

# **PUTTING AN END TO CORRUPTION**



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## PUTTING AN END TO CORRUPTION

Over the last two decades, countries have made great progress in taking the fight against corruption to the highest global and political levels and in improving their anti-corruption regulation and enforcement. But the recent scandals that have implicated national leaders and major corporations, the ongoing investigations into the sports sector and the growing threat of terrorism and its links with corruption remind us that we have to do more.

Corruption is a severe impediment to sustainable economic, political and social progress for countries at all levels of development. Businesses forego innovation and competitiveness for bribery, while individuals within governments divert funds for their own personal use that should be used to promote the well-being of people. As such, corruption has also contributed to the sharp rise in income and wealth inequality we have observed over the last decades. Corruption is also an aggravating factor in the current refugee crisis by making people-smuggling easier for organised criminals and it undermines efforts to mitigate climate change by facilitating illegal logging. And corruption will be a major hurdle to achieving the 2030 Sustainable Development Agenda.

This underscores the importance of intensifying efforts to improve governance frameworks and strengthen actions to improve the prevention, detection and sanctioning of corruption. Any effort to fight corruption requires a holistic and coordinated approach. Corruption is a multifaceted and highly complex phenomenon, involving cross-border illicit money flows, international bribery, misuse of public office, tax evasion, and accounting fraud.

The OECD has an arsenal of legal instruments and recommendations to fight corruption by criminalising bribery in international business, promoting responsible business conduct, protecting whistleblowers and insisting on integrity and transparency in public procurement processes, among others. Many of the standards are already in place. The OECD Anti-Bribery Convention in particular has been the cornerstone of the global fight against foreign bribery. The focus must now be on effective implementation.

The OECD stands ready to play its part in the global battle against bribery and corruption. Together, let's design, promote and implement better anti-corruption policies for better lives.

Mr. Angel Gurría  
OECD Secretary General

# 1 The rationale for fighting corruption

Corruption undermines sustainable economic, political and social development, for developing, emerging and developed economies alike. Corruption endangers private sector productivity by setting incentives to allocate resources to unproductive activities and by deterring innovation and the emergence of new companies. Corruption hinders public sector productivity by biasing decisions in public expenditures, by impairing the skills and professionalism of the civil service and by reducing public resources available to support productivity in the economy. And corruption is a threat to inclusive growth by undermining the opportunities to participate equally in social, economic and political life and impacting the distribution of income and well-being. Corruption also erodes trust in government and public institutions, rendering reform more difficult.

## Corruption reduces private sector productivity

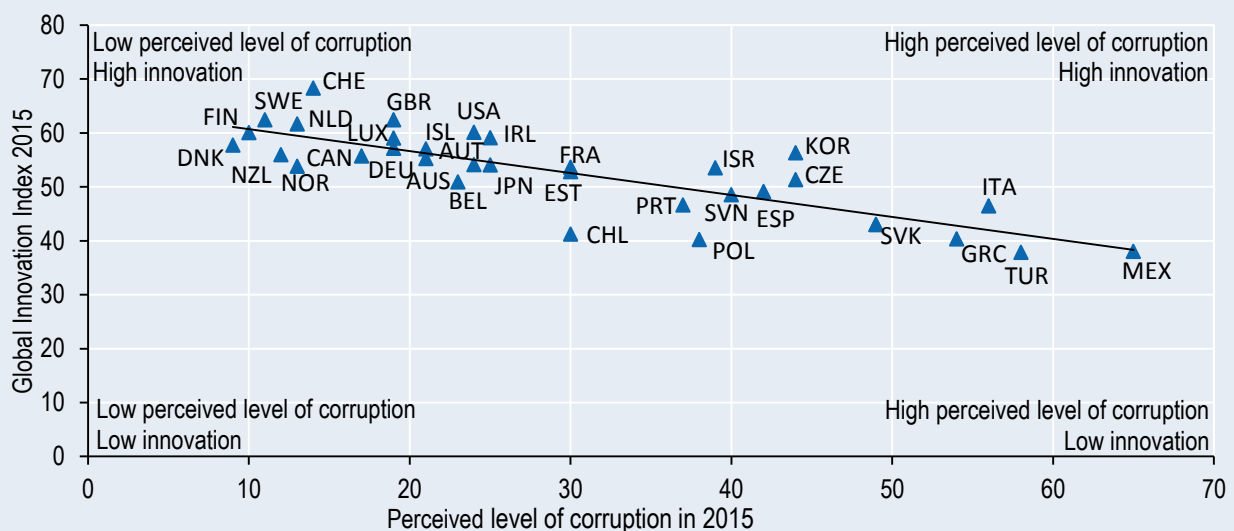
Corruption raises the cost of doing business as bribes and drawn-out negotiations to bargain them add costs to a business transaction. The OECD Foreign Bribery Report shows that, on average, bribes equal 10.9% of the value of a transaction and 34.5% of profits (OECD, 2014a). Corruption also creates uncertainty as there can always be a competing firm willing to offer a higher bribe to tilt the business in its favour.

