TRANSPARENCY INTERNATIONAL
the global coalition against corruption

EXPORTING CORRUPTION

Progress report 2020: Assessing enforcement of the OECD Anti-Bribery Convention

Short version

Transparency International is a global movement with one vision: a world in which government, business, civil society and the daily lives of people are free of corruption. With more than 100 chapters worldwide and an international secretariat in Berlin, we are leading the fight against corruption to turn this vision into reality.

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Exporting Corruption

Progress Report 2020: Assessing Enforcement of the OECD Anti-Bribery Convention

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EXECUTIVE SUMMARY

Bribery of foreign public officials has huge costs and consequences for countries across the globe and those costs have become more severe during the COVID-19 pandemic. With so many cases of foreign bribery occurring in health care, we cannot afford for corruption to cost any additional lives.

Transparency International's 2020 report, *Exporting Corruption*, rates the performance of 47 leading global exporters, including 43 countries that are signatories to the Organisation for Economic Co-operation and Development (OECD) Anti-Bribery Convention, in cracking down on bribery of foreign public officials by companies operating abroad.

The report shows how well – or poorly – countries are following the rules.

More than 20 years after the Convention was adopted, most countries still have a long way to go in meeting their obligations. In fact, active enforcement has significantly decreased since our last report in 2018.

IN A NUTSHELL

47

COUNTRIES ANALYSED

83%

OF GLOBAL EXPORTS AFFECTED

Top cases of foreign bribery

More than a decade ago, increased enforcement against foreign bribery, especially in the United States, exposed egregious, multi-country bribery schemes of companies like Siemens and BAE Systems to the detriment of the people in the countries affected.

Enforcement uncovered large-scale bribery of high-level officials by companies like Halliburton**,** enabling them to win major infrastructure projects. These cases sent shockwaves worldwide.

Yet, despite these scandals, bribery continues to be used by companies from major exporting countries to win business in foreign markets.[1] In recent years, multinationals like Airbus, Ericsson, Odebrecht, Rolls Royce and many more have been caught red-handed in systematic and widespread bribery schemes.

Corruption in international business transactions undermines government institutions, misdirects public resources, and slows economic and social development. It distorts cross-border investment, deters fair competition in international trade and discriminates against small and medium-sized enterprises.

Foreign bribery during COVID-19

Those costs have increased during the COVID-19 pandemic. The pervasive cross-border corruption in health care will cost additional lives unless robustly countered.

But the dangers of corruption during COVID-19 go beyond the health sector. Triggered by the pandemic, a global economic crisis is also depleting public treasuries.

Wasting precious public resources on corruption-fuelled deals with unscrupulous companies and intermediaries is even more deadly and damaging than before.

As companies' profits shrink, the temptation will grow for them to win business in foreign markets at any cost and by any means. The states where multinationals are headquartered may hold back foreign bribery enforcement on short-sighted economic grounds.

The need for robust foreign bribery enforcement is as urgent today as when the OECD Anti-Bribery Convention was first adopted in 1997. Now more than ever, we need stronger foreign bribery enforcement and international cooperation and coordination.

About the report

Exporting Corruption is an independent assessment of the enforcement of the OECD Anti-Bribery Convention (short for OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions), which requires parties to criminalise bribery of foreign public officials and introduce related measures. This is the thirteenth edition of the report.

Country implementation of the Convention is monitored in successive phases by the OECD Working Group on Bribery (OECD WGB), which is made up of representatives of the 44 signatories to the OECD Anti-Bribery Convention. The reviews also cover implementation of the 2009 Recommendation of the OECD Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions (2009 Recommendation). The 2009 Recommendation is being updated by the OECD WGB.

Classification

The report classifies countries into four enforcement categories: Active, Moderate, Limited and Little or no Enforcement.

Countries are scored based on enforcement performance at different stages, namely the number of investigations commenced, cases opened and cases concluded with sanctions over a four-year period (2016-2019).

Different weights are assigned according to the stages of enforcement and the significance of cases.

Country share of world exports is also factored in.

The report covers 43 of the 44 parties to the Convention. Iceland is not included, due to its small share of global exports. In addition, the report assesses foreign bribery enforcement in China, Hong Kong SAR, India and Singapore.

While not part of the OECD Convention, China is the world's leading exporter, with nearly 11 per cent of global exports. The others are also major exporters, each with a share of approximately 2 per cent of global trade.

All four countries are also signatories of the UN Convention against Corruption (UNCAC), which requires countries to criminalise foreign bribery. The analysis of Hong Kong SAR is separate from China, as it is an autonomous territory, with a different legal system and its export data is compiled separately.

The OECD Convention was adopted in 1997 to address the fact that:

> **Bribery is a widespread phenomenon in international business transactions…which raises serious moral and political concerns, undermines good governance and economic development, and distorts international competitive conditions.**
>
> OECD Convention preamble

The report assesses enforcement performance and highlights key gaps in information about enforcement, as well as slow country progress in introducing central public beneficial ownership registers, a crucial tool for detecting, investigating and preventing foreign bribery and related money laundering.

In addition, the report examines the critical issues of victims' compensation, international cooperation, parent-subsidiary liability and country performance in improving legal frameworks and enforcement systems to address foreign bribery.

Key findings

1. **Active enforcement is down significantly.** Only four countries actively enforce against foreign bribery, which represents 16.5 per cent of global exports, a decrease of more than one-third (39 per cent) since 2018.

2. **Moderate enforcement has more than doubled.** Nine countries moderately enforce against foreign bribery, more than double the four countries in 2018. This represents an increase in share of world exports from 3.8 per cent to 20.2 per cent since 2018.

3. **No country is immune to exporting foreign bribery.** Nearly every country has companies, employees, agents, intermediaries and facilitators involved in foreign bribery or related money laundering.

4. **Most countries fail to publish adequate enforcement information.** Most countries do not publish national statistics on foreign bribery enforcement. Courts often do not publish judgements and information on non-trial resolutions is frequently inadequate.

5. **Lack of public information on beneficial ownership hinders enforcement.** Results show very slow progress in establishing central public beneficial ownership registers of companies and trusts. Such registers are key to prevention, detection and investigation of foreign bribery.

6. **Compensation of victims is rare.** The countries, groups and individuals harmed by foreign bribery rarely receive compensation, and most confiscated proceeds of foreign bribery wind up in the state treasuries of the countries exporting corruption.

7. **International cooperation is increasing, but significant obstacles remain.** Insufficient or incompatible legal frameworks, limited resources and expertise, lack of coordination, jurisdictional competition and long delays hinder progress in international cooperation.

8. **Weaknesses in legal frameworks and enforcement systems persist.** Despite some improvements, significant weaknesses in laws and institutions hamper enforcement in nearly every country. Problems include weak or non-existent whistleblower protection, low sanctions, inadequate training of enforcement officials, insufficient resources and limited independence of enforcement authorities.

9. **Major non-OECD Convention exporters still fail to enforce.** There is inaction in China, Hong Kong SAR and India against foreign bribery and related money laundering. Singapore has taken only small steps.

Recommendations

Countries must do more to enforce against foreign bribery, including those that are signatories to the OECD Anti-Bribery Convention, as well as other major global exporters. Key measures to improve enforcement include:

1. **Ensure transparency of enforcement information.** Countries should publish up-to-date statistics on all stages of foreign bribery enforcement as well as on mutual legal assistance (MLA) requests. They should also publish court judgements and extensive information on non-trial resolutions, as called for by the OECD WGB. Publicly available statistics are key to determining how the enforcement system is functioning, and case information is crucial for assessing effectiveness and fairness. The OECD WGB should update its 2009 Recommendation to include a recommendation on transparency of enforcement information, carry out a horizontal assessment of the issue across all parties and develop guidance for countries.

2. **Expand the OECD WGB's annual report and create a public database of enforcement information.** The OECD WGB's annual enforcement data should include updated year-on-year data on all stages of foreign bribery enforcement and cover new developments and challenges. Given its special access to statistical data and case information, the OECD WGB should also create a public database of foreign bribery enforcement information to assist law enforcement efforts across countries, victims' claims, and investigative work by journalists and civil society activists.

3. **Improve beneficial ownership transparency.** To enhance prevention, detection and investigation of foreign bribery, countries should establish public central registers containing beneficial ownership information on companies and trusts and introduce sanctions for individuals and companies that do not comply. The OECD WGB should update its 2009 Recommendation to include a recommendation on this subject and assess performance in country reviews.

4. **Introduce victims' compensation as standard practice.** The OECD WGB should develop guidelines to assist exporting countries in granting compensation to victims in foreign bribery cases and countries should implement them. These should include timely notice to victims, recognition of a broad class of victims and wide range of harms, the possibility of claims by non-state victims and their representatives, and standards for the transparent and accountable return of assets. The OECD WGB should update its 2009 Recommendation accordingly and OECD WGB country reviews should evaluate country compensation arrangements.

5. **Improve international cooperation.** Major global exporters should improve their legal frameworks, invest the necessary resources and build the required expertise for international cooperation. They should respond to MLA requests in a timely fashion and use joint investigation teams for cross-border investigations. They should also engage early with the affected countries. The OECD WGB should conduct a horizontal assessment of MLA performance and coordination of multi-jurisdictional cases and settlements, in collaboration with the UN Office on Drugs and Crime (UNODC) and other relevant bodies.

6. **Improve and expand international structures for cooperation.** The OECD WGB should facilitate discussions on expanding existing regional and international structures and bodies or creating new ones to improve international cooperation in enforcement. The International Anti-Corruption Coordination Centre, Eurojust and the European Public Prosecutor's Office all provide examples to build on.

7. **Explore increased liability of parent companies for subsidiaries.** The OECD WGB and individual countries should conduct an in-depth review of established law and practice in this area. To help improve anti-corruption compliance, they should consider introducing parent company responsibility for taking adequate measures to prevent foreign bribery and related money laundering in all subsidiaries and controlled entities. At a minimum, they should require that ownership chains are declared in foreign bribery cases.

8. **Address weaknesses in laws and enforcement systems and call out non-**

compliance. Countries should address weaknesses hindering enforcement, including relating to money laundering, accounting offences and confiscation. They should discuss the results of OECD WGB reviews with national stakeholders and present plans to address shortcomings. The OECD WGB should continue to conduct follow-up, make public statements and carry out high-level visits to countries that fail to enforce laws against foreign bribery and implement OECD WGB recommendations. It should coordinate with other anti-corruption review mechanisms, such as the UNCAC Implementation Review Mechanism and the Council of Europe's Group of States against Corruption (GRECO), as well as the Financial Action Task Force, to point out country inadequacies. It should also consider, as a last resort, a series of steps towards suspending members that persistently fail to pursue foreign bribery allegations over a period of years.

9. **Establish high standards for non-trial resolutions**. Countries should ensure that non-trial resolutions meet standards of transparency, accountability and due process, with clear guidelines and judicial review. Non-trial resolutions should provide effective, proportionate and dissuasive sanctions and those who paid and received the bribes should be named in the published documents. The OECD WGB should include a new recommendation on non-trial resolutions in its revisions to the 2009 Recommendation.

10. **Enlist wide support to promote foreign bribery enforcement in non-OECD Convention countries.** The OECD WGB and member countries should raise enforcement issues with respect to non-OECD Convention countries at the UN, G20 and in other international forums. This should include issues on both the supply and demand side.

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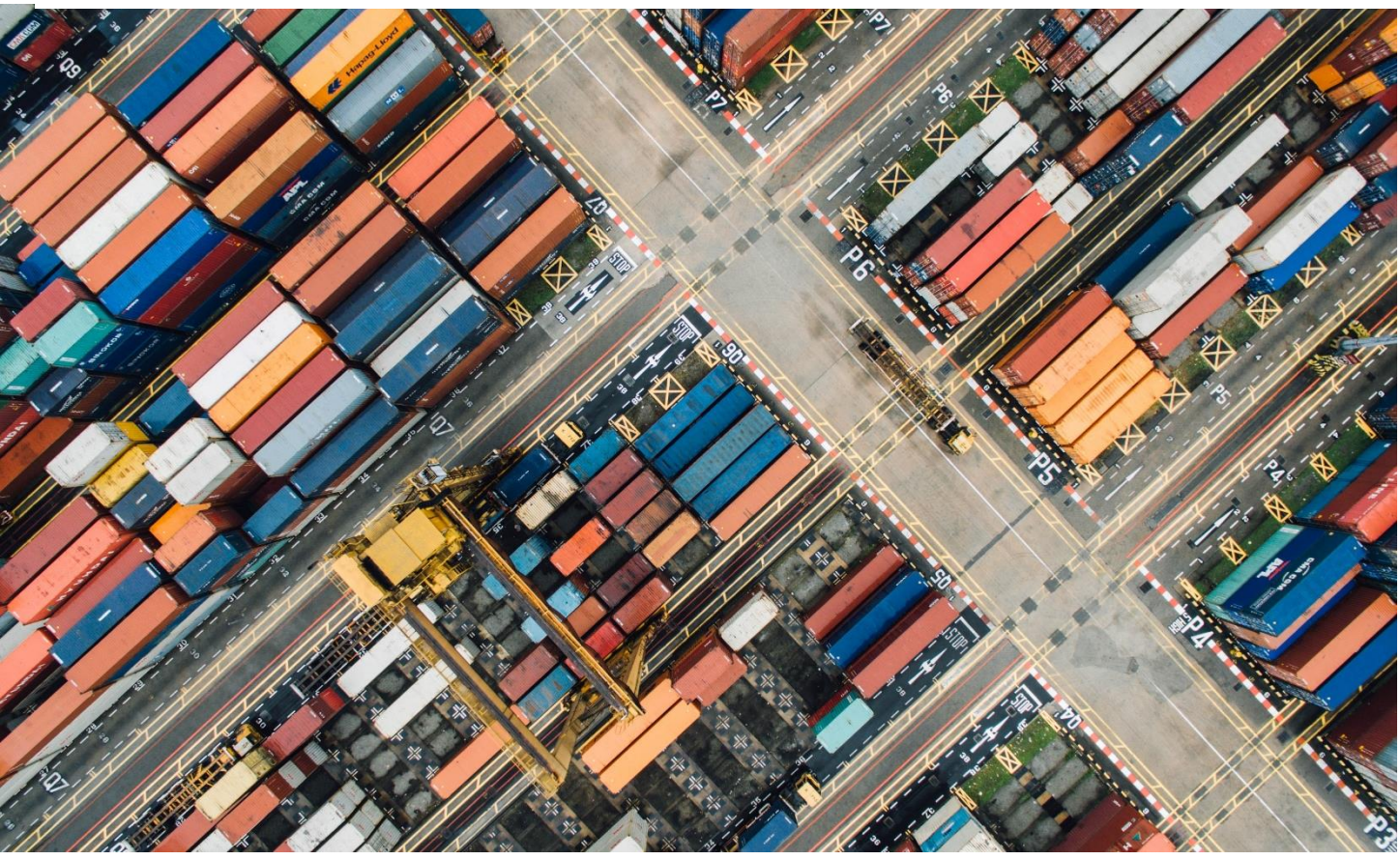


