

EXPORTING CORRUPTION 2022

Assessing enforcement of the OECD Anti-Bribery Convention

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.

www.transparency.org

Exporting Corruption 2022: Assessing Enforcement of the OECD Anti-Bribery Convention

Authors: Gillian Dell and Andrew McDevitt

The country experts who contributed to the report are listed on pages 106 and 107. We would also like to thank Ropes & Gray and the International Lawyers Project for their support with the report.

Cover: Blue Planet Studio / Shutterstock

Every effort has been made to verify the accuracy of the information contained in this report. All information was believed to be correct as of October 2022. Nevertheless, Transparency International cannot accept responsibility for the consequences of its use for other purposes or in other contexts.

ISBN: 978-3-96076-228-7

2022 Transparency International. Except where otherwise noted, this work is licensed under CC BY-ND 4.0 DE. Quotation permitted. Please contact Transparency International – copyright@transparency.org – regarding derivatives requests.

TABLE OF CONTENTS

Executive summary **2**

Global highlights **10**

Transparency of enforcement information **13**

Victims' compensation **15**

Trends in legal frameworks and enforcement systems **22**

Case study: Goldman Sachs **26**

Country briefs: OECD convention countries **28**

Argentina 28
Australia 29
Austria 31
Belgium 32
Brazil 33
Bulgaria 35
Canada 36
Chile 38
Colombia 39
Costa Rica 40
Czech Republic 42
Denmark 43
Estonia 44
Finland 45
France 46
Germany 48
Greece 50
Hungary 51
Ireland 53
Israel 54
Italy 56
Japan 58
Latvia 59
Lithuania 60
Luxembourg 61
Mexico 62
The Netherlands 63
New Zealand 64
Norway 66
Peru 67
Poland 68
Portugal 69
Russia 71
Slovakia 72
Slovenia 73
South Africa 76
South korea 77
Spain 79
Sweden 81
Switzerland 82
Turkey 84
United Kingdom 85
United States 87

Country briefs: Non-OECD convention countries **90**

China 90
Hong Kong 91
India 92
Singapore 93

Methodology **96**

Country/regional experts **101**

Endnotes **103**

EXECUTIVE SUMMARY

Bribery of foreign public officials by multinational companies gives them illicit profits, with huge costs and consequences across the globe. Foreign bribery diverts resources, undermines democracy and the rule of law, and distorts markets. The OECD Anti-Bribery Convention requires parties to prohibit and enforce against foreign bribery. This report assesses the enforcement efforts of 47 leading export countries in the period 2018-2021.

The changing global environment

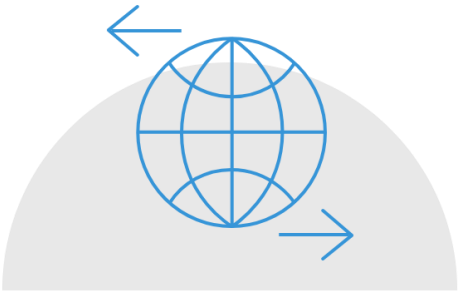
The period covered by this report has seen an unstable and rapidly changing global economic environment. The COVID-19 pandemic brought major disruptions to economic activity, resulting in a sharp decline in foreign direct investment (FDI) and exports, combined with steep increases in government spending. Global exports and foreign direct investment rebounded in 2021, reaching or exceeding pre-pandemic levels, with US$837 billion in FDI flows going to developing countries and new highs in merchandise trade from major exporters. According to the UN Conference on Trade and Development (UNCTAD), however, the trend is unlikely to continue in 2022 as a consequence of ongoing global challenges.[1] In 2022, the catastrophic invasion of Ukraine, climate-related natural disasters, energy shortages and high inflation have generated geopolitical tensions, additional major increases in state expenditure, and crisis conditions in countries around the world.

IN A NUTSHELL



47

COUNTRIES ANALYSED



84%

OF GLOBAL EXPORTS AFFECTED

The present global environment carries risks of a declining commitment to foreign bribery enforcement. Yet the need for enforcement is stronger than ever to avoid a race to the bottom in the use of bribery in the contest for foreign markets. Foreign bribery has huge costs and consequences for countries and people around the globe. It undermines democracy and human rights, and thwarts achievement of the Sustainable Development Goals. Individually, countries may prefer to turn a blind eye to their companies' efforts to win markets by whatever means possible. However, any short-term illicit profits from foreign bribery are secured at the cost of instability, inequality and a poor environment for international trade and investment – to the detriment of all. This is why it is crucial for exporting countries to enforce collectively agreed prohibitions against foreign bribery.

Negative trend in enforcement

Twenty-five years after the adoption of the OECD Anti-Bribery Convention, most countries still fall far short of their obligations. The current report points to a continued decline in enforcement against foreign bribery in many countries, including some major exporters that were previously active enforcers. While the COVID-19 pandemic has undoubtedly posed a major hindrance to every stage of enforcement from investigation to prosecution,[2] in many countries the downward trend predates the pandemic, and the current picture raises significant concerns.

In almost every country, there are inadequacies in the legal framework and enforcement system that are yet to be addressed. The shortcomings include a wide range of issues from inadequate whistleblower protection to a lack of resources for enforcement authorities and the judiciary.

In most countries, there is a lack of transparency in data and case outcomes, and there are still very few examples of victims' compensation for foreign bribery – although there have been a number of positive developments in that regard.

An advance in international standards

At the international level, there has been some progress in the form of the 2021 OECD Anti-Bribery Recommendation adopted by the OECD Council in November 2021 with the aim of strengthening implementation of the OECD Anti-Bribery Convention.

The new Recommendation enhances and adds to provisions in the 2009 OECD Anti-Bribery Recommendation, which it supersedes, providing new reference norms that are already being used to assess countries on an ad hoc basis, pending approval of the revised Phase 4 questionnaire that will systematically address the provisions of the 2021 Recommendation.[3]

The Recommendation contains new sections on transparency of enforcement outcomes; steps to address the demand side of foreign bribery; enhancement of international cooperation; principles for the use of non-trial resolutions in foreign bribery cases; anti-corruption compliance by companies; and comprehensive protection for whistleblowers.[4]

The Political Declaration of the UN General Assembly Special Session (UNGASS) against Corruption,[5] adopted in June 2021, contains a range of commitments relevant for foreign bribery enforcement and compensation of victims:

+ to criminalise the bribery of foreign public officials and actively enforce these measures by 2030, in support of achievement of the Agenda for Sustainable Development (Political Declaration para 74)
+ to strengthen efforts to confiscate and return assets when using alternative legal mechanisms and non-trial resolutions in corruption proceedings with proceeds of crime for confiscation and return (para 50)
+ to allow the recognition of other states harmed by an offence through judicial orders for compensation or damages (para 46, which restates UNCAC Article 53[b])
+ to use the available tools for asset recovery and asset return, such as conviction-based and non-conviction-based confiscation (para 47)
+ to strive to ensure that the return and disposal of confiscated property is done in a transparent and accountable manner (para 48)
+ to consider using confiscated proceeds of offences to compensate the victims of crime, including through the social reuse of assets for the benefit of communities (para 49).

About this report

Our report, *Exporting Corruption,* is an independent review of the foreign bribery enforcement performance of 47 leading global exporters. This is the 14th edition of the report.

The report assesses foreign bribery enforcement in 43 of the 44 signatories to the OECD Anti-Bribery Convention as well as in China, Hong Kong SAR, India and Singapore.[6] While not parties to the OECD Convention, these four countries and territories[7] are major exporters, each with a share of over 2 per cent of world trade, with China being the world's leading exporter. The four countries are also signatories to the UN Convention against Corruption (UNCAC), which requires countries to criminalise foreign bribery. The analysis of Hong Kong SAR is separate from China, since it is an autonomous region with a different legal system whose export data are 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 distorts international political conditions.**
>
> OECD Convention preamble[8]

Together, the countries covered by the report account for almost 85 per cent of all global exports, with OECD Convention countries accounting for almost two-thirds.

In addition to analysing foreign bribery enforcement activity across 47 countries, the report identifies inadequacies in legal frameworks and enforcement systems – as well as progress in addressing them. The report further shines a spotlight on the critical issue of victims' compensation and identifies areas for improvement with respect to the transparency of foreign bribery enforcement data and case dispositions.

Country classification system

The report includes four enforcement categories: active, moderate, limited, and little or no enforcement.

Countries are scored based on enforcement performance at different stages – i.e., number of investigations commenced, charges filed, and cases concluded with sanctions – over a four-year period (2018-2021). Different weights are assigned according to the stages of enforcement and the significance of cases. Country share of world exports is factored in. Within bands, countries are listed in order of share of world exports.

The report is intended to complement the OECD Working Group on Bribery's (WGB) monitoring of country implementation of the OECD Anti-Bribery Convention in successive phases. The WGB is made up of representatives of the 44 signatories to the OECD Anti-Bribery Convention. Currently, country reviews also cover implementation of the 2021 OECD Anti-Bribery Recommendation, which supersedes the 2009 OECD Anti-Bribery Recommendation that was previously reviewed together with the Convention.

Key findings

1. **Enforcement continues to decline significantly.** Only two of the 47 countries (United States and Switzerland) are now in the category of active enforcement. Together, they represent 11.8 per cent of global exports. This is down from four countries in 2020, representing 16.5 per cent of global exports, and seven countries in the 2018 report, representing 27 per cent of global exports. The United Kingdom and Israel dropped from active to moderate enforcement this year. Overall, deterrence is on the decline, although this may be partly due to the impact of the COVID-19 pandemic during two years of the reporting period. Since 2020, nine countries have dropped in an enforcement level and only two (Latvia and Peru) have moved up a level. Major non-OECD Convention countries remain in the little to no enforcement category – including China, the world's top exporter, and India, which still has no legislation criminalising foreign bribery.
2. **No country is exempt from bribery by its nationals and related money laundering**. The cases in countries that do engage in enforcement reveal that companies, company employees, agents and facilitators involved in

foreign bribery transactions come from almost every country assessed in the report.

3. **Inadequacies remain in legal frameworks and enforcement systems**. Despite some improvements, nearly every country has serious inadequacies in laws and institutions that hamper enforcement results. These include problems related to whistleblower protection, the level of sanctions, a lack of training and resources, the underfunding of key enforcement agencies, poor inter-agency coordination, and – in some countries – the insufficient independence of prosecution services and the courts. The persistence of these problems points to the low priority currently given by national authorities to tackling foreign bribery.
4. **Most countries fail to publish adequate enforcement information.** In most countries, there continues to be a lack of transparency in data and case outcomes. By and large, statistics on foreign bribery enforcement are not publicly available, and not enough information is published on court judgements and non-trial resolutions. Currently, the OECD WGB publishes only very limited country enforcement data (sanctions or acquittals) in its annual enforcement reports, and the data is aggregated over the period since 1999.[9]
5. **Victims' compensation is rare but there are a few positive developments.** In the countries that enforce against foreign bribery, compensation is seldom made to the states, populations, groups, companies or individuals harmed by the bribery. As a general rule, any confiscated proceeds of corruption and disgorged profits in foreign bribery cases go into the treasury of the host states of multinationals. In a few recent cases, however, the payment of compensation has been ordered or is under consideration.
6. **International cooperation is increasing but still faces significant obstacles.** Foreign bribery cases are complex and often require extensive cross-border cooperation among national enforcement agencies. However, there are often challenges in international cooperation. The problems include insufficient or incompatible legal frameworks, limited resources and know-how, a lack of coordination, and long delays. There is also a lack of published statistics on mutual legal assistance requests made and received, which could otherwise be helpful in the analysis of country-level challenges.

Recommendations

The signatories to the OECD Anti-Bribery Convention and the four non-OECD Convention countries surveyed in this report must do more to enforce against foreign bribery. Key measures to improve enforcement include:

1. **Address weaknesses in laws and enforcement systems, and continue to publicly criticise ongoing non-compliance.** OECD Convention signatories and other leading exporting countries should address weaknesses in their legal frameworks and enforcement systems, and give higher priority to enforcement against foreign bribery as well as related money-laundering offences and accounting violations.

+ OECD WGB signatories should hold public meetings to discuss the results of OECD WGB reviews and explain country plans to address recommendations.
+ The OECD WGB should invite government and civil society representatives from the countries most harmed by foreign bribery to meet and discuss how to tackle the problem.
+ The OECD WGB should continue to make public statements, and conduct technical and high-level missions to express its concern as well as offer assistance when country enforcement is weak.
+ The OECD WGB should encourage China, Hong Kong, India and Singapore to enforce against foreign bribery and join the OECD Anti-Bribery Convention. It should also raise their lack of enforcement in forums of the UN Convention against Corruption (UNCAC).

2. **Ensure transparency of enforcement information.** OECD WGB member states should implement the 2021 Anti-Bribery Recommendation transparency provisions regarding court judgements and non-trial resolutions – and go beyond. Published enforcement information should also include up-to-date statistical data covering every stage of the foreign bribery enforcement process, in line with the data required in the OECD WGB Phase 4 review questionnaire.[10] This information is essential for accountability, awareness-raising, public debate and policy-making.

+ Court judgements should be published in full – and at a minimum should include the names of the defendants, the facts, the legal basis, the sanctions and the reasoning. Company names should always be published since companies do not enjoy a right to privacy.

+ Extensive information should also be published about non-trial resolutions, including the terms of the agreement, the reasons for the agreement, a statement of the facts, the persons concerned, and any sanctions and remediation measures.
+ The OECD WGB should carry out a horizontal assessment of the issue across all countries party to the Convention, develop guidance and provide technical assistance to members in this area.

4. **Expand the OECD WGB's annual report on enforcement, and create a public database of foreign bribery investigations and cases.** The OECD WGB's annual foreign bribery enforcement report should contain updated year-on-year data on foreign bribery enforcement, providing greater detail than current reports and covering new developments and challenges. In addition, the OECD WGB should create a publicly accessible database of international corruption cases and statistics drawing on information provided by OECD Convention parties, media reports and other public information.
5. **Introduce victims' compensation as a standard practice.** OECD Convention signatories should ensure that the harm to victims is compensated in foreign bribery proceedings. The OECD WGB and member countries should develop and apply guidelines for granting compensation to victims in those cases. The guidelines should provide for timely notice to the affected parties; confiscation of bribery proceeds for the benefit of victim populations; a range of other methods of compensation; and standing for victims' representatives in certain cases.

+ OECD WGB country reviews should evaluate the status of country arrangements for use of the confiscated proceeds of foreign bribery for the compensation of victims. The planned guidelines to be developed on confiscation of bribes and proceeds of bribery should include guidance on the disposition of confiscated amounts.
+ In making compensation payments, countries should follow global standards on the return of assets, such as the Global Forum on Asset Recovery Principles for Disposition and Return of Confiscated Stolen Assets in Corruption Cases (GFAR Principles).[11]

6. **Closely monitor the use of non-trial resolutions.** The use of non-trial resolutions is often opaque and unaccountable across member countries, to the detriment of public trust in the rule of law. The 2021 Anti-Bribery Recommendation requires countries to provide greater transparency and accountability. The OECD WGB should closely monitor the adequacy of national frameworks and the use of such resolutions across countries applying the new standards set out in the 2021 Recommendation. Monitoring should include assessments of transparency and the adequacy of oversight arrangements.
7. **Support stronger national systems for cross-border cooperation and explore the expansion of international structures.** The OECD WGB should continue to facilitate discussions on potential avenues to improve international cooperation.

+ The OECD WGB should survey its members about which countries fail to cooperate in international enforcement efforts and enter into discussions with those countries to improve cooperation.
+ OECD WGB members should explore increased use of joint investigation teams in foreign bribery cases.
+ The OECD WGB should discuss the possible expansion of the International Anti-Corruption Coordination Centre (IACCC) or the creation of new regional or international structures or bodies. The European Public Prosecutor's Office offers one model to consider. Such structures can enable the pooling of resources and know-how among countries, help to achieve economies of scale, and provide a basis for targeted technical assistance to national agencies.

ENFORCEMENT LEVELS AROUND THE WORLD

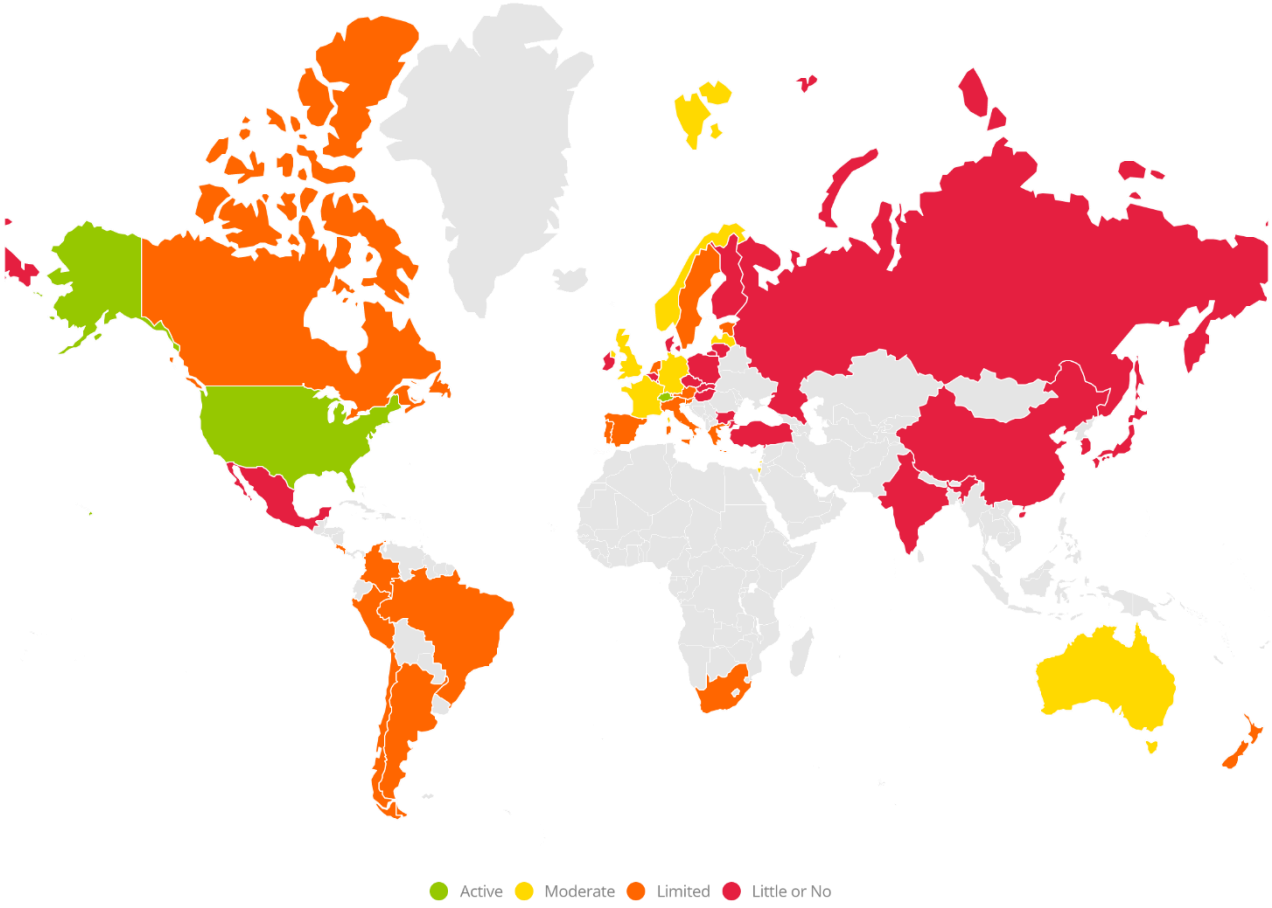


TABLE 1: INVESTIGATIONS AND CASES (2018-2021)

Country	% share of exports Average 2018-2021*	Investigations commenced (weight of 1) 2018	2019	2020	2021	Major cases commenced (weight of 4) 2018	2019	2020	2021	Other cases commenced (weight of 2) 2018	2019	2020	2021
Active enforcement (2 countries) 11.8% global exports													
United States	9.8	18	15	12	3	21	25	8	5	27	29	33	15
Switzerland	2.0	7	4	20	8	0	1	0	0	0	1	0	0
Moderate enforcement (7 countries) 16.9% global exports													
Germany	7.4	6	4	1	5	0	0	0	0	2	4	0	0
France	3.5	8	9	2	0	3	0	1	1	2	1	9	3
United Kingdom	3.4	8	2	4	5	0	1	1	1	1	1	4	1
Australia	1.4	3	3	1	1	1	0	2	2	1	0	1	0
Norway	0.6	1	0	1	1	0	0	0	0	0	0	0	0
Israel	0.5	2	1	1	0	0	0	0	0	0	0	0	0
Latvia**	0.1	1	2	3	2	0	0	1	0	0	0	0	0
Limited enforcement (18 countries) 15.5% global exports													
Netherlands	3.1	4	4	2	1	1	0	0	0	1	0	0	0
Canada	2.2	1	2	0	0	0	2	0	0	0	0	1	0
Italy	2.5	1	2	5	5	0	1	0	0	2	1	0	0
Spain	1.9	4	3	0	0	0	3	1	0	0	0	0	0
Brazil	1.1	1	3	1	0	0	0	0	1	0	0	0	0
Austria	1.0	1	1	1	0	0	1	0	0	1	0	0	0
Sweden	1.0	2	3	2	3	0	0	0	2	0	0	0	0
Portugal	0.4	0	2	0	0	0	0	0	1	0	0	0	0
South Africa**	0.4	3	3	0	1	0	0	0	0	0	1	0	0
Argentina	0.3	1	1	0	2	0	0	0	0	0	0	0	0
Chile**	0.3	1	1	2	0	0	0	0	0	0	0	0	0
Greece	0.3	0	0	0	1	0	0	0	0	1	0	0	0
Colombia**	0.2	2	0	1	0	0	0	0	0	0	1	0	0
New Zealand	0.2	1	2	0	0	0	0	0	0	0	0	0	0
Peru	0.2	0	0	1	2	0	0	0	0	0	0	0	0
Slovenia	0.2	1	1	0	0	0	0	0	0	0	0	0	0
Costa Rica**	0.1	0	2	2	0	0	0	0	0	0	0	0	0
Estonia**	0.1	0	0	0	0	0	0	0	0	1	0	0	0
Little or No enforcement (20 countries) 39.8% global exports													
China***	11.6	0	0	0	0	0	0	0	0	0	0	0	0
Japan	3.6	0	0	2	0	1	0	0	0	0	0	1	0
South Korea	2.8	0	0	2	2	0	0	0	0	1	0	1	1
Hong Kong***	2.7	0	0	0	0	0	0	0	0	0	0	0	0
Singapore***	2.7	0	0	0	0	0	0	0	0	0	0	0	0
India***	2.3	0	0	0	0	0	0	0	0	0	0	0	0
Mexico	1.9	3	0	0	0	0	0	0	0	0	0	0	0
Russia	1.9	0	1	0	0	0	0	0	0	0	0	0	0
Belgium	1.8	0	0	1	0	1	0	0	0	0	0	0	0
Ireland	2.2	1	0	0	1	0	0	0	0	0	0	0	0
Poland	1.4	1	0	0	0	0	0	0	0	0	0	0	0
Turkey	1.0	0	1	0	0	0	0	0	0	0	0	0	0
Czech Republic	0.8	1	0	0	0	0	0	0	0	1	0	0	0
Denmark	0.8	0	2	4	0	0	0	0	0	0	0	0	0
Luxembourg	0.6	0	0	0	0	0	0	0	0	0	0	0	0
Hungary	0.5	0	0	1	0	0	0	0	0	0	0	0	0
Slovakia	0.4	0	0	0	1	0	0	0	0	0	0	0	0
Finland	0.4	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
Lithuania	0.2	1	0	0	0	0	0	0	0	0	0	0	0

Country	Major cases concluded with substantial 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		
	2018	2019	2020	2021	2018	2019	2020	2021	Past 4 years	Active	Moderate	Limited
Active enforcement (2 countries) 11.8% global exports												
United States	18	19	8	3	23	32	27	15	**1360**	392	196	98
Switzerland	0	2	0	0	1	3	3	2	**101**	80	40	20
Moderate enforcement (7 countries) 16.9% global exports												
Germany	2	1	0	0	10	12	7	8	**206**	296	148	74
France	2	2	0	0	2	4	1	0	**137**	140	70	35
United Kingdom	0	0	3	1	1	3	1	4	**121**	136	68	34
Australia	0	0	0	0	3	0	1	1	**52**	56	28	14
Norway	0	0	0	1	0	1	0	0	**17**	24	12	6
Israel	1	0	0	0	0	1	0	0	**18**	20	10	5
Latvia**	0	0	0	0	0	0	1	0	**16**	4	2	1
Limited enforcement (18 countries) 15.5% global exports												
Netherlands	1	0	1	0	0	0	0	1	**41**	124	62	31
Canada	1	2	0	0	0	0	0	0	**43**	88	44	22
Italy	0	0	0	0	0	1	0	1	**31**	100	50	25
Spain	0	0	0	0	0	0	0	0	**23**	76	38	19
Brazil	0	0	0	0	2	0	0	0	**17**	44	22	11
Austria	0	0	0	0	0	1	0	0	**13**	40	20	10
Sweden	0	0	0	0	0	0	0	0	**18**	40	20	10
Portugal	0	0	0	0	0	0	0	0	**6**	16	8	4
South Africa**	0	0	0	0	0	0	0	0	**9**	16	8	4
Argentina	0	0	0	0	0	0	0	0	**4**	12	6	3
Chile**	0	0	0	0	1	0	0	0	**8**	12	6	3
Greece	0	0	0	0	0	0	0	0	**3**	12	6	3
Colombia**	0	0	0	0	1	0	0	0	**9**	8	4	2
New Zealand	0	0	0	0	0	0	0	0	**3**	8	4	2
Peru	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
Costa Rica**	0	0	0	0	0	0	0	0	**4**	4	2	1
Estonia**	0	0	0	0	1	0	0	0	**6**	4	2	1
Little or No enforcement (20 countries) 39.8% global exports												
China***	0	0	0	0	0	0	0	0	**0**	464	232	116
Japan	0	1	0	0	0	0	1	0	**22**	144	72	36
South Korea	0	0	0	0	1	0	0	0	**14**	112	56	28
Hong Kong***	0	0	1	0	0	1	0	0	**14**	108	54	27
Singapore***	0	0	1	0	1	0	0	0	**14**	108	54	27
India***	0	0	0	0	0	0	0	0	**0**	92	46	23
Mexico	0	0	0	0	0	0	0	0	**3**	76	38	19
Russia	0	0	0	0	0	0	0	0	**1**	76	38	19
Belgium	0	0	0	0	0	0	0	2	**13**	72	36	18
Ireland	0	0	0	0	0	0	0	0	**2**	88	44	22
Poland	0	0	0	0	0	0	0	0	**1**	56	28	14
Turkey	0	0	0	0	0	0	0	0	**1**	40	20	10
Czech Republic	0	0	0	0	0	0	0	0	**3**	32	16	8
Denmark	0	0	0	0	0	0	0	0	**6**	32	16	8
Luxembourg	0	0	0	0	0	0	0	0	**0**	24	12	6
Hungary	0	0	0	0	0	0	0	0	**1**	20	10	5
Slovakia	0	0	0	0	0	0	0	0	**1**	16	8	4
Finland	0	0	0	0	0	0	0	0	**0**	16	8	4
Bulgaria	0	0	0	0	0	0	0	0	**0**	8	4	2
Lithuania	0	0	0	0	0	0	0	0	**1**	8	4	2

* OECD figures
**Without at least one major case concluded with substantial sanctions in the past four years, a country does not qualify as an active enforcer; without at least one major case commenced or concluded with substantial sanctions during the past four years, a country does not qualify as a moderate enforcer
***Non-OECD Convention country

GLOBAL HIGHLIGHTS

Each of the 47 countries covered in the report is classified in one of four enforcement categories: active, moderate, limited, and little or no enforcement. The results this year show a decline in enforcement and continued weaknesses in legal frameworks and enforcement systems.

Many decliners, few improvers

Our study shows a continued downward trend in enforcement that gained momentum in the two years of the COVID-19 pandemic. Assuming a connection with the pandemic, enforcement should rise again in 2022 or 2023, although this remains to be seen.

Only two of the 47 countries surveyed are now classified as actively enforcing against foreign bribery. Only six countries moderately enforce against companies that pay bribes abroad.

Most of the assessed countries have only limited or little to no enforcement against foreign bribery. Together, this group accounts for 55.5 per cent of all global exports, with OECD Convention countries accounting for almost two-thirds.

Active enforcement has significantly decreased since the 2020 report, with the **United States** and **Switzerland** now the only two countries in this category. Together, they account for 11.8 per cent of global exports. This compares to four active enforcers in 2020 (accounting for 16.5 per cent of global exports) and seven active enforcers in 2018 (accounting for 27 per cent of global exports).

ENFORCEMENT LEVELS



ACTIVE ENFORCEMENT

2 COUNTRIES

11.8% OF GLOBAL EXPORTS

United States, Switzerland

MODERATE ENFORCEMENT

7 COUNTRIES

16.9% OF GLOBAL EXPORTS

Germany, France, United Kingdom, Australia, Norway, Israel, Latvia

LIMITED ENFORCEMENT

18 COUNTRIES

15.5% OF GLOBAL EXPORTS

Netherlands, Canada, Italy, Spain, Brazil, Austria, Sweden, Portugal, South Africa, Argentina, Chile, Greece, Colombia, New Zealand, Peru, Slovenia, Costa Rica, Estonia

LITTLE OR NO ENFORCEMENT

20 COUNTRIES

39.8% OF GLOBAL EXPORTS

China, Japan, South Korea, Hong Kong, Singapore, India, Mexico, Russia, Belgium, Ireland, Poland, Turkey, Czech Republic, Denmark, Luxembourg, Hungary, Slovakia, Finland, Bulgaria, Lithuania

Even in the US, the world's strongest performer, there was a sharp decline in enforcement in 2021. A recent study found that the Foreign Corrupt Practices Act (FCPA) enforcement penalties peaked in 2020 at US$7.13 billion and dropped to US$461 million in 2021.[12] Preliminary data suggests that US enforcement is on the upswing again in 2022, but remains below pre-pandemic levels.[13]

Moderate enforcement is also down from nine countries in 2020 (representing 20.2 per cent of global exports) to seven countries in 2022 (accounting for 16.9 per cent of exports).

The **United Kingdom** – a major exporter and enforcer representing 3.4 per cent of global exports – moved down, together with **Israel**, from active enforcement in the 2020 report to moderate enforcement this year.

Five countries accounting for 5.9 per cent of global exports dropped from moderate to limited enforcement: **Italy** continued its decline, slipping from moderate enforcement; **Spain** reversed its previous advance to moderate enforcement in 2020; **Brazil**, **Sweden** and **Portugal** also dropped into the limited category.

Lastly, **Greece** and **Lithuania** declined in enforcement in 2022, falling to the lowest category of little or no enforcement.

Only two countries have improved their level of enforcement since our 2020 report: **Latvia**, which moved up from limited to moderate enforcement, and **Peru**, which rose to limited enforcement from the bottom rung of little or no enforcement.

Effect of the COVID-19 pandemic

In all likelihood, the COVID-19 pandemic had a significant impact on enforcement performance and company compliance. According to commentators, the pandemic posed a major hindrance to every stage of enforcement from investigation to prosecution.[14] Company self-reporting dwindled or faced delays because of obstacles to company internal investigations. Some enforcement agencies indicated that COVID-19 negatively affected their ability to investigate and prosecute white-collar crime because of the curtailment of in-person investigations and interviews, travel restrictions and quarantine conditions.[15] These constraints led to a dramatic reduction in the investigation of offshore misconduct.[16] According to one commentator, there is no question that the pandemic delayed larger investigations.[17]

At the same time, company corruption risks appear to have grown, with compliance professionals reporting that pandemic working conditions made it difficult for them to effectively conduct due diligence, compliance and training.[18] Commentators also argue that disruption to supply chains increased the risk of bribery and corruption, as critical items became scarce.[19] In practice, enforcement agencies reported a sharp rise in white-collar crime in 2020 and 2021.[20]

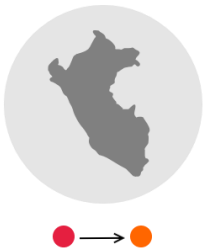
IMPROVERS AND DECLINERS

2 COUNTRIES IMPROVED

LATVIA



PERU



9 COUNTRIES DECLINED

UNITED KINGDOM



ISRAEL



ITALY



BRAZIL



SPAIN



SWEDEN



PORTUGAL



DENMARK



LITHUANIA



TRANSPARENCY OF ENFORCEMENT INFORMATION

The 2021 Anti-Bribery Recommendation standards on the transparency of enforcement information have yet to be implemented. There remain major challenges to accessing enforcement information, as successive *Exporting Corruption* reports have highlighted.

Transparency of enforcement information is a critical part of the accountability of enforcement and justice institutions to the public, as well as to other states with which they have made joint international commitments on criminalisation and enforcement. Transparency is essential for trust in the justice system and also for victims to have access to information relevant for recourse.

This section considers new transparency standards in the OECD Anti-Bribery Convention and reviews the status of access to enforcement information in the countries covered in this report.

Public access to information is part of accountability

The compilation and publication of statistics on enforcement at every stage of criminal proceedings is essential to enable assessment of the performance of justice institutions, and has a special importance for corruption cases. The information should include statistics not only on investigations, charges filed and cases concluded, but also on sanctions and assets confiscated as well as mutual legal assistance requests made and received.

In country reviews, the OECD WGB has called on member countries to compile various categories of foreign bribery enforcement statistics at the national level. Such information should be regularly published.

OECD Convention parties are required to provide such data as part of the periodic OECD WGB country reviews. The OECD WGB also publishes an annual report with some enforcement data provided by its member countries.

In an oft-cited dictum in a 1924 case, the Lord Chief Justice of England wrote:

> **"It is of fundamental importance that justice should not only be done, but should manifestly and undoubtedly be seen to be done. … Nothing is to be done which creates even a suspicion of improper interference with the course of justice."**
>
> Lord Chief Justice of England[21]

Similarly, public information about judgements and non-trial resolutions is crucial. The OECD WGB itself has stated that "expedient access to court judgements is necessary to ensure that sanctions for foreign bribery are effective, proportionate and

dissuasive as required by the Convention", and added that their publication is also necessary for raising awareness of the risks of foreign bribery and of measures to manage those risks.[22]

New OECD transparency requirements

The OECD's 2021 Anti-Bribery Recommendation codifies a minimum level of transparency for court judgements and non-trial resolutions. According to the Recommendation, OECD Convention parties must make public important elements of resolved cases, "including the main facts, the natural or legal persons sanctioned, the approved sanctions and the basis for applying the sanctions."[23]

The Recommendation reiterates this language in its section on non-trial resolutions, adding a requirement to publish the relevant considerations for having resolved a case with a non-trial resolution and the rationale for any sanctions imposed or internal remediation measures required.[24]

While these standards are relatively low, if implemented, they will provide more access to information on case dispositions than is currently available in many countries.

Accessing enforcement information remains difficult

Once again, this year it was difficult to obtain foreign bribery enforcement data and case information in most countries covered in the report – although the enforcement authorities and ministries of justice in many countries did strive to provide information on request. In some countries, it was necessary and possible to obtain enforcement information through the use of access to information requests; in others, information could be accessed from recent OECD WGB country review reports; and in some, a key source was media reports.

While all the countries surveyed in the report publish crime statistics, most still do not publish data on foreign bribery enforcement specifically. In many, foreign bribery is subsumed under bribery or even broader categories in their crime statistics or it is not included because their enforcement numbers are zero.

With regard to cases commenced through the filing of charges, in most countries access to information about the charges depends entirely on an announcement by the enforcement authority, media coverage or company public reporting. This is even more the case with regard to the negotiation of non-trial resolutions, which is generally cloaked in secrecy.

Even for concluded cases, gaining access to judgements and non-trial resolutions in foreign bribery cases is difficult in countries surveyed in the report. In most, only some courts are required to publish judgements – often only appeals courts – and in practice it can be very difficult to search specifically for foreign bribery cases.

Access to information about non-trial resolutions is even more difficult, although in a few countries they are published in full or via summaries. The OECD WGB has criticised a number of countries for the lack of transparency of their non-trial resolutions.[25]

Emerging good practices

In the **Czech Republic,** an amendment to the Act on Courts and Judges, that entered into force in July 2022, introduced an obligation for lower courts to publish their decisions – adding to the existing obligation for higher courts. District, regional and high courts are all now obliged to publish anonymised final judgements in a public database run by the Ministry of Justice. The publication of decisions issued by courts and bodies of the public administration in the Czech Republic is based on a constitutional right to access to information.

In **France**, gradual progress is now being made toward the comprehensive publication of court decisions. Currently, only 3 per cent of the three million court decisions handed down each year are accessible to the public.[26] To address the situation, the French government adopted the Law for a Digital Republic in 2016 in order to enable the public to consult all court decisions online by December 2025.

The first **Canadian** non-trial resolution – a remediation agreement – was concluded in 2022 and the court promptly published its own judgement approving it, together with the full text of the agreement.[27]

VICTIMS' COMPENSATION

Victims' compensation remains rare in foreign bribery cases. Since the *Exporting Corruption 2020* report, however, there have been a few positive new developments at international and national levels.

Foreign bribery often causes serious harm. The harm may be diffuse, indirect and widely shared as a result of the diversion or misallocation of state funds and the negative impact on state institutions.[28] States may suffer significant financial loss through bribery in government contracting due to paying higher prices, obtaining lower quality goods and services, or making unnecessary purchases.[29] States may also lose vital revenues from corruptly obtained business authorisations, licences or permits, or from bribery to secure favourable tax or customs treatment.[30] Illicitly obtained contracts, permits and licences may also cause loss of health, livelihood or housing, or result in damage to the environment. Companies that lose out in a corrupt procurement process may suffer direct financial losses, while consumers may experience indirect harm such as higher utility or telecoms prices.

These different types of harm – direct and indirect, specific and diffuse – should all be considered in compensation decisions in foreign bribery criminal proceedings, and a range of claimants should have rights and standing.

Victims' compensation has been rare in foreign bribery cases, with only a few small awards going to states in cases in the United Kingdom and the United States, for example. However, there are some signs that countries are slowly inching towards greater recognition of victims in foreign bribery cases.

International standards – more guidance needed

International standards laid down in the UN Convention against Corruption (UNCAC) and the Council of Europe Civil Law Convention on Corruption call for states to provide access to remedy to persons who have suffered damage as a result of acts of corruption.[31] This includes ensuring that the views of victims are considered in criminal proceedings and enabling those who have suffered damage from corruption to take legal action in pursuit of compensation.[32] UNCAC also requires each state party to ensure that its courts can award compensation or damages to a state party harmed by UNCAC offences, and calls for states parties to give "priority consideration" to returning confiscated proceeds of corruption to a State that requests it or its legitimate owners or to "compensating the victims of the crime" (Article 57 (3)(c).[33]

The UN Guiding Principles for Business and Human Rights have a pillar on victims' access to remedy, including compensation and restitution, which has application in relation to the negative human rights impacts of foreign bribery. In addition, the UN General Assembly's Declaration of Basic Principles for Victims of Crime and Abuse of Power provides some guidance on access to justice and fair treatment, restitution, compensation, and assistance to victims of abuse of power.[34]

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

During the OECD WGB discussions that led to the adoption of the new OECD Anti-Bribery Recommendation in 2021, some member states and NGOs argued for the inclusion of language on victims' rights and victims' compensation. Unfortunately, this was blocked by some WGB members.

Nevertheless, the 2021 Recommendation does include new language on confiscation that is relevant for compensation, since the confiscated proceeds of corruption can be used for the compensation of victims. It calls for OECD Convention parties to be "proactive in making full use of measures for the identification, freezing, seizure and confiscation of bribes and the proceeds of bribery of foreign public officials or property of equivalent value".[35] It also calls for them to consider developing, publishing and disseminating guidelines on the subject for law enforcement authorities.

The new text should be read together with the Commentary to the OECD Convention which clarifies that the proceeds of bribery are "the profits or other benefits derived by the briber from the transaction or other improper advantage from the bribery", and that the term "confiscation" means the permanent deprivation of property and is "without prejudice to the rights of victims".[36]

The Recommendation text should also be considered together with UNCAC Article 57(3)(c), mentioned above, regarding priority consideration to the return of confiscated property in international corruption cases. Additionally, Article 57(3)(b) calls for a state to return of confiscated proceeds when it recognises damage to the requested state party.

The 2021 Political Declaration of the UNGASS against Corruption adds a commitment by UN member states that "[w]hen employing alternative legal mechanisms and non-trial resolutions, including settlements, in corruption proceedings that have proceeds of crime for confiscation and return, we will strengthen our efforts to confiscate and return such assets in accordance with the [UNCAC]."

With respect to the use of confiscated proceeds of corruption, the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism encourages the use of confiscated property to pay compensation to the victims of crime.[37] The European Union Directive 2014/42/EU requires that if, "[a]s a result of a criminal offence, victims have claims against the person who is subject to a confiscation measure … Member States must ensure that confiscation measures do not prevent such victims from seeking compensation for their claims." In addition, it says that "Member States should consider taking measures allowing confiscated property to be used for public interest or social purposes".[38]

National frameworks for victims' compensation vary

The vast majority of countries covered in this report has some form of victims' rights framework, including the possibility for victims of crime to seek compensation – whether in civil or criminal proceedings, or both.[39]

However, in foreign bribery criminal proceedings, countries differ as to whether victims' compensation is available and, if so, in their procedures and conditions for making awards.

Availability of victims' compensation

In some countries, general rules on victims' compensation rights are not considered to apply in criminal proceedings against bribery. The legal interest protected by the criminal law in those cases is viewed as a public interest. This interest may be variously identified in different countries as the integrity of public office, the administration of justice, the public treasury and the free market, rather than any individually owned interests. This restriction may, however, allow for compensation of a foreign state and even – as in **the Netherlands** – a business harmed by a competitor's foreign bribery.

Many other countries allow compensation of victims in foreign bribery criminal proceedings, usually under general compensation frameworks.

The **United Kingdom** has general sentencing guidelines for corporate offenders that require the courts to consider a compensation order in foreign bribery cases, as well as general principles to compensate victims outside the UK that can be applied to the benefit of foreign victims.[40]

In the **United States**, compensation is possible under general victims' rights statutes. However, the doctrine of *in pari delicto* (in equal fault) may in some cases be an obstacle to compensation awards to states (and state agencies), where it is considered an accomplice – for example, due to corruption of senior officials. This was essentially the position taken by a US court with respect to a claim by the Costa Rican state-owned company ICE in a foreign

bribery case against Alcatel in 2011.[41] The concept of *in pari delicto* was explicitly cited by a US court when dismissing a civil suit for damages by Iraq against companies involved in the Oil-for-Food scandal.[42]

In such cases, special measures should be available, such as allowing non-state public interest representatives to bring a claim on behalf of a victim population.[43]

In many civil law countries – including **Belgium, France, Italy, Luxembourg, Spain** and **Switzerland** – compensation of foreign bribery victims is possible when those victims initiate or join a criminal case claiming civil party status. This status may be recognised for natural or legal persons, including states and relevant NGOs.[44]

In **Italy**, for example, Nigeria was granted civil party status in a major foreign bribery case against Eni and Shell concerning the purchase of rights to an oilfield and submitted a sizable compensation claim.[45] The two companies were acquitted.[46]

In a case in **Belgium**, a group of NGOs and individual Congolese claimants were granted civil party status in 2020 in a long-running foreign bribery investigation by Belgian prosecutors of Semlex – a passport printing company operating in several countries, including DRC.[47] The NGOs based their standing on an amendment to the Belgian Judicial Code allowing NGOs to file complaints in human rights cases.[48]

In **France**, anti-corruption associations can be granted civil party status and sue for damages in corruption-related cases.[49]

Other examples are provided in subsequent sections.

Types of harm recognised

Some of the countries that allow for victims' compensation in foreign bribery criminal proceedings require that they show a direct injury that is particular and concrete. Others take a broader view.

Under **United States** federal law, a crime victim is a person "directly and proximately harmed as a result of the commission of an offence for which restitution may be ordered".[50] In foreign bribery non-trial resolutions, prosecutors have construed the law narrowly and the few cases of awards in the US have been made to foreign states based on easily measurable harm. However, the Och-Ziff case – discussed below in the section on non-trial resolutions – has opened the door to a more expansive approach.

In **France**, both "moral" and material harm can be claimed by civil parties in criminal proceedings.[51] Moral damages are also allowed in other countries, but no such claims have been tested thus far in foreign bribery proceedings.

Under a provision in **Costa Rica**'s criminal procedure code, the public prosecutor is authorised to bring a civil action for social damage within the criminal process in the case of punishable acts that affect collective or diffuse interests.[52] This provision was applied in a domestic bribery case involving a foreign company.[53]

In other countries, there are definitions of crime victim that are worth considering – even if they may not apply in foreign bribery proceedings. These definitions point to broader notions of harm to victims, including consequential harm and harm to collective or diffuse interest.

For example, in **Peru**, a crime victim is defined broadly as anyone who is directly harmed by a crime or "affected by its consequences".[54] Moreover, Peruvian law provides that in the case of crimes that affect collective or diffuse interests – where an indeterminate number of people are injured or in case of international crimes – an association may exercise the rights and powers of the persons directly harmed by the crime, provided that the association's purpose is directly linked to those interests and was registered prior to the commission of the offence.[55]

Brazilian law allows for recovery of material and moral damages to collective rights and public property, including the harm caused by corruption, through civil class action lawsuits.[56]

Proposal for remediation in foreign bribery cases

One author has proposed a three-part framework for remediation in foreign bribery cases: [57]

+ compensation, a loss-based remedy applicable to identifiable victims who have suffered ascertainable loss
+ reparations, which respond to the widespread and diffuse harms suffered by populaces en masse
+ restitution, a gain-based form of remediation that strips ill-gotten gains from corrupt actors and awards them to victims.

It is also worth noting that in **Spain**, in criminal proceedings, a popular prosecutor or *acusador popular* can invoke the right to reparation in matters of public interest without the need to show direct, personal harm – but this is limited to Spanish citizens. Foreign citizens may only initiate cases as *acusador particular* or directly affected party or victim.

In several common law jurisdictions, it is possible for any person – legal or natural – to bring a private prosecution and seek compensation in that proceeding. In the **United Kingdom**, for example, under the Prosecution of Offences Act 1985, any person or company can do this.

Victims' procedural rights

Justice for crime victims depends on respect for certain procedural rights, which are extensively enumerated in some countries.

Slovakia's Code of Criminal Procedure, for example, has provisions on notification of victims about the progress of the case from the complaints stage onwards and requires the consent of a victim to a plea agreement.

In civil law countries, civil party status confers a wide range of rights. In **France**, for example, this status gives a victim the opportunity for active involvement during an investigation and trial. This includes access to documents during the instruction phase, the right to be heard during court proceedings and the right to appeal. In **Belgium**, civil parties' rights include the specific right to be heard concerning a conditional release of the accused.

The crime victim in **Estonia** also has extensive rights, including the right to file a civil action for compensation through an investigative body or the prosecutor's office; to obtain access to the criminal file; to give or refuse consent to settlement proceedings; and to present an opinion concerning the charges, the punishment and the damage set out in the charges and the civil action.

In the **United States**, the Crime Victims' Rights Act gives victims the rights to notice of court proceedings and plea bargains or DPAs, to be heard, and to full and timely restitution.[58]

Many possible paths to compensation

Compensation in foreign bribery proceedings may be made using several frameworks. This includes frameworks for non-trial resolutions, confiscation of the proceeds of foreign bribery, voluntary compensation arrangements, and penalty surcharges allocated to victims' funds. In case of compensation to states or non-state representatives of a class of victims, it is important to ensure transparent and accountable transfer of the funds.

Increase compensation in non-trial resolutions

Non-trial resolutions generally offer a flexible way of compensating victims, and many countries can use them for that purpose – although few do so.

In **Italy**, the law provides that, in foreign bribery cases, the conditional suspension of sentence is subject to the payment of an amount determined by way of reparations.[59]

Pursuant to the **French** 2016 law on judicial public interest agreements (CJIPs), a type of non-trial resolution, companies may be required to pay a public interest fine and to compensate victims.[60] However, to date, only a French state-owned company has asked for compensation following a CJIP, alleging that its subsidiaries' corrupt conduct caused it direct harm.[61] No victims were identified nor was compensation awarded in the Airbus CJIP in 2020, that imposed a public interest fine of approximately €2 billion – including disgorgement of profits of about €1 billion – in relation to allegations of bribery in several countries.[62]

Canada's more recent Remediation Agreement framework emphasises victims' compensation as part of the resolution process and specifies that foreign victims are eligible.[63] A victims' surcharge is also a possibility in foreign bribery cases. Despite this promising framework, in its first remediation agreement concluded in 2022 between SNC-Lavalin and Quebec prosecutors, only a small amount of compensation – roughly the amount of the alleged bribe – was awarded to a victim state-owned company. A victims' surcharge was also levied.[64] In approving the settlement, the court stated a significant restriction, namely that the compensation award had been contingent on the victim reaching an agreement with the defendant about the amount of the loss. The court reasoned that the criminal courts should not put themselves in the place of the civil courts.[65]

However, the French and Canadian frameworks are relatively new and remain to be further tested.

