

# OECD Working Group on Bribery



Annual Report **2006**

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**Angel Gurría**  
*Secretary-General*

Fighting corruption is one of OECD's highest priorities. We fight corruption on several fronts and we are the leading source of expertise in areas including business, taxation, export credits, development aid, and governance. The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions stands as one of our main achievements.

The OECD Anti-Bribery Convention was adopted in 1997. Over the past ten years, we have set in motion commendable progress and raised awareness and expectations around the world. Governments have passed new anti-bribery laws and created special investigation and prosecution units. Multinational companies on every continent have changed the way they do business and are facing greater public scrutiny. The OECD Working Group on Bribery has established what Transparency International calls "the gold standard" of monitoring and evaluation to ensure that governments stick to their commitments to enforce anti-corruption legislation.

This first annual report comes at a pivotal moment in the 13-year history of the Working Group on Bribery. As awareness and rejection around this transnational crime grow, important questions are being raised about the effectiveness of the OECD Anti-Bribery Convention. These questions are magnified when prominent bribery cases hit the front pages of international news.

The answer is clear: thanks to the Convention, offering bribes is no longer business as usual. Nor can bribes be claimed as a tax deduction. We now have a common yardstick to assess governments' performance, and an effective global, anti-corruption standard. We have also created a forum where individual countries' progress in meeting international legal commitments is periodically reviewed by their peers. All of this is allowing us to gain ground against international corruption.

Prominent cases are a test, but they are also a signal. Indeed, high-profile foreign bribery cases are both the clearest indication that the Convention is making a difference, and the most challenging test of countries' political will to respond unequivocally to this crime.

Yet, there is much to do. The 36 parties to the Convention must be more proactive in investigating and prosecuting foreign bribery. While some countries have applied major sanctions against offenders, others have yet to open their first investigation. We can do more and we can do it better. The OECD Working Group on Bribery has the tools to shape this commitment. The OECD Anti-Bribery Convention is the framework to transform this commitment into action, and action into results.



**Angel Gurría**  
Secretary-General



**Mark Pieth**  
*Chairperson, OECD Working  
Group on Bribery*

It is a great pleasure to present the first annual report of the OECD Working Group on Bribery. The aim of this report is to give you a brief overview of the OECD Anti-Bribery Convention and how it works. It will inform you on how the Working Group on Bribery contributes to the global fight against corruption and its main activities in 2006.

The OECD began addressing bribery in its anti-corruption work through the *Ad hoc* Group on Illicit Payments in 1989. Having been part of this work for the past 16 years, and as the Chairperson of the OECD Working Group on Bribery since its creation in 1994, I am privileged to have been a part of the evolution of the fight against bribery of foreign public officials in international business transactions from its earliest stages.

From the formulation of important recommendations on how governments can combat foreign bribery in the 90s, to the negotiation and adoption of the world's foremost legal tool for putting the brakes on bribes to foreign public officials in 1997, the OECD Working Group on Bribery is leading global progress in the area of fighting bribery in international business.

In many ways, 2006 was a very special year for the Working Group on Bribery. Throughout the year, its delegates representing 36 countries have kept the demanding pace of monitoring and evaluating the performance of each Party to the OECD Anti-Bribery Convention thoroughly and objectively. This is a complex, lengthy and exacting process. It is resource-intensive and demands the most diligent and systematic research, questioning and interpretation of each country's situation.

In the past year, our monitoring work came in the wake of astonishing revelations of illicit payments totalling at least 1.8 billion dollars, made by companies in some 66 countries, in connection with the U.N. Oil-for-Food Programme. The findings of the Independent Inquiry Committee appointed by then Secretary-General Kofi Annan, of which I had the honour to be a member, were a stark reminder of just how important and relevant the OECD Anti-Bribery Convention is today.

In 2006, in addition to evaluating individual countries' progress, this Working Group also took a long, hard look at its own progress, in its Mid-Term Study – the first of its kind to review the analysis, critique and evaluation of 21 countries over the first four years of our “Phase 2” monitoring cycle.

The global context of our work is evolving. 2006 saw the first meeting of the Conference of Parties to the United Nations Convention against Corruption, which unites over 80 countries in broad-reaching, global efforts to fight corruption. The learning process has already begun between the OECD, colleagues at the U.N. and other global anti-corruption actors. The Working Group is ready to continue sharing its anti-corruption expertise and its unmatched experience in monitoring and peer evaluation in support of this new international legal instrument.

On the eve of the tenth anniversary of the adoption of the OECD Anti-Bribery Convention, the delegates of the Working Group on Bribery have risen to the demands of an ever-growing set of duties and responsibilities. I would like to take this occasion to thank each one of them for their dedication and energy, their spirited debate and teamwork. Many of the important advances made by the Working Group on Bribery in 2006 would not have happened without the focus and commitment of the Management Group and the Vice-Chairperson, Dr. Maria Gavouneli. Once again, the unfailing support of the OECD Anti-Corruption Division, which is the secretariat for the Working Group, has been a decisive element in the success of this group. I am indeed honoured to have been re-elected to the head of the Working Group and to work alongside so many dedicated, expert colleagues.



**Mark Pieth**  
Chairperson, OECD Working Group on Bribery



The OECD is a global leader in fighting corruption. The keystone of this work is the *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*. This convention, also called the *OECD Anti-Bribery Convention*, is an international agreement among 36 countries whereby bribing a public official of another country in the context of a business deal is a crime.

### **OECD anti-bribery instruments**

The OECD Anti-Bribery Convention, together with two related OECD recommendations, require all 30 OECD countries and six non-OECD economies to establish and implement a comprehensive set of legal, regulatory and policy measures to prevent, detect, investigate, prosecute, and sanction bribery of foreign public officials. A “foreign public official” is anyone who holds an appointed or elected office or exercises a public function in any foreign country.

