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EXPORTING CORRUPTION? COUNTRY ENFORCEMENT OF THE OECD ANTI-BRIBERY CONVENTION PROGRESS REPORT 2012

TABLE B: STATUS OF FOREIGN BRIBERY CASES

Countries listed in descending order based on share of world exports

Country	Total cases through 2011	Major cases	Year last major case was initiated	Criminal (and civil) sanctions for foreign bribery ^I		Share of world exports (% for 2011) ^I
				Individuals	Companies	
ACTIVE ENFORCEMENT (7)						24.8%
United States	275	> 39	2011	58 (39)	28 (51)	9.6
Germany	176	> 16	2011	14 plus 59 agreed sanctions	0 (3)	8.2
United Kingdom	23 ^{III}	23	2011	3	2	3.6
Italy	32	10	2011	10 including 9 plea agreements	3 all plea agreements	2.9
Switzerland	52	> 3	2011	2	1	1.5
Norway	6	3	2011	5	1	0.9
Denmark	15 ^{II}	> 4	2011	0	0	0.8
MODERATE ENFORCEMENT (12)						27.5%
Japan	2	1	2007	6	1 (1)	4.1
France	24	6 ^{IV}	2010	4	0	3.4
Netherlands	9	7 ^{VI}	2007	0	0	3.2
Korea (South)	17	1	2007/2008	16	4	2.9
Canada	3	1	2011	0	2	2.4
Spain	3 ^{VI}	2	2008	0	0	2.1
Belgium	4 ^V	1	2006	-	-	2.0
Australia	2 ^{II}	1	2011	0	0	1.5
Sweden	2	1	2009	2	0	1.2
Austria	1	1	2001	0	0	1.1
Argentina	2	2	2009	0	0	0.4
Finland	6	2	2010	0	0	0.5
LITTLE ENFORCEMENT (10)						6.3%
Mexico	0	0	-	0	0	1.7
Brazil	1	0	-	0	0	1.3
Turkey	1	0	-	0	0	0.8
Hungary	38	0	-	26	0	0.6
Chile	3	0 ^{IV}	-	0	0	0.4
Luxembourg	3	0 ^{IV}	-	0	0	0.4
Portugal	4	0	-	5	0	0.4
Slovak Republic	0	0	-	0	0	0.4
Slovenia	0	0	-	0	0	0.2
Bulgaria	4	0	-	1	0	0.1
NO ENFORCEMENT (8)						4.4%
Ireland	0	0	-	0	0	1.1
Poland	0	0	-	0	0	1.1
Czech Republic	0	0	-	0	0	0.7
South Africa	0	0	-	0	0	0.5
Israel	0	0	-	0	0	0.4
Greece	0	0	-	0	0	0.3
New Zealand	0	0	-	0	0	0.2
Estonia	0	0	-	0	0	0.1

I Numbers from the OECD Working Group on Bribery 2012 Annual Report. Does not include sanctions in foreign bribery-related cases.

II Cases include those related to UN Oil-for-Food programme. Some of these cases may have been brought for sanctions violations. It was a civil action in Australia.

III Includes 2012 cases.

IV Number unknown or based on media reports.

V Belgium has brought 10 additional cases on behalf of EU institutions.

VI Number corrected from last year.

REPORTS ON ENFORCEMENT IN OECD CONVENTION COUNTRIES

IV

The following country reports summarise the assessments by TI experts of enforcement of the Convention in their countries. This year the country experts were asked to provide information on foreign bribery cases and investigations as well as on aspects of the legal framework and enforcement system. This report does not include details on most countries where there is no enforcement, namely Czech Republic, Estonia, Greece, Ireland, Poland and South Africa. Information is included on Israel and New Zealand, even though they show no enforcement, since there are emerging signs of enforcement-related activity in those countries.

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

Access to information issues

Access to information on foreign bribery enforcement is essential for the success of the Convention, as it allows citizens to track the efforts of their governments in implementation and enforcement. Adequate access to information enables citizens to monitor the level of government enforcement as well as the progress of cases, especially of politically-sensitive cases; and to determine whether adequate resources are being devoted to the issue. TI national experts reported that information on the status of cases was not systematically accessible in: Argentina, Australia, Austria, Bulgaria, Canada, Czech Republic, Denmark, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Luxembourg, Mexico, Netherlands, New Zealand, Poland, Portugal, Slovenia, South Africa, Switzerland, Turkey.

ARGENTINA

MODERATE ENFORCEMENT. Two cases and no known investigations. Share of world exports is 0.4 per cent.

Foreign bribery cases or investigations: There have been two cases in Argentina, both still pending in 2011. One of the cases is against an Argentine-Bolivian joint venture **Catler Uniservice** and its Argentine suppliers **Sica Metalúrgica** and **Lito Gonella e Hijos de Santa Fé**. The case is reportedly connected to allegations of bribery of Bolivian officials at the state-owned petroleum company **Yacimientos Petrolíferos Fiscales Bolivianos (YPFB)** to obtain a US \$88 million contract from to build a gas liquification plant in Bolivia in 2008.² In January 2012 in Bolivia, the former head of the state-run oil company YPFB was convicted of corruption and an executive of **Catler Hidrocarburos** was convicted in absentia of bribing him.³

The second case involves an Argentine-US joint venture **CBK Power Company** and relates to alleged bribes to a former Philippine minister of justice in connection with a hydroelectric construction and operation project. The case was shelved due to lack of mutual legal assistance from the Philippines, and reopened in February 2010.⁴

Recent developments: Bill 26.683, which was passed by Congress in 2011, reformed the penal code, including with regard to money laundering, and introduced new financial crimes. A new article in the Code allows for administrative sanctions against legal entities when money laundering is realised in their name, by them or for their benefit.

² La Nación, 17 March 2009, "Bolivia castiga a firmas argentinas", www.lanacion.com.ar/nota.asp?nota_id=1109352.

³ The Guardian 28 January 2012, "Former close ally of Bolivian President sentenced", <http://www.guardian.co.uk/world/feedarticle/10063740>.

⁴ La Nación, 15 January 2003, "Involucran a IMPSA en un caso de corrupción", <http://www.lanacion.com.ar/466334-involucran-a-impesa-en-un-caso-de-corrupcion>

Recommendations: Introduce legislation to protect whistleblowers and other witnesses in corruption cases and to provide greater access to information about bribery cases. Change the role of prosecutors in the penal process and adapt penalties to correspond to the considerable damage that corruption can cause. Reform the court system to ensure the independence of judges and prosecutors. In particular, enhance the appointment procedure and reform the Judicial Council.

AUSTRALIA

MODERATE ENFORCEMENT. One prosecution, one civil action and eight investigations. Share of world exports is 1.5 per cent.

Foreign bribery cases or investigations: There is one on-going case and eight investigations, seven of which were initiated in 2011. The case, Australia's first prosecution under its foreign bribery legislation, concerns alleged bribes to public officials in Indonesia, Malaysia, Nepal and Vietnam by two companies, one of which is partially and the other wholly owned by the **Australian Reserve Bank** (see case study in Section V, below).⁵ The allegations involve polymer banknote printing company **Securrency International Pty. Ltd.** and also **Note Printing Australia Ltd.** The two companies and seven former executives were reportedly charged with foreign bribery offences in July 2011, and an eighth executive was charged in August. In March 2012, it was reported that the Australian Securities and Exchange Commission had decided not to pursue its own investigation into the case, following a police referral.⁶ As to the investigations, according to media reports, one of these involves **Leighton Holdings** and relates to alleged bribery in Iraq and possibly also Indonesia.⁷ Another investigation reportedly involves the country's biggest military contractor **Tenix Defence** and relates to alleged bribery of public officials in various Asian countries, including Indonesia and the Philippines, between 2001 and 2008.⁸

Recent developments: In September 2011, the Australian government announced the commitment of AUS \$700,000 (US \$700,000) to develop and implement Australia's first National Anti-Corruption Plan. A key objective is to strengthen existing governance arrangements by developing a government-wide policy and plan on anti-corruption, and thus bringing the various relevant agencies together under a cohesive framework. Foreign bribery is included in the Attorney General's planning and public consultation process.

Recommendations: The government should determine and provide clear incentives for companies to self-report and, as defendants, to make an early plea where their own investigations uncover facts indicating foreign bribery. It should consider legislating for alternatives such as civil remedies rather than prosecution where key conditions have been satisfied, in light of the time and resources needed for obtaining evidence abroad. Legislation should clearly spell out the responsibility of companies for bribery committed by subsidiaries and other intermediaries, as presently the Australian provisions may not apply unless it can be proven that the Australian company "caused" the bribery.

AUSTRIA

MODERATE ENFORCEMENT. One known prosecution and at least ten investigations. Share of world exports is 1.1 per cent.

Foreign bribery cases or investigations: No statistics were provided by the Austrian government and estimated numbers are based on media reports. In January 2012, there was a media report about the start of a trial of five persons on various charges in relation to the sale of Finnish **Patria** tanks in Slovenia in 2006.⁹

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

6 The Age, 13 March 2012, "ASIC drops note printing bribe probe", <http://www.theage.com.au/national/asic-drops-note-printing-bribes-probe-20120312-1uwjo.html>

7 Sydney Morning Herald, smh.com.au, 14 February 2012, "Leighton alerts police to investigate possible foreign bribes", <http://www.smh.com.au/business/leighton-alerts-police-to-investigate-possible-foreign-bribes-20120213-1t2c3.html>

8 Brisbane Times, 7 March 2012, "Defence firm faces bribe probe", <http://www.brisbanetimes.com.au/opinion/political-news/defence-firm-faces-bribe-probe-20120306-1uige.html#ixzz1rJE4PAF1>, also <http://www.smh.com.au/national/exnavy-men-caught-in-bribery-probe-20120320-1>

9 Wirtschaftsbblatt, 19 January 2012, "Neue Festnahme in Patria-Affäre", <http://www.wirtschaftsbblatt.at/archiv/neue-festnahme-in-patria-affaere-prozess-in-wien-hat-begonnen-504428/index.do>

The Corruption Prosecution reportedly started a proceeding in October 2010 against two managers in connection with the purchase of the Hungarian MAV Cargo by Rail Cargo Austria, a subsidiary of the state-owned railway company Österreichischen Bundesbahnen (ÖBB).¹⁰ There are also three separate investigations against Hypo Alpe Adria Bank AG, in relation to alleged bribery in Croatia and Slovenia.¹¹ In Croatia a former prime minister was extradited from Austria in July 2011 and indicted in August 2011 reportedly for taking bribes from Hypo in the mid-1990s.¹² A prosecutor in Feldkirch was reported in June 2011 to be investigating allegations against six persons connected with the maritime crane unit of Liebherr.¹³ The newspaper report cited an unnamed person who claimed that a Russian oil giant and a Spanish port were connected with the case.¹⁴

A high-profile investigation was reported in November 2011 against 20 persons associated with the Austrian banknote printing company the Austrian Banknoten- und Sicherheitsdruck (OeBS) GmbH, a subsidiary of the Austrian National Bank. The targets reportedly include six active Supervisory Board members suspected of knowledge of bribery of foreign public officials in connection with acquisition of contracts abroad, three of whom are representatives of the Austrian National Bank. Payments reportedly targeted decision-makers in Syria and Azerbaijan, in some cases allegedly channelled via a Panamanian company.¹⁵ The case reportedly came to light following questions raised by Austrian tax authorities concerning the deductibility of certain payments.

Further investigations into alleged foreign bribery reportedly involve Strabag SE,¹⁶ and Steyr Daimler Puch.¹⁷ Another investigation reportedly relates to payments in the period 2001-2006 by Siemens AG Österreich¹⁸ and its subsidiary Siemens VAI Metal Technologies GmbH & Co.¹⁹ In addition, a number of investigations are reportedly underway concerning Austrian lobbyist Alfons Mensdorff-Pouilly, former agent for BAE Systems, and other companies (see case study in Section V, below).²⁰ The US Securities and Exchange Commission (SEC) and Department of Justice were reported in May 2011 to be investigating claims that Motorola Solutions (previously Motorola Inc) paid Mensdorff-Pouilly €2.2 million from April 2004 onwards, which was allegedly used to make payments to high-ranking politicians in Europe and the Middle East.²¹ Austrian authorities are also reportedly investigating the allegations.²²

Recent developments: There were significant organisational changes in 2011. The Central Department of Public Prosecution for Corruption was reassigned in September to deal with large-scale economic crimes and bribery, thus leading to a considerable increase in Convention enforcement. The GRECO evaluation report of December 2011 concluded that the 2009 amendments to the Penal Code could be considered genuine progress in terms of the sanctions for corruption offences, but a step back in that they narrowed down the circumstances in which different categories of persons are liable for bribery. GRECO notes that further improvements are necessary and, *inter alia*, recommends the extension of Austria's jurisdiction regarding cross-border offences. GRECO also recommends that Austria ratify the Criminal Law Convention on Corruption and its Additional Protocol.

10 Die Presse.com, 6 October 2010, "Verfahren wegen Bestechung und Untreue", http://diepresse.com/home/wirtschaft/economist/600079/OeBB_Verfahren-wegen-Bestechung-und-Untreue?_vl_backlink=/home/wirtschaft/economist/595551/index.do&direct=595551

11 Der Standard, 27 October 2011, "Korruptionsermittlungen gegen Regierungspartei HDZ", <http://derstandard.at/1319181351033/Korruptionsermittlungen-gegen-Regierungspartei-HDZ>
Der Standard, 22 April 2011: "Bei Razzien in Slowenien zehn Festnahmen", <http://derstandard.at/1303291146463/Ex-Hypo-Manager-Bei-Razzien-in-Slowenien-zehn-Festnahmen>

12 Bloomberg, 31 August 2011, "Croatian ex-PM Sanader Indicted for Graft in Hypo Bank case", <http://mobile.bloomberg.com/news/2011-08-31/croatian-ex-pm-sanader-indicted-for-graft-in-hypo-bank-case>

13 Der Standard, 28 June 2011, "Liebherr hat Staatsanwalt im Haus", <http://derstandard.at/1308679902738/Hausdurchsuchung-Liebherr-hat-Staatsanwaltschaft-im-Haus>

14 Ibid.

15 Wiener Zeitung, 28 November 2011, "OeBS Krimi: Verfahren gegen Nationalbankner", http://www.wienerzeitung.at/nachrichten/wirtschaft/oesterreich/414727_OeBS-Krimi-Verfahren-gegen-Nationalbankner.html; Handelsblatt, 28 November 2011, "EZB Ratsmitglied im Visier der Justiz", <http://www.handelsblatt.com/politik/international/oesterreich-ezb-ratsmitglied-im-visier-der-justiz/5897404.html>

16 Der Standard, 29 March 2011, "Haselsteiner verteidigt Bau-Aufträge aus autoritären Ländern", <http://derstandard.at/1297821775191/Haselsteiner-verteidigt-Bau-Auftraege-aus-autoritaeren-Laendern>

17 Der Standard, 25 February 2010, "Ermittlungen gehen weiter", <http://derstandard.at/1266541527073/Ermittlungen-gehen-weiter>

18 Die Presse, 20 September 2010: "Justiz weitet Ermittlungen gegen Siemens Österreich aus", <http://diepresse.com/home/wirtschaft/economist/595846/Justiz-weitet-Ermittlungen-gegen-Siemens-Oesterreich-aus?from=suche.intern.portal> The Public Prosecutor confirmed on 7 March 2012 that investigations are still on-going.

19 Siemens, 10 November 2010, "Legal Proceedings", <http://www.siemens.com/press/pool/de/events/2011/corporate/2011-q4/2011-q4-legal-proceedings-e.pdf>

20 Der Standard, 22 January 2011, "Causa Mensdorff: Ermittlungen stocken", <http://derstandard.at/1295570661697/Waffenlobbyist-Causa-Mensdorff-Ermittlungen-stocken>

21 Profil Online, 9 May 2011, "Motorola under SEC investigation for Bribes", <http://www.brightsideofnews.com/news/2011/9/5/motorola-under-sec-investigation-for-bribes.aspx>

22 Kleine Zeitung, 19 January 2012, "Mensdorff-Pouilly hat für Millionenhonorar keine Unterlagen", <http://www.kleinezeitung.at/nachrichten/politik/2926230/mensdorff-pouilly-hat-fuer-millionenhonorar-keine-unterlagen.story>

Recommendations: Increase the human resources of the prosecution office. Though the reorganisation in 2011 was indeed a welcome and positive development, TI Austria believes the human resources available to the prosecution office are still insufficient as it currently consists of 15 prosecutors, while 40 would be more appropriate.

