



EXPORTING CORRUPTION
PROGRESS REPORT 2013: ASSESSING
ENFORCEMENT OF THE OECD CONVENTION
ON COMBATING FOREIGN BRIBERY

Transparency International is the global civil society organisation leading the fight against corruption. Through more than 90 chapters worldwide and an international secretariat in Berlin, we raise awareness of the damaging effects of corruption and work with partners in government, business and civil society to develop and implement effective measures to tackle it.

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FOREWORD

Professor Mark Pieth of Switzerland will step down as chair of the OECD Working Group on Bribery at the end of 2013, a position he has held since the Working Group was organized in the early 1990s. He led the negotiations which resulted in the adoption of the OECD Anti-Bribery Convention in December 1997. After the Convention went into effect, Professor Pieth presided over the follow-up monitoring process to promote implementation by the Parties. The rigorous country reviews conducted by the Working Group are widely regarded as the gold standard for treaty monitoring.

On this occasion, Transparency International pays tribute to Professor Pieth's outstanding leadership, dedication and perseverance, pressing even the most reluctant governments to take action.

Transparency International commends the selection of Drago Kos of Slovenia as the new chair of the Working Group beginning in January 2014. His previous work as president of GRECO, the Council of Europe's anti-corruption organisation, and as head of Slovenia's anti-corruption agency demonstrates the capabilities needed to move the Convention forward.

I. INTRODUCTION

This is the ninth annual progress report on OECD Anti-Bribery Convention enforcement by Transparency International, the global coalition against corruption. The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, adopted in 1997, requires each signatory country to make foreign bribery a crime for which individuals and enterprises are responsible. The Convention is a key instrument for curbing the export of corruption globally because the 40 signatory countries are responsible for approximately two-thirds of world exports and almost 90 per cent of total foreign direct investment outflows. The OECD Working Group on Bribery, which represents the 40 Parties to the Convention, conducts a follow-up monitoring programme under which 9-10 countries are reviewed each year.

Transparency International's annual report on foreign bribery enforcement presents an independent assessment on the status of enforcement in all of the 40 Parties to the Convention, including Russia and Colombia, where the Convention entered into force in 2012 and 2013, respectively. The OECD Working Group on Bribery also publishes data on enforcement by the Parties in its annual reports. Results of the two reports are basically similar – both indicate that in half of the countries there is little or no enforcement against foreign bribery and show that Germany, the United Kingdom and the United States have the most active enforcement.

In this progress report on enforcement of the OECD Anti-Bribery Convention, Transparency International introduces a revised methodology. The revisions, which are explained in detail in Appendix A, are intended to provide a more up-to-date assessment of the status of enforcement by the Parties and a more refined system of classification.

ORGANISATION OF THE REPORT

The second section provides Transparency International's overall conclusions and includes a chart providing detailed statistical data. The third section covers recommendations. The fourth section contains country reports on each of the 40 Parties, based on the responses from experts primarily from Transparency International chapters in all the OECD signatory countries. These country reports cover recent foreign bribery cases and investigations, and deal with such issues as access to information on enforcement and inadequacies in the legal framework and enforcement system. The fifth section provides case studies in four important sectors: energy, health, defence and telecommunications. Appendix A describes the methodology of the report, Appendix B lists the names of Transparency International's national experts and Appendix C shows the questionnaire prepared by Transparency International, which was submitted to the experts selected by Transparency International chapters.

As in years past, this report is based on information provided by national experts in each reporting country (Appendix B) responding to a questionnaire (Appendix C). The experts interviewed national law enforcement authorities and drew on country review reports from the OECD Working Group on Bribery, Council of Europe Group of States against corruption (GRECO), Mechanism for Follow-Up on the Implementation of the Inter-American Convention against Corruption (MESICIC) and the UN Convention against Corruption (UNCAC) Review Mechanism, as well as media reports.

II. CONCLUSIONS

CLASSIFICATION OF COUNTRIES

Based on reports by Transparency International experts and application of the new methodology, we have arrived at the following classification of foreign bribery enforcement in OECD Anti-Bribery Convention countries:

Active Enforcement: Four countries with 26.2 per cent of world exports: United States, Germany, United Kingdom, and Switzerland.

Moderate Enforcement: Four countries with 6.1 per cent of world exports: Italy, Australia, Austria and Finland.

Limited Enforcement: Ten countries with 11.3 per cent of world exports: France, Canada, Sweden, Norway, Denmark, Hungary, South Africa, Argentina, Portugal and Bulgaria.

Little or No Enforcement: Twenty countries with 26.9 per cent of world exports: Japan, Netherlands, Korea (South), Russia, Spain, Belgium, Mexico, Brazil, Ireland, Poland, Turkey, Czech Republic, Luxembourg, Chile, Israel, Slovak Republic, Greece, Slovenia, New Zealand and Estonia.

The data on which these conclusions are based is shown in the tables on the following pages. (Countries above are listed in order of their share of world exports.)

COMMENTS ON CLASSIFICATIONS

The enforcement status as described in this report differs considerably from that of the 2012 report. This results primarily from changes in methodology under which countries receive credit only for the past four year's enforcement (2009-2012) and not for all enforcement dating back to their adoption of the Convention (see Appendix A). As the 2009-2012 period was impacted by the worldwide recession, enforcement in many countries appears to have been reduced during the recession.

- The Active Enforcement category has decreased from seven countries with 27.5 per cent of world exports in 2012 to four countries with 26.2 per cent of world exports in 2013. Enforcement levels in Germany, Switzerland, the UK and the US have remained robust.
 - Demotion of Italy to Moderate Enforcement reflects unavailability of recent data on enforcement.
 - Demotion of Norway and Denmark to Limited Enforcement reflects reduced enforcement activity in the last four years.
- The Moderate Enforcement category has decreased from 12 countries with 24.8 per cent of world exports in 2012 to four countries with 6.1 per cent of world exports in 2013.
 - The decrease is affected by the establishment of a new Limited Enforcement category. The change was made because the previous Moderate Enforcement category was considered too broad.
- The new Limited Enforcement category includes ten countries with 11.3 per cent of world exports.
 - Two were demoted from Active Enforcement, Norway and Denmark.
 - Four countries were in Moderate Enforcement in 2012, France, Canada, Sweden and Argentina.
 - Three countries Bulgaria, Hungary and Portugal have improved to Limited Enforcement from Little Enforcement in 2012.
 - South Africa improved from No Enforcement to Limited Enforcement. This is undoubtedly influenced by the change in methodology, which recognises actual shares in world exports, thereby providing fairer eligibility thresholds for smaller exporters.
- The Little or No Enforcement category combines separate categories for Little Enforcement and No Enforcement in 2012. The differences between the two categories were immaterial. The combined category includes twenty countries with 26.9 per cent of world exports.
 - Five countries, Belgium, Japan, Netherlands, South Korea and Spain, were in the Moderate Enforcement category in 2012. They were demoted because they had less enforcement in the 2009-2012 period than in prior years.
 - Seven countries were in Little Enforcement, seven were in No Enforcement and one (Russia) is included for the first time.
 - In 2012 there were ten countries with 6.3 per cent of world exports under Little Enforcement and eight countries with 4.4 per cent of world exports. The two categories combined included eighteen countries with 10.7 per cent of world exports.

Russia and Colombia's accession to the Convention as 39th and 40th Parties is a positive development, following the accession in recent years of South Africa and Israel.

Table 1. Foreign Bribery Enforcement of OECD Anti-Bribery Convention Countries

	Share of World Exports	Investigations commenced (weight of 1)				Major cases commenced (weight of 4)				Other cases commenced (weight of 2)			
		Average 2009-2012 ¹	2009	2010	2011	2012	2009	2010	2011	2012	2009	2010	2011
ACTIVE ENFORCEMENT (4 countries) 26.2 %													
USA ²	10.18	12	24	27	24	21	2	4	0	0	0	0	2
Germany	8.60	18	15	32	13	1	1	1	2	3	4	11	3
UK	3.80	—	—	11	6	2	11	4	3	0	0	0	0
Switzerland	1.58	12	10	16	19	0	0	0	0	0	0	0	0
MODERATE ENFORCEMENT (4 countries) 6.1%													
Italy	3.03	3	4	—	8	2	1	1	—	0	0	—	—
Australia	1.45	3	4	5	10	0	0	1	0	0	0	0	0
Austria	1.15	3	5	5	2	0	0	1	2	0	0	0	0
Finland	0.50	1	0	1	0	1	1	0	2		0	0	0
LIMITED ENFORCEMENT (10 countries) 11.3 %													
France	3.60	3	4	1	2	0	1	2	0	1	2	1	1
Canada	2.58	1	1	10	2	0	1	1	1	0	0	0	0
Sweden	1.25	0	0	2	3	1	0	0	1	0	0	0	0
Norway	0.95	1	0	2	1	1	0	1	0	0	0	0	0
Denmark	0.88	0	0	0	3	1	0	0	0	0	0	0	0
Hungary	0.60	0	1	1	0	0	0	0	0	0	0	1	0
South Africa	0.50	2	3	2	1	0	0	0	0	0	0	0	0
Argentina	0.43	1	0	0	0	0	1	0	0	0	0	0	0
Portugal	0.40	1	1	0	2	0	0	0	0	0	0	0	0
Bulgaria ³	0.10	0	0	0	0	0	0	0	0	1	0	0	0
LITTLE OR NO ENFORCEMENT (20 countries) 26.9%													
Japan	4.28	0	0	1	—	0	0	0	—	0	0	0	—
Netherlands	3.38	0	3	3	3	0	0	0	0	0	0	0	0
Korea (South)	2.95	0	0	0	0	0	0	1	0	0	0	0	0
Russia ⁴	2.55	0	0	0	0	0	0	0	0	0	0	0	0
Spain	2.10	1	1	1	0	0	0	0	0	0	0	0	0
Belgium	2.10	1	—	—	—	—	—	1	—	—	—	—	—
Mexico	1.73	0	0	0	0	0	0	0	0	0	0	0	0
Brazil	1.25	0	0	0	4	—	0	0	0	—	—	—	—
Ireland	1.18	0	0	0	0	0	0	0	0	0	0	0	0
Poland	1.08	0	0	0	0	0	0	0	0	0	0	0	1
Turkey	0.93	2	1	3	0	0	0	0	0	0	0	0	0
Czech Republic	0.80	0	0	1	0	0	0	0	0	0	0	0	0
Luxembourg	0.48	0	1	0	1	0	0	0	0	0	0	0	1
Chile	0.43	0	3	0	0	0	0	0	0	0	0	0	0
Israel	0.43	0	0	0	0	0	0	0	0	0	0	0	0
Slovak Republic	0.40	1	0	0	0	0	0	0	0	0	0	0	0
Greece	0.33	—	—	—	1	—	—	—	—	—	—	—	—
Slovenia	0.18	1	0	0	0	0	0	0	0	0	0	0	0
New Zealand	0.20	0	0	0	0	0	0	0	0	0	0	0	0
Estonia	0.10	0	0	0	0	0	0	0	0	0	0	0	0

¹ Data obtained from OECD

² The methodology used to compile enforcement statistics for the United States is set out in the U.S. country report, at pages 84-85.

³ A country to be classified in the Active or Moderate Enforcement categories, at least one major case needs to have been commenced or concluded in the past four years.

⁴ Convention entered into force in Russia in April 2012, requirements were lowered proportionately.

	Major cases concluded with substantial sanctions (weight of 10)				Cases concluded with sanctions (weight of 4)				Total points	Minimum points required for enforcement levels depending on share of world exports			Enforcement level 2012 (prior classification)
	2009	2010	2011	2012	2009	2010	2011	2012	Total 2009-2012	active	moderate	limited	
ACTIVE ENFORCEMENT (4 countries) 26.2 %													
USA	9	21	15	16	17	27	20	13	1117	407	204	102	active
Germany	3	3	3	5	4	2	16	24	464	344	172	86	active
UK	2	5	7	1	0	0	1	0	251	152	76	38	active
Switzerland	0	0	2	0	1	1	1	1	93	63	32	16	active
MODERATE ENFORCEMENT (4 countries) 6.1%													
Italy	1	1	0	1	0	0	1	—	65	121	61	30	active
Australia	0	0	0	—	0	0	0	1	30	58	29	15	moderate
Austria	0	0	0	0	0	0	0	0	27	46	23	12	moderate
Finland	—	0	0	0	—	0	0	0	18	20	10	5	moderate
LIMITED ENFORCEMENT (10 countries) 11.3%													
France	0	0	0	0	1	1	1	1	48	144	72	36	moderate
Canada	0	0	1	0	0	0	0	0	36	103	52	26	moderate
Sweden	0	0	0	1	0	0	0	0	23	50	25	13	moderate
Norway	0	0	0	0	0	0	0	0	12	38	19	10	active
Denmark	0	0	0	0	0	0	1	1	15	35	18	9	active
Hungary	0	0	0	0	0	0	1	0	8	24	12	6	little
South Africa	0	0	0	0	0	0	0	0	8	20	10	5	no
Argentina	0	0	0	0	0	0	0	0	5	17	9	4	moderate
Portugal	0	0	0	0	0	0	0	0	4	16	8	4	little
Bulgaria	0	0	0	0	0	0	0	0	2	4	2	1	little
LITTLE OR NO ENFORCEMENT (20 countries) 26.9%													
Japan	1	0	0	—	0	0	0	—	11	171	86	43	moderate
Netherlands	0	0	0	1	0	0	0	0	19	135	68	34	moderate
Korea (South)	0	0	0	0	0	0	0	0	4	118	59	30	moderate
Russia	0	0	0	0	0	0	0	0	0	17	9	4	n/a
Spain	0	0	0	0	0	0	0	0	3	84	42	21	moderate
Belgium	—	—	1	—	—	—	—	—	15	84	42	21	moderate
Mexico	0	0	0	0	0	0	0	0	0	69	35	17	little
Brazil		0	0	0	0	0	0	0	4	50	25	13	little
Ireland	0	0	0	0	0	0	0	0	0	47	24	12	no
Poland	0	0	0	0	0	0	0	0	2	43	22	11	no
Turkey	0	0	0	0	0	0	0	0	6	37	19	9	little
Czech Republic	0	0	0	0	0	0	0	0	1	32	16	8	no
Luxembourg	0	0	0	0	0	0	0	0	4	19	10	5	little
Chile	0	0	0	0	0	0	0	0	3	17	9	4	little
Israel	0	0	0	0	0	0	0	0	0	17	9	4	little
Slovak Republic	0	0	0	0	0	0	0	0	1	16	8	4	little
Greece	—	—	—	—	—	—	—	—	1	13	7	3	no
Slovenia	0	0	0	0	0	0	0	0	1	7	4	2	no
New Zealand	0	0	0	0	0	0	0	0	0	8	4	2	no
Estonia	0	0	0	0	0	0	0	0	0	4	2	1	no

III. RECOMMENDATIONS

The following recommendations call for actions by the OECD Working Group on Bribery and by the governments, and should be supported by the private sector and civil society organisations. Based on the findings of our present report and on Transparency International's nine-year experience reviewing enforcement of the Convention, we would like to emphasise the importance of the following issues, many of which have already received attention from the Working Group on Bribery.

HIGH-LEVEL ADVOCACY IN COUNTRIES WITH LAGGING ENFORCEMENT

Getting lagging governments to meet their commitments should be a top priority. The challenge ahead is to build political support in the countries with lagging enforcement, and also to prevent weakening of support in countries where there is enforcement. The fundamental rationale of the Convention is the collective commitment by the Parties to combat foreign bribery. The success of the Convention is imperilled when there is little or no enforcement in half of the Parties and limited enforcement in ten other Parties.

Continuing Working Group on Bribery monitoring alone will not be enough. Even though all the Parties have undergone the same rigorous working group reviews, there continues to be great disparity in national enforcement, as shown in both Transparency International and OECD reports. Working group reviews have been effective in countries where political will exists to support stronger foreign bribery enforcement, and ineffective in countries where such will is lacking. The need for strengthening political support is amplified by the recession. In a considerable number of countries this has resulted in business pressure against enforcement in order to win foreign orders, as well as pressure for budget cuts in enforcement agencies as part of austerity programmes.

Building the necessary political support requires advocacy with government leaders, above the level of the officials with whom the Working Group on Bribery normally interacts. This should be considered as a priority programme for 2014 and should involve the following:

- **Visits with government leaders by the OECD secretary general and the chair of the Working Group on Bribery.** Government leaders should be asked to commit the resources necessary to combat foreign bribery, and to make clear publicly their support for enforcement. These visits should be accompanied by meetings with representatives of the private sector, civil society and the media.
- **The OECD Ministerial Meeting in the second quarter of 2014 should include a review of the status of enforcement** of the Convention and should call for prompt action to enable the Convention to reach the tipping point (active enforcement in countries with over half of world exports) where its success is assured.
- **A meeting should be held with leaders of multinational enterprises and civil society organisations** to enlist their support to overcome lagging enforcement. Such a meeting could be scheduled in connection with OECD Ministerial Meeting in the second quarter of 2014.

CONTINUATION OF RIGOROUS FOLLOW-UP MONITORING PROGRAMME

Since the Convention is still far from achieving its objective of overcoming foreign bribery, continuation of a rigorous monitoring programme is essential. After the conclusion of the present round of Phase 3 reviews in 2014, monitoring must continue to ensure that weaknesses identified in prior reviews are corrected.

We urge that such future reviews give priority to countries where foreign bribery enforcement is weakest, beginning with those having the largest share of world exports. Such reviews should assess the reasons for lagging enforcement, what corrective steps are needed and should advise these countries on preparing an action plan with well-specified tasks and a timeline.

RECOMMENDATIONS ON ORGANISATIONAL MATTERS

- **Provide adequate funding and staffing for enforcement activities.**

In more than half of the Parties there are insufficient resources available to investigate and prosecute foreign bribery: Argentina, Austria, Belgium, Brazil, Bulgaria, Chile, Denmark, France, Greece, Iceland, Ireland, Italy, Japan, Netherlands, Portugal, Slovak Republic, Slovenia, South Korea, Spain, Turkey and United Kingdom.

- **Set up a specialised entity for foreign bribery enforcement and protect the entity and its activities from political interference.**

Foreign bribery investigations and prosecutions are difficult, time-consuming and require specialised expertise, such as knowledge of mutual legal assistance procedures. Regular prosecutors are overloaded with domestic cases and are reluctant to take on foreign bribery cases.

Our country reports revealed examples of political interference with anti-corruption agencies and prosecutorial bodies in the Czech Republic, Estonia, Hungary, South African and South Korea. In Argentina there are serious allegations that some judges in bribery cases lack independence and it is probable that this is a more widespread problem.

- **Improve statistical data collection and establish easy access to statistics on enforcement. If needed, seek opportunities for technical co-operation and capacity development with help from the OECD.**

To assess implementation of the Convention and to make sound policy decisions on enforcement, it is a prerequisite that statistics on investigations and prosecutions are collected and that such information is provided proactively and on request by responsible authorities.

In almost half of the Parties there are shortcomings in the availability of statistical information: Argentina, Austria, Belgium, Bulgaria, Canada, Colombia, Estonia, Greece, Ireland, Italy, Japan, Luxembourg, Mexico, Portugal, Slovenia, Spain and United Kingdom. The extent of these shortcomings varies; in some cases, the collection of information remains on the provincial level or domestic and foreign bribery cases cannot be disaggregated, while in other instances statistics are not available at all.

RECOMMENDATIONS ON SUBSTANTIVE ISSUES

- **Establish effective reporting channels and procedures for protection of whistleblowers both in private and public sectors in all the Parties to the Convention. Provide for independent reporting channels to build enough trust to receive reports from whistleblowers and from companies that have been victims of extortion and solicitation of bribes.**

Because foreign bribery always takes place in secrecy, facilitating whistleblowing is crucial. This requires readily accessible reporting channels that can ensure confidentiality. Recently, several Parties to the Convention have taken meaningful steps to improve reporting channels and whistleblower protection (such as Australia, Italy, Netherlands and South Korea). The implementation of these new laws is yet to be seen. There are serious shortcomings in more than half of the Parties.

In the following countries there is a lack of adequate rules or practice either in the public or in the private sector, or in both: Australia, Brazil, Bulgaria, Chile, Czech Republic, Denmark, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Mexico, Netherlands, New Zealand, Portugal, Russia, Slovak Republic, South Africa, Spain, Sweden, Switzerland and Turkey.

- **The OECD Working Group should conduct and publish a systematic review of sentencing practices, identifying where they are not 'effective, proportionate and dissuasive' as required by Article 3 of the Convention. Governments should modify their sanctions as necessary to conform with Article 3.**

Reports from Transparency International chapters reveal large disparities in the level of sanctions imposed for foreign bribery offences in OECD countries. In numerous countries, sanctions are inadequate to be effective deterrents for companies engaging in corrupt acts, including: Argentina, Austria, Colombia, Denmark, Finland, France, Germany, Italy, Japan, Mexico, Netherlands, Norway, Poland, Portugal, Russia, South Korea, Sweden and Switzerland.

- **Ensure that corporations are held responsible for actions of their employees, agents, foreign subsidiaries and for lack of adequate supervision of compliance programmes.**

There has been substantial progress by many of the Parties to the Convention in establishing liability of corporations for foreign bribery, but corporate liability still has shortcomings in: Austria, Denmark, Finland, Germany, Greece, Hungary, Ireland, Israel, Mexico, Poland, Russia, Slovak Republic, Sweden and Turkey.

- **Ensure the fairness and public credibility of settlements, make all settlements subject to court approval, publish their terms and abstain from inhibiting prosecution in other jurisdictions.⁵**

A substantial number of foreign bribery cases are settled through negotiations between prosecutors and the accused companies and individuals. This is an understandable development in view of the complexity, cost, delays and uncertainties of litigation.

⁵ See Transparency International Guidance Document for Acceptable Settlements, http://archive.transparency.org/policy_research/policy_and_working_papers/guidance_documents

MAJOR EXPORTERS SHOULD JOIN THE OECD ANTI-BRIBERY CONVENTION

The G20 has repeatedly recommended that all G20 states adhere to the OECD Anti-Bribery Convention. China, India, Indonesia and Saudi Arabia have not yet done so. In view of their growing role in international business, they should do so promptly. We also encourage Hong Kong, Malaysia, Singapore and Thailand to join the Convention.

IV. COUNTRY REPORTS

The following country reports summarise the assessments by Transparency International experts of enforcement of the Convention in their countries. This year the country experts were asked to provide information on foreign bribery cases and investigations, as well as on aspects of access to enforcement information, the legal framework and enforcement system. The country reports cover the developments of the years 2009, 2010, 2011 and 2012 and do not go back further in time so as to focus on how the signatory countries recently enforce against foreign bribery. In the description of cases, only those are included that are considered foreign bribery from the point of view of the assessed country, though parallel criminal procedures in the same cases conducted by authorities of other countries are often referred to.

Please note that in the following reports, convictions and sentences reported may be subject to appeal, and that the existence of a prosecution, investigation or settlement does not mean that the company, employees or other persons named have in fact been involved in any illegal activity.

ARGENTINA: LIMITED ENFORCEMENT.

Share of World Exports: 0.43 per cent

Foreign Bribery Cases and Investigations

One case was initiated in Argentina in 2010 against **Palmat C.A.**, an agricultural machinery sales and support company. This followed complaints in April 2010 from the former Argentine ambassador to Venezuela, that entrepreneurs doing business with the Venezuelan government at the time had to pay between 15 and 20 per cent in bribes to officials of the Ministry of Federal Planning.⁶ Recently, the former ambassador was prosecuted for false testimony related to this case.⁷ The **Palmat** case relates to allegations that the company served as an intermediary for various Argentine firms seeking to bribe Venezuelan officials.⁸ A judicial investigation was initiated in 2009, against an Argentine-Bolivian joint venture **Catler Uniservice** and its Argentine suppliers **Sica Metalúrgica** and **Lito Gonella e Hijos de Santa Fé**. It is reportedly connected to allegations of bribery of Bolivian officials at the state-owned petroleum company **Yacimientos Petrolíferos Fiscales Bolivianos** (YPFB) to obtain a US\$88 million contract to build a gas liquification plant in Bolivia in 2008.⁹ Another case involving an Argentine-US joint venture **CBK Power Company**, relating to alleged bribes to a former Philippine minister of justice in connection with a hydroelectric construction and operation project, was closed and then reopened in February 2010 until it was ultimately dropped in 2012.¹⁰

Access to Information

Information on the number of cases is available, although access to criminal proceedings is forbidden to anyone not party to the case. Information can be requested and is left to the discretion of the proceeding judge. In general, one learns of cases and their developments through the news.

⁶ La Nación, 1 March 2011, "Impiden el cierre del caso Sados", www.lanacion.com.ar/1353872-impiden-el-cierre-del-caso-sados.

⁷ La Nación, 29 May 2013, "Sados fue procesado por falso testimonio", www.lanacion.com.ar/1586425-sados-fue-procesado-por-falso-testimonio

⁸ La Nación, 8 May 2010, "'Realizamos un trabajo transparente', dijo Wellisch" www.lanacion.com.ar/1262486-realizamos-un-trabajo-transparente-dijo-wellisch.

⁹ La Nación, 17 March 2009, "Bolivia castiga a firmas argentinas", www.lanacion.com.ar/nota.asp?nota_id=1109352.

¹⁰ La Nación 15 January 2003, "Involucran a Impsa en un caso de corrupción", www.lanacion.com.ar/466334-involucran-aimpsa-en-un-caso-de-corrupcion

For example, despite access to information requests to the Foreign Ministry filed by Transparency International Argentina, no information on the details of cases was provided.

Inadequacies in Legal Framework

Inadequacies include the scope and content of the foreign bribery offence in the Argentine Criminal Code, the lack of dissuasive sanctions for legal persons, as well as several inadequacies in the rules of penal procedure.

Inadequacies in Enforcement System

Argentina has no centralised national office or unit to investigate and prosecute foreign bribery cases committed by Argentine companies abroad. The level of coordination and supervision given to these cases is unsatisfactory as there are no databases for centralised information, nor are statistics on foreign bribery collected at the federal or provincial level. Furthermore, prosecutors are not trained in the investigation of such crimes. This can slow the progress of investigations, and creates a serious risk that the case will fall foul of the statute of limitation rules. In addition, there are credible claims in the press and from civil society organisations that some federal judges use political criteria in conducting their inquiries, as well as serious allegations that some judges lack independence.¹¹

Recent Developments

The House of Representatives is currently debating two bills that would introduce criminal liability for companies.

Recommendations for Priority Actions

Create a special unit within the Prosecutor's Office to provide assistance to those prosecutors charged with the investigation of foreign bribery. Ensure adequate training for those tasked with investigating and prosecuting foreign bribery. Strengthen public policies to prevent and prosecute foreign bribery.

AUSTRALIA: MODERATE ENFORCEMENT.

Share of World Exports: 1.45 per cent

Foreign Bribery Cases and Investigations

The only case initiated in recent years is a major case brought in 2011 concerning alleged bribes to public officials in Indonesia, Malaysia, Nepal and Vietnam by two companies, one of which was, at the time, partially and the other wholly owned by the **Australian Reserve Bank**.¹² The allegations involve polymer banknote printing company **Securrency International Pty. Ltd.** and **Note Printing Australia Ltd.** The two companies and seven former executives were reportedly charged with foreign bribery offences in July 2011, and an eighth and ninth former executive have been charged since.¹³ The former chief financial officer of Securrency pleaded guilty in August 2012 to false

¹¹ El Sol, 8 April 2011, www.elsolonline.com/noticias/viewold/94050/--por-que-no-se-puede-eliminar-la-corrupcion-en-argentina-; La Voz, 9 April 2011, www.lavoz.com.ar/noticias/politica/eeuu-alerta-sobre-corrupcion-debilidad-institucional; CIPCE, August 2009, "Caso Skanska: ¿Corrupción entre privados o soborno transnacional?".

¹² Sydney Morning Herald, smh.com.au, 10 August 2011, "Fresh Securrency charges over 'biggest bribe yet'", www.smh.com.au/national/investigations/fresh-securrency-charges-over-biggest-bribe-yet-20110810-1ilo1.html.

¹³ The Age, 13 March 2012, "ASIC drops note printing bribe probe", www.theage.com.au/national/asic-drops-note-printing-bribes-probe-20120312-1uwjo.html; The Sydney Morning Herald, 15 March 2013 "New charges in banknote bribery case", www.smh.com.au/national/new-charges-in-banknote-bribery-case-20130314-2g3m6.html

accounting and received a suspended jail sentence of six months.¹⁴ The committal hearing, which commenced 13 August 2012 in the Melbourne Magistrates Court, remains in progress to determine if and to what extent the prosecutions should proceed to trial in 2014. The Australian Federal Police (AFP) have reported to Transparency International Australia that there have been delays in obtaining evidence from certain countries via the Mutual Legal Assistance process, which has made it difficult to conduct an efficient investigation and prosecution.

The former managing director of the **Australian Wheat Board (AWB)** admitted in August 2012 to negligence in the performance of his director duties and was fined A\$100,000 (US\$102,500), and was also disqualified from managing a corporation for two years by the Victorian Supreme Court for breaching the Corporations Act.¹⁵ This was in connection with reported payments of nearly US\$300 million to the Iraqi Government under the administration of Saddam Hussein, in connection with the UN Oil-for-Food Programme.¹⁶ Following the Australian Securities and Investment Commission's (ASIC) civil actions against senior executives of the AWB in April 2010, the ASIC also won an appeal in March 2013 to increase the sanctions for one of the four other executives also accused of bribery.¹⁷ The executive admitted in June 2012 to having contravened the Corporations Act by failing to act upon available information to investigate the possible payment of fees to the Iraqi government, and as such, the penalty was increased from a A\$10,000 (US\$10,250) fine and four-and-a-half-month disqualification from managing corporations to a A\$40,000 (US\$41,000) fine and a fifteen-month disqualification.¹⁸ The actions for breach of director duties against the other four executives are still pending.¹⁹

Since 2009, twenty-two investigations have been initiated, with three in that year, four in the following, five in 2011 and ten in 2012. None of those investigations led to prosecutions in 2012 and seven were dropped. Among the on-going investigations is one involving **Leighton Holdings**, which self-reported suspected improper payments in Iraq and possibly Indonesia.²⁰ According to the *OECD Working Group on Bribery's Phase 3 Report on Implementing the OECD Anti-Bribery Convention*, an Australian company self-reported in June 2012 possible improper payments made by a foreign subsidiary. The alleged payments were to facilitate a wharf construction understood to be in southern Iraq, and the AFP is currently conducting an investigation.²¹

Access to Information

Official information on the number of cases is accessible. Official information on case details is generally not accessible. Information on the disposition of certain charges involved in the on-going major case in Australia cannot yet be published due to a suppression order of the court. This will remain in force until all cases against the executives have finished. If they proceed, those trials are

¹⁴ Bloomberg, 20 August 2012, "Securrency Ex-CFO Gets Suspended Sentence in Bribery Probe", www.bloomberg.com/news/2012-08-20/securrency-ex-cfo-gets-suspended-sentence-in-bribery-probe-1-.html.

¹⁵ ABC Net, 9 August 2012, "Lindberg fined \$100k over AWB Iraq kick-backs", www.abc.net.au/worldtoday/content/2012/s3564108.htm; ASIC, 2 August 2010, www.asic.gov.au/asic/asic.nsf/byheadline/07332+ASIC+launches+civil+penalty+action+against+former+officers+of+AWB?openDocument.

¹⁶ Ibid.

¹⁷ ABC News, 19 March 2013, "ASIC wins increased penalties for former AWB exec", www.abc.net.au/news/2013-03-19/asic-wins-increased-penalties-for-former-awb-cfo/4581954; The Age, 3 August 2010, "Court lifts stay order on AWB civil actions", www.theage.com.au/business/court-lifts-stay-order-on-awb-civil-actions-20100802-113e5.html; ASIC, 2 August 2010,

www.asic.gov.au/asic/asic.nsf/byheadline/07332+ASIC+launches+civil+penalty+action+against+former+officers+of+AWB?openDocument.

¹⁸ ABC News, 19 March 2013, "ASIC wins increased penalties for former AWB exec", www.abc.net.au/news/2013-03-19/asic-wins-increased-penalties-for-former-awb-cfo/4581954.

¹⁹ Information provided by the ASIC.

²⁰ Sydney Morning Herald, [smh.com.au](http://www.smh.com.au), 14 February 2012, "Leighton alerts police to investigate possible foreign bribes", www.smh.com.au/business/leighton-alerts-police-to-investigate-possible-foreign-bribes-20120213-1t2c3.html; Leighton Holdings Media Release, 13 February 2013, "Leighton cooperating fully with AFP on possible breach of Code of Ethics", www.leighton.com.au/_data/assets/pdf_file/0005/9770/130212_mr.pdf.

²¹ The OECD Working Group on Bribery, Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Australia, November 2012, www.oecd.org/daf/anti-bribery/australia-oecdanti-briberyconvention.htm

due to commence in 2014. The AFP is unable to provide details with regard to current or pending matters due to investigational security, but can provide information on finalised matters where there are no public interest immunity claims.

Inadequacies in Legal Framework

There are significant inadequacies in the legal framework, in particular it is not clear whether the law requires for establishing the offence of foreign bribery to identify the particular official in the foreign country who was bribed or was the target of a bribe attempt. As the lead examiners of the Working Group on Bribery noted ‘such a requirement would significantly reduce the effectiveness of the offence’.²² The lack of a comprehensive and effective whistleblower protection law is another significant inadequacy.

Inadequacies in Enforcement System

While foreign bribery investigations can be inherently complex and protracted, enforcement against foreign bribery is a high priority for the Australian government. Australian authorities work closely with overseas counterparts to investigate and prosecute foreign bribery cases. However the Phase 3 report also spells out a number of significant matters where the enforcement system requires strengthening and each deserves attention and a response, such as difficulty in obtaining mutual legal assistance as described in the case above.

Recent Developments

The AFP underwent a restructuring of its crime operations, refocussing on fraud and anti-corruption investigations. In February 2013, within the Crime Operations portfolio a Fraud and Anti-Corruption portfolio was established. This new structure is designed to bring greater focus and more dedicated resources to foreign bribery cases within the AFP. Financial penalties for foreign bribery offences are expressed in terms of “penalty units” instead of dollar figures. On 28 December 2012, the value of a penalty unit increased from A\$110 (US\$100.60) to A\$170 (US\$155.50). Accordingly, the maximum financial penalties for foreign bribery increased as follows:

Table 2. Financial penalties for foreign bribery in Australia

	PREVIOUS MAXIMUM PENALTY (UNTIL 28 DECEMBER 2012)	CURRENT MAXIMUM PENALTY (FROM 28 DECEMBER 2012)
Individuals	A\$1.1 million ²³ (10,000 penalty units) and/or 10 years’ imprisonment	A\$1.7 million (10,000 penalty units) and/or 10 years’ imprisonment
Corporate Bodies	Greater of: <ul style="list-style-type: none"> • A\$11 million (100,000 penalty units) • 3 times the value of the benefits obtained from the bribe, or • 10% of the annual turnover of the company for the year preceding the bribe. 	Greater of: <ul style="list-style-type: none"> • A\$17 million (100,000 penalty units) • 3 times the value of the benefits obtained from the bribe, or • 10% of the annual turnover of the company for the year preceding the bribe.

²² Phase 3 Report on Australia 2012, pages 11 and 12.

²³ A\$1 = US\$1.025

In addition, the government has indicated that significant confiscation orders can and will be made in these types of cases under its Proceeds of Crime Law. The National Anti-Corruption Plan of the federal government, announced in 2011 and referred to in the 2012 Exporting Corruption Report, is yet to be published. It is expected that it will include a review of Australia's foreign bribery laws and was set to be released mid-2013, while the reason for the delay remains unknown.

Recommendations for Priority Actions

Release the National Anti-Corruption Plan with a firm programme for reform in this area and responses to the recommendations in the Phase 3 report. In particular: remove the qualified defence of facilitation payments; ensure that there is no requirement to identify the particular foreign official in order to establish the offence; remove the dishonesty requirement in domestic bribery offences; clarify the liability of Australian parent companies where the bribes are paid via offshore subsidiaries; and remove the difficulty of proving authority of the parent.

AUSTRIA: MODERATE ENFORCEMENT.

Share of World Exports: 1.15 per cent

Foreign Bribery Cases and Investigations

Two major cases and two investigations commenced in Austria in 2012. Between 2009 and 2011, the Austrian authorities initiated thirteen investigations and one major case. On 5 April 2013, the *Landesgericht* (Regional Court) in Vienna delivered a judgement in the trial of five individuals charged with offences connected to the sale of **Finnish Patria** tanks to Slovenia in 2006.²⁴ There was one conviction, three acquittals and one postponed judgement in this trial which began in January 2012.²⁵ The Austrian arms lobbyist **Hans Wolfgang Riedl** was sentenced to three years' imprisonment (of which he must serve at least one year) for foreign bribery and tax fraud offences. Riedl also received a penalty of €850,000 (US\$1,092,600) for his failure to declare for tax purposes the commission he received from the deal. The court also ordered the value of the commission €1,400,000 (US\$1,800,000) to be confiscated from his bank account. Riedl was acquitted of industrial espionage and criminal conspiracy.²⁶ Both the prosecution and defence have lodged appeals.²⁷ This case is also being pursued in Finland and Slovenia.

In December 2012 the Finnish prosecutor filed charges of aggravated bribery and business espionage against former CEOs of **Finnish Patria Oyj** and its affiliate **Patria Vehicles Oy** as well as four other employees of the **Patria Group**.²⁸ A preparatory session for the trial was held in May 2013.²⁹ In Slovenia, the first instance criminal trial closed on 5 June 2013 with a judgement rendered against former Slovenian Prime Minister Janez Janša and two other defendants. Janša was sentenced to two years' imprisonment and fined €37,000 (US\$47,513). The judgement is not yet final as the defence announced their intention to appeal to the High Court.³⁰

²⁴ Der Standard, 5 April 2013, "Patria Prozess: Drei Jahre für Waffenlobbyist", www.derstandard.at/1363707106309/Patria-Prozess-Drei-Jahre-fuer-Waffenlobbyist.

²⁵ The judgement of Austro-Slovenian entrepreneur Walter Wolf was not delivered because he was absent from the courtroom due to poor health, see Der Standard, 5 April 2013, "Patria Prozess: Drei Jahre für Waffenlobbyist"; Wien ORF, 18 January 2012, "Patria-Prozess – Nicht Schuldig", www.wien.orf.at/news/stories/2517325/.

²⁶ Format Trend, 5 April 2013, "Patria Prozess: Drei Jahre für Waffenlobbyisten Hans-Wolfgang Riedl", www.format.at/articles/1314/943/356168_s1/patria-prozess-drei-jahre-haft-waffenlobbyisten-hans-wolfgang-riedl.

²⁷ Ibid.

²⁸ Finnish Office of the Prosecutor General, 18 December 2012, "Finnish Prosecution Service has brought charges of aggravated bribery and business espionage", www.vksv.oikeus.fi/en/Etusivu/Ajankohtaista/Tiedotteet/1347273690293_

²⁹ Helsingin Sanomat, 16 May 2013, "Syyttäjät: Patria lahjoit vakoili", www.hs.fi/talous/Syytt%C3%A4j%C3%A4+Patria+lahjoi+ja+vakoili/a1368645190197.

³⁰ Slovenia Times, 5 June 2013, "Ex PM Janša Sentenced to Two Years in Prison", www.sloveniatimes.com/ex-pm-jansa-sentenced-to-two-years-in-prison.

The trial in Vienna, which began in December 2012, of the Austrian businessman and lobbyist **Count Alfons Mensdorff-Pouilly** concluded in January 2013.³¹ He was convicted for falsifying evidence but was acquitted of money laundering. Mensdorff-Pouilly was accused of laundering an estimated US\$161 million used to bribe “decision makers” in the Czech Republic, Hungary and Austria to help win contracts for the British aerospace company, **BAE**.³² No charges of foreign bribery were brought.³³ The presiding judge in the trial, Stefan Apostol said that the prosecution’s case against Mensdorff-Pouilly was weakened by the fact that the British investigations into BAE never came to trial.³⁴ In 2010 the UK Serious Fraud Office announced the end of their investigations into BAE’s defence contracts and the withdrawal of all proceedings against Mensdorff-Pouilly.³⁵ In Czech Republic, the case concerned the lease of Gripen jets (BAE was one of the shareholders of Gripen at that time). The Czech police initiated the investigation, however, no charges have been brought yet.

Following an investigation that started in 2011, the state prosecutor brought charges in December 2012 against the **Österreichische Banknoten und Sicherheitsdruck GmbH (OeBS)**, a subsidiary of the **Austrian National Bank**.³⁶ The charges relate to allegations that the company bribed officials in Azerbaijan and Syria in order to secure banknote printing contracts and new business developments, respectively.³⁷

In October 2012, Czech authorities arrested and later released businessman and lobbyist **Marek Dalik** as part of their joint investigation with Austria into allegations of financial misconduct in the sale of 107 armoured Pandur vehicles from the Austrian company **Steyr Daimler Puch Spezialfahrzeuge** to the Czech Republic in 2007.³⁸ The details of this case seemingly correspond with a case reported in the OECD Working Group on Bribery Phase 3 report for Austria published in December 2012. The report noted that an investigation of an Austrian company from the automotive sector was reopened in 2012 after new evidence came to light.³⁹

The investigation which began in 2010 into **Rail Cargo Austria**, a subsidiary of the state-owned railway company **Österreichische Bundesbahnen (ÖBB)**, is still on-going and has extended to include new individuals and allegations of embezzlement.⁴⁰ The investigation relates to alleged

³¹ The Daily Telegraph, 13 December 2013 “Trial of former lobbyist for BAE begins in Austria”, www.telegraph.co.uk/finance/newsbysector/industry/defence/9740980/Trial-of-former-lobbyist-for-BAE-begins-in-Austria.html; Vienna Times, 10 December 2012, “Count Ali on trial over BAE bribe claims”, www.viennatimes.at/news/Business/2012-12-10/29005/Count_Ali_on_trial_over_BAE_bribes_claims; New Europe, 17 January 2013, “Austrian Count Alfons Mensdorff-Pouilly found innocent of money laundering charges in BAE trial”, www.neurope.eu/article/austrian-count-alfons-mensdorff-pouilly-found-innocent-money-laundering-charges-bae-trial.

³² Ibid.

³³ Agence France Presse, 17 January 2013, “Austrian lobbyist cleared in “stinking” BAE trial”, www.google.com/hostednews/afp/article/ALeqM5isR8Q59bq_2CA2mAaAhyOBbPdIMA?docId=CNG.0ba788579a2851d033719f65fd8fd700.2b1.

³⁴ Ibid.

³⁵ United Kingdom Serious Fraud Office (SFO), Press Release 5 February 2012, “SFO withdraws proceedings against Count Alfons Mensdorff-Pouilly”, www.sfo.gov.uk/press-room/press-release-archive/press-releases-2010/sfo-withdraws-proceedings-against-count-alfons-mensdorff-pouilly.aspx.

³⁶ Format Trend, 1 August 2012, “OeBS-Bestechungsaffäre: Die Lizenz zum Drucken”, www.format.at/articles/1231/581/336700/oebs-bestechungsaffaere-die-lizenz-drucken; Wiener Zeitung, 28 November 2011, “OeBS Krimi: Verfahren gegen Nationalbankner”, www.wienerzeitung.at/nachrichten/wirtschaft/oesterreich/414727_OeBS-Krimi-Verfahren-gegen-Nationalbankner.html; Der Standard, 16 November 2012, “Anklage gegen Gelddrucker vor Weihnachten”, www.derstandard.at/1350261643122/Anklage-gegen-Gelddrucker-vor-Weihnachten; Der Standard, 21 December 2012, “Abschlussprüfer ‘zum Schein’ getauscht”, www.derstandard.at/1355460414114/Gelddrucker-Abschlusspruefer-zum-Schein-getauscht.

³⁷ Der Standard, 16 November 2012, “Anklage gegen Gelddrucker vor Weihnachten”.

³⁸ Die Presse, 11 May 2011 “Millionen für Panzer-Deal mit Prag”, www.diepresse.com/home/wirtschaft/international/661253/Millionen-fuer-PanzerDeal-mit-Prag?from=suche.intern.portal.

³⁹ The OECD Working Group on Bribery, Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Austria, December 2012 (Phase 3 Report on Austria), page 11, www.oecd.org/daf/anti-bribery/Austriaphase3reportEN.pdf.

⁴⁰ Der Standard, 22 April 2012, “ÖBB Präsident unter schmiergeld verdacht”, www.derstandard.at/1336697617613/MavCargo-Kauf-OeBB-Praesident-unter-Schmiergeld-Verdacht.

bribes paid to officials in Hungary as part of the sale of Hungarian rail freight company **MávCargo**.⁴¹ There have been no updates on the investigation reportedly initiated in 2011 by a prosecutor in Feldkirch into allegations against six persons connected with the maritime crane unit of **Liebherr**.⁴²

Investigations are reportedly still on-going into allegations of misconduct relating to payments in the period 2001 to 2006 by **Siemens AG Österreich** and its subsidiary **Siemens VAI Metal Technologies GmbH & Co**.⁴³ Three foreign bribery investigations were reportedly on-going in 2012 against the Austrian bank, **Hypo Alpe Adria Bank AG**, in relation to allegations of payments in Croatia and Slovenia.⁴⁴ There have been no further updates reported. In Croatia, the former Croatian Prime Minister **Ivo Sanader** was jailed for 10 years in 2012 for taking bribes from the Austrian bank and others in 1995.⁴⁵

Access to Information

Statistics on enforcement of foreign bribery are neither published nor available on request from Austrian authorities. Estimated numbers of cases and investigations are based on information provided to the working group's Phase 3 reviewing team and from media reports. Transparency International Austria has appealed to the Federal Ministry of Justice for the data to be collected and made available.⁴⁶

Inadequacies in Legal Framework

Due to the recent introduction of the Austrian legal framework on foreign bribery and the low number of prosecutions and convictions, it is difficult to assess the adequacy of the framework in practical terms. The Phase 3 report on Austria expressed concern that the Federal Statute on Responsibility of Entities for Criminal Offences (VbVG), the law regulating liability of companies for bribing officials abroad, was not "widely known or fully understood by prosecutors."⁴⁷ The report also noted a lack of clarity in the Penal Code concerning what effect using intermediaries to pay bribes may have on establishing liability.⁴⁸ The maximum financial sanction for a company convicted of foreign bribery is €1.3 million (US\$1.6 million); an amount not commensurate with the nature and size of many Austrian companies.⁴⁹ Fines for private persons have a higher cap of €1.8 million (US\$2.3 million). *Bankgeheimnis*, or bank secrecy laws, in Austria prevent enforcement personnel from accessing important information in the course of foreign bribery investigations.⁵⁰ Arguments in favour of withholding the information from the investigative bodies are not convincing.⁵¹

⁴¹ Ibid.

⁴² Der Standard, 28 June 2011, "Liebherr hat Staatsanwalt im Haus", www.derstandard.at/1308679902738/Hausdurchsuchung-Liebherr-hat-Staatsanwaltschaft-im-Haus.

⁴³ Die Presse, 20 September 2010, "Justiz weitet Ermittlungen gegen Siemens Österreich aus", www.diepresse.com/home/wirtschaft/economist/595846/Justiz-weitet-Ermittlungen-gegen-Siemens-Oesterreich-aus?from=suche.intern.portal; Siemens "Legal Proceedings", 10 November 2011, www.siemens.com/press/pool/de/events/2011/corporate/2011-q4/2011-q4-legal-proceedings-e.pdf. The public prosecutor confirmed on 7 March 2012 that investigations are still on-going.