Canadian remediation agreements: Provisions on victims

The Canadian remediation agreement regime puts particular emphasis on victims' involvement in the process.[66] It requires:

+ an indication of any reparations, including restitution
+ a victim surcharge of 30 per cent of the penalty in domestic cases, with some exceptions. It is not required in foreign bribery cases[67]
+ a duty to inform victims or a statement of reasons for not doing so: the prosecutor must take reasonable steps to inform any victim, or any third party that is acting on a victim's behalf, that a remediation agreement may be entered into
+ the court has a duty to consider any victim or community impact statement provided
+ a third party may act on a victim's behalf when authorised to do so by the court, if the victim requests it or the prosecutor deems it appropriate.

The regime explicitly states that a victim can include a person outside Canada.

In the **United States**, where there had only been a few small compensation awards to states, there was a breakthrough in 2020 in a landmark federal district court decision on a compensation claim under the Mandatory Victims Restitution Act, in which the court went beyond the existing approach of US prosecutors to determining eligible victims and proximate harm. This potentially opens the door to future successful victims' claims. The court sentenced the African subsidiary (Och-Ziff Africa) of hedge fund Och-Ziff to pay US$135 million in damages to the former shareholders of Africo Resources Ltd – a Canadian mining company. Prior to the sentencing, the shareholders had filed a compensation claim alleging that Africo lost mining rights in southern DRC as a result of the hedge fund's bribery scheme and that they had suffered harm.[68] In 2016, Och-Ziff Africa had pleaded guilty to conspiracy to violate the FCPA and Och-Ziff had agreed to pay a total of US$412 million in penalties to resolve FCPA charges relating to allegations of bribery in the DRC.[69] The Africo compensation claim was opposed by both Och-Ziff and the US DoJ.[70]

In another recent development, in July 2021, compensation was included for the second time in a deferred prosecution agreement (DPA) in the **United Kingdom**. The DPA was reached between the UK Serious Fraud Office (SFO) and Amec Foster Wheeler. The company agreed to pay £210,610 (US$289,530) to Nigeria as compensation for the specific and quantifiable loss to the people of Nigeria through evasion of taxes by the company through bribes paid to Nigerian officials.[71] The allegations related to the use of corrupt agents in multiple countries, and the total UK DPA financial penalty of about US$141 million was part of a global settlement with the UK, US and Brazilian authorities.[72] The SFO stated that the compensation amount was to be transferred by the UK government and placed in Nigerian funds to support three key infrastructure projects that benefit the people of Nigeria.

Use confiscated proceeds of foreign bribery for compensation

The OECD's 2021 Anti-Bribery Recommendation encourages proactive confiscation of proceeds of corruption and these amounts can be used to compensate victims. It stands to reason that disgorged profits should be treated in the same way.

Other international frameworks also encourage the use of confiscated crime proceeds for compensation, and it is common for the **European Union** jurisdictions to use confiscation mechanisms as a means to provide restitution to the victims of crime generally. Priority is often given to victims over the general treasury or any special confiscation fund.[73]

In civil law countries like **Belgium** and **France**, allocation of confiscated assets for compensation can take place as part of the *partie civile* procedure.

In **Italy**, in case of conviction or plea bargain for the crime of foreign bribery, there is a specific provision for confiscation to be ordered of the assets constituting the profit or an amount corresponding to the profit. This may be used towards compensation.

France's landmark 2021 law on the restitution of ill-gotten gains in international corruption cases – whether proceeds of bribery or embezzled public funds – establishes a new model that makes an explicit link to foreign victims. [74] The law provides that, once confiscated by the French justice system, international corruption proceeds will no longer be

placed in the French general budget. They will instead be returned "as close as possible to the population of the foreign State concerned" (where the economic offences were committed) to finance "cooperation and development actions".[75] However, this law does not apply in the case of CJIPs.

One tested way confiscated funds have been used to remedy harm to communities is through the social reuse of funds or community restitution. This is an approach used selectively in relation to drugs and organised crime offences in countries like **Italy**, the **United Kingdom** and the **United States**. Such a model could be used in large-scale foreign bribery cases where the harm caused is diffuse and widespread.

Despite existing frameworks, confiscated proceeds of foreign bribery are not known to have been used to compensate foreign victims or companies harmed.

Consider voluntary compensation with safeguards

In some countries, an offender can benefit from preferential treatment if they voluntarily or separately compensate victims. This is another potential avenue to victims' compensation in foreign bribery cases.

Sentencing guidelines in the **United States** allow for taking into account whether the accused has made restitution or reparation to the victim. In other countries – such as **Czech Republic**, **Germany**, **Mexico** and **Spain** – any mitigation of damages by the offender may be considered a mitigating circumstance in relation to criminal liability.[76] This approach has been used in **Switzerland**, including in one case where the charges were dropped against a company in exchange for its payment of a sum to the International Red Cross for use in affected countries.[77]

In a 2021 global settlement with Credit Suisse in relation to allegations of bribery in Mozambique, the US, UK and Switzerland took into account the bank's forgiveness of some of Mozambique's debt in determining the bank's penalties.[78] However, this failed to consider that the entire debt was corruptly incurred and should have been cancelled, and that the consequential harm caused went beyond the amount of the debt. (See box.)

Voluntary mitigation approaches require procedural safeguards, including an opportunity for victims to be heard.

Credit Suisse debt forgiveness for Mozambique

In 2021, a coordinated global settlement was reached with the Credit Suisse Group by the US Department of Justice (DoJ) and SEC, the UK Financial Conduct Authority and the Swiss Financial Market Supervisory Authority. Alongside the settlement, Credit Suisse forgave debt owed by Mozambique in the amount of US$200 million.

The infamous "tuna bonds" case involved US$2 billion in bank loans and bond issues from Credit Suisse and the Russian bank VTB to Mozambican state-owned entities.[79] The loans and bonds were said to be for government-sponsored investment schemes, including maritime security and a state tuna fishery.[80] However, the arrangement was kept hidden and there were no associated services or products of benefit to the Mozambican people.[81]

At least US$200 million was allegedly misappropriated for bribes and kickbacks to the scheme's participants.[82] The consequential harm done to the people of Mozambique has been estimated at US$11 billion.[83]

Apply crime victims' surcharges and create funds

The crime victims' fund is another model used in some countries to provide compensation and assistance to victims. Although most examples are limited to domestic victims of crimes other than corruption, it is a model that could be used in foreign bribery cases.

In the **United States**, there is a fund financed by fines and penalties paid by federal offenders, where victims can apply for support and assistance, but it does not cover victims of bribery, whether domestic or foreign. In **South Africa**, money derived from confiscation orders may under some circumstances be allocated to a fund supporting victims.[84]

In **Canada,** a federal victim surcharge of 30 per cent of the fine is levied in many criminal cases and is possible in foreign bribery cases. To date, the victim surcharge helps to fund programmes, services and assistance to victims of crime within the Canadian provinces and territories – but in principle could also be used to assist victims outside Canada.[85]

Likewise, in **Australia**, a victims' levy is provided for in South Australia consisting of 20 per cent of fines

imposed and there is a similar system in Australian Capital Territory.

In **Colombia,** new legislation in 2022 provides for legislation for the creation of a fund for those affected by corruption, to be administered by the Office of the Inspector General.[86] It also explicitly allows for compensation for those affected by corruption, including pecuniary sanctions in criminal cases where the corruption has resulted in harm. While the new legislation is not intended for foreign bribery cases, the reasoning could easily be extended to such cases.

A related approach was taken in 2019 by the **Interamerican Development Bank**'s (IDB) Office of Institutional Integrity in connection with the debarment of CNO S.A. – a subsidiary of the Brazilian company Odebrecht S.A. – following an investigation of alleged bribery in two IDB-financed projects. As part of the sanctions, Odebrecht committed to making a total contribution of US$50 million, starting in 2024, directly to NGOs and charities that administer social projects whose purpose is to improve the quality of life of vulnerable communities in the IDB's developing member countries.[87]

Make arrangements for transfer of compensation

Where compensation is made, especially large awards, arrangements for transfer of the amounts should draw on the Global Forum on Asset Recovery Principles for Disposition and Transfer of Stolen Assets in Corruption Cases.[88] This outlines a range of principles to follow in such transfers, including transparency, accountability, civil society participation and that "[w]here possible, and without prejudice to identified victims, stolen assets recovered from corrupt officials should benefit the people of the nations harmed by the underlying corrupt conduct". This should apply equally to the proceeds of foreign bribery recovered from companies. Civil society groups have elaborated on these principles.[89]

By way of an example, in 2020, **Switzerland** concluded a Memorandum of Understanding with Uzbekistan to return US$130 million seized in criminal proceedings against Gulnara Karimova – daughter of the former president, who was alleged to have received bribes paid by telecommunications companies to facilitate their entry into the Uzbek market. The funds are earmarked for use "for the benefit of the people of Uzbekistan" and their restitution is subject to transparency requirements and the creation of a monitoring mechanism.[90] A Restitution Agreement was signed in August 2022.[91]

While the case does not concern proceeds of corruption from the supply side of foreign bribery, it does offer a model for such cases. However, although Switzerland makes use of confiscatory measures in the sentences of natural and legal persons found guilty of foreign bribery, it has not ordered any restitution in relation to the amounts confiscated to date.

In **France**, activists and NGOs have criticised the lack of adequate measures for the transfer of a damages award to Uzbekistan. Uzbekistan was granted civil party status in a case against Gulnara Karimova, who was accused of having laundered proceeds of corruption in the French real estate sector. French justice awarded Uzbekistan damages of €60 million, currently being recovered through the sale of three real estate properties confiscated from the convicted defendant.[92] The activists and NGOs have criticised the lack of transparency in the compensation process and the absence of information on the planned use of the recovered funds.[93]

TRENDS IN LEGAL FRAMEWORKS AND ENFORCEMENT SYSTEMS

Many countries still have key weaknesses in their legal frameworks and enforcement systems. But there have also been some improvements.

The section below describes some key aspects of country legal frameworks and enforcement systems where there continue to be weaknesses and where, in some cases, there have been improvements. The last part of the section discusses recent increases in enforcement against banks.

Foreign bribery offence, jurisdiction, limitation periods

Numerous countries have weaknesses in their legal frameworks for foreign bribery enforcement. In several of the OECD Convention countries, for instance, there are inadequacies in the definition of the offence, including in **Bulgaria, Costa Rica, Czech Republic, Greece, India, Latvia, New Zealand, Peru, Portugal** and **Slovenia**. As to non-OECD Conventions countries, in **India**, there is no legislation criminalising foreign bribery, while in **China**, **Hong Kong** and **Singapore** there are deficiencies in the definition of the offence.

Also, some countries have jurisdictional limitations that hamper enforcement – including in **France, Israel, Japan, New Zealand, Norway, Slovenia, Sweden, China** and **Singapore**. In Sweden, for example, the dual criminality requirement presents an obstacle.

In a number of countries – including **Estonia, Germany**, **Greece** and **South Korea** – inadequate statutes of limitations create barriers to enforcement. In Estonia, the limitations period is not suspended. In **France**, a 2021 law limited the duration of preliminary investigations for corruption-related offences to five years.

In **Norway**, the Norwegian Penal Code was amended in 2020 to remove the requirement of double criminality and expand the reach of Norwegian anti-corruption provisions on corruption offences committed abroad.

Beneficial ownership transparency

Neither the OECD Anti-Bribery Convention nor the Anti-Bribery Recommendation requires mechanisms for beneficial ownership transparency. While UNCAC does contain general language on the transparency of company ownership, it is now increasingly widely accepted that public registers of beneficial ownership are critical for detecting and enforcing against foreign bribery and other forms of international corruption.

In almost half of the surveyed countries, a key enforcement problem identified was the lack of public registers of beneficial ownership information of companies and trusts or inadequacies in existing registers. The countries include **Argentina, Australia, Chile, Finland, Hungary, Ireland, Italy, Israel, Lithuania, Mexico, New Zealand, Norway, Peru, Poland, Russia, Slovenia, South Korea, Spain, Switzerland, the UK Overseas Territories and Crown Dependencies**, **the United States** as well as **China** and **Hong Kong**.

In a few countries – including **Canada**, **the Czech Republic, Hungary, Luxembourg** and **the Netherlands** – there were improvements in the area of beneficial ownership transparency. In **Russia**, the level of corporate transparency has decreased.

Independence and resourcing of prosecution services and judiciary

Insufficient independence or funding of enforcement agencies can undermine foreign bribery enforcement. Both problems exist in a number of countries, including **France, Mexico, Latvia, Peru, Poland, South Africa, Russia, South Korea** and **Turkey**.

In some countries such as **Argentina, Austria, Brazil, Czech Republic** and **Hungary**, the main problem consists in the lack of full independence of prosecutors, with serious, targeted political interference reported in Brazil. In **Greece**, the OECD WGB called for stronger safeguards to protect foreign bribery proceedings from being subject to improper influence by concerns of a political nature.

In other countries such as **Belgium, Canada, Denmark, Finland, Luxembourg, Portugal**, **Spain**, **Sweden** and **the United Kingdom**, the key weakness is underfunding of enforcement bodies.

France, **Portugal** and the **United Kingdom**, among others, also face insufficient resourcing of their court systems, while **Italy** has a huge backlog in its courts. In 2021, a survey of judges in **Estonia** revealed their perceptions of potential detrimental effects on the quality of justice arising from excessive workloads.[94] In **Finland**, the police and the judiciary are chronically understaffed and justice system processes are therefore very slow.

In other countries such as **Hungary** and **Poland**, there are serious challenges to the judiciary's independence. There are also restrictions on the independence of the judiciary in **Argentina**.

In **Austria** and **Czech Republic**, improvements to the independence of the prosecutor's office are pending. , while in **Slovenia** they have been initiated.

Liability and sanctions for legal persons

The OECD Anti-Bribery Convention and UNCAC call for the liability of companies – but not for their criminal liability, which Transparency International has long argued is the most effective deterrent. The lack of criminal liability is identified as a deficiency in numerous countries covered in this report, in addition to other shortcomings.

Weaknesses in the legal frameworks covering the liability of legal persons were found in the following OECD Convention parties: **Argentina, Australia, Austria, Bulgaria, Chile (sanctions), Costa Rica (subsidiaries), Finland, Germany, Greece, Israel, Japan, Latvia, Lithuania, Luxembourg, Norway, Peru, Poland, Portugal, Russia, Slovenia, South Africa, South Korea, Sweden, Spain, Switzerland, Turkey**. There are also inadequacies in company liability in **Hong Kong** and **India**.

In Greece and Japan, there are inadequate sanctions for both natural and legal persons. In **Mexico**, the problem is that state-owned enterprises are exempt from corporate liability.

In **Colombia** and **Peru**, legislation was passed in 2022 strengthening the liability of corporations for corruption offences.

Whistleblower protection

Whistleblowers are crucial for the detection of foreign bribery and other crimes, and their effective protection must be part of any enforcement framework. The 2021 Anti-Bribery Recommendation contains an extensive section on this subject.

Lack of adequate whistleblower protection was reported as a key weakness in numerous countries, including **Argentina, Australia, Austria, Bulgaria, Canada, Chile, Costa Rica, Czech Republic, Estonia, Finland, Germany, Italy, Lithuania, Luxembourg, Mexico, the Netherlands, Peru, Poland, Russia, Slovenia, South Africa, South Korea, Spain, Switzerland, Turkey, the United States** and **Singapore**. In **Russia**, there is no legislation at all on the subject, while protection in Switzerland is completely inadequate.

In a few countries, there have been improvements in the area – notably in EU countries such as **Denmark**, **France**, **Portugal** and **Sweden** that have implemented the EU Whistleblower Protection Directive. In **Estonia** and **Lithuania**, legislation was introduced that improves existing whistleblower protection, while in the **Czech Republic**, **Germany**, **Luxembourg** and **Spain** legislation to bring the legal framework in line with the EU Directive is pending.

Non-trial resolutions/settlements

Non-trial resolutions are increasingly available and used in OECD Convention countries for foreign bribery cases. The 2021 Anti-Bribery Recommendation contains a section on this subject, establishing minimum standards for these resolutions.

Weaknesses in provisions for settlements or the lack of a framework were found in several countries, including **Bulgaria, Canada, Chile, France, Germany, Greece, Luxembourg, the Netherlands, Norway, Peru, Slovenia, South Africa, Spain, Switzerland, the United Kingdom** and **China**. In Norway, for example, there is inadequate information about the application of penalty notices and the use of mitigating factors. In Switzerland, there is insufficient transparency and predictability in the use of summary penalty orders and accelerated proceedings; no framework providing incentives for self-reporting by companies; and no guidance on adequate corporate preventive measures.

Enforcement against banks and insurance brokers

A notable development over the past few years is the increase in enforcement against financial institutions. In some cases, this is because of their direct involvement in foreign bribery and, in others, for their role in facilitating foreign bribery. However, despite numerous reports of how banks have enabled multinational companies to export corruption abroad, enforcement against banks facilitating foreign bribery and other financial crimes is still rather uncommon.

France's first CJIP for foreign bribery was concluded with **Société Générale** in 2018, as part of a coordinated resolution with US authorities. It related to the bank's alleged bribery to induce the Libyan Investment Authority (LIA) to enter into derivatives trades that harmed Libya financially. Prior to concluding the CJIP, Société Générale had entered into a separate agreement with LIA in 2017 to terminate a related civil lawsuit by paying LIA €963 million. As a result, the French authorities determined that the CJIP with Société Générale did not need to include any compensation measures. [95]

In two separate cases involving **Goldman Sachs** and **Credit Suisse**, the banks were accused of bribery in connection with massive corruption in Malaysia and Mozambique, respectively, and reached settlements with enforcement authorities.[96] In the Goldman Sachs case, the bank was accused of paying US$1.6 billion in bribes to secure business with 1Malaysia Development Bhd. (1MDB), a Malaysian state-owned development fund. (See the case study in the next section.) The charges against Credit Suisse and some of its employees – described in the previous section on victims' compensation – related to the bank's alleged role in the financing of a multi-million dollar loan for a tuna fishing project in Mozambique, which involved kickbacks and the diversion of funds.

In 2021, **Deutsche Bank** reached a settlement with the United States DoJ to resolve an investigation into alleged violations of the FCPA and an alleged commodities fraud scheme. According to the FCPA allegations, Deutsche Bank conspired to conceal payments to business development consultants that were actually bribes to obtain lucrative business for the bank in China, Italy, Saudi Arabia and UAE.[97]

In other cases, banks and other entities have been sanctioned for failure to prevent money laundering, sometimes with evidence of laundering of bribes to foreign public officials. For instance, the largest Norwegian bank **DNB** was fined almost US$50 million by the Norwegian Financial Authority in 2021 for "serious breaches" in the bank's compliance with anti-money laundering legislation.[98] The authority had conducted investigations, including into the bank's handling of transactions of selected companies linked to the Icelandic fishing company Samherji.[99] Samherji was alleged by investigative journalists to have bribed the Namibian government to gain access to fishing grounds.[100] The Financial Authority concluded that the offences it uncovered in connection with the Samherji case "mainly relate to matters that are time-barred or occurred under the former Anti-Money Laundering Act, in which there was no legal basis for imposing administrative sanctions."[101]

In the UK, the Financial Conduct Authority (FCA) fined insurance broker **JLT Specialty Limited** (JLTSL) almost £8 million (US$9.7 million) in 2022 for financial control failings which gave rise to an unacceptable risk of bribery and corruption. In its Final Notice, the FCA cited bribery in Colombia and credited the broker with the over US$29 million disgorgement of profit in the US from alleged corruptly obtained contracts in Ecuador, agreed in a declination letter concluded with the US DoJ.[102]

In the Netherlands, **ABN AMRO** reached a €480 million (US$575 million) settlement in 2021 with the Netherlands Public Prosecution Service to resolve money laundering charges. The agreed statement of

facts included the observation that "two Dutch companies suspected of being involved in one of the biggest international corruption cases held bank accounts at ABN AMRO. Payments worth tens of millions of euros were transferred through the accounts of these two clients between 2010 and 2017".[103]

This was preceded by a €775 million settlement with reached by Dutch prosecutors with **ING Groep NV** in 2018, also with findings that bribe payments were laundered through the bank.[104] The settlement was upheld on appeal in 2020, with the court also ordering a criminal investigation of the former ING CEO, now CEO of UBS.[105]

In July 2022, a collective of three civil society organisations – Public Eye, the Platform to Protect Whistleblowers in Africa (PPLAAF) and the association UNIS – filed a criminal complaint with the Swiss federal public prosecutor's office about possible laundering of Congolese public funds by the Zurich and Geneva branches of the Swiss bank **UBS**' in two banking transactions totalling US$19 million. Of the amount in question, the civil society groups allege that US$7 million was connected to bribes paid by Chinese companies to Congolese leaders in relation to a mining contract and that the remaining funds were embezzled during the years of Joseph Kabila's presidency.[106]

In cases without a specific foreign bribery nexus, the FCA imposed a record fine £37.8 million on **Commerzbank London** in 2020 for failing to institute adequate anti-money laundering controls from 2012 to 2017.[107] Several banks, including Commerzbank, have also paid large fines in the US in the past for failure to have adequate anti-money laundering systems and the French authorities fined **BNP Paribas** for the second time in 2021 for anti-money laundering violations, this time by its insurance arm.[108]

CASE STUDY: GOLDMAN SACHS

The charges and admissions

In October 2020, Goldman Sachs and its Malaysian subsidiary admitted to conspiring to violate the **United States** Foreign Corrupt Practices Act (FCPA) in connection with a scheme to pay over US$1.6 billion dollars in bribes to high-ranking government officials in Malaysia and Abu Dhabi.[109]

According to Goldman Sachs's admissions and court documents, the bribes were paid to influence the decisions of the Malaysian state-owned development fund 1MDB as well as Abu Dhabi's sovereign wealth fund, International Petroleum Investment Co (IPIC) and a unit of the fund, Aabar Investments PJS, in order obtain lucrative business.[110]

In its press release about the settlement, the US DoJ said the business obtained by Goldman Sachs included a role as an advisor on the acquisition of Malaysian energy assets, as an underwriter for approximately US$6.5 billion in three bond deals for 1MDB and a potential role in an even more lucrative initial public offering for 1MDB's energy assets.[111]

According to the DoJ, Goldman Sachs participated in this "sweeping international corruption scheme" for a period of five years, between 2009 and 2014, and earned US$600 million for its work with 1MDB.[112]

Malaysian and US authorities say that US$4.5 billion – including some of the money Goldman helped raise – was embezzled from 1MDB in an elaborate scheme that spanned the globe and implicated high-level officials of the fund, Prime Minister Najib Razak, Malaysian businesspeople and others.[113]

Goldman Sachs admitted that, in order to effectuate the scheme, former Asia partner Tim Leissner, head of investment banking in Malaysia Roger Ng, another former executive and others conspired with Malaysian businessman Low Taek Jho (also known as Jho Low) to promise and pay over US$1.6 billion in bribes to officials in the Malaysian government, 1MDB, IPIC and Aabar.[114] According to the DoJ, the co-conspirators paid these bribes using more than US$2.7 billion in funds that Low, Leissner and other parties to the conspiracy diverted and misappropriated from the bond offerings underwritten by Goldman Sachs.[115] Leissner, Ng and Low also allegedly retained a portion of the misappropriated funds for themselves and other co-conspirators.[116]

Settlements and other enforcement

Goldman Sachs has been investigated by at least 14 regulators for its role in the 1MDB scandal.[117]

In October 2020, Goldman Sachs and its Malaysian subsidiary reached a global settlement agreement with criminal and civil authorities in the **United States**, the **United Kingdom** and **Singapore**. They admitted to participating in a scheme and agreed to pay US$2.3 billion in penalties[118] and US$606 million in disgorgement.[119] The Malaysian subsidiary pleaded guilty to one count of conspiracy to violate the anti-bribery provisions of the FCPA.

Of the total amount, US$1 billion in penalties and disgorgement was to settle SEC charges, while US$126 million in penalties were to be paid in the UK and US$122 million in penalties in Singapore.[120]

In a separate enforcement action, the **Hong Kong** Securities and Futures Commission issued Goldman

Sachs a fine of US$350 million, which was credited towards the global resolution.[121]

In **Malaysia**, Goldman Sachs agreed in 2020 to a settlement with local prosecutors consisting of US$2.5 billion in fines and penalties together with the bank's guarantee that the government would receive at least US$1.4 billion from money recovered from the scheme. This followed charges brought against two of its subsidiaries. While substantial, the amount is significantly smaller than the initial request from the Malaysian government, which was US$7.5 billion.[122]

The bank and several of its top executives also settled a civil suit brought by its shareholders, agreeing to pay US$79.5 million, which will be spent on compliance measures at the bank.[123] In addition, civil forfeiture actions by the US DoJ's Kleptocracy Asset Recovery Initiative, with cooperation from authorities in Malaysia, Singapore and Luxembourg, have led to the return of US$1.2 billion in misappropriated funds to Malaysia.[124]

Concerning the criminal charges against Goldman Sachs employees, Tim Leissner pleaded guilty in 2018 to conspiring to violate the FCPA by bribing Malaysian and Abu Dhabi officials, circumventing internal accounting controls, and conspiring to launder money.

Approximately US$18.1 million of the total payments to officials was allegedly paid from accounts controlled by Leissner.[125] He was ordered to forfeit US$43.7 million as a result of his crimes, but has yet to be sentenced.[126] He has, however, already been banned for life by the SEC and the Monetary Authority of Singapore. The DoJ also indicted Roger Ng, a managing director at Goldman Sachs, on three counts: bribery, circumventing internal accounting controls and money laundering.[127] He was found guilty in April 2022 after a trial. In 2019, Malaysian prosecutors filed charges against 17 more directors and former directors at three Goldman Sachs subsidiaries, including the chief executive of Goldman Sachs International.[128]

In 2020, Abu Dhabi's International Petroleum Investment Co (IPIC) dropped a lawsuit against Goldman Sachs to recover losses suffered from the bank's dealings with 1MDB.[129] The lawsuit alleged that Goldman Sachs conspired with unidentified people from Malaysia to bribe two former IPIC executives to further their business at its expense.

COUNTRY BRIEFS: OECD CONVENTION COUNTRIES

Transparency International commends the OECD Working Group on Bribery (WGB) for its continued outstanding work, and for encouraging the participation of civil society and the private sector in monitoring implementation of the OECD Anti-Bribery Convention. We encourage parties to the Convention to translate their country reports into their national languages, present it to their parliaments, hold public consultations on the report, and promptly announce plans to address deficiencies.

To complement the OECD WGB country reports, this section presents country reports for 43 of the 44 OECD Convention countries.

Our reports are based on information from experts in Transparency International chapters in OECD countries party to the Convention as well as from pro bono lawyers. The reports cover recent developments in each country and address issues such as access to information on enforcement and inadequacies in the legal framework and enforcement system. This year, the reports include a special focus on victims' compensation.

ARGENTINA



Limited enforcement

0.3% of global exports

Investigations and cases

In the period 2018-2021, Argentina opened four investigations, commenced no cases and concluded no cases.

Weaknesses in legal framework and enforcement system

Weaknesses in the legal framework include the lack of provision for a central beneficial ownership register and the lack of public access to beneficial ownership information held by several state entities; inadequate accounting and auditing requirements; a failure to hold companies responsible for subsidiaries, joint ventures and/or agents; the lack of a framework for whistleblower protection and anonymous complaints; the lack of an adequate legal framework for making or receiving mutual legal assistance (MLA) requests; deficiencies in the legal framework for forfeiture of crime proceeds ("extinction of domain") including no clear provisions on the value of confiscated assets in bribery cases (which should correspond to the amount paid as a bribe and to whatever profits were generated) or on how the forfeited proceeds will be used.

Weaknesses in the enforcement system include the lack of independence of lower court judges arising because of political interference in the appointment process.

Recent developments

The Anti-Corruption Office is now developing the Integrity and Transparency Register for Companies

and Entities[130] (RITE, from its initials in Spanish). RITE is a platform where Argentine organisations can report publicly on their integrity programmes and make visible their commitment to ethical business. A draft of the Integrity and Public Ethics Law has been opened for comment and contains significant provisions on the reporting of malfeasance and misconduct, as well as on safe reporting channels.[131]

Transparency of enforcement information

There are no published, updated statistics on foreign bribery enforcement or on mutual legal assistance (MLA) requests made and received. However, the information can be obtained through access to public information requests. Also, the Public Procurement Office publishes an annual report with information on general trends in foreign bribery enforcement, most recently in 2018.[132]

As a general rule, neither court decisions nor non-trial resolutions are published. The exception is the Supreme Court of Justice, which has a Judicial Information Centre with a dedicated "Observatory of Corruption" that publishes all of the court's judgements and resolutions related to corruption.[133] However, the information is not clearly presented and resolutions relating to foreign bribery are difficult to access without specific information about the file (e.g., file number or case name) because the search engine is limited.

Victims' compensation

There is no legal framework recognising victims' rights or victims' compensation in foreign bribery cases and no provision in the legal framework for the forfeiture of crime proceeds in such cases. Under the Argentine Penal Procedure Code, the victims of a crime can constitute themselves as plaintiffs in the penal procedure and, before the closure of the criminal instruction, can request civil compensation for damages as part of the criminal proceedings.[134] However, the option to initiate such a private action is not available for corruption-related crimes and can only be explored in strategic litigation to force a definition that is not provided for by the procedural code or specific legislation.

Recommendations

+ Publish enforcement information.
+ Establish a centralised register of beneficial ownership information instead of having several oversight bodies that collect information separately.
+ Introduce a strong legislative framework for whistleblower protection.
+ Establish a framework for holding parent companies liable for subsidiaries.
+ Introduce improved accounting and auditing standards.
+ Improve the legal framework for forfeiture of crime proceeds.
+ Eliminate political interference in the appointment process for judges and ensure their independence.
+ Establish a legal framework for victims' rights and victims' compensation in foreign bribery cases.

AUSTRALIA

Moderate enforcement

1.4% of global exports

Investigations and cases

In the period 2018-2021, Australia opened eight foreign bribery investigations, commenced seven cases and concluded five cases with sanctions.

Weaknesses in legal framework and enforcement system

There are no central public registers of the beneficial ownership of companies and trusts. The anti-money laundering legal framework does not cover real estate agents, accountants, auditors or lawyers. There is an inadequate legal framework for corporate criminal liability and the OECD WGB has raised concerns about the sanctions imposed in practice on natural and legal persons and about the low amounts confiscated in foreign bribery offences in comparison to the amounts confiscated in other cases. There are also no debarment guidelines for procurement agencies in relation to companies or individuals convicted of foreign bribery offences.

Other areas of concern include the fact that public-sector whistleblower protections are insufficient and that the facilitation payments defence remains intact, despite concerns that such payments are often de facto bribes. In addition, the OECD WGB reports that Australia has taken no steps to ensure that it can provide mutual legal assistance to other countries regarding foreign bribery offences.

Recent developments

The Crimes Legislation Amendment (Combatting Corporate Crimes) Bill 2019 ("the Bill"), which the government reintroduced in Parliament in December 2019, is still pending and the OECD WGB expressed concern in December 2021 over the ongoing delay in its adoption.[135] The Bill aims to introduce a deferred prosecution agreement (DPA) scheme and a new strict liability offence for legal persons in the case of failure to prevent foreign bribery. However, it does not require a corporation to make any formal admission of criminal liability as part of a DPA, although it must include a statement of facts for each offence.

The OECD WGB's Phase 4 Two-Year Follow-Up Report on Australia of June 2019, which was updated in 2021, was positive about the significant increase, in June 2019, in the Australian Federal Police's budget for foreign bribery investigations and the hiring of specialised, full-time staff.[136] However, the report also expressed concern over the continued low level of enforcement in Australia and the fact that not a single legal person had been sanctioned in the country since 2011.

In case developments, the Australian Federal Police (AFP) charged the Australian company **Getax Australia Pty Ltd** in February 2020 after a decade-long investigation into the alleged bribery of Nauru politicians, including the president and justice minister. As of June 2021, Getax had yet to enter a plea.[137] In 2020, the AFP was also reportedly examining leaked documents alleging an 2011 payment by ASX-listed oil company **Horizon Oil** to a shell company in Papua New Guinea in relation to an oil deal.[138] Horizon Oil itself claims that an unreleased internal report clears the company of breaching any foreign bribery laws.[139] The UK Serious Fraud Office (SFO) and the AFP were reportedly investigating **Rio Tinto** in 2017 over an alleged US$10.5 million payment to a French consultant working on the Simandou iron-ore project and in 2020 there were news reports that the company was in talks with the SFO over a possible deferred prosecution agreement in relation to the payment.[140]

There have been no public updates about reports of several investigations. These include the AFP's reported 2017 examination of the possible liability of **Iluka Resources** in relation to allegations against a London-based firm it acquired that was accused of bribing high-ranking Sierra Leone officials to win mining licences.[141] The AFP was also reported in 2016 to be conducting an investigation into allegations against **Sundance Resources** of possible bribery to win permits for an iron ore project in the Republic of Congo (Congo-Brazzaville).[142] An AFP probe into allegations against the **Snowy Mountains Engineering Company** (SMEC Holdings) was reportedly still ongoing as of early 2018.[143] In 2017, the World Bank announced a negotiated resolution agreement with SMEC International Pty, a subsidiary of SMEC Holdings, debarring it for 12 months based on an investigation that found misconduct, including "evidence indicating inappropriate payments in relation to World Bank projects in Sri Lanka and Bangladesh".[144]

Transparency of enforcement information

The AFP and the Commonwealth Director of Public Prosecutions (CDPP) do not publish statistics on investigations, prosecutions or case outcomes. The Attorney-General's Department publishes annual statistics on requests for mutual legal assistance (MLA) made and received in relation to criminal matters but does not distinguish foreign bribery-related requests. The AFP may issue media releases when filing charges and ASIC issues releases when a case concludes. Australian courts publish all decisions and any remarks made during sentencing.[145]

Victims' compensation

Australia's legal system provides for natural persons and legal persons to seek compensation for wrongs against them through civil proceedings under tort, contract or other common law principles.[146] Australia is considering introducing a deferred prosecution agreement (DPA) scheme, which could require a company to disgorge any ill-gotten profits or other benefits obtained from foreign bribery and to compensate victims, among other things.[147] This reform has been sitting with the proposed amendments to the 2019 Crimes Legislation Amendment Bill, which is still pending. Meanwhile,

there is no legal framework specifically to recognise victims' rights or victims' compensation in foreign bribery cases.

Recommendations

+ Publish statistics on foreign bribery investigations, prosecutions and case outcomes.
+ Develop a database of foreign bribery investigations and enforcement outcomes.
+ Adopt laws on the disclosure of beneficial ownership and establish a publicly accessible central register to increase transparency around corporate beneficial ownership.
+ Expand the Anti-Money Laundering and Countering Financing of Terrorism Act to cover real estate agents, accountants, auditors and lawyers.
+ Pass the 2019 Crimes Legislation Amendment (Combatting Corporate Crime) Bill as soon as possible.
+ Abolish the facilitation payments defence.
+ Introduce a debarment regime to grant agencies the power to preclude companies found guilty of foreign bribery offences from being awarded contracts.
+ Expand the scope of MLA laws to allow requests to be made for civil or administrative proceedings.

AUSTRIA

Limited enforcement

1.0% of global exports

Investigations and cases

In the period 2018-2021, Austria opened three investigations, commenced two cases and concluded one case with sanctions.

Weaknesses in legal framework and enforcement system

The main weaknesses are inadequate liability and sanctions for legal persons; the lack of sufficient functional prosecutorial independence; an insufficient number of qualified staff in some enforcement agencies; and inadequate international investigations and cooperation mechanisms and principles that hinder international investigations where jurisdictions with lenient laws are involved. Another key weakness is that Austria lacks comprehensive whistleblower protection legislation and whistleblowers only receive protection subject to strict conditions, so that they are not encouraged to cooperate.

Recent developments

In June 2022, the Austrian legislature published a draft proposal to transpose into law the EU Whistleblower Protection Directive. In July 2022, the European Commission's Rule of Law Report In July 2022, the European Commission's Rule of Law Report noted that a number of high-level corruption investigations are proceeding and, in this context, public prosecutors continue to face scrutiny and at times political attacks. It also recommended that Austria "continue the reform process to establish an independent Federal Prosecution Office, taking into account European standards on the independence and autonomy of prosecutors, including to ensure the independent operation of specialised anti-corruption prosecution".[148] Currently, preparatory work is underway in Austria to reform the prosecution service in order to strengthen its independence. A working group in the Ministry of Justice is expected to finalise a report on the subject in the second half of 2022. Additional budget and human resources have recently been allocated to strengthen the Austrian judiciary and prosecution service, with 10 additional posts for judges, 40 for public prosecutors and 100 for civil servants.

Transparency of enforcement information

There are no published, updated statistics on foreign bribery enforcement. The Austrian authorities report that it is technically impossible to collect statistical data on bribery of foreign officials because this data is collected by offence and under Austrian law there is no differentiation between bribery of domestic and foreign officials. Statistics on bribery offences are published yearly and submitted to Parliament.[149]

Austrian courts generally publish decisions (sometimes with the parties redacted). For this report, however, it was not possible to find the decisions in relevant cases in the online system, but

when the Austrian authorities were informed of this they provided file numbers.

Victims' compensation

There is no legal framework specifically recognising victims' rights or victims' compensation in foreign bribery cases, although there is a legal framework regarding victims' rights more generally in the Austrian Code of Criminal Procedure.[150]

Under Section 65 para 1 of the Code of Criminal Procedure (CCP) a "victim" includes any person natural or legal who might have suffered damage or whose legal interests protected by the criminal law might have been violated through a criminal offence and can include victims of corruption. In criminal proceedings, according to Section 67 para. 1 of the CCP, victims have the right to seek restitution for any damages suffered due to the criminal offence or compensation for infringements of their legal interests protected by criminal law. If a victim issues a statement to that effect, they become a private party to the proceedings, which gives them access to the court files and to information about the progress of proceedings.

If a verdict is issued against the defendant in the criminal proceedings, the court simultaneously rules on the private law-based claims of the victim. If the court is not in the position to decide on the full claim the private participant may be referred to civil proceedings. If compensation is ordered but not paid and assets have been confiscated by the Austrian state in the case, the victim has the right to have its claims settled out of the confiscated assets.[151]

Austria is a party to the Council of Europe Civil Law Convention on Corruption.

Recommendations

+ Publish more enforcement data, including separate statistics on foreign bribery enforcement.
+ Implement the EU Whistleblower Protection Directive without further delay.
+ Increase sanctions in line with international standards.
+ Increase prosecutorial independence.
+ Further increase the number of qualified staff in relevant enforcement agencies.
+ Improve international investigations mechanisms, ensure cooperation through international channels and relax principles that hinder international investigations where jurisdictions with lenient laws are involved.
+ Adjust the current legal framework for victims' compensation to the particular challenges that arise in foreign bribery cases.

BELGIUM

Little or no enforcement

1.8% of global exports

Investigations and cases

In the period 2018-2021, Belgium opened one investigation, commenced one case and concluded two cases with sanctions.

Weaknesses in legal framework and enforcement system

The main weaknesses are inadequate statutes of limitation for investigations of foreign bribery cases; the dual criminality requirement both for granting Belgian courts certain extraterritorial jurisdiction powers and for proceeding with mutual legal assistance requests from various countries; the inadequacy of private-sector whistleblower protection; the lack of transparency of criminal settlement proceedings; and a lack of resources (personnel and material), which results in a lack of efficiency and efficacy in the investigation and prosecution of corruption.

Recent developments

In June 2020, the Federal House of Representatives introduced a bill on the protection and legal status of whistleblowers, which is still under parliamentary discussion.[152] In January 2022, the European Commission sent a letter of formal notice to Belgium for lack of transposition of the EU Whistleblower Protection Directive. Many investigations and hearings were put on hold as a result of the COVID-19 pandemic.

Transparency of enforcement information

There are no published, updated statistics on foreign bribery enforcement. All court decisions can be found on the Juportal website.[153] However, the database does not include out-of-court settlements. In the case of settlements, the OECD WGB recommended that Belgium make public "the most important elements of settlements concluded in foreign bribery cases, in particular the main facts, the natural or legal persons sanctioned, the approved sanctions and the assets that are surrendered voluntarily,"[154] but the recommendation has yet to be implemented.

Victims' compensation

Belgium has no specific legal framework for compensation of the victims of foreign bribery. Victims' rights are, however, recognised under civil law. To receive compensation or get their rights recognised in court, victims may initiate civil proceedings under Articles 1982 et seq. of the Civil Code and also participate and seek damages in criminal proceedings for harm suffered by constituting a civil party (*partie civile*).[155] In 2021, Congolese citizens and international campaign groups were recognised as a civil party to the ongoing investigation of Belgian passport manufacturer **Semlex** for possible money laundering and corruption in the DRC.[156]

Belgium is a party to the Council of Europe Civil Law Convention on Corruption.

Recommendations

+ Publish statistics on the number of opened foreign bribery investigations, cases commenced and cases concluded.
+ Publish out-of-court settlements in foreign bribery cases in compliance with the 2021 OECD Anti-Bribery Recommendation.
+ Transpose the EU Whistleblower Protection Directive and extend its scope of application beyond the financial sector.
+ Extend the time limits on foreign bribery to allow adequate time for investigations and prosecutions.
+ Adopt a specific legal framework for victims' compensation, including in foreign bribery cases.

BRAZIL

Limited enforcement

1.1% of global exports

Investigations and case

In the period 2018-2021, Brazil opened five investigations, commenced one case and concluded two cases with sanctions.

Weaknesses in legal framework and enforcement system

The main weaknesses are the inadequacy of complaints mechanisms and whistleblower protection, especially in the private sector; the inadequate definition of foreign bribery, which does not account for private corruption; and political interference in the work of law enforcement agencies, which has remained a trademark of President Jair Bolsonaro's government, with serious consequences for anti-corruption efforts.

Recent developments

President Bolsonaro reappointed Augusto Aras to another term as Prosecutor-General in 2021 and the Federal Senate confirmed the appointment. Mr. Aras' first term was tainted by omissions in constraining Mr. Bolsonaro's efforts to interfere in several law enforcement agencies and an unwillingness to investigate high-level officials implicated in corruption allegations within the federal government.[157]

Mr. Aras dismantled the taskforce model at the Federal Prosecutor's Office (MPF), which has led to a sharp decline in corruption investigations across the country.[158] The planned replacement structures have not been adequately set up in many states, since they have insufficient administrative support and unclear guidelines about their jurisdiction.[159]

Also of great concern are the numerous disciplinary and judicial proceedings opened by both the National Prosecutor's Council[160] and the Federal Court of Accounts[161] against MPF prosecutors who were members of the *Lava Jato* taskforce and now face unprecedented and disproportionate penalties. This has had a chilling effect on independent prosecutorial action. Enforcement independence

also appears to have been undermined in the case of the Ministry of Justice's head of the International Cooperation Department (DRCI), who was fired allegedly for forwarding the Supreme Court's extradition request for one of the president's allies to the United States and for refusing to provide information about the matter to other high-level government officials.[162]

In addition, Mr. Bolsonaro has changed the command of the Federal Police four times since taking office, reportedly with the goal of exerting more control over the law enforcement agency.[163] In all, at least 18 officials in key roles at the Federal Police have been targeted by the government between 2019 and 2021.[164]

A 2019 Supreme Court decision to transfer the jurisdiction over political corruption cases to electoral courts, that lack the expertise and resources needed to conduct complex investigations, has slowed investigations and proceedings[165] and led to the overturning of past convictions, resulting in increased impunity. [166]

Another Supreme Court decision has put in question the use of informal channels of direct communication between Operation *Lava Jato* prosecutors and foreign law enforcement agents.[167] However, an internal investigation by the Office of Internal Affairs at the MPF found no irregularities in the communications.[168] Even though the exchanges are encouraged by international standards on combating foreign bribery (UNCAC Art. 48), the controversy demonstrates the need for clearer guidelines on informal, direct communications between law enforcement agents.[169]

Transparency of enforcement information

There are no consolidated statistics on foreign bribery enforcement, partially as a result of decentralised enforcement mandates.

The MPF provides information on leniency agreements signed by companies.[170] The Office of the Comptroller-General (CGU) hosts a public database with information on foreign bribery proceedings, although there is only limited information on each case.[171] A list of the leniency agreements signed between the CGU and companies is also available.[172]

Court decisions are published in full in the courts' online systems and official gazettes, providing there are no issues of confidentiality.[173] A list of the leniency agreements signed between the CGU and companies is also available.[174] The Ministry of Justice publishes detailed monthly statistical reports on MLA requests.[175]

Victims' compensation

The Anti-Corruption Law provides that penalties imposed on companies responsible for foreign bribery will preferably be paid to the public entities that were harmed. It also includes an obligation for those companies to fully repair damages caused, but these provisions, as far as they relate to individuals and private legal persons that were harmed by the illicit conducts, have not yet been tested.[176] This leads to a scattershot approach, with judges themselves often deciding how governments should spend the funds that are paid as fines and damages.[177] The Class Action Law (Law nº 7.347/1985) also allows for damages to collective rights and public property to be claimed through civil suits.

Foreign bribery settlements signed in Brazil have included provisions requiring companies to reach agreements in the victim country. Examples include agreements signed by **Odebrecht** and **Braskem**, where the parties harmed were the governments of 12 countries, in addition to Petrobras.[178]

Petrobras, for its part, reached a settlement with US authorities in which it agreed to pay a penalty of US$853 million, 80 per cent of which was to be paid in Brazil.[179] Given that the Brazilian government is the majority shareholder in Petrobras, the Brazilian prosecutors involved in the case proposed the creation of a special endowment fund to use about half of the Brazilian share of the penalty (approximately US$341 million). The fund was to be used to benefit the individuals and communities harmed by the corruption, strengthen anti-corruption efforts and support civil society in Brazil.[180] While the idea was largely a good one, it was flawed because of the prosecutors' proposed participation in the endowment's governance and their lack of coordination with the competent authorities.[181] Following a complaint about the proposal from the Prosecutor-General, the Supreme Court stepped in and determined that the funds were to be transferred to federal and state governments for use in education projects, in the prevention of wildfires in the Amazon, and in efforts to address the COVID-19 pandemic.[182] The confusion around the process underlines the need for adequate regulation on restitution procedures in Brazil.

Recommendations

+ Approve legislation on beneficial ownership transparency, ensuring the register is publicly accessible.
+ Ensure the independence and autonomy, with accountability, of Brazil's anti-corruption bodies, including the Federal Police and the Federal Prosecutor's Office.
+ Improve conditions for federal prosecutors and other law enforcement agents to participate in joint investigative teams working on corruption and organised crime cases.
+ Restore the legal competence of specialised criminal courts to process corruption cases, reforming the recent decision that transferred such cases (when linked to electoral crimes) to the less equipped electoral courts.
+ Ensure that penalties paid and assets recovered in corruption cases compensate the victims, with transparency and accountability.

BULGARIA

Little or no enforcement

0.2% of global exports

Investigations and cases

In the period 2018-2021, Bulgaria opened no investigations, commenced no cases and concluded no cases.

Weaknesses in legal framework and enforcement system

The main weaknesses are insufficient criminal liability for corporations; weaknesses in provisions for settlements; the inadequacy of complaints mechanisms and whistleblower protection; and a lack of public awareness-raising.

In 2021, the OECD WGB Phase 4 Report on Bulgaria found that there is a serious lack of awareness of the foreign bribery offence among both public and private-sector stakeholders.[183] The examiners stressed that the shortcoming undermines the detection and reporting of foreign bribery allegations. On multiple occasions in the report, they recommend raising awareness of foreign bribery among different stakeholder groups.[184] Bulgaria has also failed to introduce a comprehensive whistleblower protection regime in line with the European Union Whistleblower Directive (EU) 2019/1937 and the European Commission has initiated an infringement procedure for failure to meet the transposition deadline in December 2021.[185]

Legal persons can be sanctioned only if they "have enriched or would enrich themselves" from an offence committed by a natural person.[186] The Administrative Offences and Sanctions Act (AOSA) establishes an exhaustive list of connections between natural and legal persons and appears to exclude cases when, for instance, a bribe is offered on behalf of a company by a third person, such as a lawyer or consultant hired under a service/consultancy contract.[187]

Recent developments

Since 2020, there have been no significant improvements in the foreign bribery legal framework or enforcement system, mainly owing to the challenging political situation, which has been marked by the absence of a working legislature for most of the period. Anti-government protests against corruption and degradation of the rule of law continued until April 2021, when regular parliamentary elections took place.[188]

In late December 2020, Parliament passed amendments to the AOSA that entered into force a year later.[189] The amendments aim to close gaps and correct inconsistencies in the sanctioning of legal persons in relation to, for example, successor liability,[190] the factors to consider when determining the amount of sanctions against a legal person,[191] and the unification of the statues of limitations on the liability of legal persons through the provisions of Article 81 (3) of the Criminal Code.[192] The amendments also provide for settlements in administrative proceedings but not if the administrative offence constitutes a criminal offence. This exclusion rules out settlements with companies in foreign bribery cases.[193]

Transparency of enforcement information

The Supreme Judicial Council collects data and publishes aggregated statistics about court trials online, including both commenced and concluded

cases. Foreign bribery cases (active and passive) are reported separately, including cases that do not involve business transactions. Information regarding investigations (preliminary checks/investigations and pre-trial proceedings) is provided by the Prosecution Office but the format is not compatible with the courts' statistics and does not give any breakdown by specific offences. The data are provided for half-year periods, approximately 4 to 5 months after the end of the respective semester.[194]

Court decisions and non-trial resolutions are published in full, except for personal and corporate[195] information. The Supreme Judicial Council maintains a dedicated website, which can be searched for decisions and other judicial acts.[196] This is generally true at all levels of the court system, though in practice some courts do not do it.