BELGIUM

MODERATE ENFORCEMENT. Four cases and number of investigations unknown. Share of world exports is 2.0 per cent.

Foreign bribery cases or investigations: There have been four cases in Belgium, one of which is an Oil-for-Food related case that has been pending since initiation in 2006. Investigations were initiated in 2006 into 33 Belgian companies regarding allegations of improprieties in connection with the UN Oil-for-Food programme. There have been no known developments in a reported Belgian investigation of the Belgian utility firm Tractebel, a subsidiary of the French multinational GDF Suez, in response to allegations that it paid over US \$55 million in commissions to the Chodiev group for acting as its intermediaries in Kazakhstan.²³

Recent developments: No recent developments.

Recommendations: Measures should be introduced to meet the quantitative as well as the qualitative structural shortage of judicial resources for economic and financial delinquency. Specialist judges should be fully deployed to work only on this type of file. The judiciary should, in collaboration with the Federal Department of Justice, collect, maintain and publicise complete and accurate figures on corruption-related crimes, as currently it is only possible to make estimates based on partial figures. More structural independence and resources for the CDCB (Central Office for Combating Corruption) are required. CDCB should be promptly informed about current corruption cases (coordination between the different police services/coordination between the Public Prosecutor's Office and the police). CDCB should be allowed to establish more specific job profiles, and to complement the existing training framework of the police so as to develop specific expertise.

BRAZIL

LITTLE ENFORCEMENT. One case and two investigations. Share of world exports is 1.3 per cent.

Foreign bribery cases or investigations: The expert received information from the Attorney General's Office that the one case was initiated in 2007, involves truck manufacturer **Valtra do Brasil Ltda.** and relates to alleged illegal payments to Iraqi officials in connection with the Oil-for-Food programme.²⁴ The company is a subsidiary of the Finnish company Valtra.

There are also two investigations underway. One reportedly concerns the largest construction company in Latin America, **Norberto Odebrecht SA** which allegedly made payments in Argentina via a shell company **Infiniti Group** to subcontractors **Skanska S.A.**, **Contrara Hermanos** and **Techint SA** in connection with the construction of a public building.²⁵ The second investigation also concerns Odebrecht, reportedly involving allegations that the company paid US \$120 million to Angolan politicians in connection with public works contracts.²⁶ There are further allegations against Odebrecht relating to its activities in Ecuador and to an oil pipeline in Argentina.²⁷

23 BBC News, 24 July 2002, "The Steel Maharajah", <http://news.bbc.co.uk/2/hi/business/2146757.stm>

24 OECD Working Group on Bribery Phase 2 Follow-Up Report of June 2010 listed four law enforcement inquiries in relation to the following companies in connection with the findings of the UN Oil-for-Food report: Motocana Máquinas Equipamentos Ltda; WEG Industrias S/A; Randon S/A Implementos e Sistemas Automotivos; and Valtra do Brasil Ltda. The report stated that in 2009 the Federal Police Department was tasked with beginning an analysis of the law enforcement inquiry relative to the Valtra do Brasil case filed with the 5th Federal Court of Guarulhos. The expert reports that the Motocana investigation was dismissed in 2008 and the WEG and Randon investigations were dismissed in 2011 at the instruction of the Attorney General due to lack of evidence. See <http://www.oecd.org/daf/briberyininternationalbusiness/anti-briberyconvention/45518279.pdf>

25 Office of the Comptroller General of Brazil (CGU)'s response to Expert Respondent; Clarin.com, 27 April 2011, "Indagaron al secretario del Energia por sobrepuestos en el caso Skanska", http://www.clarin.com/politica/Indagaron-secretario-Energia-sobrepuestos-Skanska_0_470353027.html; La Republica, 21 May 2007, "El fiscal investiga a 21 funcionarios nacionales vinculados al caso Skanska" <http://www.diariolarepublica.com.ar/notix/noticia.php?i=124981&f=>

26 Zmela Angola, Odebrecht e a Corrupção em Angola: Brasileiros cobram 200 milhões ao Angolanos por menos de 1 km de Estrada, <http://www.zwelangola.com/opiniao/index-ir.php?id=4230>; Afrika.no (The Norwegian Council for Africa), 16 December 2011, "Angola: Diamonds are a girl's best friend" <http://www.afrika.no/Detailed/21018.html>; allAfrica.com/ Pambazuka News, 5 August 2010, "Angola: The Presidency—The Epicentre of Corruption", <http://allafrica.com/stories/201008060882.html>

Another investigation reportedly underway since September 2009 concerns allegations of bribery of in connection with the acquisition by Aerolíneas Argentinas of 20 commercial airplanes for US \$ 700 million from the Brazilian plane manufacturer **Embraer**²⁸. The investigation is being conducted under the responsibility of the federal judge Sergio Torres of the Criminal and Correctional Court of Buenos Aires.²⁹ Embraer also reported in November 2011 that it is under investigation by the US SEC and Department of Justice for possible Foreign Corrupt Practices Act (FCPA) violations in three countries and the Brazilian authorities are determining whether to conduct an investigation.³⁰

The OECD Working Group on Bribery Phase 2 Follow-Up Report of June 2010 stated that "requests for information of suspected cases of foreign bribery... were submitted to: Argentina (**Odebrecht**), Bolivia (**Univen Petroquímica**), the Dominican Republic (**Embraer**), Italy (**Tri Technologies**) and the Russian Federation (**Beef Exporters**)."³¹

Recent developments: In its Third Report of September 2011 the Committee of Experts for the Follow-Up Mechanism to the Inter-American Convention against Corruption noted that Brazil should remove any obstacles to reporting bribery by accountants; continue awareness and integrity promotion campaigns; ensure greater inter-institutional collaboration towards bribery prevention and detection; continue training for related officials; and introduce greater measures towards detection such as improved investigation techniques, the production of handbooks, manuals and guidelines, and improved computer technology systems.³² The OECD Working Group on Bribery Phase 2 Follow-Up report of June 2010 noted that Brazil had not yet enacted legislation to protect whistleblowers who report suspected instances of foreign bribery although two bills had been introduced before Congress (Bill 5228 of 2009 and Senate Bill 228/2006), relating respectively to private and public sector whistleblower protection. The Working Group also noted that Brazil had still not implemented effective liability of legal persons for foreign bribery, and urged Brazil to pass this legislation promptly.

A news report stated that there is business opposition to Draft Bill 6.826/2010 under consideration by the Brazilian Congress which would dramatically strengthen the country's bribery and foreign bribery laws. For example, the bill would establish the direct civil and administrative liability of corporations, making them liable for the acts of their directors, officers, employees, and agents under the theory of *respondeat superior*. It would also create strong sanctions, and establish credit for voluntary disclosure, cooperation and compliance programmes. The revised version clarifies and makes more important the voluntary disclosure and compliance programme credits.³³

Recommendations: Introduce effective liability of legal persons, strengthen sanctions and enact legislation providing for whistleblower protection. Publish statistical data about cases and investigations, as well as case details.

BULGARIA

LITTLE ENFORCEMENT. Four cases and no investigations. Share of world exports is 0.1 per cent.

Foreign bribery cases or investigations: There have been four cases, one of which is pending, and there are no investigations. The pending case concerns alleged bribery by a Bulgarian company in connection with the UN Oil-for-Food programme.³⁴

Recent developments: In 2011, a court ruled that bribery covers all non-material advantages, and a law was passed regarding the forfeiture of criminal assets. Further, a Working Group of the Ministry of Justice began drafting a new Penal Code which was to be presented for public discussion in May 2012. The new Penal Code places bribery

27 Estadão.Com.Br, 13 October 2008, "Ecuador apresenta denúncias de corrupção contra Odebrecht" <http://www.estadao.com.br/noticias/internacional,ecuador-apresenta-denuncias-de-corrupcao-contra-odebrecht,259118,0.htm>; Oilwatch Sudamerica, 4 September 2007, "Argentina—Obra da Odebrecht foi Superfaturada, diz Jornal Argentino" <http://www.oilwatchesudamerica.org/petroleo-en-sudamerica/argentina/897-argentina-obra-da-odebrecht-foi-superfaturada-diz-jornal-argentino.html>

28 BNDES, 7 December 2011, "Argentina iniciou investigacao na Embraer" <http://www.plataformabndes.org.br/site/index.php/noticias/21-clipping/231-argentina-iniciou-investigacao-na-embraer>

29 Ibid.

30 Financial Times, 3 November 2011, "SEC launches corruption probe into Embraer", <http://www.ft.com/cms/s/0/123c311a-064b-11e1-8a16-00144feabdc0.html#axzz21vzV8N00>

31 OECD Working Group on Bribery, Phase 2 Follow-Up Report on Brazil, June 2010, <http://www.oecd.org/dataoecd/50/39/45518279.pdf>

32 OAS MESISIC Committee of Experts, Third Evaluation of Brazil on Inter-American Convention against Corruption Enforcement, 16 September 2011, http://www.oas.org/juridico/PDFs/mesicic3_bra_en.pdf

33 TrustLaw, Matteson Ellis, 15 May 2012, "Business pushback against Brazil foreign bribery bill", <http://www.trust.org/trustlaw/blogs/anti-corruption-views/business-pushback-against-brazil-foreign-bribery-bill/>

34 Consultation between TI Bulgaria and the Supreme Prosecution Office of Cassation

and trading in influence crimes in a separate section and thus allows the integration of bribery in the private and public sector in one place and provides for a more effective prosecution. It also provides that foreign public officials will be held criminally liable for all types of bribery, but it is still not clear to what extent the bribery section will be amended after the discussions. Although whistleblower protection has also been widely discussed in the public arena there are no new provisions concerning that issue in the new Penal Code.

The OECD Working Group on Bribery pointed out in its Phase 3 report in March 2011 that after the Phase 2 review Bulgaria enacted legislation creating liability of legal persons, but has not made any effort to enforce the law.³⁵ The UNCAC review process has produced an Executive Summary of October 2011 that pointed out that there is no comprehensive provision on the protection of persons providing relevant information on corruption-related acts.³⁶ Whistleblower protection is only addressed in the Law on Prevention and Disclosure of Conflict of Interest of 2008.³⁷

Recommendations: Increase training for investigative bodies, and improve coordination between investigative police and prosecutors. Strengthen international cooperation. Improve complaint mechanisms and whistleblower protection. Substantially amend and enforce the law on the liability of legal persons regarding foreign bribery and implement the commitment to prohibit the tax deductibility of bribes, as recommended in the Phase 3 report on Bulgaria.

CANADA

MODERATE ENFORCEMENT. Three cases and 34 investigations. Share of world exports is 2.4 per cent.

Foreign bribery cases or investigations: There have been three prosecutions in Canada, with two concluded and one currently underway. There are 34 on-going investigations. One case was concluded in 2011, namely against **Niko Resources Ltd.** (see case study in Section V below).³⁸ In the pending case, the International Anti-Corruption Unit of the Royal Canadian Mounted Police (RCMP) filed charges against a Canadian citizen in an Ontario court in May 2010 alleging one count of violating the Corruption of Foreign Public Officials Act (CFPOA). The charges reportedly related to alleged corrupt payments on behalf of **Cryptometrics Canada Inc.** to a cabinet member of the Indian government, as part of an unsuccessful bid to secure an airport security system contract.³⁹ The accused brought a motion to dismiss the charges for lack of jurisdiction on the basis that the matter does not have a "real and substantial connection with Canada."⁴⁰ The motion was dismissed by the court on 4 May 2012, while preserving the right of the accused to bring it again at a later date.⁴¹

According to media reports, the RCMP raided the offices of the engineering company **SNC-Lavalin Group Inc.** in September 2011 in connection with the company's work on a World Bank-funded bridge project in Bangladesh.⁴² In February 2012, the former executive vice-president of the company was dismissed, and in March 2012 the CEO resigned in connection with payments to third parties in contravention of the company's policies.⁴³ In April 2012, the former construction head of SNC-Lavalin was arrested in Switzerland reportedly on suspicion of corrupt practices, fraud and money laundering in connection with dealings in North Africa, including Libya and Tunisia, and the RCMP executed

35 OECD Working Group on Bribery, Phase 3 Report on Bulgaria, March 2011, <http://www.oecd.org/dataoecd/16/20/47468296.pdf>

36 UNODC, Executive Summary: Bulgaria, 11 October 2011, <http://www.unodc.org/documents/treaties/UNCAC/COSP/session4/V1186294e.pdf>

37 Ibid.

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

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

40 The Globe and Mail, 1 February 2012, "Canadian accused of bribing cabinet minister in India is a test case for Canada's foreign anti-corruption law", <http://www.theglobeandmail.com/news/politics/canadian-accused-of-bribing-cabinet-minister-in-india/article2323342/page2/>

41 R. v. Karigar, 2012 ONSC 2730

42 WSJ Corruption Currents Blog, 2 September 2011, "Mounties Raid SNC-Lavalin In Corruption Probe", <http://blogs.wsj.com/corruption-currents/2011/09/02/mounties-raid-snc-lavalin-in-corruption-probe/> also: Globe and Mail, 6 September 2011, "SNC co-operation with RCMP investigation", <http://www.theglobeandmail.com/globe-investor/snc-co-operating-with-rcmp-investigation/article2155640/>

43 Reuters, 26 March 2012, "UPDATE 4-SNC-Lavalin CEO resigns as mystery payments probed" <http://www.reuters.com/article/2012/03/26/snclavalin-idUSL3E8EQ5JH20120326>

search warrants at the company headquarters in Montreal at the request of the Swiss authorities.⁴⁴ The RCMP also reportedly raided the offices of mining company **Blackfire Exploration Ltd.** in August 2011, in connection with alleged monthly payments to a local mayor in Mexico to prevent protesters from interrupting the company's mining operations.⁴⁵

Recent developments: In addition to the substantial increase in enforcement activity in 2011, the government has taken significant steps to review various aspects of the CFPOA enforcement in 2011, including a consultation initiated by the Department of Foreign Affairs and International Trade with informed government, private sector and civil society stakeholders to discuss possible amendments to the CFPOA, voluntary disclosure, facilitation payments, bribe solicitation, awareness raising, small- and medium-sized enterprises, sectoral initiatives, and education and training. In February 2011, Parliament adopted the Freezing Assets of Corrupt Foreign Officials Act.

The OECD Working Group on Bribery issued a Phase 3 report on Canada in March 2011. Among the recommendations was one that Canada urgently take such measures as may be necessary to prosecute its nationals for bribery of foreign public officials committed abroad. It also called on Canada to clarify that, as provided by Convention Article 5, considerations of national economic interest, the potential effect on relations with another state or the identity of the natural or legal persons involved are never proper. It further called for urgent dedication of resources for the soon-expected prosecution caseload of potentially more than 20 cases.⁴⁶

The report of March 2011 reviewing Canada's compliance with the OAS Inter-American Convention against Corruption found that the Canadian law on foreign bribery did not prohibit facilitation payments and recommended that Canada review this.⁴⁷

Recommendations: The CFPOA should be amended to introduce nationality jurisdiction as, under the current situation, the prosecution is required to devote scarce resources to establish that the facts disclose a "real and substantial link to Canada." Implement recommendations in OECD and OAS reviews.

CHILE

LITTLE ENFORCEMENT. Three cases and one investigation. Share of world exports is 0.4 per cent.

Foreign bribery cases or investigations: There are three pending cases, two of which were initiated in 2010, but the Chilean authorities do not provide details about the cases because they must be kept secret by law.

An investigation was reportedly initiated in October 2011 relating to the purchase of four frigates by the state of Chile from the Netherlands in 2004.⁴⁸ In April 2012, it was reported that the Public Prosecutor's Office had brought charges of bribery, insider dealing, money laundering and bribery of a foreign public official against an entrepreneur in the military weapons business and two officials working at Asmar (Astilleros y Maestranzas de la Armada), a state-owned company that provides construction and repair services to the Chilean navy. The entrepreneur is reportedly charged with making illicit payments of US \$1 million to the two officials via bank accounts abroad in exchange for sensitive information relating to Asmar contracts.⁴⁹ In addition, according to the press article of April 2012, a South Korean citizen working at the South Korean Embassy in Santiago for the Defense Attaché allegedly provided the entrepreneur with privileged and sensitive information about foreign companies interested in selling military vehicles to the Chilean Armed Forces in exchange for payments to the official's wife.⁵⁰ A hearing was reportedly scheduled for June 2012.