⁴⁴ Der Standard, 27 October 2011, "Korruptionsermittlungen gegen Regierungspartei HDZ", www.derstandard.at/1319181351033/Korruptionsermittlungen-gegen-Regierungspartei-HDZ; Der Standard, 22 April 2011, "Bei Razzien in Slowenien zehn Festnahmen", www.derstandard.at/1303291146463/Ex-Hypo-Manager-Bei-Razzien-in-Slowenien-zehn-Festnahmen.

⁴⁵ BBC News, 20 November 2012, "Croatia jails ex-PM Ivo Sanader for taking bribes", www.bbc.co.uk/news/world-europe-20407006.

⁴⁶ Transparency International Austria (TI-AC) has made this appeal to the Committee for the Coordination of Measures against Corruption, of which it is a member. The Committee is chaired by the Federal Ministry of Justice.

⁴⁷ Phase 3 Report on Austria 2012, page 5.

⁴⁸ Phase 3 Report on Austria 2012, pages 16 and 17.

⁴⁹ Phase 3 Report on Austria 2012, pages 5 and 21.

⁵⁰ Phase 3 Report on Austria 2012, pages 5 and 21.

⁵¹ Kurt Bayer, 11 April 2013, "Bank secrecy for whom?", www.kurtbayer.wordpress.com/2013/04/11/bankgeheimnis-fur-wen/#more-1052.

Inadequacies in Enforcement System

Despite some staff increases, the Anti-corruption Prosecutor's Office remains too small to deal with corruption cases with sufficient efficiency. The OECD reviewers were very concerned that Austria did not have a strategy in place for improving the capabilities of its law enforcement authorities to effectively evaluate significant amounts of digitalised data, in particular to trace the proceeds of foreign bribery.⁵² The working group found that there is a lack of awareness within enforcement authorities of the value of tax information in foreign bribery investigations.⁵³

Recent Developments

In 2012, the Austrian Parliament passed a number of new federal laws covering anti-corruption, party financing and lobbying, known as the *Transparenzpaket*.⁵⁴ As a result members of parliament, federal government and local government officials are now subject to the same legal sanctions in connection with corruption as federal government civil servants, that is, individuals who are employed directly by the state. These sanctions also apply to organs and employees of all institutions that fall into the Austrian Court of Audit's authority.⁵⁵ No cases or investigations have been initiated under the new laws so it still remains to be seen how well they will work in practice. Also in 2012, a separate department within the Austrian Police Headquarters was set up to work solely on economic and financial crimes.

Recommendations for Priority Actions

Increase financial sanctions for companies so they are proportionate and dissuasive. Ensure that bank secrecy laws do not apply in foreign bribery investigations. Train enforcement personnel on the new anti-corruption legislation (some guidelines have already been published).⁵⁶ Increase the number of staff and improve technical expertise in relevant enforcement agencies. Train enforcement authorities on the importance of collecting and analysing tax information to detect foreign bribery.

BELGIUM: LITTLE OR NO ENFORCEMENT.

Share of World Exports: 2.1 per cent

Foreign Bribery Cases and Investigations

Since 2009, Belgium has opened one investigation (2009) and commenced and concluded a major case with substantial sanctions (2011). No cases were commenced or concluded in 2012 nor was there reliable information available about investigations commenced in Belgium in 2012.

A criminal case involving the three businessmen who own 44 per cent of the **Eurasian Natural Resources Company (ENRC)** was settled for €22 million (US\$28.3 million) in June 2011.⁵⁷ Belgian justice officials reported that all the charges which had been pending in the Belgian courts for fifteen years against the three men, Alexander Mashkevich, Patokh Chodiev and Alijan Ibragimov, were dropped on 30 June 2011.⁵⁸ The Belgian case involved allegations of money laundering and forgery related to the use of US\$55 million in commissions that **Tractebel**, the Belgian engineering group

⁵² Phase 3 Report on Austria 2012, page 34.

⁵³ Phase 3 Report on Austria 2012, page 5.

⁵⁴ BGBl I Nr. 61/2012, www.ris.bka.gv.at/Dokument.wxe?Abfrage=BgblAuth&Dokumentnummer=BGBLA_2012_I_61.

⁵⁵ This includes: ÖBB Holding AG (Austrian Rail Company), Asfinag (the Austrian Highway Authority), Austrian Post, Austrian Broadcasting Company, Vienna Traffic Lines and public energy providers.

⁵⁶ The 'Fibel zum Korruptionsstrafrechtsänderungsgesetz 2012' was published in early 2013.

⁵⁷ The Financial Times, 17 August 2011, "Case against three ENRC Oligarchs settled", www.ft.com/intl/cms/s/0/95f8ecc4-c8dd-11e0-a2c8-00144feabdc0.html#axzz2SKEZTJRn; De Standaard, 24 January 2013, "Een wet op maat van Patokh Chodiev", www.standaard.be/cnt/DMF20130123_00444287.

⁵⁸ Ibid.

and subsidiary of the French multi-national **GDF Suez**, allegedly paid the trio in the 1990s.⁵⁹ This settlement was made possible by an extension of the *afkoopwet* (redemption law) passed in Belgium in April 2011. The law allows settlements in criminal cases involving financial offences (see recent developments).⁶⁰ In 2012, a Belgian newspaper published a letter reportedly written in 2011 by a former member of the French government which alleged that persons acting on behalf of Chodiev may have succeeded in putting pressure on some Belgian politicians to accelerate the approval of this redemption law.⁶¹ This was the first case in which this new law was used.⁶² The UK Serious Fraud Office announced on 25 April 2013 that it has started a criminal investigation into ENRC.⁶³ “The focus of the investigation will be allegations of fraud, bribery and corruption relating to the activities of the company or its subsidiaries in Kazakhstan and Africa.”⁶⁴

Access to Information

No accurate statistics on foreign bribery enforcement are available in Belgium.⁶⁵ Data is not collected systematically following a national methodology. All pending investigations concerning corruption are classified with the same judicial code, meaning foreign bribery cases cannot be distinguished from any other type of corruption case. In addition, the system to register convictions has a significant backlog, meaning no up-to-date statistics are available.

Inadequacies in Legal Framework

There are no major inadequacies in the Belgian legal framework for foreign bribery offences.

Inadequacies in Enforcement System

Anti-corruption work is not a political priority.⁶⁶ The Central Office for the Repression of Corruption is seriously under-resourced, lacking personnel and the technical tools to investigate cases. A prime example is the Brussels Court of Appeal. The president of the Brussels court recently announced that he may be forced to temporarily close his court because he cannot function without more staff.⁶⁷ The prosecution service is also working with too few prosecutors. There remains insufficient implementation of anti-corruption programmes and due diligence checks in the Belgian private sector. Anti-corruption policies vary among companies in the private sector. For example, facilitation payments are strictly prohibited in some company codes but are treated more leniently by other companies. There is a lack of communication and collaboration between the private and public

⁵⁹ Ibid; De Tijd, 28 December 1999, “Gerecht speurt naar corruptie met Tractebel-miljarden”, www.tijd.be/algemeen/algemeen/Gerecht_speurt_naar_corruptie_met_Tractebel_miljarden.5234655-534.art; BBC news, “The steel Maharajah”, 24 July 2004 www.news.bbc.co.uk/2/hi/business/2146757.stm; The Financial Times, 17 August 2011, “Case against three ENRC Oligarchs settled”, www.ft.com/intl/cms/s/0/95f8ecc4-c8dd-11e0-a2c8-00144feabdc0.html#axzz2R55nqJiO.

⁶⁰ Pursuant to the Law of 14 April 2011 (Belgian Official Journal May 6, 2011). This Act provides for the amendment of Article 216bis of the Code of Criminal Procedure (the so-called “afkoopwet”). This is generally referred to as the extended discontinuance of criminal proceedings against payment of a sum of money.

⁶¹ Le Vif, 10 October 2012, “Affaire Chodiev: un faux, la lettre qui met en cause de Decker?”, www.levif.be/info/actualite/belgique/affaire-chodiev-un-faux-la-lettre-qui-met-en-cause-de-decker/article-4000190819483.htm; De Standaard, 24 January 2013, “Een wet op maat van Patokh Chodiev”.

⁶² Ibid.

⁶³ UK Serious Fraud Office, Announcement of 25 April 2013, www.sfo.gov.uk/our-work/our-cases/case-progress/enrc-plc.aspx.

⁶⁴ Ibid.

⁶⁵ Lack of enforcement data was identified as a problem by the recent Transparency International ‘National Integrity System Report in Belgium’, May 2012 www.issuu.com/transparencyinternational/docs/2012_nisbelgium_en?mode=window&printButtonEnabled=false&shareButtonEnabled=false&searchButtonEnabled=false&backgroundColor=%23222222.

⁶⁶ The Coalition agreement of 1 December 2011 of the Government Di Rupo did not mention corruption as a security priority, see www.premier.fgov.be/nl/regeerakkoord. The National security plan of 2012-2015 also did not include corruption as a priority as it has in the past. See Nationaal Veiligheidsplan 2012-2015, www.polfed-fedpol.be/pub/pdf/NVP2012-2015.pdf.

⁶⁷ De Redactie, 22 November 2012, “Tijdelijke sluiting dreigt voor hof van beroep”, www.m.deredactie.be/cm/vrtnieuws.mobile/mregio/mbrussel/1.1487735.

sector on anti-corruption work and a lack of inter-institutional training.⁶⁸ Despite small and medium enterprises (SMEs) making up 91 per cent of the Belgian market there is no anti-corruption policy work tailored to their peculiar needs. This is a concern for foreign bribery enforcement as the Belgian government promotes investment of SMEs abroad.⁶⁹ There is insufficient public funding for academic research collecting information and analysing the risks that Belgium companies face when investing abroad and the ways to reduce them. There is no independent anti-corruption commission to raise awareness about corruption, coordinate preventive programmes, publicise reporting measures and initiate investigations which would also be required by Article 6 of the UN Convention against Corruption.⁷⁰

Recent Developments

In April 2011, the Belgian legislature extended the *afkoopwet* (redemption law) which allows for settlements to be concluded in criminal cases.⁷¹ Since April 2011, financial crimes and foreign bribery offences are covered by the law. The extension also means that settlements can be concluded between the defendant or suspect and the Belgian authorities in cases that are before the judge of investigation and during the criminal court proceedings. Previously the law was applicable only during the public prosecutor's investigations. The settlement could be either a financial payment or the handing over of goods.⁷² (See Foreign Bribery Cases and Investigations above for an example of a settlement concluded under the law).

Recommendations for Priority Actions

Dedicate more resources to enforcement authorities and the courts. Introduce systematic data collection which distinguishes foreign bribery statistics from other offences. Draw up anti-corruption policies tailored to SMEs that invest in foreign countries. Improve the implementation and coherence of anti-corruption programmes and guidelines in the private sector where they exist, where they do not, support their adoption. Public authorities tasked with stimulating foreign investment, such as Flanders Investment and Trade (Flemish Agency for International Entrepreneurship) should run trainings between the private and public sector on foreign bribery. Set up a Belgian anti-corruption commission. Increase knowledge about the risks of corruption for Belgian companies investing in foreign countries by funding relevant academic research.

⁶⁸ Vande Walle G (2012), "Anti-corruption policies in private companies: a new business trend or a real concern and for whom?", M. Cools, B. De Ruyver, M. Easton, L. Pauwels, P. Ponsaers, Vande Walle G., T. Vander Beken, F. Vander Laenen, A. Verhage, G. Vermeulen, G. Vynckier (eds.), Maklu, Governance of Security Research Papers Series, Volume 6, Antwerpen-Apeldoorn, pages 141-154.

⁶⁹ "Corruption prevention to foster small and medium-sized enterprise development", VOLUME II, UNIDO and UNODC, 1 April 2013, www.unodc.org/documents/corruption/Publications/2012/Corruption_prevention_to_foster_small_and_medium_size_enterprise_development_Vol_2.pdf.

⁷⁰ United Nations Convention against Corruption, www.unodc.org/documents/treaties/UNCAC/Publications/Convention/08-50026_E.pdf.

⁷¹ The law has been somewhat controversial and has received significant media attention in Belgium. See HLN.be, 14 November 2012, "Afkoopwet bracht al tientallen miljoenen op", www.hln.be/hln/nl/957/Binnenland/article/detail/1533760/2012/11/14/Afkoopwet-bracht-al-tientallen-miljoenen-op.dhtml; HLN.be, 21 August 2013, 'Straf afkopen schendt gelijkheidsbeginsel', www.hln.be/hln/nl/957/Binnenland/article/detail/1488770/2012/08/21/Straf-afkopen-schendt-gelijkheidsbeginsel.dhtml and Knack.be, 19 October 2012, "Na de Afkoopwet, de Uitverkoopwet?", www.knack.be/opinie/columns/jan-nolf/na-de-afkoopwet-de-uitverkoopwet/opinie-4000196096748.htm.

⁷² Gemeenschappelijke Omzendbrief nr./2012 van de Minister van Justitie, het College van Procureurs-Generaal bij de Hoven van Beroep betreffende Toepassing van artikel 216 bis Sv., in het bijzonder m.b.t. het verruimd verval van de strafvordering tegen betaling van een geldsom (VVSBG) OEP, 1 April 2012, www.static.tijd.be/pdf/afkopen.pdf; (in English) Common Circular of the Minister of Justice nr./2012, the Board of Procurators-General of the Courts of Appeal concerning Application of Article 216 bis Sv., Especially regarding the extended discontinuance against payment of a sum of money (VVSBG) OEP. See also, Van den Wyngaert C. (2011), "Strafrecht en strafprocesrecht in hoofdlijnen, deel 2, Antwerpen, MAKLU" pages 748-749.

Foreign Bribery Cases and Investigations

There have been no cases in Brazil, though there are four investigations underway, all of them were initiated in 2012. One of the investigations involves **Univen Petroquímica Ltda.**, a Brazilian oil company, suspected of possible bribery of officials of the Bolivian state-owned **Yacimientos Petrolíferos Fiscales Bolivianos (YPFB)**. This is allegedly related to an agreement between YPF and another Bolivian company, IberoAmérica Trading SRL, to trade Univen diesel and oil at prices far more favourable to the companies, which could cost the Bolivian company lost profits.⁷³ The Bolivian Public Prosecution's Office reportedly originally started an investigation, but they later shelved it due to lack of damage to the country. Thereafter, some documents were sent to the Brazilian Federal Public Prosecution's Office, which initiated an investigation in Brazil in 2012.⁷⁴ The Brazilian Federal Public Prosecution's Office also reported that an investigation commenced in 2012 into possible bribery of Italian health authorities by **Tri Technologies** and **Labcor Laboratórios Ltda.** for the sale of defective heart valves in 2002.⁷⁵ Another investigation, also reported by the Federal Public Prosecution's Office, is apparently based on an Argentine investigation which has already been terminated⁷⁶ and concerns the largest construction company in Latin America, **Norberto Odebrecht S.A.** It allegedly subcontracted **Skanska S.A.**, **Contrera Hermanos** and **Techint S.A.** for the construction of a gas pipeline in Argentina.⁷⁷ The subject of the fourth investigation, also reported by the Federal Public Prosecution's Office, is unknown.

Access to Information

Official information about corruption cases can be requested based on the Information Access Law #12.527/2011. The General Comptroller's Office has a comprehensive database containing the information on companies penalised for corruption and also on companies ineligible for other reasons. This information is public and can be accessed through the transparency page of the comptroller's office's website.⁷⁸ Most investigations or criminal processes are handled with judicial secrecy. Therefore, most information is obtained through the media.

Inadequacies in Legal Framework

In ratifying the Convention, Brazil included a full chapter on crimes practiced by individuals involving foreign public officials in its Criminal Code.⁷⁹ The Congress approved a new anti-bribery law (see below) in July 2013 that unfortunately contains some ill-formulated provisions.

Inadequacies in Enforcement System

Though there are adequate rules on the interruption of statutes of limitation, cases and investigations in particular can go on for years before conclusion, which often prevents the punishment of those responsible due to expiry of the statutes of limitation. Brazilian authorities lack

⁷³ Information provided by the Brazilian Federal Public Prosecution's Office.

⁷⁴ Ibid.

⁷⁵ Ibid.

⁷⁶ An Argentine investigation (case n° 18.579/2006) into these allegations was terminated by the National Judicial Branch - Federal Criminal and Correctional Court No. 7. (Certificate provided by the court on 11 July 2013).

⁷⁷ Brazilian Federal Public Prosecution's Office's response (dated 15 March 2013) to expert respondent by filling out a questionnaire on recent investigations; Clarin.com, 27 April 2011, "Indagaron al secretario del Energia por sobrepuestos en el caso Skanska" www.clarin.com/politica/Indagaron-secretario-Energia-sobrepuestos-Skanska_0_470353027.html; La Republica, 21 May 2007, "El fiscal investiga a 21 funcionarios nacionales vinculados al caso Skanska", www.diariolarepublica.com.ar/notix/noticia.php?i=124981&f=-; La Nacion, 5 May 2008, "Se intensifica la investigación sobre el rol de Enargas en la causa Skanska", <http://www.lanacion.com.ar/1009910-se-intensifica-la-investigacion-sobre-el-rol-de-enargas-en-la-causa-skanska>.

⁷⁸ See www.portaltransparencia.gov.br

⁷⁹ Namely, Chapter II-A of Law 10.467, of June 6, 2002, available at www.planalto.gov.br/ccivil_03/LEIS/2002/L10467.htm#art2

the organisation and equipment employed elsewhere, such as by the US Department of Justice or Securities and Exchange Commission, and also suffer from a lack of communication between state and federal agencies. There is no obligation in practice for individuals to report situations of non-compliance. Insufficient resources and inadequate complaints mechanisms and whistleblower protection also hamper enforcement efforts. Staff of the public prosecutor's office often still lack understanding of the foreign bribery offence.

Recent Developments

Bill No. 6826/10, which was being sanctioned by the president end of July 2013 (Law No. 12846/13) and will be in effect from January 2014, penalises companies through civil and administrative means for acts of corruption. Still pending is the Bill No. 4.895/12, which establishes criminal liability for companies for acts of corruption but may have been superseded by the recent enactment of Law 12846/13. Law No. 12846/13 provides for fines of 0.1 per cent to 20 per cent of the company's gross revenues in the preceding year. Other noteworthy sanctions provided for the new law are debarment from public contracts and the prohibition of receiving incentives, subsidies, grants, donations or loans from public bodies or entities and public financial institutions for one to five years. Another major concept in the bill is the definition of a "public official" and, consequently, of a "foreign public official", which is consistent with the Convention. Brazilian law already contains a broad definition of public official and the new law reinforces this by widely defining a public official as any individual who holds a position in any public agency or entity and also in companies owned or controlled directly or indirectly by the government. The definition also includes any international public organisation, diplomatic representations, agencies and government entities. The new law also encourages effective compliance programmes, which still are not common in Brazil.

THE "MENSALAO CASE"

The case of Action No. 470 (the "Mensalão Case") was a milestone in Brazil for the trial and punishment of government officials and businessmen responsible for crimes of corruption. Mensalão was a scheme that involved the embezzlement of public funds to buy support amongst coalition parties for the administration of former president Luiz Inacio "Lula" da Silva and his Workers' Party (PT).⁸⁰ The 37 defendants included officials and politicians from the PT, as well as executives from private businesses, who were charged with embezzlement, corruption, conspiracy, money laundering and misuse of public funds. Prosecutors accused the defendants of having formed a "criminal organisation" to buy political favours. Twenty-five of them were convicted, including Lula's chief of staff who was sentenced to 10 years and 10 months' imprisonment⁸¹ but procedures are still underway. The precedents established by the Supreme Court in this case will have an impact for many years on investigations and prosecutions of corruption arising in the country. According to reports in the Portuguese press, **Portugal Telecom** provided the Workers Party with €2.6 million (US\$3.4 million) in campaign finance.⁸²

Recommendations for Priority Actions

Adopt implementation of the regulation of Law No. 12846/13 as a top priority. Improve the organisation and prosecution of foreign bribery, provide more investment in equipment for the Federal Police and Public Attorney's Office and establish incentives for reporting violations.

⁸⁰ BBC, 21 November 2012, "Q&A: Brazil's 'big monthly' corruption trial", www.bbc.co.uk/news/world-latin-america-19081519.

⁸¹ Ibid.

⁸² Jornal das Noticias, 11 December 2012, "Executor do 'mensalão' diz que Portugal Telecom financiou partido de Lula", www.jn.pt/PaginaInicial/Mundo/Brasil/Interior.aspx?content_id=2940097.

Foreign Bribery Cases and Investigations

One case was commenced in Bulgaria in February 2009 with an indictment by the Sofia City Prosecution Office, concerning alleged bribery committed in May 1996 by a Bulgarian company in connection with the UN Oil-for-Food Programme.⁸³ This case was terminated in 2012 with a decree from the prosecution office due to a lack of response from the Independent Inquiry Committee into the UN Oil for Food Programme to a request for further information.

Access to Information

In accordance with the Judiciary Law, the Prosecutor's Office of Bulgaria provides general information on cases, including information for the first half of every calendar year, available on the website of the prosecutor's office,⁸⁴ but does not disaggregate information by national and foreign officials. Information on case details not available on the website has been provided to Transparency International Bulgaria on request. Numbers but not details on investigations are also provided by the prosecutor's office.

Inadequacies in Legal Framework

While there is no definition for "foreign bribery" in the Bulgarian Penal Code, "foreign public official" is well defined (art.93, para 15 from the Penal Code). The penal code does not, however, provide for sanctions against companies for bribery committed by their subsidiaries and/or joint ventures with addresses and headquarters outside Bulgaria. There is also a failure to hold companies responsible for subsidiaries and joint ventures.

Inadequacies in Enforcement System

There are inadequacies throughout the Bulgarian criminal justice enforcement system that relate to foreign bribery offences. Low levels of public trust towards justice institutions result in the unwillingness of witnesses and victims of bribery to report it to the relevant authorities. This is partially due to inadequate whistleblower protection. Also, the laws and provisions on bribery, and especially those related to the liability of legal persons, are not clear even to prosecutors and investigators. Mutual legal assistance for this type of offence is still relatively low. There is also a lack of training of investigators and prosecutors to investigate foreign bribery as well as a lack of public awareness-raising initiatives.

Recent Developments

A new law on forfeiture of property acquired from criminal activity was adopted in November 2012 and a corresponding commission was elected in March 2013. A draft law to amend the legislation establishing liability of legal persons has been prepared in response to the recommendations from the OECD Working Group on Bribery Phase 3 and the UNCAC review reports.⁸⁵ It provides for a five-fold increase in pecuniary sanctions for legal persons and new provisions creating liability of legal persons for crimes committed abroad by Bulgarian legal persons or in Bulgaria by foreign legal persons. This draft law also envisages the forfeiture of benefits acquired by legal persons through

⁸³ Consultation between TI Bulgaria and the Supreme Prosecution Office of Cassation.

⁸⁴ Website of the Prosecutor's Office, www.prb.bg/main/bg/Information/.

⁸⁵ The OECD Working Group on Bribery, Phase 3 Report on Implementation of the Anti-Bribery Convention in Bulgaria, May 2013, www.oecd.org/daf/anti-bribery/BulgariaPhase3WrittenFollowUpEN.pdf; UNCAC Implementation Review Group, Bulgaria Executive Summary of Review of Implementation of the UNCAC, June 2012 www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries/V1187232eCorr1Corr2.pdf.

criminal activity. Currently, a Ministry of Justice working group is working on a new penal code, considering the international conventions to which Bulgaria is Party. It is still not clear to what extent the bribery section will be amended, but it is expected that trading in influence offences will be included. Also, as recommended in the Phase 3 report, Bulgaria has implemented its commitment to prohibit the tax deductibility of bribes.

Recommendations for Priority Actions

Comprehensively regulate the protection of whistleblowers reporting corruption-related acts, as currently it is only addressed in the 2008 Law on the Prevention and Disclosure of Conflicts of Interest. Establish an adequate reporting channel. Enforce the law on the liability of legal persons regarding foreign bribery. Increase training for prosecutors and investigators on foreign bribery legislation, carry out investigations and strengthen international cooperation.

CANADA: LIMITED ENFORCEMENT.

Share of World Exports: 2.58 per cent

Foreign Bribery Cases and Investigations

Three major cases were initiated from 2009 to 2012, one each in 2010, 2011 and 2012, while one major case was concluded in 2011, and the trial of a third case was completed in November 2012 with a verdict expected in the spring of 2013. The first case commenced in 2010 involved the Anti-Corruption Unit of the Royal Canadian Mounted Police's (RCMP) filing of charges in May of that year against a Canadian citizen in an Ontario court alleging one count of violating the Corruption of Foreign Public Officials Act (CFPOA). The charges reportedly related to alleged corrupt payments by a former official of **Cryptometrics Canada Inc.** to a cabinet member of the Indian government, as part of an unsuccessful bid to secure an airport security system contract.⁸⁶ The trial was completed in late 2012 and a judgement is expected in the spring of 2013. One case was commenced and concluded in 2011, namely against **Niko Resources Ltd.**, a Calgary-based oil and natural gas exploration company, which pleaded guilty to one count of bribery under the CFPOA for bribing an energy minister in Bangladesh in 2005.⁸⁷ Charges were laid in the spring of 2012 against two employees of the Montreal-based engineering company **SNC-Lavalin Group Inc.** in connection with the company's work on a World Bank-funded bridge project in Bangladesh.⁸⁸ A former executive of the company was also reportedly arrested in Switzerland in November 2012 in connection with suspected payments to members of the Gaddafi family in Libya (see section on Switzerland).⁸⁹ According to reports in early 2013, investigations into SNC-Lavalin taking place in Canada, Italy and Switzerland were reportedly widened to include an Algerian agent who had allegedly transferred C\$200 million (US\$198 million) in suspicious payments to help various companies, including SNC-Lavalin, to obtain contracts from the Algerian-owned state oil company **Sonatrach**.⁹⁰ Furthermore, the World Bank reportedly added Cambodia to the list of countries in its investigation where it suspects the company has committed foreign bribery. Though the World Bank did not specify the project, the company reportedly won a \$5 million contract to design and construct

⁸⁶ CA Magazine, November 2010, "A Steep Price", www.camagazine.com/archives/print-edition/2010/nov/regulars/camagazine43455.aspx; The Star, 30 June 2010, "Ottawa man charged with bribing foreign official", www.thestar.com/news/canada/article/830459--ottawa-man-charged-with-bribing-foreign-official; RCMP Press Release, www.rcmp-grc.gc.ca/ottawa/documents/IACU-eng.pdf.

⁸⁷ Reuters, 23 July 2011, "Canada's Anti-Bribery Cops Reel One In" www.blogs.reuters.com/financial-regulatory-forum/2011/07/22/canada%E2%80%99s-anti-bribery-cops-reel-one-in/.

⁸⁸ The Star, 25 June 2012, "Preliminary hearing set for two ex-SNC Lavalin execs charged with corruption" www.thestar.com/business/2012/06/25/preliminary_hearing_set_for_two_exsnc_lavalin_execs_charged_with_corruption.html.

⁸⁹ CBC News, 25 November 2012, "Swiss probe \$139M SNC-Lavalin laundering case" www.cbc.ca/news/world/story/2012/11/25/snc-lavalin-ben-aissa-charges.html.

⁹⁰ The Globe and Mail, 21 February 2013, "SNC bribery probe widens to Algeria" www.theglobeandmail.com/report-on-business/snc-bribery-probe-widens-to-algeria/article8907906/; Malta Business Weekly, 25 April 2013, "World Bank locks out MIA shareholder SNC-Lavalin over Bangladesh bribery scandal" www.independent.com.mt/articles/2013-04-25/news/world-bank-locks-out-mia-shareholder-snc-lavalin-over-bangladesh-bribery-scandal-1460371458/.

an energy management system and control centre in Phnom Penh.⁹¹ SNC-Lavalin Inc., a key subsidiary of the public parent company SNC-Lavalin Group Inc., has been added to the World Bank's debarment list until April 2023.⁹² In January 2013, charges were brought against **Griffiths Energy International Inc.**, who pleaded guilty to having entered into an agreement to pay US\$2 million to a company owned by the wife of the ambassador of Chad to Canada, towards obtaining an oil and gas concession in Chad (see case study in the following chapter).⁹³

Regarding investigations, Canadian authorities do not publish the investigations commenced in any given year. The anti-corruption unit of the RCMP instead tends to sporadically release information, through which it is known that there were 23 investigations underway as of January 2011 and 35 as of March 2012. This means that at least 12 investigations were commenced between January 2011 and March 2012. This means that at least 12 investigations were commenced between January 2011 and March 2012.⁹⁴ Due to media reports and/or press releases by the companies themselves, it is known that one investigation was commenced in 2012 into alleged improper business practices to secure a mining concession in Ghana by the **Cardero Resource Corp.** (which was closed in January 2013)⁹⁵ and another in 2010 into allegations of bribes offered or paid by **Blackfire Exploration Ltd.** to a local mayor in the state of Chiapas, Mexico where the company has a mining operation.⁹⁶ Another investigation, reportedly initiated in 2011, relates to the abovementioned SNC-Lavalin Group Inc. and concerns allegations of bribery in connection with projects in Libya and Tunisia during the time of the Gaddafi regime.⁹⁷ **Nordion Inc.**, an Ottawa-based medical isotopes provider, issued a press release in August 2012 to announce an internal investigation "of a foreign supplier and related parties focusing on compliance with the Canadian Corruption of Foreign Public Officials Act (CFPOA) and the U.S. Foreign Corrupt Practices Act (FCPA)," relating to improper payments and other financial irregularities.⁹⁸

Access to Information

The RCMP periodically reports the number of active investigations at a given time. The number is not published regularly, but has coincided with Canada's reporting to the OECD pursuant to the Convention. The RCMP has historically declined to provide information about investigations out of concern regarding the risk of litigation claims in the event of adverse publicity to the targets of investigations. Information about specific cases is generally not available unless and until it is filed or presented in court. Canadian law enforcement agencies do not publish or disclose information about investigations independently of matters presented in court. On occasion, the RCMP will confirm that an investigation is underway. Court statistics are not available in any systemic form. Court records are public, but there is no central electronic registry in most provinces.

⁹¹ The Record, 18 April 2013, "Cambodia added to list of countries allegedly affected by SNC-Lavalin" www.therecord.com/news/business/article/920839--cambodia-added-to-list-of-countries-allegedly-affected-by-snc-lavalin.

⁹² World Bank, Listing of Ineligible Firms & Individuals, www.web.worldbank.org/external/default/main?pagePK=64148989&piPK=64148984&theSitePK=84266&theSitePK=84266&contentMDK=64069844&querycontentMDK=64069700&sup_name=&sup_country=CA.

⁹³ The Globe and Mail, 22 January 2013, "Griffiths to pay millions in African bribery case" www.theglobeandmail.com/report-on-business/industry-news/energy-and-resources/griffiths-to-pay-millions-in-african-bribery-case/article7622364/.

⁹⁴ 10 investigations were recorded for 2011 and 2 for 2012.

⁹⁵ Cardero Resource Corp, 31 January 2013, "Cardero Reports Results of Ghana Investigation" www.cardero.com/s/news_releases.asp?ReportID=568673

⁹⁶ CBC News, 29 August 2011, "Mounties probe Calgary-based mining firm" www.cbc.ca/news/canada/calgary/story/2011/08/29/calgary-blackfire-rcmp-probe.html.

⁹⁷ The Globe and Mail, 14 March 2013, "Police search home of former SNC executive" www.theglobeandmail.com/news/national/police-search-home-of-former-snc-executive/article9758262/; National Post, 25 January 2013, "Millions in SNC-Lavalin bribes bought Gaddafi's playboy son luxury yachts, unsealed RCMP documents allege" www.news.nationalpost.com/2013/01/25/millions-in-snc-lavalin-bribes-bought-gaddafi-son-luxury-yachts-unsealed-rcmp-documents-allege/.

⁹⁸ Nordion, 8 August 2012, "Nordion Statement on Voluntary Disclosure", <http://news.nordion.com/phoenix.zhtml?c=68761&p=irol-newsarticle&ID=1723999>.

Inadequacies in Legal Framework

As described below, major changes to the CFPOA were introduced in February 2013 that addressed a number of longstanding concerns with the legislation. The inadequacies that remain are the absence of a civil enforcement option and the cumbersome nature of criminal proceedings in white-collar cases in general in the Canadian justice system.

Inadequacies in Enforcement System

There has been a notable increase in enforcement activity in recent years. Substantial resources were devoted to a series of investigations into the conduct of SNC-Lavalin that was under way in 2012, including RCMP personnel from outside of the anti-corruption unit. The CFPOA currently requires full-blown criminal investigation and prosecution, which entails substantial costs to both the government and targets of investigation. This may not be required or appropriate in certain cases and an alternative non-criminal process would be beneficial.

Recent Developments

In the winter of 2011-2012, the Department of Foreign Affairs and International Trade (DFAIT) undertook a broad consultation regarding the CFPOA. The consultation involved corporate, legal and NGO representatives from various sectors and it resulted in the introduction of substantial amendments to the CFPOA in Parliament on 5 February 2013. The amendments cover the introduction of nationality jurisdiction; the elimination of facilitation payments; the establishment of a books and records offence; an increase in the maximum individual sentence from five to fourteen years' imprisonment; the clarification of the definition of "business" for the purposes of the bribery offence by eliminating the requirement that the business be "for profit"; and the conferring of exclusive jurisdiction on the RCMP for investigation and charges under the CFPOA. These amendments are very substantial and will significantly enhance enforcement of the CFPOA. Several of these matters have been priorities for Transparency International Canada in its representations to the Canadian government (notably nationality jurisdiction, books and records, and facilitation payments).

Recommendations for Priority Actions

Further amend the CFPOA to provide a non-criminal enforcement option and thereby greater flexibility and enhanced enforcement.

CHILE: LITTLE OR NO ENFORCEMENT.

Share of World Exports: 0.43 per cent

Foreign Bribery Cases and Investigations

There were no cases commenced or concluded from 2009 to 2012. Three investigations were commenced in 2010. In one of them a formal accusation was made in 2012 which brought charges against a Chilean entrepreneur in the arms trade and two retired Chilean army officials for bribery, money laundering, bribery of a foreign public official, and violation of military secrecy relating to alleged payments amounting to 29 million Chilean peso (US\$60,000) to a South Korean citizen working at the South Korean Embassy in Santiago from 2005 to 2009.⁹⁹ According to the case's prosecutors, the South Korean official received the payments from one of the former Chilean army

⁹⁹ The Clinic, 17 October 2012, "Dos ex oficiales del Ejército formalizados por soborno y cohecho en venta de pertrechos militares a Famae", www.theclinic.cl/2012/10/17/dos-ex-oficiales-del-ejercito-formalizados-por-soborno-y-cohecho-en-venta-de-pertrechos-militares-a-famae/; La Tercera, 13 August 2011, "CDE se querrela contra oficiales (R) por el caso fragatas", <http://diario.latercera.com/2011/08/13/01/contenido/pais/31-79978-9-cde-se-querrela-contra-oficiales-r-por-el-caso-fragatas.shtml>.

officials through a company named **Serlog**, owned by the now deceased entrepreneur.¹⁰⁰ According to the Public Prosecutor's Office, a former army official and an official working for the Project Development Direction of the Army illegally exchanged information on public contracting processes for demining, which allowed Serlog to win the contracts.¹⁰¹

Access to Information

The public prosecutor's office provides information on the number of cases and investigations upon request, according to the Transparency Law (Law 20,285). On the other hand, legal restrictions in certain claims, such as, for example, those that involve active members of the Chilean army, police and others who are governed by the Military Code, do not allow for details on cases and investigations to be made public nor provided upon request. Additionally, information on cases and investigations carried out under the old criminal justice system is kept classified. However, under the new criminal justice system (fully in force since 2004), information relating to cases and investigations carried out under such system is, as a general rule, public, with some specific exceptions.

Inadequacies in Legal Framework

Article 90A of the Administrative Statute (Law No. 18,834) and article 88A of Administrative Statute for Municipal Officials (Law No. 18,883) provide that public employees who report criminal offences, irregularities and breaches of the principle of administrative probity cannot be sanctioned, dismissed or relocated after they have reported misconduct, but this protection is granted only for a limited period of time and does not cover persons working in public office that do not have full status of public official. It is also not applicable to the reporting of other forms of corruption that fall outside the scope of public administration. Although the law on criminal liability of legal persons (Law No. 20,393) provides an incentive for companies to adopt reporting procedures, there is no specific protection for whistleblowers in the private sector. Law No. 19,913 created the *Unidad de Análisis Financiero* (UAF), or Financial Analysis Unit, whose main purpose is to prevent and impede the utilisation of the Chilean financial system for the perpetration of criminal offenses relating to money laundering. Despite the relation that may exist in some cases between money laundering and bribery, bribery falls out of the particular scope of Law No. 19,913 and the UAF.

Inadequacies in Enforcement System

There is a specialised anti-corruption unit within the public prosecutor's office which has separate collaboration agreements with other law enforcement entities such as the General Comptroller of the Republic, the Internal Revenue Service and the State Defence Council, among others, but organisation of enforcement of foreign bribery and other corruption offences is decentralised. There is also a need for further public awareness-raising. Training exists for judges, prosecutors and defence lawyers on corruption offences, but it could be improved regarding investigation methods and international assistance protocols for foreign bribery cases.

Recent Developments

The UAF recently issued Circular Letter 49, which standardises all administrative regulations for the prevention of money laundering.¹⁰² This includes obligations for financial entities such as reporting suspicious operations, keeping records of their clients, adopting due diligence procedures and reporting on operations involving politically exposed persons (PEPs), among others.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

¹⁰² The Circular was issued December 2012 and became effective on 1 January 2013, www.uaf.cl/legislacion/norm_sector.aspx

Recommendations for Priority Actions

Improve the provisions set forth in Laws No. 18,834 and 18,883 that protect public employees who report criminal offences, irregularities and breaches of the principle of probity, in order to strengthen the protection of whistleblowers in the public sector. Extend whistleblower protection to the private sector. Take steps to ensure better inter-institutional coordination and better training for judges, prosecutors and investigators. Extend the scope of Law No. 19,913 and the scope of duties of the UAF to include bribery, or implement a new system that replicates the regulation already existing for money laundering, especially in relation to the establishment of adequate reporting channels.

COLOMBIA: N/A.¹⁰³

Share of World Exports: 0.4 per cent

Foreign Bribery Cases and Investigations

No cases or investigations recently commenced, underway or concluded.

Access to Information

The absence of clear, complete and timely public information and statistics relating to corruption is a major challenge in Colombia. Official statistics and reports on cases of corruption are very rarely provided and, as such, the media serves as the primary source for information on such cases. The Prosecutor's Office does not have an open system of public information or statistics on investigations. They publish quarterly statistical reports, but do not provide any further detail or a breakdown of the various crimes within the category of corruption. For these reasons it is unknown whether Colombian authorities have ever enforced against any foreign bribery offence since the Convention entered into force in 2013.

Inadequacies in Legal Framework

The definitions of "foreign bribery" and "foreign public official" are compliant with OECD standards, but Colombia does not have a technical legislative definition of "foreign country"; it is simply defined as anywhere outside the Colombian territory. Without a specific definition, the foreign bribery offence may not cover public officials from special territories, such as Palestine, the Vatican and Western Sahara. In relation to sanctions, while the available prison sentences are significant, it is questionable whether the financial sanctions are sufficiently effective and dissuasive because they do not provide for graduation of economic penalties according to the economic power of transnational companies and officers of entities having responsibility in the case. The current legal regulation regarding the liability of legal persons is insufficient. First, the responsibility of legal persons is not clear concerning acts of corruption committed by lower level employees. Second, the Colombian legislation does not provide exact procedural details for sanctioning legal persons, for safeguards or for connecting the sanctioning to criminal procedures.

Inadequacies in Enforcement System

The budget for investigating foreign bribery is only allocated upon orders for an investigation to be initiated. There are two ways to initiate a penal process: by decision of the prosecutor's office or by filing an accusation against an individual or a legal entity. If the prosecutor's office needs resources to initiate an investigation, for instance in order to gather evidence, and there are sufficient motives to start a criminal process, the budget should be delivered. This is troubling, as it limits the designation of resources to the will of directive staff of the National Police and the prosecutor's office. Though there are mechanisms for making complaints, the legal framework provides only

¹⁰³ As the Convention entered into force in Colombia in January 2013, after the time period under consideration in this report, the enforcement level of the country was not evaluated in Table I.

minimal protection of whistleblowers of foreign bribery – specifically, only that retaliation against them is prohibited by Article 43 of the Anti-Corruption Statute.

Recent Developments

In 2011, the Colombian government adopted Law 1474, or the “Anti-Corruption Statute”, with a provision (Article 30) that prohibits direct or indirect bribery of, or offer of a bribe to foreign public officials. National legal entities collected information on the implementation of the criminal provisions of the UN Convention against Corruption in Colombia, among one of the most important is the provision on the offence of transnational bribery. Inter-institutional working groups were set up that produced valuable diagnostics and proposals for improvement that are important for the correct implementation of the OECD Convention in the country.

Recommendations for Priority Actions

Responsible units of the Colombian authorities should, through the prosecutor general, collect, publish and analyse statistics on official investigations relating to bribery of foreign officials. The analysis should aim to help design and implement the most efficient and effective enforcement methods. Implement a campaign to raise awareness of the foreign bribery offence among public officials and in international businesses and train the prosecutor’s office’s officials on this topic. Push forward with plans to have the Anti-Corruption and Integrity Observatory fully operational as soon as possible so that the public can access the information it plans to provide, including statistics and information on corruption cases.¹⁰⁴ Strengthen norms and prioritise activities against foreign bribery in international business transactions in order to encourage Colombian investment abroad as well as foreign investment in Colombia. Improve and implement stronger whistleblower protection and better reporting channels for citizens.

CZECH REPUBLIC: LITTLE OR NO ENFORCEMENT.

Share of World Exports: 0.80 per cent

Foreign Bribery Cases and Investigations

There have been no recent investigations or cases commenced or concluded in the Czech Republic in 2012. The OECD Working Group on Bribery’s Phase 3 report on the Czech Republic reported on only one active foreign bribery investigation.¹⁰⁵ According to the report the investigation was opened in 2011 by the Czech Unit for Combating Corruption and Financial Crime (UOFKF) and relates to allegations that in 2003 a Czech arms company bribed officials in a non-convention state.¹⁰⁶ In 2012, the UOFKF solicited cooperation from a non-convention county through the International Criminal Police Organization (INTERPOL), but the Czech authorities indicated that there were insufficient grounds for prosecution.¹⁰⁷ In 2012, the Indian media reported that the Indian army’s purchase of trucks produced by the Czech arms company **Tatra** had been under investigation since 2011 in the Czech Republic.¹⁰⁸ Reportedly, the investigation was initiated after a criminal complaint was filed in the Czech Republic in 2011 against **Ravinder Rishi** (Chairman of the UK-based **Vectra group** which sells Tatra vehicles) in connection with the Indian deal.¹⁰⁹ The Indian Central Bureau of

¹⁰⁴ Information about anti-corruption legislation in Colombia is already available via the website of the Anti-corruption and Integrity Observatory (under construction), www.anticorruption.gov.co/Informacion/, last visited 9 July 2013.

¹⁰⁵ The OECD Working Group on Bribery, Phase 3 Report on Implementing the OECD Anti-Bribery Convention in the Czech Republic, March 2013, (Phase 3 Report on Czech Republic 2013), page 9, ‘Case#1 Arms Company Case’, www.oecd.org/daf/anti-bribery/CzechRepublicphase3reportEN.pdf.

¹⁰⁶ Ibid.

¹⁰⁷ Ibid.

¹⁰⁸ Zee News, 31 March 2012, “Tatra Scam: Rishi under probe in Czech Republic too”,

www.zeenews.india.com/news/nation/tatra-scam-rishi-under-probe-in-czech-republic-too_767339.html; DNA India, 31 March 2012, “DNA investigations, Vectra boss at the centre of Tatra trucks scam”,

www.dnaindia.com/india/1669582/report-dna-investigations-vectra-boss-at-centre-of-tatra-trucks-scam.

¹⁰⁹ Ibid.

Investigation opened an investigation in 2012 after an Indian general reported that he was offered bribes in exchange for his support of the purchase.¹¹⁰

Access to Information

Statistics on foreign bribery enforcement are available on request.

Inadequacies in Legal Framework

Legal protections for whistleblowers and witnesses are weak in both the public and private sectors. There is no comprehensive stand-alone law for whistleblowers and no additional grounds to defend against unfair dismissal aside from those already provided in Czech labour law.¹¹¹

Inadequacies in Enforcement System

There is a lack of cooperation and coordination with foreign bodies when it comes to investigating foreign bribery cases. The Phase 3 report commented that awareness of foreign bribery risks in the Czech Republic is “regrettably low,” particularly among auditors, accountants and the private sector.¹¹² There is a “lack of adequate compliance programs to address the risks of foreign bribery among Czech companies.”¹¹³ The report expressed serious concerns about prosecutorial independence in the Czech Republic, specifically that “possible political pressures over prosecutorial decisions, may indirectly influence investigations and prosecutions for foreign bribery.”¹¹⁴

Recent Developments

A comprehensive corporate liability regime was enacted into Czech law in 2011 and entered into force in January 2012. The process of “agreements on guilt and punishment” (establishing rules on plea bargaining), introduced by Act No. 193/2012 Coll., became effective on 1 September 2012 and is applicable to both natural and legal persons.¹¹⁵ The Phase 3 report noted the importance that “significant elements of the agreements [made under these new plea bargaining laws] should be publicised, where appropriate and consistent with Czech law [...] in order to increase accountability, raise awareness and enhance public confidence.”¹¹⁶ Significant elements include “the reasons why the agreement was appropriate, the legal or natural persons convicted, the sanctions agreed, and the terms of the agreement.”¹¹⁷ Earlier this year, the Czech government prepared, but later abandoned, a draft amendment to the Anti-Discrimination Act to extend whistleblower protection in Czech law. Subsequently, a former whistleblower member of the Senate introduced a draft bill of a standalone whistleblower protection law, but it was not adopted either.

Recommendations for Priority Actions

Improve practical cooperation and coordination with foreign bodies. Improve prosecutorial independence. Raise awareness of foreign bribery risks across the board. Pass a stand-alone and

¹¹⁰ Indian Express, 23 October 2012, “CBI makes Antony statement in the house as part of evidence in Tatra bribe offer case”, www.indianexpress.com/news/cbi-makes-antony-statement-in-house-part-of-evidence-in-tatra-bribe-offer-case/1020611/; DNA India, 25 March 2013, “Tatra case: court rejects Vectra Group chief Ravi Rishi’s plea to go abroad”, www.dnaindia.com/india/1815537/report-tatra-case-court-rejects-vecetra-group-chief-ravi-rishi-s-plea-to-go-abroad.

¹¹¹ Phase 3 Report on Czech Republic 2013, pages 46-47; Transparency International, “An Alternative to Silence: Whistleblower Protection in 10 European Countries”, 2009, www.transparency.org/whatwedo/pub/alternative_to_silence_whistleblower_protection_in_10_european_countries.

¹¹² Phase 3 Report on Czech Republic 2013, page 43.

¹¹³ Phase 3 Report on Czech Republic 2013, page 5.

¹¹⁴ Phase 3 Report on Czech Republic 2013, page 5; Reuters, 23 August 2012, “Czech Secret Service Raps State Firms for Lawbreaking”, www.in.reuters.com/article/2012/08/23/czech-corruption-idINL6E8JNKCX20120823_

¹¹⁵ Phase 3 Report on Czech Republic 2013, page 28.