By lowering profitability and raising uncertainty, corruption tends to discourage the entry of foreign players and thus also the benefits of competition and technology spill-overs. Research shows, for example that in the power infrastructure sector, investors' decision to enter a market is significantly driven by the

perceived risk of corruption. In a similar vein, corruption may lower the attractiveness of entrepreneurship, diverting entrepreneurial talent to less productive activities. The result is higher prices and lower quality products. The OECD report on the consequences of corruption at the sector level, prepared at the request of the G20, shows that corruption is associated with higher prices for medicines, health services, textbooks, and utility services, among others (OECD, 2015a).

Corruption may also distort investment, with firms preferring to use their resources for unproductive rent-seeking activities such as lobbying or corruption-specific know-how in order to be part of the exclusive market of insiders. Where companies prefer to invest in

FIGURE 1. HIGHER CORRUPTION LEVELS ARE ASSOCIATED WITH LOWER LEVELS OF INNOVATION



Note: The vertical and horizontal lines depict the OECD averages. Without making any inference with respect to causality, the figure helps to demonstrate that higher levels of perceived corruption are observed together with lower levels of productivity, a relationship confirmed by a number of econometric studies controlling for other variables.

Source: Transparency International 2015 and Cornell INSEAD WIPO 2015.



such activities, fewer resources are available for productive investment into physical or knowledge-based capital. As such, corruption is hampering innovation (Figure 1). This effect is made even worse when corruption lowers trust in the rule of law, discouraging businesses from developing innovations or assets that could be stolen, extorted or expropriated. Research suggests that the probability of foreign direct investment is 15 percentage points lower in countries with a strong presence of corruption than in countries that are relatively free of corruption (Javorcik and Wei, 2009).

### Corruption leads to a waste of public resources

Corruption lowers public sector efficiency and effectiveness. Public investments are not allocated to the sectors and programmes which represent the best value for money or where needs are highest, but to those which offer the best prospects for personal enrichment of corrupt officials (Box 1). OECD research indeed

shows that high levels of perceived corruption are associated with lower spending on social services, including health and education, which can undermine social welfare (OECD, 2015a). Distortions in political decisions may also lead to sector regulations, trade barriers and subsidies that are not in the public interest.

The quality of the civil service can also be weakened by corruption. Where public servants are appointed on the basis of nepotism or favouritism instead of merit and ability, their decisions may reflect the interests of those who hired them. In addition, corruption may prevent governments from attracting the best talent.



**80%** of foreign  
bribes go to  
officials in state-  
owned  
enterprises,  
**11%** to heads  
of state and  
ministers

#### BOX 1. STRENGTHENING INTEGRITY IN PUBLIC PROCUREMENT – THE CASE OF COLOMBIA

Colombia has been working closely with the OECD to improve the integrity of its public procurement system by enhancing the institutional framework and creating a National Agency for Public Procurement (*Colombia Compra Eficiente*, CCE). The combined utilisation of e-procurement with modern procurement tools, in an integrated and holistic way, disclosing more and better information, in all phases of the procurement cycle, as recommended by the OECD, has increased the transparency of public procurement in Colombia. The country recognised the role of transparency and data availability in minimising the risks that are inherent to public procurement. In fact, CCE is now developing strategies and mechanisms through which integrity could be enhanced, from disclosure of data to improving competition and access to the system, and by holding all stakeholders accountable of their actions. CCE also plays an important role in fostering transparency. As part of the strategic advice from the OECD, CCE has developed and started implementing a full transactional end-to-end e-procurement platform (SECOP II) that will help to improve the overall efficiency of the procurement process. The OECD has been following the transition carefully and provided Colombia with recommendations in order to maximise its benefits for improving efficiency and reinforcing the fight against corruption (OECD, 2016a).

### Corruption deprives the public sector of valuable revenues

Customs-related corruption is estimated to **cost World Customs Organisation members at least USD 2 billion in customs revenue each year**. In a similar vein, tax evasion can be one of the routes through which corruption occurs and the fruits of corruption are transferred. Strengthening tax transparency can have positive spill-overs on the fight against corruption, as the two are linked. As countries move to implement the standard for automatic exchange of financial account information developed by the OECD, many countries have also initiated voluntary disclosure programmes and other similar initiatives targeted at offshore evasion. This allows taxpayers to ‘regularise’ their past tax affairs before they get caught as a result of increased information sharing. To date, **30 countries have identified additional revenue totalling over EUR 48 billion over the past 7 years**. In just 15 of those countries, close to 700 000 taxpayers have already come forward under these programmes.

### Corruption perpetuates inequality and poverty

The poor suffer particularly from corruption in the form of deficient social programs that are underfunded or poorly managed. Research suggests that a worsening in the corruption

index of a country by one standard deviation (2.52 points on a scale of 0 to 10) increases the Gini coefficient of income inequality by 11 points (Gupta et al., 2002).

**4 sectors**  
account for  
**66%** of foreign  
bribery cases:  
extractive,  
construction,  
transportation &  
storage,  
information &  
communication

constitutes a major hurdle to achieving them. Estimates suggest that each year the equivalent of 15-30% of all official development assistance is stolen through high-level corruption from public budgets in developing countries.

The rise in inequality in income and well-being more generally that many countries have experienced over the last decades may also be linked to corruption and the associated misallocation of public funds, rent-seeking

behaviour and capture of politicians. Inequality of income, in turn, can result in inequality of access to political processes and policy discussions.

