

## Initial comments on the review of the OECD Recommendation for Further Combating Bribery of Foreign Public Officials

*Business at OECD (BIAC)* reiterates its strong support for an effective implementation of the OECD Anti-Bribery Convention and related instruments and underlines the importance of continued outreach and additional adherence for a global level playing field. We underline that these instruments need to be up-to-date and broadly supported, also bearing in mind that the proliferation of parallel standards would be counterproductive and lead to increased complexity for business.

The 2009 Recommendation for Further Combating Bribery of Foreign Public Officials in International Business Transactions including the good practice guidance on internal controls, ethics and compliance is a key legal instrument which has helped to enhance the ability of Parties to the OECD Convention to prevent, detect and investigate allegations of foreign bribery. We support the update of the 2009 Recommendation to ensure it reflects current practice. The fight against corruption has developed significantly since 2009 – and business has contributed by designing and implementing innovative compliance systems and promoting collective action. This progress is also mirrored in the recent B20 Policy Papers under the G20 Presidencies of Germany and Argentina. We strongly encourage the OECD to take into account the following recommendations to ensure an effective and comprehensive fight against corruption.

- The update of the Recommendation represents a unique opportunity for the OECD to pave the way to **address the demand side**, bearing in mind that to effectively combat corruption, we must address both the supply and the demand sides. We need further guidance on what public authorities can do internally in order to prevent bribery. Concrete action is also needed to address difficulties for firms to communicate solicitation to reduce and ultimately eliminate facilitation payments. Building on the initial deployment and experience of a High-Level Reporting Mechanism in some countries, the Recommendation could also help encourage setting up similar schemes in other countries.
- The Recommendation should further underline the need to invest in well-functioning **anti-corruption and compliance systems** – in the private and in the public sector - and support projects that work towards the creation of incentives for good performers. "Self-cleaning measures" should be recognized in national public procurement regimes so that companies have the possibility to mitigate debarment decisions by implementing effective compliance measures after a corrupt activity was detected and remediated. Companies' investment in compliance systems, substantial support to collective action projects and full cooperation with governments in investigations should be considered as mitigating factors in case companies face penalties. For anti-corruption and compliance system in the private sector, the recommendation should encourage and allow companies to conduct

internal investigations across multiple jurisdictions in case of multijurisdictional investigations. This would allow companies to mitigate various corruption risks that are discovered under their compliance programs.

- The revision of the Recommendation would also be an excellent opportunity to **encourage voluntary self-disclosure** by harmonizing administrative and legal approaches and giving companies the certainty they need. The revision could recommend leniency programs for corporations, taking into account their compliance efforts, cooperation and self-disclosure.
- The Recommendation should **promote collective action efforts** with companies, including SMEs, to effectively and continually reduce facilitation payments using various means, such as pilot projects focused on practical means, including business codes of conduct, standard interpretations of regulations impacting companies, increased use of electronic communication and official fee payment systems, training, independent audits and effective grievance mechanisms. It should call for collaboration among governments of member and non-member countries, local, regional and international business associations, such as *Business at OECD*, which represents both large companies and SMEs from different sectors, as well as cooperation with relevant stakeholders.
- The Recommendation should put more emphasis on actions that state members should undertake to **prevent corruption from the public sector perspective**. It currently largely limits this to “awareness raising activities” but falls short on more systemic preventive measures that can have an effective anti-corruption knock-on effect. This includes among others: enhancing the country’s business regulatory framework, cutting red tape, and adopting e-government solutions.
- The Recommendation should reflect the important role of e-government and the increasing **use of information and communications technologies** as a means to promote trust and confidence in governments. Increased transparency in the public sector enhanced by e-government solutions and other innovative measures such as trade facilitation schemes would improve trust in government and reduce corruption.
- The Recommendation should consider the inclusion of expectations of public institutions including government agencies and **SOEs**, to implement internal controls, ethics and compliance requirements. These should be the same level as those for private companies, tailored to the public sector. Key issues include risk assessment, internal anti-bribery policies, awareness, communication and training.
- The Recommendation should consider the relevance but also the responsibility of **other stakeholders**, as for example non-governmental organizations, in the fight against corruption. These stakeholders should be asked to commit themselves also to effective and risk-adequate compliance standards as demonstrated by private and public businesses.

- **Reasonable funding by governments**, adequate conditions for public officials, educational measures at the local level as well as ensuring press freedom should be included as part of the measures to address corruption.

In addition to and in line with the above-mentioned over-arching comments, we would like to provide the following specific comments:

- **Section IX:** The section should underline the importance of national and local whistleblower systems accessible at no cost to persons who wish to report incidents of bribery involving national and/or regional officials, and ensure reporting is made to an independent anti-corruption ombudsman.
- **Section X:** It would be useful to launch a discussion about the traditional approach to internal control systems. The current section seems to be obsolete and no longer adequate in supporting top management in achieving business goals, due to responsibility overlaps, bureaucratic and silo approach, obsolete methods of analysis without exploiting the opportunities given by advanced digital technologies. It would be useful to identify plug and play solutions (e.g. antifraud models, multi-compliance, analytics, etc.) in order to facilitate the implementation of integrated Internal control systems, ethics and compliance programs.
- **Annex II** has been an important source of expected good practice in terms of designing an anti-corruption compliance program. However, it falls short on details on how to actually design an *effective* anti-corruption compliance program. The compliance elements should be modernized, reinforced, offering countries a generally agreed reference document in this area, taking into consideration the need for a risk-based approach which could also be fulfilled by SMEs. Annex II should be modernized in close alignment with *Business at OECD* in order to ensure a holistic and comprehensive input by business and industry experts. The modernization of this section should take into consideration all relevant standards and accepted best practices which have been developed since 2009, including the work performed in the context of the G20-B20 process.
- **Annex II:** It would be useful to develop specific programs encouraging all employees to provide improvement feedback on internal control topics (e.g. feedback boxes).
- Compliance measures by companies should be recognized as defined in section X. C or Annex II.
- **Article 4.3** of the Convention calling for consultation when more than one jurisdiction is involved has not worked effectively from the business perspective. The importance of better implementation should be underlined.