¹¹⁶ Phase 3 Report on Czech Republic 2013, page 29.

¹¹⁷ Ibid.

comprehensive law providing whistleblower protection. Establish an independent anti-corruption agency or information centres to provide anonymous reporting services, legal advice and contact to special police investigators.

DENMARK: LIMITED ENFORCEMENT.

Share of World Exports: 0.88 per cent

Foreign Bribery Cases and Investigations

Between 2009 and 2012 Denmark opened one major case (in 2009) and concluded two cases with sanctions, one in 2011 and one in 2012. In 2012 three investigations have commenced in Denmark. As noted in Appendix A on methodology, Transparency International defines foreign bribery cases as including Oil-for-Food cases, whether prosecuted as foreign bribery cases or for violating sanctions against Iraq. The OECD uses a different methodology. In August 2012, the Danish Supreme Court upheld the decision of the High Court that the Danish company **Bukkehave Corporation A/S** should have 10 million Danish krone (US\$1.8 million) confiscated for breaching UN embargo rules when trading in Iraq between 2000 and 2002 as part of the UN Oil-for-Food programme.¹¹⁸ Bukkehave violated the embargo by paying a secret 10 per cent “after-service-fee” to the Iraqi government in order to secure a contract worth 100 million Danish krone (US\$17.3 million) to supply trucks.¹¹⁹ The Supreme Court ruled that the confiscation amount should reflect the estimated profits made from the contract.¹²⁰ Charges of active bribery were not applicable in this case and other relevant charges were time barred by statute of limitation.

The Public Prosecutor for Serious Economic and International Crime (SØIK) informally reported that three foreign bribery investigations opened in Denmark in 2012 in connection with allegations of bribes paid in Hungary, Iraq and Russia.

The OECD Working Group on Bribery in their Phase 3 Report on Denmark that in 2012 SØIK opened an investigation into a Danish transport equipment manufacturer.¹²¹ According to the anonymous tip that triggered the investigation, the company is alleged to have paid a foreign official US\$150,000 in 2008 to win a contract worth €7 million (US\$9 million).¹²²

The working group also noted in the Phase 3 report that a number of investigations into foreign bribery allegations had closed in Denmark since 2009, many for lack of evidence – one closed in 2009, three in 2010, two in 2011 and one in 2012.¹²³

Access to Information

Statistics on the number of foreign bribery cases are accessible on request under the public access to information law.¹²⁴ Detailed information on investigations is not available to the public. Only limited

¹¹⁸ Moalem Weitemeyer Bendtsen, “Confiscation of profits due to breach of UN embargo”, www.mwblaw.dk/en/Nyheder/~media/News/Konfiskation%20af%20fortjeneste%20ved%20overtrdelse%20af%20FN-embargo%20-%20UK.ashx.

¹¹⁹ Andreas Bernard Kirk, Associate Partner at Plesner Law Firm, “Denmark”, pages 8-9, www.plesner.com/resources/639.pdf; The OECD Working Group on Bribery, Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Denmark, March 2013, (Phase 3 Report on Denmark 2013), page 11, Case#14 Bukkehave Corporation, www.oecd.org/daf/anti-bribery/Denmarkphase3reportEN.pdf.

¹²⁰ Several other Danish corporations (see Phase 3 Report on Denmark 2013, pages 11-12, “Concluded Oil-for-Food Cases”) had, prior to the legal proceedings involving Bukkehave, settled similar claims with SØIK without going to court. In light of the Bukkehave Supreme Court decision, other companies may seek reimbursement of part of their settlements. See Andreas Bernard Kirk, Associate Partner at Plesner Law Firm, “Denmark”, pages 8- 9.

¹²¹ Phase 3 Report on Denmark 2013, page 11, see Case#11 “Transport Equipment Case”.

¹²² Ibid.

¹²³ Phase 3 Report on Denmark 2013, pages 9 – 11, see Case#2 ‘Power Station Case’ (closed 2010), Case#3 “Trips for Doctors” (closed in 2011), Case#4 “Consultancy Case” (closed in 2009), Case#5 “African Port Case” (closed in 2010), Case#6 “Motor Vehicle Case” (went to court but was dismissed for having “no case to answer” in 2011), Case#7 “World Bank Contract Case” (closed in 2012), Case#8 “Water Project Case” (closed in 2010).

information about “out-of-court” settlements is made public. SØIK told the OECD Working Group on Bribery that they would usually publish the amount of the settlement but not the other terms.¹²⁵ The working group considered this partial disclosure to be problematic as “settlements in foreign bribery cases must be sufficiently transparent so as to instil public and judicial confidence.”¹²⁶

Inadequacies in Legal Framework

The OECD Working Group on Bribery expressed concerns in their Phase 3 report that criminal liability of legal subsidiaries or joint ventures in Danish law may be restricted by the guidelines published by the Director of Public Prosecutions (DPP).¹²⁷ Of particular concern was the fact that the DPP guidelines explicitly state that parent companies cannot be held liable for crimes committed by a subsidiary.¹²⁸ Although the Danish authorities deny that this accurately reflects the law, they confirmed that there have been no prosecutions of parent companies on this basis.¹²⁹ Current sanctions for foreign bribery convictions are too low to effectively deter companies from using bribes to secure lucrative contracts. Sanctions for false accounting offences are also too low.¹³⁰ Since 2006, the working group has repeatedly recommended that Denmark increase available sanctions for foreign bribery offences.¹³¹ Denmark is considering a legislative amendment which would increase sanctions for foreign bribery offences to six years’ imprisonment.¹³² Whistleblower legislation for the public and private sectors does not provide comprehensive protection.¹³³ The Danish legal framework for foreign bribery is still not in force in its overseas territories – the Faroe Islands and Greenland.¹³⁴

Inadequacies in Enforcement System

The Phase 3 report on Denmark expressed “serious concerns about the lack of enforcement of the foreign bribery offence” and urged Denmark to “review its overall approach to foreign bribery enforcement.”¹³⁵ The Working Group felt that SØIK had closed a number of cases before adequate investigations had been undertaken and sufficient efforts made to secure evidence from other jurisdictions.¹³⁶ Considering the exposure of Danish companies to the risk of committing foreign bribery, the overall number of allegations that have surfaced is also low.¹³⁷ Although SØIK felt that they had sufficient resources to handle foreign bribery offences, the Phase 3 report noted that not enough individuals are assigned to each case and that enhanced expertise in forensic accounting and information technology would help SØIK with its enforcement efforts.¹³⁸

¹²⁴ Danish Legislation Online, Access to Information and Data Protection, www.legislationline.org/topics/country/34/topic/3.

¹²⁵ Phase 3 Report on Denmark 2013, page 26.

¹²⁶ Phase 3 Report on Denmark 2013, pages 25-26.

¹²⁷ Phase 3 Report on Denmark 2013, pages 17-18.

¹²⁸ Phase 3 Report on Denmark 2013, page 17.

¹²⁹ Phase 3 Report on Denmark 2013, pages 18-19.

¹³⁰ Phase 3 Report on Denmark 2013, pages 19-20.

¹³¹ Phase 2 Report on Implementing the OECD Anti-Bribery Convention in Denmark, 2006, page 60.

www.oecd.org/daf/anti-bribery/anti-briberyconvention/36994434.pdf; Follow-up Report on the Implementation of Phase 2 Recommendations for Denmark, 2008, page 6, www.oecd.org/daf/anti-bribery/anti-briberyconvention/41073747.pdf. The Council of Europe also recommended that sanctions for passive and active bribery covered by Section 122 of the Criminal Code should be increased, GRECO (2009), Third Evaluation Round Report on Denmark on Incriminations, pages 14-15, [www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2008\)9_Denmark_One_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2008)9_Denmark_One_EN.pdf).

¹³² Phase 3 Report on Denmark 2013, pages 19 and 33.

¹³³ Whistleblower protection and recommendations for improvements are included in Denmark’s Transparency International National Integrity System Evaluation, 2012, www.issuu.com/transparencyinternational/docs/2011_nis_denmarkexecsummary_en?mode=window&backgroundColor=%23222222.

¹³⁴ Phase 3 Report on Denmark 2013, pages 5 and 8.

¹³⁵ Phase 3 Report on Denmark 2013, page 5.

¹³⁶ Phase 3 Report on Denmark 2013, pages 27- 28.

¹³⁷ Phase 3 Report on Denmark 2013, page 8.

¹³⁸ Phase 3 Report on Denmark 2013, page 33.

Recent Developments

There have been no recent developments of note.

Recommendations for Priority Actions

Enhance reliance on corporate liability and ensure that it extends to subsidiaries. Increase monetary sanctions for foreign bribery and accounting offences. Pass the legislative amendment to increase maximum prison term for foreign bribery offences to six years. Engage more actively in enforcement activities, ensuring in particular that all leads are pursued to obtain sufficient evidence. Increase the number of enforcement officials working on cases and enhance expertise in forensic accounting and information technology. Disclose details of terms and performance of out-of-court settlements. Improve whistleblower protection. Extend foreign bribery legislation to cover Greenland and the Faroe Islands.

ESTONIA: LITTLE OR NO ENFORCEMENT.

Share of World Exports: 0.1 per cent

Foreign Bribery Cases and Investigations

There have been no foreign bribery investigations, prosecutions or convictions in Estonia.

Access to Information

Statistics on criminal investigations and cases are collected and published by the Ministry of Justice in reports and in a public database.¹³⁹ However, these reports make no distinction in the classification of foreign and domestic bribery. The plan to consolidate police, prosecution and court databases into a single national information system called the E-File, which began in 2009, has still not been completely implemented.¹⁴⁰ Reportedly, the system will not be fully operational before 2015.¹⁴¹ The E-File was designed so that information on one case, person or offence can be traced through each enforcement procedure.¹⁴² Although the E-file has been conceived as a tool for governments and the data collected will not be made publicly available, the ministry of justice will use the data to improve the quality of statistics that are released to the public.

Inadequacies in Legal Framework

The statute of limitations for the offence of paying or arranging a bribe or gratuity is five years (10 years for aggravated offences) running from the time of the commission of the offence. A request for mutual legal assistance alone does not interrupt, suspend or extend the limitation period. Another procedural act must take place for the limitation period to be interrupted, such as the arrest of a suspect or the imposition of supervisory measures. The OECD Working Group on Bribery considers this to be a "serious deficiency".¹⁴³ The GRECO *Third Round Evaluation Second Compliance Report on Estonia* from May 2012 recommended that Estonia sign, ratify and implement the Additional Protocol to the Criminal Law Convention on Corruption, in particular articles 2, 3 and 4, which require active and passive bribery of arbitrators (including foreign arbitrators) to be criminalised.¹⁴⁴

¹³⁹ See www.just.ee/kriminaalstatistika.

¹⁴⁰ The OECD Working Group on Bribery, Follow-up Report on the Implementation of Phase 2 Recommendations in Estonia, October 2010 (Phase 2 Follow-up Report on Estonia 2010), page 20, www.oecd.org/daf/anti-bribery/anti-briberyconvention/46155745.pdf.

¹⁴¹ For information about the E-File and its implementation schedule see www.just.ee/45173_.

¹⁴² Phase 2 Follow-up Report on Estonia 2010, page 20.

¹⁴³ Phase 2 Follow-up Report on Estonia 2010, page 5.

¹⁴⁴ GRECO Third Round Evaluation Second Compliance Report on Estonia, May 2012, page 4, [www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2012\)1_Second_Estonia_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2012)1_Second_Estonia_EN.pdf).

Currently a “public official” as defined in the Estonian Penal Code does not cover foreign arbitrators.¹⁴⁵ Legislation to amend the definition to cover foreign arbitrators is pending in Estonia.¹⁴⁶

Inadequacies in Enforcement System

The enforcement system has yet to be tested by any investigations or cases. As the new safeguards for whistleblowers were only introduced in April 2013 as part of the Anti-Corruption Act, it remains to be seen whether whistleblowers will receive sufficient protection under the new regime or not. There have been some doubts raised about prosecutorial independence in Estonia, and plans to amend the Prosecution Office Act to address these concerns (prosecutors’ salaries, reorganisation of the disciplinary process for prosecutors and requirement for prosecutors to report to the legislature) have been partially implemented.¹⁴⁷ There is a lack of awareness in the public and private sector about the foreign bribery offence.¹⁴⁸

Recent Developments

The Anti-Corruption Act was adopted on 6 June 2012 and entered into force on 1 April 2013.¹⁴⁹ This act establishes improved protection for whistleblowers in the public and private sector.¹⁵⁰ However, protection for public sector employees is slightly stronger than for the private sector, for example the limits on compensation claims for whistleblowers are more restrictive for the private sector.¹⁵¹ The Auditing and International Standards of Auditing Act was adopted in January 2010, most provisions became effective in March 2010 and some in early 2011.¹⁵² This requires an auditor to report suspicions of bribery to a client’s company management or supervisory board. If the management or board does not deal with the suspicions, then the auditor must resign and advise the Auditor’s Public Oversight Board of the reasons. The board then has a duty to notify the authorities.¹⁵³

Recommendations for Priority Actions

Complete implementation of the E-File system and allow public access to the statistics on foreign bribery enforcement. Ensure proper implementation of new whistleblower protection laws. Adopt legal provisions on suspension of the statute of limitations when Estonia issues a request for mutual legal assistance. Ensure that the definition of a public official covers foreign arbitrators. Raise awareness in the public and private sector of the foreign bribery offence and of reporting obligations. Sign, ratify and implement GRECO’s Additional Protocol to the Criminal Law Convention on Corruption.

FINLAND: MODERATE ENFORCEMENT.

Share of World Exports: 0.5 per cent

¹⁴⁵ See, Section 288 (2) Estonian Penal Code.

¹⁴⁶ See bill no 393 SE (in Estonian language), www.riigikogu.ee/?op=ems&page=eelnou&eid=9a4b1b4e-07ee-4666-89c1-835d3534a1a3&. This bill will amend Article 288 of the Penal Code.

¹⁴⁷ Phase 2 Follow-up Report on Estonia 2010, page 4.

¹⁴⁸ Phase 2 Follow-up Report on Estonia 2010, page 3.

¹⁴⁹ Korruptsioonivastane seadus, RT I, 29.06.2012, 1, www.riigiteataja.ee/akt/129062012001. For the unofficial English translation see www.legaltext.ee/text/en/2012X15.htm.

¹⁵⁰ Ibid. The Act establishes that persons reporting in good faith have a legal guarantee that their reports will be kept confidential and can claim a civil remedy if they suffer discrimination consequent to reporting. Under the new law whistleblowers are subject to a shared burden of proof in civil and administrative litigation meaning the whistleblower only has the burden to prove that he/she was subjected to unequal treatment by their employer.

¹⁵¹ This is relevant for foreign bribery enforcement as the offence of foreign bribery is more likely to be committed by the private sector.

¹⁵² See www.riigiteataja.ee/akt/118122012010. For the unofficial English translation see www.legaltext.ee/text/en/XXXXX21.htm.

¹⁵³ Phase 2 Follow-up Report on Estonia 2010, pages 3-4.

Foreign Bribery Cases and Investigations

Between 2009 and 2011, Finland opened two investigations (2009 and 2011) and commenced two major cases (2009 and 2010). In 2012, two major cases began and there were no investigations. In March 2013, a former senior manager of the Finnish company **Wärtsilä Finland Oy** was convicted by the District Court of Pohjanmaa of paying bribes in Kenya to help to win a tender to build a power plant in 1997.¹⁵⁴ The manager has denied any wrongdoing and both parties appealed the sentence.¹⁵⁵ The court acquitted the company of all charges and dismissed the prosecutor's demand that they pay a substantial fine.¹⁵⁶ The charges against the company and the manager were filed by the prosecutor in May 2009.¹⁵⁷

The hearing of former executives of the Finnish company **Instrumentarium Oyj** and its former subsidiary **Medko Medical Oy** began in the District Court of Helsinki on 21 January 2013.¹⁵⁸ The state prosecutor demanded sentences of 18 to 24 months' imprisonment for aggravated bribery and aggravated subsidy fraud.¹⁵⁹ On 15 May 2013, the district court dismissed all charges on all counts against the prosecuted individuals.¹⁶⁰ There has been progress in all three enforcement actions currently open relating to the Finnish arms group **Patria Oy's** business in Croatia, Egypt and Slovenia. In December 2012, the Finnish National Bureau of Investigation completed their investigation into allegations that former executives at **Patria Land Services Oy** (previously **Patria Vehicles Oy**) paid bribes in Slovenia.¹⁶¹ Six individuals will face charges of aggravated bribery and business espionage in connection with the sale of Patria AMV type armoured vehicles to Slovenia in 2006.¹⁶² The proceedings were launched in December 2012 at the District Court of Kanta-Häme and the preparatory session for the trial was held in May 2013.¹⁶³ The State Prosecutor and the District Prosecutor are demanding a corporate fine.¹⁶⁴

The appeal of the Patria Egypt case began in the Turku Court of Appeal in February 2013, which issued a judgement in June 2013. The court dismissed the charges related to aggravated bribery, as well as the charges against the CFO of Patria Vammas related to accounting offences, but upheld the other sentences related to accounting offences; the former CEO of Patria Vammas was sentenced for an accounting offence and an aggravated accounting offence, two other persons involved were sentenced for aiding and abetting an accounting offence.¹⁶⁵ The arms group Patria is seeking to recover the costs of the trial which concluded in the District Court of Pirkanmaa in

¹⁵⁴ Wärtsilä Finland Oy, Press release, 21 March 2013, www.wartsila.com/en_FI/news-releases/wartsilan-entinen-tyontekija-syyllystynyt-lahjontaan.

¹⁵⁵ Ibid.

¹⁵⁶ Ibid.

¹⁵⁷ Wärtsilä Finland Oy, Annual Report, "Preventing Corruption and Bribery" www.annualreport2011.wartsila.com/en/ar/sustainability/personnel-and-social-performance/preventing-corruption-and-bribery.

¹⁵⁸ Helsinki Times, 31 January 2013, "Finns accused of bribing Costa Rican officials deny accusations" www.helsinkitimes.fi/finland/finland-news/domestic/5180-finns-accused-of-bribing-costa-rican-officials-deny-accusations.html; 15 March 2013 telephone interview with Mr. Jukka Rappe, State Prosecutor, Office of the Prosecutor General.

¹⁵⁹ Helsinki Times, 31 January 2013, "Finns accused of bribing Costa Rican officials deny accusations";

¹⁶⁰ Ilta-Sanomat, 15 May 2013, "Instrumentariumin lahjusjutun syytteet nurin", www.iltasanomat.fi/kotimaa/art-1288565552695.html.

¹⁶¹ Patria Annual Report for 2012, page 9, www.patria.fi/d1b398804f60f213ae3fef9d77426fe/Patria_vsk2012_en.pdf.

¹⁶² Office of the Prosecutor General, Press Release, 18 December 2012,

[www.vksv.oikeus.fi/en/Etusivu/Ajankohtaista/Tiedotteet/1347273690293_\(in_Finnish\)](http://www.vksv.oikeus.fi/en/Etusivu/Ajankohtaista/Tiedotteet/1347273690293_(in_Finnish)),

www.vksv.oikeus.fi/en/Etusivu/Ajankohtaista/Tiedotteet/1347273690293; YLE Uutiset, 18 December 2012, "Patria ex-bosses face bribery charges", www.yle.fi/uutiset/patria_ex-bosses_face_bribery_charges/6421532.

¹⁶³ 15 March 2013 Telephone interview with Mr. Timo Kokkomäki, District Prosecutor, Pirkanmaa Prosecutor Service; Office of the Prosecutor General, Press Release, 18 December 2012,

www.vksv.oikeus.fi/en/Etusivu/Ajankohtaista/Tiedotteet/1347273690293; /; Helsingin Sanomat, 6 February 2012, "Oikeus vapautti Patrian lahjusepäilyistä vangitun",

www.hs.fi/kotimaa/Oikeus+vapautti+Patrian+lahjusep%C3%A4ilyist%C3%A4+vangitun/a1305555080919.

¹⁶⁴ Office of the Prosecutor General, Press Release, 18 December 2012.

¹⁶⁵ Helsingin Sanomat, 28 June 2013, "Patrian Egyptin-tykkikauppojen tuomiot lievenivät hieman hovissa", www.hs.fi/talous/a1372389064487.

2011.¹⁶⁶ In June 2011, the district court acquitted the company of all charges related to allegations that bribes were paid to win a contract for **Patria Vammass Oyj** to supply guns to Egypt in 1999.¹⁶⁷ Four former Patria executives received suspended sentences for accounting violations but were cleared of bribing public officials.¹⁶⁸

The state prosecutor and the district prosecutor have filed criminal charges against three Finnish individuals and one company belonging to the Patria Group for aggravated bribery in June 2013. Some of the individuals are charged for alleged bribery in Croatia,¹⁶⁹ others for alleged bribery in Slovenia.¹⁷⁰

The allegations under scrutiny claim that “money was handed to civil servants and decision makers” in Croatia in order to win a contract for Patria to supply armoured vehicles then valued at €112 million (US\$143.9 million).¹⁷¹

Access to Information

Statistics and details of foreign bribery investigations and cases are available from the Finnish authorities on request.

Inadequacies in Legal Framework

The executive summary of the 2011 United Nations Convention against Corruption (UNCAC) implementation review group’s Finland review recommended that the definition of “foreign public official” be extended to ensure it includes persons exercising a public function for a public enterprise.¹⁷² The OECD Working Group on Bribery’s follow-up to the Phase 3 report on implementing the Convention in Finland (October 2010) and the working group’s recommendations from 2013 also reported that the current definition is deficient.¹⁷³ The working group raised concerns about the lack of corporate liability available in Finland for accounting and auditing offences.¹⁷⁴

Inadequacies in Enforcement System

Although some awareness raising activities have been undertaken by the Finnish authorities, the working group felt that “more could be done,” in particular to “raise awareness of Finland’s framework for combating foreign bribery and its corporate liability regime in high risk sectors [...] and

¹⁶⁶ Patria Annual Report for 2012, page 9, www.patria.fi/d1b398804f60f213ae3fef9d77426fe/Patria_vsk2012_en.pdf; YLE Uutiset, 22 February 2013, “Patria begins appeal in Egyptian bribery case”, www.yle.fi/uutiset/patria_begins_appeal_in_egyptian_bribery_case/6513069; Press statement of Patria, 23 June 2011, www.patria.fi/en/news+and+events/news/demand+for+corporate+fine+related+to+patria+egyptian+export+deal+dismissed+by+the+pirkanmaa+district+court.html.

¹⁶⁷ YLE Uutiset, 23 June 2011, “Four employees of defence company Patria found guilty of fraud”, www.yle.fi/uutiset/four_employees_of_defense_company_patria_found_guilty_of_fraud/5380792; Trace Compendium, Patria, www.traceinternational2.org/compendium/view.asp?id=30.

¹⁶⁸ Ibid.

¹⁶⁹ The Wall Street Journal, 4 January 2011, Corruption Currents, Samuel Rubinfeld, “Finland expands Patria bribery investigation into Croatia sales”, blogs.wsj.com/corruption-currents/2011/01/04/finland-expands-patria-bribery-investigation-into-croatia-sales/; Patria Annual Report for 2012, page 9.

¹⁷⁰ Verkkouutiset, 28 June 2013 “Patrian kaupat Kroatiaan johtavat syyteisiin Suomessa”, www.verkkouutiset.fi/kotimaa/patria_kroatia_lahjukset_syytteet-5384.

¹⁷¹ Boston.com, 3 January 2011, “Finland expands bribery probe to Croatia”, www.boston.com/news/world/europe/articles/2011/01/03/finland_expands_patria_bribery_probe_to_croatia/; Helsingin Sanomat, 6 February 2012, “Oikeus vapautti Patrian lahjusepäilyistä vangitun”, www.hs.fi/kotimaa/Oikeus+vapautti+Patrian+lahjusep%C3%A4ilyist%C3%A4+vangitun/a1305555080919.

¹⁷² UNCAC Implementation Review Group, Finland Review of Implementation of the UNCAC, June 2011, (UNCAC Review Report 2011) page 4, www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/7-9September2011/V1183525e.pdf.

¹⁷³ The OECD Working Group on Bribery, Phase 3 Written Follow-up Report and Recommendations (Phase 3 follow-up report 2013), January 2013, page 3. The OECD recommended that the definition be “a person holding a legislative office in a foreign country,” page 8, www.oecd.org/daf/anti-bribery/FinlandPhase3WrittenFollowUpReportEN.pdf.

¹⁷⁴ Phase 3 Follow-up Report 2013, pages 10-11.

in the legal, accounting and auditing professions.”¹⁷⁵ This has been a long standing concern.¹⁷⁶ There is no mechanism for protection of whistleblowers and measures to facilitate reporting by public officials are not sufficient.¹⁷⁷ The Finnish Ministry of Foreign Affairs, the authorities responsible for awarding official developmental assistance (ODA), have not published formal guidance on due diligence and enhanced due diligence in the process of granting ODA contracts and “public advantages”.¹⁷⁸ The UNCAC executive summary noted that monetary sanctions for corruption offences committed by legal persons might be too low when compared to other European countries.¹⁷⁹

Recent Developments

In September 2012 the Ministry of Foreign Affairs published an Anti-Corruption Handbook which includes information to complement the guidelines. The handbook will be distributed to all ministries and foreign missions and has been published online.¹⁸⁰

Recommendations for Priority Actions

Extend the definition of “foreign public official” to bring it in line with the Convention. Engage more actively in awareness-raising activities in high risk sectors and highly relevant professions (for example, auditors). Introduce whistleblower protection and measures to help public officials report suspicions of foreign bribery. Introduce corporate liability for accounting and auditing offences. Increase monetary sanctions for legal entities. Establish and follow due diligence guidelines for the awarding process of ODA.

FRANCE: LIMITED ENFORCEMENT.

Share of World Exports: 3.6 per cent

Foreign Bribery Cases and Investigations

According to official statistics, between 2009 and 2011 there have been eight investigations and three major cases and four non-major cases commenced and three cases concluded with sanctions. In 2012 two investigations and one non-major case commenced and one case concluded with substantial sanctions. There are no details available about the new investigations.

In September 2012, the Paris Criminal Court fined the French aeronautics and defence group **Safran** €500,000 (US\$642,700) for bribing public officials in Nigeria between 2000 and 2003.¹⁸¹ The court found that bribes had been paid to win a contract estimated to be worth €170 million (US\$218.5 million) to supply identity cards to the Nigerian government.¹⁸² The company has

¹⁷⁵ Phase 3 Follow-up Report 2013, page 3.

¹⁷⁶ Lack of engagement in awareness raising activities was reported in the 2010 progress report and the OECD Phase 2 and Phase 3 reports.

¹⁷⁷ Phase 3 Follow-up Report 2013, page 15.

¹⁷⁸ Phase 3 Follow-up Report 2013, pages 14, 20-22.

¹⁷⁹ UNCAC Review Report 7 June 2011.

¹⁸⁰ Finnish Ministry of Foreign Affairs, “Anti-corruption Handbook”, www.formin.finland.fi/public/default.aspx?contentid=256264&culture=en-US.

¹⁸¹ Reuters, 5 September 2012, “French court fines Safran for Nigerian bribes”, www.reuters.com/article/2012/09/05/safran-fine-nigeria-idUSL6E8K5CGF20120905;_ExPatca, 4 June 2012, “France’s Safran on trial for alleged Nigerian bribes”, www.expatca.com/fr/news/french-news/france-s-safran-on-trial-for-alleged-nigerian-bribes_231785.html.

¹⁸² Ibid.

appealed the decision.¹⁸³ Two Safran executives were questioned by the court about their involvement in the deal and were acquitted on all counts.¹⁸⁴

According to official reports from the Ministry of Justice, an individual was convicted and fined €20,000 (US\$25,000) by the Criminal Court of Paris in 2012, in a case referred to as “Herrmann’s case”.¹⁸⁵

In July 2013 the Paris Criminal Court acquitted **Total SA** and its CEO **Christophe de Margerie** of all charges in the Oil-for-Food case; the prosecutor appealed the judgement.¹⁸⁶ The French oil company was accused of paying surcharges to the Iraqi government in breach of the UN rules regulating the Oil-for-Food programme.¹⁸⁷

According to reports, in 2012 two judges took over the investigation of allegations that the French ship-builders **DCNS** (formerly **Armaris**) and **Thompson CSF** (now **Thales**) paid bribes in Malaysia in 2002 to win a US\$1.25 billion contract to supply submarines.¹⁸⁸ The allegations came to light in 2009 when Suara Rakyat Malaysia (SUARAM), a Malaysian human rights group, filed a complaint in France against the company.¹⁸⁹ SUARAM alleges that DCNS paid illegal commissions to Malaysian officials to gain access to confidential information to help them win the contract.¹⁹⁰ The Malaysian government rejects the allegations.¹⁹¹

A Negotiated Resolution Agreement was reached between **Alstom** and the World Bank in February 2012 regarding “an improper payment of €110,000 (US\$140,000) to an entity controlled by a former senior government official for consultancy services in relation to the World Bank-financed Zambia Power Rehabilitation Project.” The agreement resulted in the debarment of two Alstom subsidiaries for three years and a restitution payment of approximately US\$9.5 million.¹⁹² On 25 March 2011, two employees of the French drilling company **FORACO** were convicted and fined €10,000 (US\$12,800) for bribing a senior public official in Djibouti to obtain and keep a public contract.¹⁹³ Both appealed, but there have been no reported updates on the appeal.¹⁹⁴

¹⁸³ Safran Press Release, 5 September 2012, www.safran-group.com/site-safran-en/finance-397/financial-publications/financial-press-releases/2012-787/article/communication-safran-french-only?12332.

¹⁸⁴ Reuters, 5 September 2012, “French court fines Safran for Nigerian bribes”, www.reuters.com/article/2012/09/05/safran-fine-nigeria-idUSL6E8K5CGF20120905.

¹⁸⁵ Judgment of Paris Regional Criminal Court’s (tribunal correctionnel de Paris), 15 November 2012.

¹⁸⁶ Libération, 18 July 2013, “«Pétrole contre nourriture» : le parquet fait appel des relaxes”

http://www.liberation.fr/societe/2013/07/18/petrole-contre-nourriture-le-parquet-fait-appel-des-relaxes_919197

¹⁸⁷ Ibid.

¹⁸⁸ Defense Industry Daily, 20 March 2013, “Scorpene’s sting: Malaysia’s bribery and murder scandal”, www.defenseindustrydaily.com/scorpenes-sting-liberation-publishes-expose-re-malaysias-bribery-murder-scandal-05347/; Malaysian Digest, 8 October 2012, “What Scorpene trial? French Prosecutor rubbishes Scorpene court case”, www.malaysiandigest.com/news/36-local2/129582-what-scorpene-trial-french-govt-prosecutor-rubbishes-scorpene-court-case.html. In April 2013, the Hong Kong authorities agreed to cooperate with the French investigation by supplying information on a Hong Kong company Terasasi Ltd which is alleged to have benefited from the submarine deal, see Malaysia Kini, 23 April 2013, “Scorpene investigators to subpoena two M’sian lawyers”, www.malaysiakini.com/news/227796.

¹⁸⁹ Defense Industry Daily, 20 March 2013, “Scorpene’s sting: Malaysia’s bribery and murder scandal”,

¹⁹⁰ Malaysian Digest, 9 October 2012, “Scorpene trial on-going says French lawyer Bourdon”, www.malaysiandigest.com/news/36-local2/130382-scorpene-inquiry-ongoing-says-french-lawyer-bourdon.html; Reuters, 27 June 2012, “Malaysia denies allegations in French Submarine case”,

www.in.reuters.com/article/2012/06/27/malaysia-submarines-idINDEE85Q02020120627.

¹⁹¹ Reuters, 27 June 2012, “Malaysia denies allegations in French Submarine case”.

¹⁹² World Bank, Press Release No: 2012/282/INT, 22 February 2012, www.web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:23123315~pagePK:64257043~piPK:437376~theSitePK:4607,00.html; Exporting Corruption? Country Enforcement of the OCED Anti-Bribery Convention Progress Report 2012, “Case study: Alstom and various subsidiaries”, page 32,

www.transparency.org/whatwedo/pub/exporting_corruption_country_enforcement_of_the_oecd_anti_bribery_conventio

¹⁹³ Paris Regional Court, 11th Division/2, Case no. 0703392018, judgment of 25 March 2011, no. 10.,

¹⁹⁴ OECD Progress Report 2011, page 33.

Access to Information

Statistics on foreign bribery enforcement are available on request from the French Ministry of Justice.

Inadequacies in Legal Framework

The UN Convention against Corruption review of implementation report on France noted concerns about the independence of French prosecutors from the ministry of justice.¹⁹⁵ This could be a problem if foreign bribery allegations involve the French executive. French prosecutors have the monopoly on prosecuting offences of foreign bribery; civil society organisations are currently not permitted to request that an investigating judge opens an investigation into foreign bribery allegations.¹⁹⁶ A French law known as the “blocking statute” makes it obligatory for French companies to refuse to provide foreign enforcement authorities with information directly requested for their foreign bribery investigations. This law forces authorities to use international conventions or to ask French authorities to obtain the information on their behalf.¹⁹⁷ This could stall or prevent foreign bribery investigations. Sanctions for companies are too low. The maximum sanction available for a company convicted of foreign bribery is €750,000 (US\$960,000).¹⁹⁸ The only company sentenced (see Safran case above) was fined around US\$642,700, a figure significantly lower than the value of the profit (estimated to be US\$218.5 million) from the contract won through the bribe. This level of monetary sanction cannot be considered “effective, proportionate and dissuasive,” as required by Article 3 of the Convention.¹⁹⁹ In their Phase 3 report on France, the OECD Working Group on Bribery expressed serious concerns that Article 113-6 of the Penal Code still imposed a dual criminality requirement in relation to bribery of foreign public officials committed by French nationals abroad. Such requirements undermine the autonomy of the foreign bribery offence.²⁰⁰ Trading in influence by a foreign public official is still not covered by French criminal law. The working group recommended extending the offence to ensure that “the same acts of bribery are not treated differently according to whether the intended recipient is a French or a foreign public official.”²⁰¹

Inadequacies in Enforcement System

The Phase 3 report noted that insufficient resources were dedicated to foreign bribery investigations.²⁰² The report also expressed concerns that not enough use was being made of confiscation and additional penalties available under French law, in particular debarment from public procurement.²⁰³ To avoid some of the evidentiary requirements connected to foreign bribery, French judges have looked to establish the offence of “misuse of corporate assets” which carries less severe penalties than foreign bribery.²⁰⁴ Whistleblower protection is in place for the private sector, but not for the public sector.²⁰⁵

¹⁹⁵ Mechanism for the Review of Implementation of the United Nations Convention against Corruption, Country review report of France, www.uncaccoalition.org/images/PDF/Full-Report-France-English.pdf.

¹⁹⁶ Article 435-6 of the French Criminal Code.

¹⁹⁷ Law No. 68-678, 26 July 1968, “relative à la communication de documents et renseignements d'ordre économique, commercial, industriel, financier ou technique à des personnes physiques ou morales étrangères”.

¹⁹⁸ Articles 131-38 and 435-1 of the French Criminal Code.

¹⁹⁹ OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Article 3, www.oecd.org/daf/anti-bribery/anti-briberyconvention/38028044.pdf.

²⁰⁰ The OECD Working Group on Bribery, Phase 3 Report on Implementing the OECD Anti-Bribery Convention in France, October 2012 (Phase 3 Report on France 2012), pages 5, 14, 19 & 68, www.oecd.org/daf/anti-bribery/Francephase3reportEN.pdf. Commentary 3 to the OECD Convention requires that the foreign bribery offence should exist “not requiring proof of the law of the particular official's country”.

²⁰¹ Phase 3 Report on France 2012, pages 17 and 19.

²⁰² Phase 3 Report on France 2012, page 5.

²⁰³ Ibid.

²⁰⁴ Phase 3 Report on France 2012, page 18.

²⁰⁵ Phase 3 Report on France 2012, pages 62-65.

Recent Developments

A circular from the minister of justice published on 9 February 2012 reminded prosecutors about additional penalties for foreign bribery offences which should be pronounced against companies if the facts of the case justified them.²⁰⁶ It also recommended that prosecutors should prosecute companies as well as company personnel where the facts allow it. A statute adopted on 27 March 2012 permits the seizure and confiscation of any asset of a person convicted, extending confiscation beyond the proceeds of the offence.²⁰⁷ It also provides for the seizure and confiscation of property not legally owned by the convicted person, but de facto used by them. The minister of justice encouraged prosecutors to make use of these new provisions.²⁰⁸

Two bills of law were presented to the French Senate and the National Assembly the beginning of 2013 on 28 January and 13 February 2013 and another bill was introduced April 2013 recognising the right of associations fighting corruption to lodge official criminal complaints, including concerning foreign bribery, as a civil party and require that judicial investigations are opened, even if there is opposition from prosecutors.²⁰⁹ The first two bills were abandoned and the third one is still under discussion.²¹⁰ In July 2013 a new law was adopted to strengthen the independence of French prosecutors by prohibiting individual instructions from the minister of justice to prosecutors.²¹¹ Following the “Cahuzac Scandal”, François Hollande announced on 10 April 2013 the creation of a public prosecutor’s department specialised in white collar crime and an increase of resources and staffing dedicated to the fight against corruption, including the establishment of a central office for the fight against fraud and corruption; the pertinent bill of law is currently discussed by the National Assembly.²¹²

Recommendations for Priority Actions

Adopt the bill acknowledging the right for associations fighting corruption to file a complaint and bring a civil party petition before an investigating judge for foreign bribery cases. Remove the dual criminality requirement for foreign bribery offences. Significantly increase sanctions available against companies by considering setting them as multiples of the proceeds of the bribery or percentages of annual profits. Judges should make full use of additional penalties such as seizure and confiscation measures in foreign bribery cases. Create an exception to the “blocking statute” for cases of foreign bribery investigations. Dedicate more resources to the investigation of cases. Provide protection to whistleblowers in the public sector.

GERMANY: ACTIVE ENFORCEMENT.

Share of World Exports: 8.6 per cent

Foreign Bribery Cases and Investigations

Between 2009 and 2012, 14 major cases concluded with substantial sanctions, five of which occurred in 2012. Five major cases opened since 2009, with one commencing each year from 2009

²⁰⁶ Circular NOR : JUSD1204025C from the Minister of Justice dated 9 February 2012
http://www.textes.justice.gouv.fr/art_pix/JUSD1204025C.pdf.

²⁰⁷ Act no 2012-409, 27 March 2012, de programmation relative à l'exécution des peines
www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000025582235&dateTexte=&categorieLien=id

²⁰⁸ Circular NOR: JUSD1229412C from the Minister of Justice dated 16 July 2012
www.textes.justice.gouv.fr/art_pix/JUSD1229412C.pdf.

²⁰⁹ Website of the Sénat, www.senat.fr/dossier-legislatif/ppl12-294.html; Website of the Assemblée Nationale, www.assemblee-nationale.fr/14/propositions/pion0718.asp.

²¹⁰ Bill of law NO 1011 dated 24 April 2013, ‘Relatif à la lutte contre la fraude fiscale et la grande délinquance économique et financière’.

²¹¹ LOI n° 2013-669 du 25 juillet 2013 relative aux attributions du garde des sceaux et des magistrats du ministère public en matière de politique pénale et de mise en œuvre de l'action publique

²¹² Portail du Gouvernement, 10 April 2013, www.gouvernement.fr/gouvernement/la-transparence-de-la-vie-publique-et-le-renforcement-des-moyens-de-lutte-contre-la-gra; The Guardian, 10 April 2013, “François Hollande targets tax evasion as approval ratings plummet”, www.guardian.co.uk/world/2013/apr/10/francois-hollande-tax-evasion.

to 2011 and two in 2012. Forty-six non-major cases concluded with sanctions between 2009 and 2012; 24 in 2012. Twenty-one non-major cases were initiated between 2009 and 2012, three of which opened in 2012. Since 2009 up to and including 2012, 78 foreign bribery investigations were commenced in Germany. Thirteen were opened in 2012.²¹³ Information on Germany's enforcement activity made available by the Ministry of Justice does not give the names of companies or individuals involved. More detailed information is available from German and international media reports.

The ministry reported that in 2012 a former divisional board director of **Siemens AG** was sentenced to one year and six months' imprisonment for twenty-six counts of criminal breach of trust. The prison sentence was suspended on probation for three years on the condition that the former director pays €130,000 (US\$170,000) to various charities.²¹⁴

In September 2012, the Munich *Landgericht* (District Court) convicted, in two different decisions, two former executives of the Bavarian commercial vehicle company **MAN** for complicity in bribes paid by the company's subsidiaries to secure vehicle sales abroad. One of the cases involved sales in Norway, and the other in Slovenia and Belgium.²¹⁵ Both received a 10 month suspended sentence and were required to pay a substantial amount in fines to charity.²¹⁶

According to the February 2013 report of the Federal Ministry of Justice, there were sanctions imposed against companies in three cases in 2012. This includes the case against two former executives from **Ferrostaal**. In December 2011, the regional court of Essen, North Rhine-Westphalia convicted the two men for paying bribes between 2000 and 2007 to help secure the sale of two submarines to Greece and Portugal. The managers received a suspended sentence of two years' imprisonment and received high fines. The company agreed to pay €140 million (US\$179.5 million) in accordance with the German Act on Regulatory Offences (OwiG).²¹⁷ The conviction became final in 2012.

In September 2012, after a three year investigation, German prosecutors charged four executives from the American company **Hewlett-Packard**, with channelling €7.5 million (US\$9.7 million) through a German subsidy to be paid as bribes in Russia. The bribes were allegedly paid to win a €35 million (US\$45 million) contract to supply computers to the Russian Prosecutor General's office. The charged executives deny all wrongdoing.²¹⁸

In 2012, the press reported that German public prosecutors and the police, in cooperation with the Austrian authorities, began investigating **EADS** (European Aeronautic Defence and Space Company, N.V.).²¹⁹ The company has been accused of bribing the Austrian government in

²¹³ The statistics of cases and investigations commenced and concluded come mainly from the February 2013 report by the Federal Ministry of Justice to the OECD Working Group on Foreign Bribery which is based on the reports of the 16 Federal States (Länder).

²¹⁴ This may be the same case on which the press reported as commenced in Germany in 2011 against an ex-manager at Siemens on charges of breach of trust relating to allegations that the company allegedly paid at least US\$27 million to government representatives through middlemen to secure a project to produce identification cards in the 1990s. The Associated Press reported in Business Week, "Prosecutors charge ex-Siemens manager with bribery", 14 June 2011, www.businessweek.com/ap/financialnews/D9NROO2G0.htm; The Wall Street Journal, Corruption Currents, 14 June 2011, "German prosecutors charge ex-Siemens manager with bribery", www.blogs.wsj.com/corruption-currents/2011/06/14/german-prosecutors-charge-ex-siemens-manager-with-bribery/.

²¹⁵ The Financial Times Deutschland, 17 September 2012, "Bewährungsstrafe für E-MAN-Managerin Drzisga", www.ftd.de/unternehmen/industrie/:bestechungsskandal-bewaehrungsstrafe-fuer-ex-man-managerin-drzisga/70096827.html; The Financial Times Deutschland, 19 September 2012, "Ex-MAN-Vorstand gesteht nach Deal", www.ftd.de/unternehmen/industrie/:schmiergeld-prozess-ex-man-vorstand-gesteht-nach-deal/70092571.html.

²¹⁶ Ibid.

²¹⁷ Arms Deal-vpo.co.za, 20 December 2011, "Ferrostaal fines USD 183 million by court at ex-managers trial", www.armsdeal-vpo.co.za/articles15/ex-manager.html.

²¹⁸ Engadget, 20 September 2012, "German prosecution charges HP staff with bribing Russian officials", www.engadget.com/2012/09/20/german-prosecution-charges-hp-staff-with-bribing-russian-officials/.

²¹⁹ The Daily Telegraph, 16 November 2012, "EADS launches anti-corruption review in wake of bribery allegations", www.telegraph.co.uk/finance/financial-crime/9681781/EADS-launches-anti-corruption-review-in-wake-of-bribery-allegations.html

connection with its 2007 purchase of Eurofighter Typhoon jets from EADS.²²⁰ The details of this case may be related to the ministry's report that in Bavaria new investigations are being carried out against 14 defendants in connection with allegations of foreign bribery and criminal breach of trust.²²¹ These allegations relate to suspicions that foreign officials and enterprises in another European country were bribed with funds from a subsidiary of a European aircraft construction and defence group as part of the purchase of fighter jets by a European country from a German company headquartered in Munich.

The ministry reported that a new set of investigative proceedings have been launched in Bavaria in 2012 relating to suspicions that foreign officials may have been bribed by officials of a German aviation training company. The suspected bribery, which possibly came in the form of benefits in-kind and trips to Germany, is allegedly in connection with a training contract which was under negotiation between the company in question and representatives from a North African state. Almost €2 million (US\$2.5 million) had been impounded by the German authorities while the investigation continues. According to media reports an investigation by the Würzburg Public Prosecution Office into employees of the German gypsum producer **Knauf** was opened by the Nürnberg prosecutor in April 2012.²²² The individuals are suspected of paying bribes to Algerian officials in connection with a contract for the construction of a new gypsum factory in Algeria.²²³

In 2012, according to ministry information, a regional prosecution authority filed indictments against two individuals (a husband and wife) in connection with at least four contracts allegedly concluded on behalf of a Germany company with a Central African government between 2004 and 2008 (worth around US\$9.7 million). The defendants are alleged to have paid or facilitated the payment of bribes of around US\$1.3 million to members of the government, the police and the military.

In 2012 the Landshut prosecutor opened an investigation into the Mannheim based construction company **Bilfinger S.E.** The investigation is probing allegations that the German construction company paid bribes to foreign officials in 2006 and 2007 in connection with contracts in Hungary and in the Slovak Republic.²²⁴

The Ravensburg Prosecutor's Office reportedly launched an investigation in October 2011 into **Tognum AG** (in which **Rolls-Royce PLC** and **Daimler AG** jointly acquired a 97 per cent stake in June 2011). The inquiry reportedly relates to commission payments, in connection with sales of defence-related products that may have been wrongfully paid in South Korea in the period 2000-2011.²²⁵ The investigation is still on-going.

Access to Information

Statistics on cases and investigations commenced and concluded in all 16 federal states were obtained from the Ministry of Justice. There is no official federal government or regional governments' publications on foreign bribery. Detailed information about on-going cases and investigations is kept confidential, but the German press reports widely on corruption cases. This

²²⁰ Financial Times, 7 November 2012, "EADS offices raided in bribery probe", www.ft.com/intl/cms/s/0/7455ff4e-28fe-11e2-9591-00144feabdc0.html#axzz2StYuTloX.

²²¹ See the German Criminal Code, S 266 ss. 1 and 2, S 263 ss. 3, S 334 ss. 1, S 25 ss. 2, S 27 and 52 of the and art. 2 S 1 subs. 2 (2 a) and the German Act on the Protocol of 27 September 1996 to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, Art 2 S 2.

²²² Nürnberger Nachrichten, 27 April 2012, "Razzia bei Baustoffhersteller Knauf", www.nordbayern.de/region/razzia-bei-baustoffhersteller-knauf-1.2029943.

²²³ Ibid.

²²⁴ Spiegel Online, November 2012, "Verdacht auf Schmiergelder: Korruptionsermittlungen bei Baukonzern Bilfinger", www.spiegel.de/wirtschaft/unternehmen/korruptionsermittlungen-bei-bilfinger-a-866715.html; Die Presse, 9 November 2012, "Korruptionsskandal: Razzia bei Bilfinger Berger" www.diepresse.com/home/wirtschaft/economist/1310893/Korruptionsskandal_Razzia-bei-Bilfinger-Berger?_vl_backlink=/home/index.do.