### **Corruption undermines peace and democracy**

When rules and regulations are circumvented by bribes, public budget control is undermined by illicit money flows and political critics and the media are silenced through bribes, democratic systems of checks and balances are impaired. Corruption in political processes such as elections or the financing of parties undermine the rule of the people and thus the very foundation of democracy. If basic public services are not delivered to citizens due to corruption, the state eventually loses credibility and legitimacy.

Corruption also increases states' exposure to global threats arising from smuggling and illicit trade by organised crime and terrorist groups (Box 2). Evidence shows that it contributes to the financing of terrorism and creates inequalities that disenfranchise communities and promote the development and growth of terrorist groups. Similarly, illicit financial flows are increasingly associated with the illegal arms trade and drug trafficking. The two also play a significant role in the current refugee crisis by facilitating people smuggling.

### **BOX 2. COMBATTING HUMAN TRAFFICKING – THE CASE OF THAILAND AND THE PHILIPPINES**

Trafficking in persons relies on systemic corruption. Corruption ensures that traffickers can operate undisturbed and under the radar, without risking being arrested or convicted even when a trafficking crime has been uncovered. It also allows for the re-trafficking of victims that were able to escape their situation of exploitation. In the efforts to combat corruption as a facilitator of global threats and based on extensive field-testing in Thailand and the Philippines, the OECD has developed **Guiding Principles on Combatting Corruption related to Trafficking in Persons**. These Guiding Principles present a comprehensive analysis on the interlinkages between corruption and human trafficking, and provide guidance for the introduction and improvement of policy measures and targeted interventions.

The development of the Guiding Principles together with Thai and Philippine stakeholders have advanced the practices in countering corruption and trafficking in persons in both countries and provide a reference point for other countries. In line with the Guiding Principles, Thailand and Philippines' efforts are being focused on the sectors and industries that are most vulnerable to human trafficking, such as the construction, prostitution, agriculture, fishing and textile industries. In parallel, both countries are exploring whether specific rules and standards of transparency and integrity can be designed for those public officials who are most exposed to the risk of being involved in trafficking and corruption. Preventive measures as well as awareness-raising activities are being put in place to focus on the linkages between corruption and trafficking in persons – especially among parties involved in anti-trafficking issues and potential victims of trafficking.

## 2 Setting up solid governance frameworks to prevent corruption

Successfully preventing corrupt behaviour requires a comprehensive approach that addresses all levels of government and also reaches out to the private sector. Safeguards and integrity frameworks have to be put in place. Risk areas of corruption such as public procurement have to be specially scrutinised, in particular large-scale infrastructure projects or major sports or cultural events. The financing of political parties and electoral campaigns has to be adequately regulated to avoid undue influence and policy capture by narrow private interests. Transparent, strong and accountable governance frameworks are critical to prevent corruption in countries at all levels of development.

### Building a public integrity strategy

Corruption is a multi-faceted and evolving phenomenon and it is both a symptom and a cause of weak governance systems. Preventing corruption requires a systemic approach based on both rules and values with a comprehensive strategy. It thus entails addressing the public sector at all levels, but also involving and reaching out to the private sector and to the citizens, as they too are responsible.

At the outset, the commitment and leadership at the highest levels is needed to confront corruption, ensuring that the formal requirements are actually implemented in practice to achieve their expected impact, and that corrupt actors are effectively held to account and sanctioned. No single measure will be able to have significant effects over the long run, however; rather, it is the interplay of a set of aspects and conditions that can reduce corruption in a sustainable way.

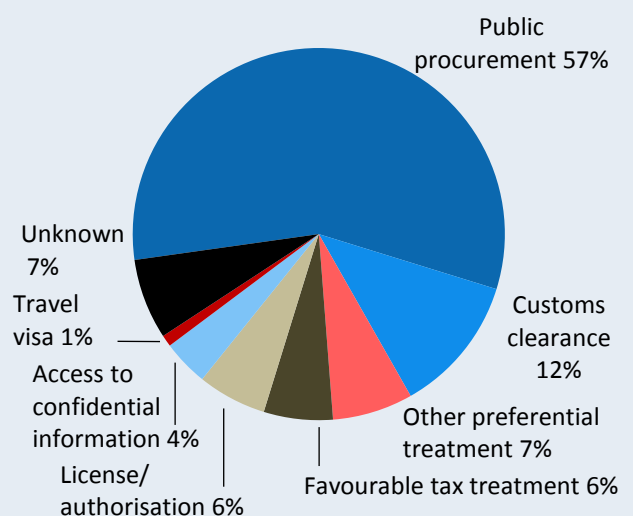
The OECD has developed a **Public Integrity Strategy** for policy makers that embraces this complexity and provides them with guidance for ensuring a comprehensive and coherent integrity system. It is based on the long-standing experience of implementing the relevant OECD Recommendations in promoting integrity and policy frameworks such as the **OECD Guidelines for Managing Conflict of Interest in the Public Sector**, the **OECD Recommendation on Principles for Transparency and Integrity in Lobbying**, the **OECD Framework on Financing Democracy**, and the **OECD Integrity Framework for Public Investment**.