Victims' compensation

There is no specific legal framework for victims' compensation with respect to foreign bribery. In the case of natural persons, the protection of victims' rights and victims' compensation is regulated by legal acts of general procedure, such as the Criminal Procedure Code, the Civil Procedure Code, and the Assistance and Financial Compensation of Victims of Crimes Act. Bulgaria is a party to the Council of Europe Civil Law Convention on Corruption.

The Prevention of Corruption and Forfeiture of Illegally Acquired Assets Act (PCFIAAA)[197] provides for protection of the public interest and compensation through forfeiture of unlawful property in favour of the state.

The adoption of non-conviction-based confiscation allows for a quicker reaction from the state and provides the means by which to seize and forfeit the proceeds of crimes independently of the outcome of any criminal proceedings against a natural person.[198] The confiscation proceedings are triggered in the case of allegations against a natural person of certain crimes, including foreign bribery.[199] The assets subject to confiscation include any illegal assets[200] including converted and transferred property.[201] In the event that assets are confiscated as a result of proceedings triggered by a foreign bribery allegation, there is no direct connection between the caused harm and the level of compensation. That is, the legal framework does not regulate the redress of crime-related damage per se; this failure is perceived as a serious deficiency.[202]

Bulgaria is a party to the Council of Europe Civil Law Convention on Corruption.

Recommendations

+ Collect and make publicly available statistical data in machine-readable format, including on sanctions imposed on legal persons for corruption-related crimes, using the same form for preliminary enquiries, investigations and court cases.
+ Comprehensively regulate the protection of whistleblowers who report corruption-related acts.
+ Strengthen law enforcement entities' capacity and improve inter-agency cooperation and international cooperation in the detection and investigation of foreign bribery.
+ Provide training to judges, prosecutors and investigators on foreign bribery offences.
+ Implement awareness-raising activities on foreign bribery offences targeted at both the public and the private sectors, as well as the general public.
+ Adopt amendments to close the weaknesses regarding the liability of legal persons when they benefit from foreign bribery.

CANADA



Limited enforcement

2.2% of global exports

Investigations and cases

In the period 2018-2021, Canada opened three investigations, commenced three cases and concluded three cases with sanctions.

Weaknesses in legal framework and enforcement system

The majority of the inadequacies identified in the 2020 report are still current. They include a high bar for proving the offence of foreign corruption; weaknesses in provisions for settlements; inadequate resources resulting in cases being stayed for unreasonable delay; the decentralised

and divided organisation of enforcement and the lack of coordination between agencies, and between federal and provincial authorities; and a lack of information about compliance programmes. The lack of training and of institutional support for the promotion and career advancement of investigators is also a problem. Canada still lacks strong whistleblower protection and does not have any formal complaints mechanisms. However, the concern about prosecutorial independence highlighted in the 2020 report was specific to the SNC-Lavalin case and is no longer considered a high risk.

Recent developments

In September 2021, prosecutors for Quebec's Criminal and Penal Prosecution Directorate announced that they had invited two entities within the **SNC-Lavalin Group** (SNC-Lavalin Inc. and SNC-Lavalin International Inc.) to negotiate a remediation agreement (RA) to settle charges of corruption, fraud, false documents and conspiracy to commit those same offences in domestic cases.[203] The resulting RAs were approved in May 2022.[204]

The 2021 decision of the Ontario Court of Appeal in the **Barra** and **Govindia** foreign bribery cases gave guidance on several points.[205] The court hinted that a case's complexity would be a factor in making a determination as to whether defendants were tried within a reasonable time. The court also upheld the exercise of territorial jurisdiction over foreign nationals conspiring from outside Canada to commit foreign corruption on behalf of a Canadian company. The court further established a high threshold for proving *mens rea* in cases where the bribery targets an employee of a state-affiliated company.

Concerning beneficial ownership transparency, the federal government announced that Canada will have a publicly accessible beneficial ownership registry for corporations by 2023.[206] In 2021, the province of Quebec passed legislation to make corporate beneficial ownership information available in the provincial corporate registry, and the province of British Columbia (BC) established the Land Owner Transparency Registry for beneficial ownership information related to real estate. Beneficial ownership due diligence was also expanded to all designated non-financial businesses and professions (except for lawyers and BC notaries) under the Proceeds of Crime (Money Laundering) Terrorist Financing Act.

Transparency of enforcement information

There are no published, updated statistics on foreign bribery enforcement. The only overview of cases is the narrative description of individual cases in the Annual Report on Canada's Fight against Foreign Bribery to Parliament, 2020.[207] There is no central or government-run repository of court decisions rendered in matters of corruption and bribery. Court decisions are generally available through public databases and court websites, as well as through paid access databases, which usually provide more coverage than public databases, particularly in specialised areas of law. As noted in the 2020 TI report, decisions are sometimes only available in paper form from the court registry.[208] The existing legislative framework is structured to ensure that the elements identified in the 2021 OECD Anti-Bribery Recommendation are made public and the first non-trial resolution concluded under the RA regime established a good precedent in this regard.

Victims' compensation

Victims may be considered in the sentencing process and compensation of victims is possible, although not compulsory. Victim restitution depends on the ability to identify victims and calculate the losses suffered or harm inflicted.[209] To date, it has been used in only two cases and never in a corruption case.[210] Consideration of victim rights is also reflected in the sentencing process through the possibility of submitting oral or written victim or community impact statements.[211] There is also provision for a victim surcharge in Canadian criminal cases, with any amounts placed in a crime victims' fund for use to support crime victims in the provinces.

Furthermore, the RA framework provides that the judge approving an RA must specifically examine whether the provisions of the regime that are relevant to victims have been considered,[212] including reasonable efforts to identify any victims[213] and determine whether they should receive any kind of compensation.[214] The court also has a duty to consider any victim or community impact statement provided.[215] In addition, the RA regime grants victims standing to bring applications to review the merits of non-publication orders in relation to RAs that are temporarily kept confidential[216] and allows for non-publication of

(parts of) an RA where it is necessary to protect the identity of a victim.[217]

In practice, however, even in cases where there has been a mandatory imposition of a victim surcharge, it is not evident that the funds have been used to provide assistance to foreign victims. In two cases involving Canadian companies in Bangladesh and Chad, the corporations involved paid significant victim surcharges to the Alberta treasury, but without any direction to use the funds in victim assistance activities to benefit the foreign victims of foreign bribery. Indeed, it now appears that many of the funds in question have gone unused.[218]

Recommendations

+ Publish statistics on foreign bribery enforcement and increase transparency of court decisions.
+ Enact necessary regulations on remediation agreements to clarify issues such as the structure of agreements and the conditions applicable to the appointment of monitors.
+ Increase transparency about how prosecutors evaluate public interest criteria when assessing whether it is appropriate to invite an organisation to negotiate an RA.
+ Evaluate creating a "failure to prevent" offence with a negligence-based fault (either penal negligence or strict liability) as an additional option for anti-corruption enforcement.
+ Increase the resources of the Royal Canadian Mounted Police dedicated to corruption cases.
+ To achieve speedier handling of corruption cases, consider the creation of a separate regulatory, quasi-criminal body.
+ Provide guidance on standards for corporate compliance programmes and for post-crime cooperation between corporations and the authorities.

CHILE

Limited enforcement

0.3% of global exports

Investigations and cases

In the period 2018-2021, Chile opened four investigations, commenced no cases and concluded one case with sanctions.

Weaknesses in legal framework and enforcement system

The main weaknesses are the lack of a central public register of the beneficial ownership of companies and trusts; inadequate accounting and auditing requirements; inadequate sanctions; the lack of an adequate legal framework for making or receiving MLA requests; and the lack of an adequate framework for whistleblower protection. In addition, there are no clear, transparent criteria to use non-trial resolutions or to ensure effective, proportionate and dissuasive sanctions in foreign bribery non-trial resolutions.

Recent developments

There have been no significant developments since 2020. For the last two administrations, the national government has shown no interest in improving the current legal framework and there are no technical government bodies currently working on the subject.

Transparency of enforcement information

On a quarterly and on an annual basis, the Chilean Public Prosecutor's Office and the Financial Analysis Unit (on money laundering and the financing of terrorism) publish detailed statistical information on crimes reported, crimes investigated, crimes in an ongoing judicial process and crimes concluded. The information includes statistics on foreign bribery cases.[219]

Judicial decisions are published in an online database, where any member of the public can find the status of a case, who is involved in it, and any documents in the judicial file.[220] Non-trial resolutions are publicly available[221] and overseen by the courts.

Victims' compensation

There is no legal framework recognising victims' rights or victims' compensation in foreign bribery cases. The law, which criminalises the bribery of

foreign public officials (Penal Code Articles 251 bis and 251 ter) only defines the crime and imposes the corresponding sanctions. [222]

Recommendations

+ Collect and publish detailed statistics on foreign bribery investigations and cases and on MLA requests.
+ Create a public centralised register for beneficial ownership information.
+ Develop comprehensive legislation for whistleblower protection that guarantees protection and confidentiality and provides incentives to promote the reporting of corruption.
+ Increase transparency and accountability for conditional suspensions and abbreviated procedures.
+ Issue guidelines on effective prevention models for companies.
+ Provide more awareness-raising and training on the offence of bribery of foreign public officials, especially among prosecutors, judges and diplomatic personnel.
+ Include companies in anti-corruption policy discussions.

In addition, the government should move towards proportional compensation to victims, according to the damage inflicted, and a list of procedural rights and protections for victims and whistleblowers.

COLOMBIA

Limited enforcement

0.2% of global exports

Investigations and cases

In the period 2018-2021, Colombia opened three investigations, commenced one case and concluded one case with sanctions.[223]

Weaknesses in legal framework and enforcement system

The weaknesses include a lack of public access to the central register of beneficial owners; a lack of legislation on whistleblower protection; inadequate reporting channels and a lack of awareness-raising about them; a lack of legislation on criminal liability for corporations; and the discretion of the Prosecutor General to use the "principle of opportunity" in any investigation as well as the risk of politicisation in the appointment of the Prosecutor General. In addition, collaboration could be improved between the relevant authorities.

The OECD WGB Phase 3 Two-Year Follow-up Report states that "Colombia has not taken any steps, either through policies, training or issuing clear criteria since Phase 3, to address the risk of politicisation of the appointment of the Prosecutor General and, in turn, the risk of direct intervention in individual foreign bribery proceedings by means of technical legal committees or the allocation of cases to individual prosecutors."[224]

Collaboration is ongoing between the authorities (Superintendency of Corporations, PGO, Transparency Secretary, FIU, the tax authority, the central bank and the migration authority) through memoranda of understanding (MoUs) and committee meetings. In 2021, 12 meetings were reported to have taken place between the Superintendency and the PGO to exchange information and open investigations, while MoUs were completed with Brazil, Peru, Ecuador and the UK. Foreign bribery investigations could also improve if an increased connection were made with money-laundering offences.

Recent developments

Bill 2195/2022 was signed by the president in early 2022. This important new bill strengthens Colombia's legal framework for foreign bribery enforcement as well as for the administrative liability of corporations. It also addresses issues such as the benefits to legal persons of collaboration; the confiscation of the proceeds of bribery; cooperation between the Superintendency of Corporations and other public entities; the false accounting offence and corresponding sanctions; and the central register of beneficial ownership. There have also been efforts to provide training to key prosecutors and investigators and to strengthen the anti-money laundering framework. In May 2022, a major fine against an insurance company was

confirmed after it had been declared administratively responsible for bribing public officials to secure businesses in Ecuador.[225]

Since 2019, two proposals for whistleblower protection legislation drafted by the Executive have failed to make any progress in Congress because of parliamentary opposition.[226] Policy recommendations on whistleblowing were approved by the Executive in the policy document CONPES 4070,[227] but the recommendations do not solve the legal gap in whistleblower protection.

Transparency of enforcement information

There are no separate published statistics on foreign bribery-related investigations and cases. Information on mutual legal assistance (MLA) requests sent and received is not available to the public. There is no publicly accessible database of foreign bribery cases. The Superintendency of Corporations publishes its administrative decisions on corporate liability.[228] There have been no court decisions in foreign bribery cases.

Victims' compensation

A new Law 2195/2022 contains measures to address compensation for those affected by corruption, such as pecuniary sanctions in criminal cases where harm has been caused by corruption, as well as the creation of a fund to compensate those affected by corruption that will be administered by the Office of the Inspector General. Article 61 of the new law establishes that once a court decides that a harm has been caused by corruption, the judge should establish a fine (pecuniary sanction) against the party responsible, and the funds coming from the fine should be sent to the compensation fund for "those affected by corruption." It is not yet known how the fund will work or how the phrase "those affected by corruption" will be interpreted. Also, the policy document CONPES requires that entities in the Executive produce an analysis of social harms caused by corruption and make recommendations to prevent such harms.

Recommendations

+ Improve the collection and availability of aggregated data on investigations and cases of foreign bribery, including data on international cooperation.
+ Enact legislation that provides protection to whistleblowers in both the public and the private sectors.
+ Continue providing capacity building to prosecutors and judges in relation to complex cases that involve transnational bribery.
+ Ensure that new regulations from Law 2195/2022 are fully understood and implemented by the private sector, accountants and auditors.
+ Continue improving cooperation between law enforcement agencies, in particular involving the Financial Intelligence Unit and the tax authority (DIAN).
+ Provide greater clarity on the criteria used by the Prosecutor General to apply the "principle of opportunity" in cases involving transnational bribery, and follow up on a case-by-case basis.
+ Continue promoting awareness of foreign bribery risks in the private sector.

COSTA RICA

Limited enforcement

0.1% of global exports

Investigations and cases

In the period 2018-2021, Costa Rica opened four investigations, commenced no cases and concluded no cases with sanctions.[229]

Weaknesses in legal framework and enforcement system

The weaknesses in the legal framework include an inadequate definition of foreign bribery; a failure to hold companies responsible for subsidiaries, joint ventures and/or agents; inadequate systems for the protection of whistleblowers and informants; and a lack of adequate guidance on the use of non-trial resolutions. There are also inadequate resources for enforcement and a lack of public awareness-raising about the offence of foreign bribery.

While the Public Prosecutor's Office has made efforts to carry out patrimonial investigations, often in coordination with the Ministry of Finance and Taxes (*Ministerio de Hacienda*), so as to detect

unjustified increases in assets and confiscate any assets resulting from acts of bribery, there is no public evidence that these efforts have generated concrete results or served as a basis for international bribery investigations.[230]

In addition, no systematic compilation provides a clear picture of how many and which treaties the country has signed that protect or provide immunity to business officials or diplomats involved in alleged acts of bribery. Also, the scope, characteristics and/or procedures covering mutual legal assistance by the justice authorities are unknown.[231]

Recent developments

In 2019, Congress approved legislation on the liability of legal persons for domestic bribery, transnational bribery and other crimes.[232] In 2021, Costa Rica became the 38th member of the OECD. In August of that year, the government launched the National Strategy for the Integrity and Prevention of Corruption (ENIPC), which establishes an inter-institutional implementation mechanism involving 17 state organisations and civil society and academic monitoring associations. The new mechanism is expected to produce agreements on new regulations for greater accountability of politicians.[233] A reform of the prosecution service is also in preparation.[234]

Transparency of enforcement information

The judiciary publishes crime statistics on its institutional portal but there are no published, updated statistics on foreign bribery enforcement.[235]

In criminal matters, only some of the judgements that reach the highest court are published, while those of the lower criminal courts are not. Nor is any information published about the indictment and trial phase. It is possible to make a formal request for a specific judgement in the jurisprudence centre run by the Judiciary (*Poder Judicial*) in association with the Public Prosecutor's Office.[236] The country's data protection law prevents publication of any personal data that might compromise the safety or integrity of a person.[237] Regarding non-trial resolutions, the OECD WGB found in its Phase 2 Follow-up Report on Costa Rica in 2022 that they are not sufficiently transparent since there is no routine publication of all such resolutions.[238]

Victims' compensation

There is no legal framework specifically recognising victims' rights or victims' compensation in foreign bribery cases. Costa Rican criminal law provides that the victim of a crime is an individual or a legal entity that has been directly affected or any shareholder, associate or certain members of a legal entity when a crime has been committed by individuals in charge of controlling and managing a company or organisation.[239] Associations, foundations and other entities whose main objective is social welfare are also considered victims when collective interests are affected.[240]

A crime victim can initiate a compensatory civil action for damages or "*acción civil resarcitoria*" against individuals and legal entities in criminal proceedings as well as in civil proceedings.[241] A victim can also initiate a private criminal complaint (*querella*) against an offender, which gives the victim similar prosecutorial powers to the Prosecutor's Office.

Costa Rica is a pioneer among OECD Convention countries in allowing compensation claims by the state for "social damages".[242] Pursuant to the Criminal Procedure Code Article 38, the Public Prosecutor is authorised to to bring a civil action for social damage within the criminal process in the case of punishable acts that affect collective or diffuse interests.[243]

When non-trial resolutions known as "the abbreviated procedure" are concluded, the consent of a complainant and any civil party must be obtained.[244]

Recommendations

+ Improve the quality of the judiciary's statistics on corruption crimes, especially national and transnational bribery.
+ Centralise the entire registry of court cases in a website with easy access and navigation, offering database options that allow for summaries consistent with data protection legislation.[245]
+ Identify and advertise the international treaties that may grant immunity privileges to foreign officials of certain international organisations working in Costa Rica to explore renegotiation possibilities.
+ Approve a whistleblower protection law, including for foreign bribery cases.

+ Address the inadequate resources in the enforcement system.
+ Ensure there is legislation to deliver mutual legal assistance and allow precautionary measures applied to the assets of those who bribe, in order to guarantee financial compensation to any victims.
+ Pass a law on transparency and access to public information, which will gradually allow individuals and NGOs to participate more actively in citizen audit mechanisms.
+ Define a consensus on the optimal Asset Recovery Law (Ley de Extinción de Dominio) to provide important elements for attacking organised crime and corruption.[246]

CZECH REPUBLIC

Little or no enforcement

0.8% of global exports

Investigations and cases

In the period 2018-2021, the Czech Republic opened one investigation, commenced one case, and concluded no cases with sanctions.

Weaknesses in legal framework and enforcement system

Key weaknesses include an inadequate legal definition of foreign bribery (as it is not a separate criminal offence, although all bribery is punishable);[247] inadequate complaints mechanisms and whistleblower protection; and the lack of sufficient independence of public prosecutors, which can frustrate the investigation process that precedes an indictment. In addition, the digitalisation of justice is slow and proceedings in high-level corruption cases are lengthy.

Recent developments

Legislation has been introduced in line with the government's anti-corruption action plan for 2018-2022.[248] The new Anti-Money Laundering Act sets out data-sharing procedures for the Financial Analytical Office relating to information about property obtained by illegal means. It is expected to materially improve the cooperation between Czech authorities and Europol in the fight against financial crime and corruption.[249]

The Act on the Protection of Criminal Activity Informers (Whistleblower Protection) has been discussed in legislative committees but has not been approved at the time of writing this report.[250] The revised legislation was expected to be approved during the third quarter of 2022, with slight amendments since the previous bill.[251]

Additionally, the Ministry of Justice has started preparing a reform of the Public Prosecutor's Office Act, which aims to establish clearer rules for the appointment, dismissal and duration of the term of office of senior prosecutors. A new proposal is scheduled for submission to the government by the end of 2022.[252] New legislation in 2021 has also improved anti-money laundering framework and the ultimate beneficial owner (UBO)-related frameworks[253] There are now sanctions of up to CZK500,000 (approximately €20,000) for failure to comply with the reporting requirements of UBOs. A partial extract from the register of UBOs has recently become available to the public.[254]

Transparency of enforcement information

The Supreme Prosecutor's Office provides statistics on bribery crimes generally, but does not report specifically on bribery crimes relating to public officials, either locally or abroad.[255]

Decisions of courts and public administration bodies are published pursuant to the constitutional right to access information and there is a corresponding obligation on such courts and bodies. A court decision is considered public information and will be read out publicly in the courtroom except in rare special cases, such as where trade secret protection or national security is involved. Pursuant to Act No.106/1999 Coll., on Free Access to Information, anybody can request a specific court decision in anonymised form.

The Supreme Courts and the Constitutional Court are required by law to issue official collections of selected decisions.[256] The Constitutional Court publishes all of its rulings and selected resolutions. The Supreme Courts have the discretion to decide what decisions are published in official collections. The general practice of these courts is to publish their decisions electronically with the verdict in full, while some selected decisions of the high courts appear in official judicial databases accessible on

the websites of the Supreme Courts and the Constitutional Court.

Following a recent amendment to the Act on Courts and Judges, which became effective on 1 July 2022, district, regional and high courts are now obliged to publish anonymised final judgements in a public database run by the Ministry of Justice. This obligation will be specified by a decree of the Ministry of Justice, which was still being drafted at the time of writing this report (August 2022).

Victims' compensation

Under the Criminal Procedure Act (the Act), a criminal court can determine the amount of compensation due to the victims of any criminal offence, including any form of bribery, if the victims' claim is raised and proved pursuant to the Act.[257] If a decision on compensation is not made by the criminal court, then the victims may make a claim for compensation in the civil courts.

Section 309 of the Act provides that in proceedings in relation to a misdemeanour, a prosecutor may, with the consent of the aggrieved person, decide to terminate the prosecution and reach a settlement if the accused (1) compensates the aggrieved person for the damage caused or otherwise makes good on the harm, (2) surrenders any unjust enrichment, and (3) deposits a financial amount designated for a specific recipient for publicly beneficial purposes. Some aspects of victims' compensation are also regulated by other legislation on crime victims and the use of criminal sanctions.[258] This legislation establishes the right of the victim of a criminal offence to have access to information and receive professional assistance and the right to protection against secondary victimisation free of charge. It also establishes the right of defined victims to financial assistance from the state.

The Czech Republic is a party to the Council of Europe Civil Law Convention on Corruption.

Recommendations

+ Publish enforcement statistics that include separate data on foreign bribery.
+ Reduce the length of proceedings in high-level corruption cases.
+ Adopt the Whistleblower Protection Act.
+ Amend the Public Prosecutor's Office Act to ensure the independence of prosecutors.
+ Improve the digitalisation of justice.
+ Adopt a new Anti-Corruption Strategy.

DENMARK

Little or no enforcement

0.8% of global exports

Investigations and cases

In the period 2018-2021, Denmark opened six investigations, commenced no cases and concluded no cases with sanctions.

Weaknesses in legal framework and enforcement system

The main weaknesses are inadequate resources for enforcement and the inadequacy of complaints mechanisms and whistleblower protection.

Recent developments

In December 2021, the Danish parliament approved a series of legislative amendments that will enter into force in 2022. The changes include the merging of the Danish State Prosecutor for Serious Economic and International Crime (SØIK) into the Danish police's Special Crime Unit (NSK). An integral part of the new national body is the establishment of formalised operational cooperation between the police, other relevant authorities and selected private actors in efforts to combat and prevent money laundering and terrorist financing. The impact on detection, investigation and prosecution of cases of foreign bribery remains to be assessed.

Denmark passed new whistleblower legislation in June 2021[259] to implement the EU Whistleblower Protection Directive (EU) 2019/1937. The legislation aims at securing safe reporting channels for employees in the public sector and in companies with over 50 employees to report breaches of EU law and serious breaches of Danish law (including bribery), significantly strengthening the protection of whistleblowers.

Transparency of enforcement information

Denmark does not publish statistics on foreign bribery investigations, cases commenced or cases concluded.

Important Danish court decisions are published in the official judicial journal (*Ugeskrift for Retsvæsen*), which can be accessed either via a fee-paying subscription or from public libraries.[260] Copies of court decisions can be obtained for a fee from the relevant court if the requester knows the case number.[261] However, the public is not informed of cases opened or concluded, which makes it challenging to follow them.

Victims' compensation

Natural persons who believe they have suffered a loss due to corruption can claim compensation in civil and criminal proceedings.[262] In criminal cases, a court may order a suspended sentence together with a condition that compensation is paid to the victim for the harm caused by the offence.[263] Where confiscation has been ordered, this may be used to cover any claims related to the offence, with compensation paid to the victim after judgement.[264]

Denmark has signed but not ratified the 1999 Council of Europe Civil Law Convention on Corruption.

Recommendations

+ Improve transparency of enforcement information concerning foreign bribery.
+ With the dissolution of the SØIK as a stand-alone unit, it is crucial to monitor enforcement processing times closely.
+ Ensure that the NSK has the necessary tools and methods to investigate and prosecute foreign bribery, including – if deemed necessary – to raise the level of penalties to allow for the use of special investigative techniques.
+ Provide the NSK with significantly more resources to investigate and prosecute foreign bribery.
+ Formulate an overall strategy, action plan and monitoring framework to ensure more effective implementation of legislation related to combatting bribery of foreign public officials.
+ Establish a permanent structure within the national authorities to act as the lead institution for implementing this strategy.
+ Ensure effective oversight and enforcement of the anti-money laundering framework.

ESTONIA

Limited enforcement

0.1% of global exports

Investigations and cases

In the period 2018-2021, Estonia opened no investigations, commenced one case and concluded one case with sanctions.

Weaknesses in legal framework and enforcement system

The main weaknesses concern the statute of limitations, which is not suspended when Estonian enforcement authorities make an MLA request; the lack of comprehensive whistleblower protection; the scope of and sanctions for the false accounting offence; and the lack of resources for the analysis of suspicious transactions reports.[265]

Recent developments

In March 2020, new legislation on money laundering entered into force as part of Estonia's efforts to transpose the Fifth EU Anti-Money Laundering Directive. The new law increases protections for whistleblowers and widens the circle of obliged entities that are subject to stricter anti-money laundering prevention requirements. It also allows for the creation of a database of bank accounts, which the Financial Intelligence Unit will be able to access. A list of politically exposed persons will be developed, for whom higher requirements will be applied for the prevention of money laundering.[266] In March 2022, the Office of the Prosecutor General brought official suspicions against **Swedbank Estonia** and its former board members for involvement in money laundering of over €100 million during the period 2014-2016.[267] The Central Criminal Police have been investigating Swedbank since 2019.

The digitalisation of the justice system in Estonia has continued to improve, including in the field of criminal proceedings, enabling more efficient work in criminal cases.[268] In 2021, a survey of judges revealed their perception of potential detrimental effects on the quality of justice arising from excessive workloads.[269]

Transparency of enforcement information

There are no centralised statistics on foreign bribery enforcement. The information is not included annually in the Ministry of Justice's published statistics, which do include data on the commencement of criminal proceedings.[270] The Ministry of Justice publishes information on mutual legal assistance (MLA) requests received and sent,[271] and most requests of this sort are logged in the relevant domestic authority's document register.[272] Statistics on foreign requests for confiscation are published by the Prosecutor's Office in its annual reviews.[273] The Estonian Internal Security Service (KAPO) also publishes annual reports, which provide information on cases and a general analysis of risks and anti-corruption efforts.[274]

All court decisions that have entered into force, including Supreme Court decisions, are published and available electronically.[275] Publication may only be partial if a decision contains sensitive personal data or if other issues exist, such as business secrecy or pending foreign criminal proceedings.

Victims' compensation

There is no legal framework for victims' rights or victims' compensation in foreign bribery cases. The State Liability Act provides that an individual or legal person whose rights are violated by the unlawful activities of a public authority may claim compensation for any damage suffered. The Code of Criminal Procedure provides that victims are parties to criminal proceedings. A victim is defined as a natural or legal person to whom physical, proprietary or moral damage has been directly caused by a criminal offence or by an unlawful act committed by a person not capable of guilt.[276]

The victim has extensive rights under the Code of Criminal Procedure, including the right to file a civil action for compensation through an investigative body or the Prosecutor's Office; to obtain access to the criminal file; to give or refuse consent to settlement proceedings; and to present an opinion concerning the charges, the punishment and the damage set out in the charges and the civil action.

Estonia has ratified the Council of Europe Civil Law Convention on Corruption.[277]

Recommendations

+ Improve the collection and availability of information on foreign bribery enforcement.
+ Adopt legal provisions on the suspension of the statute of limitations when Estonia issues an MLA request, as recommended by the OECD WGB.
+ Adopt comprehensive whistleblower protection legislation.
+ Ensure that false accounting offences cover all the activities described in the OECD Anti-Bribery Convention.
+ Increase resources available for anti-money laundering prevention and detection.
+ Increase awareness of cross-border corruption risks, especially concerning the financial and information technology sectors.

FINLAND



Little or no enforcement

0.4% of global exports

Investigations and cases

In the period 2018 -2021, Finland opened no investigations, commenced no cases and concluded no cases.

Weaknesses in legal framework and enforcement system

One of the main weaknesses is inadequate resources. While a specialised group of judges, prosecutors or investigators may not be warranted for foreign bribery cases, more resources should be allocated to the investigation of financial crime and to related education for specialists. The police and the judiciary are chronically understaffed and the processes, therefore, are very slow. The complaints

mechanisms and whistleblower protection are also inadequate.

Recent developments

In June 2022, Finland postponed passage of the law implementing the EU Whistleblower Protection Directive for a second time.[278] The Finnish parliament is now expected to start the enactment process in late 2022.

Transparency of enforcement information

Finnish authorities do not publish statistics on foreign bribery investigations, cases commenced or cases concluded. The police, the Ministry of Justice, the Prosecutor General and the statistical centre Statistics Finland all publish various statistics on crimes and investigations.[279] However, the information is mostly general, so extracting relevant information is time-consuming and difficult. Information on requests for mutual legal assistance (MLA) is not publicly available, although according to the OECD WGB, Finland has been active in seeking MLA in foreign bribery cases.[280]

All court proceedings and decisions are public, unless specifically declared partially or totally confidential (for example, to protect trade secrets). Court decisions and the relevant details of crimes are available to the media and the public on request. Noteworthy cases are widely and actively covered by the media.

Victims' compensation

There is no legal framework specifically recognising victims' rights or victims' compensation in foreign bribery cases. The victim may apply for compensation in Finland even if the offender has not been identified. This applies to all crimes, including foreign bribery.

Recommendations

+ Publish statistics on foreign bribery investigations, cases commenced and cases concluded.
+ Make the Beneficial Ownership Register publicly available.
+ Increase the maximum penalty for corporate crime.
+ Introduce legislation and establish whistleblowing channels consistent with the EU Directive.
+ Increase resources for enforcement authorities to conduct foreign bribery investigations.
+ Provide training to law enforcement officials and the judiciary on the foreign bribery offence and its application, and consider assigning foreign bribery cases to courts or judges with specialised skills and experience.
+ Raise awareness of foreign bribery laws among exporting companies.

FRANCE

Moderate enforcement

3.5% of global exports

Investigations and cases

In the period 2018-2021, France opened 19 investigations, commenced 20 cases and concluded 11 cases with sanctions.

Weaknesses in legal framework and enforcement system

The main weaknesses are jurisdictional limitations; weaknesses in provisions for settlements; inadequate resources; and the lack of independence of enforcement authorities.

On the question of enforcement independence, a 2018 report of the Council of Europe's European Commission for the Efficiency of Justice (CEPEJ) found that France is one of only 16 member states of the 47-member Council of Europe that do not grant independent status to their prosecutors.[281] In its December 2021 Phase 4 monitoring report, the OECD WGB recommended that France "complete as soon as possible the necessary reforms, including the constitutional reforms initiated in 2013 and 2019, in order to give the public prosecutor's office the statutory guarantees allowing it to carry out its missions with all the independence necessary for the proper functioning of the justice system and to protect prosecutors from any influence or the appearance of influence from political power, in particular with regard to the fight against corruption."[282]

In its 2021 review of France, the OECD WGB expressed great concern about the lack of means and resources available to investigators, prosecutors and trial judges. It linked this issue to the large number of proceedings awaiting decision by magistrates ("*juges d'instruction*").[283] It also took note of the limited resources of the Parquet National Financier (PNF – French Financial Public Prosecutor's Office).[284] In 2021, the French High Council for the Judiciary highlighted that both the budget allocated by France to its justice system and the number of magistrates per inhabitant remain substantially lower than in other European countries.[285] In an open letter published in a national newspaper, a large number of magistrates decried the worsening work conditions in many courts, in particular because of insufficient human resources and the comparatively excessive workload, forcing them to sacrifice quality for the sake of expediency.

The introduction of the judicial public interest agreement – in French, *convention judiciaire d'intérêt public* – or CJIP, which is a form of deferred prosecution agreement (DPA), has allowed enforcement authorities to sharply increase foreign bribery prosecutions and recover unprecedented amounts in fines and disgorgement of profits. However, the negotiation of CJIPs is cloaked in secrecy and the reasoning in court orders is very vague. These flaws hinder any evaluation of concluded CJIPs and mean that foreign bribery schemes are not well understood.

Recent developments

A new law in 2021 limited the duration of preliminary investigations ("*enquêtes préliminaires*") to three years, (or five years for corruption-related offences such as foreign bribery), with a suspension of the time limit for mutual legal assistance proceedings.[286] The reform risks undermining the effectiveness of prosecutions and further overloading the magistrates in charge of investigating cases, especially in corruption-related, laundering-related or tax fraud cases, for which investigations often extend over a long period of time.

The "Bolloré case" in February 2021 sparked a lively debate about combining the Bolloré company's CJIP with the guilty plea of its CEO, Mr Bolloré. The judge refused to approve the guilty plea on the grounds that the sentence proposed by the public prosecutor was not commensurate with the foreign bribery offence established. Mr Bolloré's case has been referred to the Criminal Court and awaits trial. The company's DPA was upheld.[287]

The last two years have been marked by numerous attacks on the Parquet National Financier, including from the Executive.[288] Also, a draft law submitted in October 2021 by an MP from the presidential majority could potentially undermine the liability of legal persons by giving the near-guarantee of a CJIP in certain cases. The draft law also proposes significant changes to CJIPs that could undermine the effectiveness of France's enforcement of the foreign bribery offence.[289]

A new law in March 2022 transposes the EU Directive on whistleblower protection and improves the protection of whistleblowers while also preserving the rights enshrined under the previous law (the "Sapin II" law).[290] In the context of a broader Sustainable Development Law, France has also created an asset restitution framework that enshrines many recommendations put forward by civil society organisations.[291]

Transparency of enforcement information

The PNF provides annual statistics on economic and financial crime investigations without focusing specifically on foreign bribery.[292]

Only 3 per cent of the 3 million court decisions handed down each year in France are accessible to the public.[293] In 2016, the government adopted the Law for a Digital Republic, taking a big step towards fulfilling its promise to make all court decisions publicly and freely accessible.[294] At the end of June 2020, a first decree was enacted to implement the 2016 law and the implementation is expected to be gradual over a period of years.[295] Pursuant to an order of 28 April 2021, it will gradually become possible to consult court decisions online by December 2025.[296] Since 2020, information about CJIPs in any press releases of the French authorities or validation orders of the criminal courts has been published on the websites of the Ministry of the Economy and Finance and of the Ministry of Justice rather than on the website of the French Anti-Corruption Agency.

Victims' compensation

Like other supply-side countries, France retains any confiscated bribes and profits from foreign bribery deals. Under the French Code of Criminal

Procedure, any persons that have directly suffered personal injury as a result of an offence can obtain reparations for the harm, material or moral, either by filing a complaint and suing for damages before the competent investigating judge,[297] or by joining a civil action to an ongoing criminal proceedings and requesting that the tribunal exercising jurisdiction order the perpetrator of the criminal act to pay damages.[298]

Under French criminal law, damage compensation to victims can be recovered not only using confiscated assets but also where no assets have been confiscated.[299] The compensation occurs at the end of the criminal trial, following a criminal conviction.[300]

In each of two corruption-related money laundering proceedings, a state joined as a civil party and was awarded damages.[301] In December 2010, the French Judicial Supreme Court ruled in favour of allowing anti-corruption associations to file a complaint and sue for damages in corruption-related cases, acting in the collective interest.[302] This case law has since been codified in a 2013 law.[303]

A CJIP may impose on companies the obligation to pay a public interest fine to the French Treasury and to compensate any identified victims in an amount and manner determined in the CJIP.[304] So far, the only victims to have joined foreign bribery proceedings are French companies or their top managers, who have alleged that their subsidiaries' corrupt conduct have caused them direct harm.[305]

In the **Airbus** case, under a plea deal the company paid record penalties of €3.6 billion to France, the United Kingdom and the United States, based on allegations of foreign bribery, but there was no compensation to the states and individuals who were the victims of the corruption scheme.[306]

In 2021, France adopted a law on the restitution of ill-gotten gains.[307] The law provides that illicitly acquired assets in international corruption cases – either proceeds of corruption or embezzled public funds – once confiscated by the French justice system, will no longer be placed in the French general budget, but will be returned "as close as possible to the population of the foreign state concerned" to finance "cooperation and development actions" in compliance with transparency, accountability and participatory principles. This paves the way for the confiscation and return of proceeds of foreign bribery.[308] Use of the asset restitution mechanism is conditional on the pronouncement of a conviction and thus does not cover proceeds confiscated as part of a CJIP.[309]

Recommendations

+ Publish statistics on foreign bribery that include opened cases, ongoing cases, unanswered letters rogatory, cases that have reached a final decision, and the number of MLA requests received; also update on an annual basis the case information published at the end of France's OECD Phase 4 report.
+ Adopt further guidelines on CJIPs in order to encourage voluntary disclosures by companies and promote transparency about CJIP negotiations and final agreements.
+ Increase the budget allocated to law enforcement authorities in the areas of economic and financial crime.
+ Actively implement the 2021 OECD Anti-Bribery Recommendation.

TI France reiterates its 2020 recommendations to define the notion of a victim of corruption and adapt French legal tools to more effectively repair the damage caused by corruption. TI France also recommends shifting from a sole-sanction approach to a reparations approach: the sharp increase in foreign bribery cases, whose ramifications extend abroad, requires that the fight against corruption no longer be approached solely from the point of view of sanctions, but that a logic of reparations must also be integrated.

GERMANY

Moderate enforcement

7.4% of global exports

Investigations and cases

In the period 2018-2021, Germany opened 16 investigations, commenced 6 cases and concluded 40 cases with sanctions.

Weaknesses in legal framework and enforcement system

The main weaknesses are the lack of criminal liability for corporations; weaknesses in provisions for non-trial resolutions; inadequate sanctions; lack of adequate whistleblower protection; and inadequate statutes of limitation.

Recent developments

After agreeing in June 2021 on a draft corporate sanctions law that would have addressed major weaknesses in the legal framework and enforcement system, the coalition government failed to put it on the parliamentary agenda, possibly because of strong opposition from businesses. The new coalition government has agreed to review sanctions for companies, including their amount and the extent of recognition of compliance and of internal investigations. The review, however, has not yet started. It is also not clear whether it would include making prosecution of companies mandatory as opposed to discretionary as is currently the rule. The OECD WGB criticised the lack of prosecution of companies in its Phase 4 review in June 2018.[310] It continued to express concern in its Follow-Up Report in March 2021, where it found that between the Phase 4 review and the end of 2020, 50 individuals were sanctioned in 20 cases and only two legal persons were held liable in two cases.[311] Criminal confiscation was ordered against four companies and administrative forfeiture against three companies.[312] This shows that the discrepancy between prosecuting individuals and companies still exists.

In addition, Germany failed to transpose the EU Directive for the protection of whistleblowers into law by the deadline of 17 December 2021, but draft legislation was to be discussed in the parliament in September 2022.[313]

Transparency of enforcement information

The Federal Ministry of Justice compiles information on investigations opened, cases commenced, cases concluded and requests for mutual legal assistance (MLA) made and received for the OECD Working Group on Bribery (WGB). It also makes the information available to Transparency International Germany. However, it does not publish the data.

Verdicts in foreign bribery cases are rendered by regional or local courts,[314] and they are rarely published either. If appealed, any appellate decisions by the federal court are generally published in both commercial and open access databases. Orders for conditional termination of proceedings against individuals, according to Section 153a of the Code of Criminal Procedure, generally against payment of a sum of money, are also not published. They require the consent of the accused to the termination, something which cannot be construed as an admission of facts or guilt.[315]

Since Phase 3, the OECD has recommended that Germany at least release any pertinent information about orders for termination. A compromise that involves the prosecution examining what information can be released has not been implemented and may not satisfy constitutional requirements.[316] The current status does not comply with the 2021 OECD Anti-Bribery Recommendation to make sanctions transparent.

If the press finds out about court decisions, it has the right to request copies with the exception of the decisions of prosecutors in cases against companies for failure to prevent bribery (Sec. 30, 130 Administrative Offences Act).[317] Recently, journalists have requested and published the information provided by the *Länder* (regions*)* and the Ministry of Justice to the OECD WGB under freedom of information laws. Their research concludes that many cases in Germany are unknown to the public.[318]

Victims' compensation

There is no specific legal framework recognising victims' rights and victims' compensation in foreign bribery cases. In Germany, an injured party can claim compensation as part of civil proceedings based on tort law against private parties and the State[319] and use criminal confiscation proceedings.[320]

In certain cases of bribery in foreign business transactions, a company that did not obtain a contract because of a bribe paid by a competitor may claim damages. Germany sometimes prosecutes foreign bribery using Section 299 para. 2 of the Criminal Code as an alternative offence, so that damages incurred by competitors can be claimed. However, the bribery of foreign public officials is meant to protect the integrity of public office.[321] It is not designed to protect citizens, or a group of citizens, from damage resulting from the decisions taken by public officials induced by bribes.

Furthermore, an offender (a natural person) may be conditionally exempted from prosecution where the "public interest" no longer requires the prosecution of the case. The conditional exemption from prosecution may consist of making a contribution towards compensation for the damage, paying a sum of money to the treasury or to a non-profit organisation or seriously attempting to reach a mediated agreement with the aggrieved person

(victim–offender mediation).[322] Mitigation of damages by the offender may also be considered as a mitigating circumstance in relation to criminal liability.

Germany signed but has not yet ratified the Council of Europe Civil Law Convention on Corruption, mainly because the protection of whistleblowers in Germany is not yet up to the Convention's standards.

Recommendations

+ Publish statistics for all phases of foreign bribery enforcement.
+ Publish all court decisions, including those from regional and local courts.
+ Draft and enact a corporate sanctions law that would include mandatory prosecution and a mechanism to allow transparency of sanctions in non-trial resolutions.
+ Increase statutes of limitation.
+ Include protection for whistleblowers reporting on breaches of German law, when transposing the EU Directive.
+ Provide adequate human and financial resources and training to prosecutors and judges.
+ With regard to victims' rights and victims' compensation in foreign bribery cases, change the legal theory of the interest to be protected in cases of bribery of foreign public officials, preferably by legislation, to include citizens or groups of citizens of the foreign country in question and require that the authorities apply the return principles of the Global Forum on Asset Recovery (GFAR).

GREECE

Limited enforcement

0.3% of global exports

Investigations and cases

In the period 2018-2021, Greece opened one investigation, commenced one case and concluded no cases with sanctions.

Weaknesses in legal framework and enforcement system

The main weaknesses are the inadequate definition of foreign bribery; the lack of criminal liability for corporations; the lack of provisions for settlements; inadequate sanctions; and inadequate statutes of limitation. A major obstacle is also presented by the slow pace of criminal justice and the secondary importance of foreign bribery investigations.

The OECD WGB examiners stated in their March 2022 Phase 4 Report on Greece that they were "gravely concerned that Greece does not have an effective legal framework for holding legal persons liable for foreign bribery or related offences, and [they] recommend that Greece make wholesale reforms to its legal framework, including jurisdictional issues and allocating responsibility for enforcing corporate liability to an appropriate authority." The report added that "[a] July 2021 legislative amendment requiring a natural person to be irrevocably convicted of an offence before a legal person can be sanctioned is deeply regrettable."[323] The OECD WGB also called for stronger safeguards to protect foreign bribery proceedings from being subject to improper influence by concerns of a political nature.

The Economic Crimes Prosecutor is broadly regarded by the Greek authorities as the competent prosecutor for the investigation and prosecution of active foreign bribery, but this has not been codified in the text of the Code of Penal Procedure. As a result, there are implications for the actual handling of such investigations, which are considered more or less of secondary importance in comparison with domestic corruption offences.

Recent developments

The OECD WGB Phase 4 Report on Greece in March 2022 found numerous weaknesses in the Greek legal framework and enforcement system. It noted that: "Detection and enforcement of the foreign bribery offence require urgent improvement in Greece. Despite the Convention entering into force [in Greece] over 24 years ago, Greece has no convictions for foreign bribery."

In July 2020, the chief anti-corruption prosecutor was formally charged with alleged abuse of power and breach of duty and the proceedings are ongoing.[324] In late 2020, Greece merged its specialised Anti-Corruption Prosecutor's Office

(PPACC) into the new Economic Crime Prosecutor's Office.

In November 2021, the law was changed to increase the maximum prison term for active bribery from three to five years, when the bribery occurs for an action or an omission by a public official related with his/her duties.[325]

Transparency of enforcement information

There are no published foreign bribery enforcement statistics. This causes major problems in terms of awareness and in the design of adequate policy initiatives, especially in the context of the National Anti-Corruption Plan of Greece for the period 2022-2025.

Decisions by the Supreme Court of Greece in civil and criminal cases are published in full, but with anonymity protections.[326] The decisions of lower courts (courts of first instance and appellate courts) are published sporadically in Greek legal publications that are available to subscribers in hard copy, online and in databases. Prominent Greek legal databases are NOMOS[327] and the database of the Athens Bar Association, "Isokratis."[328]

Victims' compensation

In Greece, a foreign state is considered a legal person and can initiate a civil action for compensation in civil courts (Articles 62, 64 and 66 of the Code of Civil Procedure) and participate in a relevant criminal trial as a civil plaintiff (Articles 63–70 of the Code of Criminal Procedure).

According to the Greek Code of Criminal Procedure, as it stands since 2019, the victims of foreign bribery may participate in a criminal proceedings, provided that they are entitled to compensation, according to private and public law. To obtain compensation, the victims may apply for compensation to the competent civil courts. The new Penal Code has provisions for enhanced plea bargaining for natural persons that include provisions for victims' compensation. However, the provisions do not apply for bribery offences.

Greece is a party to the Council of Europe Civil Law Convention on Corruption.

Recommendations

+ Urgently amend the definition of foreign bribery and increase the sanctions against it.
+ Urgently introduce criminal liability for legal persons and hold legal persons criminally liable for foreign bribery.
+ Clarify the competence of the Economic Crimes Prosecutor to investigate and initiate criminal proceedings for foreign bribery crimes.
+ Introduce a settlement mechanism for foreign bribery, with the participation of the victims in the procedure.
+ Gather and publish statistics.
+ Include targets for tackling the crime of foreign bribery in the upcoming revised National Anti-corruption Plan.

HUNGARY

Little or no enforcement

0.5% of global exports

Investigations and cases

In the period 2018-2021, Hungary opened one investigation, commenced no cases and concluded no cases.

Weaknesses in legal framework and enforcement system

Since 2012, TI Hungary has been warning about the phenomenon of state capture emerging in the country.[329] This includes a lack of functional autonomy among state anti-corruption organs. There are also serious deficiencies relating to the independence of judges and prosecutors and the impartiality of the National Judicial Office, a state body tasked with administration of the judiciary.[330] In addition, there are major deficiencies in the country's whistleblower regime, including limited protections against retaliation and uncertainties over the protection of whistleblowers' identities. As a result, the willingness to report corruption is very low in Hungary.[331] Hungary has still not started transposing the EU Whistleblower Protection Directive.

The 2014 GRECO review of Hungary identified issues relating to the independence of the Prosecutor General and ordinary prosecutors.[332] The July 2022 Rule of Law Report of the European Commission referenced the GRECO review and also noted Hungary's failure to address concerns over judicial independence raised in the context of the Article 7(1) Treaty of the European Union procedure initiated by the European Parliament,[333] as well as in previous Rule of Law (ROL) reports.[334] The 2022 ROL report also found that the functional independence of the Hungarian media regulator needed to be strengthened.

The OECD WGB indicated in June 2021 that it "remains concerned" about recent reports by international and non-governmental organisations, including the European Commission and European Parliament, regarding judicial independence and media freedom, as they relate to foreign bribery and follow-up issues. It added: "In particular, despite recent positive developments, the organisation of the judiciary system continues to generate a potential for judges to be specifically selected to individual cases, which may have an impact on the conclusion of foreign bribery cases. Furthermore, Hungarian media may currently not be operating in an environment conducive to the independent reporting of foreign bribery allegations." Among other issues, the Media Council is biased; journalists working for independent media are still subject to negative narratives by pro-government media and by government representatives; and journalists' safety is threatened by the government's use of the Pegasus spyware to target journalists.[335]

Recent developments

An ultimate beneficial owner (UBO) register was introduced with implementation of the EU's fourth and fifth anti-money laundering directives as of May 2021. From July 2022, the UBO register will be accessible to anyone if they have a legitimate interest and pay a fee. The UBO register will work as a central database and be managed by the Hungarian Tax and Customs Authority. However, while the law enables the authorities, including law enforcement, to access the UBO register, and from 1 February 2023, EU organs will have the same opportunity, ordinary citizens will be able to gain access to UBO data only if they pay the fee specified by the tax administration, which will not only oversee the UBO register but also define accessibility criteria. This is problematic because access fees may be excessive and access criteria too strict, thereby deterring ordinary citizens from use of this important database.