²²⁵ Bloomberg, 24 October 2011, "Tognum USD 32 million payments prompt prosecutor probe of executive", www.bloomberg.com/news/2011-10-24/tognum-32-million-payments-prompt-prosecutor-probe-of-executive.html.

report relies mainly on the anonymous case information provided by the federal ministry to the OECD Working Group on Foreign Bribery in February 2013.

Inadequacies in Legal Framework

Germany is one of the few Parties to the OECD Anti-Bribery Convention which has not ratified the UN Convention against Corruption (UNCAC).²²⁶ It has also failed to ratify the two Council of Europe conventions on corruption. This hampers international cooperation in foreign bribery cases with countries that are not Party to the OECD Anti-Bribery Convention.²²⁷ Although the institution of criminal liability for corporations would increase the variety and strength of sanctions available against companies for bribing abroad, the German government has not endorsed its introduction.

Inadequacies in Enforcement System

In 2008, improvements were made to whistleblower protection in the public sector, however, similar standards of protection have still not been established in the private sector.²²⁸ The consequences for companies found guilty of engaging in corrupt practices are not severe enough. A register of companies which have been engaged in corrupt practices does not exist in Germany despite a number of draft bills proposing its establishment. Such a register would be used to support the debarment of companies found guilty of corrupt activity from winning public procurement contracts. Export credit support is currently not systematically withheld from companies convicted of corruption offences. The OECD Working Group on Bribery in their Phase 3 report on Germany noted that “sanctions imposed to date against individuals have generally been within the lower range of available sanctions and that most prison sentences have been suspended,” they added that, “these sanctions may not always be fully effective, proportionate and dissuasive.”²²⁹

Recent Developments

In October 2012, the German *Bundestag* (Parliament) began the process to adopt an amendment to the *Ordnungswidrigkeitengesetz* (Act of Regulatory Offences) which would increase the maximum monetary fine that can be imposed on legal persons for offences under the act, including foreign bribery offences, from €1 million to €10 million. Power to investigate and prosecute most criminal and administrative offences are devolved to the *Länder* (regions) and the federal authorities have no supervisory powers. Many provinces have chosen to establish specialised prosecution units, and cooperation and information exchange between these units has increased steadily over the years. This is to be commended and the results can be seen in the leap forward in terms of the number of investigations commenced in 2012.

Recommendations for Priority Actions

Ratify the UNCAC and Council of Europe anti-corruption conventions. Introduce criminal liability for corporations. Adopt and enforce the amendment to the Act of Regulatory Offences to increase sanctions available against legal persons. Increase the level of sanctions available for individuals. Establish a central register for the purpose of debarring corrupt companies from public contracts. Introduce improved whistleblower protection for the private sector.

²²⁶ Japan, Germany, Czech Republic and New Zealand are the only Parties to the OECD Convention who have not yet ratified the United Nations Convention against Corruption, see www.unodc.org/unodc/en/treaties/CAC/signatories.html.

²²⁷ The Council of Europe treaties, www.conventions.coe.int/Treaty/Commun/ListeTraites.asp?CM=8&CL=ENG.

²²⁸ The “*Dienstrechtsneuordnungsgesetz*” (Law with new regulations for the civil service) was passed by the Bundestag on November 12, 2008, and the “*Neues Beamtenstatusgesetz*” (New Law regulating the status of civil servants of the *Länder*) on June 17, 2008. These new Laws allowed civil servants to report serious crimes, including corruption, directly to a public prosecutor instead of to their immediate superior.

²²⁹ The OECD Working Group on Bribery, Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Germany, March 2011, page 5, see also pages 28-36, www.oecd.org/daf/anti-bribery/anti-briberyconvention/Germanyphase3reportEN.pdf.

Foreign Bribery Cases and Investigations

There is no available data concerning initiated, on-going or concluded foreign bribery cases in Greece. One investigation opened in Greece in 2012. The OECD Working Group on Bribery in their Phase 3 report on the implementation of the Convention in Greece reported that Greek authorities opened an investigation probing allegations that Greek nationals facilitated bribe payments on behalf of **Magyar Telekom**, a Hungarian telecommunications company. These bribes were allegedly paid to public officials in the Former Yugoslav Republic of Macedonia.²³⁰ The Greek authorities became aware of the allegations in April 2010 when the Greek Ministry of Justice received a request for mutual legal assistance from US authorities.²³¹ The working group criticised Greece for waiting two years before officially investigating the allegations.²³²

Access to Information

Access to information on enforcement is a serious problem in Greece. No statistics on foreign bribery cases or investigations are publicly accessible and statistics for 2012 were not made available on request. The only information available comes from law enforcement agencies in other jurisdictions, the media and other international reports monitoring enforcement.

Inadequacies in Legal Framework

The absence of enforcement action means that it is hard to assess the adequacy in practical terms of the Greek legal framework. Greece has a number of laws relevant to foreign bribery which makes it difficult to know which laws should apply when and to what extent.²³³ The OECD Working Group on Bribery felt that this “complexity can only impede implementation.”²³⁴ For example, there are a number of laws dealing with the issue of corporate liability and it is not clear whether a legal person can be considered liable in Greece when bribes are paid indirectly or via a subsidiary or an agent.²³⁵

Inadequacies in Enforcement System

The enforcement system is poorly resourced and there is a lack of coordination and communication between different enforcement bodies.²³⁶ Furthermore, investigators and prosecutors are inadequately trained to handle foreign bribery cases and generally there is a lack of public awareness of the offence.²³⁷ There is no whistleblower protection in Greece and Greek authorities

²³⁰ The OECD Working Group, Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Greece, June 2012, (Phase 3 Report on Greece 2012), pages 5, 7-8, 19-21 and 29, www.oecd.org/daf/anti-bribery/Greecephase3reportEN.pdf.

²³¹ Phase 3 Report on Greece, 2012, page 8; US v. Magyar Telekom, Plc., US District Court (E.D. Virginia) 1:11CR00597 (29 December 2011); Complaint filed in Securities and Exchange Commission v. Magyar Telekom, PLC, and Deutsche Telekom, AG, US District Court (S.D.N.Y.) 11CIV9646 (28 December 2011).

²³² Phase 3 Report on Greece 2012, page 8.

²³³ Bribery of foreign public officials, as well as bribery of other categories of foreign and international staff was criminalised in Greece through the successive ratification laws of the international instruments against corruption (including the OECD Convention and the UNCAC). Laws 3666/2008 (which were passed to ratify the UNCAC) does go some way towards consolidating the ratification laws by amending some of the bribery provisions of the earlier laws of ratification. However, not all relevant provisions are amended and several legal provisions overlap. See GRECO Third Round Evaluation Report on Greece (Theme I: Incriminations) June 2010, page 10, 11, 22, [www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2009\)9_Greece_One_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2009)9_Greece_One_EN.pdf).

²³⁴ Phase 3 Report on Greece 2012, pages 10-11.

²³⁵ Ibid.

²³⁶ Transparency International Greece, *National Integrity System Assessment – Greece*, 2012, pages 88-102.

²³⁷ “The [OECD Working Group on Bribery] lead examiners believe that the awareness of foreign bribery and the Convention in Greece may be unacceptably low”, Phase 3 Report on Greece 2012, page 41.

noted that no reports of foreign bribery had come from private citizens.²³⁸ The economic crisis in Greece has intensified the competition for lucrative contracts abroad which could be mean that Greek individuals and businesses may be more tolerant of or willing to use bribes to win business. This in turn could weaken political will to prioritise the investigation and prosecution of foreign bribery.²³⁹

Recent Developments

There have been no recent developments in the legal framework or enforcement of foreign bribery. However, a number of the Convention Parties recently “expressed appreciation of Greece’s provision of mutual legal assistance in foreign bribery cases.”²⁴⁰

Recommendations for Priority Actions

Systematically collect and publish enforcement data. Consolidate and clarify foreign bribery legislation, preferably within the Penal Code. Give more resources to the prevention, investigation and prosecution of foreign bribery, in particular, to improve coordination of enforcement, train investigators and prosecutors and raise awareness of foreign bribery laws in the auditing and accounting sector. Articulate the value of strong enforcement of foreign bribery offences as a means of enhancing trust in Greek business, promoting investment opportunities and securing sustainable investments.

HUNGARY: LIMITED ENFORCEMENT.

Share of World Exports: 0.6 per cent

Foreign Bribery Cases and Investigations

There have been no cases or investigations commenced or concluded in 2012. Since 2009, one investigation was opened in 2010 and one in 2011. One case commenced in 2011 and one case was concluded with sanctions in 2011. In January 2012, Hungarian prosecutors dropped their investigation into Hungary’s oil and gas group, **MOL Nyrt.**²⁴¹ The investigation was examining allegations that MOL had bribed the former Croatian Prime Minister **Ivo Sanader** in 2008 in order to gain dominance in the Croatian oil company **INA.**²⁴² The Hungarian prosecutors explained that no satisfactory connection could be established between MOL and the Cypriot bank accounts, from which the alleged illegal payments were transferred.²⁴³ A first instance decision in Croatia in November 2012 sentenced the former Croatian prime minister to ten years’ imprisonment for taking bribes from MOL and others.²⁴⁴ Hungary did not comply with Croatia’s request for mutual legal assistance in this case; the authorities explained that compliance could have threatened Hungary’s national security. According to the Prosecution Service, the **Magyar Telekom** investigation is still on-going.²⁴⁵

²³⁸ The working group considered that the lack of past enforcement generally, as well as the lack of whistleblower protection, may discourage private citizens from reporting suspicions to the authorities. Phase 3 Report on Greece 2012, page 43.

²³⁹ Phase 3 Report on Greece 2012, page 41.

²⁴⁰ Phase 3 Report on Greece 2012, pages 5, 38.

²⁴¹ Reuters, 30 January 2012, “Hungary prosecutors say that MOL had no role in INA bribe”, www.reuters.com/article/2012/01/30/mol-ina-prosecution-idUSL5E8CU36N20120130.

²⁴² Ibid.

²⁴³ Ibid.

²⁴⁴ Natural Gas Europe, 20 November 2012, “Former Croatian MP jailed for accepting bribes from MOL”, www.naturalgaseurope.com/former-croatian-pm-jailed-for-accepting-bribes-from-mol.

²⁴⁵ Magyar Telekom Annual Report 2010, www.telekom.hu/static/sw/download/HAR_2010_Annual_Report_eng.pdf; Magyar Telekom Press Release, 21 March 2010, www.telekom.hu/press_room/press_releases/2011/march_21. The US Securities and Exchange Commission’s case against three Magyar Telekom employees moved forward in February 2013 after the motion to dismiss the case on the grounds that the court lacked personal jurisdiction to try the case was rejected. See, WatersKraus, Attorneys and Counsellors, 26 February 2013, “In Magyar Telekom Foreign Bribery Case,

Access to Information

Enforcement statistics are available online, including the numbers of reported crimes, investigations and prosecutions.²⁴⁶ More developed statistics, such as the number of terminated investigations and the sanctions imposed in concluded cases are available on request from the Ministry of the Interior or the Prosecution Service. There is a separate statistical system for the courts on criminal convictions, but it includes no data on foreign bribery cases prior to 2011 and only limited information for 2011 and 2012.²⁴⁷

Inadequacies in Legal Framework

Hungarian law requires in virtually all cases that a natural person be convicted and punished before liability of a legal person can be established.²⁴⁸ Legal entities can only be held vicariously responsible for criminal offences. This is serious barrier to holding companies accountable for corrupt activities including paying bribes abroad and could help explain why Hungary has, so far, failed to charge, prosecute or sanction any legal entity for foreign bribery offences.²⁴⁹ The OECD Working Group on Bribery noted in their March 2012 Phase 3 report on Hungary that “Hungary is currently unable to ensure that a legal person cannot avoid responsibility by committing an act of foreign bribery through an intermediary,” as the duty of companies to supervise their employees (except in some specific circumstances) does not extend to third parties.²⁵⁰

Inadequacies in Enforcement System

The minister of the interior may instruct the police and currently there are no effective legal barriers to prevent the minister, being a politician, from interfering in individual cases. The investigative agencies in Hungary are not wholly free from political interference.²⁵¹ The working group expressed concerns in their report “that the decision on whether to prosecute or dismiss a case could be subject to inappropriate considerations in sensitive cases, such as those involving bribery of foreign public officials.”²⁵² Senior public prosecutors may withdraw or reassign cases to other prosecutors at any stage of an enforcement procedure without providing reason.²⁵³ No independent forum exists in which challenges to a prosecutor’s decision to reassign or withdraw a corruption case can be heard. Act No. CLXIII of 2009 on the Protection of Fair Procedures, which came into force on 1 April 2010, in theory provides protection for whistleblowers from the public and private sectors, but due to the fact that no public entity has been designated to enforce the act, it is completely ineffective in practice. Furthermore, a new act covering whistleblower protection is due to be passed soon which will repeal the current law and provide weaker protection. There is a lack of awareness of the offence of foreign bribery in the private sector and there could be better internal controls or ethics and compliance programs within Hungarian companies. There is still no designated anti-corruption agency in Hungary.²⁵⁴

Motion to Dismiss Denied”,

www.texasfcpalawyers.com/index.aspx?id=news_magyar_telekom_foreign_bribery_mtd_denied

²⁴⁶ See www.crimestat.b-m.hu/.

²⁴⁷ The statistics available from the courts are not comprehensive. Only data which has been previously requested are easily accessible. Data requests are processed slowly by the Hungarian authorities. Overall, the statistics for convictions only provide a very limited oversight of the courts’ work.

²⁴⁸ Section 2 of Act CIV of 2001 on Criminal Measures Applicable to Legal Persons

²⁴⁹ The OECD Working Group on Bribery, Phase 3 report on Implementing the OECD Anti-Bribery Convention in Hungary, March 2012 (Phase 3 Report on Hungary 2012) page 8, www.oecd.org/daf/anti-bribery/Hungaryphase3reportEN.pdf.

²⁵⁰ Phase 3 Report on Hungary 2012, pages 12 and 14. It does constitute a crime if the head of an organisation omits to comply with supervision duties and such omission facilitates the commission of bribery by an employee. The head of organisation can also be held liable in case he/she negligently omits to fulfil his/her duties.

²⁵¹ Point j, Section 5 Act XXXIV of 1994 on Police

²⁵² Phase 3 Report on Hungary 2012, page 22.

²⁵³ Act CLXIII of 2011 on public prosecution, § 13 (1).

²⁵⁴ See www.transparency.hu/A_kozerdeku_bejelentesekrol_szolo_torvenyrol?bind_info=index&bind_id=0.

Recent Developments

In 2012, the Parliament adopted a new Criminal Code that entered into force in July 2013.²⁵⁵ Following GRECO recommendations, the code will treat bribery and foreign bribery in one chapter and assign the same sanctions for both offences.²⁵⁶ Until July 2013 foreign bribery was regulated in a separate sub-chapter. The amendment will extend and sharpen the definition of foreign bribery by distinguishing its active and passive forms as well as bribery in the public sphere and bribery in economic transactions. The amendments also mean that whether the offender alerted the authorities to their offence can now be considered by the court as a mitigating factor rather than, as before, a ground for dispensing with the charges entirely. This is an unfortunate change as it may dissuade individuals from reporting corruption to the authorities. Provisions of the new criminal code make it easier for criminal sanctions to be imposed on legal entities.²⁵⁷ A recently drafted law on whistleblower protection, if passed, will weaken already inadequate, whistleblower protection. In addition, a law amending the Criminal Code repealed the offence that used to apply to any discrimination or retribution of whistleblowers. Such an action qualifies a petty offence due to the law in force as of 1 February 2013.

Another new law, which entered into force in January 2012, criminalises “requesting undue influence” as a form of trading in influence in international relations.²⁵⁸ The statute of limitation in cases of bribery has been increased to at least five years by Act CL of 2011; the previous limit was three years.

Recommendations for Priority Actions

Ensure that the pending amendment to the law providing for enhanced liability for legal entities is passed and properly applied. Improve the capacity of the police and prosecution services by giving them more resources and providing specialised training on foreign bribery. Ensure the de facto independence of the prosecution and police from political interference. In particular, decisions on whether or not to prosecute should be accountable to an independent body. Increase awareness of foreign bribery in the private sector and promote better internal controls and compliance programmes. Establish and implement effective whistleblower protection. Require the prosecutor general to explain why neither the “MOL-Sanader” nor the “Magyar Telekom” investigation resulted in indictments.

ICELAND: N/A.²⁵⁹

Share of World Exports: 0.04 per cent

Foreign Bribery Cases and Investigations

There have been no foreign bribery cases or investigations in Iceland. The OECD Working Group on Bribery's *Follow-up Phase 3 Report and Recommendations* of 2013 noted that “[t]he Icelandic authorities have not been aware of any allegations of foreign bribery committed by Icelandic individuals or companies.”²⁶⁰

²⁵⁵ Act C of 2012 on the Criminal Code

²⁵⁶ GRECO Phase 3 Evaluation Report on Hungary on Incriminations (Theme I), June 2010, page 25, [www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2009\)8_Hungary_One_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2009)8_Hungary_One_EN.pdf).

²⁵⁷ Article 181 of Act CCXXIII of 2012. Under the current law a legal entity may only be sanctioned under criminal measures if it benefited from an unlawful advantage as the consequence of an intentional crime.

²⁵⁸ Article 15 of Act CL of 2011.

²⁵⁹ The share of Iceland's world exports is too small to yield significant result.

²⁶⁰ The OECD Working Group on Bribery, *Follow-up Phase 3 Report and Recommendations on Iceland*, January 2013, (Follow-up Phase 3 Report on Iceland 2013), page 3, www.oecd.org/daf/anti-bribery/Icelandphase3writtenfollowupreportEN.pdf.

Access to Information

Official statistics and details about foreign bribery investigations and cases are available online via the website of the Ministry of the Interior and on request from the State Prosecutor's Office.²⁶¹

Inadequacies in Legal Framework

The offence of bribing employees of state-owned enterprises (SOEs) is subject to a lower maximum punishment (three years' imprisonment) than bribing other foreign public officials (four years' imprisonment). In their Follow-up Phase 3 report, the working group was concerned by this discrepancy and felt that three years' imprisonment was too low a sanction.²⁶² There is no public sector whistleblower protection in place which would clearly cover reports of foreign bribery offences committed by a private person. However, parliamentarians have recently introduced a bill on this subject in the legislature.²⁶³

Inadequacies in Enforcement System

The working group was concerned that Iceland had taken "limited steps" to enforce the Convention since 2010.²⁶⁴ Special investigative means such as interception of communications, video surveillance and undercover operations in foreign bribery investigations are neither readily available nor commonly used in Iceland. However, wiretapping would be available in foreign bribery investigations if a "valuable public and private interest" in its use could be shown.²⁶⁵ There is a lack of awareness among auditors and tax inspectors about how to detect foreign bribery and what to do after a possible detection. The working group noted in their latest report on Iceland that the Good Practice Guidance on Internal Controls, Ethics and Compliance, set out in Annex II to the 2009 Anti-Bribery Recommendations, has not been sufficiently promoted amongst auditors and the private sector more generally.²⁶⁶ Due to the very little share of Iceland in world exports, the enforcement level of the country was not evaluated in Table I.

Recent Developments

A number of amendments to the General Penal Code (GPC) relevant to foreign bribery were adopted by parliament in January 2013 and came into effect in February. The private sector bribery offence in section 264a of the GPC now expressly covers bribery of managers and employees of SOEs; the amendment is intended to cover foreign officials as well as domestic.²⁶⁷ Section 109 of the GPC was amended to increase the maximum sanctions for active bribery from three years to four years' imprisonment – the maximum sanction for passive foreign bribery is six years. An amendment was also made to make administrative sanctions (for example, withdrawal of a licence or debarment) available against both natural and legal persons.²⁶⁸ Iceland adopted a Code of Ethics for Staff in Government Offices in May 2012, which provides that government staff should report "morally reprehensible or illegal activity in the workplace," and a Code of Ethics for Ministers of March 2011 imposed similar reporting obligations. It is not clear whether these codes cover foreign bribery committed by a private individual and whether reporting is obligatory.

²⁶¹ Website of Iceland's Ministry of the Interior, www.innanrikisraduneyti.is; the website of the State Prosecutor's Office, www.rikissaksoknari.is.

²⁶² Follow-up Phase 3 Report on Iceland 2013, page 3.

²⁶³ Follow-up Phase 3 Report on Iceland 2013, page 4.

²⁶⁴ Ibid.

²⁶⁵ Follow-up Phase 3 Report on Iceland 2013, pages 3-4.

²⁶⁶ Follow-up Phase 3 Report on Iceland 2013, page 3.

²⁶⁷ Follow-up Phase 3 Report on Iceland 2013, pages 3 and 6.

²⁶⁸ In light of this amendment the OECD Working Group in its January 2013 Follow-up Phase 3 Report deemed Recommendation 2(b) to have been implemented.

Recommendations for Priority Actions

Increase use of special investigative measures. Promote the OECD Good Practice Guidance on Internal Controls, Ethics and Compliance among auditors and the private sector and train tax inspectors and auditors about how to detect and report potential evidence of foreign bribery. Introduce public and private sector whistleblower protection to cover all reports of foreign bribery and ensure that the availability of protection is widely known.

IRELAND: LITTLE OR NO ENFORCEMENT.

Share of World Exports: 1.18 per cent

Foreign Bribery Cases and Investigations

No cases or investigations recently commenced, underway or concluded. Four Oil-for-Food investigations were reported in 2008 and since dropped.

Access to Information

An Garda Síochána (the Irish Police) do not release statistics on the number of foreign bribery investigations undertaken into detected or alleged offences under the Prevention of Corruption Acts, nor is any information on case details publicly available. They do cite figures for the number of “corruption related” offences, but they do not break them down into more specific offences.

Inadequacies in Legal Framework

The definition of a “foreign public official” as established in the Prevention of Corruption Act 1906 (the “PCA 1906”) is problematic because, although it makes sense in the context of representative democracies, it does not easily translate to other forms of government. Further, it is not clear whether it applies to independent contractors. While it appears clear that corporate entities can be held criminally liable under Irish law, the basis for imposing this liability is not clear in the courts and it is likely to deter prosecutions against such entities. Although there have been a number of civil cases in which the courts have applied the identification model as a basis for imposing liability on a corporate entity, there have been no criminal decisions on this issue.²⁶⁹ It is not possible under Irish law to hold a corporation liable for bribery where that bribery is attributable to wilful ignorance, deliberate neglect or neglect on the part of senior management.

Inadequacies in Enforcement System

The lack of foreign bribery prosecutions suggests there are significant inadequacies in the enforcement system. The lack of transparency in the enforcement system makes it difficult to identify its main inadequacies. There is no publicly available information regarding the number of complaints, investigations, files referred for prosecution or cases in which no prosecution is taken. A lack of resources is an obstacle, as is a lack of specialised training for investigators and prosecutors. Ireland has approached whistleblower protection on a sector-specific basis, and there are gaps in the Prevention of Corruption (Amendment) Act 2010 that expose whistleblowers to retaliation.²⁷⁰ The government has published the proposed general scheme of the Protected Disclosures in the Public Interest Bill 2012 in order to meet concerns over the need for a pan-sectoral approach. There does not appear to be any state-sponsored public awareness, aside from a cross-departmental website²⁷¹ and the publication of a Department of Enterprise Trade and Employment brochure on the OECD Anti-Bribery Convention.

²⁶⁹ See generally The Law Reform Commission, Consultation Paper on Corporate Killing (LRC CP 26-2003).

²⁷⁰ See Imelda Higgins, “The Prevention of Corruption (Amendment) Act 2010, Things Done but Things Left to Do – Part 2”, (2012) 22(1) Irish Criminal Law Journal, 2.

²⁷¹ Please see www.anticorruption.ie.

Recent Developments

The most significant development in the legal framework in the past year was the publication of the General Scheme of the Criminal Law (Corruption) Bill 2012, which if adopted will replace the existing bribery statutes with new bribery offences and introduce a number of new related offences. The most significant aspects of the bill relating to the Convention are the proposed introduction of: a specific offence of bribing a foreign public official; two offences covering active and passive trading in influence; a new offence of bribing through an intermediary which can be committed recklessly; and a new failure to supervise type offence for corporate and unincorporated bodies. The government has also published the general scheme of the Protected Disclosures in the Public Interest Bill (2012), which introduces pan-sectoral whistleblower protection. These developments build on other recent developments including in particular the enactment of the Prevention of Corruption (Amendment) Act 2010, which amended the earlier prevention of corruption acts in order to take into account some of the then existing deficiencies in the Irish implementation of the Convention. Moreover, the Criminal Justice Act 2011, s. 19, introduced a new offence of withholding information relating to criminal offences. Lastly, Ireland ratified the UN Convention against Corruption in November 2011.

Recommendations for Priority Actions

Enact the Criminal Justice (Corruption) Bill 2012 as a clear priority. Adopt a law on pan-sectoral whistleblower protection. Raise awareness on the foreign bribery offence. Clarify the basis for imposing liability of corporations on a statutory basis. Collect and proactively provide information on concrete enforcement efforts, including information on the number of complaints relating to foreign bribery investigated and/or sent to the director of public prosecutions for prosecution.

ISRAEL: LITTLE OR NO ENFORCEMENT.

Share of World Exports: 0.43 per cent

Foreign Bribery Cases and Investigations

No cases or investigations recently commenced, underway or concluded.

Access to Information

In theory, the number of cases and investigations would be available on request. However, there have been no cases or investigations so it is not possible to tell whether information or known case details would be accessible.

Inadequacies in Legal Framework

There are no major inadequacies in the legal framework.

Inadequacies in Enforcement System

While statutory protections for whistleblowers have been enhanced in recent years, there are still deficiencies in the law and its implementation.

Recent Developments

The Encouragement of Integrity in Public Service Regulations 1994 was amended to broaden the definition of what can be considered a complaint and thus expanded protection for whistleblowers. The director general of the Ministry of Defence (MOD) issued an instruction to the ministry's Defence Export Controls Directorate (DECD) clarifying explicitly that an exporter's engagement in foreign bribery should be taken into consideration in licensing and registration decisions. Major

defence exporters are also now required to adopt and implement corporate anti-corruption compliance programmes as a precondition for receiving marketing and export licences. The director general has ordered the DECD not to issue export licences to companies that do not adopt such anti-corruption compliance programmes. The minister of justice has formed a working group to review liability of legal entities under current laws and regulations, and a proposed bill is expected during 2013. An administrative ordinance to be applicable to governmental or quasi-governmental organisations is being drafted to establish a procedure for preventing natural and legal persons convicted of foreign bribery from competing in tender processes. Israeli officials continue to use various forums to raise awareness of foreign bribery in the private and public sectors.

Recommendations for Priority Actions

Enhance and ensure effective implementation of whistleblower protection. Provide for timeliness of investigations and prosecutions of suspected foreign bribery. Incorporate these requirements into the annual Israel police objectives for 2013-2014. Develop an inspection programme or another mechanism to ensure the adoption and implementation of anti-corruption compliance programmes by companies receiving export licenses, in addition to measures already taken by the Ministry of Defence.

ITALY: MODERATE ENFORCEMENT.

Share of World Exports: 3.03 per cent

Foreign Bribery Cases and Investigations

There were no known cases commenced in 2012, while two were concluded without sanctions due to expired *prescrizione*, or statutes of limitation. Six employees of **Siemens AG** and its Italian subsidiary, as well as **Intercom Telecommunication Systems** and **Galyan Consulting Limited**, reportedly transferred money to the **Swiss Intercom** company – money which was then transferred to public officials in unnamed countries. Plea bargains were reached for their charges of fraud, money laundering and embezzlement, among others, but charges regarding foreign bribery were dropped due to the expired *prescrizione*.²⁷² Charges against former executives and employees of **Snamprogetti S.p.A.**, a subsidiary of **ENI S.p.A.**, were also dropped due to expired *prescrizione*. These charges were related to their alleged participation in the TSKJ consortium and their alleged bribery of public officials in Nigeria in connection with the Bonny Island Liquefied Natural Gas Plant.²⁷³

Investigations initiated in 2012 reportedly included a former chief financial officer of **Finmeccanica S.p.A.** and alleged bribes of €18 million (US\$24 million) of the president of Panama in 2010 through the Panamanian company **Agafia** to secure €180 million (US\$236 million) in contracts for Finmeccanica's subsidiaries **AgustaWestland**, **Selex** and **Telespazio**.²⁷⁴ The CEOs of Finmeccanica and AgustaWestland, as well as other intermediaries, are reportedly under investigation for having allegedly paid a bribe of €42 million (US\$51 million) in 2010 to public officials in India for the sale of 12 helicopters for €560 million (US\$733 million).²⁷⁵ The former director of the **L'Avanti** newspaper was preventively arrested in 2012 for allegedly also having paid bribes to the

²⁷² Corriere della Sera, 19 September 2012, "Siemens chiude patteggiamenti inchiesta Milano", www.corriere.it/notizie-ultima-ora/Economia/Siemens-chiude-patteggiamenti-inchiesta-Milano/19-09-2012/1-A_002753465.shtml

²⁷³ Archivio Notizie Radior, 5 April 2012 "Saipem: tribunale, prescrizione per manager su tangenti Nigeria", www.archivio-radiocor.ilsole24ore.com/articolo-1051700/saipem-tribunale-prescrizione/#ixzz2R81hHuyF

²⁷⁴ Corriere della Sera, 23 October 2012, "Caso Finmeccanica, arrestato dirigente Indagato per corruzione l'ex ministro Scajola", www.corriere.it/cronache/12_ottobre_23/finmeccanica-pozzessere-arrestato_230ebc92-1cd4-11e2-99b8-aac0ed15c6ac.shtml; Il Fatto Cronaca, 23 October 2012, "Finmeccanica, indagato Scajola: "Canale privilegiato" per affari in Brasile", <http://www.ilfattoquotidiano.it/2012/10/23/finmeccanica-arrestato-dirigente-pozzessere-forniture-irregolari-in-panama/390373/>.

²⁷⁵ Il Giornale, 12 February 2013, "Finmeccanica, arrestato l'ad Giuseppe Orsi Corruzione internazionale", <http://www.ilgiornale.it/news/interni/finmeccanica-arrestato-lad-giuseppe-orisi-corruzione-884968.html>

President of Panama in 2010, in connection with the construction of prisons in that country.²⁷⁶ Three executives of **SAIPEM S.p.A.**, a subsidiary of ENI, and one executive of ENI are reportedly under investigation for suspected bribes in 2007 paid to officials of the Algerian state-owned company Sonatrach for a contract worth €430 million (US\$580 million) to construct a pipeline produced by Gk3.²⁷⁷ ENI is reportedly also under investigation for having allegedly paid bribes to public officials in Kazakhstan to obtain access to an oilfield in Kashagan.²⁷⁸ An Algerian agent is also reportedly under investigation in Italy, amongst other countries, for allegedly having made suspicious payments for various companies including Saipem and **SNC-Lavalin** (see reports on Canada and Switzerland) to obtain contracts from the Algerian state-owned oil company Sonatrach.²⁷⁹ Lastly, the president of **Pirelli S.p.A.** was reportedly under investigation for alleged bribery dating from 2002 to 2006 through a Brazilian intermediary to Brazilian government officials, though the investigation was dropped in October 2012.²⁸⁰

Access to Information

All case and investigation numbers for Italy are estimations based on secondary sources, as the government does not have a system or central database for collecting nor reporting such data. As a consequence, any quantitative data is not reliable. Quantitative information is gathered by the central administration through requests to local courts, which do not have uniform systems for recording information. Specific information on pending proceedings is not available and only decisions on concluded cases can be published. A key loophole regards proceedings which are dismissed upon a plea agreement. As Italy does not have a comprehensive Freedom of Information Act, access is only open for persons who can justify a “direct, tangible and actual” interest (law 241/1990, and articles 329 and 335 of the Italian Criminal Procedure Code).

Inadequacies in Legal Framework

Extortion by a public official is an acceptable defence for paying a bribe, in accordance with article 317 of the criminal code and article 25 of LD 231/2001 for individuals and legal persons, respectively.²⁸¹ The legal framework does not allow police authorities to make use of the special investigative instrument of “undercover operations.” Short statutes of limitation are an issue of concern in the Italian legal system in general, and for corruption and bribery in particular.²⁸²

Inadequacies in Enforcement System

There are inadequate resources to investigate and prosecute foreign bribery, seen in both the prosecution offices and in the courts. There is ineffective inter-institutional coordination, insufficient

²⁷⁶ Corriere della Sera, 16 April 2012, “Valter Lavitola in carcere a Napoli Voleva 5 milioni da Berlusconi per tacere”, www.corriere.it/cronache/12_aprile_16/lavitola-atterra-fiomicino_ca53fa64-8781-11e1-99d7-92f741eee01c.shtml

²⁷⁷ il Fatto Cronaca, 7 February 2013, “Caso Saipem, Paolo Scaroni indagato per tangenti in Algeria”, www.ilfattoquotidiano.it/2013/02/07/caso-saipem-indagato-lad-di-eni-scaroni-per-tangenti-in-algeria/492451/; Corriere della Sera, 10 May 2012, “Commissariare l'Eni in Kazakhstan”, www.corriere.it/cronache/12_maggio_10/commissariare-eni-in-kazakhstan_cb2c55bc-9a87-11e1-9cca-309e24d49d79.shtml; il Sole 24 ore, 31 January 2013, “Affaire Algeria, l'inchiesta si allarga”, www.ilsole24ore.com/art/notizie/2013-01-31/affaire-algeria-inchiesta-allarga-063810.shtml?uuid=Ab9rmoPH&fromSearch.

²⁷⁸ Corriere della Sera, 10 May 2012, “Commissariare l'Eni in Kazakhstan”, www.corriere.it/cronache/12_maggio_10/commissariare-eni-in-kazakhstan_cb2c55bc-9a87-11e1-9cca-309e24d49d79.shtml.

²⁷⁹ The Globe and Mail, 21 February 2013, “SNC bribery probe widens to Algeria” www.theglobeandmail.com/report-on-business/snc-bribery-probe-widens-to-algeria/article8907906/

²⁸⁰ La Repubblica, 12 October 2012, “Dossieraggio Telecom, indagini chiuse Tronchetti è indagato per ricettazione”, www.repubblica.it/economia/finanza/2012/10/12/news/dossieraggio_telecom_indagini_chiuse_tronchetti_indagato_per_ricettazione-44389995/.

²⁸¹ The OECD Working Group on Bribery Phase 3 Report on Implementing the Convention in Italy, December 2011, page 11, www.oecd.org/daf/anti-bribery/anti-briberyconvention/Italyphase3reportEN.pdf

²⁸² “Timed out: Statutes of limitations and prosecuting corruption in EU countries”, at www.transparency.it/att_ti.asp?idNews=172&id=progettiinternazionali; archive.transparency.org/content/download/57085/912315/Statutes+of+Limitation_web.pdf

training for justice officials and a lack of awareness of foreign bribery. Whistleblower protection does not extend to the private sector. Furthermore, although there are sound provisions for sanctions and criminal liability for companies, in practice they are not enforced.

Recent Developments

Law n.190, passed in November 2012 and known as the Anti-Corruption Law, introduced some provisions but they are only indirectly related to the Convention. It completely revised the anti-corruption framework for government agencies, empowering and enriching them with tools and safeguards,²⁸³ while also obligating them to make agency-wide anti-corruption plans. It also introduced a provision on whistleblower protection in the public sector, which Transparency International Italy regrets is largely inadequate, especially as it does not extend to the private sector. In 2012, Italy also ratified both the Civil and the Criminal Law Conventions on Corruption of the Council of Europe and joined the Open Government Partnership.

Recommendations for Priority Actions

Enforce the existing laws on sanctions and remedy those on statutes of limitation. Strengthen the existing provisions on whistleblower protection in the Anti-Corruption Law. Create a national database on criminal proceedings, provide prosecutors and enforcement officials with better tools, including legal instruments and technical resources, to investigate corruption, and ensure adequate and specialised training for police.

JAPAN: LITTLE OR NO ENFORCEMENT.

Share of World Exports: 4.28 per cent

Foreign Bribery Cases and Investigations

There are no known foreign bribery cases or investigations commenced, concluded or underway in 2012. One major case with substantial sanctions was concluded in 2009. According to a media report in 2012, the Japanese authorities closed, because of insufficient evidence, their investigation into allegations raised in Indonesia that two employees of the Japanese **Sumitomo Corporation** bribed Indonesian transport ministry officials between 2006 and 2007.²⁸⁴ The bribes were allegedly provided, in manner of entertainment²⁸⁵, in connection with a contract to supply railway coaches to the Indonesian state-owned rail company, **PT KAI**.²⁸⁶ It is not certain when the Japanese investigation opened, but a newspaper in Japan reported in November 2011 that the police were “cooperating with their Indonesian counterparts to look into whether any Japanese violated laws prohibiting the payment of bribes to officials of foreign governments.”²⁸⁷

Access to Information

Getting access to enforcement data is a challenge in Japan as statistics are not systematically collected and confidentiality rules for investigations and cases are very strict.

²⁸³ The new anti-corruption authority CIVIT is entrusted with investigative powers in that it can request information and documents from public administrations and it oversees their implementation of anti-corruption plans, which the administrations must draft and implement. Safeguards include anti-corruption plans; specific procedures for the selection and the training of public employees; rotation of public employees in certain positions; transparency obligations; duties of communication and oversight; codes of conduct for public employees; incompatibilities and bans of multiple assignments; the protection of whistleblowers; and the regulation of conflicts of interest.

²⁸⁴ The Asahi Shimbun, 3 July 2012, (no online version available), The Mainichi Shimbun, July 3, 2012 (no online version available)

²⁸⁵ The Mainichi Shimbun, July 3, 2012 (no online version available).

²⁸⁶ The Asahi Shimbun, 28 November 2011, “Sumitomo linked to railway corruption case in Indonesia”, www.ajw.asahi.com/article/behind_news/social_affairs/AJ201111280018; The Jakarta Post, 1 September 2010, “KPK raids local Sumitomo offices” www.thejakartapost.com/news/2010/09/01/kpk-raids-local-sumitomo-offices.html.

²⁸⁷ The Asahi Shimbun, 28 November 2011, “Sumitomo linked to railway corruption case in Indonesia”.

Inadequacies in Legal Framework

Japan has not ratified the United Nations Convention against Corruption. This impedes effective international cooperation with countries that are not Party to the OECD Anti-Bribery Convention.²⁸⁸ In their 2011 Phase 3 report on Japan, the OECD working group noted that there was no legal basis in Japan for confiscating the proceeds of bribes paid to foreign public officials and recommended its introduction.²⁸⁹

Inadequacies in Enforcement System

The enforcement system for foreign bribery in Japan is not sufficiently resourced and there is insufficient coordination between prosecution and investigative bodies. The working group was concerned by the poor levels of awareness of foreign bribery offences amongst accounting, auditing and legal professionals.²⁹⁰ The working group expressed concerns that the level of sanctions available against natural and legal persons for foreign bribery cases was too low to be considered “effective, proportionate and dissuasive,” as required by Article 3 of the Convention.²⁹¹ The group also noted that Japan should take urgent steps to encourage companies to prohibit the use of facilitation payments.²⁹² The government has taken some steps to assess the level of some of the challenges relating to foreign bribery enforcement. In January 2012, the government carried out a survey of Japanese small and medium-sized enterprises (SMEs) that conduct business abroad.²⁹³ Only 5.4 per cent of the companies prohibited facilitation payments, half of the companies felt that their employees were not aware that foreign bribery was a criminal offence and 83.1 per cent of companies provided no training on the topic.²⁹⁴

Recent Developments

On 18 March 2013, the Ministry of Economy, Trade and Industry published an online government-commissioned report on foreign bribery, and provided a leaflet addressed to businesses designed to raise awareness and warn against foreign bribery.²⁹⁵

Recommendations for Priority Actions

Collect and publish enforcement statistics. Raise awareness of foreign bribery offences among accountants, auditors and lawyers. Publicise available whistleblower protection. Properly resource enforcement bodies and improve coordination and communication between the different prosecution and investigative branches. Follow through with draft legislation designed to implement the UNCAC as well as the UN Convention against Transnational Organized Crime, which among other things will create a legal basis for confiscation. Ratify the UNCAC. Increase available sanctions for national and legal persons for foreign bribery offences. Encourage the private sector to prohibit facilitation payments further.

²⁸⁸ Japan, Germany, Czech Republic and New Zealand are the only Parties to the OECD Convention who have not yet ratified the United Nations Convention against Corruption. See www.unodc.org/unodc/en/treaties/CAC/signatories.html.

²⁸⁹ The OECD Working Group on Bribery, Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Japan, December 2011, (Phase 3 Report on Japan 2011), page 5, www.oecd.org/japan/Japanphase3reportEN.pdf.

²⁹⁰ Phase 3 Report on Japan 2011, pages 26, 44-45.

²⁹¹ Phase 3 Report on Japan 2011, pages 20-21.

²⁹² Phase 3 Report on Japan 2011, pages 5-6.

²⁹³ The Survey was distributed to 1,115 SMEs and 295 responded. For the complete findings (in Japanese) see, www.meti.go.jp/policy/external_economy/zouwai/pdf/chousa_houkokusho.pdf.

²⁹⁴ “Question: Does your company have specific policies addressing facilitation payments? Response: Yes - 5.4 per cent, No - 92.8 per cent, No answer - 1.8 per cent”; “Question: Do employees of your company know that the bribery of foreign public officials is punishable offence under Japanese law? Response: Most employees do not understand - 50.1 per cent, Some employees do understand - 31.2 per cent, Most employees do understand - 16.3 per cent”; “Question: Does your company provide regular trainings on foreign bribery? No – 83.1 per cent.” Ibid.

²⁹⁵ Website of the Ministry of Economy, Trade and Industry, www.meti.go.jp/policy/external_economy/zouwai/houkokusho.html; for the report (in Japanese) see, www.meti.go.jp/policy/external_economy/zouwai/pdf/chousa_houkokusho.pdf; for the pamphlet (in Japanese) see, www.meti.go.jp/policy/external_economy/zouwai/pdf/zouwaipamphlet.pdf.

Foreign Bribery Cases and Investigations

There have been no cases or investigations commenced or concluded in 2012. There was an on-going prosecution from May 2011, reportedly initiated by the Incheon Prosecutor's Office against a South Korean air cargo company employee. The case involved allegations that the cargo company paid 6.7 billion South Korean won (US\$6.3 million) in bribes to the Korean president of a local subsidiary of a Chinese government-controlled airline company.²⁹⁶ There have been no reported updates on this case.

Access to Information

Although enforcement statistics are available on request, the government is sometimes slow to provide up-to-date information and data.

Inadequacies in Legal Framework

Financial sanctions for foreign bribery remain inadequate. Fines cannot exceed 20 million South Korean won, which is approximately US\$17,000. The OECD Working Group on Bribery's Phase 3 Report called on South Korea to ensure that sanctions for natural and legal persons were "effective, proportionate and dissuasive."²⁹⁷ Whistleblowers from the corporate sector in South Korea are not fully protected.²⁹⁸

Inadequacies in Enforcement System

The investigation and prosecution authorities in South Korea do not receive adequate resources which means that dedicated staff cannot be retained. In addition, these departments do not coordinate their work effectively. Private corporations are not well informed about the offence and many companies do not have adequate internal controls to prevent and detect it.²⁹⁹ In addition, South Korea has yet to find effective ways to "facilitate reporting by the tax authorities of suspicions of foreign bribery that they uncover in their tax audits."³⁰⁰ Five years ago in 2008, the government merged the Anti-Corruption Agency (KICAC) with the ombudsman of Korea and Administrative Appeals Commission to establish a combined agency called the Anti-Corruption & Civil Rights Commission (ACRC). This was an unfortunate move. The merger undermined the independence of the KICAC and meant that its focus on corruption was diluted as it had to diversify its work to include non-corruption related activities.

Recent Developments

There have been no significant developments in 2012.

Recommendations for Priority Actions

Improve the access to enforcement information. Increase resources dedicated to foreign bribery enforcement and demonstrate a greater commitment to investigating and prosecuting this offence.

²⁹⁶ The OECD Working Group on Bribery, Phase 3 Report on the implementation of the OECD Anti-Bribery Convention in South Korea (Phase 3 Report on South Korea 2011), October 2011, page 10, "Chinese Airline Case", www.oecd.org/daf/anti-bribery/anti-briberyconvention/Koreaphase3reportEN.pdf.

²⁹⁷ Phase 3 Report on South Korea 2011 page 5.

²⁹⁸ Statement from Transparency International Korea (South), (TI-Korea) of December 2012, see www.ti.or.kr/xs/enotice/280166_

²⁹⁹ Phase 3 Report on South Korea 2011, page 5.

³⁰⁰ Phase 3 Report on South Korea 2011, page 5.

Educate South Korean businesses about foreign bribery and provide adequate protection for private sector whistleblowers. Encourage companies to adopt internal controls where possible. Re-establish the independence of the KICAC and reform the prosecution service to reduce risks of abuse of power. Improve systems to facilitate reporting by the tax authorities on suspicions of foreign bribery. Establish an independent investigation bureau that investigates allegations of corruption among high-ranking and senior government officials and reform the prosecution service to reduce the abuse of power among prosecutors.³⁰¹

LUXEMBOURG: LITTLE OR NO ENFORCEMENT.

Share of World Exports: 0.48 per cent

Foreign Bribery Cases and Investigations

One non-major case was tried in 2012, which ended with an acquittal and is under appeal. Two investigations have been initiated in recent years, one in 2010 and another in 2012.

Access to Information

Information on case and investigation details is not available to the public in line with rules relating to the presumption of innocence, secrecy of investigations, and the prevention of libel and slander.

Inadequacies in Legal Framework

As highlighted in the Phase 3 report of June 2011, the legal framework lacks clarity in terms of the element of proof required to constitute the bribery of a foreign public official, as well as in terms of whether the prosecution needs to prove that the law of the country of the bribe recipient prohibits their accepting that bribe.³⁰²

Inadequacies in Enforcement System

As noted in the Phase 3 report, although Luxembourg provides considerable mutual legal assistance to other States Parties to the Convention, it needs to be more proactive in investigating and prosecuting foreign bribery in its own jurisdiction. Limited police powers for conducting investigations in the preliminary enquiry stage affect the quality of the files passed to prosecutors. Though awareness of the offence of foreign bribery has increased in recent years, the authorities in Luxembourg need to be further raise awareness amongst the public and private sectors regarding the importance of reporting and preventing foreign bribery, and especially on the protection now afforded to whistleblowers following the February 2011 enactment of corresponding legislation.³⁰³

Recent Developments

Though there have been no recent developments related specifically to foreign bribery, there have been considerable related developments. Whistleblower legislation was enacted in February 2011. The Parliament ratified the International Anti-Corruption Academy in November 2012. The government filed comprehensive access to information legislation in February 2013, and the corresponding parliamentary process thereafter began. The government approved in March 2013 draft legislation containing a code of conduct for members of government, though this has not yet been filed with the parliament.

³⁰¹ Statement from Transparency International Korea (South), December 2012.

³⁰² The OECD Working Group on Bribery, Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Luxembourg, June 2011, page 4, see at www.oecd.org/dataoecd/46/61/48270224.pdf.

³⁰³ Ibid.

Recommendations for Priority Actions

Enact pending related legislation, review the adequacy of the Parliamentary Code of Conduct and other existing legislation related to foreign bribery, review the adequacy of qualified human resources (though the Luxembourg Criminal Police are currently recruiting highly qualified and experienced investigators).

MEXICO: LITTLE OR NO ENFORCEMENT.