In tackling corruption in a systemic way, policy makers can focus on three pillars. First, the highest political and management level needs to build a coherent and comprehensive integrity

system by establishing clear institutional responsibilities and a risk-based integrity strategy that includes clear integrity values and standards. Second, policy makers need to foster a culture of integrity through a whole-of-society approach and by investing in integrity leadership, a merit-based public sector, and an open organisational culture responsive to integrity concerns. Third, they need to enable effective accountability through internal control and regulatory oversight to ensure compliance by the public sector, the private sector and citizens with standards of public integrity, and through transparency and active participation by civil society in the public decision-making process.

Strengthening the capacity of public officials and institutions to promote integrity and transparency is also critical, especially for developing countries. The OECD helps foster such effective support through the efforts led

FIGURE 2. MORE THAN HALF OF FOREIGN BRIBERY CASES OCCUR TO OBTAIN A PUBLIC PROCUREMENT CONTRACT



Source: OECD (2014a), *OECD Foreign Bribery Report: An Analysis of the Crime of Bribery of Foreign Public Officials*, OECD Publishing, Paris.

### Box 3. PROMOTING INTEGRITY IN LARGE-SCALE INFRASTRUCTURE PROJECTS: THE CASE OF ITALY

In cooperation with the Italian Anticorruption Authority, the OECD supported the development of a methodology to supervise and monitor the tender procedures for Expo Milano 2015 and produced high-level principles, summarizing the key findings and lessons learned to allow better governance and management models for the implementation of future large events and related infrastructures.

With the establishment of the operational unit to monitor the projects of the EXPO 2015 several rules, procedures and control mechanisms were set so as to monitor and exercise a priori control of the procurement processes. The establishment of ex ante control mechanisms, although not a common practice for Supreme Audit Institutions in OECD countries (only Chile, Italy and Portugal exercise it with regularity) proved adequate for the enforcement of additional integrity measures, necessary to be addressed at the development stage of the project. As a result, for 107 procedures, Expo 2015 adopted the corrections formulated by the UOS and/or eventually provided the explanations and the additional documentation required.

This approach proves useful mainly in specific contexts, such as EXPO 2015, that have already been affected by instances of corruption which have not only contaminated existing tenders but also threaten to undermine future contracting procedures. Indeed, to be effective, ex ante controls of documents concerning the award and performance of public contracts for works, services and supplies of goods, by an entity separate from the contracting authority, cannot cover all public tenders but must focus on individual, specific cases with a high risk of corruption.

by the DAC-OECD Anticorruption Task Team as well as other forums for institutional exchanges such as Tax inspectors Without Borders.

#### Tackling the highest risk: public procurement

Sound management of public procurement contracts is critical for a transparent and accountable spending of tax payers' money. At the same time, public procurement is the most

recognised high-risk area for corruption in government (Figure 2). The OECD has a strong track record in supporting the reform of public procurement systems, particularly through OECD Public Procurement Reviews in line with the **2015 Recommendation of the Council on Public Procurement** and the **G20 Principles for Promoting Integrity in Public Procurement**, developed by the OECD.

**10-30%**  
of the investment  
in a publicly  
funded  
construction  
project may be  
lost due to  
mismanagement  
and corruption

High-level commitment and dynamic and strategic leadership are essential to achieve fast public procurement reforms. Recognising that public procurement is a high-risk activity that

requires transparency and integrity end-to-end, adopting measures against conflicts of interest and corruption, as well as limiting exceptions to the use of competitive tendering should also be standard. Countries could also consider taking advantage of opportunities provided by digital technologies and open data throughout the entire public procurement cycle to address rising expectations of transparency and access to information.

Bid rigging, which involves groups of firms conspiring to raise prices or lower the quality of the goods or services offered in public tenders, is also a major issue in public procurement. This anti-competitive, illegal practice continues to cost governments and taxpayers billions of dollars every year. The OECD has unique expertise in fighting this form of misappropriation of public resources. Reducing collusive bidding, in line with the **OECD Recommendation on Hard Core Cartels**, limits the opportunities to generate illegal profits which in turn feed corruption and bribes, directly fostering business integrity. Fighting collusion starts with training procurement officials on how to design tender processes to achieve more competitive outcomes in line with the **OECD Recommendation on Fighting Bid Rigging in Public Procurement**. Promoting effective cooperation between anti-corruption and competition enforcers at national and international level is also crucial to ensure that



anti-corruption policies (especially transparency requirements) are not unnecessarily narrow to the point that they end up facilitating collusion and consequently reduce competition. In 2011, the OECD carried out a major project with IMSS, the Social Security Institute in Mexico, to improve its procurement processes' robustness against collusive bid rigging. IMSS experienced large cost savings as a result of changed procedures. For example, IMSS estimated consolidation of bids for medicines alone to have saved over USD 200 million (IMSS, 2014).

Integrity in public procurement is also an interest and a priority for businesses: according to the OECD Foreign Bribery Report, in 57% of cases resulting in a conviction bribes are paid in order to obtain public procurement contracts. Providing a level playing field in procurement requires joint efforts. Working together with the private sector, governments could develop joint initiatives to apply the same ethical standards to contractors and suppliers, and foster training and compliance initiatives in the private sector, raising the integrity bar across the entire spectrum of public procurement stakeholders.