44 WSJ Corruption Current Blog, 30 April 2012, "Former SNC-Exec Arrested in Switzerland", <http://blogs.wsj.com/corruption-currents/2012/04/30/former-snc-lavalin-exec-arrested-in-switzerland/>; Canadian Business, 30 April 2012, "SNC-Lavalin unaware of corruption investigation by Tunisian commission", <http://www.canadianbusiness.com/article/82105--snc-lavalin-unaware-of-corruption-investigation-by-tunisian-commission>; Globe and Mail, 3 May 2012, "'SNC's challenging year not over' CEO says", <http://www.theglobeandmail.com/globe-investor/sncs-challenging-year-not-over-ceo-says/article2421220/>

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

46 OECD Working Group on Bribery, Phase 3 Report on Canada, March 2011, <http://www.oecd.org/dataoecd/55/25/47438413.pdf>

47 OAS MESISIC Committee of Experts, Third Evaluation of Canada on Inter-American Convention against Corruption Enforcement, 25 March 2011, http://www.oas.org/juridico/english/mesicic3_can_rep.pdf

48 El Mercurio, 18 April 2012, "Fragatas: piden audiencia para formalizar a coreano y a su esposa"; La Tercera, 22 October 2011, "Caso fragatas: en prisión dos ex oficiales por supuesto pago de coimas", <http://diario.latercera.com/2011/10/22/01/contenido/pais/31-87804-9-caso-fragatas-en-prision-dos-ex-oficiales-por-supuesto-pago-de-coimas.shtml>

49 Ibid.

50 Ibid.

Another investigation reportedly concerns LAN Airlines S.A., as confirmed by the Chilean Public Prosecutor's Office in May 2011. A media report in November 2010 claimed that the airline had paid US \$1,150,000 between 2006 and 2007 for consultancy services to **Controles y Auditorías Especiales de Argentina S.A.**, a company owned by an advisor to the then-minister of transportation (during the Néstor Kirchner administration).⁵¹ This money was allegedly paid to allow the operation of routes by LAN in Argentina.⁵²

Recent developments: The UNCAC review process produced an Executive Summary dated September 2011 which found Chile largely compliant with respect to the requirements for criminalisation and enforcement, with a few exceptions. Among its recommendations it suggested that Chile establish measures to encourage persons other than public officials – for example, employees of private companies – to report acts established as offences under the UNCAC.⁵³

Recommendations: Introduce stricter sanctions for foreign bribery in the legislative framework and ensure they are enforced in practice. Modify Law 20.205 on whistleblowers in the public sector to strengthen the protection provided, and introduce legislation to protect whistleblowers in the private sector.

CZECH REPUBLIC

NO ENFORCEMENT. No cases or investigations. Share of world exports is 0.7 per cent.

DENMARK

ACTIVE ENFORCEMENT. 15 cases and no current investigations. Share of world exports is 0.8 per cent.

Foreign bribery cases or investigations: There have been 15 cases brought with foreign bribery charges, 14 of which were Oil-for-Food-related cases. Thirteen cases were concluded in previous years, with two concluded in 2011. One of the 2011 cases concerned the pharmaceutical and medical equipment company **Missionpharma** and reportedly related to a suspicious payment of DKK 5.5 million (US \$1 million) to two consultants in London around the same time the company received a DKK 180 million (US \$33.5 million) contract from the UN to deliver AIDS medicine to the Democratic Republic of Congo in the period 2005 to 2007.⁵⁴ The company reached a settlement in August 2011 with the Danish Public Prosecutor, in which it agreed to a fine of DKK 1.5 million (US \$250,000) and confiscation of a further DKK 20 million (US \$3.5 million).⁵⁵ No court approval is required for this type of settlement, but guilt is acknowledged. In the second concluded case, the vehicle supplier **Bukkehave** was accused of having circumvented the Oil-for-Food embargo in Iraq and the case resulted in a court-imposed confiscation of DKK 10 million (US \$1.75 million).⁵⁶ The public prosecutor has appealed the confiscation amount to the Supreme Court.

Recent developments: The GRECO Compliance Report on Denmark of May 2011 found that Denmark had not implemented GRECO's Third Round Evaluation Report recommendation to put beyond doubt that all forms of "undue advantages" are covered by the relevant bribery offences concerning foreign public officials and officials of international organisations.⁵⁷ GRECO welcomed the steps taken to introduce in Greenland and the Faroe Islands legislation in conformity with the Criminal Law Convention on Corruption and its Additional Protocol. A new Greenlandic Criminal Code came into force on 1 January 2010.

51 El Clarín, 26 November 2010, "LAN le pagó una comisión de US\$1 millón al asesor de Jaime", http://clarin.com/politica/LAN-comision-US-asesor-Jaime_0_379762162.html

52 Ibid.

53 UNODC, Executive Summary: Chile, 30 September 2011, http://www.unodc.org/documents/treaties/UNCAC/COSP/session4/I11add2_e.pdf

54 Financial Times, 6 October 2008, "London police probe UN-Congo charity deal", <http://www.ft.com/cms/s/0/040a8346-932e-11dd-98b5-0000779fd18c.html#axzz1L8oEFAhi>

55 Missionpharma website, "Missionpharma reaches settlement regarding Congo case", http://www.missionpharma.com/content/us/about_us/news/2011/missionpharma_reaches_settlement_regarding_congo_case; Nyhederne, 11 August 2011, "Missionpharma bøder i bestikkelsessag", <http://nyhederne-dyn.tv2.dk/article.php/id-42521792%3Amissionpharma-b%C3%B8der-i-bestikkelsessag.html?rss>

56 Business.dk, 20 December 2011, "Bukkehave får nedsat straf for handel med Saddam", <http://www.business.dk/node/18010117/>

57 Council of Europe, Group of States against Corruption, Third Evaluation round – Compliance Report – Denmark, 27 May 2011, [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2011\)8_Denmark_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2011)8_Denmark_EN.pdf)

Recommendations: TI Denmark proposed as a consequence of its National Integrity System study the creation of a publicly-accessible database on court cases and settlements.⁵⁸

ESTONIA

NO ENFORCEMENT. No cases or investigations. Share of world exports is 0.1 per cent.

FINLAND

MODERATE ENFORCEMENT. Six cases and three investigations. Share of world exports is 0.5 per cent.

Foreign bribery cases or investigations: Charges were dismissed by the district court in 2009 against a former senior manager of **Wärtsilä Finland Oy** and **Wärtsilä Finland Oy** itself in relation to a 1997 power plant tender in Kenya. In September 2010, following an appeal by the prosecutor, the case was referred by the appeals court back to the district court for procedural reasons but the defendants were granted leave to appeal this decision to the Supreme Court.⁵⁹ The other case involves charges of bribery in Egypt by state-owned company **Patria Land and Armament Oy**, while two investigations relate to alleged bribery by the company in Croatia and Slovenia.⁶⁰ In June 2011, former executives were convicted of bookkeeping crimes but cleared of charges of bribing Egyptian officials, and the fine requested against the company was dismissed by the court.⁶¹ In two out of four individuals' cases the prison sentences were suspended sentences. Both the defendants and the prosecutor have appealed this decision.⁶² There are no new reports on the investigation of allegations against the Finnish consortium **Instrumentarium Medko Medical Oy** concerning the company's activities in Costa Rica.⁶³

Recent developments: Provisions of the Finnish Criminal Code (39/1889, as amended) regarding bribery offences were amended as of 1 October 2011.⁶⁴ The amendments included provisions on bribery of Members of Parliament and tightened provisions on bribery in the private sector. With the amendments, the Additional Protocol to the Council of Europe's Criminal Law Convention on Corruption was implemented in Finland.

58 Transparency International, National Integrity System Study - Denmark, 12 January 2012, http://www.transparency.org/whatwedo/nisarticle/denmark_2012

59 Wärtsilä Annual Report 2011, "Preventing corruption and bribery", <http://www.annualreport2011.wartsila.com/en/ar/sustainability/personnel-and-social-performance/preventing-corruption-and-bribery>, last visited 16 February 2011

60 "YLE, 10 October 2011, Ten suspects in arms deal bribery investigation" http://yle.fi/uutiset/news/2011/10/ten_suspects_in_arms_deal_bribery_investigation_2938576.html, last visited 16 February 2012; Iltasanomat, "Oikeus vapautti Patrian lahjusepäilyistä vangitun" <http://www.hs.fi/kotimaa/Oikeus+vapautti+Patrian+lahjusepailyista+vangitun/a1305555080919>, last visited 16 February 2012

61 Announcement of the Prosecutor General, dated 23 June 2010, <http://www.vksv.oikeus.fi/Etusivu/Ajankohtaista/Tiedotteet/1274105704144/pagename/Page/Tiedote>, last visited 15 February 2012; Helsingin Sanomat, HS.fi, 23 June 2010, "Neljä suomalaista oikeuteen Patrian tykkikaupoista Egyptiin" <http://www.hs.fi/kotimaa/artikkeli/Nelja%20suomalaista+oikeuteen+Patrian+tykkikaupoista+Egyptiin/1135258092123>, last visited 15 February 2012; Helsingin Sanomat, 20 December 2010, "Syyttäjä: Patria antoi tykkikaupoissa ainakin puolen miljoonan lahjukset" <http://www.hs.fi/talous/artikkeli/Syyttaja%20Patria+antoi+tykkikaupoissa+ainakin+puolen+miljoonan+lahjukset/1135262518742>, last visited 15 February 2012; DefenseNews, 23 June 2011, "Ex-Patria Execs Convicted of Bookkeeping Crimes" <http://www.defensenews.com/article/20110623/DEFSECT04/106230304/Ex-Patria-Execs-Convicted-of-Bookkeeping-Crimes>, last visited 15 February 2012; http://www.patria.fi/patria_www_en_sisalto/patria_www_en/news+and+info/press+releases+and+news/demand+for+corporate+fine+related+to+patria+egyptian+export+deal+dismissed+by+the+pirkanmaa+a+district+court.html, last visited 15 February 2012

62 Virpi Vuorinen, Senior Secretary, Turku Court of Appeals, telephone interview with TI Expert, 16 February 2012

63 <http://www.uusisuomi.fi/ulkomaat/98320-ts-torque-avustuspetos-suomen-ja-costa-rican-valilla>, last visited 16 February 2012; http://www.menafn.com/qn_news_story.asp?StoryId=%7B8d12f74e-c22c-48a5-919f-dd11cbfb498e%7D, last visited 16 February 2012; McClatchy-Tribune Information Services, 13 May 2011, "Former President Calderon avoids jail time", http://www.menafn.com/qn_news_story.asp?StoryId=%7B8d12f74e-c22c-48a5-919f-dd11cbfb498e%7D

64 Finnish Criminal Code (39/1889), <http://www.finlex.fi/fi/laki/ajantasa/1889/18890039001>; Government Bill 79/2010, [http://www.eduskunta.fi/triphone/bin/thw/?\\$%7Bbase%7D=akirjat&%7Bhtml%7D=akxpdf&%7Bsnhtml%7D=akxeiloydy&tunniste=HE+79/2010](http://www.eduskunta.fi/triphone/bin/thw/?$%7Bbase%7D=akirjat&%7Bhtml%7D=akxpdf&%7Bsnhtml%7D=akxeiloydy&tunniste=HE+79/2010); Juha Keränen, ministerial counsellor, Ministry of Justice, email interview, 21 February 2012

The OECD Working Group on Bribery Phase 3 Report in October 2010 found insufficient awareness-raising in the private sector and recommended that this be increased.⁶⁵ It also recommended that Finland introduce appropriate measures to facilitate reporting by public officials to law enforcement authorities, and also suggested that it introduce mechanisms to ensure that public and private sector employees who report in good faith and on reasonable grounds are protected from discriminatory or disciplinary action.

GRECO's Second Compliance Report of December 2011 noted that Finland has adopted legislation abolishing the dual criminality requirement.⁶⁶ The UNCAC review process Executive Summary of June 2011 noted that Finland does not hold legal persons liable under criminal law for certain offences.⁶⁷ It also noted the relatively lenient sanctions in Finland compared to other European countries, with an emphasis on fines. The UNCAC examiners recommended that Finland (i) ensure that the definition of "foreign official" explicitly includes persons exercising a public function for a public enterprise and (ii) explore the possibility of increasing the level of monetary sanctions against legal persons and add non-monetary sanctions to the list of possible penalties. On the enforcement side, the UNCAC report notes that Finland is considering the adoption of an obligation for public officials to report corruption offences and that, more generally, there is no whistleblower protection system in place. The examiners recommended that Finland (1) consider strengthening measures for the management of frozen/seized assets and (2) increase manpower and resources for training and capacity-building for strengthening the unit of the National Bureau of Investigation.

Recommendations: Take steps to raise awareness of the foreign bribery offence and relevant laws within the public and private sectors, especially in high-risk sectors. Introduce measures for public officials to report suspected bribery and mechanisms to protect public and private sector whistleblowers. Develop ethical rules. Provide training and guidance for law enforcement authorities and prosecutors. Require FINNVERA, Finland's export credit agency, to establish formal guidelines related to the offence, and provide guidelines for public procurement authorities.

FRANCE

MODERATE ENFORCEMENT. 24 cases including 10 concluded cases, two pending prosecutions and 12 judicial investigations. Five other investigations. Share of world exports is 3.4 per cent.

Foreign bribery cases or investigations: There are 24 cases in France, two of which were initiated in 2011, and five on-going investigations. A judicial investigation initiated in 2006 relating to **Total SA** is expected to go to trial in 2012 and concerns alleged bribery in connection with the UN's Oil-for-Food programme in Iraq.⁶⁸ In March 2012, it was reported that after two years of preliminary investigation by French police, a pair of magistrates was appointed to investigate allegations of bribery in Malaysia in connection with a June 2002 contract worth US \$1 billion between the Malaysian government and **Armaris** (now **DCNS**) and Spanish naval shipbuilder **Izar** (now **Navantia**) for two **Scorpene** attack submarines.⁶⁹

A Negotiated Resolution Agreement was reached between **Alstom** and the World Bank in February 2012 regarding alleged bribery in Zambia, resulting in the debarment of two Alstom subsidiaries for three years and a restitution payment by the two subsidiaries totalling approximately US \$9.5 million (see case study in Section V, below).⁷⁰ There are no known developments in a related prosecution of the company reportedly initiated by French authorities.⁷¹

Recent developments: Act No. 2010-768 of 9 July 2010 to facilitate seizure and confiscation in criminal cases recast the rules applicable to confiscation by extending the scope of the assets that can be confiscated, introducing a special criminal seizure procedure and creating an agency to manage and recover seized and confiscated assets.

65 OECD Working Group on Bribery, Phase 3 Report on Finland, October 2010, <http://www.oecd.org/dataoecd/59/30/46212643.pdf>

66 Council of Europe, Group of States against Corruption, Third Evaluation round – Second Compliance Report – Finland, 6 December 2011, [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2011\)13_Finland_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2011)13_Finland_EN.pdf).

67 UNODC, Note by Secretariat – Executive Summaries: Finland and Spain, 7 June 2011, <http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/7-9September2011/V1183525e.pdf>

68 RFI, 3 August 2011, "Total to be tried for oil-for-food corruption in Saddam's Iraq", <http://www.english.rfi.fr/economy/20110803-total-be-tried-oil-food-corruption-saddams-iraq>

69 Defense Industry Daily, 23 April 2012, "Scorpene's Sting: Malaysia's Bribery & Murder Scandal", <http://www.defenseindustrydaily.com/Scorpene-Sting-Liberation-Publishes-Expose-re-Malaysias-Bribery-Murder-Scandal-05347/>. According to this story: "At the heart of the story are allegations of a massive scandal involving not only Malaysian officials but top French politicians and arms purchases in Pakistan, Taiwan, India, Chile, Argentina, Saudi Arabia and other countries."

70 World Bank, Press Release No: 2012/282/INT, 22 February 2012, <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:23123315~pagePK:34370~piPK:34424~theSitePK:460700.html>

71 Alstom, Half-year ended 30 September 2010, <http://www.alstom.com/Global/Group/Resources/Documents/300910%20SEMESTRIAL%20FINANCIAL%20REPORT.pdf>

Under this new law, the police and judges in charge of investigations can confiscate the products of the offence at the very beginning of the investigation, without waiting for any conviction.