The OECD Anti-Bribery Convention requires countries to impose tough sanctions – including fines and imprisonment – for bribery of foreign public officials, also referred to as “foreign bribery”. These sanctions must apply to both individuals and companies who commit foreign bribery, according to the Convention. It also requires that all countries that have ratified the Convention, the States Parties, confiscate bribes and any profits obtained through foreign bribery. According to the Convention, States Parties must work together to ensure its effective application, for example, in gathering and exchanging evidence, or through extradition.





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## **OECD Working Group on Bribery**

The OECD Working Group on Bribery comprises representatives of each of the 36 States Parties and is responsible for overseeing the implementation of the Convention. The members of the Working Group on Bribery in International Business Transactions are Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Japan, Korea, Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom, and the United States.

Participants in the Working Group are typically public servants who work in their countries' government bodies that oversee justice, trade, finance, economic affairs or foreign affairs, among others. The secretariat for the Working Group is based at the OECD Anti-Corruption Division, and the Group meets in Paris four to five times a year. Members also work from their capital cities year-round to ensure that each country is living up to its international commitments to combat foreign bribery. The principal duty of the Working Group is to monitor each of the 36 signatory countries' performance in upholding the high anti-corruption standards set out in the Convention and the recommendations, by means of a thorough, systematic peer review process.

The OECD Anti-Bribery Convention's rigorous peer review mechanism sets it apart from other anti-corruption tools. In signing and ratifying the Convention, countries agree to be part of this monitoring process. Each Party to the Convention undergoes a detailed evaluation of its implementation and enforcement of anti-bribery laws and policies by the Working Group. Conversely, each country must also take an active role in evaluating other States Parties.

# 2006

## In Review

Monitoring countries' implementation of the OECD Anti-Bribery Convention and other OECD anti-bribery instruments was the main focus of the Working Group on Bribery in 2006. The year was a period of intensive monitoring work for the Working Group: several States Parties underwent formal evaluation – either in Phase 1, Phase 2, or in the form of a follow-up report. In addition, the Working Group and its secretariat took on a number of other projects: from reviewing countries' performance in fighting foreign bribery to reaching out to several OECD non-member economies to support their anti-corruption efforts. In 2006, they also researched and analysed diverse corruption-related issues, including bribery in public procurement and money laundering, and focused on strategic planning for the Working Group's future direction.

### **Monitoring countries' compliance with OECD anti-bribery instruments**

#### ► **Phase 1**

As of January 2006, with the completion of the Phase 1 examination of Estonia, all the current States Parties of the OECD Anti-Bribery Convention have undergone the first phase of the evaluation process. Phase 1 examinations are an initial review of each country's national laws and other legal texts to determine whether they meet the standards set in the Convention. In this phase, each country submits legal texts and other detailed information on all the aspects of their legal system relevant to the Convention, which are then reviewed by two other countries in the Working Group. The Working Group then writes a Phase 1 Report that covers the findings of this evaluation, assesses the degree to which countries' legislation is in compliance with the Convention, and in some cases, identifies outstanding areas where the country should devote further attention. These areas are flagged for scrutiny during the second phase of evaluation. All Phase 1 reports are available at [www.oecd.org/corruption](http://www.oecd.org/corruption).



## ► **Phase 2**

In 2006, Phase 2 reviews were completed for Australia, Austria, the Czech Republic, Denmark, the Netherlands, New Zealand, and Spain. The second round of monitoring is considerably more far-reaching than the initial phase. Once it is determined whether a country has met the standards set by the Convention “on paper,” the Working Group then evaluates how well each country is performing in applying the laws and other measures to fight foreign bribery. While the first phase of evaluation is primarily based on laws and other legal texts, Phase 2 examinations involve comprehensive written questionnaires, months of preliminary research, and a one-week visit to the country being evaluated by a team of examiners from two countries from the Working Group and the OECD Secretariat.

Intensive question and answer sessions with representatives of several government ministries, auditors, accountants, entrepreneurs, journalists, representatives of civil society organisations, and others, along with the written answers provided by government officials inform the examining team on the country’s experience, knowledge and preparedness to fight foreign bribery. The team examines how prosecutors, judges, the police, tax officials, and other civil servants are fulfilling their obligations to contribute to the collective effort to prevent, investigate, prosecute and sanction foreign bribery.

The Working Group’s findings, as well as its specific recommendations on how to improve implementation of the Convention, are captured in a report for each country. (All Phase 2 reports are available at [www.oecd.org/corruption](http://www.oecd.org/corruption).) The examined country must take action in response to the Group’s findings and recommendations. Each country makes an oral follow-up report on its progress one year after the Phase 2 examination; and a written follow-up report is submitted two years after the Phase 2 examination.

In cases where the Working Group finds serious deficiencies in a country’s implementation and enforcement of the Convention, a second Phase 2 evaluation, a Phase *2bis* review, is conducted. In 2006, there was one Phase *2bis* review of Japan. In the case that a country continues to fail to meet its commitments, the Working Group can opt to take other more stringent measures. For example, the Working Group may require the country to report back regularly on progress in rectifying the specific problem. Working Group members may hold face-to-face meetings with ministers and senior officials of the evaluated country to reiterate the importance of effective implementation and the steps the

country should take to meet the standards of the Convention. Another example of a measure the Working Group may take is a formal, public statement that the country in question is not sufficiently in compliance with the OECD Convention and Recommendations and make a request for immediate action to correct the situation.

In 2006, the Working Group identified several positive developments in countries' work to fight foreign bribery. Some countries have created specialised, centralised entities that focus specifically on fighting corruption. In some cases, they act as an information hub and a forum for discussion and co-operation; in other cases they are formal agencies responsible for investigating and prosecuting foreign bribery. A number of the Parties reviewed in 2006 reported that investigations into suspected cases of foreign bribery had been opened.