Share of World Exports: 1.73 per cent

Foreign Bribery Cases and Investigations

No cases or investigations recently commenced or concluded.

Access to Information

Statistical information on criminal cases of foreign bribery is only accessible upon request. In the framework of the Open Government Partnership, the government of Mexico committed to publish online statistics on foreign bribery cases, following the initiative of Transparency International Mexico. Yet, as of early 2013, the information remains unavailable. Official information on details of foreign bribery cases is considered restricted information by law. Information on any criminal cases (investigation, documents, records and file) is strictly reserved to the offended and the defendants.

Inadequacies in Legal Framework

The maximum fine for foreign bribery, according to article 222bis of the Federal Criminal Code, is up to the equivalent of one thousand days of minimum wage (totalling US\$5,260), as well as suspension or dissolution of the company. A company may be held liable for foreign bribery only if a natural person who is a member or representative of the company has been convicted of the crime. Liability arises only if the bribery was “committed with the means of the legal person” which requires prosecutors to prove that the company had known that its resources would be used and the offence would not cover bribery committed with other resources such as the employee’s own funds. Also liability cannot be imposed against state-owned or state-controlled enterprises. Lastly, there are no laws in Mexico with provisions to protect whistleblowers.

Inadequacies in Enforcement System

There is unsatisfactory whistleblower protection, both in the public and private sectors, though there has been some progress in whistleblower protection in relation to organised crime. Article 83 of the Federal Fiscal Code prohibits practices that could be used for hiding foreign bribery, such as failure to maintain accounts, to audit inventories or to provide proof of payments as well as using off-the-books accounts and making wrong entries. Accountants and auditors are professionally bound to confidentiality, and are often reluctant to report cases of criminal wrongdoing. The OECD Working Group on Bribery Phase 2 Follow-Up Report recommended obligating accountants and auditors to report suspicions of foreign bribery to law enforcement authorities.

Recent Developments

On 17 October 2012, the new Federal Law for the Prevention and Identification of Transactions with Funds of Illegal Origin was published in the Mexican Official Gazette and will become effective on 17 July 2013.³⁰⁴ The law imposes the obligation to report transactions carried out for the sale or lease of goods, services or donations and the receipt of payments in cash in amounts equal to or

³⁰⁴ Secretary of Internal Affairs, Federal Law for the Prevention and Identification of Transactions with Funds of Illegal Origin, www.dof.gob.mx/nota_detalle.php?codigo=5273403&fecha=17/10/2012.

greater than a number of thresholds. It also restricts the use of cash in certain transactions associated with high-value assets, and establishes better mechanisms for coordination between the Ministry of Finance and the police and enforcement agencies responsible for coordinating the prevention, investigation and prosecution of crimes. In 2012, a new Federal Anti-Corruption in Public Procurement Law was passed and entered into force, which extends related statutes of limitation to 10 years, starting from the time the offence was committed, and also establishes responsibilities and sanctions for individuals and corporations for violations of this law committed during the public procurement process.

Recommendations for Priority Actions

Ensure that the legislation to be drafted for a new anti-corruption agency regulates and improves the coordination of the agency with the Attorney General's Office, the Finance Ministry, the legislative and judicial branches, as well as with local governments. Though Article 222bis of the Federal Criminal Code establishes criminal sanctions for companies in bribery foreign official, clarify the extent to which the corporations can incur in criminal liability. Increase political will for fighting foreign bribery and send a clear sign of commitment and capacity for countering corruption.

THE NETHERLANDS: LITTLE OR NO ENFORCEMENT.

Share of World Exports: 3.38 per cent

Foreign Bribery Cases and Investigations

In 2012, one major case was concluded with sanctions and three investigations commenced. According to official reports since 2009, three investigations opened in 2010 and another three opened in 2011. In December 2012, the Dutch construction giant **Ballast Nedam** agreed to a settlement of €17.5 million (US\$22.5 million)³⁰⁵ with the Dutch Public Prosecution Service.³⁰⁶ This settlement concludes the investigation which the Dutch Fiscal Intelligence and Investigation Service opened in 2011 after an internal investigation at Ballast Nedam discovered that their subsidiaries had made suspicious payments between 1996 and 2003.³⁰⁷ The company alerted the Dutch authorities to the transactions which were allegedly paid to foreign officials in the Middle East and Saudi Arabia.³⁰⁸

According to media reports, in January 2013 an investigation re-opened in Argentina and Uruguay probing allegations that Sergio Cetera, a manager at the Dutch dredging company **Royal Boskalis Westminster**, bribed Uruguayan official, Francisco Bustillo.³⁰⁹ The former Argentine deputy minister Roberto Garcia Moritan allegedly acted as an intermediary in this transaction.³¹⁰ This bribe was allegedly paid to help secure a dredging contract in the Martín García Canal for **Riovia**, a subsidiary of Boskalis.³¹¹

³⁰⁵ The company agreed to pay €5 million (US\$6.4 million) and waive a pending tax claim against the Dutch authorities worth €12.5 million (US\$16 million) See Dutch Public Prosecution Office, Press Release of 21 December 2012, www.om.nl/actueel/nieuws-persberichten/@160067/transactie-ballast/.

³⁰⁶ Association of Corporate Counsel, Lexology, 11 February 2013, "Public prosecutors reach settlement with Ballast Nedam", www.lexology.com/library/detail.aspx?g=4947f6fe-adc2-4200-b8e9-9d068df653f6_

³⁰⁷ Dutch Public Prosecution Office, Press Release of 21 December 2012, www.om.nl/actueel/nieuws-persberichten/@160067/transactie-ballast/.

³⁰⁸ Law 360, 21 December 2012, "Ballast Nedam reaches 17.5 million deal over bribery allegations", www.law360.com/articles/403661/ballast-nedam-reaches-17-5m-deal-over-bribery-allegations.

³⁰⁹ Siglo21, 10 August 2012, "Cancillería uruguaya denuncia soborno en CARP", www.s21.com.gt/internacionales/2012/08/10/cancilleria-uruguay-denuncia-soborno-carp; The FCPA blog, "Global Contagion Report", 22 February 2013 www.fcpablog.com/blog/2013/2/22/global-contagion-report-boskalis.html; La Nación, 19 February 2013, "Duro cruce de acusaciones entre Timerman y García Moritán", www.lanacion.com.ar/1555978-duro-cruce-de-acusaciones-entre-timerman-y-garcia-moritán.

³¹⁰ Ibid.

³¹¹ Ibid.

Seemingly the facts of this case were also reported by the OECD Working Group on Bribery's 2012 Phase 3 report on Netherlands. The working group reported that following a request for mutual legal assistance from a non-Party state, the Dutch law enforcement authorities opened a parallel investigation into a Dutch company.³¹² The company in question is suspected of bribing port officials to win a contract for dredging work.³¹³

The Dutch company **SBM Offshore** reported in April 2013 that an internal investigation revealed that company intermediaries had appeared to have made "substantial payments" to government officials in some African countries between 2007 and 2011.³¹⁴ SBM Offshore announced that it "could face penalties and criminal prosecution" if the investigation is concluded and finds the payments to be in breach of anti-corruption laws.³¹⁵ The company informed the Dutch Public Prosecution Service about their internal investigation which began in 2012.³¹⁶

The investigation, which opened following a request from the Prime Minister of Jamaica with respect to alleged illicit payments in Jamaica by **Trafigura Beheer BV**, the world's largest independent oil trader, has been stalled as the Dutch authorities' request to hear witnesses was challenged in court on claims of immunity. The Constitutional Court (Supreme Court) reserved its judgement without a specific date.³¹⁷

Access to Information

The Dutch authorities were cooperative when asked for enforcement statistics.

Inadequacies in Legal Framework

Sanctions are currently too low for foreign bribery offences and false accounting (although this would be remedied by the introduction of the draft law of February 2013, see Recent Developments below).³¹⁸ Legislation that protects private and public sector whistleblowers from discriminatory or disciplinary action is not in place. Protection is only available against unfair dismissal.

Inadequacies in Enforcement System

In the Phase 3 report, the working group commented that "in view of the size of the Dutch economy, its level of exports, Foreign Direct Investment, and involvement in high risk sectors, the absence of any foreign bribery convictions to date is seriously concerning".³¹⁹ The Group wrote that "Dutch law enforcement authorities [should] be more proactive in opening investigations into foreign bribery allegations, and take all the necessary steps to ensure their effective investigation."³²⁰ It also expressed serious concerns as to whether the Dutch law enforcement authorities were equipped to initiate proceedings against "mailbox companies", that is, companies registered in the Netherlands but carrying out their activities from abroad.³²¹ There are many mailbox companies registered in the

³¹² The OECD Working Group on Bribery's Phase 3 Report on Implementing the OECD Anti-Bribery Convention in the Netherlands, December 2012 (Phase 3 Report on the Netherlands Report 2012), page 6, Case#6 "The Port Case", www.oecd.org/daf/anti-bribery/Netherlandsphase3reportEN.pdf.

³¹³ Ibid.

³¹⁴ Market Watch, "SBM updates on sales practice inquiry", 28 March 2013, www.marketwatch.com/story/sbm-offshore-updates-on-sales-practices-inquiry-2013-03-28; The Wall Street Journal, "SBM Offshore: may have violated anti-corruption laws", 3 April 2013, www.online.wsj.com/article/BT-CO-20130403-701600.html.

³¹⁵ Ibid.

³¹⁶ Ibid.

³¹⁷ The Jamaica Gleaner, "PNP gets go-ahead in Trafigura case", 6 December 2011, www.jamaica-gleaner.com/gleaner/20111206/lead/lead2.html; Jamaica Observer, 2 October 2012, "Court reserves judgement in Trafigura case" http://www.jamaicaobserver.com/news/Court-reserves-judgement-in-Trafigura-case_12667843.

³¹⁸ Bill Strengthening the Fight against Financial-Economic Crime, 5 February 2013, see www.rijksoverheid.nl/documenten-en-publicaties/wetsvoorstellen/2012/11/22/wetsvoorstel-versterking-bestrijding-financieel-economische-criminaliteit.

³¹⁹ Phase 3 Report on the Netherlands 2012, page 9.

³²⁰ Phase 3 Report on the Netherlands 2012, page 5.

³²¹ Phase 3 Report on the Netherlands 2012, page 33.

Netherlands and 12 of the 22 allegations of foreign bribery which the OECD recorded in their 2012 report involved such companies.³²²

Recent Developments

At the end of 2012, the Dutch minister of security and justice reported that the investigative capacity of many of the Netherlands' specialised financial economic units was to be expanded in order to improve enforcement of foreign bribery. Personnel of the specialised financial-economic police will double in number, the Tax and Customs Administration will see its powers enhanced and the Fiscal Intelligence and Investigation Service (FIOD) will be reinforced with more investigative officers.³²³ Draft legislation of 5 February 2013 is due to go before the Dutch House of Representatives which proposes to set the amount of punitive fines for companies found guilty of foreign bribery offences to equal 10 per cent of annual turnover and to increase the maximum prison term to six years (it is currently four years).³²⁴ In 2012, the National Independent Advice and Information Centre for Whistleblowing (CAVK) was established to provide independent advice to potential whistleblowers in both the public and private sectors.³²⁵

Recommendations for Priority Actions

Promptly pass the draft law to increase sanctions for foreign bribery offences and follow through on promises to increase resources for Dutch anti-corruption enforcement bodies. Introduce protection for whistleblowers from the private and public sector against discrimination and disciplinary action. Increase awareness and application of laws that hold Dutch mailbox companies liable for their activities abroad.

NEW ZEALAND: LITTLE OR NO ENFORCEMENT.

Share of World Exports: 0.2 per cent

Foreign Bribery Cases and Investigations

No cases or investigations recently commenced, underway or concluded.

Access to Information

Statistics about foreign bribery investigations and cases are only available through a formal Official Information Act (OIA) request. All OIA requests to the relevant government agencies for the purpose of this report received comprehensive responses. The Serious Fraud Office has a page on its website dedicated to "case notes" (not limited to corruption and bribery) where details on some cases and investigations can be found and where it is expected that information about foreign bribery cases (if and when brought) would be published and therefore publicly available. Access to information is not hindered by unwillingness amongst authorities to cooperate; instead the issue is that there are no collated statistics readily available to the general public (although, to date, there have not been any foreign bribery cases in New Zealand for which statistics could be collated).

³²² Phase 3 Report on the Netherlands 2012, pages 5, 8-10, see also Case#4 'The Chemical Waste Case'.

³²³ National Library of Congress, 8 February 2013, 'The Netherlands: strengthening of prosecution of foreign bribery cases', www.loc.gov/lawweb/servlet/lloc_news?disp3_l205403483_text; Government of the Netherlands, 1 August 2013, 'The Netherlands does more against foreign bribery', www.government.nl/news/2013/01/08/the-netherlands-does-more-against-foreign-bribery.html.

³²⁴ Bill Strengthening the Fight against Financial-Economic Crime, 5 February 2013, see www.rijksoverheid.nl/documenten-en-publicaties/wetsvoorstellen/2012/11/22/wetsvoorstel-versterking-bestrijding-financieel-economische-criminaliteit.

³²⁵ Stephenson and Levi, 20 December 2012, "The protection of whistleblowers", www.coe.int/t/DGHL/STANDARDSETTING/CDcj/Documents/CDCJ%202012/CDCJ_2012_9e_FIN_Feasibility_Study_protection_whistleblowers_en.pdf.

Inadequacies in Legal Framework

The legality of facilitation payments remains somewhat equivocal (though these are not prohibited under the Convention). Section 105C(3) of the Crimes Act (bribery of a foreign public official) creates an exception to what would otherwise be an offence if the act in question was committed for the sole or primary purpose of ensuring or expediting performance of a routine government action, and the value of the benefit given is small. The exception for such facilitation payments does not apply in relation to the awarding of new business or retaining existing business, which do not count as “routine government actions”. The facilitation payment exception does not apply to the other bribery offences in the Crimes Act, that is, it only relates to bribery of a foreign public official. New Zealand also lacks anti-bribery offences comparable to the offence of failing to prevent bribery now present in UK law.

Inadequacies in Enforcement System

There is insufficient awareness of the offence of foreign bribery amongst the private sector, as well as the general public. This is part of an overall lack of awareness about anti-bribery legislation (New Zealand or foreign) among companies operating overseas.³²⁶ Furthermore, though whistleblower legislation does exist in the form of the Protected Disclosures Act (PDA), it is rarely used, with the chief ombudsman for New Zealand stating in late 2012 that she would like to see a review of the PDA to see why it is being invoked so infrequently. For the year through 30 June 2012, the ombudsman’s Annual Report showed that only nine requests had been received (and six completed) by the office that year for guidance and assistance in relation to the PDA.³²⁷ However, it should be noted that as other authorities can also receive protected disclosures, the ombudsman may be unaware of all disclosures made under the act.

Recent Developments

There have been no legislative developments relating specifically to the foreign bribery offence, though the enactment of the Search and Surveillance Act in 2012 is relevant. Among other aspects, it clarifies the search and surveillance powers of enforcement bodies including the police, commissioner of inland revenue, financial markets authority and enforcement officers under the Anti-Money Laundering and Countering Financing of Terrorism Act 2009. In October 2011, the New Zealand government introduced the Companies and Limited Partnerships Amendment Bill. The bill will require all New Zealand companies to have a New Zealand-resident director, which may increase the ease with which companies can be investigated and prosecuted. The bill is currently awaiting its second reading. In August 2011, the government issued the “Strengthening New Zealand’s Resistance to Organised Crime” paper. Following this, a report is believed to have been submitted to the cabinet in June 2013, addressing proposals for amendments to bribery and corruption offences to align with international standards (including the Convention), and towards ratification of the UNCAC. It is understood to contain proposals on money laundering, identity crime, reporting on international financial transactions and a national anti-corruption strategy. The Serious Fraud Office and Transparency International New Zealand are currently working on a training package for the public and private sectors about the risks of bribery and corruption. It is anticipated that this will be launched in 2013.

³²⁶ See “KPMG (Forensic), Survey of Fraud, Bribery and Corruption in Australia and New Zealand 2012”, www.kpmg.com/AU/en/IssuesAndInsights/ArticlesPublications/Fraud-Survey/Documents/fraud-bribery-corruption-survey-2012v2.pdf and “Deloitte Bribery and Corruption Survey 2012, Australia and New Zealand”, http://www.deloitte.com/assets/Dcom-NewZealand/Local%20Assets/Documents/Services/Forensics/nz_Bribery_and_Corruption_Survey_2012.pdf.

³²⁷ 2011/12 Report of the Ombudsman Tari o te Kaitiaki Mana Tangata for the year ended, 30 June 2012, page 51, www.ombudsman.parliament.nz/system/paperclip/document_files/document_files/466/original/annual_report_2011_-_2012.pdf.

Recommendations for Priority Actions

Amend New Zealand's provisions on bribery and corruption offences generally to align them with international standards and to substantially increase penalties for private sector bribery. Ratify the UNCAC to show the country's commitment against foreign bribery. Develop and implement a national anti-corruption strategy. Encourage the reporting of foreign bribery suspicions to the authorities, and ensure adequate training and public awareness of foreign and domestic bribery risks.

NORWAY: LIMITED ENFORCEMENT.

Share of World Exports: 0.95 per cent

Foreign Bribery Cases and Investigations

One investigation was opened in 2012 and no cases were commenced or concluded. In 2009 one investigation and one major case commenced and in 2011 two investigations and one major case were opened in Norway. In October 2012, for the first time in Norway, a company was convicted of having bribed foreign public officials. The judgement of the Borgarting Court of Appeal upheld the corporate fine of 4 million Norwegian krone (US\$666,905) against the Norwegian consultancy firm, **Norconsult AS**.³²⁸ The fine had been issued by the Norwegian National Authority for Investigation and Prosecution of Economic and Environmental Crime (ØKOKRIM) in 2009. Two of the three former employees charged with grand corruption in this case have been convicted.³²⁹ "In the period 2003–2006, the company paid approximately 1 million Norwegian krone (US\$160 000) under the table to public employees in connection with a cooperation agreement with the Dar Es Salaam Water and Sewerage Authority (DAWASA) in Tanzania".³³⁰ The judgement is not final as the Norwegian Supreme Court has agreed to hear the appeal.³³¹

A Norwegian news outlet reported in September 2012 that an investigation commenced into the Norwegian shipping company **Klaveness** after the company alerted ØKOKRIM of suspicions that generous commissions paid in the 1990s to businessman Victor Dahdaleh may have been bribes used to secure shipping contracts in Bahrain. The company's owners Tom Erik Klaveness and Torvald Klaveness, who are both confirmed to be under investigation, explained that they understood that the commission money was to be paid to the King of Bahrain.³³²

Press reported in May 2012 that the company **Yara International ASA**, and three senior company officials have been charged with bribery offences relating to an ØKOKRIM investigation into the company.³³³ The investigation opened in 2011 following Yara International's voluntary disclosure to ØKOKRIM of possible offences concerning its ownership in **Libyan Norwegian Fertilizer Co.** (also known as **Lifeco**) and in projects in India.³³⁴ In June 2012, the company confirmed that it had made

³²⁸ Development Today, "Court: Norconsult to pay NOK 4 million corruption fine", www.development-today.com/magazine/2012/dt_10-11/news/court_norconsult_to_pay_nok_4m_corruption_fine; ØKOKRIM Annual Report 2012, "Criminal cases" page 12, [http://www.okokrim.no/www/okokrim/resource.nsf/files/www95wjfu-aarsrapport_okokrim_2012_engelsk/\\$FILE/aarsrapport_okokrim_2012_engelsk.pdf](http://www.okokrim.no/www/okokrim/resource.nsf/files/www95wjfu-aarsrapport_okokrim_2012_engelsk/$FILE/aarsrapport_okokrim_2012_engelsk.pdf)

³²⁹ INTSOK Norwegian Oil and Gas Partners, "Norconsult verdict in the appeal court: corporate penalty", intsok.com/style/uploads/doc/Docs/Memo_Norconsult_anticorruption.pdf.

³³⁰ Økokrim Annual Report 2012, page 12.

³³¹ Development Today, "Supreme Court will hear Norconsult corruption verdict", www.development-today.com/magazine/Frontpage/supreme_court_will_hear_norconsult_corruption_verdict

³³² www.DN.no, 6 September 2012, Indikerte utbetalinger til Kongen i Bahrain www.dn.no/forsiden/naringsliv/article2464557.ece.

³³³ Views and News from Norway, 21 April 2012, "Former Yara CEO faces charges", www.newsinenglish.no/2012/05/21/charged-executives-relieved-of-duties/; The Indian Express, 29 June 2012, "Norway's Yara probe finds 1 million unacceptable payments in India", www.indianexpress.com/news/norways-yara-probe-finds-1mn-unacceptable-payments-in-india/968375/; Reuters, 23 March 2012, "Yara has uncovered further unacceptable payments", www.reuters.com/article/2012/03/23/idUS49790+23-Mar-2012+HUG20120323.

³³⁴ The Trace Blog, 12 May 2011, "Yara International ASA discloses Norwegian foreign bribery investigation", www.traceblog.org/2011/05/12/yara-international-asa-discloses-norwegian-foreign-bribery-investigation/.

“an unacceptable payment” of US\$ 1 million in 2007 to an Indian consultant.³³⁵ An ØKOKRIM raid of the offices of **Balderton Fertilisers** (which is 100 per cent owned by Yara International) led to the discovery of improper transactions totalling US\$15 million paid in Switzerland in the period 2006 to 2010 by Balderton Fertilisers to persons employed or associated with their suppliers.³³⁶ According to the Dow Jones Newswires, a representative from ØKOKRIM said that the case concerning the Swiss payments “has no connection” to the Libya and India probes.³³⁷

Access to Information

ØKOKRIM has provided anonymised information on cases and investigations. Information about investigations and cases is sometimes published in the Norwegian and international media.

Inadequacies in Legal Framework

There are no significant inadequacies.

Inadequacies in Enforcement System

As ØKOKRIM described in its annual report, “it is a problem that serious offences detected by supervisory bodies, inspectors and others are not prosecuted” and “the police and the prosecuting authority still need a reliable centre of expertise in their combat against financial and economic crime.”³³⁸

Recent Developments

Norway announced that it will introduce country-by-country reporting (LLR) from 2014 which means companies will have to report on finances of their foreign subsidiaries which will foster responsible use of revenues by countries that originate from their natural resources.³³⁹

Recommendations for Priority Actions

Encourage companies to develop internal controls and establish mechanisms and “red flags” for early warning and detection of foreign bribery incidents. Enhance legal harmonisation between corporate penalties and tender refusal in the public sector.

POLAND: LITTLE OR NO ENFORCEMENT.

Share of World Exports: 1.08 per cent

Foreign Bribery Cases and Investigations

“Poland has not successfully prosecuted a foreign bribery case in the 12 and a half years since its foreign bribery offence came into force.”³⁴⁰ According to the recent OECD Working Group on Bribery

³³⁵ The Indian Express, 29 June 2012, “Norway’s Yara probe finds 1 million unacceptable payments in India”, Reuters, 23 March 2012, “Yara has uncovered further unacceptable payments”.

³³⁶ The Wall Street Journal, 23 March 2013, “Yara faces third case of possible corruption in a year”, www.blogs.wsj.com/corruption-currents/2012/03/23/yara-faces-third-case-of-possible-corruption-in-a-year/; The Trace Compendium, summary of enforcement actions concerning Yara International ASA, www.traceinternational2.org/compendium/view.asp?id=345; Agrimoney.com, 29 June 2012, “Yara threatens to sue former owner of Balderton”, www.agrimoney.com/news/yara-threatens-to-sue-former-owner-of-balderton--4699.html

³³⁷ The Wall Street Journal, 23 March 2012, Corruption Currents: “Yara Faces Third Case of Possible Corruption in a Year”, <http://blogs.wsj.com/corruption-currents/2012/03/23/yara-faces-third-case-of-possible-corruption-in-a-year/>

³³⁸ Økokrim Annual Report 2012, page 4.

³³⁹ Ministry of Foreign Affairs Meld. St. 25 (2012 – 2013) Report to the Storting (white paper) www.regjeringen.no/upload/UD/Vedlegg/Utvikling/whitepaper25_201213.pdf.

Phase 3 report on Poland, there have been no foreign bribery investigations commenced since 2009, save one which resulted in an indictment, although the precise dates were not given. According to the report, the indictment was issued against one Polish individual and relates to allegations that he paid bribes amounting to €64,500 to secure falsified export documents from a foreign official from another State Party to the Convention. The proceedings are reportedly still on-going.³⁴¹ This case may be related to a report in the Polish press that in 2012 the prosecutor of Gorzow Wielkopolski requested the court to detain for three months, as a precautionary measure, an individual charged with bribing German officials while importing and exporting goods. The request was granted.³⁴²

Access to Information

Enforcement statistics on foreign bribery are recorded by Polish authorities. The Central Anti-Corruption Bureau (CBA) publishes their data and the Prosecutor General's Office provides information on request. The Ministry of Justice keeps the most extensive statistics and these are also available on request.

Inadequacies in Legal Framework

Laws which provide for corporate liability for foreign bribery are too weak and are rarely applied. As a general rule, Polish law still requires that a conviction of an individual must be secured first before corporate liability can be established.³⁴³ Non-criminal sanctions for legal entities are potentially inadequate as the legislative cap on fines is quite low. Fines can be between 1,000 and 5 million Polish zloty (US\$300 and US\$1.5 million) and not more than 3 per cent of the company's revenue in the tax year when the offence was committed. The current caps on fines mark a reduction from a higher cap of 20 million Polish zloty and 10 per cent of the company's revenue in the tax year.³⁴⁴

Inadequacies in Enforcement System

Prosecuting foreign bribery is not a priority for law enforcement bodies in Poland and the CBA focuses mainly on domestic bribery. Although the CBA is adequately resourced, these resources have not translated into strong enforcement of foreign bribery.³⁴⁵ Systems in Poland to detect foreign bribery are weak. Businessmen, public officials, accountants and auditors are not always aware that foreign corruption can be prosecuted by their domestic enforcement agencies. The Polish enforcement agencies are not well informed about the activities of Polish businesses abroad and they do not regularly exchange information about vulnerable sectors with their foreign equivalents.³⁴⁶

Recent Developments

A new basis for corporate liability was introduced at the end of 2011.³⁴⁷ It allows for corporations to be held liable for crimes committed by a contractor if the corporation did not take steps to prevent the commission of the offence and the offence could have been prevented by the exercise of due diligence on the part of the corporation or its representatives. It is still too early to reliably assess the

³⁴⁰ The OECD Working Group on Bribery, Phase 3 Report on Implementation of the OECD Anti-Bribery Convention in Poland, June 2013 (Phase 3 Report on Poland 2013), page 5, www.oecd.org/daf/anti-bribery/Polandphase3reportEN.pdf.

³⁴¹ The investigating is being led by the Regional Prosecutor's Office in Gorzow Wielkopolski. See Phase 3 Report on Poland, 2013, page 11, Case#4 (False documents case).

³⁴² www.lubuska.policja.gov.pl, 27 July 2012, "Areszt za gigantyczne łapówki", www.lubuska.policja.gov.pl/serwis-informacyjny/aktualnosci/item/333-areszt-za-gigantyczne-%C5%82ap%C3%B3wki.

³⁴³ Phase 3 Report on Poland 2013, pages 17-19.

³⁴⁴ Phase 3 Report on Poland 2013, pages 5, 22- 23.

³⁴⁵ "The Office of the Prosecutor General, National Police Headquarters, and Central Anti-corruption Bureau all claimed to have adequate resources to investigate and prosecute complex foreign bribery cases", see Phase 3 Report on Poland, June 2013, page 26.

³⁴⁶ Phase 3 Report on Poland 2013, pages 24- 26.

³⁴⁷ See [www.orka.sejm.gov.pl/opinie6.nsf/nazwa/4342_u/\\$file/4342_u.pdf](http://www.orka.sejm.gov.pl/opinie6.nsf/nazwa/4342_u/$file/4342_u.pdf).

practical impact of this legislative change, however, as it stands the amendment is a positive move and could strengthen corporate control over contractors, business partners and agents. The Polish authorities have cooperated with foreign enforcement agencies investigating bribery of Polish public officials. In 2012-2013, Polish authorities cooperated with the US Federal Bureau of Investigation's investigation into allegations of bribes paid by the Polish subsidiary of the American medical equipment company **Stryker Corporation** to healthcare professionals in Poland in connection with public tenders.³⁴⁸

Recommendations for Priority Actions

Dedicate resources of the CBA to investigating and prosecuting foreign bribery offences. Improve and apply legislation establishing corporate liability for foreign bribery. Apply effective proportionate and dissuasive sanctions against corporations. Increase awareness of the Convention among investigating and prosecuting agencies, businesses and relevant professionals. Better inform enforcement bodies of the activities of Polish companies who work abroad and exchange information with foreign agencies about vulnerable sectors – this could be helped by better cooperation between government agencies more generally.

PORTUGAL: LIMITED ENFORCEMENT.

Share of World Exports: 0.4 per cent

Foreign Bribery Cases and Investigations

Statistics provided for this report by the Public Prosecutor's Office and the Ministry of Justice contradicted those recently published in the OECD Working Group on Bribery's Phase 3 report on Portugal. The working group wrote that since ratification of the Convention, "Portugal has not prosecuted any foreign bribery cases" and that since 2001 there have been 15 allegations of Portuguese individuals or businesses bribing foreign officials – seven of which are still under investigation and the other eight having been closed without prosecution.³⁴⁹ Of these 15 allegations, 1 commenced in 2009, another in 2010 and 2 in 2012.³⁵⁰ However, the public prosecutor's office and the ministry reported that four foreign bribery cases commenced in 2009 and 2010 and that other cases commenced in 2011 and 2012. They were unable to provide any information on investigations except in 2010 when they reported no investigations.

Of the on-going investigations reported in the phase 3 report, one relates to allegations in Malawi press that the major Portuguese construction company **Mota-Engil SGPS SA**, which has large projects in the country, gave gifts including a reported US\$3 million mansion and made periodic payments in 2010 and 2011 to the late president Bingu wa Mutharika.³⁵¹ The bank transfers to the personal account of the Malawian president may have been as much as €42,000 (US\$54,000), with Mota-Engil confirming the offers, claiming they were a wedding gift and financial support for the publication of the president's book.³⁵² Public Prosecutors of the Central Department for Criminal Investigation and Prosecution (DCIAP) initiated a separate investigation, which is still on-going.³⁵³

³⁴⁸ SE Poland, 1 January 2013, "Korupcja w polskich SZPITALACH? Sprawą zajmie się FBI", www.se.pl/wydarzenia/kraj/korupcja-w-polskich-szpitalach-sprawa-zajmie-sie-fbi_298896.html; The Wall Street Journal, 2 January 2013, "Stryker Corporation probed in Poland on bribery allegations", www.blogs.wsj.com/corruption-currents/2013/01/02/stryker-corp-probed-in-poland-on-bribery-allegations/

³⁴⁹ The OECD Working Group on Bribery Phase 3 Report on the Implementation of the OECD Anti-Bribery Convention in Portugal, June 2013, (Phase 3 Report on Portugal 2013), pages 5, 8 -10.

³⁵⁰ Phase 3 Report on Portugal 2013, see Case#9 Public Works (Malawi) Case commenced in 2012, page 11; Case#11 Angola/Guinea Case commenced in 2012, page 12; Case#12 Real Estate (Angola) Case commenced in 2010, page 12 and Case#15 Farm Equipment and Aircraft (Zimbabwe) Case commenced in 2009, page 12.

³⁵¹ News Time Africa, 20 April 2012, "Activist ask Malawi government to freeze former President Mutharika's accounts", www.newstimeafrica.com/archives/25281; The Nation, 24 August 2012, "The Mota-Engil, Bingu Connection", www.mwnation.com/national-news-the-nation/9252-the-mota-engil-bingu-connection.

³⁵² Ibid.

³⁵³ See the Phase 3 Report on Portugal, June 2013, Case#9 "Public Works (Malawi) Case", page. 11.

Access to Information

There are different authorities handling statistical data on corruption offences in Portugal and the data on bribery in international business is neither differentiated nor reliable. Both the public prosecutor's office and the ministry of justice (DGPJ) provided information relating to case numbers upon request. However, the database of the DGPJ provides general information and statistics on corruption, but no information related to foreign bribery is available. The official statistics provided by Portugal to the OECD Working Group on Bribery for the recently published Phase 3 report on implementation in Portugal does not seem entirely consistent with the information made available for this report or for previous reports. This raises doubts about the reliability of enforcement data available from the Portuguese authorities. Access to official information with further detail on cases and investigations is often provided upon request when addressed to the competent court. Yet this may only be done regarding cases that are not under judicial secrecy, and only media organisations can publish the information provided. Occasionally, the public prosecutor's office issues press releases with further information or clarification on cases that receive heavy media coverage.

Inadequacies in Legal Framework

The key inadequacy remains the lack of easily understood legal mechanisms, which may lead to legal uncertainty and misinterpretation of the legal framework.³⁵⁴ Sanctions for corruption-related crimes committed by legal persons, though adequate for smaller companies, are equivalent to small taxes when it comes to large multinational corporations. As no sanctions for foreign bribery have been imposed in Portugal against legal persons, it is difficult to judge the adequacy of the sanctions regime in practice. "Portugal has only a rudimentary mechanism to encourage and protect whistleblowers in the public sector" and whistleblowers from the private sector have even weaker protection.³⁵⁵

Inadequacies in Enforcement System

The main inadequacies in the Portuguese enforcement system do not relate to foreign bribery cases in particular, but to general problems, such as a lack of human and material resources for investigation and lack of expertise and training on the enforcement of economic crimes. The sluggishness and complexity of the judicial system is also considered an obstacle to the effective prosecution of corruption. A lack of cooperation within national judicial authorities and with foreign enforcement agencies also hinders effective enforcement. In the 2013 Phase 3 report, the working group was "seriously concerned that Portugal's enforcement of the foreign bribery offence has been extremely low"³⁵⁶ and "gravely concerned that Portuguese authorities repeatedly fail to investigate foreign bribery allegations thoroughly and proactively."³⁵⁷

Recent Developments

Portugal's delegate to the working group indicated that the ministry of justice plans to prepare a proposal to amend the foreign bribery offence in the Penal Code (Law no. 20/2008), in response to recommendations made by GRECO and OECD.³⁵⁸

³⁵⁴ The OECD Working Group on Bribery in their Phase 3 Report on Portugal, June 2013, mentions the problem of uncertainty and vagueness in relation to the definition of foreign bribery and available defences to the offence. See Phase 3 Report on Portugal, June 2013, pages 15 – 16, 18 – 19.

³⁵⁵ Phase 3 Report on Portugal, pages 46-47.

³⁵⁶ Phase 3 Report on Portugal, p 5.

³⁵⁷ Phase 3 Report on Portugal, p 24.

³⁵⁸ Email correspondence from Portugal's delegate to the OECD Working Group on Bribery of 18 June 2013. For comments of the OECD Working Group on Bribery see Phase 3 Report on Portugal, June 2013, page 63 and GRECO's Third Evaluation Round Compliance Report on Portugal, 'Incriminations and Transparency of Party Funding', December 2012, page 3, [www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2012\)20_Portugal_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2012)20_Portugal_EN.pdf).

Recommendations for Priority Actions

Improve statistical data collection in the criminal justice system. Specifically, enhance clarity, reliability and accessibility of enforcement data a public information “portal” for the implementation of the Convention should be set up, so that the public could monitor how many public allegations have been made and how many led to investigation, prosecution and trial. Ensure any requests made by the prosecutor’s office within the context of criminal investigations and when addressed to other institutions with specialised human resources (for example, experts from the General-Inspectorates) are considered high priority and ensure that assistance is accordingly expeditiously provided. Provide focused, in-depth and specialised training for prosecutors, criminal investigators and judges. Increase public awareness about the foreign bribery offence in the private sector, in particular regarding the liability of legal persons and possible sanctions. Encourage companies to establish special channels of communication and internal protection for whistleblowers. Increase pecuniary sanctions for legal persons for corruption-related crimes, including foreign bribery.

RUSSIA: LITTLE OR NO ENFORCEMENT.

Share of World Exports: 2.55 per cent

Foreign Bribery Cases and Investigations

There have been no known cases or investigations recently commenced, underway or concluded. In April 2013, an NGO investigative report revealed allegations that in the 1996 renegotiation of Angola’s debt of US\$5 billion to Russia, in which **Abalone Investments**, a company formed by a Russian-Israeli businessman and a French businessman, allegedly made millions of dollars from the negotiation, despite not appearing to have provided any discernible services.³⁵⁹ The Angolan state-owned oil company **Sonangol EP** allegedly played a key role in facilitating the payments between the governments and middlemen.³⁶⁰

Access to Information

Several requests for statistics on foreign bribery cases and investigations were sent to authorities, and Transparency International Russia eventually received responses. In terms of detailed information, the general prosecutor of Russia and other federal government agencies, in accordance with the National Anti-Corruption Plan, are due to analyse and provide a corresponding report on bribery of foreign public officials.³⁶¹ The report, which is due to be presented in June 2013 to the Presidential Council of the Russian Federation, will provide valuable information if made public.

Inadequacies in Legal Framework

In May 2011, Russia enacted legislation that introduced the offence of bribery of a foreign official.³⁶² However, active bribery is vaguely defined. Further, though there is a comprehensive definition of “foreign public official”, it is not entirely consistent with its definition in other laws, thus creating some confusion. It may be difficult to establish the amount of undue benefits in a foreign bribery case given that the law does not address non-pecuniary bribes. Further, for natural persons, imprisonment is not a mandatory sanction, including for the most serious bribery offences under Article 291(5) (that is, in cases where possible sanctions include a fine or imprisonment, the court may impose only a fine which could be seen as allowing the bribe payer to simply “pay” his way out of jail). The existence of the latter possibility in respect of the most serious offence casts doubts on the effectiveness, proportionality and dissuasiveness of the sanction. Lastly, Russian law does not

³⁵⁹ Associação Mãos Livres and Corruption Watch UK, April 2013, “Deception in High Places: The Corrupt Angola–Russia Debt Deal”, www.cw-uk.org/angola-russia-report/.

³⁶⁰ Ibid.

³⁶¹ Art.8 Paragraph b) www.base.consultant.ru/cons/cgi/online.cgi?req=doc;base=LAW;n=143660

³⁶² Amendments to the Criminal Code and the Code of Administrative Offences of the Russian Federation in Relation to the Enhancement of Public Governance in the Area of Counteraction to Corruption – (Federal law N° 97-FZ).

appear to fully comply with its obligations under the Convention to investigate and prosecute cases against individuals, due to its refusal to extradite on nationality grounds.

Inadequacies in Enforcement System

Complaints mechanisms and whistleblower protection are a serious concern. Further, the investigation and prosecution of corruption offences, including bribery, are the responsibility of several law enforcement and judicial bodies. The Russian authorities state that the investigation and prosecution of foreign bribery cannot be influenced by considerations of national economic interest, the potential effect upon relations with another state or the identity of the natural persons involved. However, the role of assessing the “interests of the Russian Federation” for extraterritorial offences, and the absence of a defined set of criteria for this assessment, raise concerns for possible improper considerations in the process.³⁶³

Recent Developments

The Federal Law of 01/02/2012 № 3-FZ was enacted in February 2012, through which Russia acceded to the Convention. A presidential decree was issued in March 2012 (№ 297) “On the National Anti-Corruption Plan for 2012-2013,” which the Supreme Court is charged with reviewing. The court should report on Russia’s international obligations, including those of the Convention, and should also provide clarification on the application of the law in respect to corruption offenses. The plan designates the individuals responsible for monitoring implementation of the Convention and those required to take measures to prevent bribery amongst public officials. A presidential decree of 5 April 2013 introduced some minor guarantees of protection for whistleblowers from the public and private sector. However, whistleblower protection remains a serious problem in Russia.

Recommendations for Priority Actions

The application and implementation of the new sanctions system in practice will have to be closely monitored by government officials and civil society. In particular, given that the value of the bribe determines the amount of the sanction/imprisonment, it will be crucial to assess how the courts will quantify in practice the amount of the bribe. Introduce effective liability of legal persons and ensure that third party beneficiaries are covered by the foreign bribery offence for legal persons. In accordance with Article 5 of the Convention, ensure that any person can be investigated, charged or prosecuted for foreign bribery. Enact legislation providing for whistleblower protection. Ensure that the “extradite or prosecute” principle, the grounds for refusing extradition and their application by the Russian authorities are consistent with Article 10 of the Convention. Provide and publish more information about the investigation and prosecution of foreign bribery.

SLOVAK REPUBLIC: LITTLE OR NO ENFORCEMENT.

Share of World Exports: 0.4 per cent

Foreign Bribery Cases and Investigations

There have been no investigations or cases commenced or concluded in 2012. The only investigation initiated by the Anti-Corruption Unit of the Slovak Police opened in 2009 and related to the involvement of **Istrokapitál Slovensko, J & T Bank** and the Slovak developer **Mário Hoffmann**

³⁶³ “Interest of the Russian Federation” is defined by legal doctrine. Actions against the interests of the Russian Federation usually include not only actions directly aimed against the state but other crimes that affect public order, including crimes against life and health of Russian citizens. Enforcement agencies determine whether actions are or are not against Russian interests in each individual case.

in new construction developments on the Turks and Caicos Islands, a British Overseas Territory.³⁶⁴ In their Phase 3 report on the Slovak Republic (June 2012), the OECD working group wrote that at the time of their report “the Slovak Republic had stopped its investigation [but] could reopen the case if new serious evidence is provided by the Caribbean government.”³⁶⁵ In 2012, a parallel investigation by the Turks and Caicos authorities was closed following a confidential settlement between **Mario Hoffmann** and the Islands’ attorney general.³⁶⁶ However reports indicate that ten defendants (including four former cabinet ministers) are facing trial before the island’s Supreme Court.³⁶⁷

Access to Information

Enforcement data is available on request according to the Free Access of Information act No. 211/2000.

Inadequacies in Legal Framework

The working group’s Phase 3 report remarked that “the Slovak Republic has still not fully completed the transposition of the Convention into its legislation”.³⁶⁸ It noted “loopholes with regard to the foreign bribery offence” in the Slovak criminal code. In particular, the group expressed serious concerns about the continuing “lack of liability for legal persons,”³⁶⁹ which is required by article 2 of the OECD Anti-Bribery Convention as well as article 26 of UN Convention against Corruption. The Slovak Republic is also obligated by virtue of its EU membership to implement certain provisions on liability of legal persons.³⁷⁰ The lack of adequate provision for the confiscation of bribes paid to foreign officials was noted in the Phase 3 report.³⁷¹ The report also considered the legislation in place to protect persons reporting foreign bribery offences to be “fragmented” and incapable of providing a sufficient guarantee of protection.³⁷²

Inadequacies in Enforcement System

There are serious inadequacies in the enforcement framework for foreign bribery prosecutions. Resources are not specially assigned to support the work and there is a lack of training for personnel in this area. The OECD Phase 3 report noted problems of understaffing in the Special Court and prosecutor’s office Special Prosecutor’s office.³⁷³ It also criticised the Slovak authorities

³⁶⁴ The Slovak Spectator, 20 March 2009, “Slovak link to Island graft inquiry”, www.spectator.sme.sk/articles/view/34801/2/slovak_link_to_island_graft_inquiry.html; The OECD Working Group on Bribery’s Phase 3 Report on Implementing the Convention in the Slovak Republic, June 2012 (Phase 3 Report on the Slovak Republic 2012), page 5, <http://www.oecd.org/daf/anti-bribery/SlovakRepublicphase3reportEN.pdf>.

³⁶⁵ Phase 3 Report on the Slovak Republic 2012, page 10.

³⁶⁶ Mario Hoffmann’s involvement with developments in the Salt Cay area of the Island, in particular his dealings with the former Premier Michael Misick were discussed as part of an official UK Commission of Inquiry into corruption in the British Overseas Territory. Commissioner of Inquiry, Sir Robin found that “there is information of possibly corrupt and/or otherwise seriously dishonest involvement, including misfeasance in public office, of the Hon Michael Misick in relation to the Government’s transactions with Mario Hoffmann of DEVCO for the development of Salt Cay.” See The Turks and Caicos Journal, “Criminal case against Mario Hoffmann dropped with a Confidential settlement”, 18 July 2012, <http://turksjournal.wordpress.com/2012/07/18/criminal-case-against-mario-hoffman-dropped-with-a-confidential-settlement/>; Turks and Caicos, 27 August 2011, “Full Commission of Inquiry report released”, www.fptci.com/index.php?option=com_content&view=article&id=2798:full-commission-of-inquiry-report-released&catid=18:local&Itemid=26.

³⁶⁷ Jamaica Gleaner, 22 April 2013, “Misick will stand trial, says head investigator”, www.jamaica-gleaner.com/gleaner/20130422/carib/carib2.html; Caribseek News, 19 April 2013, “Update of the Turks and Caicos Special Investigation and Prosecution Team”, www.news.caribseek.com/index.php/caribbean-islands-news/turks-and-caicos-islands-news/item/44517-update-of-the-turks-and-caicos-special-investigation-and-prosecution-team.

³⁶⁸ Phase 3 Report on the Slovak Republic 2012, page 5.

³⁶⁹ Phase 3 Report on the Slovak Republic 2012, page 5.

³⁷⁰ See Article 5 of the Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime and Article 5 of the Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector.

³⁷¹ Phase 3 Report on the Slovak Republic 2012, pages 5, 16-19.

³⁷² Phase 3 Report on the Slovak Republic 2012, pages 6 and 43.

³⁷³ Phase 3 Report on the Slovak Republic 2012, pages 5, 27 and 30.

for not being proactive about investigating foreign bribery allegations and issuing and responding to requests for mutual legal assistance relating to the offence.³⁷⁴ Auditors and accountants (perhaps with the exception of large international accounting and audit firms) are poorly equipped to detect foreign bribery because awareness of the offence is low. Professionals are not sufficiently trained and internal controls within private companies, except the foreign multinational enterprises, such as ethics and compliance measures, are commonly not in place or inadequate.³⁷⁵ There is a general lack of awareness about foreign bribery meaning that the public “underestimate the Slovak Republic’s exposure to this crime.”³⁷⁶

Recent Developments

In January 2012, the Slovak Republic began publishing all judgements online including details of plea bargains.³⁷⁷ External auditors are now legally required to report possible illegal acts (including foreign bribery) to law enforcement agencies.³⁷⁸

Recommendations for Priority Actions

Enact the legislative changes to establish liability of legal persons outlined in the Slovak Republic’s Governmental Action Plan against Fraud, approved on 31 May 2012.³⁷⁹ Employ more enforcement staff and provide training for auditors, accountants and tax examiners designed to raise awareness of foreign bribery and to improve their ability to detect offences. Encourage the private sector to implement and apply internal anti-corruption controls. Improve whistleblower protection law. Increase awareness of foreign bribery more generally.

SLOVENIA: LITTLE OR NO ENFORCEMENT.

Share of World Exports: 0.18 per cent

Foreign Bribery Cases and Investigations

There have been no cases or investigations opened or concluded in 2012. In January 2012, over two years after the police initiated their probe into allegations of domestic and foreign bribery involving the Slovenian company **LEK d.d** (a subsidiary of the Swiss pharmaceutical company, **Novartis**), the Ljubljana District Court ordered an investigation into the company, five individuals and one legal person.³⁸⁰ However, only domestic bribery charges are being pursued by the prosecutor.³⁸¹ The investigation initiated by the police in 2009 concerned allegations that the company bribed public medical professionals in Serbia and Albania, as well as in Slovenia.³⁸² According to the Office of the State Prosecutor General, the Slovenian authorities notified the Croatian and the Serbian police of the foreign bribery allegations via an International Criminal Police Organization (INTERPOL) dispatch.³⁸³

In the case of the former Serbian minister, **Oliver Dulić**, the Slovenian police confirmed that they were cooperating with the Serbian authorities but no investigation has been opened in Slovenia.³⁸⁴

³⁷⁴ Phase 3 Report on the Slovak Republic 2012, page 50.