MAP AND ENFORCEMENT TABLE

GLOBAL MAP OF ENFORCEMENT LEVELS

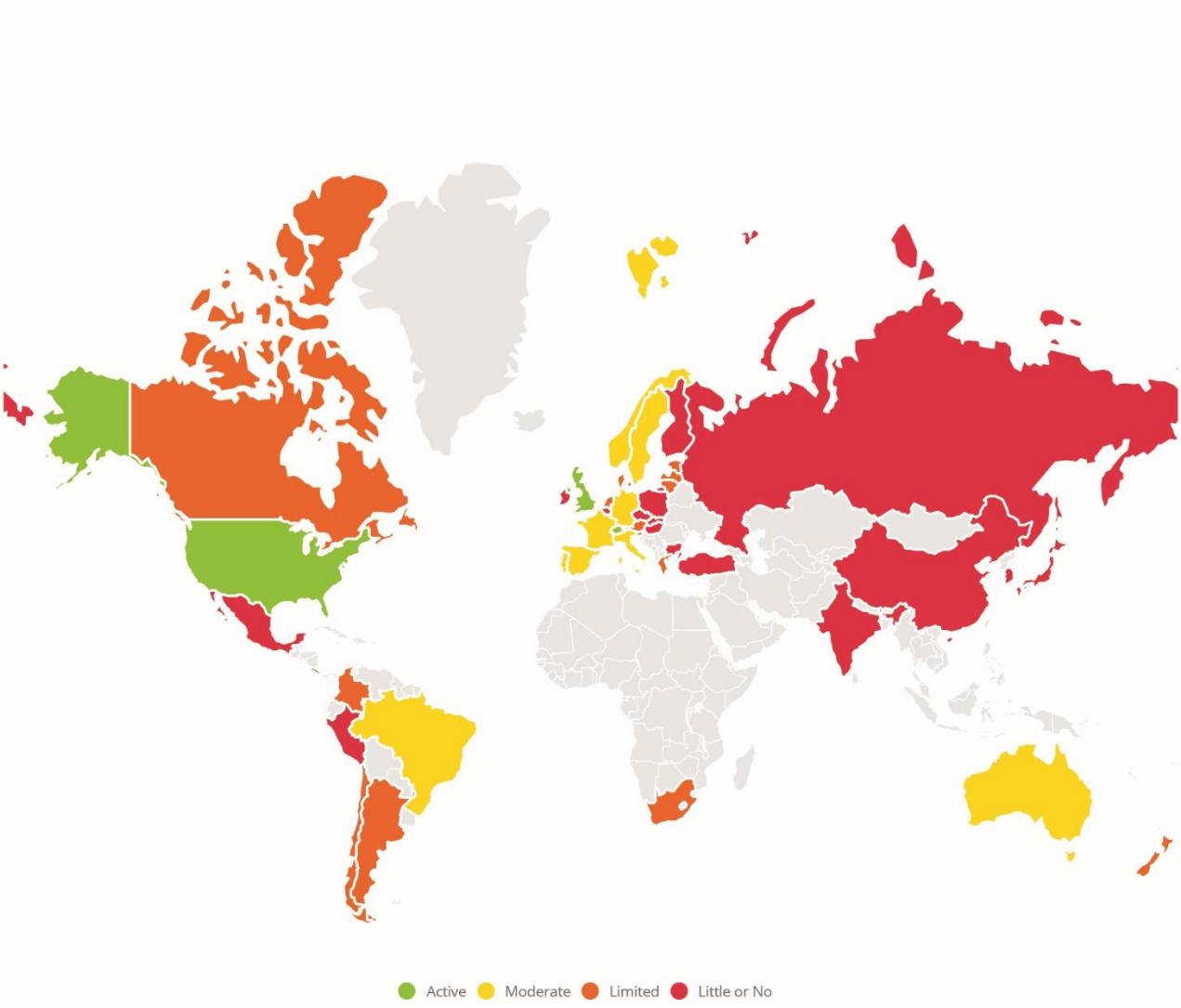


TABLE 1: INVESTIGATIONS AND CASES (2016 - 2019)

		Investigations commenced (weight of 1)				Major cases commenced (weight of 4)				Other cases commenced (weight of 2)			
Country (listed by share of world exports)	% Share of exports Average 2016-2019*	2016	2017	2018	2019	2016	2017	2018	2019	2016	2017	2018	2019
Active Enforcement (4 countries) 16.5% global exports													
US	10.4	9	45	7	11	1	5	5	8	1	1	2	1
UK	3.6	7	12	9	7	2	1	1	1	1	0	1	0
Switzerland	2.0	14	14	7	4	0	0	0	1	0	1	0	1
Israel	0.5	3	5	2	0	1	0	0	0	0	0	0	0
Moderate Enforcement (9 countries) 20.2% global exports													
Germany	7.6	8	9	6	4	1	1	0	0	3	2	2	5
France	3.5	6	6	6	6	2	1	3	0	0	0	0	1
Italy	2.6	11	10	0	2	1	1	0	1	3	1	1	1
Spain	2.0	2	2	4	3	1	3	0	3	0	1	0	0
Australia	1.3	5	3	3	3	0	0	1	0	0	1	1	0
Brazil	1.1	3	3	9	9	0	0	0	0	0	0	0	0
Sweden	1.1	3	2	2	4	0	2	0	0	0	0	0	0
Norway	0.6	0	1	1	0	0	0	0	0	0	0	0	0
Portugal	0.4	3	0	0	1	0	1	0	0	0	0	0	0
Limited Enforcement (15 countries) 9.6% global exports													
Netherlands	3.1	4	4	4	4	0	0	0	0	1	1	0	0
Canada	2.3	0	0	0	2	0	0	0	0	1	0	0	0
Austria	1.0	0	1	1	0	0	0	0	1	1	1	0	0
Denmark	0.8	4	1	1	4	0	0	0	0	0	0	0	0
South Africa**	0.4	4	4	3	3	0	0	0	0	0	0	0	1
Argentina**	0.3	3	5	2	0	0	0	0	0	0	1	0	0
Chile**	0.3	3	7	1	0	0	0	0	0	0	0	0	0
Greece	0.3	0	1	0	0	0	0	0	0	1	0	0	0
New Zealand**	0.2	4	1	2	0	0	0	0	0	0	0	0	0
Colombia**	0.2	5	5	5	5	0	0	0	0	0	0	0	0
Lithuania**	0.2	2	0	1	0	0	0	0	0	0	0	0	0
Slovenia	0.2	0	0	1	1	0	0	0	0	0	0	0	0
Estonia**	0.1	0	1	0	0	0	0	0	0	0	0	1	0
Costa Rica**	0.1	0	0	0	2	0	0	0	0	0	0	0	0
Latvia**	0.1	3	0	1	2	0	0	0	0	0	0	0	0
Little or No Enforcement (19 countries) 36.5% global exports													
China***	10.7	0	0	0	0	0	0	0	0	0	0	0	0
Japan	3.8	0	0	0	1	0	0	0	0	0	0	1	0
Korea (South)	2.9	0	1	0	0	0	0	0	0	1	0	1	0
Hong Kong***	2.3	0	0	0	0	0	0	0	0	0	0	0	0
India***	2.1	0	0	0	0	0	0	0	0	0	0	0	0
Mexico	2.0	0	0	3	0	0	0	0	0	0	0	0	0
Ireland	1.9	0	0	1	0	0	0	0	0	0	0	0	0
Russia	1.9	0	0	0	1	0	0	0	0	0	0	0	0
Singapore***	1.8	0	1	0	0	0	0	0	0	0	0	0	0
Belgium	1.8	1	4	0	0	0	0	0	0	0	0	0	0
Poland	1.3	1	1	1	0	0	0	0	0	0	0	0	0
Turkey	0.9	0	0	0	1	0	0	0	0	0	0	0	0
Czech Republic	0.8	0	0	1	0	0	0	0	0	0	0	1	0
Luxembourg	0.6	0	0	0	0	0	0	0	0	0	0	0	0
Hungary	0.5	0	0	0	0	0	0	0	0	0	0	0	0
Finland	0.4	0	0	0	0	0	0	0	0	0	0	0	0
Slovakia	0.4	0	0	0	0	0	0	0	0	0	0	0	0
Peru	0.2	0	0	0	0	0	0	0	0	0	0	0	0
Bulgaria	0.2	0	0	0	0	0	0	0	0	0	0	0	0

	Major cases concluded with subst. sanctions (weight of 10)				Other cases concluded with sanctions (weight of 4)				Total points	Minimum points required for enforcement levels depending on share of world exports		
Country (listed by share of world exports)	2016	2017	2018	2019	2016	2017	2018	2019	Past 4 years	Active	Moderate	Limited
Active Enforcement (4 countries) 16.5% global exports												
US	30	15	22	26	10	8	10	9	1236	416	208	104
UK	3	2	1	2	1	0	0	1	147	144	72	36
Switzerland	2	1	0	2	1	2	1	3	125	80	40	20
Israel	1	0	1	0	0	0	0	1	38	20	10	5
Moderate Enforcement (9 countries) 20.2% global exports												
Germany	1	1	2	1	9	10	10	12	273	304	152	76
France	0	0	1	2	0	0	2	4	104	140	70	35
Italy	1	0	0	0	1	1	0	1	69	104	52	26
Spain	0	0	0	0	0	1	0	0	45	80	40	20
Australia	0	0	0	0	0	1	1	1	34	52	26	13
Brazil	1	0	0	0	0	0	2	0	42	44	22	11
Sweden	0	0	0	0	1	0	0	0	23	44	22	11
Norway	0	1	0	0	0	0	0	1	16	24	12	6
Portugal	0	0	0	0	0	0	0	0	8	16	8	4
Limited Enforcement (15 countries) 9.6% global exports												
Netherlands	1	1	0	0	1	0	0	0	44	124	62	31
Canada	0	0	1	2	0	0	0	1	38	92	46	23
Austria	0	0	0	0	1	0	0	1	18	40	20	10
Denmark	0	0	0	0	0	0	0	0	10	32	16	8
South Africa**	0	0	0	0	0	0	0	0	16	16	8	4
Argentina**	0	0	0	0	0	0	0	0	12	12	6	3
Chile**	0	0	0	0	0	0	1	0	15	12	6	3
Greece	0	0	0	0	0	0	0	0	3	12	6	3
New Zealand**	0	0	0	0	0	0	0	0	7	8	4	2
Colombia**	0	0	0	0	0	0	1	0	24	8	4	2
Lithuania**	0	0	0	0	0	0	0	0	3	8	4	2
Slovenia	0	0	0	0	0	0	0	0	2	8	4	2
Estonia**	0	0	0	0	0	0	1	0	7	4	2	1
Costa Rica**	0	0	0	0	0	0	0	0	2	4	2	1
Latvia**	0	0	0	0	0	0	0	0	6	4	2	1
Little or No Enforcement (19 countries) 36.5% global exports												
China***	0	0	0	0	0	0	0	0	0	428	214	107
Japan	0	0	0	0	0	0	0	1	7	152	76	38
Korea (South)	0	0	0	0	3	1	1	0	25	116	58	29
Hong Kong***	0	0	0	0	0	0	0	0	0	92	46	23
India***	0	0	0	0	0	0	0	0	0	84	42	21
Mexico	0	0	0	0	0	0	0	0	3	80	40	20
Ireland	0	0	0	0	0	0	0	0	1	76	38	19
Russia	0	0	0	0	0	0	0	0	1	76	38	19
Singapore***	0	1	0	0	0	0	0	0	11	72	36	18
Belgium	0	0	0	0	0	0	0	0	5	72	36	18
Poland	0	0	0	0	0	0	0	0	3	52	26	13
Turkey	0	0	0	0	0	0	0	0	1	36	18	9
Czech Republic	0	0	0	0	0	0	0	0	3	32	16	8
Luxembourg	0	0	0	0	1	0	0	0	4	24	12	6
Hungary	0	0	0	0	0	0	0	0	0	20	10	5
Finland	0	0	0	0	0	0	0	0	0	16	8	4
Slovakia	0	0	0	0	0	0	0	0	0	16	8	4
Peru	0	0	0	0	0	0	0	0	0	8	4	2
Bulgaria	0	0	0	0	0	0	0	0	0	8	4	2

* OECD figures
**Without any major case commenced during the past four years a country does not qualify as being a moderate enforcer, and without a major case with substantial sanctions being concluded in the past four years a country does not qualify as being an active enforcer
***Non-OECD Convention country.

GLOBAL HIGHLIGHTS

This report analyses foreign bribery enforcement in 47 countries and classifies each country in one of four enforcement categories: Active, Moderate, Limited, and Little or no.

Only four of the 47 countries surveyed actively enforce against foreign bribery and only nine countries moderately enforce against companies that pay bribes abroad.

Nearly three-quarters of all countries have limited to little or no enforcement of foreign bribery cases, making up nearly half of all global exports.

This includes half of all G20 countries and eight of the top 15 global exporters.

Our research shows that between 2016 and 2019, the countries opened at least 421 investigations and 93 cases, and concluded 244 cases with sanctions, including 125 major cases concluded with substantial sanctions.