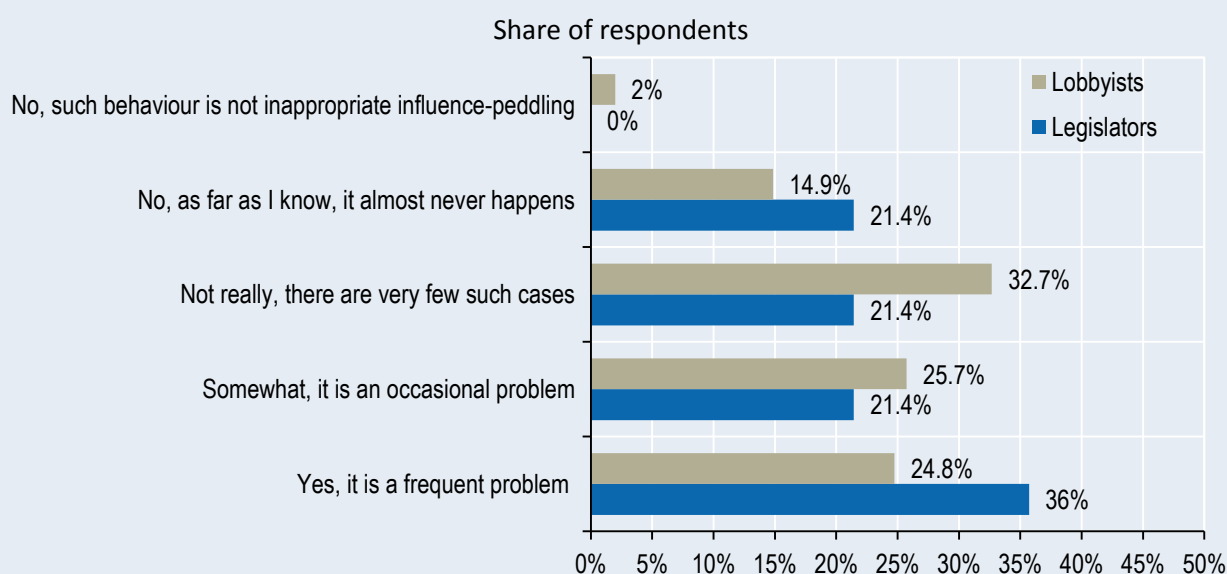
#### Targeting high-prestige, high-impact and high-cost projects: large-scale public infrastructure

Large-scale infrastructure projects are particularly vulnerable to political capture, corruption and mismanagement. It appears to be a chronic problem both across OECD and emerging economies. Ensuring the integrity and value for money of large-scale public

infrastructure is critical for productive and equitable results that build trust in government. The OECD has been developing systematic support for policymakers on how best to ensure that these high-prestige, high-impact and very costly initiatives deliver on their promises. These draw from first-hand experiences in providing concrete and practical advice to world-class projects such as the New Mexico City International Airport (OECD, 2015b) and the Milan Expo (Box 3; OECD, 2015c).

Drawing on these and other international experiences, the OECD developed the **Integrity Framework for Public Infrastructure**, which maps out conducts and risks of corruption at each phase of the investment cycle and identifies tools and mechanisms to promote integrity for inclusive, sustainable and efficient public investment. The framework includes examples of good implementation practices from both the public and private sectors. The OECD's approach goes well beyond the procurement phase and addresses corruption risks in the needs definition and selection phase of the infrastructure project in which capture of the project by elites and special interests can take place. High standards of conduct, policies for identifying and managing conflict of interest, strong controls and risk management frameworks and greater transparency are the main weapons in governments' arsenals to combat corruption while ensuring that the competitive processes that keep costs low and quality high remain in place.

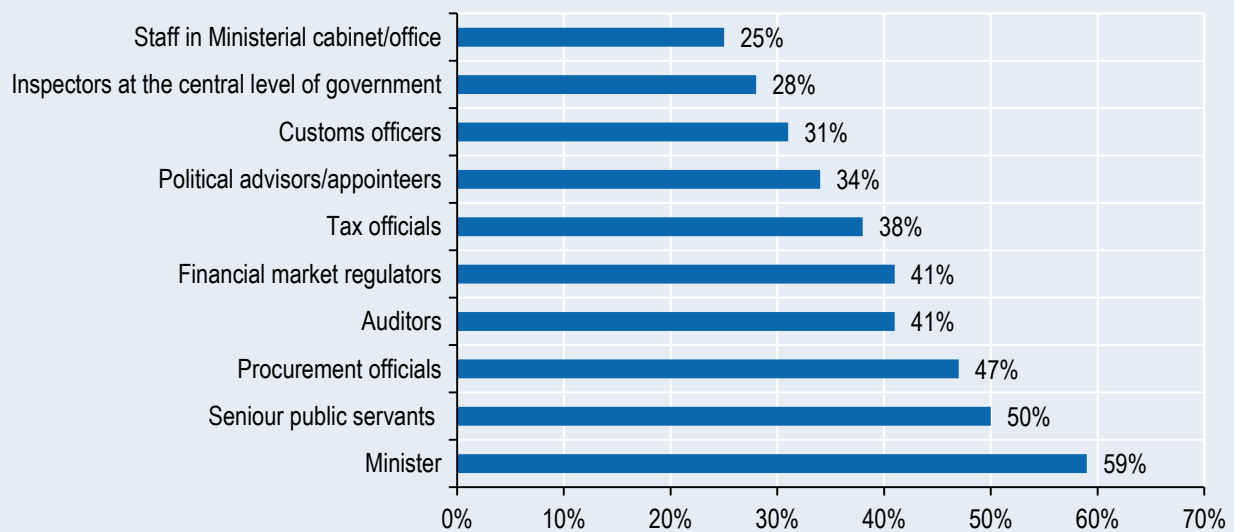
FIGURE 3. POLICY CAPTURE IS A WIDESPREAD PROBLEM



Source: Transparency International 2015 and Cornell INSEAD WIPO 2015.