³⁷⁵ Phase 3 Report on the Slovak Republic 2012, pages 34, 38, 50-51.

³⁷⁶ Phase 3 Report on the Slovak Republic 2012, pages 9 and 42.

³⁷⁷ See www.justice.gov.sk/Stranky/Sudne-rozhodnutia/Sudne-rozhodnutia.aspx.

³⁷⁸ Phase 3 Report on the Slovak Republic 2012, pages 5-6.

³⁷⁹ Phase 3 Report on the Slovak Republic 2012, 2012, page 5.

³⁸⁰ Investigation was confirmed in an 18 February 2013 email correspondence from the District Court of Ljubljana; information also received from the Office of the State Prosecutor General of the Republic of Slovenia; Dnevnik.si, 15 February 2012, www.dnevnik.si/novice/zdravje/1042509969; Finance.si, 15 February 2012, www.finance.si/340491/Afera-Novartis-po-dveh-letih-na-sodi%C5%A1%C4%8De.

³⁸¹ Email correspondence from the Office of the State Prosecutor General of the Republic of Slovenia on 4 March 2013.

³⁸² STA, 5 October 2009, “Novartis Involved in Major Corruption Scandal”, www.sta.si/en/vest.php?id=1433993.

³⁸³ Email from the Office of the State Prosecutor General of 28 April 2013.

³⁸⁴ Information received from the Police of the Republic of Slovenia; Blic Online, 8 October 2012, “Oliver Dulic/Nuba case – What it is all about”, www.english.blic.rs/News/9101/Oliver-DulicNuba-case--What-it-is-all-about; SE Times, 19

The case relates to allegations that Dulić abused his official position by favouring **Nuba Invest** over other bidders for the installation of optical cables in Serbia. Nuba Invest is owned by the Slovenian company **Nuba** but is registered in Serbia.³⁸⁵

The National Bureau of Investigation (NPU) ordered a number of house searches in Slovenia and Croatia, as part of an extensive on-going investigation reportedly initiated in 2006 into suspected irregularities in the accounts of the Slovenian bank, **Nova Kreditna Banka Maribor (NKBM)**. The investigation is concerned with allegations of abuse of authority in business activity, abuse of position and money laundering in connection with the bank's activities in Croatia.³⁸⁶ According to the office of the state prosecutor general, five Slovenians and three Croatians are under investigation.

Access to Information

Enforcement statistics on foreign bribery are available on request from the Slovenian authorities. The Police of the Republic of Slovenia publish some enforcement statistics online but it is not possible to distinguish between foreign bribery offences and domestic bribery offences.³⁸⁷

Inadequacies in Legal Framework

There are no major inadequacies.

Inadequacies in Enforcement System

There are too few well-trained investigators, prosecutors and judges in Slovenia and coordination between units specialised in economic crime is poor. This was noted in the National Integrity System Report on Slovenia published in 2012.³⁸⁸ Although enforcement systems are, on paper, decentralised, in reality lower level agencies and investigators "on the ground" have limited powers and little professional autonomy. This can limit the effectiveness of investigations. There is a lack of awareness in the private sector about the problem of foreign bribery and accounting and auditing requirements are too lax. The whistleblower protection law is still quite new and many of the protections have not yet been implemented in practice.³⁸⁹ Effective implementation requires not only the Commission for the Prevention of Corruption but also inspection bodies, the courts and the police to be fully aware of the legal protections available and to implement them when relevant.

Recent Developments

In early 2012, it was decided that the prosecutor's office would move to come under the remit of the Ministry of the Interior.³⁹⁰ This raised serious concerns that the work of the police and public prosecutor's office would be open to unacceptable levels of political pressure. The issue was challenged by the opposition members of the parliament from the political party Positive Slovenia and Social Democrats in the Constitutional Court, but the rearrangement of responsibilities was deemed "not unconstitutional" by the Court's judgement of 7 February 2013.³⁹¹ However the state

October 2012, "Former Serbian Minister Faces Corruption Probe"

www.setimes.com/cocoon/setimes/xhtml/en_GB/features/setimes/features/2012/10/09/feature-02.

³⁸⁵ Ibid. The OECD Working Group on Bribery delegate for Slovenia explained that no investigation was opened in Slovenia because there was insufficient evidence to show that the Slovenian parent company, Nuba, was involved.

³⁸⁶ www.dnevnik.si/poslovni/novice/1042549582; Finance SI, 28 November 2012, "Kako se je prelival denar v spornih poslih NKBM na Hrvaškem" www.finance.si/8327179/Kako-se-je-prelival-denar-v-spornih-poslih-NKBM-na-Hrva%C5%A1kem.

³⁸⁷ Statistical data of the Police of the Republic of Slovenia, www.policija.si/index.php/statistika/kriminaliteta.

³⁸⁸ National Integrity System Evaluation on Slovenia, 2012, www.transparency.org/whatwedo/nisarticle/slovenia_2012.

³⁸⁹ Integrity and Prevention of Corruption Act, articles 23 – 26, www.kpk-rs.si/upload/datoteke/ZintPK-ENG.pdf.

³⁹⁰ Coalition government agreement 2012,

www.vlada.si/fileadmin/dokumenti/si/program_vlade/Koalicijska_pogodba_2012_2015.pdf.

³⁹¹ Judgement of the Supreme Court of Slovenia, www.us-rs.si/media/u-i-42-12.pdf.

prosecutor's office moved back under the remit of Ministry of Justice in March 2013.³⁹² Amendments to the criminal code came into force in 2012 to extend the offence of foreign bribery to cover active and passive bribery and to introduce a comprehensive system of corporate criminal responsibility.³⁹³

Recommendations for Priority Actions

Dedicate more resources to the enforcement of foreign bribery offences. In particular provide better and more frequent training for enforcement personnel. Improve coordination between specialised units and give more de facto powers to agencies "on the ground". Raise awareness about the offence in the private sector and impose more rigorous auditing and accounting standards.

SOUTH AFRICA: LIMITED ENFORCEMENT.

Share of World Exports: 0.5 per cent

Foreign Bribery Cases and Investigations

South Africa has never initiated a prosecution or concluded a case involving foreign bribery. The Directorate for Priority Crime Investigations, known as "the Hawks", reported that there are currently five foreign bribery investigations underway in South Africa, one launched in 2010, two in 2011 and two in 2012. The two investigations opened in 2009 were dropped, as was one investigation that was commenced in 2010.³⁹⁴ However, "the particulars of such investigations may not be provided as this will prejudice the investigations."³⁹⁵ In 2012, the media reported that the Hawks launched an investigation into allegations made by **Turkcell** that the South African phone company **MTN** paid bribes in Iran in 2005.³⁹⁶ (See Turkcell & MTN case study in the following section of this report.)

A spokesperson from the Indian Central Bureau of Investigation (CIB) reported in October 2012 that after a long period of inactivity, the South Africans had promised to hand over new information to support the **Denel Pty Ltd.** case on-going in India.³⁹⁷ There is no evidence that South Africa opened an independent investigation into the allegations.³⁹⁸ The CIB alleges that Denel attempted to bribe Indian officials via the British company **Varas Associates** in order to influence a US\$3.9 million arms deal negotiated between 1999 and 2005.³⁹⁹

³⁹² Act Amending the Government of the Republic of Slovenia Act, ZVRS-G, Official Gazette of Republic of Slovenia, No. 21/2013, www.uradni-list.si/1/objava.jsp?urlid=201321&stevilka=787, and Act Amending the Public Administration Act, ZDU1-G, Official Gazette of Republic of Slovenia, No. 47/2013, www.uradnolist.si/1/objava.jsp?urlid=201347&stevilka=1783.

³⁹³ The OECD Working Group on Bribery, Steps taken by Slovenia to Enforcement the OECD Convention against Bribery, October 2012 www.oecd.org/daf/anti-bribery/anti-briberyconvention/SloveniaStepsTakenOctober2012.pdf.

³⁹⁴ E-mail from Ms P Matshego of the Public Service Commission to S Powell dated 13 May 2013 as well as telephone discussion on 17 April 2013 confirms five active foreign bribery investigations, specifically in 2009: 2 investigations opened (both dropped), 2010: 3 investigations opened (2 dropped), 2011: 2 investigations opened, 2012: 2 investigations opened, 2013: no investigations so far.

³⁹⁵ E-mail from Colonel P Govindasamy to S Powell dated 27 March 2013.

³⁹⁶ Bloomberg News, 12 October 2012, "Turkcell suit over MTN Iran deal postponed by US judge"; Mail and Guardian, 6 June 2012, "Hawks enter the fray in MTN/Turkcell dispute", www.mg.co.za/article/2012-06-05-hawks-mtn-iran; IT News, 8 June 2012, "Turkcell allegations of MTN cover-up – nonsense says MTN president" www.itnewsafrika.com/2012/06/mtn-sets-record-straight-with-irancell/.

³⁹⁷ Times of India, 7 October 2007, "CBI hopeful of headway in Denel, Tatra cases",

articles.timesofindia.indiatimes.com/2012-10-07/india/34305647_1_tatra-sipox-v-r-s-natarajan-denel

³⁹⁸ IOL News, 19 October 2009, "Denel denies corruption in Indian arms deal", www.iol.co.za/news/south-africa/denel-denies-corruption-in-india-arms-deal-1.256451#.UYfeOLX-HLc.

³⁹⁹ IOL News, 22 April 2005, "India order probe into Denel contracts", www.iol.co.za/news/south-africa/india-orders-probe-into-denel-contracts-1.239420#.UXFJCLX-HLc; BD Live, 21 June 2010, "New bid to clear bribe cloud over Denel in India" www.bdlive.co.za/articles/2010/06/21/new-bid-to-clear-bribe-cloud-over-denel-in-india; IOL News, 19 October 2009, "Denel denies corruption in Indian arms deal".

Access to Information

Statistics on the number of foreign bribery enforcement actions are available on request in South Africa. Detailed information relating to investigations is not disclosed as the authorities claim that this may prejudice investigations. More detailed information is available once a case has gone to court.

Inadequacies in Legal Framework

The laws which regulate company record keeping are not adequate, meaning that investigations into foreign bribery allegations or cases could be hampered by a lack of reliable evidence.⁴⁰⁰

Inadequacies in Enforcement System

The whole South African criminal justice system is acutely under-resourced.⁴⁰¹ It does not prioritise foreign bribery offences. Many police investigators lack expertise in corruption offences and those that have expertise are overloaded with work. Different enforcement authorities do not coordinate together well. The Hawks could also be vulnerable to political interference influencing the selection of cases (read more information on this under Recent Developments). The authorities have repeatedly indicated that changes are imminent to the Protected Disclosures Act (Whistleblowers Act) Act 26 of 2000, which protects employees from discrimination in circumstances when they blow the whistle on corruption. There are substantial backlogs in respect of follow-ups to reports made to the National Government and Provincial hot lines.⁴⁰² The public at large are accordingly distrustful and sceptical about blowing the whistle on corruption.⁴⁰³

Recent Developments

The Companies Act No 71 of 2008 has undergone significant revision. In particular, a number of new compulsory regulations to accompany the act were passed on 26 April 2011. Under the changes state-owned, listed and other medium to large companies are required to set up social and ethics committees which monitor adherence to the requirements of the act and regulations, and to work within their companies to implement OECD recommendations on reducing corruption and ensure compliance with principle 10 of the United Nations Global Compact.⁴⁰⁴ Principle 10 requires “businesses to work against corruption in all forms.”⁴⁰⁵ As a result of the regulations many South African multi-nationals have implemented the OECD recommendations, which include training staff on foreign bribery, performing due diligence checks on third-party intermediaries and setting up internal codes of conduct. It is hoped that this wave of reform will help prevent South African businesses, particularly those expanding into other African countries, from paying or facilitating bribes.

Legislation was passed in 2012 to amend the shortcomings identified in a judgement of the South African Constitutional Court which found aspects of the Hawks’ structure and status to be

⁴⁰⁰ Section 28 and 29 of the SA Companies Act 71 of 2008 require companies to keep accurate books and records, but do not carry meaningful sanctions like the US Foreign Corrupt Practices Act.

⁴⁰¹ See, “SA Police- is the thin blue line cracking?”, Trauma Support SA, Nov 13, 2012, “Our officers are underpaid, under-resourced, unappreciated and at ... is a serious problem with the stress levels of our police officers in SA”. See, www.fin24.com/Economy/Corruption-affects-public-trust-20120515-2, see www.traumasupport.wordpress.com/2012/11/13/sa-police-is-the-thin-blue-line-cracking-2/.

⁴⁰² See, www.fin24.com/Economy/Corruption-affects-public-trust-20120515-2.

⁴⁰³ See, Open Democracy Advice Centre report on Whistleblowing in South Africa, www.opendemocracy.org.za/wp-content/uploads/2010/10/ODAC_Whistleblowing_Report_web.pdf. See also, 61 per cent of the people surveyed for the 2010/2011 Global Corruption Barometer thought that they would report an incidence of corruption. The average across the 100 countries surveyed was 75 per cent. See Transparency International’s, Global Barometer, 2010/2011, www.gcb.transparency.org/gcb201011/in_detail/.

⁴⁰⁴ Regulation 43 of the Companies Regulations 2011; OECD Key Corruption Documents, www.oecd.org/corruption/keyoecdanti-corruptiondocuments.htm.

⁴⁰⁵ United Nations Global Compact Principle 10, www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/principle10.html.

unconstitutional.⁴⁰⁶ The Hawks are a sub-unit within the South African Police Force which answers to the commissioner of police. The Court explained that “our law demands a body outside executive control to deal effectively with corruption”.⁴⁰⁷ The applicants in this case have questioned the adequacy of the amendments and their latest challenge is due to be heard in a Cape Town Court in August 2013.⁴⁰⁸

Recommendations for Priority Actions

Give more resources to enforcement agencies, especially to train staff on investigating foreign bribery offence. Introduce strong sanctions for violation of bookkeeping and recordkeeping. Establish an independent and well-resourced anti-corruption commission in line with the constitutional court’s March 2011 judgement. Extend and enhance secondments and exchange programmes with professional enforcement bodies in developed countries.

SPAIN: LITTLE OR NO ENFORCEMENT.

Share of World Exports: 2.1 per cent

Foreign Bribery Cases and Investigations

The OECD Working Group on Bribery’s Phase 3 report of December 2012 stressed its serious concerns that no individual or company has ever been prosecuted or sanctioned for foreign bribery, despite the offence having entered into force nearly 13 years ago.⁴⁰⁹ Furthermore, only seven investigations had been initiated during those 13 years, all of which have been closed (four due to expired statutes of limitation and three due to lack of evidence). One was opened in 2010 and closed in June 2012 due to an expired statute of limitation, concerning allegations that **Iberinco**, the engineering and construction subsidiary of the Spanish private electricity company **Iberdrola SA**, had paid bribes in 2006 to receive a €300 million (US\$ 390 million) contract from the Latvian state-owned energy company Latvenergo.⁴¹⁰ Another investigation closed in 2012 concerned alleged bribes of €3.2 million (US\$ 4.2 million) paid to Moroccan officials between 2006 and 2008 relating to a contract worth €174 million (US\$ 228 million) to supply military vehicles.⁴¹¹ Though the limitation period expired for this case in April 2011, the investigation was not opened until July 2011.⁴¹²

Access to Information

There is no adequate public access to information on foreign bribery cases. There is only sporadic data but no details about cases. Recently, thanks to the Phase 3 report, information came to light on the seven investigations opened by the Anti-Corruption Prosecutor’s Office (ACPO). But this is an extraordinary situation and access to information remains unpredictable.

Inadequacies in Legal Framework

A major concern is the lack of criminal liability for a range of state-owned enterprises. In relation to tax measures to combat bribery, the working group expressed concern about the autonomous tax

⁴⁰⁶ See, South African Police Service Amendment Bill [B7B-2012] www.d2zmx6mlqh7g3a.cloudfront.net/cdn/farfuture/mvvgqL2QkoJMdgbtrQRmHI8rowOtTMAiktU-TYR7U/mtime:1340373778/files/docs/120523police.pdf.

⁴⁰⁷ *Glenister v President of the Republic of South Africa and Others* (CCT 48/10) [2011] ZACC 6; 2011 (3) SA 347 (CC); 2011 (7) BCLR 651 (CC) (17 March 2011) Moseneke DJP and Cameron J, para 200.

⁴⁰⁸ The applicants in the case are Hugh Glenister and the Helen Suzman foundation.

⁴⁰⁹ The OECD Working Group on Bribery Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Spain, December 2012 (Phase 3 Report on Spain 2012) www.oecd.org/daf/anti-bribery/Spainphase3reportEN.pdf.

⁴¹⁰ *El Confidencial*, 27 January 2012, “Iberdrola purga la cúpula de su filial de ingeniería por un caso de corrupción” www.elconfidencial.com/economia/2012/06/27/iberdrola-purga-la-cupula-de-su-filial-de-ingenieria-por-un-caso-de-corrupcion-100837/; Phase 3 Report Spain 2012.

⁴¹¹ Phase 3 Report on Spain 2012.

⁴¹² *Ibid.*

regions of the Basque Country and Navarra, which do not explicitly prohibit the tax deductibility of bribes.

Inadequacies in Enforcement System

Inadequate resources are a key obstacle, as the Public Prosecutor's Office is investigating nearly 800 cases of domestic corruption besides being responsible for prosecuting foreign bribery. Mutual legal assistance is often slow and ineffective, while whistleblower protection is still weak despite different improvements, and there is also a lack of public awareness-raising. Accounting and auditing requirements are also inadequate. Delays in processing cases, which were also cited in the Phase 3 report, are also a major obstacle for enforcement as they often result in the expiry of statutes of limitation. Also cited was the poor inter-institutional and international communication, with one example being a case regarding an extradition request of a Spanish national wanted for bribery of a Salvadorian public official. The ACPO was not aware that the High Court had processed such a request and as such never considered this for a possible foreign bribery investigation or prosecution. Another example would be the announcement of the Spanish Embassy in Panama of allegations of foreign bribery, though the ACPO did not know of this announcement until the visit of the OECD Working Group on Bribery.

Recent Developments

The draft Transparency, Access to Public Information and Good Governance Law is currently under discussion in Parliament and will likely be enacted in 2013. If passed, this law could support requests of information for future cases. Nevertheless, there are significant loopholes in the proposal. Political parties and the royal family are exempt from the law, sanctions are not well defined and a "catch-all reason" to refuse the release of information is available for authorities. Transparency International Spain voiced these concerns in front of the parliament, with various recommendations relating to making access to information a right of citizens, the disclosure of assets by high-ranking civil servants, and the corresponding sanctions, amongst others.

Recommendations for Priority Actions

Provide whistleblower protection. Ensure more transparency in the public prosecutor's office by improving access to statistics and information on foreign bribery cases and investigations. Create reliable statistical indicators on preliminary proceedings initiated, cases opened, investigation closed, indictments and judgements, which can also be applicable at the EU-level to allow for cross-country analysis. Allocate more resources to combat international corruption. Ensure statutes of limitation for all foreign bribery related crimes are sufficient. Fully implement the 2010 amendments to the Penal Code relating to foreign bribery. This will entail further training activities for police, prosecutors and the judiciary, as well as lawyers and the private sector.

SWEDEN: LIMITED ENFORCEMENT.

Share of World Exports: 1.25 per cent

Foreign Bribery Cases and Investigations

Since 2009, three cases have commenced in Sweden – one in 2009, one in 2012 and one in 2013. The 2009 case was concluded in April 2012 with the conviction of two former executives of **Volvo Construction Equipment International AB**, a subsidiary of **Volvo AB**, for paying bribes to the Saddam Hussein regime related to the United Nations' Oil-for-Food Programme.⁴¹³ The executives received suspended sentences of two years' imprisonment and fines of 120,000 Swedish krona

⁴¹³ The Local, 4 April 2012, "Volvo execs convicted for Saddam-era bribes", www.thelocal.se/40098/20120404/#.UWhP6aBNKSo.

(US\$ 18,500) and 60,000 Swedish krona (US\$ 9,250), while charges against a third executive were dropped.⁴¹⁴ Two former managers of the truck manufactures **Scania AB** were charged in November 2012, also in connection to illicit payments relating to the Oil-for-Food Programme, with the trial due to start in 2013.⁴¹⁵ On 17 July 2013, the Stockholm City Court issued a judgment concerning foreign bribery where two former executives of **Sweco** were convicted. The case concerned Sweco's involvement in a public bidding process over a public water supply project in the Ukraine. The former executives were given conditional sentences equivalent to four and five months, respectively, in prison. The judgment has been appealed.

In recent years, there have been six investigations initiated, specifically two in 2011, three in 2012 and one in 2013. One of the investigations initiated in 2011 relates to the demining equipment manufacturing company **Countermine Technologies AB** (put in liquidation in October 2010) in connection with alleged bribery and fraud in Libya, though part of that investigation was closed in December 2010 and there is no further information on the investigation.⁴¹⁶ Of the investigations initiated in 2012, information is only available on one, namely **TeliaSonera AB** and particularly only through media reports (see details in case studies).⁴¹⁷

Access to Information

Information on both case and investigation numbers and details is readily available.

Inadequacies in Legal Framework

The major deficiencies in the legal framework are inadequate provisions for holding corporations responsible for bribery and inadequate sanctions, relating to fines in particular. The maximum fine for corporations and other legal entities is only 10 million Swedish krona (US\$1.5 million). This is not considered by Transparency International Sweden to be an effective deterrent. Furthermore, the Phase 3 report of June 2012 recommended that Sweden "amend its framework on 'corporate fines' to ensure that companies are held liable for foreign bribery, including when committed through lower-level employees, intermediaries, subsidiaries, and third-party agents who were directed or authorised to bribe by the highest level of managerial authority."⁴¹⁸ Sweden also lacks legislation for the protection of whistleblowers. There is still a requirement of dual criminality, meaning that Swedish courts will not accept jurisdiction if foreign bribery is not also a criminal offence in the jurisdiction in which the bribery is committed.

Inadequacies in Enforcement System

The enforcement system is generally sound, with inadequate whistleblower protection being the main concern. The Phase 3 report noted that Sweden needs to more diligently investigate potential links between Swedish companies and allegations of foreign bribery committed by intermediaries; that it must significantly increase awareness amongst the general public of foreign bribery and its consequences; and that the necessary resources are made available, including in particular for the training of investigators on how to carry out investigations into foreign bribery.⁴¹⁹ The Phase 3 report also urges Sweden to encourage companies to adopt adequate internal controls, ethics, and compliance programmes or measures.

⁴¹⁴ Ibid.

⁴¹⁵ The Local, 15 November 2012, "Ex-Scania managers charged over Iraq deal", www.thelocal.se/44434/20121115/#.UWhTzKBNKSo.

⁴¹⁶ The OECD Working Group on Bribery Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Sweden, June 2012 (Phase 3 Report on Sweden 2012), www.oecd.org/daf/anti-bribery/Swedenphase3reportEN.pdf

⁴¹⁷ Bloomberg, 1 February 2013, "Teliasonera Chief Nyberg Quits After Uzbek Bribery Report" www.bloomberg.com/news/2013-02-01/teliasonera-chief-nyberg-quits-before-contract-runs-out.html.

⁴¹⁸ Phase 3 report on Sweden 2012.

⁴¹⁹ Phase 3 report on Sweden 2012.

Recent Developments

As of 1 July 2012, all bribery related offences were reorganised and placed under Chapter 10 of the Penal Code, while two new offences were introduced, namely trading in influence and negligent financing of bribery. As an addition to the revised Swedish legislation, the Swedish Anti-Corruption Institute (IMM) has published a Code on Gifts, Rewards and Benefits in the Business Sector. The code was published in September 2012 and aims to be part of the self-regulation of the business sector. The National Anti-Corruption Police Unit, a specialised unit within the National Police Board, was also established in 2012.

Recommendations for Priority Actions

Introduce heavier fines for legal persons. Follow up on the implementation on the revised provisions for liability of companies for bribery carried out through subsidiaries, joint ventures and/or agents. Review the provisions on dual criminality. Introduce an effective, specific law on the protection of whistleblowers.

SWITZERLAND: ACTIVE ENFORCEMENT.

Share of World Exports: 1.58 per cent

Foreign Bribery Cases and Investigations

Six cases have been concluded with sanctions since 2009, two of which were major cases, both in 2011, and one of which was concluded in 2012. A further 38 have been concluded without sanctions during the same period. There have been 57 investigations initiated since 2009, 19 of which were in 2012. In the case concluded in 2012, with a summary punishment order, as the allegations of corruption against the individual were not proven, he received a sanction of €540,000 (US\$ 705,000) under another provision of the Criminal Code. Further information is unavailable.⁴²⁰ One investigation initiated this year is reportedly into a former executive of **SNC-Lavalin Group Inc.**, a Canadian engineering company, who allegedly paid bribes to the family of the late Libyan dictator Gaddafi via Swiss bank accounts.⁴²¹ One former executive from the company was reportedly arrested in Bern in April 2012 and indicted in November 2012 on charges of corrupting a public official, fraud and money laundering.⁴²² Another individual, a Geneva-based lawyer for SNC-Lavalin, is also understood to be under prosecution for the alleged corruption.⁴²³ SNC-Lavalin confirmed that its international division paid US\$139 million through Swiss bank accounts to two commercial agents supporting their work in Libya, **Dinova International Inc.** and **Duvel Securities Inc.**, both registered in the British Virgin Islands and said that they have no evidence that these funds were misused.⁴²⁴ According to reports in early 2013, the investigation was expanded to include an Algerian agent who had allegedly transferred US\$198 million in suspicious payments to help various companies, including SNC-Lavalin, to obtain contracts from the Algerian-owned state oil company Sonatrach.⁴²⁵ In late 2011, a Swiss prosecutor reportedly froze nearly US\$14 million in accounts belonging to a late Czech businessman and his wife. The widow and the sons of the businessman are suspected by Swiss authorities of concealing bribes stemming from the sale of Belgian Mirage jets to the

⁴²⁰ Information provided by the Federal Prosecutor's Office.

⁴²¹ CBC News, 13 March 2013, "Former SNC-Lavalin exec investigated for alleged bribery", www.cbc.ca/news/canada/montreal/story/2013/03/13/quebec-sami-bebawi-ben-aissa-snc-lavallin.html.

⁴²² CBC News, 25 November 2012, "Swiss probe \$139M SNC-Lavalin laundering case", www.cbc.ca/news/world/story/2012/11/25/snc-lavalin-ben-aissa-charges.html; CBC News, 27 November 2012, "SNC-Lavalin payments under scrutiny total \$195M" www.cbc.ca/news/world/story/2012/11/26/snc-lavalin-switzerland-investigation.html.

⁴²³ Ibid.

⁴²⁴ Ibid.

⁴²⁵ The Globe and Mail, 21 February 2013, "SNC bribery probe widens to Algeria", www.theglobeandmail.com/report-on-business/snc-bribery-probe-widens-to-algeria/article8907906/; Malta Business Weekly, 25 April 2013, "World Bank locks out MIA shareholder SNC-Lavalin over Bangladesh bribery scandal", www.independent.com.mt/articles/2013-04-25/news/world-bank-locks-out-mia-shareholder-snc-lavalin-over-bangladesh-bribery-scandal-1460371458/.

Chilean air force in 1994.⁴²⁶ The investigation was initiated in 2011 and has involved coordination between Swiss and Chilean prosecutors.⁴²⁷

Access to Information

There is adequate access to information on numbers of foreign bribery cases, while further details are not accessible. The authorities do not provide details on on-going investigations. They only exceptionally provide details on cases concluded with a summary punishment order or an order to dismiss. Data from the cantons is not included in the government statistics system and information on concluded cases does not disclose court decisions, their reasoning or the amounts of any fines, prison sentences, or compensation for damages ordered.

Inadequacies in Legal Framework

The limitation of fines to 5 million Swiss franc (US\$5.3 million) for legal entities remains a key inadequacy in the legal framework. This amount is too small to be an effective deterrent to foreign bribery. However, disgorgement of profits imposed by the Federal Prosecutor's Office is welcome but still insufficient. The OECD Working Group on Bribery, in its Phase 3 report of December 2011, recommended that, although the majority of federal officials are already obligated to report suspicions of foreign bribery, that this obligation be extended to further agencies as well as to the cantonal level.⁴²⁸

Inadequacies in Enforcement System

Though there has been some progress under the leadership of the federal prosecutor's office towards forming a more centralised enforcement system, it remains still quite decentralised, which is a major weakness. There is also a lack of whistleblower protection, as confidential channels are not available for whistleblowers to voice concerns, report violations or obtain advice; compliance officers do not have adequate independence and direct access to company boards of directors; and whistleblowers are not sufficiently protected against reprisals. The Phase 3 report noted that the low number of convictions of legal persons was likely due in large part to law enforcement authorities being unaccustomed to using the provisions concerning corporate criminal liability.⁴²⁹

Recent Developments

There has been a significant increase in the amount of resources dedicated towards preventing and prosecuting foreign bribery. As mentioned above, there has also been considerable improvement in the centralisation of these efforts.

Recommendations for Priority Actions

Ensure better protection of whistleblowers, through the drafting and passage of related legislation. Include in government statistics data from the cantons. Disclose court decisions and reasoning as well as the amounts of any fines, prison sentences, or compensation for damages ordered. Improve international cooperation and coordination of enforcement at the international level.

⁴²⁶ El Mostrador, March 28 2012, "Justicia suiza congeló más de 13 millones de dólares retenidos en fondos ligados al caso Mirage", www.elmostrador.cl/noticias/pais/2012/03/28/justicia-suiza-congelo-mas-de-13-millones-de-dolares-retenidos-en-fondos-ligados-al-caso-mirage/.

⁴²⁷ Ibid.

⁴²⁸ The OECD Working Group on Bribery, Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Switzerland, December 2011, www.oecd.org/dataoecd/59/53/49377354.pdf.

⁴²⁹ Ibid., page 16.

Foreign Bribery Cases and Investigations

There have been six investigations commenced in Turkey since 2009, two in 2009, one in 2010 and three in 2011. In April 2012, the Turkish telecommunications company **Turkcell** announced the launch of an internal investigation into “improper payments” paid in Kazakhstan by **KCell**.⁴³⁰ (See Turkcell case study in the following section of the report.)

Access to Information

Information on foreign bribery investigations and cases is available on request from the Ministry of Justice General Directorate of International Laws and Foreign Affairs. Although court decisions are normally made public in Turkey, cases concerning foreign bribery are sometimes kept confidential by the courts.

Inadequacies in Legal Framework

Legal entities cannot be held criminally liable due to the principle of personal liability defined in Article 20 of the Turkish Criminal Code, although legal entities can be held liable under other types of liability. Article 60 of the code provides for some sanctions for legal entities benefiting from the results of a crime, however, this provision is rarely used by the prosecutors. Despite recent amendments to definitions of foreign bribery the difference between a bribe and a gift still needs clarification.

Inadequacies in Enforcement System

Lack of resources means the judicial system is quite slow-moving and enforcement officials are not well trained. There is no specialised court or prosecution office tasked with investigating cases of foreign bribery. Whistleblower protection needs to be improved. Legislation requiring detailed accounting and auditing procedures is still lacking. Public awareness about the negative effects of bribery is generally very low in Turkey.

Recent Developments

The definition of foreign bribery was extended in a number of ways as part of Law 6352. Law 6352 was a major package of justice reforms passed in July 2012.⁴³¹ The extension of the definition means that a greater number of institutions and organisations including cooperatives and organisations working in the public interest are now covered by the offence. The definition of a “foreign public official” has also been widened by the law to meet the Convention requirements. In addition, foreigners who bribe officials outside Turkey can, under certain circumstances, be held liable under Turkish law.⁴³² Another legislative change means that the definition of foreign bribery has been extended to cover omissions, that is, payments for non-performance of an official duty, and also extends liability to cover intermediaries.⁴³³ An amendment to the new Turkish Commercial Code number 6102 entered into force on 1 July 2012, introducing improved and compulsory

⁴³⁰ The Wall Street Journal, 23 April 2012, “Turkcell discloses improper payments at Kazakh company”, www.blogs.wsj.com/corruption-currents/2012/04/23/turkcell-discloses-improper-payments-at-kazakh-company/.

⁴³¹ Turkish Official Gazette number 28344, 5 July 2012.

⁴³² Amendment to Article 252, Article 87 of Law 6352, 2 July 2012, www.resmigazete.gov.tr/eskiler/2012/07/20120705-2.htm (Taken from the Official Gazette).

⁴³³ Ibid.

accounting and auditing procedures for private companies, for example, large-scale private companies must now publish their accounts and financial statements online.⁴³⁴

Recommendations for Priority Actions

Require courts to publish all decisions relating to foreign bribery. Train private sector employees and public officials to increase anti-corruption awareness within their organisations and institutions. Clarify the definition of a “gift” in the Regulations on Principles of Ethical Behaviours of Public Officials. Improve whistleblower protection. Establish a special unit to investigate allegations of foreign bribery. Raise awareness of foreign bribery among the general public.

UNITED KINGDOM: ACTIVE ENFORCEMENT.

Share of World Exports: 3.8 per cent

Foreign Bribery Cases and Investigations

Twenty cases have been commenced since 2009, all of which were major cases and three of which were commenced in 2012. There have been 16 cases concluded since 2009, most of them with substantial sanctions, one of which was in 2012. There were eleven known investigations commenced in 2011 and six in 2012; no data was available for 2009 and 2010.

In February 2012, an Australian national extradited from Australia was charged with corruption and conspiracy to corrupt, relating to contracts for the supply of goods and services to the state-owned smelting company **Aluminium Bahrain B.S.C. (Alba)**, with a tentative trial date set for April 2013.⁴³⁵ The individual’s alleged co-conspirator, who is a UK national, had been charged in October 2011. Another individual was charged in February 2012 with conspiracy to corrupt in connection to allegations of corrupt payments to public officials and other agents of the government of Indonesia.⁴³⁶ These payments were allegedly made to obtain government contracts for the supply of **Innospec Ltd.** products, including Tetraethyl Lead.⁴³⁷ Three executives of the company had previously been charged, two of whom pleaded guilty to charges of conspiracy to corrupt Indonesian and Iraqi public officials and agents.⁴³⁸ Four employees and agents of **Swift Technical Energy Solutions Ltd.**, a Nigerian subsidiary of the oil and gas contractor **Swift Group**, were charged in December 2012 with two offences of conspiracy to corrupt. The allegations concern bribes paid in 2008 and 2009 to Nigerian tax officials in order to “avoid, reduce or delay paying tax on behalf of workers placed by Swift.”⁴³⁹

In March 2013, the media reported that the Serious Fraud Office (SFO) was considering a settlement with **Rolls-Royce Plc.** relating to allegations that the car manufacturer allegedly paid bribes in China and elsewhere.⁴⁴⁰

⁴³⁴ Ibid.

⁴³⁵ SFO, 15 February 2012, “Bruce Hall charged with corruption and money laundering”, www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2012/bruce-hall-charged-with-corruption-and-money-launders.aspx

⁴³⁶ SFO, 10 February 2012, “Innospec Ltd: a fourth person charged in corruption inquiry”, www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2012/innospec-ltd--a-fourth-person-charged-in-corruption-inquiry.aspx;

SFO, 17 January 2012, “Innospec Ltd: Former director pleads guilty to corruption”, www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2012/innospec-ltd-former-director-pleads-guilty-to-corruption.aspx.

⁴³⁷ Ibid.

⁴³⁸ SFO, 30 July 2012, “Innospec Ltd: Former CEO admits bribery to falsify product tests”, www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2012/innospec-ltd--former-ceo-admits-bribery-to-falsify-product-tests.aspx; SFO, 17 January 2012, “Innospec Ltd: Former director pleads guilty to corruption”, www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2012/innospec-ltd-former-director-pleads-guilty-to-corruption.aspx.

⁴³⁹ SFO, 17 December 2012, “Four charged in Nigerian corruption investigation”, www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2012/four-charged-in-nigerian-corruption-investigation.aspx.

⁴⁴⁰ Financial Times, 22 March 2013, “SFO weighs deal to end Rolls-Royce probe”, www.ft.com/intl/cms/s/0/ff136074-931e-11e2-b3be-00144feabdc0.html#axzz2SWGAI7Pu.

The major case concluded in 2012, was that of **Oxford Publishing Ltd.**, a wholly owned subsidiary of **Oxford University Press**, in July of that year. The publishing company, which produces text books, dictionaries and other educational materials in east Africa, agreed to pay approximately £1.9 million (US\$2.95 million) as a settlement in recognition of funds generated through unlawful conduct related to subsidiaries incorporated in Kenya and Tanzania and their obtaining of public tenders to supply school books.⁴⁴¹ This was first brought to the attention of the SFO through a self-referral by Oxford University Press who, also as part of the civil recovery order, introduced enhanced compliance procedures to reduce the risk of future foreign bribery.⁴⁴²

In January 2013, the long-running **Mabey Bridge** case was concluded with a settlement of £130,000 (US\$196,000) paid by the company's shareholder and parent company **Mabey Engineering (Holdings) Ltd.** This was viewed as significant in extending the concept of liability for foreign bribery to shareholders who, through dividends, might be considered to be in receipt of the proceeds of crime. In March 2013, **BAE Systems** concluded its settlement payment to Tanzania after extensive criticism from Parliament, government ministers and the SFO for the time taken to make the payment. Civil society was also critical of the process by which the payment was made through a non-independent committee appointed by the company itself.

Details are known about one reported investigation, particularly into **GPT Special Project Management**, which is part of **Paradigm Services**, a subsidiary of **Astrium**, the space and satellite arm of the **European Aeronautic Defence and Space Company NV (EADS)** (for more information on EADS, see the country report on Germany).⁴⁴³ The SFO is reportedly investigating GPT's operations in Saudi Arabia, in particular allegations of corrupt subcontractor payments raised with the SFO by a former GPT employee, and allegations that the company paid bribes starting as early as 2008 for a £2 billion (US\$3.1 billion) Saudi military communications project.⁴⁴⁴ Paradigm runs the satellite communications for the UK's Ministry of Defence.⁴⁴⁵ Throughout 2012 and 2013, a series of police officers and journalists were arrested under Operation Elveden, an investigation into bribes paid by journalists from **News International** and elsewhere to police officers in the UK. It is understood that News International is under investigation in the US for the activity.⁴⁴⁶ In April 2013, the SFO announced an investigation into the mining firm **Eurasian Natural Resources Corporation (ENRC) Plc.** concerning allegations of fraud, bribery and corruption relating to the activities of the company or its subsidiaries in the Democratic Republic of Congo, Kazakhstan and Zambia.⁴⁴⁷

Access to Information

Details of cases concluded by the SFO are published on the SFO website. However, in cases resolved through settlements, the level of detail is often insufficient to allow external parties to assess whether the decision to proceed to a settlement rather than prosecution was in the public interest. Information on foreign bribery cases not prosecuted by the SFO (cases up to £1 million, or US\$1.5 million) area dealt with by the City of London Police; in Scotland, there are alternative

⁴⁴¹ SFO, 3 July 2012, "Oxford Publishing Ltd to pay almost £1.9 million as settlement after admitting unlawful conduct in its East African operations", www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2012/oxford-publishing-ltd-to-pay-almost-19-million-as-settlement-after-admitting-unlawful-conduct-in-its-east-african-operations.aspx.

⁴⁴² Ibid.

⁴⁴³ The Telegraph, 16 November 2012, "EADS launches anti-corruption review in wake of bribery allegations", www.telegraph.co.uk/finance/financial-crime/9681781/EADS-launches-anti-corruption-review-in-wake-of-bribery-allegations.htm; Financial Times, 9 August 2012, "SFO launches criminal probe into GPT", www.ft.com/intl/cms/s/0/d02c6fb0-e24f-11e1-8e9d-00144feab49a.html#axzz2QellcCKz.

⁴⁴⁴ Ibid.

⁴⁴⁵ Ibid.

⁴⁴⁶ Reuters, 7 February 2012, "U.S. authorities looking into Murdoch foreign payments", www.reuters.com/article/2012/02/07/us-usa-murdoch-investigation-idUSTRE81616620120207.

⁴⁴⁷ SFO, 25 April 2013, www.sfo.gov.uk/our-work/our-cases/case-progress/enrc-plc.aspx; The Guardian, 28 April 2013, "ENRC investigated for bribery in Africa and Kazakhstan", www.guardian.co.uk/business/2013/apr/28/enrc-bribery-africa-kazakhstan.

arrangements which are more difficult to obtain⁴⁴⁸. Reliable information on the number of cases and investigations commenced can only be obtained by contacting the SFO directly regarding its own cases and the Department of Business, Innovation and Skills for overall statistics. The SFO does not disclose information regarding the details of on-going investigations for fear of prejudicing their outcome. The SFO does release press statements when defendants are charged in court and further information is released as the case progresses. The full details of cases are not always disclosed and the terms for reaching settlements, as in the case of Oxford Publishing Lt, are not always released.

Inadequacies in Legal Framework

The Phase 3 report of March 2012 cites concerns with slow progress in extending the Convention to the UK's overseas territories, especially as some are considered offshore financial centres that may be used to facilitate corrupt transactions.⁴⁴⁹ In 2012, an investigation by authorities in the Turks and Caicos Islands into the involvement of **Istrokapitál Slovensko, J & T Bank** and the Slovak developer **Mario Hoffmann**, relating to new construction developments on the islands, was closed following a settlement between the developer and the island's attorney general (see the Slovak report for more information).⁴⁵⁰ Furthermore, the report states that, though the "Guidance to Commercial Organisations" has increased awareness of foreign bribery issues, the significance of "reasonable and proportionate" hospitality and promotional expenditures still lacks clarity.

Inadequacies in Enforcement System

The Phase 3 report raised the issue of increasing use of civil recovery orders to resolve foreign bribery-related cases, which involve:

- less judicial oversight and transparency than criminal plea agreements;
- the lack of publicly available information made available by UK authorities on settlements, which prevents sanctions from being properly assessed for effectiveness, proportionality and dissuasiveness and also hinders proper guidance on and public awareness of foreign bribery-related issues;
- the lack of transparency due to the willingness of the SFO to enter confidentiality agreements with defendants, which stop key information being disclosed after cases are settled;
- the lack of transparency regarding the SFO's process when giving advice to companies and accepting self-reports of wrongdoing.

The SFO has recently removed some of the guidance it has on its website regarding facilitation payments, business expenditure and self-reporting, on the grounds that it is a prosecuting authority and the Ministry of Justice and other available guidance is sufficient. On the other hand, the Financial Services Authority is increasing the guidance it gives to companies, issuing further guidelines for banks and companies to follow in its updated version of "Financial Crime: a Guide for

⁴⁴⁸ The OECD Working Group on Bribery, Phase 3 Report on Implementing the OECD Anti-Bribery Convention in the United Kingdom, March 2012, page 6, www.oecd.org/daf/anti-bribery/UnitedKingdomphase3reportEN.pdf.

⁴⁴⁹ Phase 3 Report on United Kingdom 2012, page 28.

⁴⁵⁰ Mario Hoffmann's involvement with construction developments in the Salt Cay area of the Island, in particular his dealings with the former Premier Michael Misick were discussed as part of an official UK Commission of Inquiry into corruption in the British Overseas Territory. Commissioner of Inquiry Sir Robin found that "there is information of possibly corrupt and/or otherwise seriously dishonest involvement, including misfeasance in public office, of the Hon Michael Misick in relation to the Government's transactions with Mario Hoffmann of DEVCO for the development of Salt Cay". See The Turks and Caicos Journal, "Criminal case against Mario Hoffmann dropped with a Confidential settlement", 18 July 2012, www.turksjournal.wordpress.com/2012/07/18/criminal-case-against-mario-hoffman-dropped-with-a-confidential-settlement/; FP Turks and Caicos, "Full Commission of Inquiry report released", 27 August 2011, www.fptci.com/index.php?option=com_content&view=article&id=2798:full-commission-of-inquiry-report-released&catid=18:local&Itemid=26; Jamaica Gleaner, "Misick will stand trial, says head investigator", 22 April 2013, www.jamaica-gleaner.com/gleaner/20130422/carib/carib2.html; Caribseek News, "Update of the Turks and Caicos Special Investigation and Prosecution Team", 19 April 2013, <http://news.caribseek.com/index.php/caribbean-islands-news/turks-and-caicos-islands-news/item/44517-update-of-the-turks-and-caicos-special-investigation-and-prosecution-team>.

Firms". A new law has been passed that introduces deferred prosecution agreements, discussed below. This may increase transparency over settlements through requirements to place relevant documentation in the public domain.

Another issue that is becoming increasingly important is the SFO's resources, which will be reduced from £34 million (US\$53 million) in 2013 to £29 million (US\$45 million) in 2014. From 2008 to 2012, the budget had already been cut by over a third. Some commentators feel that the result of this is that the SFO will not have sufficient resources to properly perform its function, for example, not enough resources to pay for full investigations into allegations of corruption. Others have stated that the SFO's funding gap can be filled by special grants from the Treasury for important cases – this is what happened when the SFO decided that it needed more funding in order to investigate the recent claims of corruption relating to the fixing of Libor. However, this effectively gives the government a power of veto about which cases the SFO can take on, compromising its independence.

Recent Developments

In May 2012, the government put forward proposals to allow prosecuting authorities to use deferred prosecution agreements (DPAs). These were passed into law as part of the Crime and Courts Bill, which received royal assent in March 2013. Followed by a period of consultation regarding official guidance to DPAs, the guidance will be published and DPAs will become effective. Under the current proposals, a DPA will be a way of allowing companies and prosecuting authorities to agree to suspend a prosecution subject to stringent conditions which will be made publicly available and will have to pass judicial scrutiny.

There have also been moves to change the law relating to whistleblowers in the Enterprise and Regulatory Reform Bill, which would introduce an additional "public interest" requirement in order for a disclosure to be protected by whistleblowing law. The aim of this is to prevent the use of whistleblowing law as a way of avoiding the restrictions of the law relating to unfair dismissal (namely a cap on damages and the need to have worked for a time period in order to be eligible), rather than as a means of encouraging the reporting of legitimate concerns that are in the public interest.

Recommendations for Priority Actions

The SFO should make more transparent the process by which it reaches settlements with companies, the details of the cases and the details of the settlements. Transparency International UK continues to be concerned that parts of the Bribery Act's "Guidance" to companies on procedures to prevent bribery (in relation to Section 9) could create loopholes concerning supply chains, sub-contractors, joint ventures and foreign-owned companies listed on the London stock markets. TI UK is also concerned that the SFO is under-resourced.

UNITED STATES: ACTIVE ENFORCEMENT.