ENFORCEMENT LEVEL

Improvers and decliners

Active enforcement against foreign bribery has significantly decreased by more than one-third since 2018.

In 2020, only four out of 47 countries, making up 16.5 per cent of all global exports, actively enforced against foreign bribery, compared to seven countries and 27 per cent of global exports in 2018. The **United States**, the **UK**, **Switzerland** and **Israel** maintained their positions as active enforcers.

Six countries, accounting for 6.8 per cent of global exports, have improved their level of enforcement since 2018. These are **France, Spain, Denmark, Colombia, Slovenia** and **Estonia**. While no countries moved up to active enforcement, two countries – France and Spain – moved to moderate enforcement, with Spain jumping two levels from little or no enforcement.

In France, the Sapin II legislation introduced in 2017 gave enforcement authorities new tools. In Spain, a rising focus on anti-corruption efforts boosted enforcement.

Four countries – Colombia, Denmark, Estonia and Slovenia – improved from little or no enforcement to limited enforcement. Denmark brought no cases and its improvement is due to an increase in the number of its investigations. The same holds for Slovenia, which increased the number of its investigations from one to two.

Enforcement levels in four countries, accounting for 11.3 per cent of global exports, have declined since 2018.

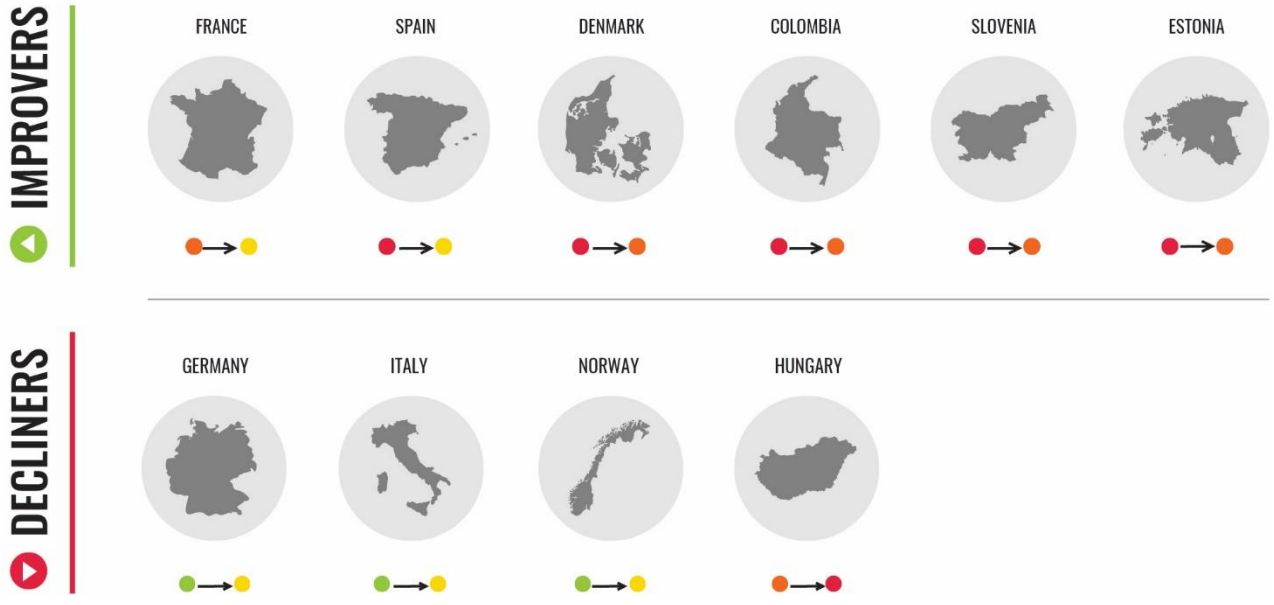
Two major exporters, **Germany** and **Italy**, dropped from active to moderate enforcement, as did **Norway**. **Hungary** declined from limited to little or no enforcement.

Germany's strong anti-bribery enforcement against individuals was not matched by comparably strong enforcement against companies.

In Italy, despite important new laws and a strict anti-corruption legal framework, lack of resources undermined the capacity of enforcement authorities to pursue and punish foreign bribery. Norway saw a string of acquittals, which contributed to its decline.

Peru, **Costa Rica** and **Latvia** are classified for the first time in this report, the former in little or no enforcement and the latter two in limited enforcement.

IMPROVERS AND DECLINERS



TRANSPARENCY OF ENFORCEMENT INFORMATION

Our assessment shows that most OECD Convention countries are still failing to publish foreign bribery enforcement information. This includes statistical data and information on court judgements or settlements.

The OECD WGB has repeatedly commented in country reviews on the importance of published statistics on foreign bribery enforcement and public information about concluded cases.

The OECD WGB Phase 4 review questionnaire requires countries to provide data covering each stage of the foreign bribery enforcement process.[2] This shows the kind of data that countries should regularly collect and publish.

Yet public information about enforcement is lacking.

Importance of public information on enforcement

Compiling statistics on foreign bribery enforcement and making these publicly available is essential to enable assessment of performance of the enforcement system, as the OECD WGB has pointed out in several country reviews.[3]

Public information about concluded cases makes it possible to determine whether sanctions for foreign bribery are effective, proportionate and dissuasive. Public information helps raise awareness of the risks of foreign bribery and how companies can manage those risks.[4]

Transparency about cases and offenders also facilitates debarment and other non-criminal sanctions, civil actions and criminal pursuit of implicated foreign public officials, as well as research and scrutiny by oversight agencies, journalists, academics and civil society groups.[5]

Naming offenders and the countries where bribes are paid acts as a deterrent and highlights which companies have failed to manage risks. Publishing details of corruption schemes is essential to better understand the loopholes and inadequacies in the enforcement framework that need to be addressed.

This information also raises awareness of the grave impacts of foreign bribery, ranging from detrimental effects on government budgets and services to interference with political party financing.

In most cases, the public interest in knowing details of case dispositions outweighs the defendants' right to privacy or the public interest in rehabilitation of offenders. Naming perpetrators both in the courtroom and in written case resolutions is a basic element of due process.

Country in focus: Colombia

In Colombia, the Superintendency of Corporations imposed a 5 billion peso (US$1.8 million) fine in 2018 on water conglomerate Inassa over charges of foreign bribery, stating that the firm allegedly either paid or offered bribes to public officials in Ecuador in 2016. As part of the decision, the regulator required the company to publish an extract of its ruling "in a medium of wide circulation and in a visible part of its website".[6]

Information is incomplete

Most OECD Convention countries still fail to publish foreign bribery enforcement information, including statistical data and information on charges filed and outcomes in cases of foreign bribery and related money laundering.

As a result, in many countries the best sources of information about investigations and cases are independent media outlets and investigative journalists.

Enforcement authorities in some countries publish annual reports on anti-bribery enforcement, with partial data and brief, selected case information. Others issue press releases or run databases with short summaries of the status of cases. These are helpful, but not a substitute for statistics and comprehensive published information on cases commenced and concluded.

For example, in **Canada**, an annual report is prepared for the House of Commons. In **France, Latvia, Mexico, Poland** and **Spain**, enforcement authorities also publish annual reports that highlight pending investigations and cases.

In some countries, like **Lithuania**, the **UK** and the **United States**, enforcement authorities regularly issue press releases about charges filed and outcomes.

In **France**, and the **Netherlands**, prosecutors also often issue press releases in significant foreign bribery cases, including when a settlement is concluded, sometimes naming the company involved.

Both the Prosecutor's Office and the Office of the Comptroller General in **Brazil** publish a considerable amount of information in online databases about pending and concluded cases. In **India**, a non-OECD Convention country, the Central Bureau of Investigation website provides case-related information about different enforcement stages.

Statistics are not published

OECD Convention countries provide annual data on cases concluded with sanctions to the OECD WGB, which is published in the OECD WGB's annual enforcement data reports.[7] For most countries, this is the only official data on foreign bribery enforcement which is publicly available.

While some countries publish enforcement statistics, most fail to publish separate statistics on foreign bribery enforcement.

In some countries, like **Argentina**, the data on foreign bribery can be obtained on request. In others, it is not compiled. In **Bulgaria**, the Supreme Judicial Council specifically mandated in 2016 separate reporting of foreign bribery data by the courts, but in practice it is difficult to extract this data from public sources.

The example of **Chile** is notable. The Public Prosecutor's Office and the Financial Analysis Unit publish detailed statistics on the number of crimes reported and investigated, cases opened and cases concluded on a quarterly and annual basis. This includes separate data on foreign bribery enforcement.

Court decisions are often hard to access

Almost all countries provide information on judgements at some court levels.

Countries providing free online access to court decisions at all levels include **Australia, Bulgaria, Estonia, Lithuania, Mexico, Slovakia** and **Spain**, although the information is often anonymised, which substantially reduces the benefits of access.

Extensive online access is also available in the **Czech Republic, Israel, South Korea, Poland, Russia, South Africa** and **Switzerland**. In non-OECD Convention countries, **China** offers considerable public access through three databases of court cases.

In other countries there are limitations on access to court decisions. In **Canada**, for example, court judgements are only available online by subscription, for a restricted audience. In other countries they can be obtained only in person from the relevant court. In many countries, only decisions of higher courts can be accessed. In **Peru**, no court decisions are available to the public.

Information about charges filed in foreign bribery cases is even more difficult to access than case outcomes – unless prosecutors choose to make announcements based on the public interest, as in countries such as **France**, the **UK** and the **United States**. Another source of such information is company filings with securities oversight bodies like the US Securities and Exchange Commission.

Information about non-trial resolutions is restricted

Non-trial resolutions or settlements can help enforcement authorities and companies to expedite case dispositions and reduce costs. These benefits should be offered in a manner that is transparent and accountable. Transparency of non-trial resolutions is especially important when they are used without judicial oversight, as occurs in several OECD Convention countries.[8]

In practice, there is a lack of adequate access to information about non-trial resolutions in most of the countries surveyed that use them.

The **United States** publishes extensive information about deferred prosecution agreements, but not about non-prosecution agreements and declinations.

At federal level in **Switzerland**, the Office of the Attorney General prepares anonymised, redacted extracts of summary penalty orders, which can be accessed on-site with some restrictions. In the **Netherlands** settlement agreements are not published in full.

> **Lack of publicity casts doubt on the quality of the justice done and can give the impression of allowing certain accused persons to enjoy preferential treatment without the fairness of that treatment being verifiable**
>
> OECD Phase 4 Report on Switzerland, 2018[9]

The OECD WGB could help

The OECD WGB collects statistics and case information from the parties to the OECD Anti-Bribery Convention during reviews and at its *tour de table*. It could play an important role in increasing enforcement transparency by publishing year-on-year statistics about all stages of foreign bribery enforcement (investigations, cases commenced, cases concluded) in its annual enforcement data report. It is also uniquely placed to establish a database of information about foreign bribery enforcement, including documents relating to cases commenced and concluded, as well as public information on investigations.

Country in focus: Brazil

In Brazil**,** leniency agreements resulting from the Operation *Lava Jato* investigations[10] are only partially accessible to the public in heavily redacted, anonymised versions providing little information.[11]

The annexes where the foreign bribery conduct is detailed remain under seal. This hinders public understanding of the offences committed and impedes independent evaluation of the proportionality and dissuasive effect of sanctions imposed.

Enforcement authorities and members of the public in the affected countries are deprived of key information that would help them to follow up on the domestic bribery cases.

Some of the leniency agreements, such as the one with Odebrecht, include confidential provisions requiring implicated companies to seek out officials in countries where they bribed to settle pending matters.[12]

Such arrangements foster opaque deal-making and deprive the public of the information needed to pressure any reluctant law enforcement officials into fully investigating domestic aspects of the corruption scheme.

BENEFICIAL OWNERSHIP TRANSPARENCY

Secret ownership of companies and trusts is an obstacle to prevention, detection and investigation of corrupt transactions, including laundering of the proceeds of crime in foreign bribery cases.

Beneficial ownership refers to the natural person or persons who ultimately own or control an asset. As recognised by the OECD WGB, public central registers of the beneficial ownership of companies and trusts would reduce bribery and money laundering opportunities and enhance detection and investigation of foreign bribery and related money laundering cases.[13] Yet opaque ownership is still allowed in most of the countries covered in this report, creating obstacles to enforcement. [14]

Shell companies facilitate foreign bribery

Foreign bribery cases over the last two decades reveal frequent use of shell companies to assist in the concealment of bribe payments and kickbacks.[15] Multinationals using shell companies have included Airbus, Odebrecht, Fresenius, Mobile TeleSystems (MTS) and SNC Lavalin**,** among many others.

The International Consortium of Investigative Journalists (ICIJ) identified 17 shell companies used in connection with the Saipem deal in Algeria alone.[16]

Public central registers would help

A Transparency International study in 2019 found that in 26 countries evaluated, enforcement authorities relied on reporting entities, such as financial institutions, corporate service providers, lawyers, notaries, accountants and real estate agents, as the main source of beneficial ownership information. This presented significant obstacles to tracking transactions and tracing culprits. The study also found that countries performed better in investigations when they had a central beneficial ownership register.[17]

Public access to central registers makes them more useful and accurate by enabling investigators to gain speedier access and allowing watchdog organisations to monitor the information.

Progress is slow

The EU's 4th Anti-Money Laundering Directive of 2015 requires all EU countries to create a central register accessible to competent authorities and to members of the public with a legitimate interest.

The deadline for implementation was June 2017. However, as of June 2020, infringement procedures were pending against 13 EU member states due to the lack of or delay in the notification of national transposition measures or their incompleteness.[18]

The EU's 5th Anti-Money Laundering Directive expanded previous obligations, broadening the group of entities subject to the rule and those entitled to inspect the information contained in the register. The directive requires public access to the register for EU-based companies and access for competent authorities to the register of trusts. While the deadline for implementation was January 2020,

only 11 member states (41 per cent) had fully complied as of June 2020.[19]

According to our research, only seven out of the 47 countries surveyed in this report have central registers which are publicly available with no restrictions, while 17 countries have no central register at all.