FIGURE 4. THE COVERAGE OF CONFLICT OF INTEREST RULES NEEDS TO BE EXPANDED

Share of OECD countries with conflict of interest policy/rule for a particular category of public officials



Source: 2014 OECD Survey on Managing Conflict of Interest in the Executive Branch and Whistleblower Protection.

### Curbing the risk of policy capture

A particular concern in many countries is the capture of public policies by special interests and elites that further enlarge inequality. Captured policies bring benefits almost exclusively to a narrow group of influential people against the public interest. Experience has shown that policies may be captured through a wide range of practices, but most commonly through the unbalanced financing of political parties and election campaigns, unregulated lobbying and conflict of interests by policy makers (Figure 3). The OECD supports policy makers in curbing the risks of policy capture through the identification of policies and practices that instil integrity and transparency to the financing of democracy, lobbying practices and manage conflict of interests (Figure 4).

Several features can help promote transparency, integrity and fairness in the decision making process such as the right to petition government, freedom of information legislation, and rules on political parties and election campaign financing. These features should be complemented with clear rules and guidelines for lobbying activity and the communication with public sector officials. Information about lobbying activities and lobbyists should be available in public registers to allow scrutiny of stakeholders. Communication technologies can help to make information accessible to the public in a cost-effective manner.

Additionally, countries should provide standards and procedures that give public officials clear directions on how they are

permitted to engage with lobbyists and consider restrictions for public officials leaving offices to prevent the misuse of confidential information and ‘revolving door’ behaviour. Temporary cooling-off periods on hiring lobbyists to fill regulatory or advisory posts can also help. The implementation and impact of these measures should be reviewed in a public debate to help meet public expectations for transparency and integrity in lobbying.

### Making sure all companies play by the rules

Companies of all sizes and ownership, including small and medium-sized firms, multinational enterprises (MNEs) and state-owned enterprises (SOEs), are exposed to the risk of corruption and other corporate misconduct. They have a responsibility to prevent and detect corruption through strong corporate governance frameworks and to promote a culture of integrity (OECD, 2011). Analysis shows that 31% of the foreign bribery cases since 1999 were detected through self-reporting by companies themselves (OECD, 2014a). The two main sources of detection were internal audits (31%) and due diligence in the context of mergers and acquisitions (28%). Companies should thus have in place good internal controls, compliance systems and due-diligence mechanisms to promote integrity throughout their supply chains (OECD, 2016b). The **OECD Good Practice Guidance for Internal Controls, Ethics and Compliance**, the **Guidelines for MNEs**, the **OECD/G20 Principles of Corporate Governance** and the **OECD Guidelines for SOEs** can help companies comply with their obligations and implementing their commitments to integrity.

# 3 Stepping up enforcement through effective international cooperation

Strong integrity frameworks will only be of limited use, if not complemented by parallel efforts to detect and sanction corrupt behaviour. With a crime that often involves complex financial networks across various jurisdictions, promoting transparency of financial flows and ensuring effective international cooperation amongst countries involved is critical to make progress. Countries will need to strengthen their enforcement of international standards such as the OECD Anti-Bribery Convention by giving higher priority to bribery investigations and prosecutions, providing enforcement institutions with adequate resources, and providing effective institutional frameworks that encourage reporting and protect whistleblowers. Additionally, the media has a role to play as a watchdog of both the public and private sector.

## Making foreign bribery a crime

Making foreign bribery a crime sends a strong signal that a country is committed to fighting corruption. Today, the 41 countries of the OECD Working Group on Bribery (WGB), which represent 64% of all global outbound FDI and over half of the world's exports, are leading the global fight against foreign bribery as signatories to the **OECD Anti-Bribery Convention** (Box 4). As a result of the Convention and its vigorous monitoring mechanism (referred to by Transparency International as the "gold standard" in monitoring) foreign bribery is now a crime in all 41 countries and 38 of them have strengthened or created corporate liability laws in compliance with commitments made under the Convention. Following the adoption of the **OECD Recommendation on the Tax Deductibility of Bribes to Foreign Officials**, bribes are no longer tax deductible in all 41 countries, and 29 countries eliminated tax deductibility of bribes in order to comply with their obligations under the Convention.

Key players have yet to join the Convention, including China, India, and Indonesia. The OECD works with these

and other countries individually, as well as through regional anti-corruption programmes which span the globe. These networks provide a forum for the OECD to help countries improve their anti-corruption frameworks, encourage international cooperation and build enforcement capacity. They also encourage accession to the Convention, to promote a

global level playing field – a goal that the G20 supports and that it encourages in its 2015-2016 Anti-Corruption Action Plan. It is therefore vital to continue to appeal to all countries that are major exporters and foreign investors to accede to and implement the Anti-Bribery Convention.