Law 2011-525 of 17 May 2011 "to simplify and improve the quality of law" ("de simplification et d'amélioration de la qualité du droit"), in its Article 154 (-6 to -13), makes it easier to prove the act of corruption, as there is no longer a need for the judge to prove that a link was intended between the favour and the bribe before either one (the favour or the bribe) took place. A law passed in December 2011 introduced plea bargaining for corruption cases, including foreign bribery. TI France is waiting for further details on how this will be implemented.

The GRECO Compliance Report of April 2011 took note of draft legislation under examination that would clarify certain aspects of the offences of bribery and trading in influence.⁷² However, GRECO found that the measures taken or communicated did not appear sufficiently complete to dispel all possible doubt among legal practitioners concerning the law on this subject. The April 2011 report also found that its recommendation ii) to consider criminalising trading in influence in connection with foreign public officials, and recommendation v) to extend the limitation period for bribery and trading in influence, had not been implemented. Furthermore, while GRECO welcomed the authorities' intention to abolish the condition that the prosecution of acts of corruption committed abroad by French nationals must be preceded by a complaint or an official report, in the absence of more concrete information or action it concluded that this part of recommendation vi had also not been implemented.

The UNCAC Executive Summary of January 2012 recommended guarantees for the independence of State Prosecutors from the Ministry of Justice. It also recommended an increase in the numbers of staff at the Brigade Centrale de Lutte contre la Corruption (police in charge of corruption cases) and to extend the competence of French jurisdictions when an offense is committed abroad. It also suggested that France criminalise trading in influence in relation to foreign public officials, extend the maximum fine applicable to legal persons and extend the limitation periods for corruption offences.⁷³ The UNCAC report further recommended exploring the option for citizens to anonymously report to the Central Service for the Prevention of Corruption (SCPC).

Recommendations: Introduce a Procureur General de la Nation (Independent Public Prosecutor), which should be an autonomous and high-ranking position, appointed by Parliament and with authority over prosecutors, in particular to avoid undue political pressure from the government. Regarding the new plea-bargaining options, it is important that penalties are proportionate and dissuasive, and that the firms opting for this procedure are obliged to introduce corrective actions to prevent corruption in the future. Currently, the maximum fine for cases of public corruption is €750,000 (US \$1 million), which is not proportionate for major companies when compared with the proceeds of bribery.

GERMANY

ACTIVE ENFORCEMENT. 176 cases and 43 investigations. Share of world exports is 8.2 per cent.

Foreign bribery cases or investigations: There have been 176 cases of foreign bribery since entry into force of the Convention in Germany, with 15 of those cases being initiated in 2011, and there are currently 43 on-going investigations. In 2011, the number of concluded cases was 20, of which five were convictions and 15 were terminations. The Munich Prosecutor's Office charged a former board member of **Siemens AG** in June 2011 with breach of trust for alleged bribery payments made to win a project in Argentina.⁷⁴ The company allegedly paid at least US \$27 million to government representatives through middlemen to secure a project to produce identification cards in the 1990s.⁷⁵ In May 2011, a Munich court dropped a case against the most senior Siemens executive to stand trial, due to insufficient evidence to support charges of tax evasion and failure to notice improper practices in areas under his control.⁷⁶ Two former executives of **Ferrostaal AG** were charged by the Munich Prosecutor's

72 Council of Europe, Group of States against Corruption, Third Evaluation round – Compliance Report – France, 1 April 2011, [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2011\)1_France_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2011)1_France_EN.pdf)

73 UNODC, Note by the Secretariat – France, 9 January 2012, <http://www.unodc.org/documents/treaties/UNCAC/WorkingGroups/ImplementationReviewGroup/2012-06-12to22/V1187226e.pdf>

74 Reuters, 14 June 2011, "Prosecutors charge ex-Siemens manager with bribery", <http://www.trust.org/trustlaw/news/prosecutors-charge-ex-siemens-manager-with-bribery/>

75 Ibid.

76 AFP, 19 May 2011, "Corruption case dropped against Siemens exec", <http://www.google.com/hostednews/afp/article/ALeqM5iJXfNEWocbj9WT7ML-u-RBYbxVrg?doclid=CNG.7235994011a827fecb3f813e3ac63.1d1>

Office in April 2011 in relation to the alleged bribing of public officials in Greece and Portugal to secure the sale of submarines between 2000 and 2007.⁷⁷ The trial of the two executives and of the company as a "lateral participant" began in December 2011, and Ferrostaal reportedly agreed to pay €149 million (US \$193 million) to settle the case.⁷⁸ In December 2011, the company also reportedly agreed to pay €10 million (US \$13 million) to settle charges of bribery related to the construction of a compressor station in Turkmenistan.⁷⁹

Philips Electronics is under investigation by German authorities, and reportedly a raid was carried out on its Hamburg office in February 2011.⁸⁰ (The investigation is reportedly unrelated to the prosecution of three former Philips employees in Poland in connection with sales of medical equipment to hospitals.) The Ravensburg Prosecutor's Office reportedly launched an investigation in October 2011 into **Tognum AG** (in which **Rolls-Royce PLC** and **Daimler AG** jointly acquired a 97 per cent stake in June 2011). The inquiry reportedly relates to commission payments of about €23 million (US \$30 million) that may have been wrongfully paid in connection with defence contracts in South Korea in the period 2000-2011.⁸¹ An investigation of the CEO of **Deutsche Telekom** for alleged bribery by the company's Hungarian subsidiary in Macedonia and Montenegro was reportedly dropped by the Bonn prosecutor in January 2011.⁸² In December 2011, Deutsche Telekom and its subsidiary **Magyar Telekom** paid a settlement fine of US \$95 million to US authorities in connection with the case.⁸³

Recent developments: The OECD Working Group on Bribery Phase 3 Report on Germany in March 2011 expressed concern that the level of sanctions applied to both legal and natural persons may not always be fully effective, proportionate and dissuasive. The examiners commended Germany for strengthening and clarifying the obligation of tax authorities to report suspected acts of bribery.⁸⁴

The GRECO Compliance Report of December 2011 found that of the 20 recommendations made in the Third Round Evaluation Report, Germany had implemented or addressed only four, noting concern over limits in the criminalisation of bribery of foreign and international officials.⁸⁵

Recommendations: Ensure adequate protection for whistleblowers. Introduce criminal liability of legal persons and ensure dissuasive sanctions against companies, as well as against individuals. Establish a central register for the purpose of debarring corrupt companies from public contracts. Ratify the UN Convention against Corruption.

GREECE

NO ENFORCEMENT. No cases or investigations. Share of world exports is 0.3 per cent.

- 77 WSJ Corruption Currents Blog, 11 April 2011, "German Prosecutors Accuse Former Ferrostaal Execs Of Bribery, MAN SE Withdraws Settlement Offer", <http://blogs.wsj.com/corruption-currents/2011/04/11/german-prosecutors-accuse-former-ferrostaal-execs-of-bribery-man-se-withdraws-settlement-offer/>
- 78 Bloomberg, 21 December 2011, "Ferrostaal Fined \$183 Million by Court at Ex-Manager's Trial", <http://www.bloomberg.com/news/2011-12-21/swap-trade-reports-derivatives-amaranth-settles-ferrostaal-compliance.html>
- 79 Ferrostaal Website, 15 December 2011, "Ferrostaal confirms willingness to pay fine" http://www.ferrostaal.com/en/company/media-and-publications/news/?tx_editfiltersystem_pi1%5Bcmd%5D=detail&tx_editfiltersystem_news_pi1%5Buid%5D=1363
- 80 Reuters, 22 February 2011, "German authorities probe Philips' Hamburg office", <http://www.trust.org/trustlaw/news/german-authorities-probe-philips-hamburg-office>
- 81 Bloomberg Business Week, 24 October 2011, "32 million Payments Prompt Prosecutor Probe of Executive", <http://www.businessweek.com/news/2011-10-24/tognum-32-million-payments-prompt-prosecutor-probe-of-executive.html>; Wall Street Journal, Corruption Currents, 24 October 2011, "German Prosecutors Launch Bribery Probe Of Tognum", <http://blogs.wsj.com/corruption-currents/2011/10/24/german-prosecutors-launch-bribery-probe-of-tognum/>
- 82 Der Spiegel, 3 January 2011, "Ermittlungen gegen Telekom-Chef Obermann eingestellt", <http://www.spiegel.de/wirtschaft/unternehmen/0,1518,737536,00.html>
- 83 US Securities and Exchange Commission Press Release, SEC Charges Magyar Telekom and Former Executives with Bribing Officials in Macedonia and Montenegro, <http://www.sec.gov/news/press/2011/2011-279.htm>
- 84 OECD Working Group on Bribery, Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Germany, March 2011, <http://www.oecd.org/dataoecd/5/45/47416623.pdf>
- 85 Council of Europe, Group of States against Corruption, Third Evaluation round – Compliance Report – Germany, 9 December 2011, [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2011\)9_Germany_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2011)9_Germany_EN.pdf)

HUNGARY

LITTLE ENFORCEMENT. 38 cases and two investigations. Share of world exports is 0.6 per cent.

Foreign bribery cases or investigations: There have been 27 convictions, 19 of which were of individuals in connection with a single case involving influence peddling in international relations (selling fake visas). There are also on-going investigation or prosecutions involving 11 charges of bribery, but there is no information about these cases. One reported investigation concerned allegations with respect to the activities in Macedonia and Montenegro of Magyar Telekom, a subsidiary of Deutsche Telekom. In Magyar Telekom's 2010 annual report it reported that "the Hungarian Central Investigating Chief Prosecutor's Office has commenced a criminal investigation into alleged corruption with the intention of violating obligations in international relations and other alleged criminal offenses. Also, as previously announced, the Hungarian National Bureau of Investigation (NBI) has begun a criminal investigation into alleged misappropriation of funds relating to payments made in connection with the Company's ongoing internal investigation and the possible misuse of personal data of employees in the context of the internal investigation."⁸⁶ In March 2011 it was reported that the Hungarian NBI had discontinued its investigation.⁸⁷ In December 2011, Magyar Telekom and its German parent agreed to pay US \$95 million in civil and criminal penalties to settle charges under the US Foreign Corrupt Practices Act.⁸⁸

According to media and the OECD Phase 3 report, Hungarian authorities were investigating allegations of bribery involving the Hungarian oil and gas company Magyar Olaj és Gázipari Nyrt (MOL).⁸⁹ The OECD Phase 3 report on Hungary states that according to media reports, an ex-premier of Croatia was accused of accepting a €10 million bribe in 2008 in exchange for securing the company's dominant position, and that Croatia's mutual legal assistance request to Hungary was declined by Hungary on national security grounds.⁹⁰

Recent developments: A number of relevant laws and amendments were passed in 2011, addressing the organisation and administration of courts, increasing statutes of limitation to at least five years, and amending the criminal code with a new category of bribery-related offences (purchasing influence). In addition, the criminal procedure code was amended to give prosecutors the right to decide at which courts they bring charges in corruption cases, based on the vague criterion of "adjudicating cases within a reasonable period of time". This amendment was annulled by the Constitutional Court as being contrary to Article 6 of the European Convention on Human Rights.⁹¹ Following the Constitutional Court's decision, and based on the same reasoning, the Parliament adopted Transitional Provisions to the Fundamental Law which includes authorisation of the Prosecutor General to give instructions on bringing charges in any criminal procedure at any court designated by him. This provision of constitutional force was criticised by the Venice Commission.⁹² Though specialised units within the prosecution service were established, there is no sign that the prosecutors employed there would have any specialised knowledge; on the contrary, the military prosecution service had been merged into the general prosecution service and the additional positions filled by former military prosecutors

The OECD Working Group on Bribery's Phase 3 Report on Hungary of March 2012 welcomed improvements since 2005/2007, such as hiring additional prosecutors to specialised units at the regional level to deal with corruption issues, lengthening the statute of limitations period for prosecuting foreign bribery offences, and passing a law requiring public officials to report foreign bribery offences.⁹³ The report also noted new legislation to protect whistleblowers, but called on Hungary to clarify that this covers whistleblowers reporting foreign bribery. However, the report also mentioned that the responsible authority with competence to implement the law has not been

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- 86 Magyar Telekom Annual Report for 2010, http://www.telekom.hu/static/sw/download/presentation_FY_2010_eng.pdf (Slide 2); Reuters, 21 March 2011, "Hungarian National Bureau of Investigation Terminates Magyar Telekom Nyrt Investigation – Telecompaper Europe", <http://www.reuters.com/finance/stocks/MYTAY.PK/key-developments>
- 87 Reuters, 21 March 2011, "Hungarian National Bureau of Investigation Terminates Magyar Telekom Nyrt Investigation – Telecompaper Europe", <http://www.reuters.com/finance/stocks/MYTAY.PK/key-developments>
- 88 Wall Street Journal, 30 December 2011, "Deutsche Telekom Settles Charges", <http://online.wsj.com/article/SB10001424052970204720204577128491600192870.html>
- 89 Bloomberg, 19 September 2011, "Hungary Probes Alleged Bribery Involving Mol and Its Croatia Arm", <http://www.bloomberg.com/news/2011-09-19/hungary-probes-alleged-bribery-involving-mol-and-its-croatia-arm.html>
- 90 OECD Working Group on Bribery, Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Hungary, March 2012, <http://www.oecd.org/dataoecd/52/20/50026740.pdf>
- 91 Constitutional Court judgment No. 166/2011 of 20 December 2011
- 92 Opinion on Act CLXII of 2011 on the Legal Status and Remuneration of Judges and Act CLXI of 2011 on the Organisation and Administration of Courts of Hungary, adopted by the Venice Commission at its 90th Plenary Session (Venice, 16-17 March 2012), Opinion 663/2012, CDL-AD(2012)001
- 93 Ibid.

established. The report further observed that Hungary has not charged, prosecuted or sanctioned any legal persons for foreign bribery, and suggested that this may be due to difficulties in applying provisions on criminal liability of legal persons. It found that the requirement that a natural person must be punished in order for a legal person to be prosecuted creates a significant loophole by which legal persons can escape liability. Of particular concern was the potential for a legal person to avoid responsibility by committing an act of foreign bribery through an intermediary. The report also raised a number of other concerns.

Recommendations: Ensure effective protection of journalistic sources and promote investigative journalism. As foreign bribery cases often implicate high-level decision-makers of both public and private sectors, as well as private corporations of national importance, it is of utmost importance that the investigative authorities and the prosecution service should perform their duties independently, and that the investigators and prosecutors should enjoy wider professional autonomy. Due to the increased constitutional independence of the Prosecutor General it is essential to establish proper accountability regulations and increase the transparency of the operation of the Prosecution Service. Enhance cooperation (information exchange, mutual legal assistance, joint investigations) between authorities at national as well as international level by making full use of the EU and other international legal frameworks.

IRELAND

NO ENFORCEMENT. No cases or investigations. Share of world exports is 1.1 per cent.

ISRAEL

NO ENFORCEMENT. No cases or investigations. Share of world exports is 0.4 per cent.

Foreign bribery cases or investigations: There are no cases and there were no investigations in 2011. The Israeli Police indicated that with regard to charges of foreign bribery brought in the FBI's "FCPA sting operation" in the US, it is conducting a preliminary examination into allegations involving an Israeli businessman and an Israeli company. In the framework of this preliminary examination, the Israeli police have requested information on the case from US authorities. (According to the information published by the US Department of Justice and reported by the media, three of the four Israelis involved in this case reside in the US and conduct business there.⁹⁴) In February 2012, it was reported that the US Department of Justice had abandoned this foreign bribery case, dropping the prosecution of 16 businessmen who had been charged.⁹⁵

According to a leading Israeli newspaper Israeli police launched at least four investigations in December 2008 into bribery allegations against defence establishment officials.⁹⁶ The first such probes reportedly started after the introduction five months earlier of the Israeli law that outlawed bribing foreign public officials. Another leading newspaper reported at the time that one investigation involved alleged bribes of six to nine per cent paid out by two state-owned Israeli companies to Indian officials in a US \$1.5 billion missile contract.⁹⁷ According to this report, the Indian media had previously reported allegations about bribes paid in the sale of Barak missiles to India, including accusations against Israel Aerospace Industries and Tafal. The Israeli companies denied any wrongdoing. None of the investigations resulted in criminal charges, apparently because the alleged bribery occurred before the law took effect.