Even where there is a central public register, important elements are needed to ensure its usefulness. [20]

Registers should be adequately resourced and contain information in an open data format on the beneficial owners of all corporate entities operating in the country, including foundations, trusts and partnerships.

The definition of a beneficial owner should be clearly and narrowly specified, and registers should provide for the timely collection and verification of appropriate information, and effectively sanction those who do not comply.

Austria and **Denmark**, for example, have automated cross-checks against government databases. Austria also has automated sanctions if information is missing and warns users that a company has potentially incomplete or wrong information.

In Denmark, if beneficial ownership information is not checked, a company will not be able to incorporate.[21] The **Czech Republic**, in contrast, does not impose any sanctions on companies for failure to register.

TABLE 2: BENEFICIAL OWNERSHIP

Status	Countries
Central register publicly accessible without obstacles	**Bulgaria, Denmark, Latvia, Luxembourg, Poland** (not for trusts), **Slovenia** (hard to use), the **UK** (except for Overseas Territories and Crown Dependencies)
Central register, publicly accessible with paywall or other restrictions	**Austria, Belgium, Estonia, Ireland, Portugal, Slovakia, Sweden** (majority of companies) – all have paywalls, some also other restrictions **Germany**: Registers centrally connected (fee payable for each access) Non-OECD: **India**
Central register, not publicly accessible	**Brazil, Czech Republic, Costa Rica, Finland, France, Spain** – all require a lawful or legitimate interest Non-OECD: **Singapore**
No central register, but concrete steps to implement	**Colombia** (legislation), **Italy**, the **Netherlands** (legislation), **Norway, Peru, Mexico** (preliminary steps), **Greece** (central public register established, but not currently accessible)
No central register	**Argentina, Australia, Canada, Chile, Hungary** (law, but no register), **Israel, Japan, South Korea, Lithuania** (preliminary steps as of March 2020), **New Zealand, Russia, South Africa, Switzerland, Turkey, United States** Non-OECD: **China** and **Hong Kong**

COMPENSATION OF VICTIMS

Bribery of foreign public officials is far from a victimless crime.

Those harmed by foreign bribery should be represented and compensated in foreign bribery proceedings. International standards call for states to provide access to remedy for corruption victims and for companies to repair the harm done. National legal frameworks and practice show this can be achieved in foreign bribery cases, although it is seldom done. More detailed guidance is needed for compensation in foreign bribery cases.

Foreign bribery harms victims

Foreign bribery often causes serious harm to those affected, together with adverse impacts on human rights.[22] In large-scale foreign bribery cases, the harm may be diffuse, indirect and widely shared, resulting from diversion of state funds and the negative impact on state institutions.[23]

States may suffer measurable financial damage from paying higher prices, obtaining lower quality goods and services or making unnecessary purchases through procurements influenced by cross-border bribery.[24] States may also lose vital revenues from corruptly obtained business authorisations, licences or permits, or bribery to secure favourable tax or customs treatment.[25]

Companies that lose out in a procurement process or licence award influenced by corruption may suffer direct, concrete and individual harm.

Consumers may experience indirect, but measurable harm, such as where bribery to gain a licence leads to higher utility or telecoms prices for users.

Illicitly obtained permits and licences may also cause individuals and groups to suffer loss of health, livelihood or housing, or may result in damage to the environment.

International standards cover victims' remedies

Countries have a duty to protect human rights in other countries by enforcing existing laws that directly or indirectly regulate businesses' adverse effects on human rights. This is highlighted by the UN Guiding Principles on Business and Human Rights, which have been incorporated into the OECD Guidelines for Multinational Enterprises.[26] Given the nexus between corruption and adverse human rights impacts, this duty to protect includes enforcement against foreign bribery.

International standards regarding victims' remedies include:

+ 1985 UN General Assembly Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, which provides some guidance on access to justice and fair treatment, restitution, compensation and assistance to victims of abuse of power.[27]
+ UNCAC Article 32, which calls on States Parties to protect and enable victims to have their views and concerns presented and considered during criminal proceedings against offenders.
+ UNCAC Article 35, which provides for States Parties to introduce measures ensuring that those who have suffered damage from corruption "have the right to initiate legal proceedings against those responsible for that damage in order to obtain compensation".[28]
+ Other provisions in the UNCAC chapter on asset recovery also address victims' remedies, including Articles 53(b) on measures to permit

courts to order compensation and Article 57(3)(c) referencing compensation of victims.[29]

However, there is no detailed international guidance on compensation of victims in foreign bribery cases.

National laws provide for victims' compensation

Many national legal frameworks allow for remedies for crime victims, whether through crime victims statutes, through *partie civile* status in proceedings in civil law countries,[30] recognition of damage mitigation by offenders, or special provisions in legislation on non-trial resolutions or settlements. The basis for such claims includes contractual restitution, tort damages and unjust enrichment.[31]

A wide range of options for compensation of victims of corruption were analysed in a 2016 UNODC report.[32] A 2019 OECD report on non-trial resolutions in foreign bribery cases outlined the opportunities for direct compensation to victims in such cases in 27 jurisdictions.[33]

The **UK** is notable in having introduced in 2018, "general principles to compensate overseas victims (including States) in bribery, corruption and economic crime cases".[34]

Countries making provision for compensation in the context of settlements include **Canada, France,** the **Netherlands** and the **United States**.[35]

In some countries, such as **Czech Republic, Mexico, Spain** and the **United States**, mitigation of damages by the offender may be considered as a mitigating circumstance in relation to criminal liability.[36]

Compensation is rare in foreign bribery cases

In practice, there are few examples of victims' restitution or compensation in foreign bribery enforcement proceedings.

In the **UK**, small amounts of restitution or compensation to states have been awarded in a handful of cases to date.[37]

However, in recent major settlements the UK Serious Fraud Office did not seek compensation and the court decisions in those cases have been unnecessarily restrictive in applying case law limiting compensation to clear and simple cases. [38]

In **France** and **Switzerland**, *partie civile* status has been granted to affected states, and in at least three cases, some compensation was granted.

For example, in 2007, in a French money laundering case against a former Nigerian energy minister, the court awarded Nigeria €150,000 (US$177,000) as compensation for *prejudice moral* (nonpecuniary damages).[39]

In the **United States**, of an estimated 500 cases under the Foreign Corrupt Practices Act (FCPA),[40] only a handful of settlements or judgements involving foreign bribery resulted in restitution, with small awards made to the affected state.[41]

More often than not, disgorged profits from corrupt deals secured by foreign bribery land in the national treasuries of supply-side countries, while the people affected by the corruption are "left out of the bargain".[42]

For example, in the Airbus case, billions of dollars in fines and confiscated proceeds were paid into state coffers in **France**, the **UK** and the **United States** without any compensation to the affected countries or people.

Airbus case

2020 saw the largest foreign bribery settlement of all time, as Airbus, a global provider of civilian and military aircraft based in France, agreed to pay nearly US$4 billion in combined penalties to France, the UK and the United States to resolve foreign bribery charges.

Claimants face hurdles in the form of rules restricting which victims qualify to make claims, limitations on standing for non-state victims' representatives and on collective redress, requirements setting a high bar for proving causation and challenges to quantification of harm.[43]

There are also several other reasons why victims' compensation is infrequent:

+ Where states are concerned, if those in power are the beneficiaries of international corruption, they are unlikely to have an interest in claiming compensation for the victims.

+ State and non-state victims may be held back by lack of information about proceedings under way in exporting countries. This is particularly the case with settlements which are often negotiated in secret.
+ Enforcement agencies in some supply-side countries reportedly reason that if they provide compensation to victim states, the funds will be recycled into further corruption.[44]

The law on diffuse harm is evolving

Consideration should be given to operationalising the concepts of 'diffuse harm', 'social damage' and 'collective damage' in assessing compensation in foreign bribery cases.

The law on diffuse harm is evolving in many countries in the corruption context as it did when environmental crimes first became actionable. The concept of social damage and related concepts are recognised in several countries and are associated with compensation for damages to the public interest. This includes damage to the environment, to the credibility of institutions, or to collective rights such as health, security, peace, education or good governance.[45]

Costa Rica is a pioneer among OECD Convention countries in allowing compensation claims by the state for 'social damages'.[46] In **France**, the courts have accepted claims for compensation for non-pecuniary damages (pr*ejudice moral*) made by state representatives in corruption cases.[47] **Peruvian** prosecutors have claimed compensation for economic harm to the state in cases of corruption of national public officials.[48] Some states provide for non-pecuniary reparations for diffuse harm.[49]

Outside the corruption arena, the **United States** recognises "community restitution" in connection with certain drug offences where there is no identifiable victim but the offence causes public harm.[50]

Expansive standing models exist

"Standing" (*locus standi*) refers to whether the complainants are legally entitled to bring a case to court. Compensation of victims in criminal and civil corruption cases relating to harm from foreign bribery may turn on recognition of their standing.

This is of particular importance for non-state representatives of victims in foreign bribery cases seeking compensation for collective harm, where state representatives are unable or unwilling to bring claims or are disqualified, as in grand corruption cases.

Some countries, such as the **United States**, have restrictive standing rules, usually requiring a plaintiff to demonstrate a personal injury that is particular and concrete, rather than broad, diffuse or abstract.

Lessons can be learned from other jurisdictions, where broad standing provisions allow citizens or civil society organisations to bring claims in the public interest. For example, in **Spain**, all citizens can invoke the right to reparation in matters that involve the public interest and do not need to show direct, personal harm. [51] In **France**, the supreme court ruled in favour of allowing an anti-corruption association, TI France, to file a complaint as *partie civile* in a major money laundering case, acting in the collective interest.[52] Other countries with liberal standing rules for citizens or civil society organisations include **Argentina**, **Colombia,** and **South Africa**.[53]

Country in focus: Democratic Republic of Congo

The people of DRC are starting to forge a path for victims in foreign bribery cases. In January 2020, Congolese citizens working with the UK NGO RAID filed claims[54] in relation to a UK Serious Fraud Office investigation of ENRC, a mining company.[55] The investigation is focused on allegations of fraud, bribery and corruption around the acquisition of substantial mineral assets in the DRC.

In Belgium, in May 2020, Congolese citizens applied to be *partie civile* in a long-running investigation by Belgian prosecutors of Semlex, a passport printing company operating in several countries in Africa, and the subject of two exposés by Reuters.[56]

Damages can be calculated

Measuring the damage caused by corruption can be a challenge in case of claims of diffuse, collective harm.

It should be recognised that foreign bribery can cause harm far out of proportion to the bribe paid or the benefits gained by the offenders. As noted in the recent interim report by the FACTI Panel and in a report by the OECD, a US$1 million bribe can easily

create US$100 million worth of damage, in the form of additional costs and poor investment decisions.[57]

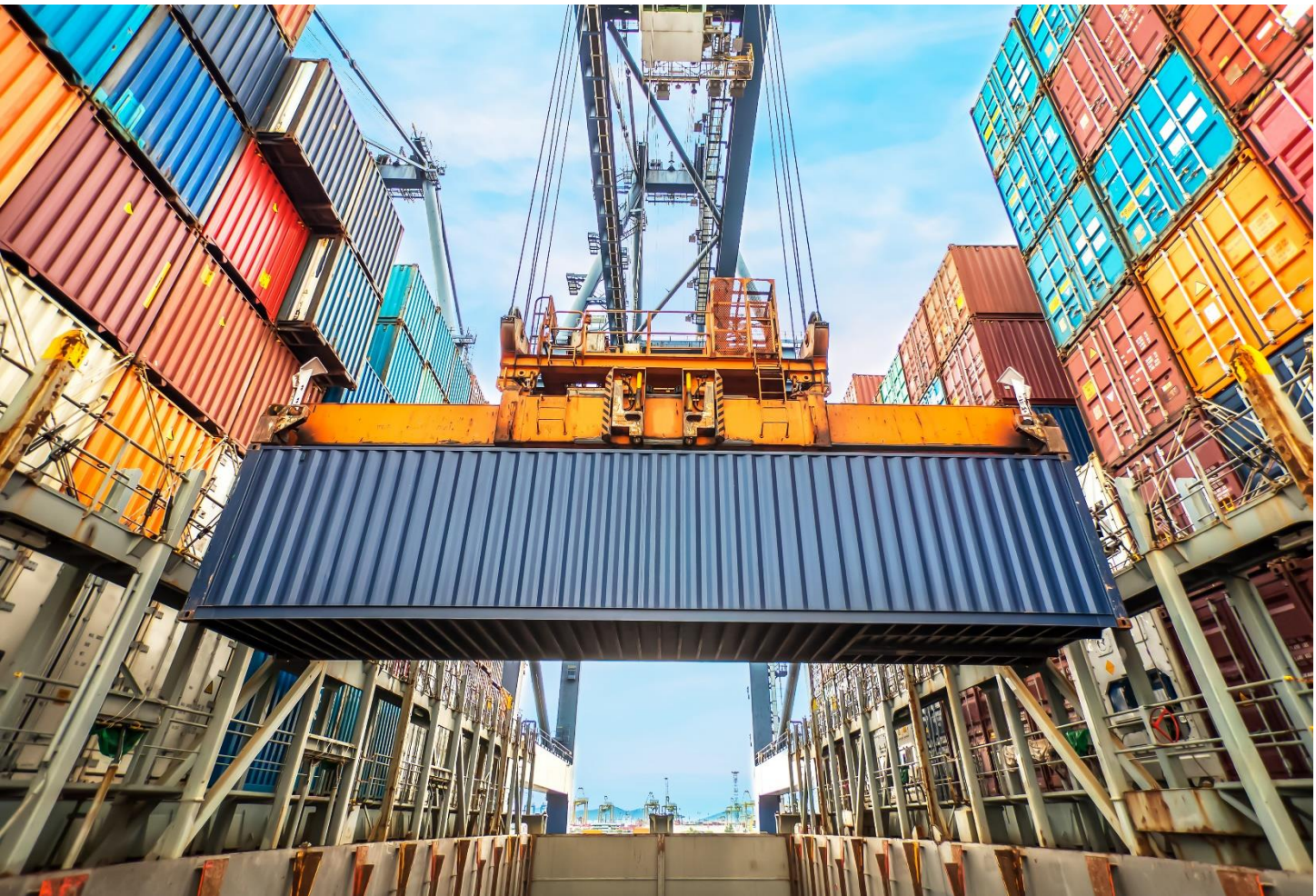
In considering social damage awards, an affected state or group of victims should, at a minimum, be awarded the confiscated assets or "disgorged profits" recovered. Where appropriate, a sum could be subtracted to cover the costs of the enforcing jurisdiction. Beyond that, formulae can be developed for calculating social damages.