Share of World Exports: 10.18 per cent

Foreign Bribery Cases and Investigations

There were at least 24 investigations initiated, two cases commenced and 29 cases concluded in 2012, with at least 63 investigations initiated, 27 cases commenced and 109 cases concluded throughout 2009, 2010 and 2011.⁴⁵¹ Cases commenced in 2012 included that against the CEO of

⁴⁵¹ For the United States portion of this report, investigations are counted as "initiated" in the year in which an FCPA investigation is first publicly disclosed (for example, in press reports or a company's securities filings). Investigations not disclosed in public sources are not counted. Cases are counted as "commenced" for the purposes of this report when an enforcement action results in ongoing judicial proceedings not involving a settlement; for example, a criminal indictment filed by the DOJ against one or more individuals, or an unsettled civil complaint filed by the SEC. Where a case "commenced" names multiple defendants under a single docket number, it is counted as a single case

Noble Corp., an offshore oil drilling contractor, and the director of its subsidiary in Nigeria, who were charged with violating the anti-bribery and internal controls provisions of the Foreign Corrupt Practices Act (FCPA), and with aiding and abetting Noble's violations of the FCPA's anti-bribery, books and records and internal controls provisions, and with other violations of the federal securities laws.⁴⁵² They are alleged to have paid bribes to customs officials to process false paperwork associated with exporting and importing drilling rigs from and into Nigeria.⁴⁵³ The subsidiary's director is also charged with misleading auditors and signing false certifications of Noble's financial statements, with the trial set for April 2014. In 2012, Noble's former corporate controller and head of internal audit agreed to a settlement – at the same time the two other executives were charged by the Securities and Exchange Commission (SEC) – alleging that he aided and abetted Noble's violations of the FCPA's anti-bribery, books and records and internal controls provisions, and that he directly violated the FCPA's internal controls provisions and other provisions of the federal securities laws. He agreed to pay a US\$35,000 civil penalty and to a permanent injunction against future misconduct to settle the case.⁴⁵⁴

Cases concluded in 2012 include that against **Lufthansa Technik AG** and its subsidiary **BizJet International Sales and Support, Inc.** relating to allegations that the latter had paid bribes to transportation officials in Mexico and Panama, directly and through a shell company owned and operated by a BizJet sales manager.⁴⁵⁵ Through a deferred prosecution agreement (DPA), BizJet agreed to pay a criminal fine of US\$11.8 million and will be required to report periodically to the Department of Justice (DOJ) regarding its compliance efforts, while Lufthansa will be subject to a non-prosecution agreement (NPA) that includes compliance, cooperation and reporting obligations but no monetary penalty.⁴⁵⁶ Two BizJet executives also pleaded guilty to criminal charges in connection with the same conduct, while two additional BizJet executives have been indicted but remain at large abroad.⁴⁵⁷ The technology and software company **Oracle Corporation** agreed with the Securities and Exchange Commission (SEC) to pay a civil penalty of US\$2 million, in connection with alleged violations of the FCPA's books and records provisions and internal controls provisions relating to its subsidiary **Oracle India Private Limited** from 2005 to 2007, connected to its sale of licenses and services to the Indian government through local distributors, and its failure to accurately record side funds maintained with those distributors.⁴⁵⁸

Pfizer Inc. was also party to settlements with the SEC and the DOJ, and Pfizer's acquired subsidiary **Wyeth LLC** with the SEC, following charges of violations of the anti-bribery, books and records and internal controls provisions of the FCPA in connection with improper payments to doctors and other health care professionals employed by foreign governments in order to win business in Croatia, the Czech Republic, Kazakhstan and Russia.⁴⁵⁹ A Pfizer subsidiary agreed to a

"commenced". Where complaints or indictments are filed against multiple defendants under separate docket numbers, they are counted as separate cases "commenced". "Cases concluded" include settlements between companies and individuals and the US DOJ and/or SEC, as well as criminal and civil judicial proceedings resulting in final judgment. Parallel settlements between a company and DOJ and SEC are treated as separate "cases concluded"; a settlement between a single US enforcement agency and more than one corporate entity in a corporate group is also counted as a single "case concluded". Cases concluded are counted as "major" if they result in more than \$25 million in criminal fines, civil penalties or disgorgement (for companies), or if they result in a prison term for an individual. Cases concluded against companies are counted in the year in which the settlement was reached and approved by a judge (for criminal and civil settlements), or finally ordered (for administrative settlements). Cases "concluded" against individuals are counted in the year a plea agreement or civil settlement was reached with the DOJ or SEC and publicly announced, or a final verdict reached by a presiding judge or jury.

⁴⁵² *SEC v. Jackson*, No. 4:12-cv-00563 (S.D. Tex. filed 24 February 2012).

⁴⁵³ *Ibid.*

⁴⁵⁴ *SEC v. O'Rourke*, No. 4:12-cv-00564 (S.D. Tex. filed 24 February 2012).

⁴⁵⁵ Press Release, U.S. Dep't of Justice, BizJet Int'l Sales and Support, Inc. Resolves Foreign Corrupt Practices Act Investigation and Agrees to Pay \$11.8 Million Criminal Penalty (14 March 2012) available at <http://www.justice.gov/opa/pr/2012/March/12-crm-321.html>.

⁴⁵⁶ *Ibid.*

⁴⁵⁷ Press Release, U.S. Department of Justice, 5 April 2013, "Four Former Executives of Lufthansa Subsidiary BizJet Charged with Foreign Bribery", www.justice.gov/opa/pr/2013/April/13-crm-388.html.

⁴⁵⁸ *Securities and Exchange Commission v. Oracle Corp.*, No. 12-CV-4310 (N.D. Cal. 13 August 2012).

⁴⁵⁹ Press Release, U.S. Dep't of Justice, 7 August 2012, "Pfizer H.C.P., Corp. Agrees to Pay \$15 Million Penalty to Resolve Foreign Bribery Investigation", www.justice.gov/opa/pr/2012/August/12-crm-980.html; Press Release, SEC, 7 August 2012, "SEC Charges Pfizer with FCPA Violations", www.sec.gov/news/press/2012/2012-152.htm.

DPA with a term of two years, which included compliance undertakings and self-monitoring requirements, and a criminal fine of US\$15 million. Pfizer Inc. and Wyeth LLC each agreed to settlements with the SEC that included a total of approximately US\$45 million to be paid to the SEC in disgorgement of profits and pre-judgment interest.⁴⁶⁰ The settlements were notable for their having held the Pfizer subsidiary criminally liable for acts committed before its acquisition by Pfizer where Pfizer conducted no FCPA-specific due diligence before the transaction. At the same time they did not hold Pfizer or any subsidiary criminally liable for FCPA violations committed by Wyeth before its acquisition by Pfizer, apparently as a result of Pfizer's due diligence before completing that acquisition.

Allianz SE agreed to a cease-and-desist order with the SEC charging violations of the books and records and internal controls provisions of the FCPA in connection with payments to officials in Indonesia during a seven-year period.⁴⁶¹ The SEC's investigation uncovered 295 insurance contracts on large government projects that were obtained or retained by improper payments of US\$650,626 by Allianz's subsidiary in Indonesia to employees of state-owned entities, using an off-the-books slush fund. The company is alleged to have profited more than US\$5.3 million from the scheme.⁴⁶²

In April and May 2013, the DOJ charged one current and two former executives of the US subsidiary of the French engineering giant **Alstom SA** in connection with the alleged bribery of a member of Indonesia's parliament and officials of a state-owned electricity company.⁴⁶³ One of the executives has since pleaded guilty.⁴⁶⁴ The SEC brought unsettled enforcement actions in December 2011 against non-US-based former executives of **Siemens AG**, and non-US-based former executives of Hungarian telecommunications operator **Magyar Telekom**.⁴⁶⁵ The executives in both sets of cases filed motions to dismiss, arguing that the conduct in question lacked the constitutionally required contacts with the US to assert personal jurisdiction. In February 2013, a New York federal judge denied the Magyar Telekom defendants' motion in its entirety, concluding that it had jurisdiction as the defendants had made false statements to Magyar Telekom's auditors, knowing that the company traded on US securities exchange, and that prospective purchasers of Magyar Telekom's securities would likely be influenced by any false financial statements and filings.⁴⁶⁶ In contrast, in the Siemens-related litigation, a former chief executive of Siemens Argentina argued that as a German citizen residing in Germany, he was not subject to U.S. jurisdiction because he was never employed in the United States, and never travelled to the United States on business for Siemens during the period alleged in the complaint or otherwise had any business related contact with the United States relating to the conduct in question. In February 2013 the trial court granted the defendant's motion, holding that he was not subject to personal jurisdiction in the US because his acts relating to the alleged bribery scheme had no connection to, nor were directed at, the US or participants in the US securities markets.⁴⁶⁷ This ruling represents the first time that a reviewing court struck down a jurisdictional assertion by the SEC or DOJ relating to the FCPA.

Investigations commenced reportedly include those against **Chevron Corp**, **ExxonMobil Corp.**, and **Deutsche Post AG**, concerning allegations that **DHL**, the logistics branch of the latter, had paid bribes in Kazakhstan on behalf of an oil consortium including **Chevron** and **ExxonMobil**.⁴⁶⁸ Another

⁴⁶⁰ Ibid.

⁴⁶¹ *In the Matter of Allianz SE*, No. 3-15132 (SEC 17 December 2012) (cease-and-desist order).

⁴⁶² Ibid.

⁴⁶³ The Wall Street Journal, 1 May 2013, "Prosecutors Charge Third Alstom Executive in Bribery Scheme" www.online.wsj.com/article/BT-CO-20130501-712796.html; Reuters, 1 May 2013, "Prosecutors add third executive to Alstom bribery case" www.reuters.com/article/2013/05/01/us-alstom-bribery-doj-idUSBRE9400U20130501

⁴⁶⁴ Ibid.

⁴⁶⁵ Note that these cases are considered "cases commenced" in TI's statistical counting methodology described above. This footnote highlights the need for clarification in footnote 1.

⁴⁶⁶ *SEC v. Straub et al.*, No. 11-cv 009645 (S.D.N.Y. 8 February 2013) (Order on Defs.' Joint Motion to Dismiss at 1).

⁴⁶⁷ *SEC v. Sharef*, 11 Civ. 9073 (SAS) (S.D.N.Y. 19 February 2013) (order granting motion to dismiss).

⁴⁶⁸ The Wall Street Journal, Christopher M. Matthews, 13 June 2012, "Second Oil Venture Probes Corruption Allegations in Kazakhstan", www.blogs.wsj.com/corruption-currents/2012/06/13/second-oil-venture-probes-corruption-allegations-in-kazakhstan/.

set of investigations was reportedly initiated in April 2012 into **20th Century Fox, Walt Disney Studios, DreamWorks Animation** and at least two other major Hollywood studios, regarding their dealings with **China Film Group**, a state-run company whose responsibilities include determining which foreign movies get access to a limited number of slots each year for revenue-sharing deals.⁴⁶⁹

Access to Information

Information on numbers of foreign bribery cases is accessible, as is official information on case details of foreign bribery cases.

Inadequacies in Legal Framework

There are no significant inadequacies in the US legal framework for enforcing foreign anti-bribery laws.

Inadequacies in Enforcement System

The US maintains the most developed and active foreign bribery legal and enforcement regime in the OECD (and the world). As demonstrated by the number and significant nature of the investigations and enforcement actions detailed in the prior sections of this report, the SEC and DOJ remain two of the leading anti-corruption law enforcement agencies globally.

However, the Working Group on Bribery in its Phase 3 Follow-Up report did not consider that the U.S. had made sufficient progress on its recommendation that the US clarify its policy on dealing with claims for tax deductions for facilitation payments, and give guidance to help tax auditors identify payments claimed as facilitation payments that are in fact in violation of the FCPA and/or signal that corrupt conduct in violation of the FCPA is taking place.

Transparency International also USA believes it necessary that the SEC and DOJ study the deterrent effect of NPAs and DPAs and that they make public detailed reasons on the choice of a particular type of agreement, the choice of the agreement's terms and duration, and how a company has met the agreement's terms.⁴⁷⁰

Recent Developments

The most important recent development was the publication in November 2012 of the long-awaited *Resource Guide to the U.S. Foreign Corrupt Practice Act* (the *Guide*) by the DOJ and SEC.⁴⁷¹ While it is not legally binding, and effectively restates existing policy, it is nevertheless significant. TI USA had previously called for the issuance of guidance and welcomes the *Guide's* publication. The 120-page guide is comprehensive and reflects a significant effort on the part of both agencies responsible for enforcing the FCPA. Other noteworthy developments in 2012 included continuing litigation, particularly by individuals, continuing efforts by certain business groups to amend the FCPA, and a continuing significant level of investigations, prosecutions, and settlements by the DOJ and SEC, although at levels slightly lower than previous years. The efforts of some business groups led by the US Chamber of Commerce to effect legislative changes to the FCPA to the benefit of the business community appeared to lose momentum.

There was a smaller number of enforcement actions against companies and individuals than in previous years. The drop does not, however, represent a de-emphasis of FCPA enforcement or a change in the legal or enforcement framework but rather the multi-year character of FCPA cases,

⁴⁶⁹ Reuters, Aruna Viswanatha, 24 April 2012, "Exclusive: SEC Probes Movie Studios over Dealings in China", www.reuters.com/article/2012/04/24/us-sec-movies-idUSBRE83N15V20120424.

⁴⁷⁰ The OECD Working Group on Bribery, United States: Follow-Up to the Phase 3 Report and Recommendations, December 2012, www.oecd.org/daf/anti-bribery/UnitedStatesphase3writtenfollowupreportEN.pdf.

⁴⁷¹ See www.justice.gov/criminal/fraud/fcpa/guidance/.

some diversion of resources away from investigations of companies towards a number of high-profile and resource-intensive criminal trials, and the production of the *Guide*. The actions the SEC and DOJ brought against companies, however, appear to reflect their efforts to be sensitive to issues raised by the FCPA community in the months before the issuance of the *Guide*.

One of those enforcement actions was the criminal prosecution of a former **Morgan Stanley** employee who pleaded guilty to charges of making corrupt payments in China. The DOJ and the SEC decided not to bring enforcement actions against Morgan Stanley in connection with the executive's conduct. This represents the first time the DOJ and SEC publicly declined to take enforcement action against a company where one of its employees nevertheless engaged in conduct in violation of the FCPA to the benefit of the employer, choosing instead to treat the employee as a "rogue".⁴⁷² The decisions not to bring enforcement actions against the company were grounded in the company's extensive compliance program and other conduct in response to the issue, and appear to reflect, as stated in the guide, the agencies' determination to give "meaningful credit" to companies that invest in compliance. The decision to decline enforcement in that case has been viewed as an important and tangible incentive to companies to invest in compliance activities. The DOJ and SEC used another major enforcement action to highlight their positions on another important topic – the circumstances in which successor liability will or will not be imposed on an acquiring company for the pre-acquisition acts of a target as demonstrated in the August 2012 settlements with Pfizer Inc. and certain subsidiaries (see above).

The jurisdictional reach of the FCPA featured prominently in litigation, resulting (in early 2013) in the first judicial decision limiting the reach of the SEC's or DOJ's claimed jurisdiction over an investigation target (see comments on *Siemens AG*), although an arguably similar case decided during early 2013 resulted in the reviewing court finding for the SEC and upholding its jurisdictional theory in the case (see *Magyar Telekom* above).

Judicial scrutiny of settlements continues to increase. In December 2012, a US district court judge refused to endorse the terms of a settlement the SEC negotiated with **IBM Corp.** in connection with books and records and internal controls violations arising from improper payments IBM subsidiaries and affiliates made in South Korea and China.⁴⁷³ The judge periodically conferred privately in his chambers after the filing of the complaint in March 2011, but in December 2012 publicly announced that he did not believe the terms of the settlement were sufficiently stringent to protect the public interest, and would not "rubber stamp" them. The judge demanded that the settlement include a stringent self-reporting requirement, which would compel IBM to report annually on its efforts to comply with the FCPA, report any future violations of the FCPA, and report any new criminal or civil investigations. IBM stated that it could commit to reporting future improper payments, and books and records violations related to such payments, but that it was unable to report broader accounting inaccuracies that are not tied to improper payments. This judicial scrutiny marked only the second time that a court refused to accept the terms of a negotiated settlement between the SEC or DOJ and a defendant. In his public remarks during the hearing, the judge stated that there was a "growing awareness among federal judges of the need for more rigorous review of corporate settlement agreements"⁴⁷⁴ which is potentially significant given that most FCPA cases involving companies are settled subject to court approval. The judge approved a revised settlement between IBM and the SEC on July 25, 2013.⁴⁷⁵

⁴⁷² See www.justice.gov/opa/pr/2012/April/12-crm-534.html

⁴⁷³ SEC v. Int'l Business Machines Corp., No. 11-cv-00563 (RJL) (D.D.C. filed 18 March 2011).

⁴⁷⁴ Bloomberg, 21 December 2012, Tom Schoenberg & Andrew Zajac, "IBM Judge Questions SEC on Foreign Bribe Settlement", www.bloomberg.com/news/2012-12-20/ibm-judge-questions-sec-posture-on-foreign-bribe-settlement-1-.html

⁴⁷⁵ Bloomberg, 26 July 2013, Tom Schoenberg, "IBM Judge OKs Foreign Bribe Settlement Two Years Later", <http://www.bloomberg.com/news/2013-07-25/ibm-judge-approves-10-million-foreign-bribe-settlement-with-sec.html>

Recommendations for Priority Actions

- Discourage the making of facilitation payments, which remain an exception of the FCPA's anti-bribery provisions.
- Provide regular information to the public regarding the number of investigations that the DOJ and SEC conduct during the course of a year, the number of investigations in which they do not pursue enforcement actions (both declinations where the agencies could have taken enforcement action, but elect not to) and file closures where an investigation, either preliminary or full, has indicated no enforcement action would have been justified, and the reasons why, as well as statistics regarding referrals of matters to other authorities. While there is the need to protect the identity of the parties involved, publication of these statistics and a description in the case of declinations of the analysis leading to the declination, would provide very important guidance to those subject to the FCPA and their advisors, and likely lead to better deployment of compliance resources at companies.
- Study the deterrent effect of NPAs and DPAs and make public detailed reasons on the choice of a particular type of agreement, the choice of the agreement's terms and duration, and how a company has met the agreement's terms.

V. CASE STUDIES

The following case studies focus on the energy, health, defence and telecommunication sectors. Together with manufacturing, these are the sectors in which most of the US enforcement actions took place.⁴⁷⁶ With the Foreign Corrupt Practices Act (FCPA) in force since 1977, the US has the longest history of foreign bribery enforcement; it is likely that high risk sectors are high risk with respect to other countries as well, as the case studies involving companies from Canada, Italy, Sweden, Turkey and the US demonstrate.

CANADA - GRIFFITHS ENERGY INTERNATIONAL INC.

Countries Involved

Canada, Chad, and the US

Enforcement Action and Date

Court approval of plea agreement on 25 January 2013

Sanction

Fine of C\$9 million (US\$8.73 million) and a victim fine surcharge of 15 per cent, resulting in a combined total of C\$10.35 million (US\$10 million)

Case Details

The case concerns indirect payment of a bribe of C\$2 million (US\$1.9 million) to the wife of a foreign official, the Chadian ambassador, by a Canadian corporation to obtain oil blocks for exploration in Chad.⁴⁷⁷ The company in question, **Griffiths Energy International Inc. (GEI)**, is privately owned. Since and before its incorporation in 2009, through other companies of its CEO Brad Griffiths and founders Naeem and Parvez Tyab, the company tried to obtain oil blocks for exploration in Chad. To gain entry into the country, it turned to the Chadian ambassador to Canada, residing in Washington. In August 2009, GEI entered into a consulting contract with a company owned by the ambassador, providing for a fee of C\$2 million (US\$1.9 million) payable upon acquisition of oil blocks. Subsequently, GEI terminated the agreement and instead entered into a similar consulting agreement with a company owned by the wife of the Chadian ambassador, Nouracham Niam, in September 2009. In addition to the original fee of C\$2 million (US\$1.9 million), GEI offered a C\$1.6 million (US\$1.5 million) founders' share to Ms. Niam and another C\$2.4 million (US\$2.3 million) share to two of her nominees, at a price of C\$0.001 each – the same price at which shares were offered as part of the founders' round. The recipients appear to have bought these shares. Ms. Niam arranged a meeting of high-level officials from both GEI and the government of Chad, including its President Idriss Deby, on 24 September 2009 to sign a memorandum of understanding regarding the acquisition of oil blocks, but that did not occur at the meeting.

⁴⁷⁶ FCPA Blog, 31 January 2013, David Riker, "Reducing C-Level Risk in Compliance Land", www.fcpablog.com/blog/2012/1/31/reducing-c-level-risk-in-compliance-land.html

⁴⁷⁷ Her Majesty the Queen and Griffith Energy International Inc., Agreed Statement of Facts, <http://de.scribd.com/doc/125043392/statement-of-facts-griffiths-energy-enforcement-action-canada>

GEI eventually succeeded in signing a production sharing agreement with the government of Chad for two oil blocks, Borogop and Doseo, in January 2011. According to the Statement of Facts, the Chadian ambassador had no influence on this agreement. GEI paid the fee of C\$2 million (US\$1.9 million) to the company of Ms. Niam at the beginning of February 2011 through a new law firm (**Macleod Dixon**).

To turn GEI into an oil producer and to access the financial markets, Brad Griffiths hired a new CEO effective 1 July 2011, while staying on as chairman. But two weeks later, he died in a boating accident. His co-founders, the Tyab brothers, left the company around that time as well.⁴⁷⁸ The new CEO brought in new executives and independent directors, and started to work on an initial public offering (IPO). During the due diligence process, the new management team discovered possible violations of the Canada Corruption of Foreign Public Officials Act. It immediately established a special committee and hired specialised outside legal advisors and forensic experts to conduct an internal investigation, at a cost of C\$5 million (US\$4.8 million). In November 2011, GEI informed the Canadian authorities and shortly thereafter the US authorities about the internal investigation and shared its results, including privileged communications with its former legal counsel. The IPO was cancelled – after C\$1.8 million (US\$1.7 million) was spent on it – and funds were raised through a more expensive private placement. In January 2013, GEI pleaded guilty to one count of foreign bribery. GEI agreed to cooperate with the Canadian authorities so that they can pursue other remedies as well. Thus, the federal crown prosecutor indicated that he initiated forfeiture proceedings in relation to the shares purchased by Ms. Niam and two others.⁴⁷⁹ On 19 February 2013, Canadian authorities seized the founders' shares belonging to her and one of the other nominees at the offices of **Norton Rose**, who since June 2011 had merged with Macleod Dixon.

Comment

This is the second foreign bribery investigation resulting in a plea agreement in Canada, after the **Niko Resources** case of June 2011, but the first one involving voluntary disclosure.⁴⁸⁰ Both Niko Resources and GEI are incorporated in Canada, and both are engaged in oil and gas exploration – Niko internationally and GEI just in Chad. The court did not impose a probation order on Griffiths because of the “effective, comprehensive and robust anti-corruption program”⁴⁸¹ instituted by GEI. Also, the management team and directors were different from the ones involved in the bribery. The three-year probation order imposed on Niko Resources may, according to Transparency International Canada, be considered a harsher penalty than the fine itself. The fines were quite similar in the two cases, but the bribe in the Niko Resources case (Toyota Land cruiser and trips to New York and Calgary) was much smaller than the C\$2 million (US\$1.9 million) fee and founders' shares in the GEI case. In the US, DOJ and SEC routinely engage in parallel investigations of foreign bribery. Under Canadian law, civil penalties for books and record violations, such as imposed by the SEC, are not foreseen. In the case at hand, the Canadian company was privately held and would thus not have been subject to a parallel SEC proceeding in the US. It is unclear whether the US DOJ is still investigating the matter, possibly with regard to the two US companies owned by the wife of the Chadian ambassador.⁴⁸²

In September 2012, after it had closed its internal investigation and passed the relevant information to the authorities, GEI announced that it had found new investors. **Glencore International plc**, incorporated in Switzerland, listed in London and Hong Kong, and an EITI supporting company

⁴⁷⁸ National Post, 13 January 2013, “Calgary oil company paid \$2M bribe for access to oil fields in Chad, court told”, <http://news.nationalpost.com/2013/01/28/calgary-oil-company-paid-2m-bribe-for-access-to-oil-fields-in-chad-court-told/>

⁴⁷⁹ The Globe and Mail, 25 January 2013, “Judge approves \$10.35-million fine for Griffiths Energy in bribery case”, www.theglobeandmail.com/report-on-business/industry-news/the-law-page/judge-approves-1035-million-fine-for-griffiths-energy-in-bribery-case/article7858675/.

⁴⁸⁰ According to the Canadian police inspector involved in the case, *ibid*.

⁴⁸¹ Metronews, 25 January 2013, “Judge approves Griffiths Energy fine”, quoting Justice Brooker, <http://metronews.ca/news/calgary/524496/judge-approves-griffiths-energy-fine/>

⁴⁸² FCPA Professor, 12 February 2013, “Will The DOJ Also Bring An Enforcement Action Against Griffiths Energy?”, www.fcprofessor.com/will-the-doj-also-bring-an-enforcement-action-against-griffiths-energy/.

since 2011, would acquire a 25 per cent stake in the Mangara and Badila oilfields in Chad (that is, oilfields not implicated by the foreign bribery settlement) in exchange for C\$300 million (US\$290 million) of funding. In addition, Glencore would acquire a 33.3 per cent interest in three production sharing contracts GEI holds in Chad for C\$31 million (US\$30 million) – this would include the Borogop and Doseo blocks implicated by the foreign bribery settlement. GEI is currently getting ready for another IPO in London, hoping that shares might be valued at C\$10 (US\$9.70) per share,⁴⁸³ so that the C\$1.6 million (US\$1.5 million) founders' shares, for which Ms. Niam paid C\$1,600 (US\$1,550), would be worth C\$16 million (US\$15.5 million). Interestingly, after the court had approved the plea agreement, the Republic of Chad dismissed the ambassador, who had since transferred to South Africa.⁴⁸⁴

What has not been discussed in the two Canadian foreign bribery cases is the use of the victim surcharge. Apparently, the surcharge is not a form of restitution to the victim but a general charge levied for the use of the respective Canadian province for victim services.⁴⁸⁵ In the GEI case, the statement of fact clarifies that the Canadian authorities are not alleging, and GEI is not admitting, that any influence was actually realized.⁴⁸⁶ But, in cases where the bribe affected an agreement entered into by a developing country, would the Canadian government consider changing the use of the surcharge to benefit the victims of the bribes, in particular in developing countries,⁴⁸⁷ or for funding the activities of the Royal Canadian Mounted Police International Anti-Corruption teams, bearing in mind that financial resources for funding their activities are limited?⁴⁸⁸

US HEALTH SECTOR CASES: SMITH & NEPHEW PLC, BIOMET INC., ORTHOFIX INTERNATIONAL N.V., PFIZER, ELI LILLY AND COMPANY

Countries Involved

Argentina, Brazil, Bulgaria, China, Croatia, Czech Republic, Greece, Indonesia, Italy, Kazakhstan, Mexico, Pakistan, Poland, Russia, Saudi Arabia and Serbia.

Case Details

Two sets of investigations that began before 2012 resulted in five Securities and Exchange Commission (SEC) and four Department of Justice (DOJ) enforcement actions under the Foreign Corrupt Practices Act (FCPA) in 2012. In the pharmaceutical sector, the enforcement actions were against **Pfizer Inc.** and certain of its subsidiaries, and against **Eli Lilly and Company**. In the medical device sector, parallel SEC and DOJ enforcement actions were brought against **Smith & Nephew plc**, **Biomet Inc.** and **Orthofix International N.V.** The US government's investigation of

⁴⁸³ The Globe and Mail, 4 February 2013, "In wake of scandal, Griffiths Energy plans IPO in London", www.theglobeandmail.com/report-on-business/industry-news/energy-and-resources/in-wake-of-scandal-griffiths-energy-plans-ipo-in-london/article8155299/.

⁴⁸⁴ The Globe and Mail, 30 January 2013, "Fired Chadian ambassador defends 'done in the daylight' Griffiths deal", www.theglobeandmail.com/report-on-business/industry-news/the-law-page/fired-chadian-ambassador-defends-griffiths-deal/article8025380/?cmpid=rss1.

⁴⁸⁵ Worthwhile Canadian Initiative, A mainly Canadian economics blog, 17 April 2011, Frances Woolley, "Understanding Victim Fine Surcharges",

http://worthwhile.typepad.com/worthwhile_canadian_initi/2011/04/understanding-victim-fine-surcharges.html.

⁴⁸⁶ Her Majesty the Queen and Griffith Energy International Inc., Agreed Statement of Facts, op. cit., para. 50

⁴⁸⁷ Under the BAE settlement with the UK Serious Fraud Office, BAE would make payments to Tanzania for text books and other school materials, The Guardian, 15 March 2012, "BAE finally pays out £29.5m for educational projects in Tanzania", www.guardian.co.uk/global-development/2012/mar/15/bae-pays-for-tanzania-education-projects.

⁴⁸⁸ The OECD Working Group on Bribery, Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Canada, March 2011, recommendation 4. b), www.oecd.org/daf/anti-bribery/anti-briberyconvention/Canadaphase3reportEN.pdf.

Eli Lilly began in 2003, and of Pfizer in 2004,⁴⁸⁹ two of the longest-running investigations to finally result in enforcement actions. The investigations of the medical device manufacturers began in 2007 as a result of one of the first industry “sweeps” conducted by the SEC and DOJ; in those cases the SEC voluntarily requested documents from Smith and Nephew and Biomet in 2007.⁴⁹⁰

Each set of enforcement actions treated the employees of publicly-owned hospitals and other healthcare providers, such as doctors, as “foreign officials” under the FCPA. They also involved substantial penalties and disgorgement of profits paid by the companies to settle the matters. The amounts of penalties and disgorgement, as well as the form of resolution agreed to by the DOJ and SEC – whether the companies were required to retain a corporate compliance monitor, and in one case, whether the company was charged at all – appear to be correlated with whether the companies made voluntary disclosures to the US government agencies, cooperated with those agencies, whether they took steps to remediate the conduct that led to the alleged FCPA violations, and other factors.

In the case of Smith & Nephew plc, US and German subsidiaries of the UK-based parent company made improper payments to offshore shell companies controlled by a Greek distributor, where that distributor subsequently paid some or all of those funds to doctors at public hospitals in Greece. The purpose of the payments was to induce Greek doctors to purchase Smith & Nephew products. In the case of Biomet Inc.,⁴⁹¹ Argentinian, Chinese, Swedish and US subsidiaries of the US parent company paid bribes to increase sales of medical devices through doctors at public hospitals in Argentina, Brazil and China from 2000 to 2008.⁴⁹² In the case of Orthofix International N.V.,⁴⁹³ a Mexican subsidiary of the orthopaedic devices manufacturer incorporated in the Netherlands Antilles but based in the US, paid bribes to hospital officials at a Mexican government health care agency from 2003 to 2010 to gain and retain contracts with various hospitals.⁴⁹⁴

The pharmaceutical sector’s case facts were somewhat similar to those of the medical device cases. According to the complaint in the SEC’s settlement with Pfizer Inc.,⁴⁹⁵ from 2001 through 2007, Pfizer subsidiaries in China, the Czech Republic, Italy and the US improperly influenced doctors and other healthcare professionals employed at state-owned hospitals in Bulgaria, China, Croatia, Czech Republic, Italy, Kazakhstan, Russia and Serbia to purchase Pfizer products. Subsidiaries also made improper payments to customs and other officials in Russia to improperly secure regulatory and formulary approvals, purchase or prescription decisions, and customs clearance.

A separate SEC complaint filed at the same time as the Pfizer Inc. settlement involved a company Pfizer acquired in 2009, **Wyeth LLC**.⁴⁹⁶ The SEC’s enforcement against Wyeth LLC related to payments to government doctors and other healthcare professionals in China, Indonesia and Pakistan, as well as customs officials in Saudi Arabia, from 2005 to 2010, to improperly recommend

⁴⁸⁹ See Eli Lilly & Company, Current Report (Form 10-Q), November 12, 2003; Pfizer Inc., 2004 Financial Report, at Note 17. http://www.pfizer.com/investors/financial_reports/financial_report_2004.jsp.

⁴⁹⁰ SEC may have come to learn about the conduct that was the subject of the subpoenas by a voluntary disclosure of an internal FCPA investigation made by Johnson & Johnson Inc. in 2006. Johnson & Johnson eventually entered into parallel DOJ and SEC enforcement actions under the FCPA in 2011. Those settlements included a Deferred Prosecution Agreement with the DOJ, that included a criminal fine of \$21.4 million, and a settled complaint with the SEC that included disgorgement and prejudgment interest of over \$48.6 million. Deferred Pros. Agreement at Attachment A, para. 28, United States v. Johnson and Johnson, No. 11-cr-099 (D.D.C. Apr. 8, 2011) (hereinafter United States v. Johnson and Johnson), available at <http://www.justice.gov/criminal/fraud/fcpa/cases/deputy-inc/04-08-11deputy-dpa.pdf>; SEC v. Johnson & Johnson, case no. 1:11 –cv-00686 (D.D.C. 2011).

⁴⁹¹ <http://www.sec.gov/news/press/2012/2012-50.htm>. <http://www.sec.gov/litigation/complaints/2012/comp22306.pdf>.

⁴⁹² Deferred Prosecution Agreement at 5, United States v. Biomet, Inc., No. 1:12-cr-00080-RBW (D.D.C. Mar. 26, 2012).

⁴⁹³ <http://www.sec.gov/news/press/2012/2012-133.htm>; <http://www.sec.gov/litigation/complaints/2012/comp-pr2012-133.pdf>; <http://www.justice.gov/criminal/fraud/fcpa/cases/orthofix/2012-07-10-orthofix-dpa.pdf>.

⁴⁹⁴ Enforcement Action, Date and Sanctions: Orthofix International N.V., July 10, 2012

SEC Settlement: US\$4,983,644 in disgorgement of profits and US\$242,000 in prejudgment interest, monitoring of its FCPA compliance program and reporting back to the SEC for two years;

DPA of three years: US\$2,220,000 criminal penalty; US\$2,220,000 criminal penalty; and implementation of an enhanced compliance program including independent review, audit and annual reporting for three years.

⁴⁹⁵ <http://www.sec.gov/news/press/2012/2012-152.htm>.

⁴⁹⁶ <http://www.sec.gov/litigation/complaints/2012/comp-pr2012-152-wyeth.pdf>.

their nutritional products to patients, obtain information for marketing purposes and gain customs clearance. The DOJ entered into a DPA with Pfizer for some of the same conduct relating to its New York subsidiary **Pfizer H.C.P. Corporation**,⁴⁹⁷ which, from 1997 to 2006, made improper payments to government officials, including publicly-employed regulators and health care professionals in Bulgaria, Croatia, Kazakhstan and Russia.⁴⁹⁸ The DOJ did not charge Pfizer in connection with the conduct that was the subject of the SEC's complaint against its acquired subsidiary Wyeth LLC.

In the case of Eli Lilly and Company,⁴⁹⁹ which to date has reached a settlement with the SEC and not DOJ, certain national subsidiaries of the company made improper payments to health care officials in Brazil, China, Poland and Russia during the periods 1994 – 2005 (Russia), 2006-2009 (China), 2007 (Brazil) and 2000-2003 (Poland).

Comment

The nine settlements in these two sectors lend themselves to a comparison of sanctions imposed by the SEC and the DOJ. While the facts of each case differ, the public record suggests that the manner in which companies respond to allegations of foreign bribery in their operations when the allegations arise, whether through voluntary disclosure to the US enforcement agencies, cooperating with those agencies when they conduct investigations, remediation of the problematic conduct, and/or through other measures, can significantly affect the ultimate form and magnitude of the sanctions associated with the settlement of an FCPA matter (which companies have almost invariably done when facing FCPA enforcement), as well as the persons charged.

Medical Device Sector Settlements

In the medical device sector settlements, the US enforcement agencies' investigations of Smith & Nephew, Biomet and Orthofix showed some common traits but also exhibit some differences that likely arise from how the companies and the US government came to learn of the matters. On the one hand, the *Smith & Nephew* and *Biomet* investigations appear to have begun as a result of letters the SEC sent to those companies and a number of their competitors in the sector in September 2007,⁵⁰⁰ in one of the first industry sweeps conducted by the SEC and DOJ. On the other hand, the *Orthofix* resolution appears to have been the result of a voluntary disclosure by Orthofix made when reports of improper conduct surfaced internally.⁵⁰¹

Sanctions in the *Smith & Nephew* and *Biomet* cases were broadly similar: both companies' SEC settlements involved settled complaints alleging violations of the anti-bribery, books and records, and internal controls provisions of the FCPA, and included the payment of US\$5.4 and US\$5.5 million, respectively, in disgorgement and prejudgment interest. Both companies also entered into DPAs with the DOJ, which credited them with "disclosure" of the subject conduct to DOJ (and in Biomet's case "voluntary disclosure" with respect to a portion of the conduct at issue), and extensive

⁴⁹⁷ <http://www.justice.gov/criminal/fraud/fcpa/cases/pfizer/2012-08-07-pfizer-dpa.pdf>.

⁴⁹⁸ Enforcement Action, Date and Sanctions: Pfizer, August 7, 2012

SEC settlement: re Pfizer, Inc: US\$16,032,676 in disgorgement of profits and US\$10,307,268 in prejudgment interest, reporting to the SEC on the status of its remediation and implementation of compliance measures over a two-year period; re Wyeth LLC, US\$17,217,831 in disgorgement of profits and US\$1,658,793 in prejudgment interest. As a Pfizer subsidiary, the status of Wyeth's remediation and implementation of compliance measures will be subsumed in Pfizer's two-year self-reporting period;

DPA of two years, Pfizer H.C.P. Corporation, US\$15 m criminal penalty, implementation of rigorous internal controls, and periodic reporting by Pfizer Inc. on implementation of remediation and compliance programme.

⁴⁹⁹ Enforcement Action, Date and Sanctions: Eli Lilly and Company, December 20, 2012

SEC Settlement: US\$13,955,196 in disgorgement of profits, US\$6,743,538 prejudgment interest, civil penalty of US\$8.7m and retention of an independent consultant to review and make recommendations about its foreign corruption policies and procedures.

⁵⁰⁰ See Biomet Inc., Registration Statement (Form S-1), May 6, 2008; Smith & Nephew plc, Annual Report (Form 20-F), March 27, 2008.

⁵⁰¹ See Orthofix International N.V., Current Report (Form 10-Q), October 28, 2010.

internal investigation, cooperation with the DOJ and remediation of problematic conduct. Both DPAs have a term of three years, and require the retention of an independent compliance monitor for 18 months. Both companies were assessed significant criminal fines as calculated under the US Federal Sentencing Guidelines, which were “discounted” by 20 per cent below the recommended minimum fine according to those guidelines (Smith & Nephew and Biomet paid US\$16.8 million and US\$17.3 million, respectively).

The *Orthofix* case, in contrast, was voluntarily disclosed to both the DOJ and SEC – Orthofix did not report having been a recipient of a letter sent in 2007 by the SEC to a number of medical device manufacturers (which was likely prompted by Johnson & Johnson’s own voluntary disclosure beforehand) and involved significantly lesser sanctions. Orthofix’s SEC settlement did not contain an anti-bribery charge. Orthofix paid approximately US\$5.2 million in disgorgement and prejudgement interest to the SEC, similar to Smith & Nephew and Biomet. Orthofix also was not required to retain a corporate compliance monitor.

Orthofix’s DOJ resolution likely reflected its voluntary disclosure of the conduct to the SEC and DOJ, in contrast to the *Smith & Nephew* and *Biomet* cases (which were prompted by letters sent by the SEC in the course of one of its first sweeps in 2007). Orthofix entered into a 3-year DPA with the DOJ, containing a criminal internal controls charge only (and no anti-bribery or books and records charges). Orthofix also was required to pay a US\$2.2 million criminal fine, which represented the low end of the range provided by the US Federal Sentencing Guidelines.

Pharmaceutical Cases

Pfizer Inc.’s and Eli Lilly and Company’s 2012 FCPA resolutions also highlight that how companies respond to FCPA issues can significantly affect the ultimate resolutions with the US enforcement agencies. The Pfizer settlements, in fact, are made up of three enforcement actions: by the DOJ resulting in a two-year DPA with Pfizer HCP Corporation, a New York subsidiary of Pfizer Inc. in connection with conduct in a number of countries, including the pre-acquisition conduct of a subsidiary it acquired in 2003 from Pharmacia Corp.; by the SEC against Pfizer Inc. for much of the same and additional conduct; and another SEC action against Wyeth LLC, a company Pfizer acquired while the original FCPA investigation, which Pfizer had voluntarily disclosed to the SEC and DOJ in 2004, was pending.

Pfizer HCP entered into a two-year DPA, containing one count each of violations of the FCPA’s anti-bribery provisions and conspiracy to violate the FCPA’s anti-bribery, books and records, and internal controls provisions relating to an extensive set of conduct in multiple countries from 1997 to 2006. Pfizer HCP agreed to pay a US\$15 million criminal penalty and abide by an extensive list of compliance requirements, and provide compliance reports to the DOJ for the entire two-year term of the DPA. It was not, however, required to retain a compliance monitor. Significantly, a portion of the conduct charged took place before Pfizer acquired a Croatian subsidiary of Pharmacia & Upjohn; the charges were brought apparently as a result of Pfizer’s failure to conduct pre-acquisition FCPA due diligence on Pharmacia & Upjohn’s Croatian operations.

In contrast, Pfizer did conduct extensive pre-acquisition FCPA due diligence on its acquisition of Wyeth LLC, resulting in no DOJ enforcement action against Pfizer or Wyeth LLC for significant conduct discovered. At least some of that conduct was publicly disclosed in Wyeth LLC’s settlement with the SEC, which resulted in Wyeth LLC paying US\$18.9 million in disgorgement and prejudgement interest, and the SEC filing a settled complaint against Wyeth LLC alleging books and records and internal controls violations in multiple countries. For its part, the Pfizer SEC settlement involved Pfizer paying over US\$26 million in disgorgement and prejudgement interest, and the SEC filing a settled complaint alleging books and records and internal controls charges against Pfizer Corp. in connection with payments in multiple countries.

Eli Lilly's settlement, in contrast, to date has involved only an SEC action (although the DOJ action reportedly remains open). It was not the product of a voluntary disclosure but instead a voluntary request for documents sent by the SEC to Eli Lilly & Company, that later resulted in a subpoena in 2004.⁵⁰² That settlement resulted in Eli Lilly agreeing to pay disgorgement of US\$13.95 million, prejudgement interest of US\$6.75 million, and a civil penalty of US\$8.7 million for a total of approximately US\$29.4 million in monetary sanction in connection with anti-bribery, books and records, and internal controls charges.

ITALY/INDIA – AGUSTAWESTLAND LTD

Countries Involved

India and Italy

Enforcement Action and Date

Italy: *Custodia cautelare* (preventive arrest) of Giuseppe Orsi, CEO of parent company **Finmeccanica S.p.A.** and former CEO of **AgustaWestland Ltd**, search of his residence and of the Milan office of AgustaWestland, and *aresti domiciliari* (preventive house arrest) of Bruno Spagnolini, CEO of AgustaWestland on 12 February 2013.⁵⁰³

India: Registration of a criminal case by Central Bureau of Investigation under anti-corruption laws against Finmeccanica, AgustaWestland Ltd and former Air force Chief S.P. Tyagi as part of a probe of four firms and twelve individuals on 13 March 2013.⁵⁰⁴

Case Details

On 8 February 2010, AgustaWestland Ltd entered into a €556 million contract to sell twelve AW101 helicopters (eight VVIP version and four non-VVIP version) to the Indian Ministry of Defence.⁵⁰⁵ Allegedly, the technical specifications of the helicopter tender were changed to allow AgustaWestland to bid, and bribes amounting to about €50 million were paid through middlemen and companies, including to the former Chief of the Indian Air Force, S.P. Tyagi.⁵⁰⁶ The helicopter contract included an integrity clause, under which the contract can be cancelled and the company debarred from participating in future procurement opportunities, if any person or the company was found to have bribed any officials.⁵⁰⁷ The ministry put on hold the delivery of the remaining nine helicopters under the integrity clause and started a process which could lead to the cancellation of the contract.⁵⁰⁸

⁵⁰² See Eli Lilly and Company, Current Report (Form 10-Q), 29 April 2011.

⁵⁰³ Fox News, 12 February 2013, "Italian Police arrest Finmeccanica CEO in corruption probe", www.foxnews.com/world/2013/02/12/italian-police-arrest-finmeccanica-ceo-in-corruption-probe/#ixzz2Olg7DDf0

⁵⁰⁴ Reuters, 13 March 2013, "CBI launches raids in Finmeccanica deal probe", <http://in.reuters.com/article/2013/03/13/india-finmeccanica-idINDEE92C03K20130313>.

⁵⁰⁵ Government of India, Ministry of Defence, Lok Sabha, Starred Question No. 46, Answered on 26 November 2012 "Purchase of VVIP Helicopters", <http://indiatoday.intoday.in/story/chopper-scram-ak-antony-rise-of-italian-arms-industry-finmeccanica/1/251341.html>ase of VVIP Helicopters", <http://164.100.47.132/LssNew/psearch/QResult15.aspx?qref=130280>.

⁵⁰⁶ Fox News, 13 August 2013, "Indian auditor criticises Italian chopper deal", www.foxnews.com/world/2013/08/13/indian-auditor-criticises-italian-chopper-deal/. <http://indiatoday.intoday.in/story/chopper-scram-ak-antony-rise-of-italian-arms-industry-finmeccanica/1/251341.html>

⁵⁰⁷ Government of India, Ministry of Defence, Lok Sabha, Starred Question No. 46, Answered on 26 November 2012 "Purchase of VVIP Helicopters", op. cit.

⁵⁰⁸ New York Times, 13 February 2013, "India Opens Its Own Inquiry Into Finmeccanica Contract", www.nytimes.com/2013/02/14/business/global/india-opens-its-own-inquiry-into-finmeccanica-contract.html.

Comment

The investigations by both Italian and Indian authorities in the helicopter deal suggest examination in a broader context.

- Finmeccanica

Finmeccanica is a large aerospace, military and security company with about 70,000 employees. The Italian government owns about 30 per cent of it.⁵⁰⁹ Its AgustaWestland subsidiary resulted in 2000 from a merger of Agusta with the British helicopter manufacturer Westland.⁵¹⁰

Other allegations of bribery have been made against the parent company, Finmeccanica, in the last years. The predecessor of Orsi as CEO of Finmeccanica, Pier Francesco Guarguaglini, came under investigations in 2011 regarding the creation of slush funds to bribe politicians in Italy; he resigned in December 2011. The charges against Mr. Guarguaglini were dropped before the trial started because the evidence lacked credibility.⁵¹¹

According to information reportedly provided by a former Finmeccanica employee, at least US\$13 million from the helicopter deal was allegedly funnelled back to Italy and paid to the Lega Nord party (which was a partner in Berlusconi's coalition) in return for its support to Orsi's bid to become president of Finmeccanica.⁵¹² Other allegations involve corrupt activities of Finmeccanica to win contracts in Latin America.⁵¹³ A former Finmeccanica commercial director was arrested in October 2012 for allegedly bribing Panamanian officials to get contracts for the supply of AgustaWestland helicopters, security systems and satellite services worth US\$233 million.⁵¹⁴ Fincanteri's offer, in partnership with Finmeccanica, to sell frigates to the Brazilian government in August 2010 reportedly may also have involved bribes.⁵¹⁵

In the Defence Companies Anti-Corruption Index of Transparency International, which looks into what defence companies currently do, or fail to do, to prevent corruption, the level of evidence for basic anti-corruption systems in place at Finmeccanica is rated as "moderate".⁵¹⁶

- Media Discussion about the case

The investigations involving Finmeccanica have given rise to interesting cross-country discussions. A French analyst was quoted as stating that "in the US, companies pay a fine, whereas in Europe, the media get involved and CEOs go to jail."⁵¹⁷ This echoes criticism of the US DOJ for infrequently charging individuals in cases of foreign bribery.⁵¹⁸ An Italian analyst expressed concern over European methods of investigation, in which documents were quoted in the press before they could be verified in a trial.⁵¹⁹ This is born out, inter alia, by the preventive arrest of Orsi, which surfaced in

⁵⁰⁹ Ibid.