Phase 2 reviews completed in 2006 highlighted two countries that recently passed laws that explicitly forbid the tax deductibility of bribes. In a related area, countries have also made improvements in the ways tax officials prevent and detect bribe payments, and how tax information can be used in corruption-related investigations.

Concerns were raised in some countries about whether sanctions and fines applied both to individuals and companies are effective, proportionate and dissuasive. There were also concerns as to whether the levels of sanctions are appropriate with respect to sanctions for similar crimes and in the context of each country's legal framework. In some cases, the levels of sanctions may be insufficient to enable law enforcement officials to secure the help of officials in other countries in obtaining information or evidence – mutual legal assistance – or to ensure that the extradition of persons involved in a foreign bribery case can be requested. The Working Group was also concerned that low levels of sanctions may not allow the use of special investigative techniques like wire-tapping or undercover operations.

Lack of awareness about foreign bribery, both in the public and private sector, and lack of a firm, proactive approach to investigating and prosecuting foreign bribery were other areas where countries are still faced with important challenges.

#### ► **Oral follow-up reports**

Seven countries presented oral reports to the Working Group on their first year of progress on implementing the recommendations made in their Phase 2 examinations. Belgium, Greece, Hungary, Japan,



Sweden, Switzerland and the United Kingdom explained to their fellow Working Group members the measures they are taking to address the shortcomings identified by the Group and future plans to improve their enforcement of the Convention.

#### **Countries that gave an oral follow-up report in 2006**

Switzerland (January)  
UK (March)  
Greece (June)  
Hungary (June)  
Japan (June)  
Sweden (October)  
Belgium (October)

#### ► **Written follow-up reports**

Written follow-up reports, which cover the two years following the Phase 2 review, were submitted for Canada, France, Luxembourg, Mexico and Norway. Some of these reports highlighted formal investigations or trials of foreign bribery cases. For example, France opened seven legal proceedings and Canada obtained one conviction for foreign bribery. The Working Group also took note of other important areas of progress in these countries. Police, prosecutors, other public servants and private-sector managers have benefited from more awareness-raising and training activities. Improvements have been made in co-ordination and co-operation among law enforcement officials. Whistleblower protection and systems to report suspicions of foreign bribery-related wrongdoing have been strengthened. All written follow-up reports are available at [www.oecd.org/corruption](http://www.oecd.org/corruption).

#### **Written follow-up reports completed in 2006**

France (January)  
Canada (March)  
Luxembourg (June)  
Mexico (October)  
Norway (October)

► **Second oral follow-up reports**

In addition to the first oral follow-up report (one year after the Phase 2 examination) and the written follow-up report (two years after the Phase 2 examination), the Convention's monitoring process calls for a second oral follow-up report, three years after the Phase 2 examination. In this report, countries specifically address the remaining areas where improvements were recommended in the Phase 2 report. In 2006, three countries – Bulgaria, Germany and the United States – made oral reports on their continued progress in the three years since their Phase 2 reviews. In 2006 Germany secured one conviction and 12 indictments of foreign bribery, and closed two other cases. Also, over the course of the year, there were about 65 investigations into bribery of foreign public officials. In 2006, the U.S. brought or settled 17 cases involving foreign bribery and related accounting and internal controls violations. Fines, penalties or disgorgement – requiring a person or company to give up profits obtained as a result of the bribery – amounted to over USD 36 million. These are the first three countries to have reached this stage in the monitoring process.

**Second oral follow-up reports made in 2006**

United States (March)  
Germany (June)  
Bulgaria (October)

In total, 23 countries underwent formal scrutiny in some stage of the monitoring process in 2006: a Phase 1 examination, a Phase 2 examination, an oral report or a written report. It should be noted however, that in addition to these periodic reports by which each State Party informs the Working Group of its progress and challenges in fighting foreign bribery, countries also give an informal update of their current situation at every meeting of the Working Group. Each country around the table appraises the Working Group of new developments – cases, investigations, obstacles, and successes. This *tour de table* is a unique opportunity and a privileged forum for Working Group members to ask specific questions and speak openly about their work. The *tour de table* was carried out at all four 2006 meetings. Given that future monitoring work will take a closer look at countries' enforcement actions, the Working Group will explore ways to make this *tour de table* process a more systematic, integral part of country evaluations.



### ► **Mid-Term Study**

The Working Group decided that at approximately the half-way point in the examination of countries' implementation of the OECD Anti-Bribery Convention, it would be useful to look back on the findings of the Phase 2 reviews and make a comparative analysis of what the Working Group had found. In May 2006, the Working Group completed this Mid-Term Study, which analyses the first 21 Phase 2 reviews. One year of meticulous research, drafting, discussion, and revisions yielded a comprehensive analysis of Phase 2 reports of Parties' application of the OECD Anti-Bribery Convention, conducted from September 2001 to the end of 2005. The study highlights progress in implementing the Convention, and identifies innovations and good practices in combating bribery. It also highlights areas that are consistently problematic for several countries, as well as significant difficulties and shortcomings observed in individual Parties. The study identifies developments and trends in a number of areas and describes levels of compliance with the OECD Anti-Bribery Convention and the effectiveness of the systems put in place to combat foreign bribery. The Mid-Term Study is available at [www.oecd.org/corruption](http://www.oecd.org/corruption).

This important study provides a solid basis for defining the future direction and priorities of the Working Group efforts to fight international bribery. The Working Group found that some questions arose repeatedly and merited special attention. The analysis of the first set of Phase 2 reviews helped identify issues that should systematically be part of future examinations. Some of these specific issues include bribes through intermediaries, bribes that benefit third parties, facilitation payments, corporate liability, jurisdiction and mutual legal assistance.