Accountable asset return is possible

To counter concerns about misuse of returned funds, there are emerging standards for the transparent and accountable return of assets, including the 2017 Global Forum on Asset Recovery principles.[58]

In addition, models for organising such returns already exist.[59] In Nigeria, the World Bank has assisted with the accountable administration and monitoring of US$321 million in embezzled Abacha II funds, returned by Switzerland in 2017.[60] Civil society groups are also actively monitoring the use of the funds in the framework of the MANTRA project.[61]

Photo: Molpix/Shutterstock.com



INTERNATIONAL COOPERATION

International cooperation is fundamental in foreign bribery and related money laundering investigations and cases, especially given significant cross-border challenges involved.

International cooperation refers to formal mutual legal assistance (MLA), extradition and informal exchanges of information for intelligence gathering purposes where lawfully allowed. Another form of cooperation among countries consists in reaching joint multi-country settlements or other arrangements for handling cases. While such cooperation is important, there are persistent challenges and new structures could help.

International cooperation is key

Effective international cooperation between countries is crucial for the successful investigation, prosecution and sanctioning of international corruption offences because suspects, evidence, witnesses and proceeds of corruption may be located in multiple jurisdictions.

For this reason, the OECD WGB supports biannual meetings of law enforcement officials

Challenges to mutual legal assistance

Increasingly, there are examples of effective international cooperation in investigations.

However, despite some successful examples, many of the challenges to international cooperation and MLA identified in our 2018 report remain, including inadequate legal frameworks, limited resources, lack of coordination and long delays.

In some countries there is a lack of an effective legal basis for cooperation related to MLA. In **Australia**, for example, there are barriers to providing MLA to countries that apply civil or administrative liability to legal persons and obstacles to international foreign bribery investigations.

Difficulties arise in **Austria** in cases which involve non-EU member states with which the country has no treaties on cooperation in criminal matters.[62]

Differences in legal and procedural frameworks present another challenge. A Transparency International Brazil report in June 2019 about MLA requests made by and received from Brazilian authorities in the country's Operation *Lava Jato* investigations found that **Argentina**'s response to a high number of requests was poor, due to differences in the two countries' legislation.[63]

Delays in responses to MLA requests and administrative barriers create further hurdles. **South Korean** prosecutors are reportedly reluctant to file MLA requests, because they must decide whether to prosecute within three months.[64]

The lack of resources and training for foreign bribery enforcement in numerous OECD Convention countries also can hinder effective MLA work by their enforcement authorities. However, **Peru** showed in 2017 and 2018 that even a country with resource constraints could send 68 MLA requests to the Brazilian authorities conducting the *Lava Jato* investigations.[65]

Dual criminality requirements may also hamper MLA for foreign bribery enforcement. Since **Hong Kong** has no foreign bribery offence, an MLA request relating to foreign bribery may not satisfy its dual criminality requirement for coercive MLA (eg. search warrant) unless the underlying conduct constitutes a crime under Hong Kong law. A pervasive issue in many cases is also the fact that

countries where the bribery took place may not respond to MLA requests or may not be considered trustworthy.

Coordinated handling of cases

In addition to international cooperation in investigations, coordination between enforcement authorities in bringing charges and concluding non-trial resolutions can also help to ensure robust enforcement across borders. In recent years, several important global settlements, such as in the Siemens, Odebrecht and Airbus cases, have involved multiple countries, albeit seldom those affected by the bribery.

Such coordination is challenging across borders but provides a crucial opportunity to help smaller and less experienced countries build their enforcement capacities.

Many non-US companies have been snared in robust US FCPA enforcement, which has sometimes meant that their home countries do not engage in enforcement on grounds of their application of an international double jeopardy (*ne bis in idem*) principle.[66]

New infrastructure could help

A key approach to improving international cooperation in multi-jurisdictional cases is the formation of joint investigation teams and information-sharing agreements. Cooperation can also be boosted by international meetings of law enforcement officials, such as the OECD WGB-organised meetings of prosecutors.

While these approaches provide a valuable basis for *ad hoc* cooperation, dedicated coordination bodies could provide more ongoing, sustained support to international investigations, helping to overcome legal, bureaucratic and language barriers. They could also enable the pooling of resources among enforcement authorities.

More permanent structures at international, regional or sub-regional levels to enhance international cooperation should be considered. Successful models include the International Anti-Corruption Coordination Centre, launched in July 2017 to assist with effective coordination of grand corruption investigations, including foreign bribery cases.[67]

Other examples are the European Union Agency for Criminal Justice Cooperation (Eurojust), which supports coordination and cooperation between national investigating and prosecuting authorities within the European Union (EU),[68] and the European Public Prosecutor's Office, currently being set up, which has powers to investigate and prosecute crimes against the EU budget in participating EU member countries.[69]

The continuity of bodies of this kind enables them to acquire valuable experience and know-how in assisting or carrying out cross-border enforcement.

Data on MLA is lacking

Publication of data on MLA requests is especially relevant for foreign bribery enforcement, as it enables monitoring of the level of international cooperation and how countries are performing.

However, few countries publish statistics on MLA requests made and received. While **Australia, Brazil, Bulgaria, France, Lithuania** and **Spain** publish MLA data, they do not distinguish between foreign bribery-related and other MLA requests.

PARENT COMPANY LIABILITY FOR SUBSIDIARIES

Holding parent companies liable for failure to prevent illicit activities of companies they own or control is increasingly recognised as an important tool to help prevent foreign bribery.

The OECD's 2016 study *on Liability of Legal Persons for Foreign Bribery* found a considerable lack of clarity in most of the 41 countries studied regarding the conditions for parent company liability for subsidiaries and affiliates.[70] OECD WGB country reviews have also found inadequacies in this regard.

Parent companies should be held responsible for a subsidiary's lack of adequate procedures to prevent foreign bribery.

Parent company liability would help improve integrity

Ensuring parent company liability for subsidiaries and affiliates would help raise standards of integrity across corporate groups. It would act as an important deterrent and serve the interests of justice, including for victims.[71]

Certain levels of ownership imply both control and benefit from the activities of subsidiaries or group members as far as foreign bribery is concerned.

Therefore, principles of limited liability and separation of entities should be restricted to encourage economically and socially responsible parent-subsidiary and company group behaviour in relation to foreign bribery and other offences.[72]

Requiring that ownership chains be declared in foreign bribery cases and named in official press releases and reports about those cases could deter unscrupulous actors and help track patterns within corporate groups.

In the context of anti-money laundering, 25 per cent ownership qualifies a natural person as a beneficial owner or controller. This threshold could be adopted to determine whether a parent company is jointly or partially liable for corrupt activities of entities in a company group.

Liability could also be based on contractual rather than ownership relations.

Rules are unclear in many countries

In most countries, parent companies are liable for subsidiaries when the parent participates in, or directs, a subsidiary's wrongful conduct.

In some countries, the parent company may also be liable if it knew of or ratified the acts of its subsidiary.

A small minority of countries explicitly foresee liability in cases of legal or functional control.

The OECD study in 2016 also showed that the legislation in many countries leaves uncertain the full range of conditions for parent company liability.

Country examples to consider

Country examples, including some provided in the OECD study, show models to consider for holding parent companies liable for their subsidiaries.

In the **United States**, in the context of FCPA enforcement, parent companies can be held liable for violations by subsidiaries under traditional agency principles.[73] At the same time, under the FCPA's accounting requirements, an issuer's responsibility to maintain accurate books and records extends to the books and records of the subsidiaries and affiliates under its control, including foreign subsidiaries.[74]

Thus, a subsidiary's misstated financial records may potentially result in an FCPA books and records violation for its parent company.

Parent-controlled or affiliated companies in **Brazil** are jointly liable for the "perpetration of acts" covered by the corporate liability law. In **Italy**, any company in a corporate group can be liable if any relationship exists, organic or even de facto.

In **Slovenia** a parent company can be held liable if it "benefited from the bribe given by a subsidiary". This approach potentially encompasses wrongdoing that objectively benefits a parent company, even though the subsidiary that committed the offence may not be controlled by, or otherwise acting for, the parent company at the time of the offence.[75]

In 2010 in **Norway**, a parent company was held liable without fault for environmental damage caused by a subsidiary before it was acquired by the parent. The court attached weight to the shareholder being a company rather than an individual investor.[76]

In the **UK** liability can be imposed if a legal person failed to prevent an offence by a related legal person deemed to be an "associated person".

France's Sapin II legislation provides a good example of how to design corporate responsibility throughout the ownership chain. It requires large companies to introduce an anti-corruption compliance programme, which applies equally to parent companies and their subsidiaries and controlled entities with head offices in France.

Logically, this requirement should apply to subsidiaries and controlled entities with head offices in other countries as well.

The French Duty of Vigilance Law establishes additional standards of parent company responsibility. It requires parent companies to introduce "vigilance measures" to identify risks and prevent adverse human rights violations and human health, safety and environmental impacts.

These violations or impacts could result from the parent companies' own activities, from operations of companies they control, or from operations of their subcontractors and suppliers, with whom they have an established commercial relationship.[77]

These models offer the possibility of promoting higher standards throughout corporate groups and should be considered as part of an OECD WGB discussion of best practices in parent company liability for subsidiaries.

Skoda JS a.s. case in Ukraine

Parent company liability for subsidiaries in foreign bribery cases would mean additional deterrence.

This is illustrated by a case in Ukraine, where two intermediaries are on trial in relation to a tender award by state enterprise NNEGC Energoatom to Czech company Skoda JS a.s. for the supply of equipment for nuclear power stations.[78]

The Czech company is a subsidiary of Netherlands-registered OMZ B.V., which is part of the Russian OMZ Group (Uralmash-Izhora Group), in turn owned or controlled by Russia's state-owned Gazprombank.[79]

With parent company responsibility to ensure adequate anti-corruption preventive measures in its subsidiaries, the Dutch and Russian parent companies might be held liable if the Czech company were found liable for foreign bribery.

TRENDS IN LEGAL FRAMEWORKS AND ENFORCEMENT SYSTEMS

Since our 2018 report, many countries have made improvements to their national legal frameworks and enforcement systems, while a few have regressed.

Many countries still have significant deficiencies in laws, institutions and processes which hinder enforcement. These range from weak anti-money laundering requirements and oversight, to lack of whistleblower protection, or severe lack of resources and limited training to handle complex cross-border cases.

Positive developments

In the **European Union**, the 4th and 5th Anti-Money Laundering Directives, together with the Whistleblower Protection Directive, are poised to improve national legal and institutional frameworks.

Once transposed into national law, these directives should help improve the detection and investigation of corruption and money laundering offences.

In **Chile**, new legislation in 2018 expanded the scope of the foreign bribery offence, increased related sanctions and extended the statute of limitations.

Legislative amendments in **South Korea** expanded the scope of foreign bribery and increased fines and penalties.

In **Italy**, long-awaited legislation in 2019 extended the statute of limitations and increased sanctions for bribery.

Latvia made several improvements to its legal framework, including the introduction of a new whistleblower protection law in 2019. The country also made improvements to anti-money laundering laws and amended provisions on confiscation of criminally acquired property. **Lithuania** also adopted a whistleblower protection law in 2019.

Some countries have strengthened their enforcement systems. In **Mexico**, a Special Anti-Corruption Prosecutor was appointed in 2019 and in **Slovakia**, a new Whistleblower Protection Office was due to start operation.

In **South Africa**, a Multi-Agency Task Team was established to help coordinate foreign bribery investigations and in the **United States** there was an increase in enforcement against actors on the demand side of foreign bribery.

Another notable development concerns enforcement against two banks, ING in the **Netherlands** and PKB Privatbank in **Switzerland**, which were held accountable for failure to prevent foreign bribery-related money laundering.

The **Netherlands** also brought charges against an accounting firm, EY, for failure to report unusual transactions in a foreign bribery-related case, but it is unclear how that case concluded.[80]

In **Switzerland**, two foreign bribery investigations were triggered by complaints by an NGO, Public Eye, one against Credit Suisse[81] and one against Glencore, a commodity miner and trader.[82]

Negative developments

In **Argentina**, efforts to introduce non-conviction-based confiscation were thwarted by a lack of agreement between the executive and legislative branches of government.

The **Greek** parliament adopted a new Penal Code and Procedure in June 2019 that downgraded active bribery from a felony to a misdemeanour, with an associated decrease in sanctions, among other points of concern. After a joint ad hoc visit by representatives of the OECD WGB and the Group of States against Corruption (GRECO), and a change of government, the new code was amended in November 2019.

Setbacks in the anti-corruption legal and international framework in **Brazil** in 2019 and 2020 triggered a public statement of concern by the Financial Action Task Force and a High-Level Mission to Brazil by the OECD WGB in November 2019.

The troubling developments in Brazil included a Supreme Court injunction that virtually paralysed the country's anti-money laundering system; growing political interference by the president in anti-corruption institutions; and the approval, in Congress, of legislation detrimental to the independence of law enforcement agencies and the accountability of political parties.[83]

Other countries were notable in their failure to follow through on their OECD Convention obligations. The OECD WGB sent a High-Level Mission to **Sweden** and discussed sending one to **Turkey**, due to concerns about their lack of progress in addressing weaknesses in their frameworks and enforcement frameworks.

In the case of Sweden, the mission appears to have triggered new legislation strengthening the liability of legal persons.