A 2012 study that examined foreign bribery in the context of the United Nations' Oil-for-Food programme in Iraq concludes that the implementation of the OECD Anti-Bribery Convention at home had a beneficial effect on companies' behaviour abroad, decreasing the likelihood of foreign bribery (Jeong and Weiner, 2012). This study shows the importance of extending the breadth of the Convention in order to effectively combat corruption on a global scale.

## Giving investigations and prosecutions the priority they deserve

Criminalisation alone is not sufficient. **Active enforcement is the only truly effective means for deterring and ending bribery.** Enforcement of anti-bribery laws has increased dramatically since the entry into force of the Convention. As of December 2014, nearly 500 individuals and companies have been sanctioned under criminal proceedings for foreign bribery. 95 individuals have been sentenced to prison and USD 5.4 billion in combined monetary sanctions

Bribery is now a crime in all **41** parties to the OECD Anti-Bribery Convention

**24** countries that are party to the OECD Anti-Bribery Convention have yet to conclude a foreign bribery enforcement action



have been imposed. Six Parties sanctioned only individuals, and 1 sanctioned only companies. Eight Parties also sanctioned individuals or legal persons for other offences related to foreign bribery in international business transactions (e.g. accounting offences, breach of trust, or money laundering). **But with only 17 out of the 41 Parties having successfully concluded a foreign bribery case to date, it is clear that an enforcement gap remains.**

A 2013 study by the George Washington School of Business and Duke University found that enforcement was vital to the effectiveness of the Convention in reducing corruption by companies from signatory countries (Jensen and Malesky, 2013). Some of the main challenges to effective enforcement identified by the WGB in the course of its peer reviews are low prioritisation of foreign bribery investigations and prosecutions, which in turn leads to **inadequate resources and capacity for law enforcement**. As a result the WGB has in most country evaluations called for the allocation of adequate human and financial resources to law-enforcement authorities, along with training and capacity-building for investigators and prosecutors in complex economic crime investigations and prosecutions.

In addition, **investigations and prosecutions of bribery cases should be independent from considerations of national economic interest**, the potential effect upon relations with another state, and the identity of the individuals or companies involved. Investigators and prosecutors must also have a reasonable amount of time to follow a bribery case and have access to the tools they need to effectively investigate the often complex cases of bribery of foreign and domestic public officials. International cooperation is also essential, especially in cases of transnational bribery.

#### **Promoting international cooperation between law-enforcement institutions**

As the world economy becomes increasingly globalised, it is ever more important that countries are able to cooperate to detect, investigate and sanction corruption. Similarly, the combating of illicit financial flows requires action by both the countries where the illicit revenue is generated and the countries where the revenue ends up being spent or invested. This is why effective international

#### **BOX 4. COMBATTING BRIBERY – THE CASE OF THE UNITED KINGDOM**

The United Kingdom has strengthened its efforts to fight corruption. When it joined the OECD Anti-Bribery Convention in 1999, the country's anti-bribery framework was largely reliant on old legislation. This regime was based on an outdated model of corporate liability that limited a company's liability to circumstances where a senior manager or director was directly responsible for the bribery. Given that most international bribery is committed through an intermediary, this narrow view of corporate liability seriously threatened the chances to successfully pursue complex bribery cases against corporate offenders and the review by the OECD Working Group on Bribery underlined the need to enact modern bribery legislation to allow the successful pursuit of corporate offenders. Secretary-General Gurría and OECD experts worked with the United Kingdom and in 2009, the Parliament passed the Bribery Act, marking a dramatic improvement in its legal framework. The Act introduced a ground-breaking new offence of failure by a company to prevent an employee or agent of the company from offering, promising or paying a bribe on the company's behalf. The Act, and particularly the 'failure to prevent' offence, has become a global standard for anti-bribery legislation. The country has also strengthened enforcement by adopting deferred prosecution agreements and actively pursuing several major corruption cases (OECD, 2014b).

cooperation is the cornerstone of international standards on foreign bribery and on tax transparency. Challenges in obtaining effective Mutual Legal Assistance are also a significant obstacle to enforcement of corruption offences for many practitioners.

The OECD is well placed to help countries build law-enforcement capacity and increase international cooperation through its law-enforcement networks and exchange-of-information platforms. Through their biannual law-enforcement meetings that help build strong relationships and generate practical know-how, members of the WGB have an advantage in the enforcement of transnational anti-corruption cases. This advantage helps to explain why the vast majority of foreign bribery cases successfully concluded involve only OECD

Working Group members. The Global Law Enforcement Network which met in December 2015 aims at broadening these efforts to non-Parties.

### More actively sharing relevant information

**Secrecy from law enforcement provides a fertile ground for financial crimes** such as corruption and tax evasion. Pockets of secrecy across the globe damage all jurisdictions and developing countries in particular, and weak cooperation amongst law-enforcement agencies hinders progress in this fight. While bank secrecy is a key component of a person's right to privacy, it should be lifted in appropriate circumstances, such as fighting financial crimes, and banks must be required to keep records pertaining to accounts as well as related financial and transactional information.

Significant headway has been made in recent years to strengthen tax transparency. The international standard on tax information exchange 'on request' is now adopted by all 135 members of the OECD's **Global Forum on Transparency and Exchange of Information for Tax Purposes** and its implementation is closely

monitored through an in-depth peer review process. The OECD launched in 2014 the new international standard for automatic exchange of financial account information (AEOI), allowing governments to track funds transferred and held offshore that were previously unknown and unknowable.

