anti-bribery and corruption policies supported by appropriate compliance programs. Due consideration should be given to how to incentivize companies bidding

for publicly significant procurement projects to have appropriate anti-corruption compliance programs in place.

An effective means of addressing the demand side of bribery transactions would be collective action between governments and the private sector, including specific collaborative projects in which businesses and government agencies agree: a) specific codes of conduct for public and private employees to prevent the solicitation and payment of bribes; b) clear guidance on regulations governing business operations, in order to eliminate ambiguity in interpreting regulations, and c) projects focusing on the reduction and elimination of facilitation payments. An effective means of promoting this would be an OECD-sponsored collective action anti-corruption project.

We call upon the OECD to show commitment to address the demand side and explore options for future work in this area to help establish the necessary confidence for the business community for a comprehensive fight against corruption.

2. Encouraging voluntary self-reporting

Companies implementing effective compliance measures may detect misconduct, but are subsequently often “blamed” when such information becomes public. BIAC underlines that on the contrary, good compliance must be encouraged, not punished, and self-cleaning measures should be actively promoted. We see a particularly important role for the OECD in this area to support such efforts and underline the importance of compliance incentives for companies at the highest political level.

As recognized by the OECD Foreign Bribery Report in December 2014, one in three cases came to the attention of the authorities through self-reporting by companies or individuals. Companies that self-reported became aware of foreign bribery in their international operations primarily through internal audits and merger and acquisition due diligence procedures. Self-reporting of corruption thus has the potential to make a significant contribution to address corruption and bribery.

If companies can be given legal certainty of not being punished for their cooperation, this would lead to major improvements in the fight against corruption. Business should therefore be encouraged to do so, among others through a reliable and predictable process that consistently incentivizes self-reporting, including through reduced penalties and streamlined resolution.

Implementing leniency mechanisms in an increasing number of countries would help business at large and could make a clear contribution to incentivizing companies to improve their compliance systems and culture. This would not only lead to the ability to detect and effectively address specific cases, but would also encourage a more productive partnership between business and governments more broadly. Companies should have the possibility to mitigate blacklisting and debarment decisions by implementing effective compliance measures after a corrupt activity was detected and remediated.

A growing number of companies are demonstrating leadership by implementing effective anti-corruption programs. Therefore, compliance incentive systems should be encouraging voluntary self-disclosure of companies and investment in compliance systems. True compliance efforts as well as self-cleaning measures should also be clearly recognized in national public procurement regimes.

However, this issue cannot just be addressed at the national level, as illustrated by the importance of avoiding double-jeopardy. The OECD, which has a proven track record in the area of fighting corruption and bribery, should play an active role in helping governments put in place a legal framework that incentivizes companies to build robust compliance programs and self-report compliance breaches. We call upon the OECD and its members to forcefully engage themselves and foster international cooperation in this area.

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