### **Private sector and civil society organisations**

The perspective of business entrepreneurs is crucial in formulating and promoting effective measures to fight bribery of foreign public officials. During each Phase 2 review, managers of businesses of all sizes are asked to evaluate their government's progress in implementing the OECD Anti-Bribery Convention.

The business community also provides useful insight to the Working Group in other ways. In 2006, private sector representatives briefed the Working Group on their organisations' anti-corruption activities and highlighted opportunities for co-operation. At the beginning of the year, a Working Group consultation brought together private sector

representatives from the International Chamber of Commerce, the Business and Industry Advisory Committee to the OECD, and others, along with key international NGOs to exchange views on progress in the implementation of the OECD Anti-Bribery Convention, the evolving perception of corruption in the private sector, and approaches to the Working Group's future challenges. In October, representatives of the World Economic Forum's Partnering Against Corruption Initiative (PACI) presented its 116-company strong voluntary, global private sector initiative to fight corruption and bribery.

Civil society also plays an important role in anti-corruption efforts led by the Working Group. At the country level, civil society organisations' views are also sought in evaluating every Party to the OECD Anti-Bribery Convention. The tireless efforts of non-governmental organisations, from a global scope to a grassroots level, have been essential to recent progress in fighting corruption. International non-governmental organisations, like Transparency International, have made significant contributions to the OECD's work to fight foreign bribery.

Other specialised groups, such the Trade Union Advisory Committee to the OECD, give regular input to the Working Group. In January, Working Group delegates met with trade union officials from 11 countries and global trade organisations to examine the role of trade unions in implementing the OECD Anti-Bribery Convention – including reporting corruption, whistleblowing and whistleblower protection.

## **Other areas of work**

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In addition to its core focus on monitoring the implementation of the OECD Anti-Bribery Convention, the Working Group carries out a number of complementary projects to strengthen means to detect and prevent corruption.

### ► ***Bribery in public procurement***

One important area where the Working Group has devoted special attention is the analysis of bribery in public procurement – the purchase of goods or services by governments or government-owned enterprises. The Working Group hosted a seminar of law enforcement and procurement specialists to delve into current knowledge about how bribery is committed throughout the various stages of government purchasing; how bribery is related to other forms of corruption such as fraud, money laundering or false accounting; and what can be done to prevent and uncover these crimes. The Working Group will publish a





typology that describes methods of bribery in public procurement and means to address this problem.

► ***Money laundering and terrorist financing***

Through the OECD's Anti-Corruption Division, the Working Group is actively contributing to an international project on the links between fighting corruption, and combating money laundering and the financing of terrorism. The joint project, led by the Financial Action Task Force on Money Laundering (FATF) and the Asia/Pacific Group on Money Laundering (APG), brings together several countries and international and regional organisations to examine the complex interface among three serious international issues: money laundering, terrorist financing, and corruption. The joint project helps to ensure that resources to address these global concerns are being used optimally and that current knowledge is shared among a range of governments and agencies. Research and analysis of these links will contribute to strengthening systems to combat money laundering and terrorist financing and shield these systems from corruption. Currently the Working Group is researching why systems to combat money laundering and the financing of terrorist activities have not yet uncovered foreign bribery cases, for a research paper to be adopted by the FATF in 2007.

## **Global relations**

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The 36 countries that make up the Working Group on Bribery account for a vast majority of today's international trade. The demonstrated commitment of these countries is an essential motor behind international efforts to fight the bribery of foreign public officials. It is clear, however, that the Working Group's challenge is complex and multi-faceted, and that 36 countries' efforts alone cannot suffice to stem the tide of foreign bribery. Close co-operation among several international and regional organisations and governments heightens the impact of each individual entity's work toward common goals to curb bribery.

► ***International organisations***

The Working Group works closely with several international and regional organisations. The recent entry into force of the United Nations Convention against Corruption has created opportunities to work together with the United Nations Office on Drugs and Crime (UNODC). Co-operation with international financial institutions and multilateral

development banks, including the World Bank, the International Monetary Fund, the Asian Development Bank, and the Inter-American Development Bank, as well as with the Council of Europe and the Organization of American States, enriches the OECD's work to fight foreign bribery.

► **Regional outreach programmes**

In addition to addressing the anti-foreign bribery policies of the 36 countries that are Parties to the OECD Anti-Bribery Convention, the Working Group on Bribery is also active in helping to raise international anti-corruption standards in other countries. Some members of the Working Group and the secretariat are involved with anti-corruption networks in the Asia-Pacific Region; the Middle East and North Africa; Central, Eastern and Southern Europe; the Caucasus and Central Asia; and Latin America. These regional networks bring together government officials, international organisations, international financial institutions, civil society and business associations, and provide a forum to share experiences, promote anti-corruption activities, and build a greater understanding of OECD anti-bribery instruments. These outreach activities mobilise the public sector, the private sector and civil society in fighting bribery and provide a platform where the international community can work together to combat corruption.

In 2006, these activities spanned the globe. In the context of the Anti-Corruption Network for Eastern Europe and Central Asia, on-site monitoring visits took place in Armenia, Azerbaijan, Georgia and Ukraine, and monitoring updates were completed for Tajikistan and the Kyrgyz Republic.

Meetings of the Asian Development Bank/OECD Asia Pacific Anti-Corruption Initiative in Manila, Thailand and Kuala Lumpur brought together the 27 Asian and Pacific economies working together to fight corruption in the region. An important training seminar in March entitled, "Denying Safe Haven to the Corrupt and the Proceeds of Corruption," strengthened participants' expertise in the areas of extradition and mutual legal assistance.