Continuing weaknesses in legal frameworks

Despite some improvements in legal frameworks, many inadequacies remain. In **Austria, Costa Rica, Greece, Hungary, Poland**, **Portugal** and **Russia** there are deficiencies in the legal definition of the offence of foreign bribery.

A lack of adequate protection of whistleblowers in the public or private sectors continues to be a challenge in 25 parties, while a constraining statute of limitations or other time limits are a problem in **Belgium, Estonia, Germany, Japan** and **Korea**.

In **Australia, Japan** and **Korea**, sanctions are remarkably low, while legal provisions on sanctions for companies are inadequate in countries including **Austria, Colombia, Denmark, Finland, Germany, Greece, Hungary, Israel, Poland, Slovakia, South Africa, Switzerland** and **Turkey**. In some countries, such as **Argentina, Chile** and **Costa Rica**, there are inadequate provisions on asset confiscation.

There are also deficiencies in provisions on corporate liability, in countries including **Denmark**, **Ireland**, **Norway**, **Peru, Poland, Portugal** and **Turkey**, as well as lack of criminal liability of companies in multiple countries. There is a lack of guidelines for companies on an adequate prevention model, in countries including the **Netherlands**, **Norway, Peru** and **Switzerland** among others.

Continuing inadequacies in enforcement systems

Inadequacies in the enforcement system, whether a lack of independence of justice institutions or insufficient resources for handling complex cross-border cases, are critical barriers to foreign bribery enforcement.

A recent report by Transparency International France noted that "there can be no real independence without strengthening the means allocated to justice: human and financial resources and the removal of legal obstacles to justice".[84]

The SNC Lavalin case in **Canada** demonstrated the importance of prosecutorial independence. In this case, the justice minister/attorney general resigned after alleging that members of the government improperly attempted to influence her to offer a non-trial resolution to the company.[85]

Concerns about the independence of judges or prosecutors have also been raised in **Argentina, Austria, Brazil, Canada, Czech Republic, France, Japan, Latvia, Poland, Russia, Slovakia, Spain** and **Turkey**.

Lack of resources, staff or training for enforcement bodies or the courts are a problem in over 25 countries, including **Argentina, Belgium, Canada, Chile, Colombia, Costa Rica, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Ireland, Israel, Italy, Korea, Latvia, Mexico, New Zealand, Peru, Poland, Portugal, South Africa, Spain** and the **UK**.

In 2019, a GRECO report found that the **Belgian** federal police were in crisis, particularly the departments tasked with combatting corruption, which lack resources and staff. Previous *Exporting Corruption* reports and an OECD WGB statement dating back to 2013 also found a serious lack of resources for prosecution services and the appeals court.

Interagency coordination or clarification of overlapping competences among agencies are areas for improvement in **Brazil, Bulgaria, Canada, Colombia, Costa Rica, Denmark, Finland, France, Korea, Latvia, Norway, Spain** and **Switzerland**.

Non-trial resolutions

Non-trial resolutions or settlements offer an economic way to hold companies accountable for wrongdoing in foreign bribery cases.

Such resolutions can help incentivise self-reporting, boost enforcement of foreign bribery laws and improve corporate compliance. However, they may not act as a significant deterrent to foreign bribery if low standards apply.

In many countries that use non-trial resolutions, information on their outcomes is inaccessible to the public or can be obtained only in anonymised, abbreviated format.

Non-trial dispositions in many countries also fail to meet standards of accountability and due process, lacking clear guidelines and judicial review. Often, they fail to provide effective, proportionate and dissuasive sanctions.

Countries with weaknesses in their approaches to non-trial resolutions include **Belgium, Canada, Chile, Costa Rica, Estonia, France, Germany, the Netherlands, Norway, Switzerland**, and the **UK**.

The OECD WGB Phase 3 Report on **Estonia** recommended that Estonia provide appropriate guidance on what factors it takes into account when entering into a settlement agreement.[86] The OECD WGB also said the country should consider the degree of mitigation of sanctions to ensure that plea bargaining does not impede effective enforcement.

In the **UK**, the recent Airbus judgement suggests an unwelcome shift away from self-reporting as a condition for a deferred prosecution agreement (DPA). DPAs should only be used in cases of strong public interest, with utmost transparency, and to help encourage self-reporting by others in the future.

Transparency International's recommendations on settlements in 2015 and its joint letter to the OECD in 2018, sent with three other civil society organisations, propose standards for addressing these issues.[87]

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CHINA AND OTHER MAJOR EXPORTERS (NON-OECD)

Major exporters like China, Hong Kong, India and Singapore have a responsibility and obligation to combat foreign bribery.

China criminalised bribery of foreign public officials following its ratification of the UN Convention against Corruption, which requires countries that are parties to do so. There have been no known examples of enforcement by China against foreign corrupt practices by its companies, citizens or residents, even though Chinese companies and individuals have been the subject of publicly reported investigations and charges in numerous other countries.

As the world's leading exporter, with more than 10 per cent of global exports annually, China has a special responsibility with respect to the practices of its companies and businesspeople abroad. In view of its status, China has a significant impact on trade practices globally.[88]

Hong Kong, India and **Singapore** lack specifically targeted legislation to prohibit bribery of foreign public officials. Only in Singapore has there been any enforcement activity in the last four years.

In **India**, bribery of foreign public officials is not criminalised at all, despite the fact that the country is a party to the UN Convention against Corruption, which requires it.

Major exporters such as China, Hong Kong, India and Singapore have an important role to play in tackling the supply side of corruption in international trade and helping to prevent a race to the bottom.

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METHODOLOGY

In *Exporting Corruption*, Transparency International places OECD Convention countries in one of four categories showing their level of enforcement of the convention in the period 2016-2019 (the previous report covered 2014-2017):

+ **Active enforcement**
+ **Moderate enforcement**
+ **Limited enforcement**
+ **Little or no enforcement.**

"Active enforcement" reflects a major deterrent to foreign bribery. "Moderate enforcement" shows encouraging progress, but still insufficient deterrence, while "Limited enforcement" indicates some progress, but only little deterrence. Where there is "Little or no enforcement", there is no deterrence.

Transparency International takes into account two factors to categorise the OECD Convention countries according to enforcement level:

+ **Different enforcement activities and point system weighting**
+ **Share of world exports.**

Factor 1: Different enforcement activities and point system weighting

Each country is evaluated based on its enforcement activities, in terms of effort and commitment to enforcement, as well as deterrent effect, via investigations, filing charges to commence cases and concluding cases with sanctions. Cases concluded without sanctions are not counted. Commencing or concluding a major case[89] is considered to involve more effort and deterrence. Concluding a major case with substantial sanctions[90] is considered to involve the most effort and deterrence.

The weighted scores for the different degrees of enforcement are as follows:

+ **for commencing investigations – 1 point**
+ **for commencing cases – 2 points**
+ **for commencing major cases – 4 points**
+ **for concluding cases with sanctions – 4 points**
+ **for concluding major cases with substantial sanctions – 10 points**

The date of commencement of a case is when an indictment or a civil claim is received by the court. Prior to that, it is counted as an investigation.

This point system reflects two factors: 1) the level of effort required by different enforcement actions, and 2) their deterrent effect. Based on expert consultations, it was agreed that concluding a major case with substantial sanctions requires the greatest effort and has the greatest deterrent effect of any enforcement efforts. Likewise, commencing a case requires more effort and has greater deterrent effect than launching an investigation. Therefore, it was agreed to differentiate and give extra points to these different enforcement levels.

For the purposes of this report, foreign bribery cases and investigations include civil and criminal cases and investigations, whether brought under laws dealing with corruption, money laundering, tax evasion, fraud, or violations of accounting and disclosure requirements. These cases and investigations concern active bribery of foreign public officials, not bribery of domestic officials by foreign companies.

Cases and investigations involving multiple corporate or individual defendants, or multiple charges, are counted as one if they are commenced as a single proceeding. If, during the course of a proceeding, cases against different defendants are separated, they may be counted as separate concluded cases.

Cases brought on behalf of European Union institutions or international organisations are not counted – for example, in Belgium and Luxembourg. These are cases identified and investigated by European Union bodies and referred to domestic authorities.

Factor 2: Share of world exports

The underlying presumption is that the prevalence of foreign bribery is roughly in proportion to export activities and that exporting countries can be compared. Transparency International recognises that the potential for foreign bribery could be affected by factors other than the level of world exports, such as foreign investment, a country's culture of business ethics, and corruption risks in specific industry sectors and economies. As reliable country-by-country information for most of these factors is not currently available, an inclusion of these variables in the weighting scheme was not deemed possible. However, Transparency International will continue to explore possibilities for improving this methodology.

Thresholds for enforcement categories are based on a country's average percentage of world exports over a four-year period, using annual data on share of world exports provided by the OECD.

Calculation of enforcement category

Each country collects enforcement points through its enforcement actions. The sum of these points is multiplied by the average of the country's share of world exports during the four-year period assessed.

To enter the categories of "Active enforcement", "Moderate enforcement" or "Limited enforcement", a country's result has to reach the pre-defined threshold of the particular enforcement category ("Minimum points required for enforcement levels", indicated below in green). If the result is below the "Limited enforcement" threshold, the country is classified in the "Little or no enforcement" category.

The thresholds for each per cent share of world exports are as follows: 40 points for the "Active enforcement" category, 20 points for the "Moderate enforcement" category, and 10 points for the "Limited enforcement" category. A country that has a 1 per cent share in world exports but collects less than 10 points through its enforcement activities is placed in the "Little or no enforcement" category. The table below gives examples of thresholds of enforcement categories based on share of world exports.

In addition to the necessary point scores, for a country to be classified in the "Active enforcement" category, at least one major case with substantial sanctions needs to have been concluded during the past four years. In the "Moderate enforcement" category, at least one major case needs to have been commenced or concluded in the past four years.

CALCULATION OF ENFORCEMENT

Share of world exports / Enforcement Categories	0.5%	1%	2%	4%
Active enforcement	20	40	80	160
Moderate enforcement	10	20	40	80
Limited enforcement	5	10	20	40
Little or no enforcement	<5	<10	<20	<40

For example, Argentina has a 0.4 per cent share of world exports. This percentage multiplied by 40, by 20 and by 10 renders the following thresholds: 16 points to be in the “Active enforcement” category, 8 points for the “Moderate enforcement” category, and 4 points for the “Limited enforcement” category.

Differences between Transparency International and OECD Working Group on Bribery Reports

Transparency International’s report differs from the OECD Working Group on Bribery (WGB) reports in several key respects. Transparency International’s report is broader in scope than the WGB’s, as Transparency International covers investigations, commenced cases and convictions, settlements or other dispositions of cases that have become final, and in which sanctions were imposed. However, the WGB covers only convictions, plea agreements, settlements and sanctions in administrative and civil actions. Transparency International uses a broader definition of foreign bribery cases, covering cases where foreign bribery is the underlying issue, whether brought under laws dealing with corruption, money laundering, tax evasion, fraud or violations of accounting or disclosure requirements. The WGB covers only foreign bribery cases. Its report is based on data supplied directly by the government representatives who serve as members of the WGB. Transparency International uses data supplied to its experts by government representatives, as well as media reports.

Transparency International selects corporate or criminal lawyers who are experts in foreign bribery matters to assist in the preparation of the report. They are primarily local lawyers selected by Transparency International national chapters. The questionnaires are filled in by the experts and are reviewed by lawyers in the Transparency International Secretariat. The Secretariat provides the country representatives of the OECD WGB with an advanced draft of the full report, for their comment. The draft is further reviewed by the experts and the Transparency International Secretariat after the country representatives provide feedback.

To enable comparison between the results in 2018 and in this 2020 report, we include here the scoring results from the 2018 report.

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TABLE 4: INVESTIGATIONS AND CASES (2014- 2017)

		Investigations commenced (weight of 1)				Major cases commenced (weight of 4)				Other cases commenced (weight of 2)			
Country (listed by share of world exports)	% Share of exports Average 2014-2017*	2014	2015	2016	2017	2014	2015	2016	2017	2014	2015	2016	2017
Active Enforcement (7 countries) 27% global exports													
United States	9.8	17	3	8	4	2	0	1	3	2	3	1	1
Germany	7.7	11	13	8	8	1	3	0	1	1	4	3	0
United Kingdom	3.7	6	3	8	19	2	3	1	1	0	1	1	0
Italy	2.7	3	3	11	10	1	0	1	3	7	0	3	1
Switzerland	2.0	27	61	27	/	1	0	0	0	0	0	0	2
Norway	0.7	0	2	0	1	1	0	0	0	1	0	0	0
Israel	0.4	1	6	2	4	0	0	1	0	0	0	0	0
Moderate Enforcement (4 countries) 3.8% global exports													
Australia	1.2	4	4	7	4	0	1	0	1	0	0	0	0
Sweden	1.1	0	4	3	0	0	0	0	2	0	1	0	0
Brazil	1.1	2	3	2	2	1	0	0	0	0	0	0	0
Portugal	0.4	2	2	0	0	0	0	1	0	0	0	0	0
Limited Enforcement (11 countries) 12.3% global exports													
France	3.5	16	8	8	8	0	0	0	1	0	0	0	0
Netherlands	3.1	0	1	3	3	0	0	0	0	0	0	1	1
Canada	2.3	0	0	0	0	2	1	0	0	0	0	1	0
Austria	1.0	0	0	0	0	0	0	0	2	0	0	0	0
Hungary**	0.5	0	2	3	2	0	0	0	0	0	2	2	2
South Africa**	0.5	15	0	0	0	0	0	0	0	0	0	0	0
Chile**	0.4	0	2	2	7	0	0	0	0	0	0	0	0
Greece**	0.3	3	2	0	1	0	0	0	0	1	0	1	0
Argentina**	0.3	0	1	3	5	0	0	0	0	0	0	0	0
New Zealand**	0.2	1	3	2	2	0	0	0	0	0	0	0	0
Lithuania	0.2	0	0	2	0	0	0	0	0	0	0	0	0
Little or No Enforcement (22 countries) 39.6% global exports													
China***	10.8	0	0	0	0	0	0	0	0	0	0	0	0
Japan	3.8	0	0	0	0	1	0	0	0	0	0	0	0
South Korea	3.0	0	0	0	1	0	1	0	0	0	0	0	0
Hong Kong***	2.8	0	0	0	0	0	0	0	0	0	0	0	0
Singapore***	2.3	0	0	0	0	0	0	0	0	0	0	0	0
India***	2.1	0	0	0	0	0	0	0	0	0	0	0	0
Spain	1.9	2	2	1	1	1	0	0	0	0	0	1	0
Mexico	1.9	1	2	0	0	0	0	0	0	0	0	0	0
Russia	1.9	0	0	0	0	0	0	0	0	0	0	0	0
Belgium	1.8	1	0	1	4	0	0	0	0	0	1	0	0
Ireland	1.6	0	0	0	0	0	0	0	0	0	0	0	0
Poland	1.2	0	0	0	0	0	0	0	0	0	0	0	0
Turkey	0.9	0	0	0	0	0	0	0	0	0	0	0	0
Denmark	0.8	0	1	4	1	0	0	0	0	0	0	0	0
Czech Republic	0.7	0	1	0	0	0	0	0	0	0	0	0	0
Luxembourg	0.6	0	0	0	0	0	0	0	0	0	0	0	0
Slovakia	0.4	0	0	0	0	0	0	0	0	0	0	0	0
Finland	0.4	0	0	0	0	0	0	0	0	0	0	0	0
Colombia	0.2	0	0	0	1	0	0	0	0	0	0	0	0
Slovenia	0.2	1	0	0	0	0	0	0	0	0	0	0	0
Bulgaria	0.1	0	0	0	0	0	0	0	0	0	0	0	0
Estonia	0.1	0	0	0	0	0	0	0	0	0	0	0	0