94 Haaretz, 21 January 2010, "U.S. Indicts Four Israelis in armaments bribery case", <http://www.haaretz.com/print-edition/business/u-s-indicts-four-israelis-in-armaments-bribery-case-1.261827>

95 Wall Street Journal Blog, 21 February 2012, <http://blogs.wsj.com/law/2012/02/21/justice-dept-drops-fcpa-sting-case/>. Three men previously pleaded guilty in this case, and US District Judge Richard Leon split the remaining defendants into groups, the first of which went on trial over the summer of 2011. That proceeding ended in a mistrial after the jury failed to reach a verdict. In January 2012, another jury acquitted two defendants in a second trial, and a week later, Judge Leon declared a mistrial after the jury deadlocked on the remaining three defendants.

96 UPI.com, 9 March 2012, "Indian ban hits Israeli defense industry", http://www.upi.com/Business_News/Security-Industry/2012/03/09/Indian-ban-hits-Israelis-defense-industry/UPI-50531331315614/

97 The Jerusalem Post <http://www.jpost.com/Headlines/Article.aspx?id=260645>; See also, OECD Working Group on Bribery, Phase 2 report on Israel, 11 December 2009, <http://www.oecd.org/dataoecd/60/10/44253914.pdf>

Recent developments: In 2010, the Ministry of Defence (MOD) introduced a declaration and a commitment regarding foreign bribery required from exporters in defence marketing and export licence applications. A similar term has been incorporated into the licences themselves. The MOD sent major defence exporters formal letters in 2010 requiring them to adopt and implement corporate anti-bribery compliance programmes by 31 December 2011 as a precondition for receiving marketing and export licences. The MOD reports that currently more than 80 per cent of these exporters have committed to adopting anti-corruption compliance programmes. In another development, ASHRA (the Israel Foreign Trade Risks Insurance Corporation Ltd.) became a member of the OECD Export Credit Group in April 2011.

According to news reports, India has blacklisted **Israel Military Industries (IMI)**, a major Israeli arms manufacturer. The decision will prevent IMI from bidding on Indian defence contracts for a period of 10 years and is being appealed.⁹⁸ A report in March 2012 claimed that IMI was blacklisted in relation to a corruption scandal that centred on a former director general of the state-run Ordnance Factory Board.

Recommendations: Establish the foreign bribery offences as an enforcement priority, and develop new methods and tools that will allow for actual enforcement. Raise awareness about the foreign bribery offence and the responsibility of boards of directors. Provide additional guidelines to companies for countering bribery and implementation.

ITALY

ACTIVE ENFORCEMENT. 32 cases and 15 investigations. Share of world exports is 2.9 per cent.

Foreign bribery cases or investigations: There have been 32 cases in Italy, five of which were concluded in 2011 and nine of which were on-going. Some cases have involved multiple defendants and 15 were Oil-for Food cases. In December 2011, the OECD noted that "although 60 defendants have been prosecuted and 9 cases are under investigation, final sanctions were only imposed against 3 legal persons and 9 individuals, in all cases through *patteggiamento* (settlements)."⁹⁹

Of the five cases concluded in 2011, two were dismissed due to a lack of grounds to prosecute and two due to expiry of the statutes of limitation.¹⁰⁰ In the fifth concluded case, concerning alleged bribes of €14 million (US \$18 million) paid to Libyan officials by an unnamed oil company through an intermediary, the Court of Milan in September 2011 acquitted two individuals and sentenced a third to three-and-a-half years' imprisonment. The convicted person has appealed and it is likely that the sentence will not be enforced as the limitation period expired in January 2012.¹⁰¹

One prosecution underway in 2011 involved charges against the Italian company **Saipem SpA**, a subsidiary of **Eni SpA**, as well as against five former managers. The case concerns alleged bribes paid in connection with award of contracts to the TSKJ joint venture for the development of the Bonny Island liquefied natural gas plant in Nigeria from 1994 to 2004.¹⁰² Saipem's Dutch subsidiary **Snamprogetti Netherlands BV** was a member of the joint venture.¹⁰³ Due to the expiry of the statute of limitations in February 2012, the case against the five managers was dismissed, while the case against the company was to continue with the next hearing set for June 2012.¹⁰⁴

An investigation was reportedly initiated in September 2011 into the state-backed military equipment company **Finmeccanica** in response to allegations of bribery of foreign officials in various countries, including Colombia, India, Malaysia, Panama and Saudi Arabia, for the award of contracts in the military, defence and security sectors.¹⁰⁵

98 Haaretz: 7 March 2012, "India blacklists Israel Military Industries for 10 years", <http://www.haaretz.com/business/india-blacklists-israel-military-industries-for-10-years-1.416993> and Times of India: 6 May 2012, "Blacklisted Israel Military Industries moves Delhi high court", http://articles.timesofindia.indiatimes.com/2012-05-06/india/31597078_1_imi-defence-ministry-defence-equipment.

99 OECD Working Group on Bribery, Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Italy, 16 December 2011, <http://www.oecd.org/dataoecd/59/47/49377261.pdf>

100 Ibid.

101 Ibid.

102 Borsa Italiana, 5 April 2012, "Saipem: tribunale, prescrizione per manager su tangenti Nigeria", http://www.borsaitaliana.it/borsa/notizie/radiocor/finanza/dettaglio/nRC_05042012_1041_81209399.html

103 Saipem homepage, 20 December 2010, "Snamprogetti Netherlands BV enters agreement with Federal Government of Nigeria" <http://www.saipem.com/site/Home/Press/Corporate/articolo6034.html>

104 Borsa Italiana, 5 April 2012, "Saipem: tribunale, prescrizione per manager su tangenti Nigeria", http://www.borsaitaliana.it/borsa/notizie/radiocor/finanza/dettaglio/nRC_05042012_1041_81209399.html

105 La Stampa, 15 September 2011, "La nuova pista: corruzione internazionale"

<http://www3.lastampa.it/politica/sezioni/articolo/1stp/420271/>; Il fatto quotidiano, 16 December 2011, La procura di Napoli: "A Panama Lavitola ha corrotto il governo", <http://www.ilfattoquotidiano.it/2011/12/16/la-procura-di-napoli-a-panama-lavitola-ha-corrotto-il-governo/177918/>

According to news reports in December 2011, an individual was placed under investigation on suspicion of having bribed Panamanian officials with €81 million for the construction of modular-cell prisons.¹⁰⁶ Panama's security minister reportedly asked the Italian government "to declare that there was no corruption in the contracts signed with Panama," and, if this was not confirmed, Panama would void contracts with the Finmeccanica.¹⁰⁷ Meanwhile, the company's chairman was reported to have been put under investigation by Italian authorities in April 2012 amidst allegations of bribes for the sale of 12 helicopters to India in 2010.¹⁰⁸

Recent developments: The OECD Working Group on Bribery Phase 3 report of December 2011 emphasised that Italy's statute of limitations is the primary reason why significant enforcement efforts have led to only limited results in terms of sanctions. The report expressed concern about the striking number of foreign bribery cases dismissed as time-barred or likely to be time-barred within the next year. They also noted that the defence of *concussione* (extortion) is systematically used by defence lawyers and contributes to lengthen investigations and prosecutions of foreign bribery cases. The Phase 3 report also expressed concerns as to the effectiveness of the liability of legal persons in foreign bribery cases as well as about the sanctions framework. Regarding sanctions, it noted a lack of monetary sanctions for natural persons; a low level of financial sanctions for legal persons; lack of clarity about seizure and confiscation options; and lack of transparency in *patteggiamento* settlement arrangements. The Phase 3 report also expressed concern at the lack of whistleblower protection in both the public and private sectors, and a lack of clarity as to the mechanism for public officials to report foreign bribery, as they are required to do. It further recommended increased police training and the creation of specialised units, as well as the establishment of a national database for all on-going cases.

Recommendations: The dismissal of so many cases and the failure to enforce sanctions due to the inadequate statute of limitations in Italy should be addressed. Increase resources for investigations. Develop specific prevention and monitoring mechanisms for companies, in particular for those in the energy and defence sectors, often state-backed, as is the case with Eni and Finmeccanica. Introduce a law providing for whistleblower protection, for both private and public sectors.

JAPAN

MODERATE ENFORCEMENT. Two cases and three investigations. Share of world exports is 4.1 per cent.

Foreign bribery cases or investigations: There have been two cases in Japan, which were concluded in 2007 and 2009. In 2011 there were at least three on-going investigations, according to the OECD Working Group on Bribery Phase 3 Report on Japan. Two of these investigations, for which Japan is awaiting mutual legal assistance, allegedly involve a foreign subsidiary of a Japanese company and a local agent. Several other investigations involving the same company are not being pursued due to the expiration of the statute of limitations.¹⁰⁹ The report further notes that the National Police Agency is also investigating possible foreign bribery in relation to a major infrastructure contract. However, again due to the expiration of the statute of limitations, some of the alleged bribery payments are not being investigated.¹¹⁰ A media report in November 2011 noted that Japanese police were cooperating with an Indonesian investigation into allegations about the Indonesian Ministry of Transportation's award to **Sumitomo Corporation** of a contract for the purchase of used railway cars.¹¹¹ In other jurisdictions, the US sanctioned **JGC Corporation** in April 2011, **Bridgestone Corporation** in September 2011, and **Marubeni Corporation** in January 2012 for FCPA violations.¹¹²

¹⁰⁶ Ibid.

¹⁰⁷ News Room Panama, 25 April 2012, "Mulino threatens cancelation of helicopter contracts"

<http://www.newsroompanama.com/panama/4232-mulino-threatens-cancelation-of-helicopter-contracts.html>

¹⁰⁸ AFP, 24 April 2012, "Finmeccanica boss under investigation for bribery: reports" [http://www.france24.com/en/20120424-](http://www.france24.com/en/20120424-finmeccanica-boss-under-investigation-bribery-reports)

[finmeccanica-boss-under-investigation-bribery-reports](http://www.france24.com/en/20120424-finmeccanica-boss-under-investigation-bribery-reports); Il Sole 24 Ore, 26 April 2012, "Finmeccanica, rogatorie in Francia e Gb" <http://www.ilssole24ore.com/art/notizie/2012-04-26/finmeccanica-rogatorie-francia-083658.shtml?uuid=Ab84hkTF>; La Repubblica, 26 April 2012, "Sugli elicotteri Finmeccanica all'India tangente di 10 milioni per la Lega, http://www.repubblica.it/politica/2012/04/24/news/sugli_elicotteri_finmeccanica_all_india_tangente_di_10_milioni_per_la_lega-33838813/

¹⁰⁹ OECD Working Group on Bribery, Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Japan, December 2011, <http://www.oecd.org/dataoecd/59/51/49377330.pdf>

¹¹⁰ OECD Working Group on Bribery, Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Japan, December 2011, <http://www.oecd.org/dataoecd/59/51/49377330.pdf>

¹¹¹ The Asahi Shinbun, 28 November 2011, "Sumitomo linked to railway corruption case in Indonesia", http://ajw.asahi.com/article/behind_news/social_affairs/AJ201111280018

¹¹² US Department of Justice, 6 April 2011, "JGC Corporation Resolves Foreign Corrupt Practices Act Investigation and Agrees to Pay a \$218.8 Million Criminal Penalty", <http://www.justice.gov/opa/pr/2011/April/11-crm-431.html>; Bloomberg Business Week, 15 September 2011, "Bridgestone to Pay \$28 Million Over Bribes, U.S. Says", <http://www.businessweek.com/news/2011-09-15/bridgestone-to-pay-28-million-fine-over-bribes-u-s-says.html>; UPI, 18 January 2012, "Japan settles LNG bribery case with

Recent developments: In its December 2011 Phase 3 report on Japan, the OECD Working Group on Bribery stated that "prosecutions in two foreign bribery cases in 12 years appears very low in view of the size of the Japanese economy," and that "the Working Group continues to have serious concerns that Japan still does not appear to be actively enforcing its foreign bribery offence."¹¹³ The report also expressed concerns about the effectiveness of sanctions in foreign bribery cases and about lack of provision for confiscation of the proceeds of foreign bribery, and called for urgent steps to establish the necessary legal basis. It found that Japan must also take urgent steps to encourage companies to prohibit the use of facilitation payments, and make it an offence to launder the proceeds of foreign bribery.

Recommendations: Increase access to information on cases, in particular by publishing the number of foreign bribery cases and investigations. Make it a legislative priority to provide for the confiscation of the proceeds of foreign bribery in the Act on Punishment of Organized Crimes and Control of Crime Proceeds (AOCL), an initiative that was rejected by Parliament in 2009. Ensure effective and deterrent sanctions, as the penalties imposed in the two foreign bribery cases were light by international standards.

KOREA (SOUTH)

MODERATE ENFORCEMENT. 17 prosecutions and no known investigations. Share of world exports is 2.9 per cent.

Foreign bribery cases or investigations: There was an on-going prosecution from May 2011 but no investigations underway in 2011. The prosecution was reportedly initiated by the Incheon Prosecutor's Office against a South Korean air cargo company employee for allegedly paying KRW 6.7 billion (US \$6.3 million) in bribes to the Korean president of a local subsidiary of a Chinese government-controlled airline company.¹¹⁴ The OECD Working Group on Bribery Phase 3 report on Korea of October 2011 says there were nine convictions between 2002 and 2008, including three convictions of legal persons.¹¹⁵ Eight cases involved bribery of procurement officials at a US army base in Korea and one concerned bribery of foreign officials in China.¹¹⁶

Recent developments: The Act on the Protection of Public Interest Whistleblowers, which extends whistleblower protection to the private sector, was adopted by the National Assembly on 11 March 2011 and entered into force on 30 September 2011, and an awareness campaign was launched by the Ministry of Justice in 2011.¹¹⁷ The Phase 3 report recommended that Korea ensure that sanctions imposed in practice on natural and legal persons are effective, proportionate and dissuasive. It also called on Korea to make full use of the authority to confiscate the bribe and proceeds where appropriate; and consider whether the complicated nature of the legislation on confiscation has been a hindrance to the effective imposition of confiscation as a sanction.

In addition, during the Transparency International Asia-Pacific Regional Meeting in 2012 (14-17 May in Seoul), all directors and delegates of 21 TI chapters in the Asia Pacific region called for the revitalisation of the Korean Pact on Anti-Corruption and Transparency (K-PACT) by the Korean government.¹¹⁸

Recommendations: Protect whistleblowers in the private sector in practice.¹¹⁹ Increase sanctions. Conduct awareness-raising and provide more information for corporations. Provide greater access to and disclosure of information about foreign bribery enforcement. Re-establish a separate, independent anti-corruption agency such as the Korea Independent Commission against Corruption (KICAC) that existed before it was merged with the Ombudsman and Administrative Appeals Commission in 2009.

U.S.", http://www.upi.com/Business_News/Energy-Resources/2012/01/18/Japan-settles-LNG-bribery-case-with-US/UPI-90521326893179/

113 OECD Working Group on Bribery, Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Japan, December 2011, <http://www.oecd.org/dataoecd/59/51/49377330.pdf>

114 OECD Working Group on Bribery, Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Korea, October 2011, <http://www.oecd.org/dataoecd/59/31/48897608.pdf>

115 Ibid.

116 Ibid.

117 OECD, "Steps taken to implement and enforce the OECD Convention", June 2011, <http://www.oecd.org/dataoecd/16/62/42102467.pdf>; OECD Working Group on Bribery, Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Korea, October 2011, <http://www.oecd.org/dataoecd/59/31/48897608.pdf>

118 Transparency International Asia-Pacific Resolution "Requesting for the Revitalisation of K-PACT", 17 May 2012 http://ti.or.kr/xe/?mid=enotice&document_srl=261915

119 See: http://ti.or.kr/xe/?_filter=search&mid=briefing&search_target=title_content&search_keyword=%EA%B3%B5%EC%9D%B5%EC%8B%A0%EA%B3%A0&document_srl=242911
http://ti.or.kr/xe/?_filter=search&mid=briefing&search_target=title_content&search_keyword=%EA%B3%B5%EC%9D%B5%EC%8B%A0%EA%B3%A0&document_srl=240323

LUXEMBOURG

LITTLE ENFORCEMENT. One case and two judicial investigations. Share of world exports is 0.4 per cent.