In September, an international conference on detection, investigation and prosecution of bribery, held in Chile, brought anti-corruption specialists from across Latin America together to discuss their successes and challenges in implementing international legal tools to fight corruption. The conference, organised by the Working Group secretariat, the Government of Chile, and the Inter-American



Development Bank, with contributions from the Organization for American States, and the United Nations Office for Drugs and Crime, was followed by a technical seminar for investigators and prosecutors on co-operation in bribery investigations and prosecutions.

### **Year 2007 and beyond**

Important advances have been made against foreign bribery in the past decade. However, increasing volumes in transnational business, major new players in international trade, and the ever-evolving context in which business deals are conducted are the source of future challenges in combating foreign bribery. The Working Group is actively preparing for these challenges. The year 2006 was marked by analysis of past work, in the Mid-Term Study, to prepare the way for the second half of the Phase 2 reviews. The Working Group revised its guidelines for Phase 2 examinations to streamline the process, speed the publication of its findings and broaden the audience for this information.

The Working Group also trained a group of future examiners on how to assess a country's implementation of the OECD Anti-Bribery Convention. In 2007, the following countries will undergo Phase 2 examination: Poland (January), Portugal (March), Ireland (March), Slovenia (June), Turkey (October), Chile (October), Brazil (December). The Working Group will consider written follow-up reports from Belgium, Greece, Hungary, Italy, Japan, Korea, the Slovak Republic, Sweden, Switzerland, and the United Kingdom in 2007 as well. In 2008, Argentina and Estonia will undergo Phase 2 examination; and Luxembourg will undergo a Phase *2bis* examination.

Looking ahead, the Working Group is giving careful consideration to how monitoring beyond Phase 2 will be carried out. The year 2008 will mark the end of Phase 2 reviews for all current States Parties. The careful design of an efficient and effective assessment mechanism to monitor countries' implementation of the OECD Anti-Bribery Convention beyond Phase 2 is a major priority for the Working Group in the coming year.

Ensuring that the OECD Anti-Bribery Convention and the related OECD Recommendations remain cutting edge tools to fight foreign bribery is another crucial priority of the Working Group. As the face of international business evolves, and as important lessons about enforcing the OECD Anti-Bribery Convention are learned, the need to review and possibly update the legal texts to combat bribery is growing more urgent. The Working Group is considering a review of one of the

relevant international legal tools, the *Revised Recommendation of the Council on Combating Bribery in International Business Transactions*, also known as the *1997 Revised Recommendation*.

Given the very nature of transnational trade and the complexities of tackling foreign bribery, it is essential to build strong partnerships among all economies that contribute significantly to global trade and investment. The Working Group is responding to a call from OECD countries' leadership to bring major emerging economies closer to OECD policies through dialogue, co-operation, and possibly in some cases, preparing the way for new countries to join the OECD Anti-Bribery Convention. Accession to the OECD Anti-Bribery Convention is open to countries who are willing and able to commit to reaching the high standards set by the Convention. New States Parties would also commit to taking part in rigorous monitoring to demonstrate that they are fulfilling their international obligation to meet these standards, on paper and in practice.

## Executive summaries of 2006 country monitoring reports

In 2006, Phase 2 reviews were completed for Australia, Austria, the Czech Republic, Denmark, the Netherlands, New Zealand, and Spain.

### Executive summary of the Phase 2 Report for Australia

The Phase 2 Report on Australia by the Working Group on Bribery evaluates and makes recommendations on Australia's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments. The Australian authorities demonstrated a strong commitment to combating foreign bribery. Although no cases have been prosecuted, the Australian Federal Police has opened three investigations (one which has been terminated) and is currently conducting two investigations. Meetings held with the Australian authorities, including police, prosecutors and officials from the Attorney-General's Department, were highly constructive.

In 2001, Australia established a progressive framework for corporate criminal liability (i.e. the criminal liability of bodies with legal personality). Despite the broad scope of this liability, which includes in its application offences linked to "corporate culture", it has not yet been applied to corruption-related offences. The Working Group therefore identified this as an area requiring follow-up once there has been sufficient practice. Additionally, it was recommended that Australia increase the maximum corporate fine of AUD 330 000 (about EUR 209 000/USD 252 000) for foreign bribery, in view of the size and importance of many Australian companies as well as MNEs with headquarters in Australia. The defence of facilitation payments was also identified for further monitoring because of concerns such as the practical effectiveness of the record-keeping requirement and the prohibition against facilitation payments under some State criminal codes. The Australian authorities agreed with these recommendations.

The Working Group recommended improved measures for the referral of information about foreign bribery cases to the AFP from other Commonwealth agencies and State and Territorial police, and for ensuring that the process for notifying the Minister for Justice and Customs of foreign bribery cases in politically sensitive matters does not potentially result in delays in the referral of cases to the AFP. The Working Group welcomed improvements announced by the Australian Taxation Office (ATO) to more effectively prevent and detect bribe payments to foreign public officials and ensure that the tax deduction for facilitation payments is not misused.

The Report also discusses elements of the Australian system that should positively impact on the international fight against foreign bribery, including Australia's commitment to support good governance in its partner countries. In addition, two of the three foreign bribery investigations were referred through the AFP International Liaison Network, which facilitates the investigation of transnational crime involving Australian interests by placing liaison officers in key centres around the world.

The Report, which provides the findings of experts from Japan and New Zealand, was adopted by the OECD Working Group. Within one year of the Group's approval of the Report, Australia will make a follow-up report on its implementation of the recommendations, with a further written report within two years. The Report is based on the laws, regulations and other materials supplied by Australia, and information obtained by the evaluation team during its five-day on-site visit to Canberra and Sydney in June 2005, during which the team met with representatives of several Australian Commonwealth agencies, State agencies, the private sector, civil society and the media.