	Major cases concluded with subst. sanctions (weight of 10)				Other cases concluded with sanctions (weight of 4)				Total points	Minimum points required for enforcement levels depending on share of world exports		
Country (listed by share of world exports)	2014	2015	2016	2017	2014	2015	2016	2017	Past 4 years	Active	Moderate	Limited
Active Enforcement (7 countries) 27% global exports												
United States	16	8	30	12	8	7	10	7	858	392	196	98
Germany	2	2	1	1	11	12	9	11	308	308	154	77
United Kingdom	2	1	2	4	1	0	1	0	166	148	74	37
Italy	2	0	1	0	0	1	1	1	111	108	54	27
Switzerland	1	0	2	1	4	0	1	2	191	80	40	20
Norway	1	0	0	1	1	0	0	0	33	28	14	7
Israel	0	0	1	0	0	0	0	0	27	16	8	4
Moderate Enforcement (4 countries) 3.8% global exports												
Australia	0	0	0	1	0	0	0	0	37	48	24	12
Sweden	0	0	0	0	0	2	0	1	29	44	22	11
Brazil	0	0	1	0	0	0	0	0	23	44	22	11
Portugal	0	0	0	0	0	0	0	0	8	16	8	4
Limited Enforcement (11 countries) 12.3% global exports												
France	0	0	1	0	0	0	0	1	58	140	70	35
Netherlands	1	0	1	1	0	0	1	0	45	124	62	31
Canada	0	0	0	1	0	0	0	0	24	92	46	23
Austria	0	1	0	0	0	0	0	0	18	40	20	10
Hungary**	0	0	0	0	0	0	1	0	23	20	10	5
South Africa**	0	0	0	0	0	0	0	0	15	20	10	5
Chile**	0	0	0	0	0	1	0	0	15	16	8	4
Greece**	0	0	0	0	0	0	0	0	10	12	6	3
Argentina**	0	0	0	0	0	0	0	0	9	12	6	3
New Zealand**	0	0	0	0	0	0	0	0	8	8	4	2
Lithuania	0	0	0	0	0	0	0	0	2	8	4	2
Little or No Enforcement (22 countries) 39.6% global exports												
China***	0	0	0	0	0	0	0	0	0	423	216	108
Japan	0	1	0	0	0	0	0	0	14	152	76	38
South Korea	0	0	0	0	5	0	1	0	29	120	60	30
Hong Kong***	0	0	0	0	0	0	0	0	0	112	56	28
Singapore***	0	0	0	1	0	0	0	0	10	92	46	23
India***	0	0	0	0	0	0	0	0	0	84	42	21
Spain	0	0	0	0	0	0	0	1	16	76	38	19
Mexico	0	0	0	0	0	0	0	0	3	76	38	19
Russia	0	0	0	0	0	0	0	0	0	76	38	19
Belgium	0	0	0	0	0	1	1	0	16	72	36	18
Ireland	0	0	0	0	0	0	0	0	0	64	32	16
Poland	0	0	0	0	1	1	0	0	8	48	24	12
Turkey	0	0	0	0	0	0	0	0	0	36	18	9
Denmark	0	0	0	0	0	0	0	0	6	32	16	8
Czech Republic	0	0	0	0	0	0	0	0	1	28	14	7
Luxembourg	0	0	0	0	0	0	1	0	4	24	12	6
Slovakia	0	0	0	0	0	0	0	0	0	16	8	4
Finland	0	0	0	0	0	0	0	0	0	16	8	4
Colombia	0	0	0	0	0	0	0	0	1	8	4	2
Slovenia	0	0	0	0	0	0	0	0	1	8	4	2
Bulgaria	0	0	0	0	0	0	0	0	0	4	2	1
Estonia	0	0	0	0	0	0	0	0	0	4	2	1

* OECD figures
**Without any major case commenced during the past four years a country does not qualify as being a moderate enforcer, and without a major case with substantial sanctions being concluded in the past four years a country does not qualify as being an active enforcer
***Non-OECD Convention country.

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Pro bono recognition

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ENDNOTES

[1] https://www.theglobeandmail.com/opinion/article-bribery-is-just-the-cost-of-doing-business/

[2] http://www.oecd.org/daf/anti-bribery/Phase-4-Guide-ENG.pdf, pp.45 onwards. The questionnaire calls for detailed data on investigations, prosecutions, court proceedings and civil or administrative proceedings and their outcomes.

[3] For example, the OECD WGB Phase 3 and Phase 4 Reports on Germany commented that it should strengthen its efforts to compile at the federal level, for future assessment, information and statistics relevant to monitoring and follow-up of the enforcement of the German legislation implementing the Convention; The Phase 4 Report on Switzerland in 2018 recommended that Switzerland collect exhaustive statistics on the number of concluded cases at cantonal and federal levels and more detailed statistics on MLA requests received, sent and rejected that relate to money laundering where foreign bribery is the predicate offence. See also Phase 3 Reports on Brazil (2014) and Portugal in (2015) on the need for statistics about confiscation and money laundering.

[4] See e.g. OECD WGB Phase 4 Report on Czech Republic (June 2017), https://www.oecd.org/corruption/anti-bribery/Czech-Republic-Phase-4-Report-ENG.pdf. The OECD WGB stated: "expedient access to court judgements concerning foreign bribery is necessary to ensure that sanctions for foreign bribery are effective, proportionate and dissuasive as required by the Convention. Their publication is also necessary for raising awareness of the risks of foreign bribery, and to ensure that Czech companies understand how to manage those risks through effective compliance measures". http://www.oecd.org/corruption/anti-bribery/Czech-Republic-Phase-4-Report-ENG.pdf

[5] See articles on the benefits of transparency of case information: http://www.oecd.org/corruption/anti-bribery/NRGI-White-Paper-Court-Case-Disclosures-Dec-2018.pdf; https://oecdonthelevel.com/2018/06/28/closed-courts-how-could-open-data-help-the-fight-against-corruption-in-the-uk/; https://oecdonthelevel.com/2017/12/05/anti-bribery-enforcement-the-case-for-making-court-decisions-freely-available-in-germany/

[6] https://www.bnamericas.com/en/news/inassa-fined-in-colombia-for-transnational-bribery

[7] http://www.oecd.org/corruption/data-on-enforcement-of-the-anti-bribery-convention.htm

[8] As noted in a 2019 OECD study, the Parties to the Convention take various approaches to whether a court or other authority should have an oversight role over the conclusion or execution of non-trial resolutions. In the cases reviewed by the study, the court did not have any role in non-trial resolutions in 40 per cent of cases involving legal persons and in 29 per cent of cases involving natural persons, https://www.oecd.org/daf/anti-bribery/Resolving-foreign-bribery-cases-with-non-trial-resolutions.pdf, p.142.

[9] https://www.oecd.org/corruption/anti-bribery/Switzerland-Phase-4-Report-ENG.pdf, p.39. This refers to Swiss simplified procedures.

[10] https://www.bloomberg.com/news/features/2017-06-08/no-one-has-ever-made-a-corruption-machine-like-this-one

[11] https://www.gov.br/cgu/pt-br/assuntos/responsabilizacao-de-empresas/lei-anticorrupcao/acordo-leniencia

[12] Information provided by Brazilian authorities.

[13] See OECD WGB Phase 4 Reports on the UK and Czech Republic, https://www.oecd.org/corruption/anti-bribery/UK-Phase-4-Report-ENG.pdf; https://www.oecd.org/corruption/anti-bribery/Czech-Republic-Phase-4-Report-ENG.pdf

[14] StAR, 2011, "The Puppet Masters" https://star.worldbank.org/publication/puppet-masters

[15] OECD WGB Phase 3 and Phase 4 reports show many such cases.

[16] https://www.icij.org/investigations/panama-papers/20160725-natural-resource-africa-offshore/

[17] https://www.transparency.org/en/publications/who-is-behind-the-wheel-fixing-the-global-standards-on-company-ownership

[18] These are: Austria, Belgium, Bulgaria, Czech Republic, Denmark, Ireland, Italy, Hungary, Latvia, Netherlands, Romania, Slovakia and Sweden, https://ec.europa.eu/info/publications/anti-money-laundering-directive-4-transposition-status_en

[19] These are: Bulgaria, Croatia, Denmark, Finland, France, Germany, Italy, Latvia, Lithuania, Malta and Sweden, https://ec.europa.eu/info/publications/anti-money-laundering-directive-5-transposition-status_en

[20] Transparency International, 2019, "Recommendations on Beneficial Ownership for OGP Action Plans", https://images.transparencycdn.org/images/Rec-on-Beneficial-Ownership-Transparency-for-OGP-action-plans-FINAL.pdf ; https://www.openownership.org/uploads/oo-implementation-guide-booklet-68508a.pdf

[21] https://www.taxjustice.net/2019/11/27/fatf-beneficial-ownership-report-reveals-cutting-edge-verification-processes-hesitates-to-endorse-public-registries/

[22] There is now wide consensus that corruption has adverse human rights impacts, e.g. https://www.ohchr.org/EN/Issues/CorruptionAndHR/Pages/CorruptionAndHRIndex.aspx

[23] See: ICHRP, 2009, Integrating Human Rights in the Anti-Corruption Agenda, http://ichrp.org/files/reports/58/131b_report.pdf

[24] OECD-StAR, 2012, "Identification and Quantification of the Proceeds of Bribery: A joint OECD-StAR analysis", https://www.oecd.org/corruption/anti-bribery/50057547.pdf

[25] See also SERAP v. Nigeria, 2011, http://serap-nigeria.org/ecowas-court-orders-nigeria-to-provide-free-and-compulsory-education-to-every-child.ngo/

[26] UN Guiding Principles on Business and Human Rights, Chapter III, Access to Remedy, https://www.ohchr.org/documents/publications/guidingprinciplesbusinesshr_en.pdf; plus

[27]UNGA Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power, 1985 https://www.ohchr.org/en/professionalinterest/pages/victimsofcrimeandabuseofpower.aspx; Paragraph 21 says: "States should… enact and enforce, if necessary, legislation proscribing acts that constitute serious abuses of political or economic power, as well as promoting policies and mechanisms for the prevention of such acts, and should develop and make readily available appropriate rights and remedies for victims of such acts", http://www.un.org/documents/ga/res/40/a40r034.htm

[28] The Council of Europe Civil Law Convention against Corruption contains similar language.

[29] Article 53(b) also requires States Parties to permit their courts to order corruption offenders to pay compensation or damages to foreign States that have been harmed by corruption offences. Article 57 (3)(b) refers to situations whereby "the requested State Party recognises damage to the requesting State Party as a basis for returning the confiscated property".

[30] In civil law countries, procedures generally allow for crime victims to apply to join a criminal prosecution as a civil party and claim compensation from a criminal court in case of conviction. This is the case under the French Criminal Procedure Code, which allows victims, including states, to be granted the status of "*partie civile*".

[31] See StAR, 2014, "Left Out of the Bargain: Settlements in Foreign Bribery Cases and Implications for Asset Recovery", https://star.worldbank.org/document/left-out-bargain

[32] https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup2/2016-August-25-26/V1604993e.pdf

[33] OECD (2019), "Resolving Foreign Bribery Cases with Non-Trial Resolutions: Settlements and Non-Trial Agreements by Parties to the Anti-Bribery Convention", in particular 4.5.4., Compensation to victims, www.oecd.org/corruption/Resolving-Foreign-Bribery-Cases-with-Non-Trial-Resolutions.htm

[34] https://www.sfo.gov.uk/2018/06/01/new-joint-principles-published-to-compensate-victims-of-economic-crime-overseas/

[35] Subsection 715.34(1)(g) Criminal Code of Canada, https://fcpablog.com/2016/09/22/the-netherlands-tougher-foreign-bribery-laws-with-gaps-help/

[36] In the Czech Republic, this is conceived of as an "effort to restore damage or eliminate other harmful effects of the criminal act", https://rm.coe.int/16806d11e6; In Mexico pursuant to article 256 of the Criminal Procedures National Code, once an investigation begins, the offender can request that the prosecution authorities refrain from instituting a criminal prosecution based on the application of "opportunity criteria", as long as the damage caused to the victims has been repaired or guaranteed, https://www.lexology.com/library/detail.aspx?g=62df2f53-c23e-4118-84c1-fc8f7b409b5d; In Spain it is defined as "mitigation of damages caused as a consequence of the offence before the trial hearing takes place", https://globalcompliancenews.com/anti-corruption/anti-corruption-in-spain/; In the United States, principles of federal prosecution of organisations and sentencing guidelines allows for credit given for restitution or other forms of remediation, in the US Justice Manual Title 9 and US Sentencing Guidelines, https://www.justice.gov/jm/jm-9-28000-principles-federal-prosecution-business-organizations#9-28.1000; and: https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2012/05/deferred-prosecution-agreements-and-us-approaches-to-resolving-criminal-and-civil-enforcement-actions.pdf.