**99** jurisdictions have now signed up to implement the AEOI standard and begin the first exchanges in 2017 and 2018

**One critical element of transparency is access to reliable and quality beneficial ownership information.** Indeed, sophisticated vehicles for channelling illegal payments – disguised through a series of offshore transactions and complex layers of corporate structures often involving shell companies – are recurrent features of corruption which render its detection and sanctioning more difficult. Shell companies may also be used as a way for politicians or other public officials to disguise the award of contracts to companies in which they or their proxies hold interests. Shell companies can also be used as conduits to

divert public funds and channel payments to the real beneficiaries of the transaction. Strengthening the effectiveness of beneficial ownership identification requirements, as contained in the international transparency standards and, where appropriate, developing alternative solutions to ensure that beneficial ownership information becomes more readily available to law-enforcement agencies is critical.

**Policies must also be in place to address the role of intermediaries** such as accountants, lawyers and corporate service providers, who are often involved in facilitating these crimes. **Promoting a whole of government approach to fighting financial crimes** is also necessary to make progress. The OECD's Oslo Dialogue has looked at how all relevant government agencies can best cooperate and exchange information to deter, detect and prosecute crimes. Its International Academy of Tax Crime Investigation supports this goal by training officials from around the world to detect and prosecute tax, corruption and other financial crimes.

### Empowering and protecting whistleblowers

OECD research finds that only 2% of foreign bribery cases were detected through external whistleblowers. Having the right environment and appropriate protection frameworks for whistleblowers – both in the public and private sectors – to come forward is essential to the detection and reporting of corruption, as underlined in the **2009 OECD Anti-Bribery Recommendation**, the **OECD Guidelines for Multinational Enterprises**, and the **G20/OECD Principles of Corporate Governance**.

Recent years have seen significant developments in whistleblower protection in OECD countries. More OECD countries have put in place dedicated laws to protect whistleblowers in the past five years than in the previous quarter century. But only a few countries have enacted effective protection measures

**18** countries have introduced or strengthened whistleblower protection in response to OECD peer evaluations and recommendations

in both the public and private sector. In the absence of a broad, dedicated framework protection risks being less comprehensive, which may discourage reporting and leave fraud and corruption undetected. Countries should strive to establish a consolidated, dedicated law for the protection of both public and private sector whistleblowers.

### **Making use of investigative media**

The role of the media is critical in raising public awareness, promoting integrity and detecting and reporting on corruption. Successful action against corruption is dependent on knowledge and information which can be delivered by media. First, media raises public awareness about corruption, its causes, consequences and possible remedies and thus can foster a culture of integrity. Second, media can investigate, detect and report incidences of corruption, bringing corruption cases into the public sphere and instigating judicial involvement. OECD analysis shows that 5% of foreign bribery cases are brought to the attention of the authorities through the media (OECD, 2014a).

The effectiveness of the media, in turn, depends on access to information and freedom of expression, as well as a professional and ethical cadre of investigative journalists. Governments, media owners and journalists have a shared responsibility to ensure that the media can and does effectively contribute to enhance accountability and curb corruption. For the media to fulfil this function, a number of elements should be in place such as freedom of information laws and procedures, effective competition between a plurality of media firms, and sufficient protection of journalists who expose corruption or investigate the interests of powerful private and public sector leaders.

### **Ensuring that corruption is systematically and appropriately sanctioned**

Strong frameworks to encourage firms and individuals to play by the rules are of only limited use if corrupt behaviour by firms and individuals is not adequately sanctioned. OECD analysis shows that in jurisdictions with weak

sanctions, foreign bribery can be seen as an attractive 'investment' (OECD, 2014a).


For anti-corruption legislation to be effective, sanctions must be proportionate and dissuasive, and bribes and the proceeds of bribes must be subject to confiscation. In addition, investigations and prosecutions of bribery cases should be independent from considerations of national economic interest, the potential effect upon relations with another state, and the identity of the individuals or companies involved.

Investigators and prosecutors must also have a reasonable amount of time to follow a bribery case and have access to the tools they need to effectively investigate the often complex cases of bribery of foreign and domestic public officials. The quality of the full spectrum of justice institutions from lawyers and police to prosecutors and agencies responsible for enforcing sanctions and judicial decisions is thus crucial. Their effectiveness, efficiency and coherence aim to ensure fair and systematic proceedings and the implementation of sanctions, further acting as a deterrent to potential future misbehaviours. Trustworthy judiciaries further build reservoirs of legitimacy for other institutions and allow for the consolidation of the rule of law.

Anti-corruption efforts also depend on the transparency and effectiveness of justice institutions at all levels of government and jurisdictions, which should be supported by robust systems to ensure their integrity and save them from bribery or political interference in judicial or equivalent proceedings. Ensuring a balance between independence and accountability of the judiciary will be essential to maintain trust and responsiveness to citizens' expectations.

International cooperation is also essential, especially in cases of transnational bribery. The fight against corruption will only succeed if both domestic and international frameworks are effectively put in place and if corrupt individuals and companies as well as those who help them are aggressively pursued across the globe.





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