Foreign bribery cases or investigations: There is one pending prosecution, and two judicial investigations. The pending prosecution is not major, and involves alleged bribery of a public official in Romania, though no further details are known. According to the OECD Working Group on Bribery Phase 3 Report of June 2011, Luxembourg stated at the time that there was one pending judicial investigation. However, the report said it was not certain that this was an OECD Convention case because it involved bribes paid by Portuguese nationals established in Luxembourg to a Portuguese public official, so that he would issue documents falsely certifying that the conditions for the exercise of certain independent professions in Luxembourg were met. According to the TI Luxembourg expert, another judicial investigation on-going in Luxembourg, not mentioned by the OECD report, concerns activities in Liberia of a major multinational company headquartered in Luxembourg.

In the past, there have been reports of investigations in Luxembourg regarding a range of allegations.¹²⁰ In January 2010, media cited a Luxembourg police investigation report that mentioned then French president Nicolas Sarkozy in connection with the payment of tens of millions of euros in alleged bribes in the sale of French submarines to Pakistan in 1994.¹²¹ In the French investigation of this case, a former French defence ministry official was reported in January 2012 to have testified about a Luxembourg company that allegedly handled the bribe payments.¹²²

Luxembourg does investigate OECD Convention-related money-laundering cases, and uses a considerable amount of resources to provide mutual legal assistance, partially related to the OECD Convention cases. However, this is not captured in its statistics.

In other jurisdictions, in May 2011 in the US **Tenaris SA**, a Luxembourg-headquartered manufacturer and supplier of steel pipe products and related services to the oil and gas industry, agreed to pay US \$8.9 million in penalties for FCPA violations and accepted an SEC Deferred Prosecution Agreement and a US Department of Justice Non-Prosecution Agreement.¹²³ The SEC alleged that employees of Tenaris bribed government officials at a state oil and gas company in Uzbekistan to gain access to confidential bids by competitors for four government contracts, revised its own bids, and as a result won several contracts awarded by the Uzbekistan government.¹²⁴

Recent developments: The OECD Working Group on Bribery Phase 3 report on Luxembourg of June 2011 welcomed amendments to the legislation since the Phase 2bis report; in particular, the introduction on 3 March 2010 of provisions for the criminal liability of legal persons.¹²⁵ It noted, however, that the application of the new provisions has so far been limited. The report highlighted the lack of enforcement of the offence of bribery of foreign public officials, with only one case being prosecuted at the time of the report. Both that report and the GRECO Interim Compliance Report of April 2011 welcomed the introduction into Luxembourg law in 2011 of whistleblower-protection measures in the public and private sectors (Act strengthening means to combat bribery of 13 February 2011).¹²⁶

Recommendations: Extend whistleblower protection, improve awareness-raising, and increase qualified human resources within the judicial police.

120 In 2007, EU offices were reportedly raided in a bribery inquiry involving police in Belgium, France, Italy and Luxembourg.

The Irish Times, 3 March 2007, "EU Offices Raided in Bribery Inquiry", <http://www.irishtimes.com/newspaper/world/2007/0328/1175003351703.html>. In 2002 an investigation was reported in Luxembourg in relation to allegations that the German company Ferrostaal transferred several hundred million dollars into secret accounts of a son of Nigerian dictator Sani Abacha with the Luxembourg subsidiary of the Hamburg-based bank M.M. Warburg: Deutsche Welle, 22 April 2002, "Ferrostaal at Center of Probe into Nigerian Corruption Affair", <http://www.dw-world.de/dw/article/0,,503022,00.html>

121 France 24, 23 November 2010, "'Karachigate' police report mentions French president", <http://www.france24.com/en/20100602-luxembourg-police-report-karachi-gate-mentions-sarkozy>

122 Reuters, 2 January 2012 (citing Liberation), "Sarkozy mis en cause dans l'affaire Karachi, selon Liberation", <http://fr.reuters.com/article/topNews/idFRPAE80103220120102>

123 US Department of Justice Press Release, 17 May 2011, "Tenaris S.A. Agrees to Pay \$3.5 Million Criminal Penalty to Resolve Violations of the Foreign Corrupt Practices Act" <http://www.justice.gov/opa/pr/2011/May/11-crm-629.html>

124 US SEC Press Release, 17 May 2011, "Tenaris to Pay \$5.4 million in SEC's First Ever Deferred Prosecution Agreement", <http://www.sec.gov/news/press/2011/2011-112.htm>

125 OECD Working Group on Bribery, Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Luxembourg, June 2011, <http://www.oecd.org/dataoecd/46/61/48270224.pdf>

126 Council of Europe, Group of States against Corruption, Third Evaluation round – Interim Report – Luxembourg, 1 April 2011, [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2010\)4_Interim_Luxembourg_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2010)4_Interim_Luxembourg_EN.pdf); OECD Working Group on Bribery, Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Luxembourg, June 2011, <http://www.oecd.org/dataoecd/46/61/48270224.pdf>

MEXICO

LITTLE ENFORCEMENT. No cases and two investigations. Share of world exports is 1.7 per cent.

Foreign bribery cases or investigations: The information on the investigations comes from the OECD Working Group on Bribery Phase 3 Report on Mexico of October 2011, which points out that there are two investigations which opened in 2004 and 2005.¹²⁷ Both came to the attention of the Attorney General's Office (PGR) through foreign authorities and were still under investigation at the time of the report. Both investigations are on-going and have yet to produce foreign bribery charges as of the time of this report. Given the delay, the limitation periods in these cases could expire as early as 2012, according to Mexican authorities.

Recent developments: The Phase 3 report stated: "When foreign bribery cases are opened, the Mexican authorities do not appear to have investigated and prosecuted them with priority and urgency."¹²⁸ It indicates that "the PGR became aware of allegations related to the first investigation in 2001. The investigation initially concerned money laundering but was expanded to include foreign bribery in 2004. A mutual legal assistance (MLA) request was sent to foreign authorities only in 2008 and remains outstanding. The statute of limitations for the investigation expires as early as December 2012. The second foreign bribery investigation opened in 2005 and an MLA request was sent in 2010. This request, too, remains outstanding. In sum, both foreign bribery cases appear to have languished." The Phase 3 report also highlighted a deficiency in corporate criminal liability in Mexico. A company may be held liable for foreign bribery only if a natural person who is a member or representative of the company has been convicted of the crime. Liability arises only if the bribery was "committed with the means of the legal person" which requires prosecutors to prove that the company had known that its resources would be used and would not cover bribery committed with other resources such as the employee's own funds. Also, liability cannot be imposed against state-owned or state-controlled enterprises.

Recommendations: Handle foreign bribery cases and investigations with more priority and speed. Ensure greater agency coordination at federal and local level. Create a public information system regarding enforcement of international anti-corruption conventions.

NETHERLANDS

MODERATE ENFORCEMENT. Nine cases and four investigations. Share of world exports is 3.2 per cent.

Foreign bribery cases or investigations: Of the nine cases, seven were Oil-for-Food cases settled out of court. The Dutch authorities reported four investigations pending in 2012. According to a news report in October 2011, the Dutch Public Prosecutor's office launched an investigation into a Dutch import and export company, following information from the World Bank that one of its former employees had been bribed by the Dutch firm. The investigation is being carried out jointly by the Dutch Public Prosecutor and the Overseas Anti-Corruption Unit of the London police. The Dutch tax office is also reportedly facilitating the enquiry. This investigative activity resulted from a preliminary investigation by the World Bank Group Integrity Vice Presidency, which referred the information to the relevant authorities. The Dutch authorities are also reportedly conducting an investigation with respect to alleged illicit payments in Jamaica by **Trafigura Beheer BV**, the world's largest independent oil trader, following a request from public officials in Jamaica.¹²⁹

According to a 2011 news report, in March 2008 when Polish authorities were investigating alleged bribery related to **Philips'** operations in Poland, they requested the Dutch authorities to raid Philips' offices in the Netherlands.¹³⁰ The Dutch authorities only followed up with a raid in October 2009, too late for the Polish investigation.¹³¹ Due to Polish corruption legislation, Philips as a legal entity could not be prosecuted. The Polish investigation led to the trial in 2011 in Katowice of three Polish former managers of Philips accused of bribing hospital managers to purchase

127 OECD Working Group on Bribery, Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Mexico, October 2011, <http://www.oecd.org/daf/bribery/internationalbusiness/48897634.pdf>

128 Ibid.

129 The Gleaner, 6 December 2011, "PNP Gets Go-Ahead in Trafigura Case", <http://jamaica-gleaner.com/gleaner/20111206/lead/lead2.html>

130 Radio Netherlands Worldwide, 13 June 2011, "Dutch 'dragged their feet' in Philips Poland bribery case", <http://www.rnw.nl/english/article/dutch-%E2%80%98dragged-their-feet%E2%80%99-philips-poland-bribery-case>

131 Ibid.

Philips medical equipment.¹³² In November 2011, a prosecutor in the case was reported to have said that Poland has no evidence that Royal Philips Electronics NV was aware of alleged corruption of its former managers.¹³³ In February 2012, Philips' Hamburg office was under investigation and the media said an individual was suspected of corruption.¹³⁴

Recent developments: On 21 February 2012, the Dutch Minister of Security and Justice signed a memorandum of understanding with the World Bank in which they agreed to cooperate in support of criminal and administrative investigations and proceedings in the fight against fraud and corruption that threaten the security of development resources.

Recommendations: Increase sanctions for foreign bribery. Expand and institutionalise the cooperation between the National Police Internal Investigation Department (NPIID) and financial investigation authorities. Introduce whistleblower protection in the public and private sectors.

NEW ZEALAND

NO ENFORCEMENT. No cases or investigations. Share of world exports is 0.2 per cent.

Foreign bribery cases or investigations: There have been no cases in New Zealand and there are no on-going investigations.

Recent developments: The Justice Ministry issued an All-of-Government Response paper in August 2011 entitled "Strengthening New Zealand's Resistance to Organised Crime"¹³⁵ which stated an intention to amend bribery and corruption laws to increase penalties and further align the provisions with international standards. The paper also stated an intention to develop a cross-agency project to prevent, detect, investigate and remedy corruption across the public and private sectors. In the context of assessing the impact of organised crime in New Zealand and the need for a range of enhanced response measures, it also mentioned planned reforms in company law rules and in regulation of trust and company services providers to prevent the misuse of New Zealand legal arrangements. This includes measures to prevent the exploitation of loopholes in New Zealand company laws allowing criminal groups to set up "shell" companies that can be used for drug smuggling, fraud and money laundering.¹³⁶ The paper stated that "Over 1,000 NZ company, and limited partnership arrangements [have been] implicated in serious offending overseas over the past five years... The amount of domestic and international crime proceeds laundered through New Zealand entities is difficult to quantify, but is thought to be significant, in the order of NZ \$1 billion to NZ \$1.5 billion."

Recommendations: It appears that awareness within New Zealand of foreign corruption prohibitions and risks is low. The Serious Fraud Office and other agencies should support public-awareness efforts and encourage the reporting of suspected foreign bribery, as it is understood the Serious Fraud Office and police have received few, if any, such complaints.

132 Warsaw Business Journal, 17 May 2011, "Former Philips employees to face corruption trial in Poland" <http://www.wbj.pl/article-5573-former-philips-employees-to-face-corruption-trial-in-poland.html?typ=ise>

133 WSJ Corruption Currents Blog, 16 November 2011, "Philips is 'injured party' in bribery case", <http://blogs.wsj.com/corruption-currents/2011/11/16/philips-is-injured-party-in-bribery-case>

134 Reuters, 22 February 2012, German authorities probe Philips' Hamburg office, <http://www.trust.org/trustlaw/news/german-authorities-probe-philips-hamburg-office>

135 New Zealand Ministry of Justice, Strengthening New Zealand's Resistance to Organised Crime, August 2011, <http://www.justice.govt.nz/publications/global-publications/s/strengthening-new-zealands-resistance-to-organised-crime>

136 See also: nzherald.co.nz, 17 January 2012, "Foreign crooks exploit weak laws", http://www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10779202

NORWAY

ACTIVE ENFORCEMENT. Six cases and three investigations. Share of world exports is 0.9 per cent.

Foreign bribery cases or investigations: In July 2011, three employees of Norconsult AS, were convicted and the company itself, the largest consulting company in Norway, was acquitted.¹³⁷ The case related to allegations of bribery of Tanzanian public officials in the period 2003–2006 in order to obtain contracts on a World Bank project.¹³⁸ An appeal by the company and one of the employees is scheduled to be heard in the Court of Appeal in late August 2012. In 2009, Økokrim (National Authority for Investigation and Prosecution of Economic and Environmental Crime) had fined the employees and the company itself faced a fine of NOK 4 million (US \$730,000), which it rejected in November 2009.¹³⁹ This led to a court hearing in May 2011 and a judgment confirming the fines in July 2011. The Norwegian telecommunications company Telenor has been mentioned in connection with two foreign inquiries into bandwidth awards in India and Ireland.¹⁴⁰ Økokrim is reportedly investigating claims involving Yara, the world's largest fertiliser maker, including allegations of a possible US \$1 million bribe in India during efforts to create a joint venture, as well as a suspected irregular payment in Libya.¹⁴¹

Recent developments: The Norconsult case led to new developments in judicial practice and interpretation of Sections 48a and b of the Penal Code on legal persons' criminal liability on corrupt acts of employees, as the court found the company vicariously responsible for criminal acts of its employees under Section 48a, but acquitted the company under discretionary rules in Section 48b.

The OECD Working Group on Bribery Phase 3 report of June 2011 commended Norway for increased enforcement of the foreign bribery offence, resulting in a number of prosecutions and sanctions of individuals and companies in foreign-bribery related cases. It also commended its whistleblower-protection legislation. The report, noted however, that all foreign bribery cases involving companies have been concluded with out-of-court settlements, and therefore courts have not had the opportunity to provide interpretation of the corporate liability provisions in foreign bribery cases (but see report on Norconsult, above.) The report also noted that confiscation measures have not been relied on by the law enforcement authorities to seize and confiscate the proceeds of bribery potentially gained by companies. The lead examiners also remained unsure as to whether the five-year statute of limitations applicable to the basic foreign bribery offence is adequate for the effective investigation of foreign bribery cases.

Recommendations: Amend current legislation to prevent arbitrariness and inconsistency in sanctioning, and to provide for barring companies from government procurement for foreign bribery. Improve access to information on foreign bribery cases and investigations. Ensure adequate protection against sanctions to whistleblowers who report suspected cases of bribery. Encourage companies to develop internal controls and establish mechanisms and "red flags" for early warning and detection of foreign bribery incidents.

POLAND

NO ENFORCEMENT. No cases or investigations. Share of world exports is 1.1 per cent.

137 Norconsult, "Norconsult acquitted in the Tanzania case", <http://www.norconsult.com/?did=9106472>

138 NA 24, 20 November 2009, "Nekter å godta Økokrims millionbot", <http://www.na24.no/article2762538.ece>; Hegnar Online, 20 November 2009, "Norconsult nekter for korrupsjon", <http://www.hegnar.no/okonomi/article400592.ece>

139 Ibid.

140 BBC News, 2 February 2012, "India court cancels 22 telecom licences", <http://www.bbc.co.uk/news/world-asia-india-16848844>; see also 2011 TI Progress Report on OECD Convention Enforcement

141 Reuters, 12 May 2012, UPDATE 2, "Norway's Yara faces second corruption probe", <http://www.reuters.com/article/2011/05/12/yara-corruption-idUSLDE74B0KT20110512>

PORTUGAL

LITTLE ENFORCEMENT. Four cases and no investigations. Share of world exports is 0.4 per cent.

Foreign bribery cases or investigations: There is no 2011 information available on the cases. Investigations have not evolved.

Recent developments: The Ministry of Justice launched an awareness campaign for Portuguese exporting companies on bribery of foreign officials.¹⁴² A new whistleblowing website of the Public Prosecutor's Office was launched at the end of 2010. By mid-2011 it had received more than 1,000 corruption complaints, some of them reportedly leading to investigations. (It is unknown whether any of these related to foreign bribery).¹⁴³ However, it should be noted that Portugal does not have specific legislation on whistleblowing.