The OECD WGB report on Hungary in June 2021 found that Hungary had not implemented 23 of the 32 recommendations in the June 2019 Phase 4 report on the country.[336] At the same time, the 2021 report welcomed improvements in the definition of foreign public officials and the adoption of the prosecutorial guidelines on corporate liability. It also commended Hungary on its efforts to increase the resources of the Central Investigation Office of the Public Prosecution Service (CIOPPS) and to provide training to the public and private sectors.

Transparency of enforcement information

The Ministry of the Interior records the number of offences reported and registered, investigations commenced, investigations terminated and indictments for the offences of trading in influence and bribery of public officials. While the information is not publicly available, it is available on request. There is a comprehensive public database covering the period from 2013 to the end of June 2018. Hungary does not compile and publish statistics on the requests for mutual legal assistance (MLA) made and received. Court decisions are published in anonymised form.

Victims' compensation

There is no legal framework recognising victims' rights or victims' compensation in bribery cases, whether foreign or domestic, despite the fact that Hungary is a party to the Council of Europe Civil Law Convention on Corruption.

Recommendations

+ Regularly publish statistics on foreign bribery enforcement and MLA.
+ Ensure that the central register of beneficial ownership information is freely accessible to citizens and that there is increased transparency of private equity funds, which play a role in hiding ill-gotten gains from corruption.
+ Improve the legal framework for whistleblower protection.
+ Improve the professional autonomy of prosecutors.
+ Extend the two-year time limit on investigations.

+ Raise awareness of the foreign bribery offence in the private sector.
+ Strengthen capacity to provide prompt and effective legal assistance to other Parties to the Convention investigating and prosecuting foreign bribery cases.
+ Introduce a legal framework to address damages suffered by victims of bribery, whether foreign or domestic.

IRELAND

Little or no enforcement

2.2% of global exports

Investigations and cases

In the period 2018-2021, Ireland opened two investigations, commenced no cases and concluded no cases.

Weaknesses in legal framework and enforcement system

The weaknesses in legal framework include lack of transparency of beneficial ownership and enforcement data.

Recent developments

In 2021, Ireland established the Central Register of Beneficial Ownership of Express Trusts, adding to a central register of beneficial ownership of companies. In the same year, Ireland transposed the Fifth EU Anti-Money Laundering Directive into Irish law by way of the Criminal Justice (Money Laundering and Terrorist Financing) (Amendment) Act 2021.[337] Also coming into effect in 2021 was the Companies (Corporate Enforcement Authority) Act 2021,[338] which establishes the Corporate Enforcement Authority (CEA), to perform the functions previously performed by the Office of the Director of Corporate Enforcement (ODCE) namely encouraging compliance with, and investigating and prosecuting violations of, company law.[339] In preparation for this, the budget of the ODCE was increased by €1 million and resources were allocated for additional staff to be assigned to the authority. [340]

Ireland has also recently established the Advisory Council against Economic Crime and Corruption and has convened a forum of senior representatives from enforcement agencies including An Garda Síochána (AGS, or the national police service) and the Revenue, as recommended by the Review Group on Anti-Fraud and Anti-Corruption.[341]

In relation to resources, the government has increased the budget of the Office of the Director of Public Prosecutions in three consecutive years, most recently by about €3 million, to enable it to increase staffing and resources to handle the rise in the nature and volume of criminal investigation files received from AGS and other specialised investigative agencies (and to accommodate an increase in State Solicitor expenses).

Transparency of enforcement information

The Irish Department of Justice does not publish any statistics on foreign bribery enforcement, nor does it disclose such statistics on request.[342] The Garda National Economic Crime Bureau (GNECB), Ireland's leading anti-corruption and bribery enforcement agency, also does not release general enforcement statistics.[343] Statistics on mutual legal assistance (MLA) are not published.[344]

Decisions of the Courts Service of Ireland, including the Supreme Court of Ireland, are published on the Irish Courts Service website.[345] Non-trial resolutions are not published in full. Based on the results of an online search, it does not appear that court decisions and non-trial resolutions are published in accordance with the 2021 Anti-Bribery Recommendation.

Victims' compensation

There is no legal framework specifically recognising victims' rights or victims' compensation in foreign bribery cases. In cases of crime where a victim (natural person) is identified, the Criminal Justice (Victims of Crime) Act 2017 applies. However, the authorities take the view that in bribery and corruption cases the victim is usually the "public at large" and there are not usually specific victims. As a matter of common law, foreign states have standing (*locus standi*) in Irish civil courts. They can thus initiate civil action in court to establish title to or ownership of property or seek compensation or damages.[346]

Ireland has signed but not ratified the Council of Europe Civil Law Convention on Corruption.

Recommendations

+ Remove the paywall from the Irish Register of Beneficial Ownership for bodies corporate to make the register fully accessible to the public, as required by the Fifth EU Anti-Money Laundering Directive.
+ Establish a specialist corporate crime unit within the Director of Public Prosecutions, in addition to the Special Financial Crime Unit, and ensure that this unit is properly resourced to tackle corporate crime, including foreign bribery, as recommended by the Irish Law Reform Commission in 2018.[347]
+ Ensure that there is adequate civil society representation on the Advisory Council against Economic Crime and Corruption and that its advice is relevant, evidence-based and aimed at addressing the incentives for corruption as well as opportunities for improvements in law enforcement.
+ Ensure there is an adequate legal framework and safeguards in place for the recovery and repatriation of the proceeds of corruption.

ISRAEL

Moderate enforcement

0.5% of global exports

Investigations and cases

In the period 2018-2021, Israel opened four investigations, opened no cases and concluded two cases with sanctions.

Weaknesses in legal framework and enforcement system

The main weaknesses include the lack of a legal framework establishing a central register of beneficial ownership information; inadequacies in the framework for the criminal liability of corporations; the insufficient scope of sanctions and punitive tools; and jurisdictional limitations.

In particular, the present common law on the liability of legal persons is not codified as part of Section 23 of the Penal Code 1977 that establishes corporate criminal liability. There is a dual penalty requirement in the Penal Code (Article 14(c)). There is a legal provision that if a person is tried in Israel, the penalty cannot be more severe than it would have been in the other jurisdiction where the crime was committed[348] and there is no general arrangement regarding the forfeiture of crime proceeds.

Further, there are limitations on jurisdiction under Article 14(b)(2) of the Penal Code;[349] and there is a lack of sufficient specification in relevant codes of ethics relating to the duty of public officials to report acts of foreign bribery. Additionally, there are no formal Defence Export Controls Agency guidelines for conducting due diligence on applicants and no guidelines for the exclusion of companies from public procurements where they are under police investigation or convicted of foreign bribery.

Recent developments

In 2020, the Attorney General established an anti-corruption unit after an in-depth examination and an extensive consultation process. In October 2019, the Israeli State Prosecutor's Office published two new sets of guidance. The first concerned the indictment and sanctioning of corporations, including consideration of whether a company has an adequate compliance programme.[350] The second concerned revised guidance on the financial penalties for bribery offences, clarifying that the 2010 increase in the court's authority to determine higher economic penalties was intended, among other things, to enable it to set deterrent sanctions for corporations.[351] Israel is developing an ordinance on the consideration of investigations and convictions (including foreign bribery) in public tenders and contracts with suppliers. In October 2021, the High Court of Justice in the case of *Shafir Intelligence v the State of Israel* reiterated that procurement authorities may exclude from publicly funded contracts, companies under police investigation or convicted of offences concerning integrity.

A committee that has representatives from the Ministry of Justice and the Money Laundering and Terror Financing Prohibition Authority (IMPA) and coordinates with the Corporations Authority is currently examining setting up a central register of beneficial ownership information for legal persons, taking into account regimes adopted in other

countries and the updated FATF recommendations. Regarding trusts, the Israel Tax Authority maintains a non-public register of Israeli resident trusts and holds information on the beneficial ownership of some companies and trusts.

In November 2019, Israeli authorities reportedly opened investigations into suspicions that the Israeli company **Dignia Systems Ltd** had bribed a Botswana public official and committed related money-laundering offences to assist in winning tenders.[352] Also in 2019, there were media reports that Israel Police and the Israel Securities Authority said they had sufficient evidence to proceed with a bribery case against **Shikun & Binui**, Israel's largest construction group, its units and senior executives.[353] The reported suspicions are that the company was involved in paying millions of dollars in bribes to African officials.[354] In November 2021, the company claimed that it was in advanced talks with the State Attorney's Office about a deal to resolve the case without criminal charges being filed.[355] As of mid-2022, no reports indicated that the case had been resolved.

Transparency of enforcement information

Israel does not publish statistics on the number of investigations opened by Israel Police, cases commenced or cases concluded. Nor does it publish statistics on requests for mutual legal assistance (MLA) made or received.[356]

The Supreme Court publishes decisions on its website.[357] Other courts decisions can be found on the judicial website.[358] Several other websites publish court resolutions and decisions on a subscription basis.[359] In addition, the Ministry of Justice has recently launched a new page on its website dedicated to the newly established anti-corruption unit. The website includes a vast amount of information on anti-corruption efforts and tools, including the full text of relevant court decisions on all anti-corruption topics and areas, arranged and categorised for ease of navigation.[360] However, in the case of a civil forfeiture consent agreement, no information is publicly available.

Settlements are presented in court for approval and the court's approval is then published along with its explanation – similar to any other court verdict.[361] This includes details of the agreement brought before the court and the reasons for approving it or, as the case may be, not approving it.

In case of a non-prosecution agreement, the details must be published on the website of the relevant prosecution authority.[362] The details published will include: (1) the matter of closing a case with an arrangement; (2) the nature of the offence and its circumstances, a description of the facts to which the suspect has confessed and an indication of the provisions of the legislation specified in the arrangement; and (3) the terms of the arrangement.

Victims' compensation

In Israeli law, the procedural rights of victims of crime are regulated in the Law on the Rights of Victims of Crime, while the court's authority to order the payment of victim compensation within the framework of a criminal sentence is set forth in Article 77 of the Penal Code. In most corruption cases, no victim compensation is awarded since the harm caused by the offence is to the public interest. However, bribery of a foreign public official could be interpreted as harm to a more specific public which is the public of the foreign country whose public servant was offered the bribe. If such circumstances occur, where the concrete damages to the foreign public can be proved, Israel's penal code would allow an award of victim compensation.

It should be noted that the possibilities for determining conditions in the framework of negotiations for a non-prosecution agreement are more flexible. Therefore, the prosecuting authorities are able to set the conditions that determine any compensation or additional steps to rehabilitate the damage caused by the offence, including payment of compensation to the victims of the corruption offence.

Recommendations

+ Publish statistics by all enforcement agencies on foreign bribery enforcement from investigations to concluded cases, as well as statistics on MLA requests made and received.
+ Establish a central public register of beneficial ownership.
+ Amend the Penal Law to ensure that sanctions for foreign bribery are not subject to the dual penalty requirement (Article 14(c)) and that the limitations to jurisdiction that exist under Article 14(b)(2) do not apply to foreign bribery.
+ Consider completing the amendment of the Criminal Procedure Law 1982 and Section 23 of

the Penal Law 1977, or add punitive tools against legal entities as described above.

+ The Ministry of Defence should continue to develop quality standards and a mechanism to oversee the implementation of anti-corruption compliance programmes for defence-related exports.
+ Within the scope of relevant codes of ethics, specify the duty of public officers to report any act of foreign bribery they identify in their position.
+ Consider adopting clear legislation or policy on the implication of a bidder in public tenders being involved in illegal activity regarding integrity issues as mentioned above.

ITALY

Limited enforcement

2.5% of global exports

Investigations and cases

In the period 2018-2021, Italy opened 13 investigations, commenced four cases and concluded two cases with sanctions.

Weaknesses in legal framework and enforcement system

The main weaknesses are the lack of training of investigators to investigate this kind of offence; the length of the legislative process and judicial proceedings; and inadequate complaints mechanisms and whistleblower protection. Five of the seven cases concluded during the period were acquittals (or reclassified), suggesting a serious weakness with enforcement.

Recent developments

The legal framework has not significantly improved in the last two years. The Covid-19 pandemic, especially in 2020, has drawn legislators' focus elsewhere, even though new corruption risks have come to the fore. In 2021, more attention was given to reform of the justice system. That is why an enabling act was approved that requires the government to introduce new regulations (by October 2022) to make criminal proceedings faster, more efficient and fairer, seeking to reduce their duration by 25 percent over the next five years.[363]

A major reform of the justice system is also currently under discussion, reflecting a commitment that the government has made within the framework of the National Recovery and Resilience Plan (NRRP).[364] Reducing the huge backlog of cases is one of the objectives of the reform, since it is one of the main obstacles to the effective enforcement of foreign corruption laws. The NRRP foresees huge investments in digitalisation in Italy that will also impact the operation of the justice system. In April 2022, the reform was approved by the Chamber of Deputies and the Senate's approval is now required. However, other pending laws and provisions that are expected to improve the situation are still waiting their turn.

The EU Whistleblower Protection Directive should have been implemented into law by 17 December 2021, but as of May 2022, the final version had not yet been adopted, resulting in the EU's initiation of an infringement procedure. In August 2022, parliament passed legislation delegating to the government implementation of the Directive.[365] The transposition process has lacked transparency: it has taken place without the involvement of external stakeholders and no draft text has been shared publicly, unlike the process in other countries.[366]

The country does not yet have a central register of beneficial ownership information, but it is working on establishing one in line with Legislative Decree No. 2019/125,[367] which was passed to comply with the Fifth EU Anti-Money Laundering Directive.[368] In May 2022, the decree on the implementation of the register was published.[369] The competent institutions and the Chambers of Commerce are working on the practical implementation.

Transparency of enforcement information

Currently, there are no published statistics on foreign bribery enforcement, either from the Ministry of Justice or from other authorities. No action has yet been taken to establish a national database of all foreign bribery cases.

Court decisions, including in relation to plea bargains, are published, but they are often not freely accessible to most citizens. The Supreme Court of Cassation (Corte Suprema di Cassazione) publishes decisions and other resources on its website. Its service SentenzeWeb gives access to a

freely searchable database with past criminal and civil cases within the last five years and it can be accessed by all citizens. [370]

ItalgiureWeb, another online system of the court, gives access to many different types of documents on past proceedings, both in civil and criminal matters. [371] However, it is free of charge only to the persons operating in the judicial system. It can be accessed by other groups, such as lawyers, civil servants, universities and other interested parties, through payment of an annual subscription fee.[372]

Lawyers and court-appointed experts have free access to the IT Services Portal of the Ministry of Justice,[373] which provides information on the status of proceedings (first instance, appellate and Corte di Cassazione) where a lawyer is involved. Information on other cases are also available but anonymised.

Decisions by civil and criminal courts are not available online free of charge but can be accessed in private databases that require a subscription of €1,000 to €1,500 per year, on average. Other court decisions are available online for free, such as the decisions of the Corte dei Conti,[374] while the Constitutional Court's sentences are available on the institutional website.[375] In the case of administrative proceedings (Regional Administrative Tribunals and Consiglio di Stato for appeals), decisions are published on another website.[376]

Non-trial resolutions in Italy take the form of a "*patteggiamento*" procedure, or plea bargain. The court decisions in these cases are published in the same way as other decisions.

Recent privacy regulations issued by the Italian Data Protection Authority are currently being implemented and may become an obstacle to publication of the personal data of the accused.[377]

Victims' compensation

In cases of foreign bribery, a foreign government can participate in the proceedings as a civil party (*partie civile*). For example, Nigeria gained civil party status and filed a large compensation claim in a major case against oil multinationals **Eni** and **Shell** concerning the purchase of rights to an oilfield. The two companies were acquitted.[378]

In another major case, **Eni** reached a settlement for allegedly paying a fee for a renewal of oil permits in the Republic of the Congo and was ordered to pay compensation of €11 million to the Italian state.[379] However, the charges were reduced from foreign bribery to undue inducement.[380]

The Italian Penal Code (Article 165) also provides that the conditional suspension of a sentence may be subject to compensation for damage and other obligations.[381] With reference to foreign bribery, the conditional suspension of a sentence is "in any case" subject to the payment of the amount determined by way of pecuniary reparations.

Furthermore, Article 322 ter of the Penal Code code establishes that, in the case of a conviction or plea bargain for the crime of foreign bribery, the confiscation of the assets constituting the profit is always ordered (unless the assets belong to a person unrelated to the crime) or, when this is not possible, the confiscation of assets in an amount corresponding to the profit. Article 322 quater also foresees a pecuniary reparation in an amount equivalent to the price or profit of the offence "in favor of the administration injured by the conduct of the public official, without prejudice to the right to compensation for damage."

The Italian legal framework also allows for the compensation of victims of a criminal offence through a civil trial.

Italy is a party to the Council of Europe Civil Law Convention on Corruption.

Recommendations

+ Publish statistics on foreign bribery enforcement.
+ Make all court decisions in foreign bribery cases freely accessible to the public.
+ Implement a beneficial ownership registry and improve the accessibility of information in line with the highest open data standard, making it open to the public for free and ensuring interoperable use with other relevant data sources.
+ Ensure adequate whistleblower protection in the private sector through the transposition of the EU Whistleblower Protection Directive.
+ Improve the functioning of the justice system by solving the problem of the backlog of cases.
+ Provide additional resources and training for investigators, prosecutors and judges and ensure their effectiveness.
+ Provide adequate training and experience-sharing on anti-corruption prevention strategies and tools to private and public entities.

+ Join the Extractive Industries Transparency Initiative to promote good governance in the oil, gas and mining sectors.

JAPAN

Little or no enforcement

3.6% of global exports

Investigations and cases

In the period 2018-2021, Japan opened two investigations, commenced two cases and concluded two cases with sanctions.

Weaknesses in legal framework and enforcement system

The main weaknesses are jurisdictional limitations; inadequate sanctions; inadequate statutes of limitation; and a lack of public awareness-raising.

In response to criticism by the OECD WGB's Phase 4 report in 2019, the Ministry of Economy, Trade and Industry (METI) established the Study Group on the Prevention of Bribery of Foreign Public Officials, which met in January to July 2020 and issued a final report in May 2021.[382] The Study Group concluded that (i) no extension of the statute of limitations as it applies to foreign bribery, (ii) no expansion of the breadth of nationality of jurisdiction for foreign bribery offences, and (iii) no increase of sanctions to be applied to both natural and legal persons were necessary or appropriate in light of the potential impact on the entire criminal law system.

Recent developments

Although the METI Study Group concluded that no major amendments to foreign bribery-related laws were necessary, METI did make some amendments to the "Guidelines for the Prevention of Bribery of Foreign Public Officials"[383] and prepared a brochure on the guidelines to help small and medium-sized companies to fully understand the foreign bribery prevention regulations. The government has done some awareness-raising about the guidelines and the brochure.[384] In addition, some experts argue that the investigating authority has been more active in investigating and concluding cases since 2019. However, this is not known by the public and, therefore, has no deterrent effect.

Transparency of enforcement information

The METI Study Group report and the guidelines list all of the cases related to foreign bribery up to June 2020. Other than these lists, there is still no publicly available data on foreign bribery enforcement in Japan.

Information on court decisions is available through a centralised court website and other law reporting services. The full text of judgements and commentaries are available online. With respect to non-trial resolutions, there do not appear to be any transparency provisions built into the new prosecutorial agreement system that took effect on 1 June 2018, pursuant to which plea bargaining can be used for violations of the Unfair Competition Prevention Act, including foreign bribery.

Victims' compensation

There is no legal framework recognising victims' rights or victims' compensation in foreign bribery cases. Discussions regarding victims' rights and compensation in foreign bribery cases have not fully started, nor are people aware of the need for such discussions.

Recommendations

+ Ensure that METI or the Ministry of Justice collects and publishes enforcement statistics.
+ Ensure that the Financial Intelligence Unit establishes a publicly accessible beneficial ownership register for companies and trusts.
+ Adopt a separate act to regulate foreign bribery and move the responsibility for implementing the OECD Anti-Bribery Convention, the UN Convention against Corruption and other anti-bribery standards to the Ministry of Justice.
+ Introduce and implement improvements to whistleblower protection and create incentives for whistleblowers to come forward.
+ Expand the breadth of nationality jurisdiction for foreign bribery offences.
+ Increase sanctions to be applied to both natural and legal persons.

+ Improve enforcement through encouraging investigations by the police and increasing investigations by prosecutors.
+ Ensure that overseas missions actively monitor local media with a view to detecting foreign bribery by Japanese citizens.
+ Apply the Japanese Unfair Competition Prevention Act to any officials of international organisations that run on public funds or are government-funded, and to all profit-making international transactions, even if they are not business transactions.

In addition, METI should establish a study group to prepare recommendations on a legal framework for victims' rights and victims' compensation in foreign bribery cases.

LATVIA

Moderate enforcement

0.1% of global exports

Investigations and cases

In the period 2018–2021, Latvia opened eight investigations, commenced one case and concluded one case with sanctions.

Weaknesses in legal framework and enforcement system

A key weakness in the legal framework is an inadequate definition of foreign bribery. In the 2021 Phase 3 Follow-up Report, the OECD WGB regretted that Latvia had not yet introduced legislation in accordance with Article 1 of the Convention, so that (i) the promise of a bribe (direct intent) would constitute a bribery offence and (ii) the liability of legal entities would not be restricted to cases where the natural person(s) who perpetrated the offence are prosecuted or convicted. Other key weaknesses include the insufficient training of investigators with respect to detection, confiscation, complicity and other matters related to foreign bribery; a lack of public awareness-raising; insufficient inter-agency coordination; and unfilled positions of skilled investigators and prosecutors. In addition, there are no sufficient safeguards to protect the independence of investigators and prosecutors from political interference.

The 2021 OECD WGB follow-up report also noted that "the fact that no financial institution has been held criminally liable in Latvia for money laundering to date is highly concerning, and the Working Group regrets the persistent lack of money laundering convictions predicated on foreign bribery."

Recent developments

Latvia has successfully concluded its first foreign bribery case and brought a second foreign bribery case to trial; both cases have been welcomed as a significant improvement by the OECD WGB.[385] In addition, the Corruption Prevention and Combating Bureau (KNAB), acting jointly with other institutions, has made progress during the reporting period in implementing many of the recommendations of the OECD WGB Phase 3 assessment.[386] For example, the allocation of funding and human resources to the KNAB has been increased; the KNAB has adopted a more proactive approach to detecting foreign bribery; and inter-agency cooperation has improved between KNAB and the FIU in relation to detecting foreign bribery and money laundering. The OECD WGB report noted that considerable efforts had been made to enhance the prevention and detection of money laundering and welcomed the steady increase in money-laundering investigations and convictions since Phase 3.

Transparency of enforcement information

Information regarding enforcement is partially available through a variety of sources, most notably press releases on the State Prosecution's website, which include any final decisions on foreign bribery and related offences.[387] However, press releases can only be filtered by year, not by topic, so information regarding foreign bribery enforcement is not readily available.

Certain court rulings in criminal proceedings are publicly available online.[388] Anonymised court rulings in other proceedings are also published online.[389] Rulings and decisions of the highest courts that could be relevant to the interpretation of the law are generally made public in anonymised form. However, not all court rulings are published and there are regular debates in the legal community about making court decisions more readily available.

Victims' compensation

There is no legal framework specifically recognising victims' rights or victims' compensation in foreign bribery cases, and victim's rights have never been raised or applied in a foreign bribery case. A party can gain victim status under Latvian criminal law, and then make a claim for damages under Latvian civil law.[390] Section 95 of the Latvian Code of Criminal Procedure provides that a victim can be a natural or legal person to whom harm has been caused by a criminal offence, that is, a moral injury, physical suffering, or any material loss.[391] However, a victim in criminal proceedings may not be a person to whom moral injury has been caused as a representative of a specific group or part of society, which could in principle affect standing for non-state representatives of groups of victims in foreign bribery cases. Sections 96 to 108 of the Code of Criminal Procedure specifies the rights of victims in criminal proceedings.

Latvia is a party to the Council of Europe Civil Law Convention on Corruption.

Recommendations

+ Regularly publish statistics on foreign bribery enforcement and make court decisions more readily available.
+ Ensure the foreign bribery offence is sufficiently broad.
+ Ensure independence for investigators and prosecutors and provide protection against political interference.
+ Reinforce inter-agency cooperation and implement a strategic approach to ensure that fact patterns are fully investigated, rather than focusing on specific offences.
+ Provide sufficient resources and expertise to authorities to effectively investigate and prosecute foreign bribery and related money-laundering cases.
+ Increase public awareness-raising.
+ Establish a legal framework for victims' compensation in foreign bribery cases.

LITHUANIA



Little or no enforcement

0.2% of global exports

Investigations and cases

In the period 2018-2021, Lithuania opened one investigation, commenced no cases and concluded no cases.

Weaknesses in legal framework and enforcement system

One of the main weaknesses is a lack of public awareness-raising. The Lithuanian Map of Corruption reports that in 2021 at least 62 percent of business leaders (up from 61 percent in 2020) and 66 percent of public servants (up from 57 percent in 2020) had not heard of any measures in Lithuania to combat foreign bribery.

In August 2022, Lithuania publicly launched its beneficial ownership registry. Although publicly accessible data is still not published in an open data format. Publicly, information on individual companies and natural persons can be accessed in pdf format only with the exceptions for law enforcement institutions or those with statutory rights.

There is also still work to be done to achieve whistleblower protection in the private sector, including measures to allow safe reporting.[392]

Enforcement institutions report that they are or feel dependent on the work of enforcement institutions in other countries. They cannot conduct investigations in foreign countries and they depend on information provided by others. Any investigation of foreign bribery cases is often hampered by a lack of mutual legal assistance from other countries.

Recent developments

A civil asset forfeiture law was adopted in March 2020. Lithuania became one of the first countries to transpose the EU Whistleblower Protection Directive at the end of 2021 and the amended law entered into force in February 2022. The Special Investigation Service carried out training and

developed recommendations for Lithuanian companies doing business in other countries.[393]

Transparency of enforcement information

There are no published, updated statistics on foreign bribery enforcement. Information on foreign bribery proceedings is provided on the official websites of the Special Investigation Service and the Prosecutor General's Office,[394] but there is no systemised listing of cases. A database of all anonymised cases is available online.[395] It is possible to search for cases by case number, type of case, court, date and other criteria. As of November 2017, the Criminal Code prescribes an obligation to announce in full the sentencing verdict of a legal person for crimes of bribery, trading in influence and graft through media.[396]

Victims' compensation

On 1 March 2021, a law to support crime victims came into force, but it is not designed for corruption victims, foreign or domestic.[397] The Lithuanian Code of Criminal Procedure also provides for a range of victim's rights in criminal proceedings.

Lithuania is a party to the 1999 Council of Europe Civil Law Convention on Corruption.

Recommendations

+ Systematise collection and publication of data on the enforcement (investigations, proceedings and sanctions) of foreign bribery cases and MLA.
+ Publish data on beneficial ownership of companies and trusts in an open data format, free of charge and taking additional measures to verify data submitted.
+ Strengthen already established bilateral relationships with foreign prosecuting authorities in order to improve the efficiency of MLA.
+ Prosecuting institutions should carry out training and strengthen the capacity of responsible institutions and specialists to recognise foreign bribery risks.
+ Private-sector enterprises (including municipality-owned enterprises and state-owned enterprises) should raise awareness of the risks of foreign bribery among their employees.
+ Business associations should take a clear position against corruption and foreign bribery.

LUXEMBOURG

Little or no enforcement

0.6% of global exports

Investigations and cases

In the period 2018-2021, Luxembourg opened no investigations, commenced no cases and concluded no cases with sanctions.

Weaknesses in legal framework and enforcement system

The main weaknesses include the lack of criminal liability of corporations; deficiencies in provisions for settlements; inadequate accounting and auditing requirements; a failure to hold companies responsible for subsidiaries, joint ventures and/or agents; and the inadequacy of complaints mechanisms and whistleblower protection. In addition, the relevant enforcement authorities lack adequate resources and training.

According to an interview with the deputy prosecutor at the Economic and Financial Prosecutor's Office and the director of the Financial Intelligence Unit in January 2020, five years after the LuxLeaks revelations, the fight against white-collar crime had not taken off in Luxembourg because of a lack of qualified staff and the increasing complexity of financial transactions.[398] The European Union's 2022 Rule of Law Report on Luxembourg found that "challenges remain as regards human resources in the prosecution services dealing with economic and financial crime, sometimes resulting in delays in prosecution of corruption."[399]

A 2021 exposé by OCCRP concluded that "[d]espite reform efforts, Luxembourg is still an opaque jurisdiction, where mandatory disclosure rules for companies and individuals can be circumvented and sanctions are rarely enforced."[400] The OCCRP report found that dozens of foreign citizens linked to corruption, embezzlement of public funds, organised crime and tax crime have opened companies in Luxembourg, seemingly without raising red flags, suggesting a failure in the regulation of the corporate industry.

Recent developments

In June 2021, the European Commission decided to refer Luxembourg to the European Court of Justice for failing to transpose a 2014 EU Directive on freezing and confiscating the proceeds of crime in the European Union.[401] A draft law (Bill No. 7945) was tabled in January 2022 in the Chamber of Deputies aimed at transposing into Luxembourg law the EU Whistleblower Protection Directive on the protection of persons who report violations of European Union law. A law establishing a register of beneficial owners for Luxembourg-registered entities came into force on 1 March 2019. As a result, national authorities will have full access and other people will have limited access to all information except the private and professional addresses and the national or foreign identification numbers of the ultimate beneficial owners.

Transparency of enforcement information

Luxembourg publishes crime statistics but these do not include statistics on foreign bribery enforcement**.** The case-law of the Supreme Court (*Cour Supérieure de Justice*), the Constitutional Court and the Administrative Court and Tribunal is published on Luxembourg's Justice Portal and on the website of the administrative courts. Constitutional cases must be published in the Official Journal («Mémorial»).[402]

Victims' compensation

A law of 6 October 2009 strengthening the rights of victims of criminal offences provides for a partial legal framework for victims' rights and victims' compensation in foreign bribery cases, but it has not been used in any foreign bribery cases.[403] A victim is defined as "anyone who claims to have suffered damage as a result of an offence" and may exercise the right to be a civil party (*partie civile*), among other rights.

Luxembourg has signed but not ratified the Council of Europe Civil Law Convention on Corruption.

Recommendations

+ Ensure that the beneficial ownership register is up-to-date, verified and accessible.
+ Implement EU rules on freezing and confiscation of the proceeds of crime.
+ Develop and implement the extension of whistleblower protection legislation, strengthen reporting channels and put in place provisions for an independent body to handle corruption allegations.
+ Improve training for judges, prosecutors, members of the administrative courts and other court personnel and ensure they have adequate resources.
+ Establish an efficient regulatory framework to promote the emergence of anti-corruption prevention measures within public or private companies.

MEXICO

Little or no enforcement

1.9% of global exports

Investigations and cases

In the period 2018-2021, Mexico opened three investigations, commenced no cases and concluded no cases.

Weaknesses in legal framework and enforcement system

Some of the most serious current weaknesses include the exemption of state-owned corporations from corporate liability; inadequate complaints mechanisms and whistleblower protection, despite some progress; the lack of training of investigators to investigate international corruption; a lack of proactive investigative measures; and the failure of Prosecutor's Office personnel receiving mutual legal assistance requests to pass on information about foreign bribery allegations to the appropriate authorities.

Recent developments

The OECD WGB's 2021 Phase 4 Two-Year Follow-Up Report found that Mexico had partially implemented 11 and not implemented 9 recommendations from the Phase 4 report in 2018.[404] The WGB stated that it was "highly concerned about the lack of enforcement in Mexico. Twenty years after the Convention's entry into force, Mexico has yet to

successfully conclude its first foreign bribery case, not one foreign bribery case has moved past the investigative stage to date, and the number of investigations is lower than in Phase 4." The WGB considered that Mexico "did not deploy sufficient efforts to address Phase 4 recommendations" and stated that "[w]hile the Working Group acknowledges that Mexico has engaged in large-scale legal and institutional reforms to enhance the fight against domestic bribery, it finds all the more regrettable that measures to step up the fight against foreign bribery did not follow suit."

In December 2020, an investigation and resolution of the United States Justice Department alleged that between 2015 and July 2020 **Vitol Inc**., the U.S. affiliate of the Dutch Vitol group of companies, one of the largest energy trading firms in the world, agreed to offer and pay more than US$2 million US dollars in bribes to officials in Ecuador and Mexico in order to obtain and retain business in connection with the purchase and sale of oil products, violating the Foreign Corrupt Practices Act.[405] As of May 2022, the current government had filed two complaints in the Prosecutor General's Office (FGR) based on the names of officials of the state-owned petroleum company Petroleos Mexicanos (Pemex) who allegedly received bribes from Vitol that were disclosed to the government. Information on the case has not yet been published in the public databases of the FGR.

Regarding foreign bribery prevention, the Ministry of Public Administration (SFP) has taught the course "Elements to combat international bribery", from January 2022. The course was prepared by the FGR, shared through the Ministry of Foreign Affairs (SRE), and adapted by the SFP.

Transparency of enforcement information

Information about foreign bribery enforcement is available on the government's Open Data Portal and on the website of the Prosecutor General's Office (FGR), and is updated to August 2019.[406] The information includes the date, the file number, the origin of the file, the country in which the alleged offence took place, the file status and any comments on the file. No government agency publishes statistics on incoming or outgoing mutual legal assistance (MLA) requests, since the information is considered confidential. The information in question is managed through the FGR. In general, the judiciary is required by law to publish non-trial resolutions and court decisions and make them available online. However, there have so far been neither in foreign bribery cases.

Victims' compensation

The General Law of Victims recognises the rights of victims of crime and violations of rights, especially the right to assistance, protection, care, truth, justice, comprehensive reparation, due diligence and all other rights enshrined in the law, the Mexican Constitution and human rights instruments.[407] However, it does not specifically mention foreign bribery cases.

Recommendations

+ Publish and update statistics and other information on corruption and foreign bribery cases and investigations, including international cooperation data.
+ Follow through on the international anticorruption commitment adopted by Mexico for ensuring beneficial ownership transparency.
+ Initiate proactive investigative measures in foreign bribery investigations.
+ Ensure the independence of the Prosecutor General's Office to prevent its selective or political use.
+ Provide adequate resources and training for the investigation and prosecution of corruption and foreign bribery cases.
+ Enforce damage repair, compensation and guarantee of non-repetition to victims, including populations, groups, companies or individuals harmed by foreign bribery.

THE NETHERLANDS

Limited enforcement

3.1% of global exports

Investigations and cases

In the period 2018-2021, the Netherlands opened 11 investigations, commenced two cases and concluded three cases with sanctions.

Weaknesses in legal framework and enforcement system

The main weaknesses are the tendency to enter into settlements that are opaque; a failure to increase prosecution of individuals with responsibility for foreign bribery; the decentralised organisation of enforcement; and the inadequacy of complaints mechanisms and whistleblower protection.

Stakeholders have little insight into ongoing foreign bribery cases and there is often no published information about settlements.

Recent developments

The UBO Registration Implementation Act took effect in September 2020 and a beneficial ownership register has now been established.[408] As of 1 October 2020, the Public Prosecutor Service has a revised policy governing the prosecution of foreign bribery that introduces new considerations, for instance, (i) the assessment of whether the bribery was a structural part of conducting business, and (ii) the fact that the use of intermediaries does not indemnify the company since it should be aware of this practice.

Transparency of enforcement information

There are no published, updated statistics on foreign bribery enforcement. An annual enforcement report contains overall developments, statistics and data but does not have separate foreign bribery enforcement data.[409] Court decisions are published in full, although they are sometimes redacted to keep the names of individuals anonymous, if the case does not concern companies.[410] Settlements seem to be published in certain instances on the website of the Dutch Public Prosecution Service.[411] In those cases, the most important elements of the case are published, including the main facts, the natural or legal persons sanctioned, the approved sanctions and the basis for applying the sanctions.[412]

Victims' compensation

The Code of Criminal Procedure states that an injured party who has suffered direct damage due to a crime may claim damages as a part of the penal process. (Articles 51a and 51f) Since the offence of bribing a (foreign) public official is, among other things, designed to combat unfair competition, a competitor who has been injured by bribery could make such a claim by joining the proceedings as an injured party. Moreover, pursuant to Article 36f of the Penal Code, the judge in a criminal matter may ex officio order compensation for damages incurred by a victim to be paid to the state for his/her benefit.[413]

Furthermore, in the UNCAC review of the Netherlands, the reviewers praised the Dutch authorities for the national experiences in some high-profile corruption cases of offering defendants the option of voluntary pre-trial asset forfeiture. The review noted that "this approach is in many ways desirable from victims' perspectives, as it means they can receive compensation immediately instead of waiting for the conclusion of the trial (which may take years)."[414]

The Netherlands is a party to the Council of Europe Civil Law Convention on Corruption,

Recommendations

+ Publish clear statistics about foreign bribery cases.
+ Avoid settlements to allow for greater transparency in the enforcement of foreign bribery and increase overall awareness and confidence in enforcement.
+ Increase protection of whistleblowers.
+ Increase transparency and involvement of stakeholders by publishing information about ongoing investigations and decisions/settlements in accordance with the 2021 Recommendation.

NEW ZEALAND



Limited enforcement

0.2% of global exports

Investigations and cases

In the period 2018-2021, New Zealand opened three investigations, commenced no cases and concluded no cases.

Weaknesses in legal framework and enforcement system

Key weaknesses include the inadequate definition of foreign bribery; jurisdictional limitations due to the continued failure to proscribe the use of facilitation payments; and inadequate resources. In addition, the beneficial ownership of companies and trusts remains opaque, although there is some promise of change with regard to companies.

The Serious Fraud Office (SFO) has not published a National Financial Crime and Corruption Strategy in response to a 2014 review recommendation, nor has it published the National Anti-Corruption Work Programme 2020-2022, for which funding was allocated.

Recent developments

The Protected Disclosure Act (Protection of Whistleblowers) is now law. It contains some gaps, such as the failure to provide "active support" to anybody coming forward to report an issue. A 2020 review by FATF found that New Zealand should improve the availability of beneficial ownership information, strengthen oversight and implement targeted financial sanctions.[415]

Transparency of enforcement information

There are no published annual statistics on foreign bribery enforcement, but some limited statistics can be obtained from the Serious Fraud Office (SFO). The SFO provides limited information on selected investigations in its annual reports. Most decisions of higher-level courts, where foreign bribery cases are heard, are published and free to access. There is no known publication of non-trial resolutions, nor any indication that there have actually been non-trial resolutions. There is minimal transparency of the assets held in the Proceeds of Crime fund or their source.

Victims' compensation

There is no legal framework specifically recognising victims' rights or victims' compensation in foreign bribery cases. Nor is there is any legal mechanism for a foreign state or non-state institution of a foreign country invested with legal standing to intervene on behalf of the citizens of that country in corruption cases pursued in New Zealand. There is a range of legal rights for victims built into several laws that have yet to be tested in foreign bribery cases. The laws in question include the Victims' Rights Act, the District Court Act 2016 and the Senior Courts Act 2016. Nevertheless, some of the Proceeds of Crime fund can be redistributed back into community and regulatory initiatives to reduce criminal activity.

Recommendations

+ Establish comprehensive mechanisms to ensure transparency of New Zealand companies and trusts, including beneficial ownership information.
+ Introduce an offence of failure to prevent bribery (cf. The (UK) Bribery Act 2010, Section 7).
+ Remove the "routine government action" (facilitation payments) exemption from Section 105C of the Crimes Act.
+ Further improve protection for whistleblowers.
+ Introduce clear and specific legislative protection for auditors (and others) who report suspicions of bribery to the relevant authorities.
+ Remove the requirement of Attorney General consent to foreign bribery prosecutions.
+ Introduce clear referral guidelines between agencies regarding foreign bribery.
+ Develop a more active enforcement mechanism.
+ Give greater priority to the investigation of foreign bribery and enforcement of Sections 105C, 105D and 105E of the Crimes Act.
+ SFO and other relevant agencies should report more transparently on foreign bribery cases, including non-trial resolutions.
+ Consider creation of an independent anti-corruption agency to manage foreign bribery investigations.
+ Publish and implement a National Anti-Corruption Work Programme and a National Financial Crime and Corruption Strategy.

In addition, develop a victims compensation guideline for enforcement agencies that is in line with the UNODC Good Practices in Identifying the Victims of Corruption and Parameters for their Compensation.

NORWAY

Moderate enforcement

0.6% of global exports

Investigations and cases

In the period 2018-2021, Norway opened three investigations, commenced no cases and concluded two cases with sanctions.

Weaknesses in legal framework and enforcement system

The main weaknesses include the lack of a central register of beneficial owners of companies in Norway; jurisdictional limitations; a lack of clarity about the extent to which companies may be held liable for the acts of intermediaries, including offences committed on behalf of foreign subsidiaries;[416] a lack of clarity about the scope of corporate liability for offences committed through the operations of related entities (e.g. subsidiaries or joint ventures); insufficient coordination among law enforcement authorities, including the FIU; a lack of transparency about how the amounts of fines and confiscation penalties are calculated in foreign bribery cases; and insufficient information on the application of penalty notices and the use of mitigating factors. Despite guidance issued to prosecutors, there is also not enough information to enable companies to fully understand their obligations under the law, and the procedures for self-reporting in the context of foreign bribery.[417] Additionally, it is very difficult to confiscate profits, as the judgement in the Boligbygg case illustrates.[418]

Recent developments

As of 1 July 2020, the Norwegian Penal Code (Nw. straffeloven) stands amended to remove the requirement of double criminality and expand the reach of Norwegian anti-corruption provisions on corruption committed abroad.[419] Going forward, Norwegian authorities will no longer be required to prove that corrupt activities abroad were unlawful under local law in order to establish Norwegian jurisdiction. The extraterritorial reach of the Norwegian Penal Code has also been expanded to include persons acting on behalf of a company registered in Norway who are neither Norwegian citizens nor residents nor otherwise present in Norway. In addition, the Ministry of Justice commissioned the Høivik report on corporate liability to evaluate corporate liability in corruption cases and point to the need for any reform.[420] In 2021, the ministry conducted a public consultation on the report.[421] In June 2022, Økokrim launched an indicator list consisting of measures to enable more reporting entities to detect corruption.[422]

Although it is not yet clear when the public registry will be operational, Norwegian companies are required to obtain information about their UBOs from 1 November 2021.[423]

In December 2021, Økokrim detained the chief executive of **PetroNor E&P** and another individual as part of an investigation into a potential criminal offence related to projects in Africa.[424] Aside from foreign bribery cases, there have been important case law developments in cases involving allegations of domestic corruption, for example in the Tjøme case, which Økokrim took to the Supreme Court.[425]

Transparency of enforcement information

Publication of data on foreign bribery enforcement is limited. There are no statistics on mutual legal assistance (MLA) requests made or received. Court decisions are available on request to the relevant court, and online access to Supreme Court decisions is available to anyone free of charge at Lovdata.no. The full text of all court decisions on corruption can be accessed by subscribers.[426] Final and accepted penalty notices are not public documents, but may be published based on specific considerations in each case. Transparency International Norway also publishes a collection of all corruption cases, which it updates on an annual basis.[427]

Victims' compensation

Norway has a framework in place that explicitly recognises victims' rights and permits victims to seek compensation in corruption cases, including foreign bribery. In accordance with the Norwegian Act on Compensation for Damages ("the Act"), a person who has suffered damage, including financial losses, whether through intent or negligence, as a result of corruption may seek damages from the offender.[428] The Act applies regardless of whether someone is found guilty in a criminal case. Further, if the person responsible or their employer is domiciled in Norway, the liability

also applies if the corruption takes place abroad or the damage occurs abroad. The Act is supplemented by the general rules of Norwegian tort law.

Victims, including natural and legal persons, have the right to initiate proceedings to recover compensation in civil court against an offender. A criminal conviction is not a precondition for a victim to seek compensation. Apart from civil proceedings, the victims of corruption can also seek redress by filing a civil claim in criminal proceedings if the claim arises from the same act as the case.[429]

Norway is a party to the Council of Europe Civil Law Convention on Corruption.

Recommendations

+ Fully establish the central register of beneficial ownership information.
+ Approve legislation further cementing the liability of companies for offences committed by intermediaries.
+ Improve the system for the non-trial resolution of bribery cases.
+ Improve coordination among law enforcement authorities, including the Financial Intelligence Unit, to fully engage and use all available resources, including intelligence, against foreign bribery.
+ Provide better information on how penalties (fines) are calculated.
+ Improve the rules regarding confiscation of profits in foreign bribery cases.
+ Disseminate information about the Indicator list.

PERU

Limited enforcement

0.2% of global exports

Investigations and cases

In the period 2018-2021, Peru opened three investigations, commenced no cases and concluded no cases.

Weaknesses in legal framework and enforcement system

Some of the main weaknesses are the lack of a public register of the beneficial ownership of companies; an inadequate definition of the offence; a lack of criminal liability for corporations; weaknesses in provisions for settlements; inadequate resources; jurisdictional issues; political interference in enforcement and a lack of independence of enforcement authorities. In addition, there is a lack of legislation on whistleblower protection, as the OECD WGB observed in its Phase 2 Report on Peru in 2021.[430] The OECD WGB also considered that there were challenges in the area of coordination of mutual legal assistance requests to foreign countries.

With regard to the question of resources, the former general prosecutor requested an institutional budget in 2021 that was four times bigger than the existing budget in order to properly strengthen the capacities of her office. The lack of resources affects investigations because teams are not complete, they lack the needed skills and they do not have the economic resources to hire technical researchers. As for political interference, the OECD WGB's Phase 2 Report called for the protection of prosecutors from unjustified removal from cases.

Recent developments

In January 2022, the Peruvian government approved a decree (DL 1521) to explicitly disallow the tax deductibility of bribes in line with the 2009 Anti-Bribery Recommendation. In June 2022, Congress passed a bill presented by the government to strengthen the liability of corporations for corruption offences; clarify the extent of the "preventive model" of whistleblower protection in relation to senior members of corporations; and explain the role of the technical report of the Superintendence of the Securities Market (SMV).[431] The OECD WGB had called on Peru to take action on these issues in its Phase 1 Report on Peru.[432]

In a 2021 development, Peru's General Prosecutor and Attorney General's offices jointly announced the country's second settlement with a company in a domestic corruption case, the first one to involve a Peruvian company.[433] As part of the agreement, the construction company **Aenza** (formerly Graña y Montero) withdrew two arbitration claims and paid roughly US$128 million in civil compensation (*reparación civil*) to the Peruvian state in a domestic bribery case.

Transparency of enforcement information

The General Prosecutor's Office publishes aggregated data on a yearly basis. The last report made public is for the year 2019.[434] Information related to crimes against the public administration, commonly referred to as corruption crimes, is not broken down by type of crime.

The Ombudsman Office releases periodic "maps of corruption" using information generated by the Special Anti-Corruption Attorney's Office. In the last edition of the tool (February 2022), there is disaggregated information by type of crime under investigation, but only the categories with large number of cases are visible. Bribery of corrupt foreign officials, if any cases existed, could appear as part of the "others" category.[435]

Court decisions are considered public information and they are read out in public hearings. However, in practice, once the texts are read out, they are difficult to access. Only the decisions of the Supreme Court can be found on a dedicated website.[436] The OECD WGB's Phase 2 report in 2021 found that there is insufficient guidance and transparency in the use of non-trial resolutions.

Victims' compensation

Under the Peruvian Criminal Code, "civil compensation is determined simultaneously with the penalty" in a criminal case.[437] Under the Code of Criminal Procedure, a victim is defined as "[a]nyone who is directly harmed by the crime or affected by its consequences."[438] The category of victims includes shareholders, partners, associates and members of legal persons with respect to crimes affecting the legal person committed by those who direct, manage or control it.

In addition, in the case of crimes that affect collective or diffuse interests, where an indeterminate number of people are injured or in case of international crimes, an association may exercise the rights and powers of the persons directly harmed by the crime, provided that the association's purpose is directly linked to those interests and was registered prior to the commission of the offence.[439]

A victim can apply to be constituted as a "civil actor" and in that capacity can participate in the investigation, intervene in the oral trial, file appeals and provide supporting evidence for any compensation claim, but can no longer file a compensation claim outside of the criminal proceedings.[440] In addition, a victim can also initiate a private prosecution as "*querellante particular*" seeking a criminal sanction and payment of reparations.[441]

In 2018, Peru approved a law that ensures the immediate payment of reparations in favour of the Peruvian State in cases of corruption and related offences. The law seeks to ensure the immediate payment of civil damages in favour of the state. Among other things, it was passed to fill legal gaps in terms of collaboration with companies.

The crime of transnational active bribery (Art. 397-A in the Criminal Code) is considered a crime against the public administration based on its placement in the Criminal Code. This means that the "victim" of the criminal conduct is not considered to be an individual or a community, but the Peruvian state. In addition, the Peruvian courts could, in theory, order persons who have committed offences to pay compensation or damages to another state that has been harmed by such offences and recognise another state's claim as a legitimate owner of property acquired through the commission of an offence established in accordance with the Convention.[442]

Recommendations

+ Publish official updated information on foreign bribery enforcement, including data on international cooperation.
+ Ensure that the registry of beneficial owners' information is available to the public in an open data format.
+ Provide transparency to court decisions at different levels of justice administration.
+ Provide adequate resources and training on foreign bribery enforcement to prosecutors and judges.