### **Executive summary of the Phase 2 Report for Austria**

The Phase 2 Report on Austria by the Working Group on Bribery evaluates Austria's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Overall, the Working Group finds that Austria has engaged in significant legislative efforts to implement the Convention, but that stronger efforts are necessary to address the lack of awareness of the Convention and the offence of foreign bribery both in the public and the private sectors, which impacts directly on the proper implementation of the Convention. The Working Group is seriously concerned about the absence of any foreign bribery investigations in Austria since the adoption of the foreign bribery legislation in 1998, including with regard to allegations in the public domain.

With regard to liability for foreign bribery, the Working Group recommends that certain issues be addressed including ensuring that the law also applies to bribes to foreign public officials designed to obtain acts outside of their scope of competence. The Working Group also recommends that the available criminal sanctions for foreign bribery, particularly for more serious cases, should be increased.

In October 2005, shortly after the Phase 2 on-site visit, the Austrian Parliament adopted legislation establishing general criminal liability of legal persons, including for bribery offences. While this was a welcome act of implementation of the Convention and of a recommendation in the 1999 Phase 1 report on Austria by the Working Group, its timing did not allow a review of the law as applied in practice as is contemplated in the Phase 2 process. Accordingly, the Working Group decided that a review of the law's application should occur at a date to be determined once sufficient practice exists. In addition, the Working Group has recommended that Austria take appropriate measures to ensure that legal persons that engage in foreign bribery are subject to effective, proportion and dissuasive penalties in all cases and the Group will follow up with regard to the application of the law to cases involving bribes by agents acting on behalf of the company.

The Report also highlights a number of positive aspects in Austria's fight against foreign bribery. For instance, the law on confiscation has been strengthened. Austria has also adopted a law that will provide for mandatory exclusion from participation in public contracts of a candidate or tenderer who has been the subject of a final judgement for corruption. As the Report also notes, Austria has also responded to concerns about its trade promotion agencies by indicating that it will engage in awareness raising efforts directed at employees of its principal trade promotion agency, as well as make information available to Austrian businesses through that agency.

The Report, which reflects findings of experts from Greece and Luxembourg, was adopted by the OECD Working Group along with recommendations. In addition to the expected additional review of corporate liability referred to above, regular Phase 2 follow up procedures will occur: within one year of the Working Group's approval of the Phase 2 Report, Austria will report to the Working Group on the steps that it will have taken or plans to take to implement the Working Group's recommendations, with a further report in writing within two years. The Report is based on the laws, regulations and other materials supplied by Austria, and information obtained by the evaluation team during its on-site visit to Vienna. During the five-day on-site visit in June/July 2005, the evaluation team met with representatives of Austrian government agencies, the private sector, civil society and the media. A list of these bodies is set out in an annex to the Report.

### **Executive summary of the Phase 2 Report for the Czech Republic**

The Phase 2 Report on the Czech Republic by the Working Group on Bribery evaluates the implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions in the Czech Republic. Overall the Working Group finds that the Czech Republic has made efforts to implement the Convention. Nevertheless, the Group remains deeply concerned about the continuing lack of liability of legal persons for foreign bribery in the Czech Republic. In addition, some areas could be strengthened, as recommended by the Group, such as raising public awareness of the Convention.

The Report recalls that a team of experts was scheduled to visit Prague in October 2005 as part of the exercise, but the Czech Republic postponed the visit at the eleventh hour. The visit was eventually rescheduled for May 2006, but the postponement nonetheless raised doubts at the time about the Czech Republic's commitment to implement the Convention. As well, other Phase 2 evaluations had to be postponed in turn, thus affecting the Working Group's ability to monitor the implementation of the Convention in other countries.

The Report notes that the Czech Republic does not impose liability against legal persons for criminal offences, including bribery of foreign public officials as required by the Convention. Accordingly, the Group strongly recommends that the Czech Republic establish such liability for foreign bribery without delay and put in place sanctions that are effective, proportionate and dissuasive. The Group further expects the Czech Republic, within 12 months, to report specifically in writing on the progress of this issue. Finally, there are also concerns that the prosecution of foreign bribery may be influenced by factors such as national economic interest, the potential effect on relations with another state and the identity of the persons involved. The Group will thus monitor this issue as cases develop.

The Report further observes that the Czech Republic has engaged in activities to raise public awareness of corruption generally, but relatively few of these activities specifically mention foreign bribery or the Convention. Consequently, the awareness of foreign bribery and the Convention in the Czech Republic is low and Czech businesses appear unconcerned about these matters. The Working Group therefore recommends that the Czech Republic raise the profile of foreign bribery in its anti-corruption efforts. These activities should specifically target Czech individuals and companies that operate internationally, as well as entities involved in official development assistance, taxation, accounting and auditing.

The Report also highlights a number of positive aspects in the Czech Republic's fight against foreign bribery. The Export Guarantee and Insurance Corporation has devoted significant attention to raising awareness of foreign bribery and the Convention among its clients. The Czech Republic has adopted legislation that expressly denies tax deduction of foreign bribe payments. Recent amendments to the Criminal Code extends a court's power to forfeit or confiscate assets belonging to beneficial owners, as well as assets of equivalent value if forfeiture or confiscation of the original asset is frustrated.

The Report, which details the findings of experts from Iceland and Slovenia, was adopted by the OECD Working Group along with recommendations. Within one year of the Group's approval of the Phase 2 Report, the Czech Republic will report to the Working Group on the steps that it will have taken or plans to take to implement the Working Group's recommendations, with a further report in writing within two years. The Report is based on the laws, regulations and other materials supplied by the Czech Republic, and information obtained by the evaluation team during its on-site visit to Prague, Czech Republic. During the five-day on-site visit in May 2006, the evaluation team met with representatives of several Czech government agencies, the private sector and civil society. A list of these bodies is set out in Annex 1 to the Report.

