



BUSINESSatOECD

THE BUSINESS AND INDUSTRY ADVISORY COMMITTEE



**OECD Roundtable on
20 years of the
Anti-Bribery Convention**

***Why the OECD Convention matters to business
and what should come next***

Paris, 12 December 2017



Why the OECD Convention matters to business and what should come next

The OECD Convention – a unique instrument with an efficient monitoring process

20 years after the signing of the OECD Anti-Bribery Convention in December 1997, Business at OECD (BIAC) would like to congratulate the OECD for its strong contribution to combat bribery and reiterate its support for an effective implementation of the Convention. The Convention creates a strong legal foundation for countries' commitment to fight foreign bribery and establishes effective standards for implementation. Together with other related legal instruments and guidance documents, it has clearly positioned the OECD as a leading institution in the international fight against corruption.

One of the key strengths of the Convention is the OECD monitoring process in the form of rigorous peer reviews, which has led to concrete improvements on the ground and should be considered as a best-practice example also for other OECD instruments to measure implementation. Continued monitoring of a correct implementation and enforcement of the Convention should therefore remain high on the OECD agenda. Gaps with regard to the implementation of the Convention in adhering countries must be addressed.

We appreciate that the phase 4 review cycle endeavors to take a tailor-based approach, considering each country's unique situation and challenges. However, rather than focusing on the number of cases, we see a major opportunity for the peer review process to compare the practices of the adhering countries, to encourage additional consistency and to share best practices. The reviews should also increasingly look at how countries are encouraging an effective dialogue with business, whether they are supportive of modern anti-corruption measures, including 'collective action', Integrity Pacts and compliance monitoring of public infrastructure projects. The peer reviews should also look at how countries encourage compliance efforts of companies and acknowledge voluntary disclosure.

Finally, we have major concerns regarding the lack of coordination between State Parties which, in practice, do not apply article 4.3 of the Convention, which specifies that "*when more than one Party has jurisdiction over an alleged offence described in this Convention, the Parties involved shall, at the request of one of them, consult with a view to determining the most appropriate jurisdiction for prosecution*". Several cases have shown that companies can be sanctioned by different countries for the same facts. This lack of coordination seriously undermines the effectiveness of the fight against corruption at the expense of companies which are sanctioned several times for the same facts. We strongly recommend increased coordination in this respect.

Outreach and additional adherence for a level playing field

The success of the fight against corruption rests on the engagement with major economic players to create a level playing field. One of the challenges is that while the Convention includes several non-member countries in addition to the OECD member countries, it is not global, and several G20 countries, such as China and India, are not yet parties to the Convention. As these countries are major trading partners, this undermines

the efforts to create a level playing field for international business. We encourage the OECD to use its well-established collaboration with key partners and its cooperation with the G20 to bring them closer to OECD policy standards, with the ultimate objective to encourage their adherence to the Convention to ensure a global level playing field. In addition, future OECD accession discussions will present an opportunity to broaden the coverage of the Convention.

What issues should be addressed next

While BIAC strongly supports effective implementation and additional outreach regarding the Convention, business believes that there are a number of issues that the OECD should address for a comprehensive fight against corruption. These issues should also be addressed when the OECD considers revising existing instruments or developing new ones in the area of anti-corruption.

One important challenge is that, while the Convention is the only legally binding international instrument to focus on the supply of bribes to foreign public officials in international business transactions, this leaves out the demand side and thus only addresses part of the problem. To effectively combat corruption, however, the OECD must address both the supply and the demand side of the equation.

As also highlighted earlier this year by the High-Level Advisory Group, the OECD has developed a number of guidelines and standards for public sector integrity. However, these standards do not create the same level of legally binding obligations and do not require OECD members to undergo formal peer-review monitoring to ensure their implementation and enforcement. We would therefore like to reiterate BIAC's long-standing request to effectively address the demand side as requests for facilitation payments, bribe solicitation and extortion are still a reality. Effectively including the demand side of bribery in OECD analysis and legal instruments, accompanied by an effective monitoring process, would be a major step forward. This should go hand in hand with additional focus on public sector integrity and more robust public sector financial management and control arrangements.

We appreciated that Ministers who got together at the 2016 OECD Anti-Bribery Ministerial encouraged further dialogue in the area of voluntary self-disclosure, i.e. the voluntary reporting by companies of internally detected possible misconduct to public authorities or other relevant stakeholders such as multilateral development banks. We welcome the fact that the OECD has included this issue in its study on Detection of Foreign Bribery. However, this work must go further. There is a clear need for international guidance to avoid multiple sanctions in the case of voluntary self-disclosure. What companies need is legal certainty of not being punished for their cooperation. International cooperation in this area is urgently needed, as illustrated by the importance of avoiding double-jeopardy.

Furthermore, we see an important role for the OECD in encouraging member governments to recognize corporate compliance efforts when awarding public contracts and when imposing sanctions for breaches. The B20¹ therefore called upon the OECD – in conjunction with other relevant organizations – to conduct a study on countries' approaches to compliance incentives. The OECD should help countries put in place a legal framework that encourages voluntary self-disclosure and incentivizes companies to build robust compliance programs.

¹ <https://www.b20germany.org/priorities/responsible-business-conduct-anti-corruption/rbcac-recommendations/>

A comprehensive OECD strategy to combat corruption

Efforts to improve law enforcement must be complemented by initiatives in other areas. BIAC calls upon the OECD to take a comprehensive approach towards fighting corruption. A number of OECD initiatives contribute to and complement the goals of the OECD Anti-Bribery Convention and the important work of the Working Group on Bribery.

The quality of public governance and public procurement frameworks, for example, is a key factor which can significantly contribute to the fight against corruption. Related OECD work in other areas, such as development, export credits, responsible business conduct, taxation, corporate governance and integrity of state-owned enterprises should be duly highlighted and underlines the unique role the OECD plays in the fight against corruption. The OECD Working Group on Bribery should be a key pillar to achieve this objective, working in close cooperation with BIAC and other key stakeholders.

- ***OECD Anti-Bribery Convention:***

- Continue the monitoring process to foster effective implementation and broaden adherence to the OECD Convention*

- ***Next steps:***

- *Address the demand side of bribery in OECD analysis, monitoring activities and legal instruments*
 - *Effectively recognize and incentivize compliance efforts*
 - *Encourage voluntary self-disclosure by providing legal certainty*

- ***Support a comprehensive OECD anti-corruption strategy***