POLAND

Little or no enforcement

1.4% of global exports

Investigations and cases

In the period 2018-2021, Poland opened one investigation, commenced no cases and concluded no cases with sanctions.

Weaknesses in legal framework and enforcement system

The two main weaknesses are the lack of criminal liability for corporations and a failure to hold companies responsible for subsidiaries, joint ventures and/or agents. Another weakness is insufficient whistleblower protection.

In addition, the Polish legal system still faces a deepening rule of law crisis, with recent rulings by the EU Court of Justice confirming the illegality of the disciplinary system for judges, which infringes on the balance between the executive and the judiciary to the detriment of the latter.[443] The Office of Prosecutor General and the Minister for Justice are still connected and held by one person, which leads to a politicised justice distribution system and does not favour transparency or objectivity.

Recent developments

There have been no recent developments addressing any of the weaknesses identified in the previous report. The amendment to the Criminal Code that provides for higher penalties for bribery, among other things, was assessed by the Constitutional Court as contrary to the Polish Constitution and the changes did not come into force. However, a draft bill amending the Criminal Code has been published and it also provides for higher penalties for bribery and corruption. The draft bill is now going through the legislative process.

Transparency of enforcement information

There are no published statistics on foreign bribery enforcement. Moreover, neither the National Prosecutor's Office nor the Central Anti-Corruption Bureau provided such statistical information on request for the purpose of this report.

Until 2019, the Ministry of Justice annually published complex statistics on final convictions with information about the legal classification of charges and imposed penalties. Since 2019, however, such statistics are not available, probably owing to delays related to COVID-19. Nonetheless, preliminary information about 2019 can be obtained on request. Foreign bribery are not presented separately in the statistics.

Almost all Supreme Court judgements are published on the Supreme Court's website. Some judgements of the common courts – regional, district and appeal courts – are published on the Ministry of Justice website. There are no clear criteria for determining which common court judgements are published and which are not.

Victims' compensation

There is a legal framework recognising victims' rights to compensation in criminal matters, although it is broadly defined and does not refer specifically to corruption. Article 46 of the Criminal Code states that "in the event of sentencing and at a motion of the injured or another authorised person, the court may award an obligation to compensate the damage in whole or in part or to award satisfaction for the suffered harm."[444]

Poland is a party to the Council of Europe Civil Law Convention on Corruption.

Recommendations

+ Publish data on foreign bribery enforcement.
+ Implement fully the EU Whistleblower Protection Directive.[445]
+ Introduce criminal liability for legal persons and remove the requirement that companies can be held liable only after a prior binding conviction of a natural person.
+ Separate the roles of general prosecutor and minister for justice to ensure the independence of prosecutors.
+ Ensure the independence of the Polish judiciary and the rule of law.

PORTUGAL

Limited enforcement

0.4% of global exports

Investigations and cases

In the period 2018-2021, Portugal opened two investigations, commenced one case and concluded no cases with sanctions.

Weaknesses in legal framework and enforcement system

Among the main deficiencies are an inadequate definition of foreign bribery; deficiencies in the law on the liability of legal persons; and inadequate sanctions for legal persons. There is also a lack of human and financial resources for investigations and in the court system, as well as a lack of expertise and training on the enforcement of economic crimes. The sluggishness and complexity of the judicial system is also an obstacle to the effective prosecution of corruption.[446]

Recent developments

In November 2021, the Portuguese parliament approved Law No. 91/XIV transposing the EU Whistleblower Protection Directive into national law. The new law provides protection to a whistleblower who, in good faith and having serious grounds to believe that the information is true, denounces or publicly discloses an offence under the terms established. It also calls for the creation and operation of institutional whistleblowing channels and the prohibition of any form of retaliation, together with protective and supportive measures for whistleblowers.[447] In March 2021, the European Commission sent a letter of formal notice to Portugal for incorrectly transposing the Fourth EU Anti-Money Laundering (AML) Directive.[448] In 2020, the Commission initiated infringement proceedings against Portugal for lack of or incomplete transposition of the Fifth EU AML Directive.[449] In September 2021, three Angolan NGOs filed a complaint in Portugal about alleged corruption and money laundering at Sonangol, the Angolan state oil company, involving the former vice president of Angola.[450]

Transparency of enforcement information

Official enforcement statistics published by the Council for the Prevention of Corruption[451] and the Directorate-General for Justice Policy do not incorporate specific information on foreign bribery. Statistics on requests for mutual legal assistance are not published.

Case decisions at the appeals level (Court of Appeal, Supreme Court of Justice) are available online in the legal and documentary database of the Ministry of Justice,[452] but foreign bribery cases are not classified separately so it is very difficult to trace them. The Public Prosecutor may, on occasion, issue press releases about an investigation.[453] Trial court sentences are accessible after they are issued.[454]

Victims' compensation

There is no specific legal framework for victims' rights or victims' compensation in foreign bribery cases. However, according to the Constitution of the Portuguese Republic and the Criminal Code, all persons who have suffered damage as result of an act of corruption or any other offence have the right to initiate legal proceedings against the offenders in order to obtain compensation.[455] Any natural or legal person suffering damage from a corrupt act can intervene in the criminal proceedings as an "*assistente*" and has the right to seek civil compensation for that damage within the criminal proceedings.[456]

Portugal has neither signed nor ratified the 1999 Council of Europe Civil Law Convention on Corruption.

Recommendations

+ Systematically collect and publish statistical data on the enforcement of foreign bribery and money laundering.
+ Improve the Beneficial Ownership Central Register by implementing beneficial ownership data standards to ensure the register's accessibility and utility as an anti-money laundering and anti-corruption tool.
+ Implement the OECD WGB's recommendations on the definition of the foreign bribery offence and related provisions, and on corporate criminal liability.
+ Increase the resources and training of investigators and prosecutors in the fight against corruption.
+ Increase human and financial resources for the court system.
+ Increase the use of special investigative measures and exchange information with

foreign government agencies about vulnerable sectors.

+ Engage more actively in awareness-raising activities in high-risk sectors and highly relevant professions (for example, auditors and accountants).
+ Implement the anti-corruption recommendations of the Group of States against Corruption, especially those addressed to members of parliament, judges and prosecutors.[457]

RUSSIA

Little or no enforcement

1.9% of global exports

Investigations and cases

In the period 2018-2021, Russia opened one investigation, commenced no cases and concluded no cases.

No substantive response was provided by the Russian authorities to our requests for information. The Investigative Committee, which is tasked with foreign bribery investigations,[458] declined to provide any information on ongoing cases since Transparency International Russia is not a party to any case. The State Duma MP Mr. Vyborny, who is active in drafting anti-corruption bills, responded that he is not in a position to comment on questions regarding foreign bribery policy.

Weaknesses in legal framework and enforcement system

There is no central public register of the beneficial ownership of companies. Another key weakness is the lack of criminal liability for corporations. Although there is administrative liability, it does not provide sufficient investigative powers to cover, for example, wiretapping. There is political interference in enforcement and enforcement bodies lack independence, with the president fully controlling the prosecution and investigation services. There is also a lack of whistleblower protection, with no legislation at all on the subject. Finally, there is a lack of public awareness-raising since the government gives no priority to tackling corruption in exports.

Recent developments

Russia has significantly decreased its level of corporate transparency. In March 2022, the national bank issued a regulation revoking an earlier regulation that required commercial banks to publish information on their shareholders, top management, board of directors, any reorganisations, etc.,[459] as well as their accounting reports.[460] Since 2021, several types of legal entities, including NGOs, have been allowed not to disclose their shareholders or founders.[461] The decrease in transparency undermines the possibilities for civic investigations of foreign bribery. Another change is that the government no longer promotes legislation on whistleblower protection. The latest proposal was withdrawn from the State Duma in June 2019, even though the August 2021 National Anti-Corruption Plan has once again suggested analysing the possibility of protective measures.[462]

Transparency of enforcement information

The Russian Federation publishes criminal enforcement statistics, but there are no published statistics on foreign bribery enforcement. Nor are there specific statistics on MLA requests concerning foreign bribery. The last press release on international cooperation was published in January 2021.[463]

All court decisions are published online, except for those that contain national or commercial secrets, involve sexual crimes or crimes against minors, or involve decisions in divorce cases. Personal details are usually omitted.[464] Russian law does not allow non-trial resolutions for crimes.

Victims' compensation

Under the Russian Code of Criminal Procedure, a foreign interested person may become a party to criminal proceedings as a victim (Article 42) or a civil plaintiff (Article 44) and file a claim for damages caused by an offence.[465] Civil law in general also allows victims to seek remedy from the person who has caused them harm. However, Russia has not ratified the Council of Europe Civil Law Convention on Corruption. In practice, there are no known examples of efforts to seek compensation through the courts in any corruption cases. The government through the prosecution service seeks compensation from bribe-payers, but such

proceedings are conducted exclusively in the interests of the government budget.

Recommendations

+ Create a centralised public registry of beneficial owners of companies.
+ Criminalise non-tangible bribery.
+ Provide information on the work done by the task force set up by the Ministry of Justice on foreign bribery enforcement.
+ Criminalise the promising and offering of a bribe irrespective of the gravity of the offence.
+ Propose to the State Duma new whistleblower protection legislation for both the public and private sectors.
+ Introduce incentives for companies to introduce anti-corruption compliance measures and introduce sanctions for non-compliance.
+ Exclude effective regret relief in respect of foreign bribery crimes, as has already been done in respect to the administrative liability of legal entities.
+ Create a special task force within the Investigative Committee to handle foreign bribery cases.
+ Improve training and conduct capacity-building exercises for investigators to prosecute cases of foreign bribery.
+ Prioritise the investigation and prosecution of complex money-laundering cases.
+ Provide a legal framework for civil lawsuits for corruption damages for non-governmental actors.

SLOVAKIA

Little or no enforcement

0.4% of global exports

Investigations and cases

In the period 2018-2021, Slovakia opened one investigation, commenced no cases and concluded no cases.

Weaknesses in legal framework and enforcement system

The main weaknesses in the legal framework are jurisdictional limitations; a failure to hold companies responsible for subsidiaries, joint ventures and agents; political interference in enforcement and a lack of independence; a lack of public awareness; and a lack of resources, skilled investigators and prosecutors to make and process mutual legal assistance (MLA) requests (including a lack of language skills), although Slovak authorities have made efforts to provide training to overcome the last weakness.

Recent developments

A judicial reform in 2022 increased the independence and transparency of the judiciary through an improved selection procedure for judges and the Judicial Council, the security screening of judges, and judicial review. The reform may address some of the concerns raised by the European Commission's July 2022 Rule of Law Report, which noted a very low level of perceived judicial independence among the general public and in the private sector.[466] Information about the ultimate beneficial owners of Slovak legal entities became publicly available online in November 2020 pursuant to the Fifth EU Anti-Money Laundering Directive.[467]

Transparency of enforcement information

There is no published data on foreign bribery investigations, cases commenced or cases concluded. The National Crime Agency's annual report includes statistics from the Anti-Corruption Unit on the number of criminal investigations and criminal prosecutions commenced, and the number of individuals charged with offences related to corruption (passive bribery, active bribery, trading in influence, electoral corruption and sports corruption). However, the annual reports are not updated frequently and as of June 2022, the latest annual report was for the year 2016.[468] The Ministry of Interior publishes monthly crime statistics[469] and the General Prosecutor also publishes some statistics on criminal activities online.[470]

All court decisions are published online in anonymised form.[471] Certain non-trial resolutions (i.e., resolutions of public prosecutors in pre-trial proceedings, in Slovak: *predsúdne konanie*) are published in anonymised form online if the case has

been closed by such resolution and the proceeding was brought against a specified person.[472]

Victims' compensation

There is no legal framework specifically recognising victims' rights or victims' compensation in foreign bribery cases. Act No. 274/2017 on victims of criminal offences regulates the rights, protection and support of the victims of any criminal offence. It also regulates victims' compensation but only in relation to violent criminal offences and not in relation to foreign bribery. The Act on the Criminal Liability of Legal Persons provides that in determining the type and degree of penalty the court shall consider, inter alia, the actions of the legal person to eliminate harmful consequences of the criminal offence or provide voluntary compensation for any damage.[473]

Sections 232 and 233 of the Code of Criminal Procedure provide that bribery offences can be settled via a plea bargaining procedure, which may be offered to both individuals and legal entities.[474] In reaching a plea bargain agreement, the public prosecutor must respect the interests of the victim regarding damages.[475] Moreover, the plea bargain agreement must be signed by the prosecutor, the accused, the defence counsel and any victim who has been awarded compensation. Section 95 of the Code of Criminal Procedure relating to the seizure of funds will apply "if it is necessary to seize funds to secure the claim of the victim for damages in criminal proceedings." The code also has extensive provisions on notification of victims about the progress of a case from the complaints stage onwards.[476]

The Slovak Republic is a party to the Council of Europe Civil Law Convention on Corruption.

Recommendations

+ Regularly publish foreign bribery enforcement data.
+ Amend the Law on the Criminal Liability of Legal Persons regarding the exemption of state-owned enterprises from criminal liability.
+ Increase the independence of the General Prosecutor and the transparency of the selection procedure for that position.
+ Employ more enforcement staff and enhance law enforcement capabilities to allow more efficient detection of bribery, and provide law enforcement agencies with better tools to investigate and prosecute bribery cases.
+ Provide training for auditors, accountants and tax examiners to raise awareness of foreign bribery and improve their ability to detect the offence.
+ With regard to victims' compensation:
+ Adopt a legal framework providing for victims' compensation in relation to foreign bribery harms.
+ Create a public database of foreign bribery enforcement information to assist law enforcement efforts, victims' claims and investigative work by journalists and civil society activists.
+ Put more resources into raising awareness of victims' rights and compensation.

SLOVENIA

Limited enforcement

0.2% of global exports

Investigations and cases

In the period 2018-2021, Slovenia opened two investigations, commenced no cases and concluded no cases with sanctions.

Weaknesses in legal framework and enforcement system

The main weaknesses in the legal framework are an inadequate definition of what constitutes foreign bribery; jurisdictional limitations; and weaknesses in provisions for settlements. The main weaknesses in the enforcement system are inadequate resources; a lack of coordination between investigation and prosecution; the lack of training of investigators to investigate foreign bribery; inadequate complaints mechanisms and whistleblower protection; and a lack of resources and skilled investigators and prosecutors to make and process mutual legal assistance (MLA) requests, including a lack of language skills.

The OECD WGB said in its March 2021 Phase 4 report on Slovenia that it remained concerned that Slovenia's foreign bribery offence did not meet the

requirements of the Convention in terms of the scope and definition of foreign officials, which should include employees of foreign state-owned and controlled enterprises.[477] It should also cover officials exercising a public function for a foreign country and officials of foreign organised areas that do not qualify as states. The OECD WGB called on Slovenia to remedy this shortcoming and also to amend its legislation to eliminate the defence of effective regret in foreign bribery cases as a matter of priority. Regarding whistleblowers, there is some protection under the Integrity and Prevention of Corruption Act (IPCA), but it does not reach the minimum requirements set out in the EU Whistleblower Protection Directive.

In the area of enforcement, the OECD WGB raised serious concerns about the independence of police investigations and the risk of interference and political influence in prosecutions, while similar concerns were also raised in the European Commission's July 2022 Rule of Law Report on Slovenia.[478] Additionally, the OECD WGB recommended specialised training for prosecutors and judges on applying effective, proportionate and dissuasive sanctions, including confiscation measures for foreign bribery. A specific hindrance in the area of enforcement is the system of maximum three-month or six-month time limits for the authorised use of special investigative measures in foreign bribery investigations.

Recent developments

IPCA amendments became effective in November 2020 and were welcomed by the OECD WGB Phase 4 Report as potentially having a positive impact on the independence of the Commission for the Prevention of Corruption (CPC) and its role in the fight against foreign bribery.[479] Additionally, a new Prevention of Money Laundering and Terrorist Financing Act became effective on 5 April 2022, which inter alia equipped the competent authorities with broader investigative powers to detect cases of money laundering and terrorist financing. A new law on whistleblower protection to transpose the EU Whistleblower Protection Directive is in the final stages of preparation at the Ministry of Justice after extensive public consultations.

In June 2022, the new government announced that one of its main objectives was to remedy actions by its predecessors in the area of police and prosecutorial independence. It appointed 13 prosecutors who had been chosen by the prosecutorial council and had been waiting over a year to be appointed.[480] Further, in its Decision No. U-i-214/19-54 and Up-1011/19-52 dated 8 July 2021, the Constitutional Court decided that the parliamentary investigation of judges and prosecutors and inquiries about their liability for judicial decisions are unconstitutional. This decision concludes the long-running debate about political oversight and political accountability of state prosecutors in Slovenia, providing answers about their independence and addressing a number of concerns that had been raised by the EU and OECD WGB.

Transparency of enforcement information

The Slovene Criminal Code does not have a separate criminal offence of foreign bribery, which therefore falls under the criminal acts of active or passive bribery. As a result, it is not possible to draw a distinction between the data on domestic bribery and the data on foreign bribery in relation to opened investigations, cases commenced and cases concluded. There is no data on foreign bribery investigations in the Slovenian Police's annual reports (all data on opened criminal investigations are considered confidential), and the State Prosecutor's Office's annual reports do not include any data on foreign bribery crimes. Nor is there data on foreign bribery case referrals in the CPC's annual reports.[481]

Decisions of the courts of first instance are not published. All other court decisions are published in anonymised form and accessible online.[482] The CPC keeps a record of cases involving international corruption, but it is not available to the public. The CPC's list of cases includes the name of the suspect, accused, charged or convicted person, the type of criminal offence and the manner in which the case was concluded. Although the CPC's remit does not include bribery of foreign public officials, it keeps the record in order to determine the causes of international corruption, draw up measures, report to international organisations, and cooperate with other competent state bodies. CPC decisions in sui generis procedures from November 2020 onwards are available online.[483]

Victims' compensation

There is no specific legal framework recognising victims' rights or victims' compensation in foreign bribery cases. However, legal and/or natural person can be held liable to pay compensation if certain

requirements are met (as is the case with any claim for damages). Consequently, victims of foreign bribery could, in theory, be compensated if they can prove that they are injured parties.

The OECD WGB found that plea bargains and guilty pleas appear to be common practice in the resolution of domestic bribery cases in Slovenia, but there is a lack of clarity regarding the procedure governing the mechanisms and, in particular, how sanctions, including fines and confiscation, are calculated.[484] Plea bargains can include compensation for victims and victims can challenge plea bargains ahead of their court approval.

There is a specific legal framework for both civil[485] and criminal[486] confiscation of assets acquired through an illegal act, as well as for search and seizure in criminal proceedings against legal persons.[487]

Under Slovenian criminal procedure, a victim can file a motion with the state body authorised to receive crime reports and can also act as a subsidiary prosecutor or private prosecutor, thus allowing the views and concerns of victims to be presented and considered during criminal proceedings.[488] If the public prosecutor withdraws the indictment in a case, the injured party may continue prosecuting under the existing indictment or file a new one.[489] The injured party in their capacity as prosecutor shall have the same rights as the public prosecutor, except those vested in the public prosecutor ex officio.

Slovenia is a party to the Council of Europe Civil Law Convention on Corruption.

Recommendations

+ Publish the record of cases of international corruption recorded by the CPC.
+ Ensure that the definition of foreign public officials is expanded to address gaps.
+ Amend relevant legislation to ensure that the defence of effective regret does not apply to natural persons or legal persons in cases related to foreign bribery.
+ Improve detection of offences related to foreign bribery.
+ Establish clear and specific procedures to ensure appropriate coordination, sharing of information and resolution of conflicts of competence in foreign bribery investigations between various Slovenian authorities as well as between Slovenian and foreign investigative authorities.
+ Increase specialised training of public officials (especially prosecutors and judges) in the area of international economic crimes, including foreign bribery and asset confiscation, and on the application of effective, proportionate and dissuasive sanctions, including confiscation measures, to natural and legal persons convicted of the foreign bribery offence.
+ Review the system of maximum time limits for the use of special investigative measures in foreign bribery investigations.
+ Adopt a law transposing the EU Whistleblower Protection Directive (EU) 2019/1937 to ensure that public and private-sector employees who report suspected acts of foreign bribery are adequately protected from disciplinary or discriminatory action.
+ Ensure that sanctions imposed in practice for foreign bribery are effective, proportionate and dissuasive; and keep maintaining detailed statistics on sanctions imposed in both domestic and foreign bribery cases, including in relation to confiscation of the instrument and proceeds of the bribe, unified across institutions.

Plea bargain with GE STEAM Power Systems

In a 2021 domestic bribery case, the prosecution reached a plea bargain, subject to court approval, with **GE STEAM Power Systems**, the legal successor to Alstom. This settlement, which followed an 11-year investigation, concerned an alleged bribery scheme in relation to the construction of the TEŠ6, Unit 6 at the Šoštanj coal-fired plant (TEŠ), at a cost of €1.4 billion. GE STEAM Power Systems pleaded guilty to acting as an accessory to abuse of office and agreed to pay €23 million in damages.[490] Earlier in the year, it had entered a €261 million out-of-court settlement in an ICC arbitration with TEŠ and the Slovenian state-owned energy group HSE, which owned TEŠ. The two state-owned companies had sought arbitration to recover damages.[491]

SOUTH AFRICA

Limited enforcement

0.4% of global exports

Investigations and cases

In the period 2018-2021, South Africa opened seven investigations, commenced one case and concluded no cases with sanctions.

Weaknesses in legal framework and enforcement system

The main weaknesses in the legal framework are the lack of criminal liability for corporations; deficiencies in provisions for settlements; inadequate accounting and auditing requirements; a failure to hold companies responsible for subsidiaries, joint ventures and/or agents; and inadequate sanctions. The main weaknesses in the enforcement system consist of inadequate resources; political interference in enforcement and a lack of independence; the decentralised organisation of enforcement; a lack of coordination between investigation and prosecution; the lack of training of investigators to investigate this kind of offence; and the inadequacy of complaints mechanisms and whistleblower protection.

As an example of the lack of resources for enforcement, cuts were made in 2021 to the budgets of four of the five key anti-corruption institutions, namely the Special Investigating Unit (SIU), National Prosecuting Authority (NPA), Hawks, AGSA and the Office of the Public Protector (OPP).[492] According to a 2021 article by News24, the Hawks' workforce was at 48% capacity, with 2,584 members instead of 5,332.[493] Of the 2,584, only 1,832 were operational personnel and not all of them were investigators. Further, the NPA lacks sufficient specialised investigators and prosecutors with the requisite forensic, data collection or financial skills to investigate complex matters like foreign bribery.

Another reason cited by authorities for the failure to investigate and enforce against foreign bribery is the "non-cooperation" of some foreign authorities with regard to mutual legal assistance requests, especially in the African context. The authorities claim this issue hampers the ability of prosecutors to decide on whether there is a prima facie case against suspects.

Recent developments

In 2022, the Commission of Inquiry into State Capture headed by then Acting Chief Justice Raymond Zondo issued four reports, following the largest open investigation into state capture and corruption in South African history.[494] The reports implicate many current or former politicians as well as large multinational companies. They describe the "state capture" of public institutions and key state-owned enterprises (SOEs) by international criminal networks and individuals which have looted South Africa's public finances for private gain.[495] The capture of key institutions and SOEs was enabled and facilitated by foreign firms, including **Bain**, **McKinsey** and **Bell Pottinger**, according to the reports.[496]

The corruption trial of former President Jacob Zuma concerning alleged payments from French arms manufacturer **Thales** has been delayed for almost two decades. The latest hearing dates in April, May and August 2022 were postponed pending the outcome of an appeal to the Supreme Court of Appeal to have the State Prosecutor, Billy Downer, removed from the case.[497] Additional corruption-related charges linking Zuma to Thales subsidiary **Thint** were reinstated in 2018, but several pre-trial court applications have been launched to postpone the trial in what has been dubbed Zuma's "Stalingrad defence".[498]

Transparency of enforcement information

Updated statistics on foreign bribery enforcement, including on MLA, are not published. MLA statistics are kept by the Department of Justice and only available on special request. The NPA also keeps a database of statistics on convictions of natural and legal persons for corruption in general, and convictions of natural and legal persons for other intentional economic crimes. The NPA information is also not published. According to the NPA and DPCI, however, it is made available on request following convictions.

As part of its annual report, the NPA provides information on the number of persons convicted of corruption and corruption-related offences. This information is reported to Parliament on a yearly basis. The annual reports are presented to

Parliament and published on its website each year.[499] Thus, certain information is publicly available once cases are finalised.

Not all court decisions are reported and published. However, there are databases that publish court decisions. Some of the databases are free and open to the public, while others require payment for services. The databases include the Saflii database,[500] Sabinet[501] and Lexisnexis, which contain unreported and reported judgements from all courts.[502]

Victims' compensation

There is a Service Charter for Victims of Crime in South Africa, which sets out the rights of and services provided to victims of crime.[503] Neither the charter nor its underlying legislative clauses, however, make specific reference to foreign bribery cases. That said, the Criminal Procedure Act 1977 would find application in foreign bribery cases.[504] Specifically, Chapter 29 deals with compensation and restitution and Section 300 sets out that a court may award compensation where an offence causes damage to or loss of property (including money) on application of the injured person or of the prosecutor acting on the instruction of the injured person.

In addition, there are two types of private prosecution available to South Africans seeking justice. A crime victim who can show injury can initiate such a prosecution under Section 7 of the Criminal Procedure Act ("the Act"), on the issuance of a "nolle prosequi" by the DPP. In addition, any natural person, regardless of whether they are a victim, can bring a private prosecution under Section 8 of the Act. Other legislation may also apply. In South Africa's first private prosecution of environmental crimes under Section 33 of the National Environmental Management Act (NEMA), the Pretoria High Court found BP Southern Africa guilty in 2020 of environmental transgressions. The criminal complaint was initiated by Uzani Environmental Advocacy.[505]

Recommendations

+ Publish statistics on foreign bribery enforcement, even if the numbers are zero.
+ Develop the capacity of the NPA to deliver on its crucial mandate and pursue prosecution of foreign corruption cases.
+ Urgently appoint the head of the Investigating Directorate at the NPA.
+ Review and reform whistleblower protection by amending the Protected Disclosures Act.
+ Introduce deferred prosecution agreements with accused corporations on certain conditions.
+ Amend Section 34A of the Prevention and Combating of Corrupt Activities Act to strengthen the duties of private-sector entities and enhance measures to prevent bribery.
+ Amend legislation to enhance transparency and provide protection for accounting officers/authorities acting in good faith.
+ Consider enacting legislation that compels all officials working in public procurement to belong to a professional body.
+ Consider legislation to develop and improve specialised courts tasked with adjudicating on corruption and bribery-related matters.
+ Provide training and resources to investigators and prosecutors to enable them to investigate complex matters.
+ Build coordination between the police and prosecutors with respect to cases.
+ Allocate appropriate financial resources to five key anti-corruption institutions.
+ Authorise the litigation unit to engage in incentivised disclosures.
+ Provide for deferred prosecution agreements and authorise offers of immunity from criminal/civil prosecution if an honest disclosure is made.

SOUTH KOREA

Little or no enforcement

2.8% of global exports

Investigations and cases

In the period 2018-2021, South Korea opened four investigations, commenced three cases and concluded one case with sanctions.

Weaknesses in legal framework and enforcement system

The most important weaknesses in the legal framework are jurisdictional limitations; the lack of criminal liability for corporations; inadequate accounting and auditing requirements, inadequate sanctions; and an inadequate statute of limitations. The most important weaknesses in the enforcement system are inadequate resources; political interference in enforcement and a lack of independence; a lack of coordination between investigation and prosecution; the inadequacy of complaints mechanisms and whistleblower protection; and a lack of resources or skilled investigators and prosecutors to make and process MLA requests (including a lack of language skills). In addition, there is no public centralised registry of beneficial ownership information.

The OECD WGB's Phase 4 Report on Korea in December 2018 noted the limited capacity of Korea's law enforcement agencies to proactively detect and investigate foreign bribery and their "concerning lack of initiative".[506] The OECD WGB 2021 two-year follow-up report also found that "low fines and suspended imprisonment" in recent cases continued to raise concerns that "sanctions in practice are insufficiently effective, proportionate and dissuasive."[507] It was also found that "a high number of recommendations in the Phase 4 report were only partially, or remained to be, implemented", although some enhancements had been made.

Recent developments

As part of sweeping changes to curb the powers of prosecutors to file charges, conduct investigations and impose criminal sanctions, the Korean parliament approved the passage of a controversial bill in early May 2022 that transfers the power to conduct investigations for most crimes to the police.[508] Once the bill is passed in September 2022, the prosecutors' authority to undertake direct investigations will be limited to two categories of major crime, namely (1) corruption crimes[509] and (2) economic crimes.[510] Plans are underway to further transfer the investigative powers of prosecutors over these two categories of major crime to a new organisation dedicated to corruption investigations.

High-level company officials were indicted in two recent Korean cases. In November 2021, the CEO and other company officials of **KT Corp** were indicted on charges of violation of the Political Funds Act and embezzlement. The charges were related to illicit party political donations made in both Korea and Vietnam, using a sizeable secret slush fund.[511] (In parallel, the United States SEC announced in February 2022 that the company had agreed to pay US$6.3 million to resolve FCPA charges relating to improper payments in Korea and Vietnam.)[512] In December 2021, **DGB Financial Group** Chairman Kim Tae-oh was indicted by the Daegu District Prosecutors' Office for allegedly giving US$3.5 million to a Cambodian broker to enable DGB's subsidiary **Daegu Bank** to obtain a commercial banking licence from Cambodia's financial authorities.[513] The first trial took place in April 2021, with Mr. Kim denying the related charges.

Transparency of enforcement information

There are no published, updated statistics on foreign bribery enforcement. All court decisions are published in full on the Supreme Court of Korea's website, but the names of the defendants are not disclosed in the published decisions, including when the defendants are companies.[514] Other case resolutions, such as suspended prosecutions, are not publicly available.

Victims' compensation

There is no legal framework recognising victims' rights or victims' compensation in foreign bribery cases. Under Article 750 of the Civil Act, however, victims of corruption can bring private actions in civil courts and obtain compensation. There is also provision for the return of property confiscated from corrupt criminals to the victims of crime.[515]

Recommendations

+ Improve public access to enforcement information.
+ Create a centralised public registry for beneficial ownership information.
+ Improve methodology for analysing and transmitting suspicious transaction reports.
+ Provide for adequate legal standards and sanctions for natural and legal persons, including by setting appropriate standards for determining maximum pecuniary fines and confiscation measures.

+ Ensure that the current investigation time limit and the time frame for prosecuting companies on foreign bribery are sufficient to allow for effective foreign bribery enforcement.
+ Enhance detection capacities by mobilising government agencies and private-sector professionals that have the potential to detect foreign bribery.
+ Monitor and ensure no gaps in anti-corruption investigation and enforcement (including asset recovery) following transfer of investigative powers to the police.
+ Clarify criteria and increase transparency of decisions to suspend prosecution in foreign bribery cases and consider reforms to ensure judicial review of all such cases to ensure consistency.
+ Take a more proactive stance in the use of MLA requests.
+ Increase resources dedicated to the enforcement of foreign bribery regulations and demonstrate greater commitment to investigating and prosecuting the offence.

With respect to victims' rights and compensation:

+ Increase public awareness of the need to protect and support victims in foreign bribery cases.
+ Formulate plans among state and local governments to deliberate on necessary actions and monitor progress regularly.
+ Devise adequate legal standards for determining victims, eligibility for relief and related remedies (including relief funds).
+ Increase resources dedicated to victims' rights and victims' compensation in foreign bribery cases.

SPAIN

Limited enforcement

1.9% of global exports

Investigations and cases

In the period 2018-2021, Spain opened seven investigations, commenced four cases and concluded no cases with sanctions.

Weaknesses in legal framework and enforcement system

The main weaknesses include the lack of an adequate legal framework for anonymous money-laundering complaints and reports to Spain's financial intelligence unit SEPBLAC;[516] inadequate resources and a public perception of a low level of judicial independence;[517] inadequate internal complaints mechanisms and whistleblower protection; and a lack of public awareness-raising.

Recent developments

The Fifth EU Anti-Money Laundering Directive was transposed into Spanish law.[518] The law increases the number of reporting entities, broadens the concept of politically exposed persons to cover the senior management of political parties, and provides for the creation of a single register of beneficial ownership of legal entities and trusts by the Ministry of Justice. The register will be accessible to relevant authorities, notaries and registrars, obliged entities and third parties, who will be able to obtain basic data about the current beneficial owners of a legal person or entity or a structure without legal personality, as well as about the nature of such beneficial ownership.

Article 324 of the Code of Criminal Procedure was amended to extend the time limit for judicial investigation from six months to a maximum of twelve months from the opening of a case, with the possibility of an extension of up to six months.[519] The draft law to transpose the EU Whistleblower Protection Directive was approved in March 2022 after a public consultation process[520] and in September 2022, the Council of Ministers approved the draft law regulating the protection of of persons who report infringements of European and national law and sent it to the Spanish parliament.[521]

In recent years, there has been an increase in cooperation between national public and private actors to prevent, investigate and promote the exchange of information in the field of corruption.[522]

In case developments, the Public Prosecutor's Office closed an investigation in 2022 into allegations against the king emeritus of illegal commissions paid in connection with Saudi Arabia's award of the AVE to Mecca high-speed rail contract to a Spanish consortium, but the investigation proceedings continued with respect to other alleged wrongdoing.[523] In 2021, the former CEO of **Copisa Guatemala Constructora** was indicted for allegedly

paying a commission of US$30 million for the award of a contract to then president of Guatemala Otto Pérez Molina, his vice-president Roxana Baldetti, and the directors of the awarding authority, Empresa Portuaria Quetzal-EPQ.[524] The case concerned the award to the TCQ company of the project to build the Puerto Quetzal container terminal in Guatemala. Related indictments were filed against at least 14 additional defendants.[525] In the **Mercasa case,** the National Court sent 18 defendants to trial in 2022 in relation to an alleged scheme to bribe Angolan officials in exchange for contracts in the period between 2006 and 2016.[526] In the **DEFEX** case, indictments are pending in relation to facts concerning Saudi Arabia and investigations are still ongoing in relation to Egypt and Brazil.[527]

Transparency of enforcement information

Statistics on enforcement are published every three months by the General Council of the Judiciary (CGP). The information covers investigations carried out by judicial bodies, indictments and final judgements for crimes related to corruption (categorised by the court that issues the decision, including both acquittal and conviction decisions).[528] The CGP also publishes annual statistics on mutual legal assistance (MLA) requests sent and received.[529] In addition, information is compiled on other requests, such as extradition requests, which are filed through the Ministry of Justice,[530] and requests for international judicial assistance, which are filed directly through the Spanish courts.[531]

The Office for Asset Recovery and Management (ORGA) publishes some statistical information, but it is all outdated and also very little data exists on its actual function, Its latest Annual Report is from 2019.[532]

Court decisions are published in full and directly available to the general public (CENDOJ).[533] In 2019, the Prosecutor's Office on Corruption and Organised Crime started publishing annual reports with summaries of the investigations and cases under its jurisdiction.[534]

Victims' compensation

There is no legal framework specifically recognising victims' rights or victims' compensation in foreign bribery cases. In Spain, claims for compensation for damages arising from the commission of a crime are usually tried simultaneously with the prosecution of criminal defendants, although the damaged party may opt to sue in civil court. Title V of the Spanish Criminal Code covers civil liability for felonies and misdemeanours.[535] The liability entails (1) restitution, (2) repairing the damage, and (3) compensation for material and moral damage (Article 110). Whoever participates for gain in the effects of a felony or misdemeanour must restore the item or compensate for the damage up to the amount of their share (Article 122).

In addition, Spanish law allows ordinary citizens to pursue private prosecutions by filing criminal complaints (*querella*). If a victim files a complaint (known as an *acusación particular*) directly with an investigating judge and the victim becomes a civil party (*actor civil*), then they become a party in the case during the investigation and trial phases.[536] Spanish law also allows people not directly connected to the crime to take part in a case as popular prosecutors or *acusadores populares*.[537] Public interest groups often join these complaints.

Citizens using the *acusación popular* procedure can invoke the right to reparations in matters of public interest without the need to show direct, personal harm. This right was invoked by Asociación Pro Derechos Humanos de España (APDHE), a human rights organisation, when it filed a criminal complaint in 2008 against President Obiang of Equatorial Guinea, alleging money laundering in Spain originating from the corruption of high-ranking officials in Equatorial Guinea.[538] (This was not a foreign bribery case.)

Spain is a party to the Council of Europe Civil Law Convention on Corruption.

Recommendations

+ Allocate more resources to combat foreign bribery.
+ Develop a holistic plan for the prevention and reduction of corruption that takes into account international standards and involves civil society organisations, the private sector and public-sector institutions in its design.
+ Promote and strengthen expedited judicial procedures to quickly investigate and prosecute corruption cases and allocate enough resources.
+ Address weaknesses in integrity and anti-fraud systems of public administrations and strengthen whistleblower protection, including transposing horizontally the EU Whistleblower

Protection Directive as soon as possible and allowing anonymous AML reports to SEPBLAC.

+ Improve the channels of dialogue, cooperation and collaboration between public institutions working on foreign bribery issues.
+ Invest in more education, sensitisation and awareness-raising about foreign bribery and its harmful consequences for the public interest.

SWEDEN

Limited enforcement

1.0% of global exports

Investigations and cases

In the period 2018-2021, Sweden opened 10 investigations, commenced two cases and concluded no cases.

Weaknesses in legal framework and enforcement system

The weaknesses include jurisdictional limits; the lack of criminal liability for corporations; and inadequate sanctions. They also include inadequate resources and a lack of skilled investigators and prosecutors to make and process MLA requests, as well as the decentralised organisation of enforcement.

Recent developments

In 2021, the parliament adopted legislation on whistleblower protection, implementing the EU Whistleblower Protection Directive.[539] The new legislation forbids all acts of retaliation against a whistleblower, ensures protection of a whistleblower's identity, and requires employers to establish secure reporting channels. In March 2022, the Swedish government published a proposal for an updated legal framework including coverage of settlements and plea bargaining,[540] which was accepted by Parliament on 2 June and entered into force in July 2022.[541]

Transparency of enforcement information

There are no separate published statistics on foreign bribery cases, although they can be obtained on request. General, aggregated statistics about opened investigations, cases commenced and cases concluded can be found in the Swedish Prosecutor Authority's annual report, but the kinds of crimes involved are not specified.[542] The detailed statistics, which can be requested from the Swedish Prosecution Authority, must be made available to the public pursuant to Law 2009:400 on public access to information and secrecy.

Partial information about cases is published online, for example through press releases from the Swedish Prosecution Authority. The Court of Appeal also publishes decisions that they consider to be important for future cases. Even though not all documents are published, most can be requested from the courts and are thus publicly available in accordance with Law 2009:400 on public access to information and secrecy. The only information that a citizen cannot access is information protected by confidentiality in accordance with the National Secrecy Act**.** Sometimes there is a fee to access information depending on the workload that is required to compile it.

Victims' compensation

There is no legal framework recognising victims' rights or victims' compensation in foreign bribery cases. Under the Swedish Criminal Code, confiscated property and corporate fines accrue to the state and the state is then responsible in the offender's place for compensating the injured party or person entitled to compensation up to the value of what was confiscated.[543] Also, when a confiscation order is enforced, the person to whom it is directed is entitled to deduct any amount they have paid in compensation to the injured party or person entitled to compensation. Chapter 26 of the Swedish Code of Judicial Procedure provides for provisional attachment of a suspect's property to ensure the payment of fines, the value of forfeited property, corporate fines, or other compensation to the community, or damages or any other compensation to an aggrieved person.[544]

Sweden is a party to the Council of Europe Civil Law Convention on Corruption.

Recommendations

+ Establish a comprehensive public database of statistics on foreign bribery investigations and other information on foreign bribery cases in order to enhance information accessibility.
+ Introduce a legal framework for victims' rights and victims' compensation in foreign bribery cases.
+ Research and introduce a sound legal framework for non-trial resolutions that requires judicial review, self-reporting by companies, deterrent sanctions and transparency of outcomes.
+ Review the provisions on dual criminality.
+ Develop provisions requiring companies to take preventive measures, with a view to achieving modern and effective bribery legislation, including enacting a new law on liability for legal persons.

SWITZERLAND

Active enforcement

2.0% of global exports

Investigations and cases

In the period 2018-2021, Switzerland opened 39 investigations, commenced two cases and concluded eleven cases with sanctions.

Surveys suggest that around every fifth exporting Swiss company has made bribery payments abroad.[545] Against this background, the available numbers on criminal prosecution are low.

Weaknesses in legal framework and enforcement system

The main weaknesses in the legal framework include a lack of clear standards of liability for corporations; completely inadequate whistleblower protection; and inadequate sanctions, with the maximum fine for companies too low and thus not effective, proportionate or dissuasive. In addition, there is no central public register of beneficial owners of companies and trusts and the anti-money laundering framework is inadequate. Further challenges are presented by the decentralised organisation of enforcement and weaknesses in provisions for settlements, which take the form of summary penalty orders.

The Financial Action Task Force (FATF) reviewed the anti-money laundering framework in 2020 and found that the current Swiss Anti-Money Laundering Act has too narrow a scope and does not cover certain non-financial activities, especially those conducted in connection with the creation, management or administration of companies or trusts.[546] The parliament refused to address the loophole, revising the AML legislation in 2021 without making any improvements in the area.

Regarding corporate liability, the OECD WGB in its 2018 Phase 4 Report criticised that the maximum fine for legal persons charged with foreign bribery remains too low at CHF5 million (US$5.4 million)[547] and commented that "sanctions imposed are not effective, proportionate or dissuasive [...], particularly in relation to legal persons".[548] The OECD WGB has further recommended that Switzerland clarify the concept of "defective organisation", which is a requisite for corporate liability.[549] Across multiple cases, the Office of the Attorney General (OAG) has not indicated the standards for the necessary and "reasonable organisational measures", such as internal control systems and codes of conduct, that a company must adopt to prevent it from having a "defective organisation" and therefore being liable.[550] Guidelines would help companies to adopt adequate compliance programmes. Furthermore, although the merits of self-reporting were recognised in the case of **KBA-Notasys SA**, there is no known clear and transparent framework for self-reporting by companies.[551]

The summary penalty order and accelerated proceedings are a poor substitute for the model of deferred prosecution agreements found in other countries because they lack transparency and predictability. Additionally, there is no framework to provide incentives for self-reporting by companies and no guidance for adequate corporate preventive measures.

Recent developments

During the reporting period, the long-running legislative process for the protection of whistleblowers in Switzerland was scuttled by Parliament. Thus, after years of legislative work, Switzerland is still without sufficient whistleblower protection. In addition, during the period under

review, an affair involving Attorney General Lauber was a dominant issue that kept the OAG, its oversight body (the Supervisory Authority for the Office of the Attorney General of Switzerland) and the Federal Parliament very busy and damaged the reputation of the OAG.[552] The election procedure for the successor to Attorney General Lauber was also no highlight. Discussions on the basic structure of the OAG continue in Parliament.

One case in 2020 tackled the demand side of foreign bribery. On 26 June 2020, the Federal Criminal Court sentenced the high-ranking Ukrainian politician Mykola Martynenko, together with an accomplice, to a fine and imprisonment for qualified money laundering[553] and also ordered them to pay compensation of almost CHF3.8 million to the Swiss Confederation.[554] An appeal was filed in October 2020 and the appeal proceedings are still pending. Martynenko had allegedly laundered €2.8 million through several offshore companies in relation to some contracts between the Czech company Škoda JS and the Ukrainian nuclear power plant operator, NNEGC Energoatom.[555]

In 2021, **Falcon Private Bank** was convicted by the Federal Criminal Court in Bellinzona, marking the first time that a financial institution was convicted in court in Switzerland. The criminal proceedings were initiated in connection with the Malaysian sovereign wealth fund 1MDB case and Falcon was found to have violated significant obligations in the legal and compliance areas.[556] It was fined CHF3.5 million (US$3.8 million) and ordered to pay compensation to the Swiss state of CHF7.3 million, plus interest of 5% since 2014.[557]

In another criminal case against a bank, not foreign bribery-related, the OAG filed charges in late 2020 against **Credit Suisse** with the Federal Criminal Court in Bellinzona, alleging that the bank had laundered money for a Bulgarian drug trafficking ring in the period from 2004 to 2008.[558] The trial started in February 2022.

In 2021, OAG fined three Swiss subsidiaries of the multinational group **SBM** CHF4.2 million and ordered payment of CHF2.8 million in restitution.[559] The convictions are related to the conviction of a former **Gunvor** employee by the Federal Criminal Court on 6 July 2020; the individual in question was found guilty in summary proceedings of bribery of foreign public officials.[560]

Also in 2021, the Geneva Criminal Court found commodities trader Beny Steinmetz guilty of bribery to obtain mining rights in Guinea and sentenced him to five years in prison.[561] Steinmetz was also ordered to pay compensation to the Swiss state of CHF50 million. He announced that he intends to appeal the verdict.[562] His two accomplices were also sentenced to prison terms and ordered to pay compensation.

Transparency of enforcement information

There continues to be poor transparency of enforcement data. As before, no data or hardly any on criminal proceedings are published by cantonal prosecution authorities, and the OAG discloses figures about ongoing proceedings only in its annual report. It does not even publish the figures that have to be forwarded to the OECD, which the OECD publishes in summary form. The resulting lack of statistical data makes it almost impossible to get a clear picture of law enforcement. Accordingly, the OAG is subject to a recommendation by the OECD WGB on this subject.

The judgements of the Swiss Federal Criminal Court and Federal Supreme Court are available online. This is not the case for decisions issued by the OAG, including summary penalty orders and abandonment orders with sanctions, which are only available on request, in person, in a summarised format and anonymised. The summary penalty orders issued by the OAG of Switzerland may be viewed for 30 days. However, since the OAG only rarely communicates that such an order has been issued, it is not always possible to inspect them. After the deadline has expired, inspection is possible only under difficult circumstances or not at all. Access to the decisions may be denied if the authorities find that the interest of preserving secrecy outweighs the right to information.[563] The OAG may also issue statements on the results of big cases.[564]

Victims' compensation

The legal framework for compensation of victims in foreign bribery cases is insufficient and no guidelines have been established. The legal framework does partially recognise victims' rights and victims' compensation in foreign bribery cases inasmuch as an injured person may participate in criminal proceedings as a party. This is also theoretically applicable to injured countries. However, it is little used because it is not widely known. Both Nigeria and Tunisia have been accepted as a civil party (*partie civile*) in Abacha and

Ben Ali-related cases, respectively, but no compensation has been paid.[565]

Switzerland has neither signed nor ratified the Council of Europe Civil Law Convention on Corruption.

Recommendations

+ Systematically publicise and make available online information on all foreign bribery cases, including those concluded through summary penalty orders.
+ Improve the collection and publication of statistics on corruption, especially data from the cantons.
+ Create a publicly accessible central register of beneficial owners of companies and trusts.
+ Develop corporate compliance standards and a clearly defined framework of voluntary disclosure for companies.
+ Amend the Anti-Money Laundering Act to address deficiencies identified by FATF, especially enlarging the scope of the Act.
+ Enact protection of whistleblowers in the private sector, based on the highest international standards.
+ Make provision for compensation of victims in foreign bribery cases.
+ Ensure that judicial authorities do not adopt a restrictive interpretation of foreign bribery-related offences.
+ Increase enforcement and impose tougher sanctions on companies.
+ Improve awareness-raising among small and medium-sized enterprises, encouraging them to take internal measures to prevent and detect foreign bribery.
+ Improve the process of summary penalty orders to make them more transparent and predictable.

TURKEY

Little or no enforcement

1.0% of global exports

Investigations and cases

In the period 2018-2021, Turkey opened one investigation, commenced no cases and concluded no cases.

Weaknesses in legal framework and enforcement system

In June 2021, a high-level mission of the OECD WGB reported that "Turkey has not taken sufficient steps to address the OECD Working Group on Bribery's concerns about its implementation of the OECD Anti-Bribery Convention or its deficient level of enforcement of the foreign bribery offence."[566] It observed that the OECD WGB has "since 2014, urged Turkey to ensure that foreign bribery is effectively investigated and prosecuted, including by protecting the independence of prosecutions, strengthening its legislation on the liability of legal persons for foreign bribery, and implementing adequate protection for whistleblowers who report suspicions of foreign bribery."

Recent developments

Concerning the liability of legal persons for foreign bribery, the OECD WGB high-level mission welcomed Turkey's December 2020 amendment to the Code of Misdemeanours, which included the strengthening of sanctions. Turkey stated that the amendments clarify that prosecution of a natural person is not required to initiate proceedings against a legal person for foreign bribery. However, the WGB delegation indicated that this still needs to be demonstrated in practice. Members of the high-level mission also said they were encouraged by proposed new amendments clarifying that state-owned enterprises can be held liable for foreign bribery.