GRECO'S Third Round Evaluation Report of December 2010 included recommendations to enlarge the scope of application of the legislation concerning active and passive bribery of foreign public officials, and called for revision of the "effective regret" exemption from punishment.¹⁴⁴

According to a news report in December 2011, hackers exposed sensitive data on the concluded Freeport and Submarine investigations involving domestic bribery by foreign companies.¹⁴⁵

Recommendations: Implement the recommendations made by GRECO. The method of appointment of the Prosecutor General may raise unnecessary concerns about his/her independence in relation to the government of the day, despite all the constitutional and statutory guarantees. The Portuguese Government and Parliament should aim to improve the independence of the Prosecutor General, mainly by changing the proposal and the appointment process, through a method that ensures greater democratic legitimacy and independence, for example by a two-third majority vote in Parliament (a method which is already used for electing the ten judges to the Constitutional Court, the Ombudsman, the President of the Economic and Social Council, the seven members of the Supreme Judicial Council, the members of the media regulatory body and the members of all other constitutional bodies under art. 163 of the Constitution of the Portuguese Republic). Provide the Public Prosecutor's Office and police investigators with more financial resources, internal expert and intelligence units (thus avoiding the need for external experts and consultants, and the consequent conflict of interest issues that may arise) and specific training, to properly conduct investigations. Conduct more awareness-raising initiatives, amongst the private sector especially. Increase sanctions.

SLOVAK REPUBLIC

LITTLE ENFORCEMENT. No cases and one investigation. Share of world exports is 0.4 per cent.

Foreign bribery cases or investigations: There is reportedly an on-going investigation underway by the Slovak police in cooperation with UK and European authorities, into alleged illicit payments by the company *Istrokapitál Slovensko* in the Turks and Caicos islands.¹⁴⁶ The expert reports that the Slovak authorities tried to transfer the case to the UK authorities already investigating the case but this was not possible. There was a report of an Oil-for-Food investigation that was dropped in early 2011, but there is no confirmed information about this.

142 DGPJ website, "DGPJ promove sensibilização sobre corrupção no comércio internacional", <http://www.dgpj.mj.pt/sections/noticias/a-corrupcao-nas>

143 Público, 16 July 2011, "Mais de mil denúncias de corrupção na PGR em oito meses", http://www.publico.pt/Sociedade/mais-de-mil-denuncias-de-corrupcao-na-pgr-em-oito-meses_1503271

144 Council of Europe, Group of States against Corruption, Third Evaluation round – Evaluation Report – Portugal, 3 December 2010, [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3\(2010\)6_Portugal_One_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2010)6_Portugal_One_EN.pdf)

145 Público, 6 December 2011, "Hackers revelam dados sigilosos do Freeport e submarinos", <http://www.publico.pt/Sociedade/hackers-revelam-dados-sigilosos-do-freeport-e-submarinos-1523934>; Diário de Notícias: http://www.dn.pt/inicio/interior.aspx?content_id=1173505; Algarve Daily News, 6 December 2011, "Hackers reveal sensitive data on the Freeport and submarine purchase scandals", <http://algarvedailynews.com/news/5230-hackers-reveal-sensitive-data-on-the-freeport-and-submarine-purchase-scandals>; The Portugal News Online, 10 December 2011, "Hackers 'leak' state secrets", <http://www.theportugalnews.com/cgi-bin/google.pl?id=1142-3>

146 The Slovak Spectator, 30 March 2009, "Slovak Link to Island Graft Inquiry", http://spectator.sme.sk/articles/view/34801/2/slovak-link_to_island_graft_inquiry.html

Recent developments: A working group was established in January 2011 by the Ministry of Justice, consisting of members of the Prosecutor's Offices, courts, police headquarters, Ministry of Interior and Ministry of Justice, to address one of the six key recommendations of GRECO, in particular to review its existing legislation to ensure "that bribery in the public sector is criminalised also in situations which do not involve a breach of duty or the 'procurement of a thing of general interest.'" A July 2011 amendment to the Slovak Criminal Code implemented another GRECO recommendation by broadening the range of persons targeted by trading in influence provisions to include all categories of domestic and foreign public officials.¹⁴⁷

Recommendations: Provide guidelines, instructions and training to tax examiners on detecting foreign bribery during tax audits. Continue efforts to make whistleblower protection provisions in the Labour Code more widely known to the public.

SLOVENIA

LITTLE ENFORCEMENT. No cases and six investigations. Share of world exports is 0.2 per cent.

Foreign bribery cases or investigations: The Prosecutor's Office of Ljubljana informed the expert that there are six related investigations underway, but did not disclose further details about them. One of the investigations is reported to concern a subsidiary of the company **Novartis**. Media reports in February 2012 stated that more than two years after the filing of criminal charges on suspicion of corruption, the so-called "Novartis affair" finally moved forward after a deadlock.¹⁴⁸ According to the report, in January 2012 the Ljubljana District Court ordered an investigation of the Slovenian branch of Novartis and six individuals in January 2012. The investigation of the company relates to five offences¹⁴⁹ Five of the individuals are suspected of committing a criminal offence under Article 267 of the Penal Law (extortion of statement) and one person is suspected of committing criminal offence under Article 268 of Penal Law (misappropriation of property of investigation or enforcement).

Recent developments: In early 2012, the government moved the Prosecutor's Office under the Ministry of Interior, a step in the wrong direction. Also recently, a new law on the recovery of assets came into force, which among other things introduced financial investigations and provides for temporary and permanent recovery of illicit assets. Otherwise, there were other major developments and changes in 2010, when the Integrity and Prevention of Corruption Act was adopted. It has since been amended twice, first in April 2011 and then in June 2011. The National Bureau of Investigation became operational, and the Court Act entered into force in 2011. In September 2011, Parliament issued an official consolidated text of this Act.

Recommendations: Even more than last year, it is important to highlight the need for independence of investigators and prosecutors. Adopt a more proactive approach to the investigation and prosecution of foreign and domestic bribery, enforcing the solid legal framework. Improve the recording of statistical data by police and public prosecution offices.

SOUTH AFRICA

NO ENFORCEMENT. No cases or investigations. Share of world exports is 0.5 per cent.

147 GRECO Second Interim Compliance Report on the Slovak Republic, 5-7 December 2011, [http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3\(2010\)3_2nd_Interim_Slovakia_EN.pdf](http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3(2010)3_2nd_Interim_Slovakia_EN.pdf)

148 Dnevnik.si 15.2.2012 <http://dnevnik.si/novice/zdravje/1042509969> and Finance.si 15.2.2012 <http://www.finance.si/340491/Afera-Novartis-po-dveh-letih-na-sodi%C5%A1%C4%8De>

149 Ibid.

SPAIN

MODERATE ENFORCEMENT. Three cases and no investigations. Share of world exports is 2.1 per cent.

Foreign bribery cases or investigations: The expert reports that it was difficult to obtain information on foreign bribery cases or investigations from the Spanish Public Prosecutor's Office due to the lack of a comprehensive filing and reporting system. There were no new prosecutions and no known on-going investigations in 2011. One case in the past related to *Instalaciones Inabensa SA*¹⁵⁰, a subsidiary of the Spanish conglomerate *Abengoa SA*, which was charged in 2008 with bribing the then-president of Costa Rica to obtain a US \$55 million public contract to provide electricity to the city of San Jose. The case was closed by the Central Court on the grounds that Article 445 of the Penal Code (bribery of foreign public officials) does not include the possibility of prosecuting a foreign citizen abroad (Article 23 LOPJ). A case brought in 2002 concerned *Banco Bilbao Vizcaya Argentaria*¹⁵¹. In another case, a Spanish company was charged with bribing the president of Angola, but after two years the investigative judge decided to close the case and the Central Court confirmed the decision. One Oil-for-Food case investigation closed before going to court because of lack of evidence of a crime.

In connection with the Swiss-Polish investigation of allegations involving *Alstom*¹⁵², the Spanish police were requested to arrest a consultant in January 2010 on the basis of a European Arrest Warrant and, after some delay, did so in March 2010. There have been serious allegations reported in the press in the past against the oil and gas company *Repsol YPF*, as well as against *Endesa*, *Union Fenosa* and *Indra*. There are also reports which raise serious concerns.¹⁵³

Recent developments: In April 2010, Spain ratified the Council of Europe Criminal Law Convention on Corruption, which entered into force for Spain on 1 August 2010. It ratified the Additional Protocol to the Convention in January 2011, which entered into force on 1 May 2011.

Recommendations: Improve whistleblower protection. Introduce more transparency in the Public Prosecutor's Office. Provide more resources for combating international corruption.

SWEDEN

MODERATE ENFORCEMENT. Two cases and one investigation. Share of world exports is 1.2 per cent.

Foreign bribery cases or investigations: In one case, a major criminal prosecution was brought in 2009 against three executives of *Volvo Construction Equipment International AB*, a subsidiary of *Volvo AB*, based on allegations of illicit payments in Iraq in connection with the UN Oil-for-Food programme.¹⁵⁴ All three were convicted and received conditional sentences together with fines.

One part of an investigation into the demining equipment manufacturing company *Countermine Technologies AB* in connection with alleged bribery and fraud in Libya was closed in December 2010.¹⁵⁵ There is also an ongoing investigation concerning allegations of illicit payments by *Scania* in connection with the UN Oil-for-Food programme in Iraq. In this case the CEO of *Scania* was reported to have filed a complaint with the Swedish Chancellor of Justice against a prosecutor who has been investigating the allegations. The *Scania* CEO claimed violation of confidentiality rules.¹⁵⁶

Recent developments: The anti-corruption legal framework has been under review since 2009, and a new bill was presented in 2012. However, the terms of reference for the Committee of Inquiry were too limited to ensure adequate revision of the foreign bribery offence. It is important that the Committee reviews statutes of limitations,

150 Allegations first appeared in 2004 in the Spanish newspapers *El Mundo* and *Al Dia* and the Argentinian *La Nacion*. See e.g. *La Nacion*, 9 October 2004; www.nacion.com/In_ee/ESPECIALES/ice-alcatel/n1009.html; *Inside Costa Rica*, 21 October 2004, insidecostarica.com/dailynews/2004/october/21/nac0.htm#Abengoa%20Loses%20Costa%20Rican%20Contract
As a result of the bribery charges, Inabensa reportedly lost a F162.4 million contract to build a power plant in Costa Rica and was removed from the list of government suppliers to the electricity company ICE.

151 BBC News, 9 April 2002, news.bbc.co.uk/2/hi/business/1919257.stm; All Business.com, 1 May 2002, www.allbusiness.com

152 New York Times Online, 29 March 2010, www.nytimes.com/2010/03/30/business/global/30alstom.html?pagewanted=2

153 For example: "Valoracion de la responsabilidad social de las empresas espanolas en América Latina (Argentina, Brasil, Chile, México y Perú)", by Observatorio de Responsabilidad Social Corporativa

154 The Local, 6 March 2009, "Volvo execs charged for Saddam-era bribes", <http://www.thelocal.se/18032/20090306/>

155 OECD Working Group on Bribery, Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Sweden, June 2012, [http://search.oecd.org/officialdocuments/displaydocumentpdf/?cote=DAF/INV/BR\(2012\)15/FINAL&docLanguage=En](http://search.oecd.org/officialdocuments/displaydocumentpdf/?cote=DAF/INV/BR(2012)15/FINAL&docLanguage=En)

156 The Local, 27 June 2011, "Scania CEO reports prosecutor over 'oil-for-food' bribery claims", <http://www.thelocal.se/34594/20110627/>

the introduction of corporate liability, effective and deterrent sanctions, adequate whistleblower protection, and the repealing of dual criminality. Additionally, the number of prosecutors, forensic accountants and administrative staff at the National Anti-Corruption Unit (NACU) has increased significantly with the unit now composed of seven prosecutors, three forensic accountants and three assistants. A National Police group of approximately 30 officers was also established to support the NACU and began work in 2012.

Recommendations: Ensure a sufficient number of well-trained police investigators directly subordinate to the National Anti-Corruption Unit. Introduce heavier fines for corporations and other legal entities and adequate penal law provisions making corporations liable for bribery carried out through subsidiaries, joint ventures and/or agents. Abolish the prerequisite of dual criminality. Introduce an effective, specific law on the protection of whistleblowers.

SWITZERLAND

ACTIVE ENFORCEMENT. 52 cases and number of investigations unknown. Share of world exports is 1.5 per cent.

Foreign bribery cases or investigations: There have been 52 cases in Switzerland, 36 of which were Oil-for-Food related. Eleven Oil-for-Food cases resulted in convictions for violation of the trade embargo but none for foreign bribery. Information on one of the cases resulting in a foreign bribery judgment is available, namely that against **Alstom Network Schweiz AG** allegedly acting for **Alstom SA**, the Paris-based energy and transport company, and a number of its subsidiaries (see case study in Section V, below).¹⁵⁷ In a summary judgment in November 2011 by the Swiss Attorney General, the company was found to have failed to take all reasonable and necessary organisational measures to prevent the payment of bribes to foreign public officials in Latvia, Malaysia and Tunisia and imposed penalties of CHF 38.9 million (US \$42.2 million), including a fine of CHF 2.5 million, and, in addition, a mandatory donation of CHF 1 million (US \$1.1 million) to the International Committee of the Red Cross.¹⁵⁸ Proceedings are still underway against two individuals for suspected passive bribery and against the consultants allegedly used to channel the bribe payments. The investigation involved mutual legal assistance requests to 15 countries and a spontaneous exchange of information with another eight.¹⁵⁹

The Chief Federal Prosecutor is reported to have opened an investigation into the son of Angola's president, concerning allegations of corruption and money laundering in relation to the African Innovation Foundation registered in Zurich, Switzerland.¹⁶⁰ It was also reported in April 2012 that Swiss authorities had arrested a former executive of the Canadian engineering company **SNC Lavalin Group Inc.** on suspicions of corrupt practices, fraud and money laundering in connection with dealings conducted in North Africa, including Libya and Tunisia.¹⁶¹

Recent developments: The OECD Working Group on Bribery in its Phase 3 report of December 2011 congratulated Switzerland on its first conviction of a company for foreign bribery, but noted that the number of convictions remains low, which may be due to difficulties in applying provisions on the criminal liability of legal persons. The report considered that sanctions do not always appear sufficiently dissuasive and was concerned about the lack of a systematic approach allowing for the exclusion of companies convicted of bribery from public procurement or Overseas Development Assistance contracts. It welcomed the new Code of Criminal Procedure, and noted the existence of draft legislation defining the framework for reporting and whistleblower protection in the private sector and recommended this be adopted as soon as possible.¹⁶² The GRECO report of October 2011 pointed to the fact that offences of private sector and international bribery are defined more narrowly than those applicable to domestic public officials, and that Switzerland has restricted its jurisdiction in cases with a transnational dimension.¹⁶³

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

158 Reuters, 22 November 2011, "Alstom fined \$42 mln in Swiss bribery probe", <http://www.reuters.com/article/2011/11/22/alstom-idUSL5E7MM1ZD20111122>; WSJ Corruption Currents Blog, 22 November 2011, "Alstom Fined By Switzerland In Bribery Case", <http://blogs.wsj.com/corruption-currents/2011/11/22/alstom-fined-by-switzerland-in-bribery-case/>

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

160 *andelzeitung*, 7 August 2011, "Angolanische Wirren", <http://www.handelszeitung.ch/invest/angolanische-wirren>

161 SNC Lavalin website, 29 April 2012, "SNC-LAVALIN'S Position Regarding the Announcement of Riadh Ben Aissa's Arrest", http://www.snclavalin.com/news.php?lang=en&tid=1740&taction=latest_news_details

162 OECD Working Group on Bribery, Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Switzerland, December 2011, <http://www.oecd.org/investment/briberyininternationalbusiness/anti-briberyconvention/49377354.pdf>

163 Council of Europe, Group of States against Corruption, Third Evaluation Round – Switzerland, 21 October 2011, Phase 3 Report on Implementing the OECD Anti-Bribery Convention in Switzerland, December 2011, <http://www.oecd.org/investment/briberyininternationalbusiness/anti-briberyconvention/49377354.pdf>

Recommendations: Improve the statistics maintained by the government on foreign bribery. First, data from the cantons should be included in the statistics and further, information on concluded cases should be improved by disclosing court decisions and reasoning as well as the amounts of any fines, prison sentences, or compensation for damages ordered. Implement the recommendations of the OECD Working Group on Bribery and GRECO.

TURKEY

LITTLE ENFORCEMENT: One case and one investigation. Share of world exports is 0.8 per cent.