⁵¹⁰ The Guardian, 12 February 2013, Rupert Neate "Finmeccanica boss arrested over 'corrupt' helicopter deal with India", www.guardian.co.uk/business/2013/feb/12/finmeccanica-boss-arrested-corruption-claims.

⁵¹¹ DefenseNews, 26 January 2013, Tom Kington, "Guarguaglini Cleared Of Accounting Charges", www.defensenews.com/article/20130126/DEFREG01/301260019/Guarguaglini-Cleared-Accounting-Charges

⁵¹² The Sunday Guardian, 23 February 2013, Ram Jethmalani, "Is UPA serious about finding the guilty?", www.sunday-guardian.com/analysis/is-upa-serious-about-finding-the-guilty.

⁵¹³ Niti Central, 21 February 2013, Priyadarshi Dutta, "Finmeccanica's muddy footprints all over world", www.niticentral.com/2013/02/21/finmeccanicas-footprints-all-over-world-48915.html.

⁵¹⁴ DefenseNews, 27 October 2012, Tom Kington, "Future Cloudy for Finmeccanica CEO Guiseppe Orsi", www.defensenews.com/article/20121027/DEFREG01/310270001/Future-Cloudy-Finmeccanica-CEO-Giuseppe-Orsi.

⁵¹⁵ Ibid.

⁵¹⁶ Defence Companies Anti-Corruption Index, Finmeccanica S.p.A., IT, ranked "C", <http://companies.defenceindex.org/results/companies/finmeccanica-spa#more>.

⁵¹⁷ DefenseNews, 18 March 2013, Tom Kington and Vivek Raghuvanshi, "Helo Bribery Case, Shooting Fray India-Italy Ties", www.defensenews.com/article/20130318/DEFREG01/303180010/Helo-Bribery-Case-Shooting-Fray-India-Italy-Ties.

⁵¹⁸ FCPA Professor, 28 January 2013, "A Focus On DOJ FCPA Individual Prosecutions", www.fcpaprofessor.com/a-focus-on-doj-fcpa-individual-prosecutions.

⁵¹⁹ "Helo Bribery Case", op.cit.

the press with a statement of the Italian magistrate that “AgustaWestland and its management seem to be used to paying bribes and we have reason to believe that such a corporate philosophy could be repeated in the future, if not stopped through an arrest.”⁵²⁰ In fact, Orsi was in custody until 5 May 2013.⁵²¹ Italian magistrates are allowed to hold suspects in custody while investigations continue.⁵²² The trial of Orsi and of former AgustaWestland CEO Bruno Spagnolini started on 19 June 2013.⁵²³

In India, the government is reported to be split as to a ban of AgustaWestland, from future tenders.⁵²⁴ India already blacklisted six companies⁵²⁵, and if another was added, important suppliers of military equipment would be excluded from bidding in India at a time when the military needs to be modernized.⁵²⁶ The ban of six defence companies in India can be contrasted with statements of the DOJ in the US health cases, where avoiding exclusion of a company from participation in federal health care programs was among the considerations for entering into a deferred prosecution agreement.⁵²⁷

Another aspect being discussed is the timing of the arrest in Italy and investigations in India, both related to elections. In Italy, a senior Finmeccanica official saw a political motivation in the timing of the arrest of Orsi shortly before the Italian elections on 24–25 February 2013, although investigation against him had been ongoing for 18 months.⁵²⁸ During the election campaign, former prime minister Berlusconi suggested that the Indian case had been overblown. “Kickbacks are a phenomenon that exist, and it is useless to ignore their necessity. India is outside the Western sphere, and it is not up to us to judge India. This is absurd moralism,” he was quoted as saying. But a day later, Berlusconi appeared to backtrack, saying that bribery must always be punished.⁵²⁹ In India, the upcoming elections in mid-2014 may influence actions and reactions to the scandal. Last summer, massive demonstrations took place across India to influence the parliament to pass a special ombudsman law which would help in the fight against corruption. As commented on by the Los Angeles Times, the Finmeccanica allegations are drawing comparisons to a 1980s scandal in which Swedish defence firm AB Bofors allegedly paid US\$11.6 million in kickbacks to top Indian politicians and defence officials in a contract for field guns. This contributed to the defeat of the Congress Party, led by Rajiv Gandhi, in the 1989 general election.⁵³⁰ The opposition criticized the Indian defence minister for not moving quickly enough after Orsi’s arrest.⁵³¹ On 17 February 2013, the Indian government set up a joint parliamentary committee to investigate the helicopter deal.⁵³²

⁵²⁰ Reuters, 12 February 2013, Emilio Parodi and Danilo Masoni, “Finmeccanica head arrested over India bribe allegations”, www.reuters.com/article/2013/02/12/us-orisi-finmeccanica-idUSBRE91B09Q20130212

⁵²¹ The Hindu, 18 June 2013, Vaiju Naravane, “Chopper scam: Trail against Orsi to begin tomorrow”, www.thehindu.com/news/international/world/chopper-scam-trial-against-orisi-to-begin-tomorrow/article4825800.ece.

⁵²² DefenseNews, 18 February 2013, Tom Kington and Vivek Raghuvanshi, “All Eyes on New Finmeccanica Boss”, www.defensenews.com/apps/pbcs.dll/article?AID=2013302180007.

⁵²³ Reuters, 19 June 2013, Emilio Parodi, “Finmeccanica helicopter corruption trial starts in Italy”, <http://in.reuters.com/article/2013/06/19/finmeccanica-trial-start-idINDEE95I0AS20130619>.

⁵²⁴ Reuters, 16 March 2013, Manoj Kumar and Ross Colvin, “India wrestles with dilemma of blacklisting AgustaWestland”, www.reuters.com/article/2013/03/17/us-india-finmeccanica-blacklist-idUSBRE92G01N20130317.

⁵²⁵ Including Rheinmetall Air Defence Switzerland (part of Germany’s Rheinmetall AG), Israel Military Industries, Singapore Technologies Kinetics, and Denel of South Africa, India Today, 22 February 2013, Sandeep Unnithan and Bhavna Vij-Aurora, “As Antony pleads innocence, the helicopter scam underlines how Italy has emerged as one of the biggest arms suppliers to India over the past five years”, <http://indiatoday.intoday.in/story/chopper-scam-ak-antony-rise-of-italian-arms-industry-finmeccanica/1/251341.html>.

⁵²⁶ Ibid.

⁵²⁷ United States v. Biomet, Inc. No. 1:12-cr-00080-RBW, (D.D.C. 26 March 2012) (DPA), para. 3 h, www.ft.com/intl/cms/s/0/1ee373ce-74ef-11e2-8bc7-00144feabdc0.html#axzz2PD00Jzgjjustice.gov/criminal/fraud/fcpa/cases/biomet/2012-03-26-biomet-dpa.pdf.

⁵²⁸ Financial Times, 12 February 2013, Guy Dinmore, “Italian police arrest Finmeccanica chief”, www.ft.com/intl/cms/s/0/1ee373ce-74ef-11e2-8bc7-00144feabdc0.html#axzz2cnrHmqW4.

⁵²⁹ “All Eyes on New Finmeccanica Boss”, op.cit.

⁵³⁰ Los Angeles Times, 13 February 2013, Mark Magnier, “India bribery scandal threatens to ground \$750-million copter deal”, <http://articles.latimes.com/2013/feb/13/world/la-fg-wn-india-helicopter-20120213>.

⁵³¹ , India Today, 22 February 2013, Sandeep Unnithan and Bhavna Vij-Aurora “As Antony pleads innocence, the helicopter scam underlines how Italy has emerged as one of the biggest arms suppliers to India over the past five years”, op. cit.

⁵³² The Wall Street Journal, 27 February 2013, “India Parliament Panel to Probe Helicopter Deal”, <http://online.wsj.com/article/SB10001424127887324662404578330162252293952.html>.

- Cross-country co-operation in investigation

It is encouraging that Italy investigates the case under the aspect of foreign corruption, and India under that of domestic bribery.⁵³³ This demonstrates to companies that they risk prosecution both at home and in the country in which the bribe is being paid. The principle of double jeopardy shields a company only from more than one prosecution in one country, not in multiple countries.⁵³⁴ Press reports about the Italian-Indian co-operation in the case vary. According to one source, India expected more support from Italian prosecutors.⁵³⁵ Another source reported positive meetings.⁵³⁶ Co-operation between Italy and Switzerland seemed to have worked well during the search of the residences of two middlemen involved in the deal and their subsequent arrest. Requests for extradition from Switzerland to Italy are pending.⁵³⁷ There is speculation that the US may also step in,⁵³⁸ considering the fact that Finmeccanica's shares are listed in the US.⁵³⁹ The UK could take up the case because of the location of the helicopter factory in southern England and the British nationality of one of the middlemen involved, but the UK authorities are not yet investigating the case.⁵⁴⁰

- Defence sector in India

The helicopter deal made Italy the fifth-most important arms supplier to India in 2011, up from the twelfth in 2007, according to the Stockholm Institute of Peace Research Institute.⁵⁴¹ In the Transparency International Government Defence Anti-Corruption Index, which considers the risk of corruption in national defence establishments in five key risk areas, that is, political, financial, personnel, operations, and procurement, India is placed in Band D+, on a scale of A to F. The summary on political corruption states: "It is unclear from public information whether a national defence policy exists in India. While the Ministry of Defence (MOD) asserts that a draft policy has been prepared, this is not available to the public. A parliamentary standing committee on defence examines a range of issues; its effectiveness is constrained as the recommendations of parliamentary committees are not binding on the Executive. There is no evidence that Civil Society Organisation engagement has occurred to any significant extent, despite requests from civil society to be involved in consultations on the Whistle-blower Bill. In recent years, India has ratified the United Nation Convention against Corruption and signed up to other anti-corruption instruments, yet it is still early to gauge the extent of its compliance to these."⁵⁴² In response to the AgustaWestland scandal, the Indian defence ministry made changes to its procurement policy.⁵⁴³

⁵³³ Regarding domestic bribery, India has obligations under the UN Convention against Corruption.

⁵³⁴ United States v. Gi-Hwan Jeong, No. 09-11127, (5th Cir. 22 October 2010) at II.B., www.ca5.uscourts.gov/opinions/pub/09/09-11127-CR0.wpd.pdf.

⁵³⁵ "India bribery scandal threatens to ground \$750-million copter deal", op.cit.

⁵³⁶ Reuters, 21 February 2013, Paolo Biondi and Danilo Masoni, "Italy's Finmeccanica delays results over India probe", <http://uk.reuters.com/article/2013/02/21/uk-finmeccanica-india-idUKBRE91K1AL20130221>.

⁵³⁷ Reuters, 22 March 2013, "Italy seeks extradition of Swiss resident in Finmeccanica probe", www.reuters.com/article/2013/03/22/finmeccanica-probe-idUSL6N0CEE5620130322.

⁵³⁸ "All Eyes on New Finmeccanica Boss", op.cit.

⁵³⁹ FCPA Professor, 15 February 2013, "Friday Roundup", <http://www.fcpaprofessor.com/category/finmeccanica>

⁵⁴⁰ DefenseNews, 6 March 2013, Vivek Raghuvanshi, "India" No Decision of Blacklisting AgustaWestland", <http://mobile.defensenews.com/article/303060014>.

⁵⁴¹ India Today, 22 February 2013, Sandeep Unnithan and Bhavna Vij-Aurora, "As Antony pleads innocence, the helicopter scam underlines how Italy has emerged as one of the biggest arms suppliers to India over the past five years", op.cit.

⁵⁴² International Defence & Security Programme, Government Defence Anti-Corruption Index, India, "D+", <http://government.defenceindex.org/results/countries/india>.

⁵⁴³ The Hindu, 22 April 2013, "Defence Ministry strengthens its new procurement policy", www.thehindu.com/news/national/defence-ministry-firms-up-new-procurement-policy/article4636876.ece.

SWEDEN – TELIASONERA AB AND TURKEY – TURKCELL ILETISIM HIZMETLERI AS

Countries Involved

Kazakhstan, Sweden, Turkey, the US and Uzbekistan

Enforcement Action and Date

Sweden: In September 2012, the Swedish public prosecutor started a preliminary investigation into suspicion of aggravated bribery by employees of TeliaSonera with regard to the purchase of a 3G telecom license in Uzbekistan, and, on March 28, 2013, expanded the probe to include TeliaSonera with possible consequences of corporate fines and asset forfeiture.⁵⁴⁴

US: On April 20, 2011, Turkcell disclosed that it was made aware of allegations of improper payments relating to the operations of Kcell, a mobile telephone company in Kazakhstan, of which it owns a minority share.⁵⁴⁵

Case Details

TeliaSonera: TeliaSonera resulted from a merger of Swedish **Telia** and Finish **Sonera** in 2002.⁵⁴⁶ Since 2007, TeliaSonera has owned **Ucell**, a small mobile operator in Uzbekistan. In conjunction with the purchase of Ucell, TeliaSonera entered into an agreement with Takilant Limited, to acquire 3G telecom licenses, frequencies and number series, for US\$30 million and a 26 per cent ownership interest in Ucell.⁵⁴⁷ In early 2012, TeliaSonera acquired additional shares in Ucell⁵⁴⁸ from Takilant for US\$220 million.⁵⁴⁹

On 19 September 2012, Swedish television aired the findings of investigative journalists regarding TeliaSonera's purchase of a 3G telecom license that Takilant had close ties to Gulnara Karimova, the daughter of the President of Uzbekistan, Islam Karimov.⁵⁵⁰ Persons interviewed claimed that at least a part of the millions that TeliaSonera had paid for the licence ended up as bribes in the hands of Uzbekistan President Islam Karimov and his family. Swedish prosecutors followed up on the allegations made on TV and started a preliminary investigation of TeliaSonera employees.⁵⁵¹ In

⁵⁴⁴ Reuters, 28 March 2013, "Update 1 – Prosecutors eye fine for Telia in Uzbek probe", www.reuters.com/article/2013/03/28/teliasonera-uzbek-idUSL5N0CK2MP20130328.

⁵⁴⁵ Turkcell Iletisim Hizmetleri AS, 20 April 2011, 20-F/A for 12/31/10, Line 3591, www.secinfo.com/d14D5a.q35B1.htm?Find=Kcell&Line=3592#Line3592.

⁵⁴⁶ Teliasonerahistry.com, "Telia + Sonera = TeliaSonera", www.teliasonerahistory.com/building-the-company/article-list/telia-sonera-teliasonera/, the Swedish Government holds 37.3 per cent of its shares, and the Finnish Government 11.7 per cent since it sold a 2 per cent stake in TeliaSonera in March 2012, TeleGeography, 13 August 2013, "Finland to sell more TeliaSonera shares next year", www.telegeography.com/products/commsupdate/articles/2013/08/13/finland-to-sell-more-teliasonera-shares-next-year/.

⁵⁴⁷ Press Release, TeliaSonera, 19 September 2012, "TeliaSomera comments on developments in Uzbekistan", <http://www.teliasonera.com/en/newsroom/press-releases/2012/9/teliasonera-comments-on-developments-in-uzbekistan/>, For additional information on the acquisition see Ferghana News, 21 September 2012, Maria Yanovskaya, "Gayane Avakyan and TeliaSonera or Swedish Krona for Googoosha", <http://enews.ferghananews.com/articles/2781>; Ferghana News, 15 October 2012, Maxim Baylis, "Investigation: What happened to TeliaSonera in Uzbekistan?", <http://enews.ferghananews.com/articles/2787>.

⁵⁴⁸ indirectly by acquiring shares from TeliaSonera Uzbek Telecom Holding B.V., a Dutch holding company owning 100 per cent of Ucell (OOO Cusco)

⁵⁴⁹ TeliaSonera, Annual Report 2010, Acquisitions and Divestitures, <http://reports.teliasonera.com/2010/sv/AR/ReportoftheDirectors/AcquisitionsandDivestitures.html>.

⁵⁵⁰ Reuters, 26 September 2012, "Swedish prosecutors open probe into TeliaSonera Uzbek deal", www.reuters.com/article/2012/09/26/us-teliasonera-uzbekistan-idUSBRE88P0XM20120926

⁵⁵¹ The probe has been expanded to a third employee in April 2013, Thomson Reuters Foundation, 4 April 2013, "Prosecutors identify third suspect in Telia Uzbek probe", www.trust.org/trustlaw/news/prosecutors-identify-third-suspect-in-telia-uzbek-probe/

October 2012, a Swedish court ordered the freezing of assets in the amount of US\$30 million of Takilant,⁵⁵² and in January 2013, expanded the asset freeze to US\$277 million, the biggest amount ever declared frozen in Sweden.⁵⁵³ In February 2013, the Swedish court issued a decision making a slight increase in the amount. Criminal charges are to be brought no later than 9 September 2013.

Separately, Swiss authorities started an investigation for money laundering centring on four Uzbek citizens. The probe was initially sparked by an Uzbek arrest warrant for Bekhzod Akhmedov, the director of the Uzbek subsidiary of the Russian mobile phone company MTS on charges of fraud. In July 2012, two Uzbek citizens were arrested, and in late September 2012, several hundred million Swiss francs frozen in different Swiss bank accounts. The other three Uzbek citizens under investigation are linked to the TeliaSonera investigation in Sweden, among them the director of Takilant, Gayane Avakyan.⁵⁵⁴

A law firm, which carried out an independent investigation at the request of TeliaSonera, reported in February 2013 that it had not uncovered any evidence of bribery or money laundering, but it criticized the failure of TeliaSonera to probe into the real ownership of Takilant. This led to the resignation of TeliaSonera's CEO.⁵⁵⁵

Turkcell: Turkcell is a Turkish mobile phone operator.⁵⁵⁶ The allegations Turkcell made concern transactions that may involve **Kcell** and certain of the employees and management of Kcell, **Fintur Holdings B.V.**, TeliaSonera, and certain vendors of Kcell. Turkcell clarified that the allegations do not concern itself but Kcell.⁵⁵⁷ Kcell is the brand name under which GSM Kazakhstan offers mobile telephone services in Kazakhstan, with a market share of 47.7 per cent at the end of September 2012.⁵⁵⁸ After a number of transactions, Turkcell currently holds a minority share in Kcell through Fintur Holding B.V., while TeliaSonera is the majority shareholder.⁵⁵⁹

The allegations involving Kcell were discussed by Turkcell's board of directors, and the board members who represent Turkcell on Fintur's board of directors have requested the initiation of an investigation regarding these allegations.⁵⁶⁰ In subsequent filings with the US SEC in 2012⁵⁶¹ and 2013,⁵⁶² Turkcell mentioned that its board had been informed that the Fintur board had completed its own investigation and that allegations had not been substantiated, stating further that it would remain vigilant on this matter, since no assurance could be given that there would not be further requests for investigation.

⁵⁵² Reuters, 15 October 2012, "Court freezes Takilant assets in Sweden in TeliaSonera-linked probe", www.reuters.com/article/2012/10/15/teliasonera-takilant-idUSS3E8KO00A20121015.

⁵⁵³ The Local, 22 January 2013, "New asset freeze in TeliaSonera bribe probe", www.thelocal.se/45748/20130122/#.UWraalXzvak

⁵⁵⁴ Financial Times, 7 March 2013, Courtney Weaver and Neil Buckley, "Uzbekistan: The leading lady", www.ft.com/intl/cms/s/0/e73db090-85b7-11e2-9ee3-00144feabdc0.html#axzz2QtzZluZo

⁵⁵⁵ The Wall Street Journal, 1 February 2013, Anna Molin, "Update: TeliaSonera CEO Quits", <http://online.wsj.com/article/BT-CO-20130201-710033.html>.

⁵⁵⁶ in which TeliaSonera holds a minority interest of 37 per cent and which has become the subject of disputes, Reuters, 11 March 2013, "TeliaSonera says wins court victory in Turkcell dispute", www.reuters.com/article/2013/03/11/turkcell-telia-caribbean-idUSL6N0C38GY20130311.

⁵⁵⁷ Quartz, 4 January 2013, Steve LeVine, "Foreign bribery probes spread as firms start rattling on each other", <http://qz.com/40704/foreign-bribery-probes-spread-as-firms-start-rattling-on-each-other/>.

⁵⁵⁸ Bloomberg, 31 January 2013, Ilya Khrennikov, "TeliaSonera's Kcell Seeks to Maintain Profitability, Chief Says", www.bloomberg.com/news/2013-01-31/teliasonera-s-kcell-seeks-to-maintain-profitability-chief-says.html.

⁵⁵⁹ Business Wire, 22 December 2011, "TeliaSonera Increases Its Ownership in Kcell and Prepares For IPO", www.businesswire.com/news/home/20111222005224/en/TeliaSonera-Increases-Ownership-Kcell-Prepares-IPO.

⁵⁶⁰ Turkcell İletişim Hizmetleri AS, 20 April 2011, 20-F/A for 12/31/10, Line 3592, www.secinfo.com/d14D5a.q35B1.htm?Find=Kcell&Line=3592#Line3592.

⁵⁶¹ Turkcell İletişim Hizmetleri AS, 20 April 2012, Form 20-F, www.secinfo.com/d14D5a.p58Uk.htm?Find=Kcell&Line=3281#Line3281.

⁵⁶² Turkcell İletişim Hizmetleri AS, 8 April 2013, Form 20-F, www.secinfo.com/d14D5a.x4Eyp.htm?Find=Kcell&Line=3229#Line3229.

Comment

TeliaSonera: The telecommunications market is a high risk market for foreign bribery.⁵⁶³ In the famous Siemens case, the telecommunications unit allegedly paid more than US\$800 million of the US\$1.4 billion in illegal payments that Siemens made from 2001 to 2007.⁵⁶⁴ Current probes in the US centre on Haiti's state-owned telecommunications company and US-based executives and intermediaries who allegedly bribed company's employees. At issue is whether a state-owned company is "an instrumentality" of a foreign government under the Foreign Corrupt Practices Act.⁵⁶⁵ Often, other risks are associated with bribery. The father of one of the defendants who ultimately co-operated in the probe was assassinated in Haiti after media reported about the co-operation.⁵⁶⁶

Another US case in the telecommunications sector involved the Hungarian telecommunications company **Magyar Telekom Plc.** and **Deutsche Telekom AG**, the majority owner of Magyar Telekom. Both agreed to pay US\$95 million to settle civil and criminal charges with the US DOJ and the SEC at the end of 2011 arising out of bribing of officials in Macedonia and Montenegro.⁵⁶⁷ German prosecutors dropped a foreign bribery investigation against the CEO of **Deutsche Telekom AG** for lack of evidence at the beginning of 2011, but investigations against other employees of the company continue.⁵⁶⁸ Still other risks emerge as well. TeliaSonera is also facing an investigation for allowing authorities in Azerbaijan, Belarus and Uzbekistan to access its networks to keep tabs on anti-government activists.⁵⁶⁹

Turkcell: The disclosure regarding improper payments was made by minority owner Turkcell, not majority owner TeliaSonera. This may be because only Turkcell was informed about allegations. But it could also be due to the fact that Turkcell's shares (in the form of American depository receipts) are listed on the New York Stock Exchange, with the attendant reporting requirements to the SEC, whereas TeliaSonera is listed on the Stockholm and Helsinki exchanges, having voluntarily ended its US NASDAQ listing in 2004.⁵⁷⁰ These allegations were apparently not mentioned in the initial public offering of Kcell shares by TeliaSonera on the London Stock Exchange in 2012.⁵⁷¹ So far, the allegations refer to "improper payments," and it is not clear whether, if substantiated, they would amount to foreign bribery, which would require that a foreign public official was, directly or indirectly, bribed. US authorities, which would be involved if Turkcell (and not Kcell) was responsible as minority shareholder, declined to comment.⁵⁷² But as stated before, the allegations refer to Kcell and not Turkcell.

Interestingly, Turkcell is also at the receiving end of a bribery scandal. On 28 March 2012, it filed a lawsuit for damages against South African based operator **MTN** in a US court,⁵⁷³ alleging that MTN actions caused Turkcell to lose a private GSM license in Iran that Turkcell had initially won in a

⁵⁶³ Along with energy, manufacturing, pharmaceutical, defense or telecom sectors, according to an analysis of FCPA enforcement actions, FCPA Blog, 31 January 2013, David Riker, "Reducing C-Level Risk in Compliance Land", www.fcpablog.com/blog/2012/1/31/reducing-c-level-risk-in-compliance-land.html.

⁵⁶⁴ The New York Times, 20 December 2008, Siri Schubert and T. Christian Miller, "At Siemens, Bribery Was Just a Line Item", www.nytimes.com/2008/12/21/business/worldbusiness/21siemens.html.

⁵⁶⁵ *United States v. Esquenazi*, No. 11-15331-C (11th Cir.), WSJ Blogs, 10 May 2012, Samuel Rubinfeld, 'Foreign Official' Challenge Reaches 11th Circuit", <http://blogs.wsj.com/corruption-currents/2012/05/10/foreign-official-challenge-reaches-11th-circuit/>.

⁵⁶⁶ Fox News, 21 May 2012, "Ex-Haiti official, 9 years in telecom bribery case", www.foxnews.com/us/2012/05/21/ex-haiti-official-years-in-telecom-bribery-case/.

⁵⁶⁷ Press Release, SEC, 29 December 2011, "SEC Charges Magyar Telekom and Former Executives with Bribing Officials in Macedonia and Montenegro", www.sec.gov/news/press/2011/2011-279.htm.

⁵⁶⁸ WSJ Blogs, 3 January 2011, Joe Palazzolo, "Deutsche Telekom Chief Cleared In German Bribery Probe", <http://blogs.wsj.com/corruption-currents/2011/01/03/deutsche-telekom-chief-cleared-in-german-bribery-probe/>

⁵⁶⁹ Reuters, 26 September 2012, "Swedish prosecutors open probe into TeliaSonera Uzbek deal", www.reuters.com/article/2012/09/26/us-teliasonera-uzbekistan-idUSBRE88P0XM20120926.

⁵⁷⁰ TeliaSonera, Investors, Listings, www.teliasonera.com/en/investors/share/listings/.

⁵⁷¹ Bloomberg, 12 December 2012, Ruth David, "Kcell Raises \$525 Million for TeliaSonera in London IPO", www.bloomberg.com/news/2012-12-12/teliasonera-raises-525-million-from-london-ipo-of-kazakh-unit.html.

⁵⁷² WSJ Blogs, 23 April 2012, Christopher M. Matthews, "Turkcell Discloses Improper Payments At Kazakh Company", <http://blogs.wsj.com/corruption-currents/2012/04/23/turkcell-discloses-improper-payments-at-kazakh-company/>.

⁵⁷³ Investor Announcement, Turkcell, 29 March 2012, "Turkcell Files a Lawsuit against MTN", www.turkcell.com.tr/InvestorAnnouncementLibraryEN/fass_lawsuitagainstMTN_29032012.pdf.

tender in 2004, but which Iranian authorities later awarded to MTN. Turkcell is claiming that MTN lobbied South Africa to back Tehran's nuclear development at the International Atomic Energy Agency, and that MTN approved improper payments to Iranian officials⁵⁷⁴ and to South Africa's former ambassador to Iran.⁵⁷⁵ Prosecutors in South Africa are investigating the case.⁵⁷⁶ Separately, a commission formed at the request of MTN, led by retired judge, found no wrongdoing on the part of MTN.⁵⁷⁷ In the US court case, MTN filed a motion to dismiss, arguing that the Alien Tort Statute, on which Turkcell based its claim, and which allows non-citizens to make claims in US courts, applied only to violations of international law, including human rights but not to commercial disputes.⁵⁷⁸ In October 2012, the US Court stayed the proceedings pending a decision of the US Supreme Court, in a separate case, on the interpretation of the statute.⁵⁷⁹ The supreme court recently decided that plaintiffs must be able to demonstrate a strong connection between their allegations and the US to overcome a presumption that the statute does not apply to overseas conduct. On 1 May 2013, Turkcell voluntarily dismissed its suit against MTN, stating that it may institute a new lawsuit in a different jurisdiction.⁵⁸⁰

⁵⁷⁴ WSJ Blogs, 3 July 2012, Samuel Rubinfeld, "MTN Moves To Dismiss Turkcell Lawsuit Alleging Bribery", <http://blogs.wsj.com/corruption-currents/2012/07/03/mtn-moves-to-dismiss-turkcell-lawsuit-alleging-bribery/>.

⁵⁷⁵ Engineering News, 8 June 2012, Megan Wait, "MTN expects Turkcell corruption claims to be dismissed", www.engineeringnews.co.za/article/mtn-expects-turkcell-corruption-claims-to-be-dismissed-2012-06-08

⁵⁷⁶ *Ibid.*

⁵⁷⁷ The Wall Street Journal, 1 February 2013, "MTN Says Iran Deal Was Legitimate", <http://online.wsj.com/article/SB10001424127887323701904578277700132738018.html>.

⁵⁷⁸ "MTN Moves To Dismiss Turkcell Lawsuit Alleging Bribery", *op.cit.*

⁵⁷⁹ WSJ Blogs, 12 October 2012, Samuel Rubinfeld, "Judge Stays Turkcell Lawsuit, Citing Supreme Court Case", <http://blogs.wsj.com/corruption-currents/2012/10/12/judge-stays-turkcell-lawsuit-citing-supreme-court-case/>.

⁵⁸⁰ Reuters, 2 May 2013, Alison Frankel, "Kiobel's first casualty: Turkcell drops ATS bribery case", <http://blogs.reuters.com/alison-frankel/2013/05/02/kiobels-first-casualty-turkcell-drops-ats-bribery-case/>.

APPENDICES

APPENDIX A – CHANGES IN METHODOLOGY

Four important changes in methodology

In 2012, Transparency International conducted a detailed review of the methodology used in the first eight progress reports. Based on this review, the following four changes are applied for the first time in the 2013 report.

- Classification of enforcement is based solely on the Parties enforcement actions in 2009-2012, instead of cumulative totals since the Convention went into effect in 1999. This change provided a more meaningful assessment of the current level of enforcement.

- Four enforcement categories are used:

Active Enforcement

Moderate Enforcement

Limited Enforcement

Little or No Enforcement

Active Enforcement is considered a major deterrent to foreign bribery. Moderate Enforcement and Limited Enforcement indicate stages of progress, but are considered insufficient deterrence. Where there is Little or No enforcement, there is no deterrence.

The prior Moderate Enforcement category has been divided in two by adding a new Limited Enforcement category to provide better differentiation between levels of enforcement.

The prior categories of Little Enforcement and No Enforcement categories have been combined because the differences were not sufficiently material.

- Thresholds for enforcement categories are based on the country's actual percentage of world exports.⁵⁸¹ The prior methodology only differentiated between large exporters, with more than 2 per cent of world exports, and small exporters, with less than 2 per cent. The new methodology provides a more accurate basis for evaluating and comparing enforcement in smaller and larger exporting countries.

Transparency International recognises that the potential for foreign bribery could be affected by factors other than the level of world exports, such as foreign investment, as well as the industry sectors and regions in which business is conducted. Adding such factors would be complex and would not make a major difference in the categorisation of countries.

⁵⁸¹ Data on share of world exports is provided by the OECD and the average of the last four years under review is used for scoring.

A point system weighting different enforcement actions is introduced: 1 point for commencing investigations,⁵⁸² 2 points for commencing cases, 4 points each for commencing major cases, or concluding cases with sanctions, and 10 points for concluding major cases with substantial sanctions.⁵⁸³

- This point system is intended to reflect two relevant factors: the level of effort required by different enforcement actions and their deterrent effect. While the points assigned are somewhat arbitrary, it seems clear that concluding a major case with substantial sanctions will have a greater deterrent effect and will require greater effort than commencing an investigation.

Calculation of enforcement category

The enforcement category for each country is determined by multiplying the enforcement points collected with its enforcement actions by the average of the country's share of world exports during the assessed four-year period. Based on the result, a country may get into the Active Enforcement, the Moderate Enforcement, the Limited Enforcement or the Little or No Enforcement categories. To reach a category thresholds are set which are proportionate with the share in world exports.

In the following table the examples of thresholds of enforcement categories based on share of world exports are given:

	Country W	Country X	Country Y	Country Z
share of world exports	0.5%	1%	2%	4%
enforcement categories				
Active Enforcement	20	40	80	160
Moderate Enforcement	10	20	40	80
Limited Enforcement	5	10	20	40
Little or No Enforcement	<5	<10	<20	<40

In addition to the necessary point scores, for a country to be classified in the Active or Moderate Enforcement categories, at least one major case needs to have been commenced or concluded in the past four years. The definition of "major case" includes bribing of senior public officials by major companies, including state-owned enterprises.⁵⁸⁴ Additional factors can be taken into account, such as the total amount of the bribe paid, the size of the contract and whether the bribe was part of a scheme involving multiple payments.

⁵⁸² For the purposes of this report "investigation" is used for the pre-trial phase and "case" is used for the trial phase of a legal procedure.

⁵⁸³ "Substantial" sanctions include deterring prison sentences, large fines, appointment of a compliance monitor, and/or disqualification from future business.

⁵⁸⁴ Seniority of public officials would depend, inter alia, on their ability to influence decisions. The characterisation as "major case" involves discretion, to be exercised narrowly, so that in cases of doubt, a case should not be characterised as "major".

For the purposes of this report, foreign bribery cases (and investigations) include civil and criminal cases and investigations, whether brought under laws dealing with corruption, money laundering, tax evasion, fraud, or violations of accounting and disclosure requirements. Oil-for-Food cases are included whether they were prosecuted as bribery cases or for violating restrictions on doing business with Iraq.

Cases (and investigations) involving multiple corporate and/or individual defendants or multiple charges are counted as one if commenced as a single proceeding. If in the course of a proceeding, cases against different defendants are separated, they may be counted as separate concluded cases.

Differences between Transparency International and Working Group on Bribery Reports

Transparency International's report differs from the OECD Working Group on Bribery's report in several respects. The principal differences are: Transparency International's report is more comprehensive than the working group report because Transparency International covers investigations, commenced cases as well as convictions, while the working group covers only convictions. Transparency International uses a broader definition of foreign bribery cases, covering cases where foreign bribery is the underlying issue, whether brought under laws dealing with corruption, money laundering, tax evasion, fraud or violations of accounting or disclosure requirements; the working group covers only foreign bribery cases. The working group report is based on data supplied directly by the government representatives serving on the working group. Transparency International uses data supplied by its own experts, primarily local lawyers selected by Transparency International chapters. Transparency International classifies countries into four categories based on their level of enforcement: Active, Moderate, Limited, and Little or No Enforcement.

Transparency International submitted the draft of the present report the OECD Working Group on Bribery for their comments and has taken into account the feedback received from a significant number of countries. However, the report remains Transparency International's research and the working group has not endorsed it.

APPENDIX B – NATIONAL EXPERTS

COUNTRY	NATIONAL EXPERTS
Argentina	German Cosme Emanuele , Lawyer, Fundación Poder Ciudadano Catarina Lappas , Fundación Poder Ciudadano
Australia	Michael Ahrens , Executive Director, TI Australia Jane Ellis , Commercial Lawyer, Board Member of TI Australia
Austria	Magdalena Reinberg-Leibel , Transparency International Austria Johann Rzeszut , Board of Directors TI Austria; Head of the Austrian Supreme Court 2003 - 2006
Belgium	Gudrun Vande Walle , assistant professor – Ghent University, Faculty of Economics and Business Administration, Department Business Administration and Public

	Administration, Research Group Governing and Policing Security (GaPS) Arne Dormaels , assistant academic staff – Ghent University, Faculty of Economics and Business Administration, Department Business Administration and Public Administration, Research Group Governing and Policing Security (GaPS)
Brazil	Isabel C. Franco , Anti-corruption and Compliance Specialist Felipe Faria , Anti-corruption and Compliance Specialist
Bulgaria	Ralitza Ilkova , Lawyer, Sofia Bar Association, Assistant Professor at Faculty of Law of Sofia University “Sv. Climent Ohridski”
Canada	Milos Barutciski , Bennett Jones LLP, Director, Transparency International Canada
Chile	Francisco Sanchez , Lawyer, Transparency International Chile
Colombia	Natalia Albañil Riaño , Transparency International Colombia Ernesto Cavalier , Partner, Posse Herrera Ruiz
Czech Republic	Petr Leyer , Lawyer, Transparency International Czech Republic Vladan Brož , Head of Advocacy and Legal Advice Centre TI Czech Republic
Denmark	Knut Gotfredsen , Transparency International Denmark
Estonia	Jaanus Tehver , Transparency International Estonia
Finland	Anna Huilaja , Associate, Asianajotoimisto White & Case Oy
France	Marina Yung , Transparency International France Jacques Terray , Lic. and LLM, Vice-Chairman, TI France David Pressouyre , Transparency International France
Germany	Max Dehmel , Head of Working Group on International Conventions, Transparency International Germany Reiner Hüper , former criminal prosecutor and Head of Working Group on criminal prosecution, TI Germany
Greece	Anna Damaskou , Researcher of Transparency International Greece, Legal Counsel
Hungary	Dávid Vig , Department of Criminology, Faculty of Law, Eötvös Loránd University Miklós Ligeti , Legal Director, Transparency International Hungary
Iceland	Edda Kristjansdottir , Attorney & International Law Consultant
Ireland	Imelda Higgins , Barrister John Devitt , CEO, Transparency International Ireland Margaret Rose Farrelly , TI Ireland Peter Kearney , TI Ireland

Israel	Ephrat Barzilai , Partner, Gross, Kleinhendler, Hodak, Halevy, Greenberg & Co
Italy	Davide del Monte , Transparency International Italy Giorgio Frascini , TI Italy
Japan	Professor Toru Umeda , Vice Chair, Transparency International Japan, & Professor, Reitaku University
Korea (South)	Professor Joongi Kim , Yonsei Law School / College of Law, Seoul, Korea
Luxembourg	Yann Baden , Lawyer, Transparency International Luxembourg
Mexico	Eduardo Bohorquez , Executive Director, Transparency International Mexico Alejandra Rascón Rodríguez , TI Mexico
Netherlands	Dick Alblas , Transparency International Netherlands
New Zealand	Fiona Tregonning , Director, Transparency International New Zealand and Senior Associate, Bell Gully
Norway	In the case of Norway the Secretariat of Transparency International prepared the country report.
Poland	Janusz Tomczak , lawyer, partner, Wardyński & Partners Aleksandra Stępniewska , lawyer, Wardyński & Partners Łukasz Lasek , lawyer, Wardyński & Partners
Portugal	Luís de Sousa , PhD, Research Fellow at ICS-University of Lisbon; President, Transparência e Integridade, Associação Cívica (TIAC) Ana Meireles , Researcher, Transparência e Integridade, Associação Cívica David Marques , Researcher, Transparência e Integridade, Associação Cívica Susana Duarte Coroado , PhD Candidate, Researcher, Transparência e Integridade, Associação Cívica
Russia	Denis Primakov , Lawyer, Center for Anti-Corruption Research and Initiative (Transparency International Russia)
Slovak Republic	Pavel Nechala , Transparency International Slovak Republic, Lawyer, Pavel Nechala & Co
Slovenia	Vid Doria , Integriteta -Transparency International Slovenia Bojan Dobovsek , PhD., Lawyer, Professor, University Maribor Matjaž Jager , LL.D., Senior Research Associate, Associate Professor
South Africa	Steven Powell , Lawyer - Director of Forensics, Edward Nathan Sonnenbergs Inc.
Spain	Dr. Manuel Villoria , Transparency International Spain, Professor, Political Science, University Rey Juan Carlos I

	Dr. Silvina Bacigalupo , Professor, Criminal Law, Universidad Autónoma de Madrid
Sweden	Birgitta Nygren , Member of the Board, Transparency International Sweden
Switzerland	Jean Pierre Mean , Lawyer, President, Transparency International Switzerland
Turkey	Pelin Erdogan , Transparency International Turkey Oya Özarlan , Chair of TI Turkey Ece Harmanyeri , Office Manager of TI Turkey
UK	Sam Eastwood , Partner, Norton Rose LLP, Head of the Business Ethics and Anti-Corruption Group
USA	Lucinda Low , Steptoe & Johnson LLP Washington, D.C. Tom Best , Steptoe & Johnson LLP Washington, D.C. Peter Jeydel , Steptoe & Johnson LLP Washington, D.C.

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APPENDIX C – QUESTIONNAIRE

2013 QUESTIONNAIRE

FOR NATIONAL EXPERT RESPONDENTS

NUMBERS AND DETAILS OF FOREIGN BRIBERY INVESTIGATIONS, CASES & ALLEGATIONS

A. STATISTICS AND CASES

Please note: Foreign bribery cases (and investigations)⁵⁸⁵ shall include all cases involving bribery of foreign public officials⁵⁸⁶, criminal, civil or administrative, whether brought under laws dealing with corruption, money laundering, tax evasion, fraud, or accounting and disclosure provisions. See Guidelines for definition of “case”. Information is requested for foreign bribery cases brought for the last four years. Priority would be to have as accurate data on year 2012 as possible. Feel free to use data from previous reports on preceding years unless you can obtain updated data concerning those years.

1. INVESTIGATIONS

If a new investigation turns into a prosecution in the course of the year, it should be reported both under “investigations commenced” and under “cases commenced”.

Please provide available information on government investigations of allegations of bribery of foreign public officials started in 2009, 2010, 2011, and 2012:

Number of investigations commenced

in 2009 _____ in 2010 _____ in 2011 _____ in 2012 _____

Regarding each investigation please provide any available details, including and updating any information provided in the questionnaires for 2009, 2010, 2011, and providing new information for 2012 about the following:

- (i) Names of companies and/or individuals involved
- (ii) Date commenced
- (iii) Nature of allegations
- (iv) Name of country whose officials were allegedly bribed:
- (v) Name of company allegedly involved in bribery process, if not named under (i) above

1.2. Please provide the number of investigations that (1) turned into prosecutions or (2) were dropped in the course of the year.

⁵⁸⁵ For the purposes of this questionnaire “investigation” is used for the pre-trial phase and “case” is used for the trial phase.

⁵⁸⁶ As defined by Article 1 para 4 a of the Convention.

2. CASES COMMENCED

Major Cases commenced

in 2009 _____, in 2010 _____, in 2011 _____, in 2012 _____.

Other cases commenced

in 2009 _____, in 2010 _____, in 2011 _____, in 2012 _____.

Please include, and update, any information on cases commenced in 2009, 2010, and 2011, as per the questionnaires for 2009, 2010, 2011, and please provide, if possible, new information on each case commenced in 2012. Please use the definition provided in the guidelines on what would constitute a major case.

c) Name of case, including parties and when it was commenced or lodged in court _____

d) Is this a major case?

Yes___ No___ Please explain and count under either a. or b., as appropriate.

e) Is it a criminal, civil, or administrative case?

f) Summary of principal charges or claims including name of the country whose officials were allegedly bribed, and name of company allegedly involved, if not provided under c) above

g) Penalties, other sanctions or recovery sought

h) Status of case, including expected trial date.

i) To your knowledge are there any obstacles holding up the case, such as

lack of resources

lack of mutual legal assistance from other countries

political interference

national economic interests

potential effect upon relations with another State

identity of the natural or legal persons involved

If so, please explain.

j) To your knowledge has an investigation/case involving the same (or in part the same) facts or defendants been commenced in another country?

If so, where and when? Please explain:

k) Sources of information used:

3. CASES CONCLUDED

Including convictions, settlements, or other dispositions of cases, which have become final, and in which sanctions were imposed. Please include, and update, any information on cases concluded with sanctions in 2009, 2010, and 2011, as per the questionnaires for 2009, 2010, 2011. Please note that the definition of the indicator has changed with regard to previous years from “cases concluded” to “cases concluded with sanctions”, so that the information provided in the questionnaires of 2009, 2010, 2011 needs to be reviewed. Please provide information on cases concluded with sanctions in 2012.

Please use the definition of “substantial sanction” provided in the guidelines.

a) Cases concluded with sanctions (excluding major cases)

_____ in 2009, _____ in 2010, _____ in 2011, _____ in 2012

b) Major cases concluded with substantial sanctions

_____ in 2009, _____ in 2010, _____ in 2011, _____ in 2012

c) Cases concluded without sanctions

_____ in 2009, _____ in 2010, _____ in 2011, _____ in 2012

d) Name of case, including parties and when it was commenced or lodged in court _____

(If not a party, please indicate name of company involved)

e) Is this a major case concluded with substantial sanctions, or a case concluded with sanctions?

Yes___ No___ Please explain and count under either a. or b., as appropriate.

f) Is it a civil, criminal, or administrative case?

g) Verdict/decision or settlement

summary of principal confirmed charges, including name of the country whose officials were bribed

penalties or other sanctions imposed, including requirements for compliance programmes with or without provisions for verification

against individuals

against companies (legal persons)

in addition, for settlements:

- is judicial review of the settlement required by law and has it been performed?
- was there public consultation with affected stakeholders, such as competitors, and the government or civil society organisations of the victim country?
- was the agreement published with accompanying explanation of the procedural and substantive terms?
- was information on fulfilment of the terms of the settlement published by any of the parties?
- was information provided by the investigative authorities to the fellow authorities of the countries where the offences were committed?
- were fines paid or profits reimbursed transferred to the country that suffered from the offence?

h) To your knowledge did obstacles hold up the case or influence its outcome?

lack of resources

lack of mutual legal assistance from other countries

political interference

national economic interests

potential effect upon relations with another State

identity of the natural or legal persons involved⁵⁸⁷

If so, please explain:

i) To your knowledge has an investigation/case involving the same (or in part the same) facts or defendants been brought in another country?

If so where and when? Please explain:

⁵⁸⁷ See Article 5 of the Convention

j) Sources of information used:

4.ACCESS TO INFORMATION

a) Is information on numbers of foreign bribery cases accessible either as already published or on request? _____

If not, please indicate the official or other reasons why not: _____

b) Is official information on case details of foreign bribery cases accessible either as already published or on request? _____

If not, please indicate the official or other reasons why not: _____

B. LEGAL FRAMEWORK AND ENFORCEMENT SYSTEM

Note: If the information is the same as last year, please refer to last year's questionnaire.

1. LEGAL FRAMEWORK

Are there significant inadequacies in the *legal framework* for foreign bribery prosecutions in your country? Yes___ No___

If yes, please provide a short explanation of the main inadequacies in the legal framework such as:

Inadequate definition of foreign bribery

Jurisdictional limitations

Lack of liability for corporations (criminal or equivalent administrative liability)

Failure to hold companies responsible for subsidiaries, joint ventures and/or agents

Inadequate sanctions

Inadequate statutes of limitation

2. ENFORCEMENT SYSTEM

Are there significant inadequacies in the enforcement system for foreign bribery prosecutions in your country? Yes ___ No ___

If yes, please provide a short explanation of the main inadequacies in the enforcement system such as:

Inadequate resources

Lack of coordination in organisation of enforcement

Lack of coordination between investigation and prosecution

Lack of training of investigators and prosecutors to investigate this kind of offence

Difficulties in obtaining mutual legal assistance

Inadequacy of complaints mechanisms and whistle-blower protection

Lack of public awareness-raising

Inadequate accounting and auditing requirements

C. RECENT DEVELOPMENTS

Have there been significant developments in the *legal framework* or in the *enforcement system* during the last year? Yes ___ No ___

Please provide a short explanation.

D. RECOMMENDATIONS FOR PRIORITY ACTIONS

What priority actions are needed concerning the legal framework?

Please provide a short explanation.

What priority actions are needed in the field of enforcement?

Please provide a short explanation.

I have shown/sent this report to a member of my country's delegation to the OECD Working Group on Bribery.

Yes___ No___

Explanation

Report prepared by:

(signature)

Name of respondent:

Affiliation:

Professional experience:

APPENDIX

List of persons consulted (with affiliation):

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