There has been no other significant development in the legal framework, enforcement system or case law since the *Exporting Corruption* report of 2020. It could be argued that this has to do with Turkey's increasingly authoritarian climate and the approaching general and presidential elections of 2023, which are causing increased polarisation and harm to social cohesion.[567] Some argue that a properly working judicial system could undermine the current government's authority and hence the government does not want an independent judiciary.[568]

The Group of States against Corruption (GRECO) 2020 report on Turkey, published in March 2021, underscored that judges and prosecutors made up the group that complied least with its previous recommendations.[569] In 2019, the Financial Action Task Force (FATF) Mutual Evaluation Report on Turkey criticised the country's lack of necessary measures, among others, to regulate politically exposed persons in the country's legislation.[570] Since Turkey did not make the required improvements, the FATF added it to the grey list in 2021.[571]

Transparency of enforcement information

There are no published, updated statistics on foreign bribery enforcement. There is also no published data on mutual legal assistance (MLA) requests sent and received. Court decisions and non-trial resolutions are not published, but unless otherwise stated, all court decisions can be accessed from courts on demand.

Victims' compensation

There is no legal framework specifically recognising victims' rights and victims' compensation in foreign bribery cases. However, various legal provisions may assist victims in seeking damages, compensation and restitution for acts of corruption more generally such as the Code of Obligations (Law No. 6098).

In addition, crime victims are recognised to have a number of rights under Article 235 of the Turkish Code of Criminal Procedure.[572] Article 237 of the Code of Criminal Procedure refers to the possibility for victims and others who have been damaged by a crime to intervene in the public prosecution and put forward their claim until such time as a judgement has been rendered. Also, under Article 231 of the Code of Criminal Procedure, a judgement against a person can be postponed in less serious cases if three conditions have been met, including the condition that the damage to the victim or the public because of the committed crime has been recovered (by giving back an object taken, restoring the circumstances as they were before the crime was committed or paying damages).

Recommendations

+ Require courts to publish all decisions relating to foreign bribery, and collect and publish data regarding investigations and cases in implementation reports.
+ Create a publicly accessible central register for beneficial ownership information.
+ As recommended by the OECD WGB's Phase 3 Report in 2017, ensure that investigations and prosecutions of foreign bribery are not influenced by considerations of national economic interest, the potential effect on relations with another state, or the identity of the natural or legal person involved.
+ Ensure the independence of the judiciary and the Prosecutor's Office from improper political influence.
+ As recommended by the OECD WGB's Phase 3 Report in 2017, ensure that any reassignment of police, prosecutors or magistrates does not adversely affect foreign bribery investigations and prosecutions.
+ Proactively and effectively investigate foreign bribery allegations.
+ Increase available sanctions to deter foreign bribery by corporations and introduce the criminal liability of legal persons.
+ Raise awareness about foreign bribery among the general public and train private-sector employees and public officials to increase anti-corruption awareness within their organisations.
+ Regulate and enforce whistleblower protection in the public and private sectors.
+ Regulate politically exposed persons through relevant anti-money laundering legislation.

UNITED KINGDOM

Moderate enforcement

3.4% of global exports

Investigations and cases

In the period 2018-2021, the United Kingdom opened 19 investigations, commenced 10 cases and concluded 13 cases with sanctions.

Weaknesses in legal framework and enforcement system

Two of the main weaknesses in the legal framework are a lack of public registries of beneficial ownership of companies in the Overseas Territories and Crown Dependencies[573] and a longstanding issue regarding corporate liability in the UK, which inhibits the successful prosecution of large multinationals for substantive bribery offences. Key enforcement system weaknesses include underfunding in the court system and law enforcement agencies, and a lack of public awareness-raising.

Recent developments

In June 2022, the Law Commission published a series of options for ministers to consider on reform of the UK's corporate criminal liability regime.[574] If implemented, some of the proposals could help with the enforcement of foreign bribery laws against large, complex multinationals.

In May 2022, the government introduced a Procurement Bill (the Bill) before Parliament. The Bill stipulates that any convictions for foreign bribery (under Section 1, 2 or 6 of the Bribery Act 2010) are mandatory grounds for debarment of suppliers,[575] but this does not apply in the case of deferred prosecution agreements (DPAs). As introduced to Parliament, the Bill does not include Section 7 of the Bribery Act ("failure to prevent") as mandatory grounds for exclusion even though there is a provision to exclude suppliers for a failure to prevent tax evasion. The Bill is unlikely to come into force until 2023 at the earliest.

In March 2022, the Economic Crime (Transparency and Enforcement) Act 2022 received Royal Assent. The new law establishes beneficial ownership registers for UK property and enhances the unexplained wealth order regime in favour of the authorities.[576] The measures may also help with the identification and pursuit of foreign bribery cases. Commencement of the property register is due later in 2022.

In October 2021, the OECD WGB welcomed amendments to the Memorandum of Understanding (MoU) among UK law enforcement authorities to make reference to Article 5 of the OECD Anti-Bribery Convention, as the WGB had previously recommended.[577] However, the WGB observed that the change does not fully reflect the scope of its recommendation, and therefore only considered it to be "partially implemented".[578]

Transparency of enforcement information

The UK has numerous bodies involved in foreign bribery enforcement and justice but no centralised mechanism for collecting and reporting economic crime enforcement data and no centralised repository of judgements and other case outcomes in economic crime cases. Consequently, it can be work-intensive to access the information.

The Serious Fraud Office (SFO), which is the principal body responsible for investigating and prosecuting complex bribery cases in England and Wales, routinely publishes information on investigations, forthcoming court cases and concluded cases on its website[579] and in its annual reports.[580] The Crown Prosecution Services (CPS)[581] and the Crown Office and Procurator Fiscal Service (in Scotland)[582] bring forward prosecutions based on investigations by the National Crime Agency (NCA), Police Scotland, local police or other government departments, but there is no central, public source of information about investigations underway.

There is also no central source for information relating to court cases for England, Wales and Northern Ireland, with court judgements maintained largely by an independent charity, the British and Irish Legal Information Institute (BAILII).[583] The Crown Office and Procurator Fiscal Service maintains information about the conclusion of bribery cases on its website.[584]

Court decisions are published, including those authorising deferred prosecution agreements (DPAs) between prosecutors and a defendant. However, there is no consistent and comprehensive reporting of court sentencing remarks and judgements in economic crime cases, including foreign bribery ones.

Victims' compensation

UK sentencing guidelines in foreign bribery cases, including for corporate offenders in fraud, bribery and money laundering cases, should apply when determining compensation for victims. These include consideration of any loss or injury to victims, the offenders' ability to pay and any aggravating factors, including the intent of the offender. Reasons should be given if a compensation order is not made.[585]

The SFO, CPS and NCA are all signatories to a statement of general principles for compensating victims (including affected states, organisations and

individuals) in foreign bribery cases to ensure they are able to benefit from asset recovery proceedings and compensation orders made in England and Wales,[586] but the general principles are not enshrined in law. The conditions imposed under a DPA can include, among other things, compensation to the victims of the alleged offence and disgorgement of profits.[587]

Application of the general principles varies depending on the case. For example, none of the large fines for **Airbus** were used to compensate any victims in the countries where the bribery took place, a concern that Transparency International Sri Lanka raised directly with the SFO regarding the lack of appropriate compensation for victims in the country.[588] The reasons cited for the failure were the inability to easily quantify the loss arising from the criminal conduct; the lack of evidence that any of the products or services sold by Airbus to customers were defective or unwanted, so as to justify a legal claim; and the fact that the DPA does not prevent any victims from claiming compensation.[589]

A July 2021 DPA that was agreed between the SFO and **Amec Foster Wheeler** included a term that £210,610 (US$289,530) of the financial penalty was ordered as payable in compensation to victims in Nigeria.[590] The compensation constitutes 0.2 per cent of the total financial penalty for the UK DPA (which amounted to £103 million (US$141 million) in penalties and costs as part of a US$177 million global settlement with the UK, US and Brazilian authorities).[591] This is the sum that the SFO states was reached on the basis of the specific and quantifiable loss to the people of Nigeria identified in the investigation.

Recommendations

+ Establish a publicly accessible centralised database of economic crime enforcement data and a central repository of economic crime judgements and non-trial resolutions.
+ Publish court sentencing remarks and judgements for cases of economic crime, including bribery.
+ Ensure the SFO has the resources and leadership necessary to remain the principal actor for enforcing foreign bribery offences.
+ Strengthen mechanisms to determine whether companies convicted of bribery should be debarred from public contracts.
+ Broaden corporate criminal liability beyond the failure to prevent foreign bribery and tax evasion.
+ Encourage the urgent introduction of public beneficial ownership registers in the UK's Overseas Territories and Crown Dependencies.
+ Ensure the NCA's ICU has the resources to take on non-corporate bribery cases.
+ Ensure that DPAs are used only in cases of strong public interest, with utmost transparency, and as a means to encourage self-reporting by others in the future.
+ Provide greater support and education on the UK Bribery Act for small and medium-sized enterprises.
+ Include anti-corruption and transparency provisions in future trade agreements.
+ Closely monitor the impact of the departure from the European Union on the UK's foreign bribery enforcement, particularly in relation to international cooperation arrangements with EU countries.

In addition, with respect to victims:

+ Enshrine the principles for compensation of victims into law to ensure adequate compensation can be given in complex corruption cases.
+ Ensure the current NCA, CPS and SFO principles for compensation of victims are incorporated into the use of DPAs.
+ Establish a comprehensive legal framework establishing the rights of victims in international corruption cases, including standing and compensation for broad classes of victims.

UNITED STATES

Active enforcement

9.8% of global exports

Investigations and cases

In the period 2018–2021, the United States opened 48 investigations, commenced 163 cases and concluded 145 cases with sanctions.[592]

Weaknesses in legal framework and enforcement system

Some of the main weaknesses include the lack of a central national register of companies and trusts; insufficient whistleblower protection; and the exception for facilitation payments.

The US does not have a centralised national register of company information, let alone a centralised database of corporate beneficial ownership information. It also lacks a central register of beneficial ownership of trusts.[593] For beneficial ownership data, US authorities must rely on a patchwork of sources: state company registries, financial institutions, the SEC, the Internal Revenue Service and the SAM database. Access to some of these sources requires a subpoena, and there is no guarantee that the data reflect the true beneficial owner(s) of a particular company.

Legal protections for whistleblowers have loopholes and the agencies responsible for enforcing them often lack the staffing, resources or even desire to do so. Moreover, there have been widespread allegations of retaliation and reprisal against whistleblowers and only a small fraction of whistleblowers who file retaliation claims ultimately prevail through the legal process.[594] Further, the processing of rewards to individuals who blow the whistle on foreign bribery and other corporate wrongdoing is slow, even though the law provides that they may be rewarded with a percentage of any funds recovered by the government.[595]

The FCPA contains an exception for facilitation ("grease") payments to foreign officials. This exception is defined and interpreted narrowly, and is not believed to be a hindrance to US enforcement efforts.[596] On the other hand, the exception gives official approval to one form of corruption and, according to some commentators, is invariably misused in practice.[597]

Recent developments

The year 2020 set records for FCPA enforcement penalties, although the number of case resolutions was down in both 2020 and 2021 and the penalties declined significantly in 2021, especially against corporations. The US Department of Justice (DoJ) announced eight corporate resolutions in 2020, four against foreign companies, and assessed US$2.1 billion in penalties, while the SEC resolved eight enforcement actions amounting to US$683 million in penalties. In 2021, there were two FCPA corporate resolutions against foreign companies (one British and one German) assessing US$87.2 million in penalties, while the SEC resolved four enforcement actions against companies, with US$171.7 million in penalties.

Commentators have noted that prosecutors from the DoJ's FCPA Unit have increasingly charged non-FCPA crimes such as money laundering, mail and wire fraud, Travel Act violations, tax violations, and even false statements, in addition to or instead of FCPA charges.[598] The most common of these FCPA-related charges are under money-laundering statutes, which are often used to charge foreign public officials together with the person making a corrupt payment under the FCPA.

In June 2021, President Biden issued a National Security Study Memorandum identifying efforts to counter corruption as a "core United States national security interest."[599] The memorandum outlined plans to curb foreign corruption by increasing anti-corruption programming and resources in the federal government.[600] In 2021, the Deputy Attorney General Lisa O. Monaco announced a DoJ modification of certain corporate criminal enforcement policies.[601] She also highlighted the DoJ's increasing scrutiny of companies that have received pre-trial diversion, such as deferred or non-prosecution agreements.[602] Finally, the Biden administration issued the US Strategy on Countering Corruption on 6 December 2021.[603] In terms of resources, Monaco also announced that the DoJ is "surg[ing] resources" for corporate enforcement.[604]

The National Defence Authorisation Act (NDAA) that passed in January 2021 includes provisions that expand the SEC's statutory authority to seek disgorgement in cases filed in federal court, in response to recent Supreme Court decisions in *Kokesh v SEC*[605] and *Liu v SEC*,[606] both of which narrowed the scope of the SEC's disgorgement power. The NDAA also extends the statute of limitations from five to ten years for SEC enforcement actions based on scienter-based claims.[607]

The NDAA also includes the Anti-Money Laundering Act of 2020, which enacted the most consequential set of anti-money laundering reforms since the passage of the USA Patriot Act in 2001. The requirements, which include beneficial ownership reporting requirements to limit the practice of using shell companies to launder ill-gotten gains, apply to certain US entities and foreign entities registered to do business in the United States, and the Department of Treasury's Financial Crimes

Enforcement Network (FinCEN) is tasked with maintaining a beneficial ownership registry of such reported information, which will be available for use by law enforcement agencies. The NDAA also expands the DoJ's authority to subpoena foreign banks with US-based correspondent banking accounts.[608]

In 2021, FCPA-specific whistleblower tips to the SEC were up by 24%.[609]

Transparency of enforcement information

The DoJ publishes partial FCPA criminal enforcement statistics in its annual publication "The Fraud Section Year in Review".[610] The statistics do not include data on investigations,[611] nor do they identify the number of enforcement actions resulting in DPAs, non-prosecution agreements or acquittals. The SEC publishes a list of enforcement actions by calendar year.[612] The US government does not publish statistics on mutual legal assistance (MLA) requests received and made.[613]

US trial and appellate court pleadings, decisions and transcripts can be obtained for a fee at the Public Access to Court Electronic Records (PACER) online repository.[614] The DoJ and the SEC maintain centralised FCPA information web portals that list cases where charges have been filed and public cases that have been resolved.[615] They also provide enforcement-related news,[616] explain the law and link to the text of the statute.[617] Both agencies publicly announce the filing of new enforcement cases and resolutions of closed cases, posting summaries and legal documents on the internet.

Victims' compensation

The United States does not commonly seek restitution for the victims of foreign bribery in enforcement actions under the Foreign Corrupt Practices Act (FCPA). Of an estimated 500 FCPA cases, only a handful of settlements or judgements involving foreign bribery have resulted in restitution, with small awards made to the affected state.[618]

The legal framework for victims' compensation at federal level consists of the 1982 Victims and Witness Protection Act, the 1996 Mandatory Victim Restitution Act and the 2004 Crime Victims Act.[619] As pointed out in a 2016 article, these three pieces of legislation do not cover an FCPA violation, but they do cover conspiracy and most FCPA prosecutions include a conspiracy charge.[620] Under the federal code of criminal procedure the term "victim" means a person directly and proximately harmed as a result of the commission of an offence for which restitution may be ordered and "[t]he court may also order restitution in any criminal case to the extent agreed to by the parties in a plea agreement."[621]

If restitution is ordered, it is usually in cases involving individual, not corporate, defendants, when there are other criminal violations, such as embezzlement and fraud.[622] However, there have been at least three FCPA cases in which a corporate defendant was ordered to provide compensation, as well as two cases involving individuals.[623] This issue received renewed attention in September 2019 in the **Och-Ziff** case, in which the company entered into a deferred prosecution agreement with the DoJ in connection with a bribery scheme involving officials in the Democratic Republic of Congo and Libya.[624] In late 2020, Och-Ziff was ordered to pay more than US$137 million in restitution to investors.[625]

In January 2021, the Internal Revenue Service issued a finalised rule setting out a multi-factored inquiry to determine whether an amount paid in disgorgement or forfeiture is tax deductible as restitution or remediation.[626]

Recommendations

+ Enhance transparency and accountability by publicly reporting in a centralised location statistics detailing the number of investigations commenced, ongoing and concluded without enforcement action.
+ The DoJ and the SEC should also analyse the deterrent effect of non-prosecution and deferred prosecution agreements and the number of referrals provided to and received from other countries.
+ Introduce a central public register of beneficial ownership.
+ Establish and implement guidelines for restitution and compensation to victims in foreign bribery cases, including for indirect or diffuse harm.
+ Strengthen whistleblower protections and establish a track record for compensating whistleblowers.

COUNTRY BRIEFS: NON-OECD CONVENTION COUNTRIES

CHINA

Little or no enforcement

11.6% of global exports

Investigations and cases

In the period 2018-2021, China opened no investigations, commenced no cases and concluded no cases.

Weaknesses in legal framework and enforcement system

The main weaknesses include an inadequate definition of foreign bribery; the lack of criminal liability for corporations; weaknesses in provisions for settlements; and a failure to hold companies responsible for subsidiaries, joint ventures and/or agents.

Recent developments

In September 2021, the National Supervisory Commission published and enacted the implementation regulations of the PRC Supervision Law.[627] The regulations clarify the duties of supervisory commissions, their jurisdiction, supervisory power and working procedures. In particular, they introduce rules concerning international cooperation, setting out in detail the extent to which Chinese authorities will cooperate with foreign agencies in the investigation of, and enforcement against, overseas corruption.[628] Domestically, China's Central Commission for Discipline Inspection (the CCDI) recently released a new anti-bribery guideline that signals a more aggressive approach by China in targeting individuals and corporations paying bribes, in contrast to the recipients of bribes that were the traditional focus of China's enforcement efforts. Three key features of the guideline are: (1) the blacklisting of companies and individuals found to have paid bribes in China; (2) a potential for "carbon copy prosecutions" if a company enters into a settlement with a foreign authority about bribery allegations in China; and (3) a more stringent approach to the evaluation and consideration of "mitigating circumstances" and the confiscation of properties and cancellation or revocation of advantages derived from bribery.[629]

Transparency of enforcement information

Although some domestic enforcement statistics are available through the CCDI website,[630] no statistics on foreign bribery enforcement have been released and there are no statistics published in relation to mutual legal assistance (MLA) between China and foreign countries in criminal cases.

Judgement documents of all Chinese courts should be published on the website "China Judgements Online," which was developed by China's Supreme People's Court and went online in July 2013. [631] However, a recent news article notes that millions of court rulings may have been removed from the

database as part of a migration process.[632] It is unclear whether access to the removed documents has been restored. Additional resources include "China Trials Online",[633] "China Judicial Process Information Online"[634] and "China Enforcement Information Online".[635] No resources pointing to the publication of non-trial resolutions have been identified.

Victims' compensation

There is no legal framework recognising victims' rights or victims' compensation in foreign bribery cases. However, there is a legal framework recognising victims' rights in China.[636] Under China's Criminal Procedure Law, a victim is a party to criminal proceedings (Article 82.2) and is entitled to a range of rights. A victim may initiate an incidental civil action (Articles 77, 78) and a private prosecution (Articles 88, 170).[637] Under the Criminal Law, civil compensation is to be paid to the victim and this precedes a fine or confiscation of property (Article 36). In addition, the legitimate property of the victims shall be promptly returned to them (Article 64).[638] Victims can be citizens, companies, enterprises, institutions, state organs or organisations. Material losses include actual losses and inevitable losses.[639]

Recommendations

The recommendations in the 2020 report are still relevant. The majority of the issues raised do not to have been acted on nor actively and publicly discussed or debated:

+ Establish laws and regulations that require legal entities in China to identify, verify and maintain beneficial ownership information and establish a beneficial ownership registry allowing authorities a gateway to access such information on a timely basis.
+ Define and clarify certain key terms in Article 164 of the Criminal Law (or explicitly link them to the corresponding UNCAC definitions), so as to ensure that the similarities of bribery of foreign and national public officials are taken into account in order to maintain necessary consistency in the criminalisation of the two types of acts.
+ Expand the scope of conduct covered in Article 164, in particular to explicitly cover the promising and offering of bribes, indirect bribery and bribery committed by companies' subsidiaries, joint venture partners and agents, among others.
+ Eliminate the criminal threshold for foreign bribery, so law enforcement officials and prosecutors can investigate and prosecute the offence, regardless of the value of a bribe.
+ Substantially increase the size of penalties for violations of anti-money laundering law.
+ Give priority to foreign bribery enforcement and allocate any additional resources required.
+ Continue to provide training to law enforcement officials, prosecutors and judges about Article 164 and relevant UNCAC provisions, and in conducting investigations.
+ Provide guidance and training to financial institutions and designated non-financial businesses and professions on beneficial ownership and ongoing due diligence.
+ Clarify the penalties for violations of the ICJA Law and the procedure for obtaining government permission to satisfy foreign court orders.
+ Explicitly address the right to seek compensation in the context of corruption offences, either by providing a definition of who a victim of corruption is or by regulating compensation mechanisms available in corruption cases; this approach can be included into China's Criminal Law or the Anti-Unfair Competition Law (AUCL), as applicable.

HONG KONG

Little or no enforcement

2.7% of global exports

Investigations and cases

In the period 2018-2021, Hong Kong opened no investigations, commenced no cases and concluded two cases with sanctions.

Weaknesses in legal framework and enforcement system

Among the most important weaknesses are the lack of published enforcement data; an inadequate definition of foreign bribery; the lack of beneficial

ownership transparency; a failure to hold companies responsible for subsidiaries, joint ventures and/or agents; and inadequate sanctions.

Recent developments

In October 2020, the Securities and Futures Commission announced that it had reprimanded and fined Goldman Sachs (Asia) L.L.C. US$350 million for serious lapses and deficiencies in its management supervisory, risk, compliance and anti-money laundering controls that contributed to the misappropriation of US$2.6 billion from US$6.5 billion that 1Malaysia Development Berhad (1MDB) raised in three bond offerings in 2012 and 2013.[640]

Transparency of enforcement information

There are no published, updated statistics on foreign bribery investigations, cases commenced and cases concluded.[641] Hong Kong does not maintain a centralised database nor does a press release outlet report on all phases of foreign corruption enforcement, making it difficult to obtain such information.[642] Mutual legal assistance cooperation data is published from time to time. Unfortunately, China has not published its full UNCAC review report, which contains a Hong Kong review; the report may include data on enforcement.[643]

A press release about a case is issued on the Hong Kong Independent Commission Against Corruption (ICAC) website when the Department of Justice has decided that there is sufficient evidence to mount a prosecution and it is in the public interest to do so. ICAC also publishes information about notable corruption-related investigations and cases, but none have been published about foreign bribery cases.[644] Court decisions and case resolutions that are of significance as legal precedents or in the public interest are reported in full and made available to the general public through the judiciary's official website.[645] The website, however, does not appear to be searchable to find foreign bribery cases.

Victims' compensation

There is no legal framework specifically recognising victims' rights or victims' compensation in foreign bribery cases. However, various legal provisions may assist victims in seeking damages, compensation and restitution for acts of corruption more generally.[646]

Recommendations

+ Publish data on foreign bribery enforcement as well as any court judgements and information on non-trial resolutions.
+ Establish and implement a framework for victims' compensation in foreign bribery cases.
+ Introduce a central register of the beneficial ownership of companies and trusts that is accessible to law enforcement, private institutions and the public.
+ Expand the coverage of beneficial ownership of trusts by requiring that all beneficiaries of a trust with a nexus to Hong Kong are identified and the information can be accessed.
+ Establish laws that clearly prohibit Hong Kong persons and entities from engaging in corrupt practices overseas, including the bribery of foreign public officials.
+ Define "foreign public officials" in POBO and other applicable laws.
+ Establish laws that expressly prescribe foreign bribery-related sanctions.
+ Criminalise the failure of companies to prevent bribery.
+ Continue enforcement efforts, including through ICAC and collaborative initiatives with foreign governments and other international anti-bribery organisations.
+ Become a party to the OECD Anti-Bribery Convention.

INDIA

Little or no enforcement

2.3% of global exports

Investigations and cases

In the period 2018-2021, India opened no investigations, commenced no cases and concluded no cases.

Weaknesses in legal framework and enforcement system

The main weakness is that India still has no legislation to deal with the bribery of foreign public officials. Other weaknesses include jurisdictional limitations; the lack of criminal liability for corporations; inadequate sanctions; and the lack of an adequate legal framework to make or receive MLA requests. The main weaknesses in the enforcement system are inadequate resources; a lack of coordination between investigation and prosecution; a lack of training of investigators to investigate this kind of offence; the inadequacy of complaints mechanisms and whistleblower protection; a lack of public awareness-raising; and a lack of resources or skilled investigators and prosecutors to make and process MLA requests (including a lack of language skills).

Recent developments

There has been no progress in putting in place a legal framework to criminalise foreign bribery. In 2011, the then United Progressive Alliance (UPA) government introduced The Prevention of Bribery of Foreign Public Officials and Officials of Public International Organisations Bill ("the Bill") in Parliament.[647] The Bill lapsed with the dissolution of Lok Sabha (the lower house of Parliament). In 2015, the present government made a move to pass legislation to deal with bribery related to foreign public officials, but it has so far gone nowhere.[648]

Transparency of enforcement information

There are no published, updated statistics on foreign bribery enforcement, since there is no foreign bribery offence. Court decisions are accessible online.[649] Statistics related to crimes can be accessed from a web portal known as the National Crime Records Bureau, which is a repository of information on crimes and criminals.[650]

Victims' compensation

There is no legal framework recognising victims' rights or victims' compensation in foreign bribery cases. Provisions related to victims' rights and compensation that can be found in the Criminal Procedure Code 1973 and the Code of Civil Procedure are applicable in bribery cases.[651] Section 357 of the Criminal Procedure Code 1973 empowers courts to award compensation to crime victims for any loss or injury caused by an offence.[652] Pursuant to the Indian Constitution, any citizen or organisation can file a Public Interest Litigation in the Supreme Court pursuant to (article 32) and in the High Court (article 226) on issues related to larger public interest including cases related to corruption. However, the remedy of punitive damages may only be obtained by parties against whom the defendant acted with malice."[653] In addition, a private citizen is able to bring a criminal prosecution in India in certain cases.[654]

Recommendations

+ The same recommendations apply as in 2020:
+ Become a party to the OECD Anti-Bribery Convention.
+ Pass legislation criminalising foreign bribery in line with UNCAC obligations.
+ Extend coverage of whistleblower protection to the private sector.
+ Enforce against foreign bribery to the extent possible under existing legislation.

SINGAPORE

Little or no enforcement

2.7% of global exports

Investigations and cases

In the period 2018-2021, Singapore opened no investigations, commenced no cases and concluded two cases with sanctions.

Weaknesses in legal framework and enforcement system

The main weaknesses include an inadequate definition of foreign bribery; jurisdictional limitations; inadequate sanctions; and a lack of prioritisation of foreign bribery enforcement.

There is still no definition of foreign public officials under the Prevention of Corruption Act (PCA), and Singapore still has no other specific legislation on corruption committed by foreign public officials.

Additionally, penalties for bribery are still too low (a fine not exceeding SG$100,000 (US$70,000) or imprisonment for up to seven years for public-sector bribery, given that bribes in recent years have amounted to millions of US dollars.

The Corrupt Practices Investigation Bureau (CPIB) has commented that in cases involving international jurisdictions, the progress of investigations is highly dependent on the extent of cooperation and assistance provided by the relevant foreign authorities.[655]

Recent developments

In 2020, it was reported that **Goldman Sachs** would pay US$ 122 million in penalties to Singapore as part of a global settlement in connection with the 1MDB case.[656]

Transparency of enforcement information

There are no published, updated statistics on foreign bribery enforcement. All written judgements issued by the Supreme Court of Singapore since 2000 are published in full on the Singapore judiciary website.[657] Judgements issued by the State Courts of Singapore and the Family Courts of Singapore for the most recent three months are available for free on LawNet, which is a service provided by the Singapore Academy of Law, a statutory body.[658] Case summaries, headnotes and reported versions of Supreme Court judgements and the full archive of past Supreme and State Courts judgements are only available to paid subscribers of LawNet.

An indication of the transparency of settlements is given by the conditional warning issued in 2017 to Singapore-based shipbuilder Keppel Offshore & Marine Ltd (Keppel) by Singapore's Attorney General's Chambers and the CPIB. The warning was announced through a press release that was available on both agencies' websites.[659] The release provided a brief summary of the main facts, the name of the entity sanctioned, the fine imposed and the legal basis, and it took note of Keppel's substantial cooperation and substantial remedial measures. The press release did not, however, provide information on the "certain undertakings" that Keppel committed to under the conditional warning.

Victims' compensation

In Singapore, when a person is convicted of an offence, the court can order the offender to compensate the victim. Section 359 of the Criminal Procedure Code allows for claims for compensation in criminal proceedings and makes it mandatory for a court convicting a person of any offence to consider whether a compensation order should be made. Compensation orders can therefore be made for any offence punishable by any written law in Singapore.[660] However, there does not appear to be a specific victims' compensation framework in foreign bribery cases.

In some circumstances, other government agencies or private individuals may institute and have instituted prosecutions.[661]

Recommendations

+ Become a party to the OECD Anti-Bribery Convention.
+ Make public any information on investigations and cases and the beneficial ownership information contained in the Registers of Registrable Controllers.
+ Define "foreign public officials" in the PCA and other applicable laws and broaden the scope of the PCA to include such individuals and third parties retained by corporations who are involved in corrupt practices committed overseas.
+ Establish laws that clearly prohibit Singaporean persons and entities from engaging in corrupt practices overseas.
+ Expand the extraterritorial reach of the PCA so that the law can apply to non-Singaporeans who commit corrupt practices overseas where they are agents of a Singaporean company or who have a Singaporean nexus.
+ Strengthen criminal penalties under the PCA and other applicable anti-corruption laws.
+ Enact overarching legislation to protect whistleblowers.
+ Make greater use of alternatives to judicial proceedings, such as DPAs and non-prosecution agreements, in combatting corrupt practices.
+ Increase collaboration with foreign governments, Interpol and other international anti- bribery organisations.

Singapore should also implement specific mechanisms to enable victims to seek compensation in foreign bribery cases, including establishing parameters to identify victims of corruption (whether they be states or legal or natural persons). Singapore may wish to explicitly address the right to seek compensation in the context of corruption offences, either by providing a definition of who a victim of corruption is or by regulating compensation mechanisms available in corruption cases. This approach can be included in Singapore's Prevention of Corruption Act.

METHODOLOGY

In *Exporting Corruption*, Transparency International places OECD Convention countries in one of four categories to show 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 a little deterrence. Where there is "little or no enforcement", there is no deterrence.

Transparency International takes two factors into account when categorising the OECD Convention countries by 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[662] is considered to involve more effort and deterrence. Concluding a major case with substantial sanctions[663] 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.

The 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 opportunities to improve the 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 the share of world exports provided by the OECD.

Calculation of enforcement category

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

To enter the categories of "active enforcement", "moderate enforcement" or "limited enforcement", a country's result has to reach the predefined 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 in the past four years.

For example, Argentina has a 0.3 per cent share of world exports. This percentage multiplied by 40, by 20 and by 10 renders the following thresholds: 12 points to be in the "active enforcement" category, 6 points for the "moderate enforcement" category, and 3 points for the "limited enforcement" category.

	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

Differences between Transparency International and OECD Working Group on Bribery reports

Transparency International's report differs from the Working Group's report in several key respects. Transparency International's report is broader in scope than the Working Group's report 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 Working Group covers only convictions, plea agreements, settlements and sanctions in administrative and civil actions. In addition, Transparency International uses a broader definition of foreign bribery cases, covering cases where foreign bribery is the underlying issue, whether brought under laws dealing with corruption, money laundering, tax evasion, fraud or violations of accounting or disclosure requirements. The Working Group, by contrast, covers only foreign bribery cases. Its report is based on data supplied directly by the government representatives who serve as members of the Working Group, whereas 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 reviewed by lawyers in the Transparency International Secretariat. The Secretariat provides the country representatives of the OECD Working Group with an advanced draft of the full report for their comment. The draft is then reviewed again by the experts and the Transparency International Secretariat after the country representatives provide feedback.

To enable comparison between the results in 2020 and the results in this 2022 report, we include here the scoring results from the 2020 report.

TABLE 2: INVESTIGATIONS AND CASES (2016-2019)

Country	% share of exports Average 2016-2019*	Investigations commenced (weight of 1)				Major cases commenced (weight of 4)				Other cases commenced (weight of 2)			
		2016	2017	2018	2019	2016	2017	2018	2019	2016	2017	2018	2019
Active Enforcement (4 countries) 16.5% global exports													
United States	10.4	9	45	7	11	1	5	5	8	1	1	2	1
United Kingdom	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
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
New Zealand**	0.2	4	1	2	0	0	0	0	0	0	0	0	0
Slovenia	0.2	0	0	1	1	0	0	0	0	0	0	0	0
Costa Rica**	0.1	0	0	0	2	0	0	0	0	0	0	0	0
Estonia**	0.1	0	1	0	0	0	0	0	0	0	0	1	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
Belgium	1.8	1	4	0	0	0	0	0	0	0	0	0	0
Singapore***	1.8	0	1	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
Bulgaria	0.2	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

Country	Major cases concluded with subst. sanctions (weight of 10)				Other cases concluded with sanctions (weight of 4)				Total points	Min. points required depending on % 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												
United States	30	15	22	26	10	8	10	9	**1236**	416	208	104
United Kingdom	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
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
New Zealand**	0	0	0	0	0	0	0	0	**7**	8	4	2
Slovenia	0	0	0	0	0	0	0	0	**2**	8	4	2
Costa Rica**	0	0	0	0	0	0	0	0	**2**	4	2	1
Estonia**	0	0	0	0	0	0	1	0	**7**	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
Belgium	0	0	0	0	0	0	0	0	**5**	72	36	18
Singapore***	0	1	0	0	0	0	0	0	**11**	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
Bulgaria	0	0	0	0	0	0	0	0	**0**	8	4	2
Peru	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 a moderate enforcer; without a major case with substantial sanctions being concluded in the past four years, a country does not qualify as an active enforcer; ***Non-OECD Convention country

COUNTRY/REGIONAL EXPERTS

Country/region	National experts
Argentina	Alejandra Bauer, Transparency and Anti-Corruption Coordinator, Poder Ciudadano (Transparency International Argentina)
Australia	Serena Lillywhite, former CEO, Transparency International Australia Alexandra Lamb, Policy and Communications Coordinator, Transparency International Australia
Brazil	Guilherme France, Lawyer
Bulgaria	Ecaterina Camenscic, Lawyer
Canada	Jennifer Quaid, Professor, University of Ottawa James Cohen, Executive Director, Transparency International Canada Amee Sandhu, Lawyer, Lex Integra
Chile	Michel Figueroa Mardones, Research Director, Chile Transparente (Transparency International Chile) David Zavala, Project Coordinator, Chile Transparente (Transparency International Chile)
Colombia	Andres Hernandez, Executive Director, Corporación Transparencia por Colombia (Transparency International Colombia)
Costa Rica	Guillermo Zeledón, Executive Director, Costa Rica Íntegra (Transparency International Costa Rica) Evelyn Villarreal, President, Board of Directors, Costa Rica Íntegra (Transparency International Costa Rica)
Denmark	Karinna Bardenfleth, Member of the Board of Directors, Transparency International Denmark
Finland	Pekka Suominen, Partner, Mercatoria Attorneys Ltd
France	Laurence Fabre, Business Integrity Officer, Transparency International France Sara Brimbeuf, Senior Advocacy Officer, Transparency International France
Germany	Angela Reitmaier, Member of the Board of Directors, Transparency International Germany
Greece	Antonis Baltas, Lawyer
Hungary	Miklos Ligeti, Head of Legal Affairs, Transparency International Hungary
India	Ashutosh Kumar Mishra, Lawyer, Managing Partner, Anbay Legal
Ireland	John Devitt, Chief Executive Transparency International Ireland
Israel	Orly Doron, Lawyer
Italy	Susanna Ferro, Advocary Officer, Transparency International Italy

	Aiste Galinyte, Researcher, Transparency International Italy Ginevra Campalani, Lawyer Alessio Ubaldi, Lawyer
Lithuania	Deimantė Žemgulytė, Project Leader, Transparency International Lithuania Sergejus Muravjovas, Executive Director, Transparency International Lithuania
Mexico	Paola Palacios, International Affairs Coordinator, Transparencia Mexicana (Transparency International Mexico)
Netherlands	Lotte Rooijendijk, Transparency International Netherlands
New Zealand	Julie Haggie, Chief Executive Officer, Transparency International New Zealand
Norway	Guro Slettemark, Secretary General, Transparency International Norway
Peru	Samuel Rotta, Executive Director, Proética (Transparency International Peru)
Poland	Maria Kozlowska, Advocat, Wardynski & Partners
Portugal	João Oliveira, Communications Officer, Transparência & Integridade (Transparency International Portugal)
Russia	Grigory Mashanov, Senior Lawyer, Transparency International Russia
South Africa	Nicki Van 't Riet, Head of Legal and Investigations, Corruption Watch (Transparency International South Africa)
Spain	David Martinez, Executive Director, Transparency International Spain
Sweden	Lotta Rydstrom, Transparency International Sweden Klara Edenmo, Transparency International Sweden
Switzerland	Walter Mäder, Member of Advisory Board, Transparency International Switzerland
Turkey	Gizem Sema, Researcher, Transparency International Turkey
United Kingdom	Angus Sargent, Senior Research Analyst, Transparency International UK Steve Goodrich, Head of Research and Investigations, Transparency International UK
United States	Daniel Fishbein, Lawyer, Stroock

The authors would like to thank Ropes & Gray and the International Lawyers Project for their support with this report.

We are also grateful to our reviewers from the Transparency International Secretariat: Kush Amin, Julius Hinks and Roberto Kukutschka.

ENDNOTES

[1] UNCTAD, World Investment Report 2022: https://unctad.org/press-material/global-foreign-direct-investment-recovered-pre-pandemic-levels-2021-uncertainty; https://www.oecd.org/trade/morenews/international-trade-statistics-trends-in-fourth-quarter-2021.htm

[2] https://www.crowell.com/files/2020-Fall-Gap-Year-hanusik-zelenko-aviad-schwartz.pdf

[3] The full name is the "Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions complements the Anti-Bribery Convention". See: https://www.oecd.org/corruption/2021-oecd-anti-bribery-recommendation.htm

[4] OECD website: https://www.oecd.org/corruption/2021-oecd-anti-bribery-recommendation.htm

[5] Annex to resolution of the UN General Assembly adopted on 2 June 2021, "Our common commitment to effectively addressing challenges and implementing measures to prevent and combat corruption and strengthen international cooperation" (Political Declaration): https://undocs.org/A/S-32/2/ADD.1

[6] Iceland is not included because of its small share of international trade.

[7] For the sake of convenience, they will all be referred in the report as "countries".

[8] OECD Convention on Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention, 1997), Preamble

[9] https://www.oecd.org/daf/anti-bribery/OECD-Anti-Bribery-Convention-Enforcement-Data-2021.pdf

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

[11] https://star.worldbank.org/sites/star/files/the-gfar-principles.pdf

[12] https://fcpa.stanford.edu/enforcement-actions.html

[13] https://fcpa.stanford.edu/fcpac-reports/2022-fcpa-q2-report.pdf

[14] https://www.crowell.com/files/2020-Fall-Gap-Year-hanusik-zelenko-aviad-schwartz.pdf

[15] See, for example: https://www.financierworldwide.com/white-collar-crime-in-the-post-covid-19-landscape

[16] https://www.crowell.com/files/2020-Fall-Gap-Year-hanusik-zelenko-aviad-schwartz.pdf

[17] Ibid.

[18] https://abmagazine.accaglobal.com/global/articles/2020/specials/cpd-special-edition-2020/in-business/white-collar-crime-on-the-rise.html

[19] https://abmagazine.accaglobal.com/global/articles/2020/specials/cpd-special-edition-2020/in-business/white-collar-crime-on-the-rise.html; https://www.crowell.com/files/2020-Fall-Gap-Year-hanusik-zelenko-aviad-schwartz.pdf

[20] See, for example: https://www.financierworldwide.com/white-collar-crime-in-the-post-COVID-19-landscape#.YuWv3BxBw2w; https://www.eastnets.com/newsroom/anti-pandemic-financial-crime-how-COVID-19-has-affected-aml-and-cdd

[21] https://www.iclr.co.uk/wp-content/uploads/media/vote/1915-1945/McCarthy_kb1924-1-256.pdf

[22] See, for example, OECD WGB Phase 4 report on Czech Republic (June 2017).

[23] https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0378, Sanctions and confiscation XV. (iii)

[24] 2021 Anti-Bribery Recommendation

[25] See, for example, OECD WGB Phase 3 Report on Belgium (2017); Phase 4 Report on Germany (2018); Phase 4 Report on Switzerland (2018).

[26] https://www.lemonde.fr/les-decodeurs/article/2018/06/28/l-ouverture-des-donnees-judiciaires-ouvre-un-marche-ou-s-agitent-de-nouveaux-acteurs_5322679_4355770.html

[27] https://www.canlii.org/fr/qc/qccs/doc/2022/2022qccs1967/2022qccs1967.html

[28]International Council on Human Rights Policy, 2009, Integrating Human Rights in the Anti-Corruption Agenda: https://assets.publishing.service.gov.uk/media/57a08b6540f0b64974000b10/humanrights-corruption.pdf

[29] 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

[30] *SERAP v Nigeria*, 2011, http://serap-nigeria.org/ecowas-court-orders-nigeria-to-provide-free-and-compulsory-education-to-everychild.ngo/

[31] UNCAC Articles 32(5) and 35; Council of Europe Civil Law Convention on Corruption: https://www.coe.int/en/web/impact-convention-human-rights/civil-law-convention-on-corruption; the UN Guiding Principles on Business and Human Rights, Pillar III also calls for victims' remedies and is applicable in foreign bribery cases: https://www.ohchr.org/sites/default/files/documents/publications/guidingprinciplesbusinesshr_en.pdf

[32] UNCAC Articles 32 and 35

[33] UNCAC Article 53: "Each state party shall in accordance with its domestic law … (b) take such measures as may be necessary to permit its courts to order those who have committed offences established in accordance with this Convention to pay compensation or damages to another state party that has been harmed by such offences."

[34] https://www.ohchr.org/en/instruments-mechanisms/instruments/declaration-basic-principles-justice-victims-crime-and-abuse

[35] Recommendation XVI (i) and (ii)

[36] Commentaries adopted by the Negotiating Conference (1997), paras. 21 and 22: https://www.oecd.org/daf/anti-bribery/ConvCombatBribery_ENG.pdf

[37] https://rm.coe.int/168008371f

[38] https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32014L0042&rid=9

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

[40] https://www.sentencingcouncil.org.uk/offences/magistrates-court/item/corporate-offenders-fraud-bribery-and-money-laundering/; https://www.cps.gov.uk/sites/default/files/documents/publications/General-Principles-to-compensate-overseas-victims-December-2017.pdf; https://www.sfo.gov.uk/publications/information-victims-witnesses-whistleblowers/compensation-principles-to-victims-outside-the-uk/

[41] https://fcpablog.com/2011/06/18/ice-loses-victim-claim-in-eleventh-circuit/; https://fcpablog.com/2011/05/05/costa-rican-victim-objects-to-alcatel-lucent-settlement/

[42] https://www.reuters.com/article/us-iraq-oil-un-idUSL2969467520080701; https://www.casemine.com/judgement/us/5914f52aadd7b04934989392; https://www.reuters.com/article/iraq-oilforfood-lawsuit-idUSL1N0B69WG20130206

[43] Sometimes even *ultra vires* acts (i.e., beyond the scope of their power) of an official are attributed to the state, under Article 7 of the International Law Commission's 2001 Articles on Responsibility of States for Internationally Wrongful Acts (the "ILC Articles"). However, the Commentary to the ILC Articles states: *Cases where officials acted in their capacity as such, albeit unlawfully or contrary to instructions, must be distinguished from cases where the conduct is so removed from the scope of their official functions that it should be assimilated to that of private individuals, not attributable to the State*. *In the words of the Iran-United States Claims Tribunal, the question is whether the conduct has been "carried out by persons cloaked with governmental* authority."

[44] https://www.service-public.fr/particuliers/vosdroits/F1454

[45] Shell plc and Eni SpA were prosecuted in Italy over allegations of corruption in connection with their acquisition of the OPL 245 oilfield for US$1.3 billion in 2011. Prosecutors had alleged that just under US$1.1 billion of the total amount was siphoned

off to politicians and middlemen. Nigeria's compensation claim was filed after it joined the case as a civil party in 2018, based on its assessment of the true value of the licence purchased by Shell and Eni. See: https://news.bloomberglaw.com/environment-and-energy/nigeria-to-pursue-3-5-billion-civil-claim-against-eni-and-shell; https://www.reuters.com/business/energy/italy-court-confirms-acquittal-eni-shell-nigeria-case-2022-07-19; https://punchng.com/fg-continues-3-5bn-eni-shell-suit-italy-drops-charges/

[46] https://www.reuters.com/business/energy/italy-court-confirms-acquittal-eni-shell-nigeria-case-2022-07-19/

[47] https://www.reuters.com/article/us-congo-passports-belgium-idUSKBN22P2ZB

[48] The lawyers will have to demonstrate that corruption results in – or is in and of itself – a human rights violation.

[49] Cour de cassation, 9 November 2010, no. J 09-88.272 F-D ; Loi n° 2013-907 du 11 octobre 2013 relative à la transparence de la vie publique

[50] https://www.law.cornell.edu/uscode/text/18/3663 The MVRA does not apply if "the court finds, from facts on the record, that ... (A) the number of identifiable victims is so large as to make restitution impracticable; or (B) determining complex issues of fact related to the cause or amount of the victim's losses would complicate or prolong the sentencing process to a degree that the need to provide restitution to any victim is outweighed by the burden on the sentencing process." Id. § 3663A(c)(3). https://www.law.cornell.edu/uscode/text/18/3663A

[51] https://www.service-public.fr/particuliers/vosdroits/F1454

[52] https://www.pgr.go.cr/servicios/procuraduria-de-la-etica-publica-pep/temas-de-interes-pep/dano-social/forma-de-reclamar-el-dano-social; Costa Rica has defined 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". 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

[53] https://ticotimes.net/2015/08/05/alcatel-lucent-indemnifies-costa-ricas-ice-10-million-settlement-corruption-case

[54] Code of Criminal Procedure Article 94: https://wipolex.wipo.int/en/text/202824

[55] Code of Criminal Procedure Article 94(d)

[56] Law No. 7,347 enacted in 1985 (Class Action Law). See: https://uk.practicallaw.thomsonreuters.com/9-617-6649?transitionType=Default&contextData=(sc.Default)&firstPage=true. The Class Action Law is mentioned in Article 21 of the Anti-Corruption Law establishing the rules for the civil and administrative liability of legal entities that carry out acts against national or foreign governments, but its application remains to be tested. http://extwprlegs1.fao.org/docs/pdf/bra208353E.pdf; http://extwprlegs1.fao.org/docs/pdf/bra208353E.pdf

[57] https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1790&context=cjil

[58] 18 U.S.C. § 3771. In a recent case against commodities trading firm Glencore Ltd, a victim state entity has been given the opportunity to present a compensation claim in relation to an oil price-rigging scheme following a Glencore guilty plea on charges of foreign bribery and market manipulation. A United States federal district court delayed sentencing from June to September 2022 to allow the Mexican state oil company Petroleos Mexicanos (Pemex) time to submit a crime victim statement in relation to financial losses it allegedly suffered from Glencore's oil price-rigging scheme. The same kind of opportunity should be provided to victims of foreign bribery. https://www.justice.gov/opa/pr/glencore-entered-guilty-pleas-foreign-bribery-and-market-manipulation-schemes; https://news.bloomberglaw.com/securities-law/glencore-sentencing-delayed-as-pemex-seeks-restitution-for-fraud. In the FCPA part of the case, the US DOJ charged that Glencore, acting through its employees and agents, had engaged in a scheme for over a decade to pay more than US$100 million to third-party intermediaries, while intending that a significant portion of the payments would be used to pay bribes to officials in Nigeria, Cameroon, Ivory Coast, Equatorial Guinea, Brazil, Venezuela and the Democratic Republic of the Congo (DRC).

[59] See Italian Penal Code Articles 165 and 322.

[60] https://www.oecd.org/daf/anti-bribery/Resolving-foreign-bribery-cases-with-non-trial-resolutions.pdf; https://www.agence-francaise-anticorruption.gouv.fr/files/files/Lignes%20directrices%20PNF%20CJIP.pdf under Article 41-1-2 of the Code of Criminal Procedure, the amount of the public interest fine is determined in proportion to the benefits derived from the wrongdoing, capped at 30 per cent of the company's average annual turnover, and calculated on the basis of the turnover of the last three years available on the date the wrongdoing is recognised.

[61] https://www.legifrance.gouv.fr/loda/id/JORFTEXT000033202746/

[62] https://www.agence-francaise-anticorruption.gouv.fr/files/files/CJIP%20AIRBUS_English%20version.pdf ; https://www.ropesgray.com/en/newsroom/alerts/2020/01/Four-Years-and-Almost-4-Billion-Airbus-Corruption-Investigations-End-with-Sky-High-Fine; https://www.clearygottlieb.com/news-and-insights/publication-listing/airbus-enters-into-a-coordinated-resolution-of-foreign-bribery-investigation; https://www.justice.gov/opa/pr/airbus-agrees-pay-over-39-billion-global-penalties-resolve-foreign-bribery-and-itar-case

[63] https://www.ppsc-sppc.gc.ca/eng/pub/fpsd-sfpg/fps-sfp/tpd/p3/ch21.html

[64] While it was a domestic bribery case, some similarities in approach can be expected for settlements in foreign bribery cases, though the latter cases are handled by federal prosecutors from the Public Prosecution Service of Canada.