### **Executive summary of the Phase 2 Report for Denmark**

The Phase 2 Report on Denmark by the Working Group on Bribery evaluates Denmark's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. No cases of foreign bribery have been tried in Denmark so far. However, the Working Group finds that Denmark has engaged in significant legislative efforts to implement the Convention, including increasing the limitation period for prosecuting legal persons to the same level as the one applicable for prosecuting natural persons. Additional efforts are nevertheless necessary in some areas. Since Phase 1, Denmark has not introduced sufficiently effective, proportionate and dissuasive sanctions for the foreign bribery offence. Additional measures should also be undertaken to further raise awareness of foreign bribery in both the public and the private sectors.

The Report finds that the maximum sanction for foreign bribery is lower than for comparable offences in the Danish Criminal Code. This low level of sanctions also does not meet the necessary threshold for allowing Danish law enforcement authorities to use special investigative techniques – such as interception of communications and undercover operation – in counteracting crimes of foreign bribery. As a result of Denmark's dual criminality rules, such techniques are also not available for the purpose of providing mutual legal assistance in foreign bribery cases.

The Report also highlights problems within the reporting chain that could prevent civil servants in key public agencies and ministries – in particular at the Ministry of Foreign Affairs – from effectively channelling suspicions of foreign bribery which they might unveil or be alerted to in the course of their work. The overall framework for detection and prevention is further hampered by the absence of any measures to provide for whistleblower protection to employees of the private sector.

In addition, the Report highlights a number of positive aspects in Denmark's fight against foreign bribery. The Report welcomes Denmark's extension to five years of the limitation period for prosecuting legal persons (previously two years), as well as the introduction of a new act on the prevention of money laundering that provides for enhanced reporting and diligence requirements for reporting entities. The Report also notes Denmark's wide scope of action with regard to corruption prevention in the context of development assistance, as well as efforts undertaken with a view to extend ratification of the Convention to Greenland and the Faroe Islands.

The Report, which reflects findings of experts from the Slovak Republic and Sweden, was adopted by the OECD Working Group along with recommendations, which appear in the last section of the report. The Report is based on the laws, regulations and other materials supplied by Denmark, and information obtained by the evaluation team during its on-site visit to Copenhagen. During the five-day on-site visit in January-February 2006, the evaluation team met with representatives of Danish government agencies, the private sector, civil society and the media. Within one year of the Working Group's approval of the Phase 2 Report, Denmark will report orally to the Working Group on the steps that it will have taken or plans to take to implement the Working Group's recommendations. A further report in writing to the Working Group within two years will give rise to a publicly-available evaluation by the Working Group of Denmark's implementation of the recommendations.



### Executive summary of the Phase 2 Report for the Netherlands

The Phase 2 Report on the Netherlands by the Working Group on Bribery evaluates and makes recommendations on the Netherlands' implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and related instruments. In the wake of recent scandals involving fraud in the Dutch construction industry, awareness about domestic corruption is generally regarded as high in the Netherlands, although further efforts are required in relation to foreign bribery. No cases of foreign bribery have been tried in the Netherlands so far, a matter that the Working Group believes could be addressed if the Netherlands adopted a more proactive approach to the investigation and prosecution of this type of crime.

The Working Group recommended that the Netherlands ensure that sufficient training and resources, including specialised expertise are available to law enforcement and prosecution authorities, including the police, Rijksrecherche and the National Public Prosecutor for Corruption (NPPC) for the effective detection, investigation and prosecution of foreign bribery offences. The Report also raises the importance of the co-ordinating role of the NPPC in corruption cases, including foreign bribery. The Working Group urges Dutch authorities to ensure that law enforcement and prosecution authorities are aware of this role and that they report all suspected foreign bribery cases to the NPPC. The Report recommends reconsideration and amendment of the *Directive on Investigation and Prosecution of Corruption of Officials* to ensure that it does not provide misleading information about the offence of bribing a foreign public official, and to clarify the application of the Dutch law to the issue of small facilitation payments.

In view of the size and importance of many Dutch companies, the Working Group recommended that the Netherlands increase the maximum corporate fine for the foreign bribery offence to ensure that sanctions are effective, proportionate and dissuasive. Given the economic role of Aruba and the Netherlands Antilles, the Working Group strongly recommends that the Netherlands in Europe continue to encourage Aruba and the Netherlands Antilles to adopt the necessary legislation in line with the principles of the Convention and Revised Recommendation, and assist them in their efforts, within the rules governing their relationship. The Group also highlights the importance of implementing the guidelines for personnel in Dutch diplomatic representations on reporting suspicions of foreign bribery to Dutch law enforcement and prosecution authorities.

The Report discusses a number of other elements of the Dutch system that should positively impact on the international fight against foreign bribery. A promising development has been the recent efforts of the National Police Internal Investigation Department (*Rijksrecherche*) to improve its expertise and methods for the detection and investigation of corruption. In addition, the Working Group welcomed the recent enactment of legislation to expressly prohibit the tax deductibility of bribes. However, given its recent entry into force, the Working Group will follow-up on its effective application. Areas where good working cooperation has been achieved between government and industry include export credit procedures applicable within the Netherlands and the Dutch anti-money laundering reporting system. The Working Group also viewed the general framework of corporate social responsibility and the Dutch "Platform on Fighting Corruption" as promising initiatives to raise awareness about foreign bribery within the public and private sectors and to develop strategies to combat it.