[37] Agencies work collaboratively with DFID, the Foreign and Commonwealth Office (FCO), the Home Office and the Treasury to identify potential victims overseas, assess the case for compensation, obtain evidence in support of compensation claims, ensure the process for the payment is "transparent, accountable and fair", and identify means by which compensation can be paid to avoid the risk of further corruption. See SFO (2018), "New joint principles published to compensate victims of economic crime overseas" (1 June), https://www.sfo.gov.uk/2018/06/01/new-joint-principles-published-to-compensate-victims-of-economic-crime-overseas/

[38] https://www.sfo.gov.uk/cases/rolls-royce-plc/; https://www.sfo.gov.uk/2020/01/31/sfo-enters-into-e991m-deferred-prosecution-agreement-with-airbus-as-part-of-a-e3-6bn-global-resolution/

[39] StAR, 2014, "Left Out of the Bargain: Settlements in Foreign Bribery Cases and Implications for Asset Recovery", https://star.worldbank.org/document/left-out-bargain

[40] Mintz Group, 2020, "Where the Bribes Are", https://www.fcpamap.com/

[41] Messick, R., 2016, Legal Remedies for Victims of Bribery under US Law, June 2016 https://www.opensocietyfoundations.org/sites/default/files/legal-remedies-5-messick-20160601_1.pdf In the United States, compensation can be made to victims "directly harmed" in FCPA conspiracy cases, in line with the Victims and Witness Protection Act and the Mandatory Victim Restitution Act". The court may also order, if agreed to by the parties in a plea agreement, "restitution to persons other than the victim of the offense".

[42] StAR, 2014, "Left Out of the Bargain: Settlements in Foreign Bribery Cases and Implications for Asset Recovery", https://star.worldbank.org/document/left-out-bargain

[43] The OECD has observed that those harmed by foreign bribery are, with the exception of competitors, often difficult to identify, or may be the population of a country as a whole, and restitution may present particular challenges because the harm may be difficult to quantify. OECD, 2019, "Resolving Foreign Bribery Cases with Non-Trial Resolutions: Settlements and Non-Trial Agreements by Parties to the Anti-Bribery Convention", https://www.oecd.org/daf/anti-bribery/Resolving-foreign-bribery-cases-with-non-trial-resolutions.pdf. The range of legal, procedural and practical obstacles in the EU was also analysed in a European Parliament report in 2019 on access to legal remedies for victims of human rights abuses in third countries, https://www.europarl.europa.eu/thinktank/en/document.html?reference=EXPO_STU(2019)603475

[44] OECD, 2018, "OECD Due Diligence Guidance for Responsible Business Conduct", https://mneguidelines.oecd.org/OECD-Due-Diligence-Guidance-for-Responsible-Business-Conduct.pdf.

[45] https://knowledgehub.transparency.org/helpdesk/country-experience-with-reparation-for-social-damages ; https://www.transparency.de/fileadmin/Redaktion/Aktuelles/2020/TI_Comments_2009_Anti-Bribery_Recommendation.6.5.2019.final.pdf

[46] Costa Rica, defines social damages as "the impairment, impact, detriment or loss of social welfare (within the context of the right to live under a healthy environment) caused by an act of corruption and suffered by a plurality of individuals without any justification, whereby their material or immaterial diffuse or collective interests are affected, and so giving rise to the obligation to repair". In Costa Rica the Attorney General is authorised to file a civil suit for compensation when the offence caused damage to society. The Conference of Ministers of Justice of the Ibero-American countries held in Madrid in 2011 agreed to use Costa Rica's proposal to create a concept of social damage. https://www.unodc.org/documents/treaties/UNCAC/COSP/session4/V1186372s.pdf

[47] https://knowledgehub.transparency.org/helpdesk/country-experience-with-reparation-for-social-damages

[48] French *Cour de Cassation*, 4 May 2006, https://www.legifrance.gouv.fr/juri/id/JURITEXT000007608830/ In this decision, relating to a corruption-related offense between a public official working for the Ministry of Defence and a private company, the Supreme Court granted the French State the sum of € 10 000 as compensation for its non-pecuniary damage, on the grounds that the offences committed by the defendants "have brought discredit on all the civilian and military personnel of the Ministry of Defence and constitute a factor of weakening of the authority of the State in public opinion."

[49] Some states provide for compensation "in kind", such as the issuance of a public apology or a declaration to help restore the reputation of the victim, the publication of the judgement of conviction as a means to repair non-proprietary damage, and the notification of the case in a newspaper.

[50] 18 U.S.C. para 3663 (a)(6)

[51] See eg. the criminal complaint, or *querella*, filed against the Obiang family by the Asociación pro Derechos Humanos de España (APDHE) https://www.justiceinitiative.org/litigation/apdhe-v-equatorial-guinea

[52] French *Cour de Cassation*, 9 November 2010, https://www.transparency.org/en/press/20101109-biens-mal-acquis-case-french-supreme-court-overrules-court-of-appe

[53] https://www.justiceinitiative.org/uploads/4759d161-17c9-4264-b5cc-215030ba7223/legal-remedies-2-20160202_0.pdf

[54] https://www.raid-uk.org/victimsofcorruption

[55] https://www.sfo.gov.uk/cases/enrc/

[56] https://wkzo.com/news/articles/2020/may/13/congolese-citizens-bring-civil-action-in-belgium-against-passport-maker/1017787/

[57] FACTI Panel, 2020, "Interim Report", page IX https://uploads-ssl.webflow.com/5e0bd9edab846816e263d633/5f6b68c7bff4ad6cf6cb53a7_FACTI_Interim_Report_final.pdf; https://www.oecd.org/corruption/Illicit_Financial_Flows_from_Developing_Countries.pdf

[58] Global Forum on Asset Recovery (2017), "Principles for Disposition and Transfer of Stolen Assets in Corruption Cases", https://star.worldbank.org/sites/star/files/the-gfar-principles.pdf

[59] See for example, the BOTA Foundation, "Final Summative Report", IREX https://www.justice.gov/opa/file/798316/download

[60] https://star.worldbank.org/content/gfar-principles-action-mantra-projects-monitoring-disbursement-abacha-ii-funds-nigeria;

[61] https://mantra-acorn.com/ ; https://www.aneej.org/poor-nigerians-receive-n23-7billion-from-recovered-322-5million-abacha-loot-mantra-report/

[62] https://globalinvestigationsreview.com/benchmarking/the-practitioner%E2%80%99s-guide-to-global-investigations-fourth-edition/1212691/austria

[63] https://www.jota.info/especiais/cooperacion-internacional-en-el-caso-odebrecht-argentina-29052019

[64] https://mlexmarketinsight.com/insights-center/editors-picks/area-of-expertise/anti-bribery-and-corruption/south-korean-anti-graft-reforms-alone-wont-resolve-poor-enforcement-record

[65] The nine countries are: Argentina, Colombia, Dominican Republic, Ecuador, Guatemala, Mexico, Panama, Peru and Venezuela.

[66] https://globalanticorruptionblog.com/2018/04/19/guest-post-further-developments-on-french-law-regarding-anti-bribery-prosecutions-by-multiple-states/#more-11459

[67] Since 2017, the IACCC reports that it has advanced nine grand corruption cases and identified 227 suspicious bank accounts across 15 different jurisdictions, although it is not yet clear how many of these cases relate to foreign bribery and related offences, https://www.nationalcrimeagency.gov.uk/what-we-do/crime-threats/bribery-corruption-and-sanctions-evasion/international-anti-corruption-centre; Radu Mares, 2019, Liability Within Corporate Groups: Parent Company's Accountability for Subsidiary Human Rights Abuses, https://www.researchgate.net/publication/337022663_Liability_within_corporate_groups_Parent_company%27s_accountability_for_subsidiary_human_rights_abuses

[68] https://europa.eu/european-union/about-eu/agencies/eurojust_en

[69] https://ec.europa.eu/info/law/cross-border-cases/judicial-cooperation/networks-and-bodies-supporting-judicial-cooperation/european-public-prosecutors-office_en

[70] OECD, 2016, "The Liability of Legal Persons for Foreign Bribery: A Stocktaking Report" https://www.oecd.org/daf/anti-bribery/Liability-Legal-Persons-Foreign-Bribery-Stocktaking.pdf; Clifford Chance, 2019, "An international guide to anti-corruption legislation" https://www.cliffordchance.com/briefings/2019/03/an_internationalguidetoanti-corruptio.html

[71] Radu Mares, 2019, Liability Within Corporate Groups: Parent Company's Accountability for Subsidiary Human Rights Abuses, https://www.researchgate.net/publication/337022663_Liability_within_corporate_groups_Parent_company%27s_accountability_for_subsidiary_human_rights_abuses

[72] Ibid

[73] OECD, 2016, "The Liability of Legal Persons for Foreign Bribery: A Stocktaking Report", at 80, https://www.oecd.org/daf/anti-bribery/Liability-Legal-Persons-Foreign-Bribery-Stocktaking.pdf p. 79

[74] US DoJ and SEC, 2012, A Resource Guide to the FCPA, at 43, https://www.sec.gov/spotlight/fcpa/fcpa-resource-guide.pdf

[75] OECD, 2016, The Liability of Legal Persons for Foreign Bribery: A Stocktaking Report, at 80, https://www.oecd.org/daf/anti-bribery/Liability-Legal-Persons-Foreign-Bribery-Stocktaking.pdf

[76] Radu Mares, 2019, Liability Within Corporate Groups: Parent Company's Accountability for Subsidiary Human Rights Abuses, https://www.researchgate.net/publication/337022663_liability_within_corporate_groups_parent_company%27s_accountability_for_subsidiary_human_rights_abuses**;**

[77] http://www.respect.international/french-corporate-duty-of-vigilance-law-english-translation/; "Europe moves on human rights due diligence?", 2019, https://nordicfinancialunions.org/europe-moves-on-human-rights-due-diligence/

[78] https://nabu.gov.ua/en/novyny/energoatom-case-indictment-two-more-persons-was-sent-court ; https://antac.org.ua/en/news/martynenko-facilitated-russian-company-skoda-js-in-winning-tenders-in-ukraine-with-the-help-of-fake-competitors/

[79] https://www.e15.cz/byznys/prumysl-a-energetika/korejci-udajne-kupuji-od-rusu-plzenskou-spolecnost-skoda-js-ruska-strana-obchod-popira-1364903)

[80] https://globalinvestigationsreview.com/article/1167634/ey-to-be-prosecuted-in-the-netherlands-over-vimpelcom-transactions; https://nos.nl/artikel/2225653-accountantskantoor-ey-vervolgd-vanwege-vimpelcom-fraude.html

[81] https://www.publiceye.ch/en/media-corner/press-releases/detail/mozambiques-hidden-debt-public-eye-files-a-criminal-complaint-against-credit-suisse; https://www.reuters.com/article/mozambique-credit-suisse-gp/update-1-swiss-prosecutors-open-mozambique-loan-scandal-investigation-idUSL8N2DI2Q0

[82] https://www.publiceye.ch/en/topics/commodities-trading/glencore-in-drc

[83] https://www.transparency.org/en/publications/brazil-setbacks-in-the-legal-and-institutional-anti-corruption-frameworks

[84] https://transparency-france.org/actu/un-an-apres-lelection-presidentielle-lethique-et-la-transparence-de-la-vie-publique/#.Xl0SlCFKjIU

[85] https://www.cbc.ca/news/politics/trudeau-wilson-raybould-attorney-general-snc-lavalin-1.5014271

[86] https://www.oecd.org/daf/anti-bribery/EstoniaPhase3ReportEN.pdf;

[87] *CSO Letter to OECD Secretary General Angel Gurria,* 2018, https://www.oecd.org/daf/anti-bribery/CSO-Letter-to-OECD-SG-Gurria-December-2018.pdf; Transparency International, Policy Brief: *Can justice to achieved through negotiated settlements*? (2015) https://images.transparencycdn.org/images/2015_PolicyBrief1_Settlements_EN.pdf

[88] OECD figures (2016-2019 average)

[89] The definition of "major case" includes the bribing of senior public officials by major companies, including state-owned enterprises. In determining whether a case is "major", additional factors to be considered include whether the defendant is a large multinational corporation or an individual acting for a major company; whether the allegations involve bribery of a senior public official; whether the amount of the contract and of the alleged payment(s) is large (regardless of whether it was paid in a single transaction or in a scheme involving multiple payments, even if

only to lower-level officials) and whether the case and sanctions constitute a major precedent and deterrent. Several indicative guidelines can also be used to help decide whether a case is major. A company could be considered major if its revenue represents more than 0.01 per cent of a country's GDP. The seniority of public officials could be defined in terms of their remoteness from the highest public official (prime minister, for example). If they are less than five steps removed from the prime minister, they can be considered senior. Seniority of public officials would depend, inter alia, on their ability to influence decisions. For a case to be defined as "major", its details would have to be available in the public domain or published in an official legal journal. Where relevant, the Global Investigations Review´s Enforcement Scorecard can be used as a barometer for defining a major case. If a case appears in the global top 100 according to the scorecard, it should be classified as major regardless of jurisdiction, https://globalinvestigationsreview.com/edition/1000012/the-enforcement-scorecard. The characterisation as "major" should be exercised narrowly. In case of doubt, a case is not characterised "major".

[90] "Substantial" sanctions include deterrent prison sentences, large fines and disgorgement of profits, appointment of a compliance monitor, and disqualification from future business. The ratio between the maximum sentence for a crime in question and the actual sentence in each given case could be used as an indicator of the severity of the sanctions imposed. Disgorgement of profits alone should not count as a substantial sanction, but should only be considered in combination with other sanctions.

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