[65] SNC Lavalin was required to pay CAD3.5 million (US$ XX million) – the amount of the bribe paid plus interest - as compensation to the corporation with which it contracted, as well as a CAD5.4 million (US$XX million) victim surcharge. It also paid a penalty of approximately CAD18.1 million (US$ XX million) and CAD2.5 million (US$XX million) was confiscated as proceeds of crime: https://www.dwpv.com/en/Insights/Publications/2022/First-Remediation-Agreement-under-Canadian-Criminal-Code; https://mcmillan.ca/insights/we-have-a-dpa-prosecutors-agree-to-deferred-prosecution-agreement-with-snc-lavalin/; https://www.thestar.com/business/2022/05/06/snc-lavalin-to-pay-30m-under-agreement-with-quebec-over-bridge-bribes.html

[66] Criminal Code Part XXII.1 715.3(1) et seq.

[67] Since there is no requirement for a victim surcharge to be imposed for offences under the Corruption of Foreign Public Officials Act, the RA regime provides that no victim surcharge is required in cases under the CFPOA. Despite this, in two earlier cases of foreign bribery, Niko Resources (2011) and Griffiths Energy (2013), settled through plea agreements before the RA regime existed, a victim surcharge amount of 15% of the fine was imposed. No explanation was provided for deviating from the default rate of 30% set out in the Criminal Code section 737(2)

[68] https://casetext.com/case/united-states-v-oz-africa-mgmt-gp-llc; https://www.reuters.com/article/securities-ochziff-corruption-idUSL1N2HR02P; https://www.raid-uk.org/blog/us-court-orders-135-million-shareholders-stolen-dr-congo-mine-local-communities-left-out; https://globalanticorruptionblog.com/2020/12/17/a-breaththrough-in-recognizing-who-is-a-corruption-victim/

[69] https://www.justice.gov/opa/pr/och-ziff-capital-management-admits-role-africa-bribery-conspiracies-and-agrees-pay-213

[70] https://globalanticorruptionblog.com/2020/12/17/a-breaththrough-in-recognizing-who-is-a-corruption-victim/

[71] https://www.sfo.gov.uk/2022/02/21/sfo-investigation-delivers-over-200000-compensation-for-the-people-of-nigeria/

[72] https://www.sfo.gov.uk/2021/07/02/sfo-enters-into-103m-dpa-with-amec-foster-wheeler-energy-limited-as-part-of-global-resolution-with-us-and-brazilian-authorities/

[73] https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup2/2017-August-24-25/V1705952e.pdf

[74] https://www.transparency.org/en/press/france-a dopts-new-provision-for-returning-stolen-assets-and-proceeds-of-crime-a-step-forward-with-room-for-improvement ; https://www.diplomatie.gouv.fr/en/french-foreign-policy/development-assistance/france-has-a-new-recovery-mechanism-for-illicit-assets/; however, this mechanism is not available in the context of non-trial resolutions.

[75] https://www.diplomatie.gouv.fr/en/french-foreign-policy/development-assistance/france-has-a-new-recovery-mechanism-for-illicit-assets/

[76] 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 the “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, the principles of federal prosecution of organisations and sentencing guidelines allow for credit given for restitution or other forms of remediation, under 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

[77] In 2011 the Attorney General's Office issued a summary penalty order against Alstom Network Schweiz in a case involving the payment of bribes in Latvia, Malaysia and Tunisia, but the charges were dropped against the parent company Alstom S.A. on four grounds, one of which was that it had paid voluntary reparations under Article 53 of the Swiss Criminal Code, in the amount of CHF1 million transferred to the International Committee of the Red Cross (ICRC) for its projects in Latvia, Malaysia and Tunisia. In another Swiss case concerning bribery in Haiti, the defendants found guilty at trial were issued an order to pay restitution to the Haitian government, pp. 107 and 114 at https://star.worldbank.org/sites/star/files/9781464800863.pdf

[78] To resolve the SEC's charges of fraud and FCPA violations, Credit Suisse also paid disgorgement of US$34 million to the SEC plus a US$65 million civil penalty. To resolve the criminal investigation involving allegations of fraud, it agreed to pay US$175 million to the DOJ, which is reduced from a larger amount that included US$10.34 million in criminal forfeiture. It also paid US$200 million to the UK Financial Conduct Authority (FCA) in a related resolution, https://www.reuters.com/legal/transactional/credit-suisse-units-sentencing-delayed-tally-victim-claims-2022-04-29/. An interesting aspect of the settlement was that Credit Suisse also agreed to a methodology to calculate the proximate loss for international investors who were victims of its criminal fraud, with the amount of restitution payable to victims to be determined in a future proceeding.

[79] https://www.sec.gov/news/press-release/2021-213; https://www.dw.com/en/mozambique-hidden-debt-trial-exposes-depth-of-corruption/a-59052690

[80] https://www.theguardian.com/business/2021/oct/19/credit-suisse-fined-350m-over-mozambique-tuna-bonds-loan-scandal

[81] https://www.cmi.no/news/2793-mozambique-hidden-debt-scandal

[82] https://www.gibsondunn.com/2021-year-end-fcpa-update/

[83] https://www.cmi.no/news/2793-mozambique-hidden-debt-scandal

[84] https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/workinggroup2/2017-August-24-25/V1705952e.pdf

[85] https://www.justice.gc.ca/eng/rp-pr/cj-jp/victim/rr16_vic/p1.html

[86] Law 2195/2022, https://www.funcionpublica.gov.co/eva/gestornormativo/norma.php?i=175606

[87] https://www.iadb.org/en/news/odebrecht-reaches-settlement-agreement-idb-group-resulting-sanctions-0

[88] https://star.worldbank.org/sites/star/files/the-gfar-principles.pdf

[89] https://ungass2021.unodc.org/uploads/ungass2021/documents/session1/contributions/UNGASS_-_Submission_of_ANEEJ_CiFAR_CISLAC_HRW_I_Watch_ISCI_TI_EU_TI_France.pdf

[90] https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-80393.html. Regarding the charges in the US, see, for example: https://www.justice.gov/usao-sdny/pr/former-uzbek-government-official-and-uzbek-telecommunications-executive-charged-bribery

[91] https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-89949.html

[92] https://www.rferl.org/a/uzbekistan-10-million-france-karimova/31704780.html

[93] https://transparency-france.org/actu/restitution-par-la-france-a-louzbekistan-des-avoirs-acquis-illegalement-par-gulnara-karimova-une-occasion-manquee/#.YzCTBkxBw2x

[94] Estonian Judges Association (2022) cited in: https://ec.europa.eu/info/sites/default/files/18_1_194002_coun_chap_estonia_en.pdf

[95] https://www.oecd.org/daf/anti-bribery/Resolving-foreign-bribery-cases-with-non-trial-resolutions.pdf page 214

[96] See, for example: https://www.sec.gov/news/press-release/2021-213; https://www.justice.gov/opa/pr/goldman-sachs-charged-foreign-bribery-case-and-agrees-pay-over-29-billion

[97] https://www.justice.gov/opa/pr/deutsche-bank-agrees-pay-over-130-million-resolve-foreign-corrupt-practices-act-and-fraud; https://www.justice.gov/opa/press-release/file/1351746/download; https://www.sec.gov/enforce/sec-enforcement-actions-fcpa-cases

[98] https://www.finanstilsynet.no/en/news-archive/inspection-reports/2021/inspection-report--dnb-bank-asa/; https://news.cision.com/dnb-asa/r/finanstilsynet-confirms-administrative-fine,c3338351

[99] https://www.finanstilsynet.no/en/publications/annual-report/annual-report-2021/reports-from-the-supervised-sectors-for-2021/money-laundering-and-financing-of-terrorism/; https://www.finanstilsynet.no/en/news-archive/inspection-reports/2021/inspection-report--dnb-bank-asa/

[100] https://www.reuters.com/article/us-namibia-iceland-idUSKBN1XN2FF; https://www.icelandreview.com/news/samherji-accused-of-tax-evasion-and-bribery-in-namibia/; https://www.transparency.org/en/press/iceland-samherji-fishrot-files-bribery-dirty-tactics-against-critics-exposed; https://www.samherji.is/en/the-company/news/samherji-not-party-to-case-between-finanstilsynet-and-dnb; https://www.icelandreview.com/news/samherji-accused-of-tax-evasion-and-bribery-in-namibia/

[101] https://www.finanstilsynet.no/en/news-archive/inspection-reports/2021/inspection-report--dnb-bank-asa/

[102] https://www.fca.org.uk/publication/final-notices/final-notice-2022-jlt-specialty-limited.pdf; https://www.justice.gov/criminal-fraud/file/1486266/download; https://www.fca.org.uk/news/press-releases/jlt-specialty-limited-fined-7.8m-pounds-financial-crime-control-failings

[103] https://assets.ctfassets.net/1u811bvgvthc/4eUXF7eCnLthKp95RNnMnz/645730a7cd044da33ef4ad1545470f12/Statement_of_Facts_-_ABN_AMRO_Guardian.pdf

[104] https://www.rferl.org/a/ing-to-pay-900-million-for-failing-to-prevent-financial-crime/29471803.html

[105] https://apnews.com/article/europe-business-143b16cb11e26d5626b9a78767c7d870

[106] https://www.publiceye.ch/en/media-corner/press-releases/detail/dubious-transactions-involving-kabilas-clan-and-ubs-a-criminal-complaint-filed-in-switzerland

[107] https://www.fca.org.uk/news/press-releases/fca-fines-commerzbank-london-37805400-over-anti-money-laundering-failures

[108] https://www.amlintelligence.com/2021/05/insurance-arm-of-french-banking-giant-faces-multi-million-euro-penalty-for-aml-failings/

[109] https://www.justice.gov/opa/pr/goldman-sachs-charged-foreign-bribery-case-and-agrees-pay-over-29-billion

[110] IPIC agreed to be a guarantor of a 2012 1MDB debt deal, a role that helped the bond offering move ahead; https://news.bloomberglaw.com/banking-law/goldman-hit-with-record-u-s-bribery-fine-over-1mdb-scandal

[111] https://www.justice.gov/usao-edny/pr/goldman-sachs-resolves-foreign-bribery-case-and-agrees-pay-over-29-billion

[112] https://www.justice.gov/opa/pr/goldman-sachs-charged-foreign-bribery-case-and-agrees-pay-over-29-billion

[113] https://www.straitstimes.com/business/banking/understanding-goldman-sachs-role-in-the-1mdb-mega-scandal

[114] https://www.justice.gov/opa/pr/goldman-sachs-charged-foreign-bribery-case-and-agrees-pay-over-29-billion;

[115] https://www.justice.gov/opa/pr/goldman-sachs-charged-foreign-bribery-case-and-agrees-pay-over-29-billion

[116] https://www.justice.gov/opa/pr/goldman-sachs-charged-foreign-bribery-case-and-agrees-pay-over-29-billion

[117] https://www.reuters.com/article/us-goldman-sachs-1mdb-settlement-explain-idUSKBN2772HC

[118] The penalty amount includes a fine of US$126 million imposed by the UK's Financial Conduct Authority and Prudential Regulation Authority, a fine of US$122 million imposed by the Singapore government and a fine of US$350 million to be paid to Hong Kong's authorities.

[119] https://www.justice.gov/opa/pr/goldman-sachs-charged-foreign-bribery-case-and-agrees-pay-over-29-billion

[120] https://www.sec.gov/news/press-release/2020-265; https://www.bbc.com/news/business-54597256

[121] https://mlexmarketinsight.com/news-hub/editors-picks/area-of-expertise/anti-bribery-and-corruption/hong-kongs-goldman-1mdb-fine-is-separate-from-us-led-settlement-says-citys-regulator

[122] https://www.theguardian.com/business/2018/dec/21/malaysia-seeks-75bn-damages-from-goldman-over-1mdb-scandal

[123] https://www.bloomberg.com/news/articles/2022-05-14/goldman-agrees-to-settle-suit-over-1mdb-for-79-5-million

[124] https://www.justice.gov/opa/pr/over-1-billion-misappropriated-1mdb-funds-now-repatriated-malaysia (The total amount seized as of August 2021 was over US$1.7 billion.)

[125] https://www.justice.gov/criminal-fraud/file/1329911/download

[126] https://www.bloomberg.com/news/articles/2022-07-06/ex-goldman-banker-leissner-s-1mdb-sentencing-delayed-until-2023?leadSource=uverify%20wall

[127] https://www.justice.gov/opa/pr/malaysian-financier-low-taek-jho-also-known-jho-low-and-former-banker-ng-chong-hwa-also-known

[128] https://www.aljazeera.com/economy/2019/8/9/malaysia-charges-17-goldman-sachs-employees-over-1mdb-scandal;

[129] https://www.reuters.com/article/ipic-1mdb-goldman-sachs-int-idUSKBN2762WA

[130] https://www.argentina.gob.ar/sites/default/files/rite_consideraciones_generales_junio2021.pdf

[131] https://www.boletinoficial.gob.ar/detalleAviso/primera/251280/20211019?busqueda=1

[132] https://www.mpf.gob.ar/transparencia-activa/files/2019/03/Informe_Anual_MPFN-2018.pdf

[133] https://www.cij.gov.ar/causas-de-corrupcion.html

[134] http://servicios.infoleg.gob.ar/infolegInternet/anexos/0-4999/383/texact.htm

[135] https://www.oecd.org/daf/anti-bribery/Australia-Phase-4-Addendum-to-the-follow-up-report.pdf (on page 5)

[136] https://www.oecd.org/daf/anti-bribery/Australia-Phase-4-Addendum-to-the-follow-up-report.pdf

[137] https://www.abc.net.au/news/2021-06-10/nauru-getax-australia-bribery-corruption-charges/100201344; https://www.abc.net.au/pacific/programs/pacificbeat/australian-company-facing-nauru-bribery-charge/13379790

[138] https://www.afr.com/companies/energy/asx-oil-firm-mired-in-15m-png-bribery-scandal-20200207-p53ypj; https://www.afr.com/companies/energy/federal-police-examine-horizon-oil-corruption-allegations-20200210-p53zeb

[139] https://www.investordaily.com.au/markets/46487-feds-probe-horizon-over-corruption-claims; https://fcced.com/australian-banks-link-horizon-oil-bribery-probe-14320925/; https://www.abc.net.au/pacific/programs/pacificbeat/call-for-png-gov-to-act-after-horizon-oil-bribery-allegations/11960764

[140] https://www.ft.com/content/66aeb1b9-7f7a-4713-866c-c756d82bf3c5; https://www.spglobal.com/marketintelligence/en/news-insights/trending/geufhumwnyakk7qy007gga2

[141] https://www.smh.com.au/business/companies/afp-to-examine-iluka-bribery-concerns-in-africa-20170825-gy4h27.html

[142] https://www.reuters.com/article/us-sundance-rsc-congorepublic-idUSKCN110019

[143] https://www.abc.net.au/news/2018-04-12/engineering-firm-working-on-snowy-hydro-investigated-overseas/9647482

[144] https://www.worldbank.org/en/news/press-release/2017/09/28/world-bank-announces-settlement-relating-to-misconduct-in-world-bank-financed-projects-in-the-south-asia-region

[145] Courts publish decisions on their own websites. For example, the Australian Federal Court: http://www.federalcircuitcourt.gov.au/wps/wcm/connect/fccweb/reports-and-publications/publications. Decisions of all courts can be found at http://www.austlii.edu.au/, a joint facility run by the University of Technology Sydney and the University of UNSW Faculties of Law.

[146].https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2019_11_29_Australia_Final_Country_Report_first_cycle.pdf

[147] See page 35 at https://www.oecd.org/daf/anti-bribery/Resolving-foreign-bribery-cases-with-non-trial-resolutions.pdf

[148] https://ec.europa.eu/info/sites/default/files/46_1_194005_coun_chap_austria_en.pdf

[149] Sicherheitsberichte (justiz.gv.at)

[150] https://www.justiz.gv.at/home/service/opferhilfe-und-prozessbegleitung/opfer-und-opferrechte.2c94848a542b5c16015581a118da5055.de.html

[151] Section 373b CCP https://www.ris.bka.gv.at/GeltendeFassung.wxe?Abfrage=Bundesnormen&Gesetzesnummer=10002326

[152] https://www.lachambre.be/FLWB/PDF/55/1380/55K1380001.pdf

[153] https://juportal.be/home/welkom

[154] Belgium Phase 3 Report, recommendation 5

[155] Article 63 of the Belgian Code of Criminal Instruction (*Code d'instruction criminelle*)

[156] https://www.reuters.com/article/us-congo-passports-belgium/congolese-citizens-bring-civil-action-in-belgium-against-passport-maker-idUSKBN22P2ZB; https://medor.coop/documents/66/2020_FIDH-LDH-UNIS_Semlex_Plainte_FR.pdf

[157] https://www.cnnbrasil.com.br/politica/desde-a-posse-aras-foi-contra-74-pedidos-de-investigacao-contra-bolsonaro-e-a-favor-de-1/; https://www1.folha.uol.com.br/poder/2021/12/denuncias-e-propostas-da-cpi-da-covid-travam-no-senado-e-na-pgr.shtml; https://www.jota.info/stf/do-supremo/pgr-pede-arquivamento-de-7-das-10-investigacoes-contra-bolsonaro-e-aliados-25072022;

https://g1.globo.com/politica/noticia/2022/08/29/escandalo-do-mec-pgr-defende-rejeitar-pedido-de-investigacao-de-senador-contra-bolsonaro-por-suposta-interferencia-na-pf.ghtml; https://noticias.uol.com.br/ultimas-noticias/agencia-estado/2022/08/17/pgr-recorre-para-arquivar-investigacao-sobre-inquerito-vazado-por-bolsonaro.htm

[158] https://oglobo.globo.com/politica/reducao-de-forcas-tarefa-freia-ritmo-de-investigacoes-de-crimes-de-colarinho-branco-25112236; https://noticias.uol.com.br/ultimas-noticias/agencia-estado/2022/02/01/prisoes-da-pf-por-corrupcao-tem-menor-patamar-em-14-anos.htm

[159] https://www1.folha.uol.com.br/poder/2022/04/modelo-de-aras-que-substituiu-lava-jato-tem-improviso-e-estruturas-precarias.shtml

[160] https://www.poder360.com.br/justica/cnmp-instaura-processo-administrativo-contra-procuradores-da-lava-jato-rio/

[161] https://g1.globo.com/politica/noticia/2022/08/09/camara-do-tcu-condena-dallagnol-janot-e-procurador-a-ressarcir-cofres-publicos-por-diarias-e-passagens.ghtml

[162] https://br.noticias.yahoo.com/funcion%C3%A1rios-minist%C3%A9rio-da-justi%C3%A7a-relataram-173551995.html

[163] https://www.cnnbrasil.com.br/nacional/bolsonaro-troca-diretor-geral-da-policia-federal/; https://www1.folha.uol.com.br/poder/2022/02/governo-bolsonaro-troca-de-novo-diretor-geral-da-policia-federal.shtml

[164] https://www.metropoles.com/colunas/guilherme-amado/governo-bolsonaro-ja-puniu-ou-demitiu-18-delegados-da-pf-em-retaliacao

[165] https://oglobo.globo.com/politica/de-70-casos-da-lava-jato-transferidos-para-justica-eleitoral-apenas-um-resultou-em-condenacao-1-24169607

[166] https://www.conjur.com.br/2022-abr-29/ministro-anula-acao-lava-jato-manda-autos-justica-eleitoral

[167] https://www.conjur.com.br/2021-jun-28/lewandowski-proibe-uso-delacao-odebrecht-instituto-lula

[168] https://www.conjur.com.br/2021-out-08/sindicancia-isentou-lava-jato-nao-afetara-casos-stf

[169] See page 5 at: https://www.oecd.org/corruption/acn/OECD-International-Cooperation-in-Corruption-Cases-2017.pdf

[170] http://www.mpf.mp.br/atuacao-tematica/ccr5/painel-acordos

[171] http://paineis.cgu.gov.br/corregedorias/index.htm

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

[173] https://www.cnj.jus.br/programas-e-acoes/processo-judicial-eletronico-pje/

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

[175] http://www.justica.gov.br/sua-protecao/cooperacao-internacional/estatisticas

[176] Restitution is referenced in two articles of the Anti-Corruption Law: Article 6(II) Paragraph 3 which states that "The application of the sanctions set forth in this Article does not exclude, in any case, the obligation of full restitution for the damage caused." and Article 16 (III) Paragraph 3 which states that "The leniency agreement does not exempt the legal entity from its obligation to make full restitution for the damages caused." In addition, in Article 21 on Judicial Liability, the Anti-Corruption Law states the following: The procedures set forth in Law N. 7,347, of July 24, 1985 [the Class Action Law] will be adopted as the procedure for the judicial action. Sole paragraph. The condemning judgment shall render certain the obligation to fully repair the damage caused by the wrongful act, which amount is to be determined in a subsequent liquidation process, in case it is not expressly indicated in the issued decision.

[177] https://exame.com/brasil/bretas-libera-mais-de-r-660-milhoes-apreendidos-na-lava-jato/

[178] https://www.justice.gov/opa/pr/odebrecht-and-braskem-plead-guilty-and-agree-pay-least-35-billion-global-penalties-resolve; https://www.gov.br/cgu/pt-br/assuntos/combate-a-corrupcao/acordo-leniencia/acordos-firmados/odebrecht.pdf

[179] https://www.justice.gov/opa/pr/petr-leo-brasileiro-sa-petrobras-agrees-pay-more-850-million-fcpa-violations

[180] For example, the endowment envisioned supporting communities in localities where investments from Petrobras were halted owing to the corruption scandals. More generally, see: https://www.mpf.mp.br/pr/sala-de-imprensa/docs/acordo-fundo-petrobras/view

[181] Transparency International Brazil researched experiences with compensation funds from corruption cases around the world, and published a report on best practices and guidelines for good governance and transparency. See: https://comunidade.transparenciainternacional.org.br/asset/41:governanca-de-recursos-compensatorios-em-casos-de-

corrupcao?stream=1. The prosecutors used some elements of this research as one of their references for governance aspects of their proposed endowment, but failed to follow key recommendations, such as preventing prosecutors and other law enforcement agents from becoming involved in the establishment and governance of the funds.

[182] https://g1.globo.com/politica/noticia/2020/03/22/moraes-determina-que-dinheiro-do-fundo-da-petrobras-va-para-combate-ao-coronavirus.ghtml

[183] https://www.oecd.org/countries/bulgaria/Bulgaria-phase-4-report-en.pdf

[184] OECD WGB Phase 4 Report on Bulgaria (2021) https://www.oecd.org/corruption/anti-bribery/Bulgaria-phase-4-report-en.pdf

[185] The OECD WGB recommends adopting amendments to the procedural regulations to allow anonymous notices to be regarded as a statutory occasion, thus increasing the potential sources of detection of [foreign bribery] cases. OECD 2021, page 30.

[186] Ibid., page 39

[187] According to Article 83a (1) of the Administrative Offences and Sanctions Act (AOSA), monetary sanctions may be imposed on a legal person when foreign bribery is committed by: (a) an individual authorised to formulate the will of the legal person; (b) an individual representing the legal person; (c) an individual elected to a control or supervisory body of the legal person; or (d) an employee to whom the legal person has assigned a certain task, when the crime was committed during or in connection with the performance of said task.

[188] See for instance https://www.euronews.com/2020/10/17/bulgaria-protests-enter-100th-consecutive-day-as-demonstrators-denounce-widespread-corrupt

[189] State Gazette 109/2020

[190] AOSA Articles 83 (3) and 83 (4)

[191] AOSA Article 83a (5) These include the gravity of the offence, the financial position of the legal person, any assistance rendered to disclose the offence and compensate for the damages caused by the offence, the amount of the benefit, and other circumstances.

[192] AOSA Article 83a (8)

[193] AOSA Article 58g

[194] See the Supreme Judicial Council website at http://www.vss.justice.bg/page/view/1082

[195] They conceal the full name of the company, the UIN/VAT identification, and the names of any legal representatives.

[196] https://legalacts.justice.bg/

[197] Prom. SG 7/2018. Initially, non-conviction-based confiscation was instigated through the 2012 Forfeiture of Illegally Acquired Assets Act (SG 38/2012). The latter has been repealed by the PCFIAAA, but the general aspects and principles of the civil confiscation procedure remained unchanged.

[198] Transparency International Bulgaria, Forfeiture of Illegal Assets: Challenges and Perspectives of the Bulgarian Approach, Executive Summary (2014), on page 4: https://www.confiscation.eu/site/wp-content/uploads/2014/03/ExecutiveSummary_Report_BG_en.pdf

[199] PCFIAAA Article 108 (1)

[200] PCFIAAA Article 5 (1)

[201] PCFIAAA Articles 143-146

[202] TI Bulgaria 2014, supra, page 26 https://www.confiscation.eu/site/wp-content/uploads/2014/03/ExecutiveSummary_Report_BG_en.pdf

[203] "Enquête Agrafe 2 de la Gendarmerie royale du Canada: le Directeur des poursuites criminelles et pénales dépose des accusations", Press release, Directeur des poursuites criminelles et pénales du Canada, 23 September 2021. Online: https://www.quebec.ca/nouvelles/actualites/details/enquete-agrafe-2-de-la-gendarmerie-royale-du-canada-le-directeur-des-poursuites-criminelles-et-penales-depose-des-accusations-34816

[204] https://www.rcmp-grc.gc.ca/en/news/2022/statement-remediation-agreement-approved-project-agrafe

[205] R v Barra, R v Govindia, 2021 ONCA 568 (Canlii),

[206] Government of Canada, Federal Budget 2021, Part 4: Fair and Responsible Government, Chapter 10: Responsible Government, 2021, https://www.budget.gc.ca/2021/report-rapport/p4-en.html. The timeline for the implementation of the registry was advanced to 2023 in the 2022 Federal Budget, https://budget.gc.ca/2022/report-rapport/chap5-en.html#2022-3

[207] https://www.international.gc.ca/transparency-transparence/bribery-corruption/2020-2021.aspx?lang=eng

[208] This can happen when a joint submission is made to the court because one of the parties, usually the defence, has prepared the original documents and submits paper copies for endorsement by the judge. The lengthy agreed statement of facts and joint submission on sentence in the settlement of fraud and foreign corruption charges involving SNC-Lavalin Group and two of its subsidiaries is an example of a decision that is not publicly available online in digital form.

[209] Criminal Code Section 718.21(i)

[210] See Jennifer Quaid, "The Limits of Legislation as a Tool of Reform: A Study of the Westray Reform to Organizational Sentencing", 2020 54 RJTUM 511, 550-551.

[211] Criminal Code Section 722 and s. 722.2

[212] Criminal Code Section 715.37(3), (4) and (5)

[213] Criminal Code Section 715.36(3)

[214] Criminal Code Section 715.34(1)(g)

[215] Criminal Code Section 715.37(3)(c)

[216] Criminal Code Section 715.42(5)

[217] Criminal Code Section 715.42(3)(ii)

[218] https://blogs.dal.ca/dlj/2020/09/21/using-the-fines-in-corporate-corruption-cases-to-provide-victim-redress/

[219] http://www.fiscaliadechile.cl and http://www.uaf.cl

[220] This information is available through the unified search engine of the Judicial Authority at: https://www.pjud.cl/; https://www.chileatiende.gob.cl/fichas/10087-consulta-de-estado-de-causas

[221] https://oficinajudicialvirtual.pjud.cl/indexN.php

[222] https://www.bcn.cl/leychile/navegar?idNorma=1125600&buscar=21121

[223] https://www.oecd.org/daf/anti-bribery/Colombia-phase-3-follow-up-report-en.pdf

[224] https://www.oecd.org/daf/anti-bribery/Colombia-phase-3-follow-up-report-en.pdf (on page 7)

[225] https://www.supersociedades.gov.co/Noticias/Paginas/2022/Supersociedades-impone-multa-por-mas-de-8000-millones-a-Carpenter-Marsh-Fac-Colombia-Corredores-de-Reaseguros-por-soborno-t.aspx

[226] Draft bill 008/2019 and draft bill 341/2020. See: https://transparenciacolombia.org.co/2021/06/17/congreso-vuelve-a-fallar-en-proteger-a-denunciantes-de-corrupcion/

[227] https://colaboracion.dnp.gov.co/CDT/Conpes/Econ%C3%B3micos/4070.pdf

[228] https://www.supersociedades.gov.co/delegatura_aec/Paginas/Decisiones_en_firme.aspx

[229] Information provided by the Deputy Prosecutor's Office for Integrity, Transparency and Anti-Corruption

[230] https://cijulenlinea.ucr.ac.cr/portal/descargar.php?q=MTEwMQ==; https://www.icd.go.cr/portalicd/index.php/inicio-ura

[231] Nevertheless, a brief on the regulation of immunities and consular diplomatic privileges and international organisations can be found at the website of the Ministry of Foreign Affairs, https://www.rree.go.cr/?sec=ministerio&cat=protocolo&cont=451#:~:text=Que%20los%20funcionarios%20diplom%C3%A1ticos%20y,materia%2C%20vigentes%20en%20Costa%20Rica

[232] Law 9699: Law on the Responsibility of Legal Persons on Domestic Bribery, Transnational Bribery and Other Crimes, Law No. 9699 of 10 June 2019 at http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=88954&nValor3=116544&strTipM=TC; http://www.mjp.go.cr/Cohecho/Cohecho

[233] https://www.presidencia.go.cr/comunicados/2021/12/estrategia-contra-la-corrupcion-recibe-declaratoria-de-interes-publico

[234] 2022 Rule of Law Report (Czechia), European Commission, pp. 7-11

[235] https://www.poder-judicial.go.cr/planificacion/index.php/estadistica/estadisticas-judiciales

[236] https://nexuspj.poder-judicial.go.cr/

[237] Law No. 8968 at http://www.prodhab.go.cr/reformas/

[238] OECD WGB, Phase 2 Follow-Up Report on Costa Rica (2022), page 8 at https://www.oecd.org/corruption/Costa-Rica-phase-2-follow-up-report-en.pdf

[239] http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=5027&nValor3=96389&strTipM=TC

[240] Code of Criminal Procedure Article 70(d) https://wipolex.wipo.int/en/text/247976

[241] http://www.navaslaw.com/cms/wp-content/uploads/2015/03/victims_rights_under_costa_rican.pdf

[242] Exporting Corruption Report 2020, page 21 at https://files.transparencycdn.org/images/A-slim-version-of-Exporting-Corruption-2020.pdf

[243] https://www.pgr.go.cr/servicios/procuraduria-de-la-etica-publica-pep/temas-de-interes-pep/dano-social/forma-de-reclamar-el-dano-social/ Costa Rica has defined 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". 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

[244] OECD WGB Phase 2 Report on Costa Rica (2020), https://www.oecd.org/corruption/Costa%20Rica-Phase-2-Report-ENG.pdf The "abbreviated procedure" involves an agreement by the accused to plead guilty based on an agreed sentence without trial (Articles 373-375 CCP), and it is available to natural and legal persons at any time before a trial commences (Article 21 CLL).

[245] Law 8968 on Protection of the Person against the Processing of their Personal Data, http://www.pgrweb.go.cr/scij/Busqueda/Normativa/Normas/nrm_texto_completo.aspx?param1=NRTC&nValor1=1&nValor2=70975&nValor3=85989

[246] http://www.pgrweb.go.cr/scij/Busqueda/Normativa/pronunciamiento/pro_ficha.aspx?param1=PRD&param6=1&nDictamen=22655&strTipM=T#:~:text=La%20extinci%C3%B3n%20de%20dominio%20es,naturaleza%20alguna%20para%20el%20afectado

[247] Act No. 40/2009 Coll., the Criminal Code lists the following criminal offences related to bribery: reception of a bribe, bribery (provision of a bribe) and indirect bribery (reception or provision of a bribe through another person) (the "bribery crimes").

[248] The drafting of a new Anti-Corruption Strategy is ongoing.

[249] Act on Some Measures Regarding Legalisation of the Profits from Illegal Activities and Terrorism Financing

[250] The act provides for whistleblower protection in larger companies of over 50 employees and the establishment of a new Informer Protection Agency, which should serve as one of the channels for the submission of reports and for support services under the umbrella of the Ministry of Justice. See also https://www.epravo.cz/top/clanky/whistleblowing-pokus-r-2022-krok-spravnym-smerem-byt-stale-s-vyznamnymi-preslapy-nova-vlada-novy-rok-novy-navrh-zakona-na-ochranu-oznamovatelu-114774.html

[251] https://www.epravo.cz/top/clanky/whistleblowing-pokus-r-2022-krok-spravnym-smerem-byt-stale-s-vyznamnymi-preslapy-nova-vlada-novy-rok-novy-navrh-zakona-na-ochranu-oznamovatelu-114774.html

[252] https://www.ceska-justice.cz/2022/07/exkluzivne-ministerstvo-dokoncilo-novelu-zakona-o-statnim-zastupitelstvi-klicove-otazky-nechava-otevrene/

[253] Act No. 37/2021 Coll., on the Registration of Beneficial Owners. It also includes a prohibition on the payment of dividends to shareholders and covers the exercise of voting rights by shareholders.

[254] On 7 July 2020, the House of Deputies approved an amendment to the Act on the Register of Beneficial Owners, which includes certain changes in determining beneficial owners and other technical changes that seek to comply with EU legislation and remove some discrepancies in the register (the Senate will take a vote on the amendment in the near future).

[255] https://verejnazaloba.cz/wp-content/uploads/2021/06/Korupce_2020.pdf; https://www.policie.cz/clanek/statisticke-prehledy-kriminality-za-rok-2021.aspx

[256] Section 59 of Act No. 182/1993 Coll., on the Constitutional Court; Section 24 of Act No. 6/2002 Coll., on Courts and Judges Section; Section 22 of Act No. 150/2002 Coll., Administrative Procedure Code

[257] https://www.zakonyprolidi.cz/cs/1961-141

[258] The Act on Victims of Crime (No. 45/2013), effective from 1 August 2013, and the Act on the Use of Pecuniary Means from Property Criminal Sanctions imposed in Criminal Proceedings (No. 59/2017), effective from 1 January 2018.

[259] https://www.ft.dk/samling/20201/lovforslag/l213/index.htm. The law went into force on 17 December 2021 for employers with more than 250 employees. The law will go into force for employers with 50 to 249 employees on 17 December 2023.

[260] https://www.karnovgroup.dk/loesninger/ugeskrift-for-retsvaesen

[261] The fee is 175 Danish kroner.

[262] UNCAC first-cycle review of Denmark at https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries/V1605601e.pdf

[263] Danish Criminal Code, Chapter 7, para 57(8) at https://antislaverylaw.ac.uk/wp-content/uploads/2019/08/Denmark-Criminal-Code.pdf

[264] Danish Criminal Code, Chapter 9, para 77 at https://antislaverylaw.ac.uk/wp-content/uploads/2019/08/Denmark-Criminal-Code.pdf

[265] http://www.oecd.org/corruption/anti-bribery/Estonia-Phase-3-Written-Follow-up-Report-ENG.pdf

[266] https://www.rahandusministeerium.ee/en/news/estonia-enhances-efficiency-fight-against-money-laundering

[267] https://news.err.ee/1608544279/former-board-of-swedbank-handed-suspicions-of-money-laundering

[268] https://ec.europa.eu/info/sites/default/files/18_1_194002_coun_chap_estonia_en.pdf

[269] Estonian Judges Association (2022) cited in https://ec.europa.eu/info/sites/default/files/18_1_194002_coun_chap_estonia_en.pdf

[270] https://www.kriminaalpoliitika.ee/kuritegevuse-statistika/

[271] https://www.just.ee/et

[272] https://www.prokuratuur.ee/

[273] https://aastaraamat.prokuratuur.ee/sites/default/files/inline-files/Prokuratuuri%20tegevus%202019.aastal%20%28002%29.pdf

[274] https://www.kapo.ee/en/content/annual-reviews.html

[275] https://www.riigiteataja.ee/index.html; https://www.riigikohus.ee/

[276] https://www.riigiteataja.ee/en/eli/530102013093/consolide para 37

[277] https://www.riigiteataja.ee/en/eli/530102013093/consolide para 38

[278] https://www.euractiv.com/section/politics/short_news/finland-postpones-implementing-eu-whistleblower-directive-again/

[279] https://www.stat.fi/til/oik_en.html

[280] http://www.oecd.org/corruption/Finland-phase-4-follow-up-report-ENG.pdf

[281] Council of Europe European Commission for the efficiency of justice (CEPEJ), European judicial systems Evaluation Report, 2020

[282] Rapport de phase 4, Evaluation de la mise en œuvre par la France de la Convention de l'OCDE sur la lutte contre la corruption. https://www.oecd.org/fr/daf/anti-corruption/France-Rapport-Phase-4-FR.pdf

[283] Rapport de phase 4, Evaluation de la mise en œuvre par la France de la Convention de l'OCDE sur la lutte contre la corruption. https://www.oecd.org/fr/daf/anti-corruption/France-Rapport-Phase-4-FR.pdf There has been a gradual increase in the number of pending cases, climbing from 211 in 2014 to 578 in 2020. Rapport de l'inspection générale de la justice 2020 https://www.dalloz-actualite.fr/sites/dalloz-actualite.fr/files/resources/2020/09/rapport_igj_pnf.pdf at p. 31. The average

portfolio of a magistrate in 2021 was 90 cases. The rate of preliminary investigations rose from 37 per cent in February 2014 to 67 per cent at the end of 2015, and reached 81.5 per cent by the end of 2019, a large increase in activity but without enough magistrates to take decisions on the cases. PNF Rapport Annuel 2021 at https://www.tribunal-de-paris.justice.fr/sites/default/files/2022-01/PNF-brochure_A5-2021%5B2%5D.pdf

[284] In 2020, the Parquet National Financier (PNF – French Financial Public Prosecutor's Office) had a portfolio of around 600 cases and was staffed by only 38 persons, 18 of which are prosecutors. Rapport de l'inspection générale de la justice 2020 at https://www.dalloz-actualite.fr/sites/dalloz-actualite.fr/files/resources/2020/09/rapport_igj_pnf.pdf at p. 31

[285] European Commission, 2022 Rule of Law Report: Country Chapter on the Rule of Law Situation in France (July 2022), https://ec.europa.eu/info/sites/default/files/25_1_194023_coun_chap_france_en.pdf

[286] Loi n° 2021-1729 du 22 décembre 2021 pour la confiance dans l'institution judiciaire, Article 2

[287] Dalloz Actualité, L'affaire Bolloré ou les limites d'une justice pénale négociée, March 2021 ; https://www.mediapart.fr/en/journal/france/040321/judge-rejects-plea-bargain-deal-french-billionaire-vincent-bollore-corruption-case

[288] There have been two kinds of attacks: (1) Political attacks and calls to "shut down" the Parquet National Financier in the media and (2) disciplinary investigations that target PNF judges at the behest of the Government. See, for example: Le Figaro, Enquête visant des magistrats du PNF : «une attaque inédite» dénoncent des syndicats, September 2020; Le Temps, Attaques en série contre le Parquet national financier français, September 2020

[289] TI-France's position, Proposition de loi n°4586 visant à renforcer la lutte contre la corruption déposée par le député Raphaël Gauvain, December 2021

[290] Loi n° 2022-401 du 21 mars 2022 visant à améliorer la protection des lanceurs d'alerte

[291] Loi n° 2021-1031 du 4 août 2021 de programmation relative au développement solidaire et à la lutte contre les inégalités mondiales, Article 2.XI

[292] Rapport d'activité du Parquet National Financier, 2021

[293] Le Monde, L'ouverture des données judiciaires ouvre un marché où s'agitent de nouveaux acteurs, June 2018

[294] Loi n° 2016-1321 du 7 octobre 2016 pour une République numérique

[295] Décret n° 2020-797 du 29 juin 2020 relatif à la mise à la disposition du public des décisions des juridictions judiciaires et administratives. This decree must still be further defined by another decree. See Dalloz Actualité, Un pas pour l'open data des décisions de justice, July 2020

[296] Arrêté du 28 avril 2021 pris en application de l'article 9 du décret n° 2020-797 du 29 juin 2020 relatif à la mise à la disposition du public des décisions des juridictions judiciaires et administratives. The Court of Cassation's decisions will be made available in Open Data at the latest by 30 September 2021. The civil, social and commercial decisions of the appeals courts will appear at the latest by 30 April 2022, while the decisions of the industrial tribunals will appear at the latest by 30 June 2023. The decisions of the commercial courts and decisions handed down by the courts of first instance in criminal matters will be made available at the latest by 31 December 2024. Any other decisions rendered in courts of first instance or on criminal matters will be made available in Open Data in 2025 (September and December). See Vie Publique, Open data des décisions de justice : un calendrier prévu jusqu'en 2025, May 2021.

[297] French Criminal Procedure Code, Article 85 https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000038312069/

[298] French Criminal Procedure Code Article 2 (https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000024496925) and Article 418 of the French Criminal Procedure Code, (https://www.legifrance.gouv.fr/codes/id/LEGISCTA000006182906/)

[299] French Criminal Procedure Code Article 706-164 (https://www.legifrance.gouv.fr/codes/article_lc/LEGIARTI000032655877/)

[300] French Criminal Procedure Code Article 464 (https://www.legifrance.gouv.fr/codes/id/LEGISCTA000024459224/); http://www.justice.gouv.fr/art_pix/indemnisation_victime_an.pdf

[301] https://transparency-france.org/actu/restitution-par-la-france-a-louzbekistan-des-avoirs-acquis-illegalement-par-gulnara-karimova-une-occasion-manquee/#.YvZWHnZBxPY

[302] Cour de cassation, 9 November 2010, no. J 09-88.272 F-D

[303] Loi n° 2013-907 du 11 octobre 2013 relative à la transparence de la vie publique

[304] https://www.oecd.org/daf/anti-bribery/Resolving-foreign-bribery-cases-with-non-trial-resolutions.pdf

[305] Convention Judiciaire d'Intérêt Publique entre le Procureur de la République près le tribunal judiciaire de Nanterre et la SAS Kaefer Wanner, 15 février 2018; Convention d'Intérêt Public entre le Procureur de la République près le tribunal judiciaire de Nanterre et la SAS Poujaud, 4 mai 2018

[306] Transparency International, Why don't the victims of bribery share in the record-breaking airbus settlement?, February 2020 https://www.transparency.org/en/news/why-dont-the-victims-of-bribery-share-in-the-record-breaking-airbus-settlem

[307] Loi n° 2021-1031 du 4 août 2021 de programmation relative au développement solidaire et à la lutte contre les inégalités mondiales, Article 2.XI

[308] https://www.transparency.org/en/press/france-adopts-new-provision-for-returning-stolen-assets-and-proceeds-of-crime-a-step-forward-with-room-for-improvement

[309] Loi n° 2021-1031 du 4 août 2021 de programmation relative au développement solidaire et à la lutte contre les inégalités mondiales, Article 2.XI

[310] https://www.oecd.org/corruption/germany-s-strong-anti-bribery-enforcement-against-individuals-needs-to-be-matched-by-comparably-strong-enforcement-against-companies.htm page 3

[311] https://www.oecd.org/daf/anti-bribery/germany-phase-4-follow-up-report.pdf at page 4

[312] See https://www.oecd.org/daf/anti-bribery/germany-phase-4-follow-up-report.pdf pp. 5-6

[313] https://www.bundestag.de/dokumente/textarchiv/2022/kw39-de-hinweisgebende-personen-911404

[314] OECD WGB Bribery Phase 4 Report on Germany, Recommendation 2d to establish the sole jurisdiction of regional courts over foreign bribery and bribery in commercial cases has not yet been implemented, see Follow-up Report above.

[315] See the order of the constitutional court of 16 January 1991, 1 BvR 1326/90, pages 12 and 13 at https://www.kkh.de/content/dam/kkh/dokumente/abrechnungsbetrug/fachliteratur/verwaltungsrecht/002.pdf

[316] Yet, the previous Government used the same legal mechanism for non-trial resolutions of proceedings against companies in its draft corporate sanctions law, which failed to be enacted in 2021.

[317] These decisions are the equivalent of non-trial resolutions of cases against companies. See the denial of a request by the editor of TI Germany's quarterly magazine, https://www.transparency.de/fileadmin/Redaktion/Aktuelles/2018/Amtsgericht_Muenchen_Akteneinsicht_Bussgeldbescheid_18-11-29.pdf; English translation at https://www.transparency.de/fileadmin/Redaktion/Aktuelles/2018/Amtsgericht_Muenchen_Translation_Order.pdf

[318] https://correctiv.org/aktuelles/korruption/2022/03/10/exportmeister-deutschland-die-korruptions-akte/

[319] See : https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2022_02_04_Germany_Cycle_I_Country_Report_EN.pdf, p. 191 et seq

[320] Criminal Code Section. 73 para. 1

[321] Criminal Code Sections 334, 335a,

[322] https://www.oecd.org/daf/anti-bribery/Resolving-foreign-bribery-cases-with-non-trial-resolutions.pdf at page 61

[323] See also paragraphs 187-189 of the Phase 4 report.

[324] Naftemporiki (July 2020), "Top anti-corruption prosecutor now faces criminal charges over shambolic Novartis probe," https://www.naftemporiki.gr/story/1619931/top-anti-corruption-prosecutor-now-faces-criminal-charges-over-shambolic-novartis-probe

[325] See GRECO, Second Follow-up Report to The Ad hoc Report on GREECE (Rule 34), published on 3 March 2022, paras. 17-21, https://rm.coe.int/second-follow-up-report-to-the-ad-hoc-report-on-greece-rule-34-adopted/1680a5a14b

[326] http://www.areiospagos.gr/

[327] https://lawdb.intrasoftnet.com/nomos/nomos_frame.html

[328] https://www.dsanet.gr/

[329] https://transparency.hu/wp-content/uploads/2022/02/TI_Hu_Black_Book_II_ENG.pdf

[330] https://helsinki.hu/en/wp-content/uploads/sites/2/2022/01/HUN_NGO_contribution_EC_RoL_Report_2022.pdf; https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c6b9e

[331] https://images.transparencycdn.org/images/TI_GCB_EU_2021_web_2021-06-14-151758.pdf

[332] The GRECO report stated that "the independence of the Prosecutor General from political influence would be clearer if this official could not be re-elected and with discontinuation of the current possibility to politically block the election of a new prosecutor general with a minority vote in Parliament, in which case the sitting Prosecutor General will remain in office after the expiry of his/her mandate. Moreover, the disciplinary proceedings in respect of ordinary prosecutors would benefit from being made more transparent and connected to broader accountability. Superior prosecutors' decisions to move cases from one prosecutor to another ought to be guided by strict criteria and justifications. See pp. 4-5 at https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=09000016806c6b9e

[333] Article 7 of the Treaty on European Union is a procedure in the treaties of the European Union to suspend certain rights from a Member State. It aims at ensuring that all Member States respect the common values of the EU, including the rule of law.

[334] https://ec.europa.eu/info/sites/default/files/40_1_193993_coun_chap_hungary_en.pdf

[335] https://helsinki.hu/en/wp-content/uploads/sites/2/2022/01/HUN_NGO_contribution_EC_RoL_Report_2022.pdf page 36 et seq.

[336] https://www.oecd.org/daf/anti-bribery/hungary-phase-4-follow-up-report.pdf at page 4

[337] See Bill to amend the 2010 Act https://www.oireachtas.ie/en/bills/bill/2020/23/

[338] See Companies Act 2021 https://www.oireachtas.ie/en/bills/bill/2021/107/. In February 2022, the Minister for Finance also signed implementing regulations into law. In February 2022, the Minister for Finance also signed implementing regulations into law

[339] See Department of Enterprise, Trade and Employment, https://enterprise.gov.ie/en/news-and-events/department-news/2021/december/20211216a.html

[340] See also Department of Enterprise Trade and Employment, https://enterprise.gov.ie/en/news-and-events/department-news/2022/july/07072022.html

[341] See Report by the Review Group, https://www.justice.ie/en/JELR/Hamiliton_Review_Group_Report.pdf/Files/Hamiliton_Review_Group_Report.pdf

[342] Irish Department of Justice Anti-corruption and Bribery website, https://www.anticorruption.ie/

[343] See GNECB's website, https://www.garda.ie/en/about-us/organised-serious-crime/garda-national-economic-crime-bureau/

[344] See Irish resources on MLA (which do not include enforcement statistics), https://www.justice.ie/en/JELR/Pages/mutual_legal_assistance#_Useful_Resources:

[345] See Irish Courts Service https://www.courts.ie/judgments (Supreme Court decisions)

[346] https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2021_12_23_Ireland_Cycle_II_Country_Report_EN.pdf

[347] See Report on regulatory powers and corporate offences, https://www.lawreform.ie/news/report-on-regulaory-powers-and-corporate-offences.839.html

[348] Israeli Penal Code Section 14(c)

[349] Israeli Penal Code Section 14(b)

[350] https://www.justice.gov.il/Units/StateAttorney/Guidelines/01.14.pdf

[351] https://www.justice.gov.il/Units/StateAttorney/Guidelines/09.15.pdf

[352] Information released to Shvi"I by the Israeli delegate to the OECD group on the fight against the bribery of a foreign official. https://www.mmegi.bw/news/dis-raids-dignia-in-israel/news

[353] https://lawdb.intrasoftnet.com/nomos/nomos_frame.html

[354] https://www.bnnbloomberg.ca/israel-police-recommend-bribery-charges-against-shikun-binui-1.1264307

[355] https://en.globes.co.il/en/article-shikun-binui-to-agree-heavy-fine-if-bribery-charge-dropped-1001392159

[356] However, as is the case with many countries, statistics on MLA requests were officially reported to the OECD WGB as part of its evaluations of Israel, and the relevant data appear in the reports published by the OECD WGB.