The Report and the recommendations therein, which reflect findings of experts from Ireland and Norway, were adopted by the OECD Working Group. Within one year of the Group's approval of the Report, the Netherlands will make a follow-up report on its implementation of the recommendations, and will submit a written report within two years. The Report is based on the laws, regulations and other materials supplied by the Netherlands, and information obtained by the evaluation team during its five-day on-site visit to The Hague in January/February 2006, during which the team met with representatives of Dutch government agencies, the private sector, civil society and the media.

### **Executive summary of the Phase 2 Report for New Zealand**

The Phase 2 Report on New Zealand by the Working Group on Bribery evaluates New Zealand's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Overall, the Working Group finds that New Zealand has engaged in significant efforts to implement the Convention including the establishment of nationality jurisdiction over the foreign bribery offence and recent efforts to improve awareness about the Convention, but that stronger efforts are necessary in several key areas. The Working Group finds that New Zealand should broaden the criteria for the criminal liability of legal persons for foreign bribery.

The Working Group finds that prosecution and conviction of companies that engage in bribery is unlikely because applicable case law sets very high barriers to any corporate criminal liability. It recommends that the laws be changed to make companies more accountable. The Working Group also recommends that New Zealand clarify and expand the role of the Serious Fraud Office in the investigation and prosecution of foreign bribery cases and that it allow for the sharing of information about suspected criminal offences between the tax and law enforcement authorities. New Zealand should also ensure that the foreign bribery offence does not require the interpretation of any foreign law for its application and clarify the scope of the facilitation payments exception so that it complies with the narrow exception in the OECD Convention. New Zealand does not yet have a conviction for foreign bribery, but it has some investigative activity underway.

The Report also highlights a number of positive aspects in New Zealand's fight against foreign bribery including New Zealand's current proposed legislation to facilitate seizure and confiscation of the proceeds of crime, including bribery, its efforts to make the extradition system easier to use by requesting states and its efforts to encourage whistleblowing in appropriate cases. The Working Group also welcomed New Zealand's adoption of tax legislation expressly prohibiting the deduction of bribes, but recommended that it apply to all foreign bribe payments, including bribes paid through intermediaries.

The Report, which reflects findings of experts from Australia and Korea, was adopted by the OECD Working Group along with recommendations. Within one year of the Working Group's approval of the Phase 2 Report, New Zealand will report to the Working Group on the steps that it will have taken or plans to take to implement the Working Group's recommendations, with a further report in writing within two years. The Report is based on the laws, regulations and other materials supplied by New Zealand, and information obtained by the evaluation team during its on-site visit to Wellington and Auckland. During the five-day on-site visit in May 2006, the evaluation team met with representatives of New Zealand government agencies, the private sector, civil society and the media. A list of these bodies is set out in an annex to the Report.

## Executive summary of the Phase 2 Report for Spain

The Phase 2 Report on Spain by the Working Group on Bribery evaluates Spain's implementation of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions. Overall, the Working Group finds that Spain has engaged in significant efforts to implement the Convention, including the maintenance of a specialized and experienced anti-corruption prosecution agency, but that stronger efforts are necessary in several key areas. Spain has still not adopted liability and sanctions that meet the requirements of the Convention with regard to legal persons (companies) that engage in foreign bribery. Remedial measures are also necessary to address the lack of awareness of the Convention and the foreign bribery offence both in the public and the private sectors. Spain does not yet have a conviction for foreign bribery, but it has an investigation underway.

The Report finds that, despite certain improvements in 2003, Spain's law with regard to liability and sanctions for legal persons for foreign bribery is inconsistent with Articles 2 and 3 of the Convention because of the absence of direct liability of legal persons for foreign bribery and any monetary sanctions against legal persons for foreign bribery. The Report notes that Spain has commenced drafting a law regarding legal persons and urges it to proceed as quickly as possible in this regard. The Working Group will evaluate the regime of liability and sanctions for legal persons for foreign bribery once it is adopted and once there has been sufficient practice.

The Report also recommends that additional issues be addressed including ensuring that the foreign bribery offences in Spain do not require recourse to foreign law for their application and that they sanction appropriately bribes to obtain a favourable exercise of discretion by a foreign public official, such as the attribution of a contract. The Working Group also recommends that sanctions be increased as necessary in order to ensure that effective mutual legal assistance and extradition are potentially available in all foreign bribery cases. The Report also finds that Spain should take measures to make explicit the prohibition concerning the tax deductibility of foreign bribes in order to improve the awareness of tax inspectors and companies about the offence and its tax treatment.

The Report also highlights a number of positive aspects in Spain's fight against foreign bribery. The Report welcomes the Spanish authorities' decision that the Anti-Corruption Prosecution Office (ACPO), which the Report describes as a high-profile and specialized anti-corruption prosecution agency with dedicated support units to assist in investigations, will be given the power to investigate foreign bribery cases without the need for a case-specific decision from the Attorney-General. The Report also notes Spain's adoption of improved legislation regarding confiscation and Spain's positive practice with regard to the recent changes in the OECD Model Tax Convention potentially allowing the use of tax information received pursuant to tax conventions for corruption-related investigations.

The Report, which reflects findings of experts from Chile and Mexico, was adopted by the OECD Working Group along with recommendations. In addition to the expected additional review of corporate liability referred to above, regular Phase 2 follow up procedures will occur: within one year of the Working Group's approval of the Phase 2 Report, Spain will report to the Working Group on the steps that it will have taken or plans to take to implement the Working Group's recommendations, with a further report in writing within two years. The Report is based on the laws, regulations and other materials supplied by Spain, and information obtained by the evaluation team during its on-site visit to Madrid. During the five-day on-site visit in October 2005, the evaluation team met with representatives of Spanish government agencies, the private sector, civil society and the media. A list of these bodies is set out in an annex to the Report.