[357] https://supreme.court.gov.il/sites/en/Pages/home.aspx

[358] https://www.gov.il/en/departments/the_judicial_authority

[359] For example: https://www.nevo.co.il/; http://www.takdin.co.il/; http://www.dinimveod.co.il/

[360] https://www.gov.il/he/Departments/Guides/relevant-case-law-cor?chapterIndex=3

[361] https://www.court.gov.il/NGCS.Web.Site/Viewer/NGCSViewerPage.aspx?DocumentNumber=de3a276d41a946c6873abc71dc5fe3a9

[362] https://www.gov.il/he/Departments/DynamicCollectors/conditional-; https://www.gov.il/he/departments/news/conditional_arrangments_tableorder?skip=0

[363] Law No. 134/2021 at https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:2021-09-27;134

[364] Piano Nazionale di Ripresa e Resilienza, see page 55 at https://italiadomani.gov.it/content/dam/sogei-ng/documenti/PNRR%20Aggiornato.pdf

[365] https://www.simmons-simmons.com/en/publications/ckoe7mtd61an70907i1up1uot/eu-whistleblowing-directive---italy ;

[366] https://transparency.it/informati/news/direttiva-ue-sul-whistleblowing-30-giorni-al-termine-previsto-per-la-trasposizione

[367] https://www.gazzettaufficiale.it/atto/serie_generale/caricaDettaglioAtto/originario?atto.dataPubblicazioneGazzetta=2019-10-%2026&atto.codiceRedazionale=19G00131&elenco30giorni=true

[368] In December 2021, the Council of the State published its opinion clearing the way for the adoption of the executive decree that set up the Register of Beneficial Ownership. See https://www.giustizia-amministrativa.it/web/guest/-/il-consiglio-di-stato-ha-reso-il-parere-sullo-schema-di-decreto-in-materia-di-dati-relativi-alla-titolarit-c3-a0-effettiva-di-imprese-dotate-di-person. The executive decree of the Ministry of Economy and Finance (MEF) and the Ministry of Economic Development (MISE) implementing the register is ready to be published in the Gazzetta Ufficiale, the official bulletin of the Italian government, after the opinion of the Court of Audit (Corte dei Conti) is issued. Parere no. 1835 of 6 December 2021. See https://www.italiaoggi.it/news/titolari-effettivi-c-e-il-registro-2553020

[369] https://www.gazzettaufficiale.it/eli/id/2022/05/25/22G00060/sg

[370] SentenzeWeb http://sentenzeweb.altervista.org/pages/sentenze.php

[371] http://www.italgiure.giustizia.it/#

[372] Ranging from €671.39 to €1,342.79 for an annual subscription that permits 1,000 minutes of viewing

[373] https://pst.giustizia.it/PST/

[374] https://banchedati.corteconti.it/

[375] https://www.cortecostituzionale.it/actionPronuncia.do

[376] https://www.giustizia-amministrativa.it/web/guest/dcsnprr

[377] https://www.garanteprivacy.it/

[378] https://www.reuters.com/business/energy/italy-court-confirms-acquittal-eni-shell-nigeria-case-2022-07-19/

[379] https://www.affaritaliani.it/cronache/processo-eni-la-procura-contro-il-pm-de-pasquale-no-al-ricorso-della-nigeria-765639.html. Relevant information and documents also available on the Eni website at https://www.eni.com/it-IT/media/caso-opl245-processo-nigeria/atti-giudiziari-milano.html

[380] https://www.avvenire.it/attualita/pagine/caso-congo-eni-patteggiamento-11-milioni

[381] See Italian Criminal Code https://www.altalex.com/documents/news/2014/09/03/della-estinzione-del-reato-e-della-pena

[382] https://www.meti.go.jp/shingikai/economy/anti_bribery/pdf/20210512_1.pdf

[383] https://www.meti.go.jp/policy/external_economy/zouwai/pdf/GaikokukoumuinzouwaiBoushiShishin20210512.pdf (in Japanese)

[384] The guidelines were posted on a website in May 2021, and have been explained at several seminars including a seminar for members of the Keidanren (Japan Business Federation). The Association of Corporate Legal Departments wrote an article about the guidelines and has delivered brochures to about 40 overseas offices to raise awareness among Japanese SMEs.

[385] OECD WGB Phase 3 Follow-Up Report on Latvia (October 2021) at https://www.oecd.org/corruption/Latvia-phase-3-follow-up-report-en.pdf

[386] The OECD WGB found that Latvia had fully implemented 16 recommendations and partially implemented 19 of the 44 recommendations made in its 2019 Phase 3 report. See https://www.oecd.org/corruption/Latvia-phase-3-follow-up-report-en.pdf; https://www.knab.gov.lv/lv/media/2270/download

[387] http://www.prokuratura.gov.lv/lv/aktualitates/aktualitates

[388] https://manas.tiesas.lv/eTiesasMvc/nolemumi

[389] This is provided for by Regulation No. 123 on the "Publication of Court Information on the Website and Processing of Court Decisions Before Their Issuance", adopted by the Cabinet of Ministers on 10 February 2009.

[390] Civil Law Article 1635 at https://likumi.lv/ta/en/en/id/225418-civil-law

[391] https://cjad.nottingham.ac.uk/documents/implementations/pdf/Latvia-Criminal_Procedure_Code_amend_2019_EN.pdf page 36

[392] TI Lithuania and Prosecutor General's Office, Analysis of internal reporting channels of public sector institutions, https://www.transparency.lt/wp-content/uploads/2020/11/Prane%C5%A1%C4%97j%C5%B3-apsauga_studija.pdf. Prosecutor General's Office and TI Lithuania, Analysis of internal reporting channels of private sector companies https://www.prokuraturos.lt/data/public/uploads/2021/06/praneseju-apsauga-lietuvoje-studija.pdf, 2021.

[393] Special Investigation Service, Recommendations for Lithuanian businesses operating abroad, https://www.stt.lt/data/public/uploads/2021/07/informacija-uzsienyje-veikianciam-verslui.pdf

[394] Special Investigation Service, https://www.stt.lt/; the Prosecutor General's Office, https://www.prokuraturos.lt/

[395] See http://liteko.teismai.lt/viesasprendimupaieska/detalipaieska.aspx?detali=2. For example, John Smith will appear as "J.S." and "Recruiters International" Ltd. will appear as "R.I." Ltd.

[396] Criminal Code of the Republic of Lithuania, Article 43 at https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.111555/asr

[397] https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/ce7d8910571711eba1f8b445a2cb2bc7

[398] https://www.luxtimes.lu/en/luxembourg/financial-crime-watchdog-bemoans-lack-of-firepower-602d6d76de135b9236b5ad3f

[399] https://ec.europa.eu/info/sites/default/files/37_1_193987_coun_chap_luxembourg_en.pdf

[400] https://www.occrp.org/en/openlux/shedding-light-on-big-secrets-in-tiny-luxembourg

[401] https://ec.europa.eu/commission/presscorner/detail/en/ip_21_1643 ; https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32014L0042

[402] 20201105_CAL-2019-00415_exequatur_125a-accessible.pdf (public.lu); https://e-justice.europa.eu/13/EN/national_case_law?LUXEMBOURG&member=1 ; https://justice.public.lu/fr.html ; https://justice.public.lu/fr/organisation-justice/juridictions-administratives.html

[403] https://legilux.public.lu/eli/etat/leg/loi/2009/10/06/n1/jo

[404] https://www.oecd.org/daf/anti-bribery/mexico-phase-4-follow-up-report.pdf

[405] https://www.justice.gov/opa/pr/vitol-inc-agrees-pay-over-135-million-resolve-foreign-bribery-case

[406] Fiscalía General de la República (2019), Datos Abiertos FGR, https://transparencia.pgr.gob.mx/en/transparencia/DatosAbiertos;

Gobierno de México (2018), Cohecho Internacional de PGR, https://datos.gob.mx/busca/dataset/cohecho-internacional-de-pgr

[407] Cámara de Diputados (2013), Ley General de Víctimas, https://www.diputados.gob.mx/LeyesBiblio/pdf/LGV.pdf

[408] https://business.gov.nl/regulation/ubo-register-ultimate-beneficial-owner/

[409] https://www.fiu-nederland.nl/en/about-the-fiu/annual-reports; foreign bribery investigations are conducted by the Fiscal Intelligence and Investigations Service (FIOD) and the Netherlands Public Prosecution Service (NPPs).

[410] https://www.om.nl

[411] https://www.prosecutionservice.nl/

[412] See, for example: https://www.prosecutionservice.nl/organisation/national-office-for-serious-fraud-environmental-crime-and-asset-confiscation/documents/publications/fp/hoge-transacties/feitenrelaas/statements-of-facts--settlement-agreements; https://www.prosecutionservice.nl/latest/news/2019/03/19/telia-pays-remaining-208500000-usd-from-confiscation-amount-to-dutch-public-prosecution-service and https://www.om.nl/onderwerpen/corruptie/nieuws/2019/03/19/telia-betaalt-resterend-ontnemingsbedrag-van-208.500.000-usd-aan-nederlands-om

[413] https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2017_10_17_Netherlands_Final_Country_Report.pdf

[414] OECD WGB Phase 4 Report on the Netherlands (2020) at https://www.oecd.org/corruption/anti-bribery/netherlands-phase-4-report-en.pdf

[415] https://www.fatf-gafi.org/publications/mutualevaluations/documents/mer-new-zealand-2021.html

[416] http://www.oecd.org/corruption/anti-bribery/Norway-Phase-4-Report-ENG.pdf

[417] http://www.oecd.org/corruption/anti-bribery/Norway-Phase-4-Report-ENG.pdf

[418] https://www.dn.no/innlegg/korrupsjon/okokrim/korrupsjon-trives-i-krisetider-og-kaos/2-1-1243841

[419] Double criminality has been eliminated for corrupt activities pursuant to §§ 387-389 of the Norwegian Penal Code. See https://bahr.no/newsletter/compliance-broadened-extraterritorial-reach-of-norwegian-anti-corruption-laws-2

[420] https://www.regjeringen.no/contentassets/0c02d87e8751414d9152634c2234f335/horing-utredning-om-foretaksstraff-og-korrupsjon.pdf

[421] https://www.regjeringen.no/no/dokumenter/horing-utredning-om-foretaksstraff-og-korrupsjon/id2876359/

[422] https://www.okokrim.no/oekokrim-skal-hjelpe-naeringslivet-aa-gjenkjenne-korrupsjon.6533805-549307.html

[423] https://haavind.no/en/news/register-of-ultimate-beneficial-owners-new-obligations-for-all-norwegian-companies/

[424] https://www.upstreamonline.com/production/petronor-e-amp-p-chief-executive-detained-in-norway-in-africa-corruption-probe/2-1-1128547

[425] https://transparency.no/wp-content/uploads/Domssamling2022.pdf ; https://norwaytoday.info/news/architect-and-former-construction-case-manager-convicted-of-gross-corruption-in-tjome-case/ https://www.domstol.no/en/supremecourt/rulings/rulings-2022/supreme-court-criminal-cases/HR-2022-1278-A/

[426] www.lovdata.no

[427] http://transparency.no/wp-content/uploads/Domssamling2019_web_.pdf

[428] Sections 1-6 of Skadeserstatningsloven - skl - Lovdata Pro. Corruption is defined in accordance with the definition in the Penal Code, Sections 387 and 389.

[429] Straffeprosessloven - strpl - Lovdata Pro

[430] https://www.oecd.org/daf/anti-bribery/peru-phase-2-report.pdf

[431] Bill 676/2021-PE

[432] See OECD WGB, Phase 1 Report on Peru (2019) paras. 187-192 at https://www.oecd.org/corruption/anti-bribery/peru-oecd-anti-briberyconvention.htm

[433] Aenza acknowledged that Graña y Montero, as Aenza was previously known, and its subsidiaries GyM and CONCAR, as well as six former executives, were complicit in acts of corruption relating to 16 infrastructure projects in Peru, including highways and metro lines. The case resulted from the *Lava Jato* investigations in Brazil. See https://www.reuters.com/article/peru-companies-idUSL2N2N901H; https://www.leadersleague.com/en/news/aenza-agrees-to-pay-126m-compensation-to-peruvian-government

[434] See https://www.mpfn.gob.pe/estadisticas/

[435] See https://www.defensoria.gob.pe/wp-content/uploads/2022/02/MAPAS-DE-LA-CORRUPCI%C3%93N-QUINTA-EDICI%C3%93N.pdf

[436] https://jurisprudencia.pj.gob.pe/jurisprudenciaweb/faces/page/nosotros.xhtml

[437] Criminal Code Article 92. In addition, Article 285 of the Code of Criminal Procedure provides that the judgement should indicate the amount of compensation to be paid.

[438] Code of Criminal Procedure Article 94 https://wipolex.wipo.int/en/text/202824

[439] Code of Criminal Procedure Article 94(d)

[440] Code of Criminal Procedure Article 100

[441] Code of Criminal Procedure Article 107

[442] New Code of Criminal Procedure, Article 318, para. 4, and Article 319 Procedure, https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries2/V2003431e.pdf

[443] See: C-791/19 and C-204/21 judgements. The deepening crisis was further confirmed by the ruling of the ECHR on 22 July 2022 (No. 43447/19), which found the Disciplinary Chamber of the Supreme Court created in 2018 by the ruling party to be in violation of the European Convention on Human Rights. The Polish Constitutional Tribunal and the ruling majority's representative openly question the effectiveness of the judgements issued by the CJEU and ECHR and refuse to implement them.

[444] See page 98 of https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/FINAL_Country_Review_Report_Poland.pdf

[445] Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons who report breaches of Union law.

[446] See, for example, the OECD's *Economic Surveys: Portugal 2019*, which has a chapter on "[e]nhancing judicial efficiency to enhance economic activity". The chapter discusses a range of problems, including the insufficient resources of the Public Prosecutor's Office and Criminal Investigation Police and the need to reinforce specialised training.

[447] https://www.dataguidance.com/news/portugal-parliament-transposes-eu-whistleblowing

[448] https://ec.europa.eu/commission/presscorner/detail/en/inf_21_441

[449] https://www.europarl.europa.eu/doceo/document/E-9-2021-001277_EN.html

[450] https://www.verangola.net/va/en/092021/Defense/27286/Angolan-NGOs-file-a-complaint-in-Portugal-over-alleged-corruption-at-Sonangol.htm

[451] http://www.cpc.tcontas.pt/documentos/analises.html

[452] http://www.dgsi.pt/

[453] https://de.reuters.com/article/us-portugal-corruption-utilities/ceo-of-portugals-edp-a-suspect-in-corruption-inquiry-idUSKBN18T2Q9

[454] http://www.dgsi.pt/; https://jurisprudencia.csm.org.pt/

[455] This refers to the Criminal Code Articles 113, 114 and 117 as well as Article 130 cited in https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2014_05_21_Portugal_Final_Country_Report.pdf

[456] Code of Criminal Procedure Articles 68 to 70, 71 and 84. This procedural possibility is regulated under Articles 71 to 84 of the same Code.

[457] https://econews.pt/2020/06/03/portugal-non-compliance-with-grecos-anti-corruption-recommendations/

[458] https://en.wikipedia.org/wiki/Investigative_Committee_of_Russia

[459] https://frankrg.com/63341; https://www.banki.ru/wikibank/raskryitie_informatsii_bankom/

[460] https://frankrg.com/62438

[461] https://meduza.io/cards/nalogoviki-stali-skryvat-chto-navalnyy-osnoval-fond-borby-s-korruptsiey-a-shamalov-i-yakunin-kooperativ-ozero-chto-proishodit

[462] https://www.rbc.ru/politics/16/08/2021/611ab2349a7947f143b69f3b

[463] https://epp.genproc.gov.ru/web/gprf/search?article=58085835

[464] Federal Law No. 262-FZ of 22 December 2008 on providing access to information on the activities of courts in the Russian Federation

[465] https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/13-17June2022/CAC-COSP-IRG-II-2-1-Add.29/V2108943_E.pdf

[466] https://ec.europa.eu/info/sites/default/files/56_1_194041_coun_chap_slovakia_en.pdf

[467] https://rpo.statistics.sk/rpo/?lang=en#search

[468] http://www.minv.sk/swift_data/source/policia/naka_opr/opr/inf_o_cinnosti_naka/Informacia%20o%20cinnosti%20NAKA%20P%20PZ%20za%20rok%202016%20public.pdf

[469] https://www.minv.sk/?statistika-kriminality-v-slovenskej-republike-csv

[470] https://www.genpro.gov.sk/statistiky-12c1.html

[471] https://obcan.justice.sk/infosud/-/infosud/zoznam/rozhodnutie. See also Section 82a para 3 of the Act No. 757/2004 Coll. on Courts as amended and Section 55m para 1 of the Act No. 153/2001 Coll. on Public Prosecution as amended.

[472] https://www.genpro.gov.sk/dokumenty/pravoplatne-uznesenia-prokuratora-ktorymi-sa-skoncilo-trestne-stihanie-vedene-proti-urcitej-2f09.html?3

[473] OECD WGB Phase 1bis Liability of Legal Persons in Slovak Republic (2017), page 24, https://www.oecd.org/corruption/anti-bribery/Slovak-Republic-Phase-1bis-Report-ENG.pdf

[474] https://www.dlapiper.com/fr/france/insights/publications/2019/09/bribery-offenses-guide/slovakia/

[475] Section 232 (3) of the Code of Criminal Procedure stipulates that "[i]f the victim is present at the proceedings on the agreement, they shall express their opinion on the extent and method of damages or in case of their unexcused absence despite being duly summoned, the public prosecutor may agree with the accused person, on behalf of the victim, on the extent and method of damages up to the amount of the filed claim for damages."

[476] See Law No. 301/2005 Coll. of the Code of Criminal Procedure Sections 28(6), 46(1) and 46(8).

[477] https://www.oecd.org/daf/anti-bribery/slovenia-phase-4-report-en.pdf

[478] https://ec.europa.eu/info/sites/default/files/54_1_194035_coun_chap_slovenia_en.pdf

[479] http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO7930

[480] https://sloveniatimes.com/prosecutor-organisations-welcome-appointments-of-13-prosecutors/

[481] https://www.kpk-rs.si/letna-porocila/

[482] Cases can be accessed through the following search engines: https://www.sodnapraksa.si/ and https://www.us-rs.si/decisions/?lang=en

[483] https://www.kpk-rs.si/delo-komisije/pravnomocne-prekrskovne-odlocbe/

[484] CPA Articles 285 (a-f), 370 and 450 (a -c) See OECD Phase 4 Report on Slovenia (2021), pp. 61-62 at https://www.oecd.org/daf/anti-bribery/slovenia-phase-4-report-en.pdf

[485] Confiscation of Assets of Illicit Origin Act (ZOPNI), http://pisrs.si/Pis.web/pregledPredpisa?id=ZAKO6267

[486] Criminal Code Articles. 74-77 and Criminal Procedure Act Articles 498-507

[487] Art. 41 of the Liability of Legal Persons Criminal Offences Act, http://www.pisrs.si/Pis.web/pregledPredpisa?id=ZAKO1259

[488] UNODC, UNCAC Country Review Report on Slovenia (2015), https://www.unodc.org/documents/treaties/UNCAC/CountryVisitFinalReports/2015_11_09_Slovenia_Final_Country_Report.pdf

[489] Criminal Procedure Act Article 60/3

[490] https://sloveniatimes.com/alstom-successor-strikes-plea-bargain-in-tes6-trial/

[491] https://www.hse.si/en/hse-and-tes-receive-eur-261-million-settlement/

[492] https://www.news24.com/news24/southafrica/news/budget-cuts-for-npa-siu-20210508

[493] https://www.news24.com/news24/southafrica/news/hawks-wings-clipped-by-exodus-of-detectives-and-shrinking-budget-parliament-hears-20210506

[494] https://www.statecapture.org.za

[495] These included the South African Revenue Service (SARS), the Government Communication and Information System (GCIS), Eskom (South Africa's electricity supplier), South African Airways, Transnet and Denel.

[496] https://www.theafricareport.com/173833/south-africa-bain-mckinsey-the-role-foreign-firms-played-to-aid-the-capture-of-state-owned-firms/

[497] https://www.dailymaverick.co.za/article/2022-04-11-zuma-corruption-trial-postponed-after-judge-says-appeal-process-should-run-its-course/ ; https://www.aa.com.tr/en/africa/ex-south-african-leader-zumas-corruption-trial-postponed-for-3rd-time-this-year/2650852

[498] https://www.bbc.com/news/world-africa-43426971 ; https://www.dailymaverick.co.za/article/2021-10-27-stalingrad-defence-zumas-costly-and-legally-untenable-attempts-to-avoid-facing-criminal-charges/

[499] https://www.npa.gov.za/annual-reports

[500] http://www.saflii.org/

[501] https://www.sabinet.co.za/information-services/legal-information-services/sabinet-judgments

[502] https://www.lexisnexis.co.za/lexis-digest/case-law

[503] https://www.npa.gov.za/sites/default/files/resources/public_awareness/victims_charter.pdf

[504] https://www.justice.gov.za/legislation/acts/1977-051.pdf

[505] http://www.saflii.org/za/cases/ZAGPPHC/2019/86.html ; https://www.webberwentzel.com/News/Pages/private-prosecution-for-environmental-crimes-becomes-a-reality-in-south-africa.aspx Section 33 of NEMA provides that any person may institute a private prosecution against a person (natural or legal) if such person has breached, or threatens to breach, a legal duty that is concerned with the protection of the environment and where the breach of that duty is an offence.

[506] http://www.oecd.org/newsroom/korea-must-enhance-detection-and-reinforce-sanctions-to-boost-foreign-bribery-enforcement.htm

[507] https://www.oecd.org/daf/anti-bribery/korea-phase-4-follow-up-report.pdf

[508] https://www.legal500.com/developments/thought-leadership/sweeping-changes-to-the-korean-criminal-procedures-starting-in-the-new-year/; https://www.lexology.com/library/detail.aspx?g=4e57a982-e305-4622-b533-52b7fbab7667

[509] Examples include the bribery of "high-ranking public officials," bribes and acts of favour under the Act on Aggravated Punishment of Specific Crimes; rebates related to the medical area and pharmaceuticals; bribes to foreign public officials; illegal receipt of political funds; violation of the Attorney-at-Law Act; and breach of trust by executives of financial institutions/ auditors/accountants/founders of companies.

[510] Examples include fraud/embezzlement/breach of trust involving KRW500 million or more; smuggling of goods valued at KRW30 million or more; violation of the Customs Act including customs evasion of KRW50 million or more; violation of the Punishment of Tax Offences Act involving a tax refund of KRW500 million or more; financial securities crimes such as market price manipulation; leakage of industrial technology and trade secrets to foreign countries/entities; unfair joint practices; unfair trade practices; coerced payment of unfair subcontracts; false/exaggerated/slanderous advertisements; any act of offshore hiding of assets; violation of the Foreign Trade Act; import and export of narcotics, etc.

[511] http://www.koreaherald.com/view.php?ud=20211104000823

[512] https://www.sec.gov/news/press-release/2022-30

[513] http://www.koreatimes.co.kr/www/biz/2021/12/602_320213.html

[514] National Assembly Law Library, Legal Information Services, http://Law.nanet.go.kr; Supreme Court of Korea, https://www.scourt.go.kr/supreme/supreme.jsp

[515] Article 6(2) of the Act on Special Cases Concerning the Confiscation and Return of Property Acquired through Corrupt Practices, https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries/V1388701e.pdf

[516] Arts. 63 to 65, Law 10/2010 of 28 April 2010 on the prevention of money laundering and terrorist financing (https://www.boe.es/buscar/act.php?id=BOE-A-2010-6737)

[517] Data according to the *EU Rule of Law 2022 Report,* which refers to public perception of a low level of judicial independence in its EU Justice Scoreboard: https://ec.europa.eu/info/sites/default/files/23_1_194017_coun_chap_spain_en.pdf

[518] Royal Decree-Law 7/2021, of 27 April, at https://www.boe.es/eli/es/rdl/2021/04/27/7/con

[519] Law 2/2020, of 27 July, https://www.boe.es/eli/es/l/2020/07/27/2/con

[520] https://www.mjusticia.gob.es/es/AreaTematica/ActividadLegislativa/Documents/Consulta%20Publica%20Whistleblowers%205%20ENE%2021.pdf; the draft Law for the Protection of Whistleblowers was published in 2021 at https://www.mjusticia.gob.es/es/areas-tematicas/actividad-legislativa/normativa/participacion-publica-proyectos-normativos/proyectos-real-decreto

[521] https://www.lamoncloa.gob.es/consejodeministros/resumenes/Paginas/2022/130922-rp-cministros.aspx ; https://www.lamoncloa.gob.es/consejodeministros/referencias/Paginas/2022/refc20220913sini.aspx#Denunciantes

[522] This is mainly due to general action agreements and protocols concluded between law enforcement authorities and other public and private stakeholders.

[523] Information provided by enforcement authorities

[524] https://www.europapress.es/nacional/noticia-juez-interroga-manana-dos-imputados-pit-proyecto-villarejo-perez-maura-20211123180817.html

[525] See page 697 at https://www.fiscal.es/documents/20142/183863/Memoria_2021_Fiscalia_Anticorrupcion.pdf

[526] https://www.elmundo.es/espana/2022/04/07/624f032dfc6c8379558b4572.html; https://www.lavanguardia.com/vida/20220407/8184441/banquillo-18-acusados-caso-mercasa-red-sobornos-angola.html

[527] For all the details regarding the case, see page 108 of "Exporting Corruption. Progress Report 2020: Assessing Enforcement of the OECD Anti-Bribery Convention" (https://www.transparency.org/en/projects/exporting-corruption)

[528] http://www.poderjudicial.es/cgpj/es/Temas/Transparencia/Repositorio-de-datos-sobre-procesos-por-corrupcion/Consulta-de-datos/

[529] http://www.poderjudicial.es/cgpj/es/Temas/Estadistica-Judicial/Estadistica-por-temas/Aspectos-internacionales/Cooperacion-con-organos-judiciales-extranjeros/Solicitudes-de-cooperacion-tramitadas-a-traves-de-la-Fiscalia/

[530] http://www.poderjudicial.es/cgpj/es/Temas/Estadistica-Judicial/Estadistica-por-temas/Aspectos-internacionales/Cooperacion-con-organos-judiciales-extranjeros/Solicitudes-de-cooperacion-tramitadas-a-traves-del-Ministerio-de-Justicia/

[531] http://www.poderjudicial.es/cgpj/es/Temas/Estadistica-Judicial/Estadistica-por-temas/Aspectos-internacionales/Cooperacion-con-organos-judiciales-extranjeros/Solicitudes-de-cooperacion-tramitadas-directamente-por-los-organos-judiciales/

[532] https://www.mjusticia.gob.es/es/areas-tematicas/oficina-recuperacion-gestion

[533] http://www.poderjudicial.es/search/indexAN.jsp

[534] https://www.fiscal.es/documents/20142/183863/memoria2019_fiscalia_anticorrupcion.pdf/bf933261-3bfc-249f-6b14-9eee30469b30

[535] https://documents.law.yale.edu/sites/default/files/criminal_code_spain.pdf

[536] Code of Criminal Procedure Article 110, https://cja.org/what-we-do/litigation/legal-strategy/the-spanish-national-court/

[537] This is based on the Spanish Constitution, Article 125, and the Code of Criminal Procedure, Article 101.

[538] https://www.justiceinitiative.org/litigation/apdhe-v-obiang-family. This is the judicial procedure Diligencias Previas No. 737/2009. See https://apdhe.org/wp-content/uploads/2020/06/Memoria-Actividades-2017_APDHE_completa-web-1.pdf.The case is being handled by Juzgado de Instrucción no. 5 of Las Palmas on the island of Gran Canaria.

[539] Law (2021:890)

[540] https://www.regeringen.se/494984/contentassets/3ba74da9e94b4756b87831fd98fb5d4e/en-starkt-rattsprocess-och-en-okad-lagforing-prop.-202122186.pdf

[541] See En stärkt rättsprocess och en ökad lagföring Justitieutskottets Betänkande 2021/22:JuU35 – Riksdagen. The now approved proposal will affect several different laws, but it primarily focuses on the use of crown witnesses, which have not been used before in Sweden. As a result, some laws will be updated and some will be new.

[542] https://www.aklagare.se/nyheter-press/aktuellt-pa-aklagarmyndigheten/arsredovisning-2021/

[543] https://www.government.se/government-policy/judicial-system/the-swedish-criminal-code/

[544] https://www.government.se/contentassets/a1be9e99a5c64d1bb93a96ce5d517e9c/the-swedish-code-of-judicial-procedure-ds-1998_65.pdf

[545] Chur University of Applied Sciences, "Korruptionsrisiken erfolgreich begegnen – Strategien für international tätige Unternehmen", Chur 2012, https://www.fhgr.ch/fileadmin/fhgr/unternehmerisches_handeln/SIFE/publikationen/corporate_responsibility/publikation-leitfaden-korruptionsrisiken-erfolgreich-begegnen.pdf

[546] http://www.fatf-gafi.org/media/fatf/documents/reports/fur/Follow-Up-Report-Switzerland-2020.pdf

[547] Swiss Criminal Code Article 102, https://www.admin.ch/opc/en/classified-compilation/19370083/index.html

[548] https://www.oecd.org/corruption/anti-bribery/Switzerland-Phase-4-Report-ENG.pdf

[549] https://www.oecd.org/corruption/anti-bribery/Switzerland-Phase-4-Report-ENG.pdf

[550] https://globalcompliancenews.com/anti-corruption/handbook/anti-corruption-in-switzerland/

[551] https://www.bundesanwaltschaft.ch/mpc/en/home/taetigkeitsberichte/taetigkeitsberichte-der-ba.html, Section 4.10

[552] https://www.swissinfo.ch/eng/scandal-hit-attorney-general-to-quit-next-month-/45934398

[553] This is in the sense of the Swiss Criminal Code Article 305bis No. 1 and No. 2 lit. b SCC

[554] Sentence SK.2019.77 of 26 June 2019, https://www.swissrights.ch/bsg/2020-SK.2019.77.php; https://www.reuters.com/article/uk-swiss-ukraine-idUKKBN27B1B7. He was given a partially conditional prison sentence of 28 months, of which 12 months are enforceable, and 16 months conditionally enforceable, and he was ordered to pay a conditional fine of 250 daily fines of CHF1,000.00 with probationary periods of 2 years.

[555] https://mind.ua/en/openmind/20233080-and352koda-js-will-be-scrapped

[556] There was no independent internal control body, although one was required by internal and external guidelines. The court also found that the accumulation of offices held by the CEO Eduardo L was not in compliance with the rules. As CEO and at the same time as head of private banking, he had been both superior and subordinate at the time in question. https://www.finews.asia/finance/35963-criminal-trial-eduardo-leemann-1mdb-falcon-private-bank-malaysia-switzerland-wealth-management

[557] https://www.swissinfo.ch/eng/falcon-bank-fined-for-money-laundering--former-ceo-acquitted/47194680; https://www.swissinfo.ch/eng/falcon-first-bank-to-face-money-laundering-trial-in-switzerland/46981906

[558] The amount of the offence was 44 million Swiss francs. According to the indictment, members of the Bulgarian mafia allegedly came to the bank with suitcases full of money and deposited the money without any problems.

[559] https://www.admin.ch/gov/en/start/documentation/media-releases.msg-id-86009.html ; https://www.swissinfo.ch/eng/swiss-justice-sentences-sbm-offshore-for-corruption/47133200

[560] The employee was sentenced to 24 months with a probationary period of 3 years and ordered to pay compensation (*Ersatzforderung*) of US$480,200. The condemnation of the subsidiaries should also be seen in the context of the parent company's agreements with the Netherlands, the US and Brazil. The companies were all convicted of violating Art. 102 SCC in connection with the bribery of foreign public officials. The severity of the misconduct was judged to be massive. In the same complex, a senior member of the management was sentenced in the simplified proceeding to 24 months in prison conditionally with a probationary period of 3 years by a judgement of the Federal Criminal Court (SK. 2020.8).

[561] https://www.publiceye.ch/en/media-corner/press-releases/detail/steinmetz-trial-landmark-judgement-against-mining-magnate-in-geneva; https://www.swissinfo.ch/eng/swiss-court-hands-diamond-magnate-five-year-prison-sentence-/46309514

[562] https://www.srf.ch/news/schweiz/prozess-gegen-beny-steinmetz-hartes-urteil-gegen-franzoesisch-israelischen-rohstoffhaendler

[563] https://www.bundesanwaltschaft.ch/mpc/en/home/zugang-zu-amtlichen-dokumenten/strafbefehle--einstellungs--und-nichtanhandnahmeverfuegungen.html

[564] https://www.bundesanwaltschaft.ch/mpc/en/home/medien/archiv-medienmitteilungen/news-seite.msg-id-76725.html

[565] https://openknowledge.worldbank.org/handle/10986/16271 at page 89

[566] https://www.oecd.org/turkey/turkey-should-urgently-implement-key-reforms-to-boost-fight-against-foreign-bribery-including-to-preserve-independence-of-investigations-and-prosecutions.htm

[567] https://t24.com.tr/haber/nagehan-alci-turkiye-buyuk-bir-kutuplasma-icinde-2023-te-cok-daha-vahim-seyler-yasanabilir,982555

[568] https://www.evrensel.net/yazi/81009/yargi-bagimsizligini-asil-kim-tehdit-ediyor

[569] https://rm.coe.int/21st-general-activity-report-greco-2020/1680a2173c; https://tr.euronews.com/2021/04/15/greco-raporu-turkiye-yolsuzlukla-mucadele-tavsiyelerinin-coguna-uymad

[570] http://www.fatf-gafi.org/media/fatf/documents/reports/mer4/Mutual-Evaluation-Report-Turkey-2019.pdf

[571] https://www.al-monitor.com/originals/2021/10/global-finance-watchdog-adds-turkey-grey-list. There has been one improvement regarding bearer notes, https://www.resmigazete.gov.tr/eskiler/2021/04/20210406-9.htm

[572] https://sherloc.unodc.org/cld/uploads/res/document/tur/2005/turkish_criminal_procedure_code_html/2014_Criminal_Procedure_Code.pdf

[573] The registries are not expected until 2023, https://researchbriefings.files.parliament.uk/documents/CBP-8259/CBP-8259.pdf

[574] https://www.lawcom.gov.uk/project/corporate-criminal-liability/

[575] https://bills.parliament.uk/publications/46439/documents/1777

[576] https://www.legislation.gov.uk/ukpga/2022/10/contents/enacted

[577] Note that Article 5 requires that investigations and prosecutions of foreign bribery are "not influenced by considerations of national economic interest, the potential effect upon relations with another State or the identity of the natural or legal persons involved," https://www.oecd.org/daf/anti-bribery/United-Kingdom-Phase-4-Addendum-to-the-follow-up-report.pdf [accessed 12 April 2022]

[578] Note that the recommendation asks the UK to "[e]nsure that Article 5 of the Convention is clearly binding on investigators, prosecutors (including in Scotland), the Attorney General and the Lord Advocate at all stages of a foreign bribery investigation or prosecution."

[579] https://www.sfo.gov.uk/our-cases/

[580] https://www.sfo.gov.uk/publications/corporate-information/annual-reports-accounts/

[581] Note there are separate services for England and Wales and for Northern Ireland.

[582] Note there are separate services for England and Wales and for Northern Ireland.

[583] https://www.bailii.org/

[584] https://www.copfs.gov.uk/publications/bribery-act

[585] This is based on Sections 55 and 133-135 of the Sentencing Code.

[586] SFO, NCA and CPS, *General Principles to compensate overseas victims (including affected States) in bribery, corruption and economic crime cases* (June 2018), https://www.cps.gov.uk/sites/default/files/documents/publications/General-Principles-to-compensate-overseas-victims-December-2017.pdf

[587] https://www.oecd.org/daf/anti-bribery/Resolving-foreign-bribery-cases-with-non-trial-resolutions.pdf page 51

[588] https://www.transparency.org/en/news/why-dont-the-victims-of-bribery-share-in-the-record-breaking-airbus-settlem

[589] https://www.judiciary.uk/wp-content/uploads/2020/01/Director-of-the-Serious-Fraud-Office-v-Airbus-SE-1.pdf, paras. 95-96

[590] https://www.sfo.gov.uk/2022/02/21/sfo-investigation-delivers-over-200000-compensation-for-the-people-of-nigeria/

[591] https://www.sfo.gov.uk/2021/07/02/sfo-enters-into-103m-dpa-with-amec-foster-wheeler-energy-limited-as-part-of-global-resolution-with-us-and-brazilian-authorities/

[592] Annual totals as reported by the Stanford Law School Foreign Corrupt Practices Act Clearinghouse, https://fcpa.stanford.edu/index.html

[593] See page 5 at https://fas.org/sgp/crs/misc/R45798.pdf; see page 2 at https://www.transparency.org/files/content/publication/2015_BOCountryReport_US.pdf

[594] https://www.pogo.org/analysis/2019/03/caught-between-conscience-and-career/; https://clsbluesky.law.columbia.edu/2021/09/15/whistleblowing-should-be-part-of-president-bidens-fight-against-corruption/

[595] Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), Public Law 111–203, § 922. https://www.govinfo.gov/content/pkg/PLAW-111publ203/pdf/PLAW-111publ203.pdf

[596] https://fcpablog.com/2019/04/15/uber-grease-payments-and-charitable-giving-gone-wrong/

[597] https://mlexmarketinsight.com/news-hub/editors-picks/area-of-expertise/anti-bribery-and-corruption/ethics-of-facilitation-payments-pit-business-principles-against-practicalities-in-the-developing-world

[598] https://www.gibsondunn.com/2021-year-end-fcpa-update/

[599] Memorandum on Establishing the Fight Against Corruption as a Core United States National Security Interest, The White House (3 June 2021), https://www.whitehouse.gov/briefing-room/presidential-actions/2021/06/03/memorandum-on-establishing-the-fight-against-corruption-as-acore-united-states-national-security-interest/

[600] See The White House, United States Strategy on Countering Corruption (Dec. 2021), https://www.whitehouse.gov/wpcontent/uploads/2021/12/United-States-Strategy-on-Countering-Corruption.pdf

[601] Specifically, these policy changes include: (1) restoring prior guidance concerning the need for corporations to provide non-privileged information about all individuals involved in misconduct (not just those substantially involved) in order to receive cooperation credit; (2) requiring prosecutors to consider a corporation's full criminal, civil and regulatory record in making charging decisions and not just conduct related to the misconduct at issue in the present case; and (3) making clear that there is no general presumption against monitorships and prosecutors are free to require the imposition of a corporate monitor whenever they determine it appropriate.

[602] See Lisa O. Monaco, Deputy Attorney General, US Dept. of Justice, Keynote Address at the ABA's 36th National Institute on White Collar Crime (28 October 2021), https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-o-monaco-gives-keynote-address-abas-36th-national-institute. As a result, based on the companies' SEC filings, two notifications appear to have been issued to Telefonaktiebolaget LM Ericsson and Mobile Telesystems PJSC, both of which entered into DPAs with the DoJ in 2019 and appear to have been notified subsequently of breach of their agreements by the DoJ, https://www.gibsondunn.com/2021-year-end-fcpa-update/

[603] See The White House, United States Strategy on Countering Corruption (Dec. 2021), https://www.whitehouse.gov/wp-content/uploads/2021/12/United-States-Strategy-on-Countering-Corruption.pdf

[604] See Lisa O. Monaco, Deputy Attorney General, US Dept. of Justice, Keynote Address at the ABA's 36th National Institute on White Collar Crime (28 October 2021), https://www.justice.gov/opa/speech/deputy-attorney-general-lisa-o-monaco-gives-keynote-address-abas-36th-national-institute.

[605] 581 US ___ (2017).

[606] 591 US ___ (2020).

[607] A scienter-based claim refers to intent or knowledge of wrongdoing. Scienter is a mental state embracing intent to deceive, manipulate or defraud.

[608] https://www.gibsondunn.com/the-top-10-takeaways-for-financial-institutions-from-the-anti-money-laundering-act-of-2020/

[609] See US Securities & Exchange Commission, Annual Report to Congress: Whistleblower Programme 28-29 (2021), https://www.sec.gov/files/owb-2021-annualreport.pdf; US Securities & Exchange Commission Annual Report to Congress on the Dodd-Frank Whistleblower Programme (15 November 2016) https://www.sec.gov/files/owb-annual-report-2016.pdf

[610] https://www.justice.gov/criminal-fraud/file/1245236/download; https://www.sec.gov/spotlight/fcpa/fcpa-cases.shtml

[611] The DoJ and the SEC do not disclose the number of closed or ongoing FCPA investigations, when investigations have commenced or concluded, or whether, when and why agencies decline to pursue enforcement action. Publicly traded companies sometimes disclose information about commenced and closed investigations and pending cases in public financial filings required by US securities law. These filings are posted on the SEC's Electronic Data Gathering, Analysis and Retrieval (EDGAR) website. US Securities and Exchange Commission, "EDGAR – Search and Access", https://www.sec.gov/edgar/search-and-access

[612] https://www.sec.gov/spotlight/fcpa/fcpa-cases.shtml

[613] For example, https://www.justice.gov/opa/pr/samsung-heavy-industries-company-ltd-agrees-pay-75-million-global-penalties-resolve-foreign

[614] Currently 10 cents per page. Administrative Office of the US Courts, "PACER – Public Access to Court Electronic Records", https://www.pacer.gov/

[615] https://www.justice.gov/criminal-fraud/enforcement-actions; https://www.sec.gov/spotlight/fcpa/fcpa-cases.shtml; https://www.sec.gov/spotlight/foreign-corrupt-practices-act.shtml

[616] https://www.justice.gov/news; https://www.sec.gov/news/pressreleases

[617] https://www.justice.gov/criminal-fraud/statutes-regulations

[618] Messick, R., 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

[619] 1982 Victims and Witness Protection Act, https://www.congress.gov/bill/97th-congress/senate-bill/2420; the 1996 Mandatory Victim Restitution Act https://www.law.cornell.edu/uscode/text/18/3663A and the 2004 Crime Victims Act https://www.law.cornell.edu/uscode/text/18/3771

[620] https://www.justiceinitiative.org/uploads/58dc15ea-f2c9-4bfa-894f-0d007145b230/legal-remedies-5-messick-20160601_1.pdf

[621] 18 USC § 3663 – Order of Restitution https://www.law.cornell.edu/uscode/text/18/3663

[622] https://www.velaw.com/insights/five-less-predictable-predictions-for-fcpa-enforcement-in-2020/

[623] Those cases were in 1979, 1989, 1990, 2009 and 2010. Richard Messick, Legal Remedies for Victims under US Law, 2016, https://www.justiceinitiative.org/uploads/58dc15ea-f2c9-4bfa-894f-0d007145b230/legal-remedies-5-messick-20160601_1.pdf

[624] https://www.justice.gov/opa/pr/och-ziff-capital-management-admits-role-africa-bribery-conspiracies-and-agrees-pay-213

[625] https://www.law360.com/articles/1295894/och-ziff-investors-reach-136m-mine-bribery-restitution-deal

[626] https://www.irs.gov/pub/irs-drop/td-9946.pdf

[627] https://www.chinalawtranslate.com/en/supervision-implementation/ ; https://www.chinalawtranslate.com/en/supervision-law-of-the-prc-2018/

[628] http://english.www.gov.cn/news/topnews/202109/21/content_WS614915f6c6d0df57f98e09c6.html

[629] See https://www.jdsupra.com/legalnews/new-chinese-anti-bribery-guideline-5022125/ and https://fcpablog.com/2022/01/04/three-things-to-know-about-chinas-new-anti-bribery-guideline/

[630] For example, in the 22 January 2021 Work Report of Zhao Le Ji (Secretary of the Central Commission for Discipline Inspection) at the Fifth Plenary Session of the 19th Central Commission for Discipline Inspection Meeting, available at https://www.ccdi.gov.cn/xxgkn/hyzl/202103/t20210315_40530.html

[631] http://wenshu.court.gov.cn/

[632] https://www.scmp.com/news/china/politics/article/3138830/millions-court-rulings-removed-official-chinese-database

[633] http://tingshen.court.gov.cn/

[634] https://splcgk.court.gov.cn/gzfwww/

[635] http://zxgk.court.gov.cn/

[636] http://www.npc.gov.cn/zgrdw/englishnpc/Law/2007-12/13/content_1384067.htm

[637] https://www.unafei.or.jp/publications/pdf/RS_No70/No70_15PA_Jin.pdf

[638] https://www.fmprc.gov.cn/ce/cgvienna/eng/dbtyw/jdwt/crimelaw/t209043.htm

[639] https://www.unafei.or.jp/publications/pdf/RS_No70/No70_15PA_Jin.pdf

[640] https://apps.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=20PR103;

[641] There are aggregated annual statistics on prosecutions, but no breakdown by type of offences, http://www.icac.org.hk/en/rc/figure/prosecute/index.html

[642] Transparency of enforcement data is subject to strict legal requirements stipulated in Section 30 of the POBO to maintain confidentiality of the investigation process. All ICAC investigations are eventually reported to the Operations Review Committee (ORC) for scrutiny. The ORC is chaired by a non-official and has 12 other non-official members and four ex officio members, https://www.icac.org.hk/en/check/advisory/orc/index.html

[643] https://www.unodc.org/unodc/en/corruption/country-profile/countryprofile.html#?CountryProfileDetails=%2Funodc%2Fcorruption%2Fcountry-profile%2Fprofiles%2Fchn.html

[644] http://www.icac.org.hk/en/law/case/index.html

[645] https://www.judiciary.hk/en/judgments_legal_reference/index.html

[646] See the 2017 Executive Summary of the UNCAC Review of the People's Republic of China (including Hong Kong SAR and Macau SAR) page 18 https://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/ExecutiveSummaries/V1609720e.pdf

[647] https://prsindia.org/billtrack/the-prevention-of-bribery-of-foreign-public-officials-and-officials-of-public-international-organisations-bill-2011

[648] https://indiankanoon.org/doc/87167657/; https://www.livemint.com/Politics/pB5Zzfv5dw3PRlBhdROFkN/Govt-to-move-fresh-bill-to-tackle-bribery-by-foreign-officia.html

[649] https://main.sci.gov.in/judgments

[650] https://ncrb.gov.in/en

[651] Code of Criminal Procedure Section 357

[652] https://indiankanoon.org/doc/1705664/; every state of India has its own victim compensation fund, https://it.delhi.gov.in/sites/default/files/All-PDF/Home_notification.pdf

[653] Common Cause v Union of India, A.I.R. 1982 S.C. 149

[654] Code of Criminal Procedure Sections 301 - 302

[655] https://www.todayonline.com/voices/cpib-cannot-comment-on-keppel-o%26m-case-says-singapore-corruption-control-framework-effective

[656] https://www.mas.gov.sg/news/media-releases/2020/agc-cad-and-mas-take-action-against-goldman-sachs-singapore-pte-on-1mdb-bond-offerings ; https://www.straitstimes.com/business/banking/singapore-fines-goldman-sachs-165-million-over-1mdb-scandal ; https://www.justice.gov/opa/pr/goldman-sachs-charged-foreign-bribery-case-and-agrees-pay-over-29-billion

[657] https://www.judiciary.gov.sg/judgments/judgments-case-summaries

[658] https://www.lawnet.sg/lawnet/web/lawnet/free-resources

[659] https://www.agc.gov.sg/docs/default-source/newsroom-doucments/media-releases/2017/joint-press-release-by-agc-and-cpib---conditional-warning-issued-to-keppel-offshore-marine-ltd8c1000354dcc63e28975ff00001533c2.pdf and https://www.cpib.gov.sg/press-room/press-releases/conditional-warning-issued-keppel-offshore-marine-ltd

[660] https://www.lawsociety.org.sg/our-community/legal-fact-check/understanding-compensation-orders/

[661] https://singaporelegaladvice.com/law-articles/what-is-private-prosecution/

[662] 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 as “major”.

[663] “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 a 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 be considered only in combination with other sanctions.

CREATE CHANGE WITH US

ENGAGE

Follow us, share your views and discuss corruption with people from around the world on social media.

facebook.com/TransparencyInternational/
twitter.com/antikorruption/
linkedin.com/company/transparency-international/
instagram.com/Transparency_International/
youtube.com/user/TransparencyIntl/

LEARN

Visit our website to learn more about our work in more than 100 countries and sign up for the latest news in the fight against corruption.

transparency.org

DONATE

Your donation will help us provide support to thousands of victims of corruption, develop new tools and research and hold governments and businesses to their promises. We want to build a fairer, more just world. With your help, we can.

transparency.org/donate

Transparency International
International Secretariat
Alt-Moabit 96, 10559 Berlin, Germany

Phone: +49 30 34 38 200
Fax: +49 30 34 70 39 12

ti@transparency.org
www.transparency.org

Blog: transparency.org/en/blog
Facebook: /transparencyinternational
Twitter: @anticorruption