Foreign bribery cases or investigations: Turkey initiated and concluded its first foreign bribery case in 2011, following the Ankara chief public prosecutor's indictment dated 24 May 2011. The indictment concerned alleged corruption by a Turkish company relating to the Oil-For-Food programme in Iraq. The case was filed against two people at the Ankara 7th Criminal Court and on 20 September 2011, the defendants were acquitted on the grounds that the acts were committed prior to the act becoming a crime. In October 2011, the Turkish Prime Ministry Inspection Board notified **Siemens A.S. Turkey** of an investigation in connection with alleged bribery in Turkey and Iraq from 1999 to 2007.¹⁶⁴ In April 2012, **Turkcell**, Turkey's largest cell provider said in an SEC filing that it was investigating allegations of "improper payments" related to a mobile operator in Kazakhstan in which Turkcell's minority subsidiary **Fintur Holdings BV** has a 51% share.¹⁶⁵

Recent developments: No recent developments.

Recommendations: Improve data collection and management of foreign bribery allegations. Provide greater training for law enforcement officials and government officials. Provide clear definitions of gifts and souvenirs, as well as distinctions between bribes and gifts. Provide trainings for the private sector, since awareness of the OECD Convention is extremely low.

UNITED KINGDOM

ACTIVE ENFORCEMENT. 23 cases and 29 investigations. Share of world exports is 3.6 per cent.

Foreign bribery cases or investigations: Of the total 23 cases, 18 have been concluded, three in 2011. The three cases concluded in 2011 include two relating to Iraq, one of them an Oil-for-Food case against an individual,¹⁶⁶ and the other against **Mabey and Johnson Ltd.** for providing kickbacks to Saddam Hussein's regime in exchange for a contract to provide steel bridges.¹⁶⁷ The third case concluded in 2011 was against **MacMillan Publishers Limited** in connection with a World Bank-funded tender to supply educational materials in Southern Sudan.¹⁶⁸ One of the pending cases is against an individual, a British-Canadian billionaire businessman charged in October 2011 with corruption and money laundering in connection with contracts between state-owned smelting company **Aluminium Bahrain B.S.C. (Alba)** and US company **Alcoa** for the supply of aluminium.¹⁶⁹ Three other cases against individuals relate to alleged corrupt payments to public officials and other agents of the governments of Indonesia and Iraq to secure contracts for **Innospec Limited**.¹⁷⁰ In March 2012, it was reported that **BAE Systems** had implemented a 2010 settlement agreement by paying £29.5 million (US \$47 million) to provide textbooks and teacher guides

164 Siemens Form 6-K, 10 November 2011, <http://sec.gov/Archives/edgar/data/1135644/000119312511305744/d253513d6k.htm>

165 WSJ Corruption Currents Blog, 23 April 2012, "Turkcell Discloses Improper Payments at Kazakh Company" <http://blogs.wsj.com/corruption-currents/2012/04/23/turkcell-discloses-improper-payments-at-kazakh-company/> A majority share in Fintur is reportedly held by Teliosonera, AB.

166 SFO Press Release, 13 April 2011, "Medical goods to Iraq supplier jailed for paying kick-backs", <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2011/medical-goods-to-iraq-supplier-jailed-for-paying-kick-backs.aspx>

167 SFO Press Release, 23 February 2011, "Mabey & Johnson Ltd: Former executives jailed for helping finance Saddam Hussein's government", <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2011/mabey--johnson-ltd-former-executives-jailed-for-helping-finance-saddam-hussein%27s-government.aspx>

168 SFO Press Release, 22 July 2011, "Action on Macmillan Publishers Limited", <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2011/action-on-macmillan-publishers-limited.aspx>

169 SFO Press Release, 24 October 2011, "Victor Dahdaleh charged with bribery", <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2011/victor-dahdaleh-charged-with-bribery.aspx>; Financial Times, 31 October 2011, "Dahdahleh asked for £10m bail" <http://www.ft.com/cms/s/0/33fcc9ba-03e2-11e1-98bc-00144feabdc0.html#axzz1lsw1Et7n>

170 SFO Press Release, 27 October 2011, "Innospec Ltd: Two more executives charged with corruption", <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2011/innospec-ltd-two-more-executives-charged-with-corruption.aspx>

to Tanzanian primary schools under a Memorandum of Understanding signed by the Tanzanian government, BAE Systems and the UK Serious Fraud Office.¹⁷¹

Recent developments: Though it was enacted in April 2010, the Bribery Act only entered into force in July 2011 pending the issuance of Guidance to Commercial Organisations (GCO). Following informal consultations with different stakeholders, in May 2012 the government issued a paper for public consultation on the introduction of deferred prosecution agreements as a new enforcement tool to deal with economic crime committed by commercial organisations.

The OECD Working Group on Bribery in its Phase 3 report on the UK in March 2012 commended the UK for increased foreign bribery enforcement and raising awareness of the Bribery Act. At the same time, it expressed particular concerns about some aspects of UK enforcement, including the following: (1) the increased use of civil recovery orders which require less judicial oversight and are less transparent than criminal plea agreements; (2) lack of publicly available information on settlements, including confidentiality provisions in some, thus making it difficult to assess whether sanctions imposed are effective, proportionate and dissuasive; (3) slow progress in extending the Convention to Overseas Territories; (4) the need to ensure that companies move effectively towards zero tolerance of facilitation payments; and (5) the need for the GCO to clarify, in relation to hospitality and promotional expenditures, the significance of "reasonable and proportionate" including the reference to industry norms.¹⁷²

Recommendations: TI-UK believes the Government should consider the introduction of Deferred Prosecution Agreements or some similar sentencing procedure after a thorough assessment of the alternatives and as part of a package of reforms that will help to ensure just, fair and transparent outcomes, particularly in civil recovery cases.¹⁷³ TI-UK continues to be concerned that parts of the Bribery Act's "Guidance" to companies on procedures to prevent bribery (in relation to Section 9) could create loopholes and the UK Overseas Territories Anguilla, Bermuda, Gibraltar, Montserrat and Turks and Caicos are not compliant with the OECD Convention. TI-UK is also concerned that, because of recent cutbacks, resources for the effective enforcement of the Bribery Act may not be sufficient; and that changes to the institutional arrangements for law enforcement ahead of the establishment of the National Crime Agency in 2013 may reduce resources and downgrade the priority attached to foreign bribery.

UNITED STATES

ACTIVE ENFORCEMENT. 275 cases and 113 investigations. Share of world exports is 9.6 per cent.

Foreign bribery cases or investigations: Of the 275 cases, 42 are pending. (These cases primarily involve proceedings against individual defendants where the corporations have settled without litigation.) There were at least 113 investigations on-going in 2011, higher than any other year, and 20 of those were initiated in 2011. The year was marked by relatively novel enforcement actions instead of settlements, including an SEC suit brought in December 2011 against seven former executives of **Siemens AG**¹⁷⁴ and another against three **Magyar Telekom** executives. The latter followed the December 2011 SEC settlement with Magyar Telekom and its parent **Deutsche Telekom**, by which the subsidiary agreed to pay US \$31.2 million in disgorgement and pre-judgment interest and pay a US \$59.6 million criminal penalty as part of a deferred prosecution with the US Department of Justice (DOJ).¹⁷⁵ The German-based parent agreed to pay US \$4.36 million as part of a Deferred Prosecution Agreement. This case concerned alleged bribery of public officials in Macedonia and Montenegro.¹⁷⁶

171 SFO Press Release, 15 March 2012, "BAE Systems will pay towards educating children in Tanzania after signing an agreement brokered by the Serious Fraud Office, <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2012/bae-systems-will-pay-towards-educating-children-in-tanzania-after-signing-an-agreement-brokered-by-the-serious-fraud-office.aspx>; Defense Industry Daily, 18 March 2012, "BAE's Bribery Battles: Tanzania Paid, as Czech Case Simmers", <http://www.defenseindustrydaily.com/UK-Fraud-Office-BAE-Set-for-Another-Round-05777/>

172 OECD Working Group on Bribery, Phase 3 Report on Implementing the OECD Anti-Bribery Convention in the United Kingdom, March 2012, <http://www.oecd.org/daf/bribery/internationalbusiness/50026751.pdf>

173 TI-UK has made several other recommendations for improving consistency, fairness and transparency (see 'Deterring and Punishing Corporate Bribery – An evaluation of UK corporate plea agreements and civil recovery in overseas bribery cases', TI-UK, December 2011, <http://www.transparency.org.uk/publications>)

174 US Department of Justice Press Release, 13 December 2011, "Eight Former Senior Executives and Agents of Siemens Charged in Alleged \$100 Million Foreign Bribe Scheme", <http://www.justice.gov/opa/pr/2011/December/11-crm-1626.html>

175 US Securities and Exchange Commission Press Release, 29 December 2011, "SEC Charges Magyar Telekom and Former Executives with Bribing Officials in Macedonia and Montenegro" <http://www.sec.gov/news/press/2011/2011-279.htm>

US Department of Justice Press Release, 29 December 2011, "Magyar Telekom and Deutsche Telekom Resolve Foreign Corrupt Practices Act Investigation and Agree to Pay Nearly \$64 Million in Combined Criminal Penalties" <http://www.justice.gov/opa/pr/2011/December/11-crm-1714.html>

176 Ibid.

In their enforcement efforts, the DOJ and SEC were willing to bring cases based on modest connections with the US. For example, the DOJ negotiated a criminal plea agreement with the Japanese company JGC Corp. under which JGC also agreed to pay a US \$218.8 million fine in connection with its involvement in the TSKJ consortium in Nigeria.¹⁷⁷ Another example was the DOJ's reliance on a single email having traversed a US-based server in order to assert territorial jurisdiction over Magyar Telekom. The SEC also deployed its new authority to seek increased civil penalties in administrative cases, in particular in its enforcement action against Diageo plc, alleging that the company paid more than US \$2.7 million in bribes through its subsidiaries to obtain lucrative sales and tax benefits relating to its liquor sales in India, Thailand and South Korea, and violated the FCPA's books and records provisions by failing to accurately record the transactions.¹⁷⁸

At least twenty investigations were initiated this year, including investigations into financial firms' dealings with sovereign wealth funds that include Citigroup Inc., Bank of America Corp., and Blackstone Group LP,¹⁷⁹ amongst other firms, as well as other investigations into Philips Electronics,¹⁸⁰ Kraft Foods Inc.,¹⁸¹ News Corp.,¹⁸² Halliburton,¹⁸³ and Wal-Mart Stores Inc. (for more information on the Wal-Mart investigation, see case study in Section V, below).¹⁸⁴

Recent developments: Despite an active year of enforcement by the US authorities, efforts were subject to significant resistance on a number of fronts, including from the private sector, and the US Congress. In addition, a number of high-profile criminal trials ended without criminal convictions.¹⁸⁵ 2011 saw significant efforts by the US Chamber of Commerce and other private parties to amend the FCPA in ways that would likely benefit companies subject to it. In late 2011, the DOJ announced that it would be issuing guidance on the FCPA criminal and civil enforcement provisions. In the first part of 2012, the department has been conducting a series of informal consultations together with the SEC, to gather inputs from the private sector and civil society on issues of interest for the guidance.

The OECD Working Group on Bribery's Phase 3 Report on implementation of the Convention contained recommendations regarding Non-Prosecution Agreements (NPA) and Deferred Prosecution Agreements (DPA).¹⁸⁶ It was recommended that the US: (1) study the deterrent effect of these agreements and (2) make public detailed reasons on the choice of a particular type of agreement (deferred prosecution or non-prosecution agreement), on the choice of the agreement's terms and duration, and on how a company has met the agreement's terms.¹⁸⁷

With rising enforcement in the US and the significant penalties imposed, there have been questions raised about the extent of the benefits accruing to the private sector from cooperation, voluntary disclosure, and having a strong compliance programme. Although US authorities have taken some steps to begin to address the issue (such as in their decision to not prosecute Morgan Stanley as a result of the company's cooperation and thorough internal investigation¹⁸⁸), this has been an area of long-standing concern in FCPA enforcement. While the enforcement agencies encourage voluntary disclosures and strong compliance programmes, current tools do not make the benefits of these as clear as they could be.

Recommendations: TI-USA recommends that the SEC, DOJ or US Sentencing Commission clarify through guidance the incentives accruing from voluntary disclosure and a strong compliance programme. Further, TI-USA believes that the above-referenced recommendations from the OECD Working Group on Bribery on Deferred Prosecution Agreements are still valid. It is likely that the upcoming guidance may address many of the outcomes that these recommendations seek to achieve.

177 US Department of Justice Press Release, 16 April 2011, <http://www.justice.gov/opa/pr/2011/April/11-crm-431.html>

178 US Securities and Exchange Commission Press Release, 27 July 2011, <http://www.sec.gov/news/press/2011/2011-158.htm>

179 Wall Street Journal, 14 January 2011, "SEC Probes Banks, Buyout Shops Over Dealings With Sovereign Funds", <http://online.wsj.com/article/SB10001424052748704307404576080403625366100.html>

180 WSJ Corruption Currents Blog, 16 November 2011, "Philips Is 'Injured Party' In Bribery Case", <http://blogs.wsj.com/corruption-currents/2011/11/16/philips-is-injured-party-in-bribery-case/>; also Koninklijke Philips Electronics N.V, Annual Report (22 February 2010)

181 FCPA World Compliance, <http://www.fcpa-worldcompliance.com/fcpa-recent-news.html>; WSJ Corruption Currents Blog, 28 February 2011, "SEC Opens Foreign Bribery Probe of Kraft", <http://blogs.wsj.com/corruption-currents/2011/02/28/sec-opens-foreign-bribery-probe-of-kraft/>

182 New York Times, 11 February 2012, "British Arrest 8 in Inquiry About a Murdoch Tabloid", <http://www.nytimes.com/2012/02/12/world/europe/8-arrested-in-hacking-inquiry-tied-to-murdochs-british-papers.html>

183 Halliburton Co., Quarterly Report (Form 10-Q) (21 October 2011), available at <http://biz.yahoo.com/e/111021/hal10-q.html>

184 New York Times, 21 April 2012, "Vast Mexico Bribery Case Hushed Up by Wal-Mart After Top-Level Struggle", <http://www.nytimes.com/2012/04/22/business/at-wal-mart-in-mexico-a-bribe-inquiry-silenced.html?pagewanted=all>

185 New York Times, 10 March 2012, "Hits and Misses in the War on Bribery", <http://www.nytimes.com/2012/03/11/business/corporate-bribery-war-has-hits-and-a-few-misses.html?pagewanted=all>

186 OECD Working Group on Bribery, Phase 3 Report on Implementing the OECD Anti-Bribery Convention in the United States, 15 October 2010, <http://www.oecd.org/dataoecd/10/49/46213841.pdf> and <http://www.oecd.org/daf/briberyininternationalbusiness/anti-briberyconvention/46213841.pdf>

187 Ibid.

188 US Department of Justice, Press Release, 25 April 2012, "Former Morgan Stanley Managing Director Pleads Guilty for Role in Evading Internal Controls Required by FCPA", <http://www.justice.gov/opa/pr/2012/April/12-crm-534.html>; The FCPA Blog, 26 April 2012, "Morgan Stanley's Peters Charged for China Deals", <http://www.fcpa-blog.com/blog/2012/4/25/morgan-stanleypeterson-charged-for-china-deals.html>

CASE STUDIES



Alstom SA and various subsidiaries

Company headquarters – France

Cases – France, Switzerland, World Bank

Investigations – European Investment Bank, European Bank of Reconstruction and Development, France, Mexico, Norway

There were a number of enforcement actions across the world against French engineering giant **Alstom SA** in 2011 and the start of 2012.

In February 2012, the World Bank Group announced the debarment for three years of Alstom subsidiaries **Alstom Hydro France** and **Alstom Network Schweiz AG** for three years. This related to allegations of attempted bribery of Zambian officials in 2002. The companies agreed to a settlement of US \$9.5 million as part of its Negotiated Resolution Agreement, and the subsidiaries will also be prohibited from participating in bids of the African Development Bank, Asian Development Bank, European Bank for Reconstruction and Development (EBRD) and the Inter-American Development Bank Group.¹⁸⁹

As to enforcement in France, Alstom reported in 2010 that a Group subsidiary in the Hydro business was formally charged in France on 6 October 2010 for alleged illegal payments concerning operations in Zambia. Apart from the World Bank, the European Investment Bank was also at the time reportedly conducting an investigation for alleged illegal payments concerning operations in Zambia.¹⁹⁰

The Swiss authorities in November 2011 charged Alstom Network Schweiz with having failed to take all reasonable and necessary organisational measures to prevent the payment of bribes to foreign public officials in Latvia, Malaysia and Tunisia. The Swiss attorney general announced a summary punishment order against the company assessing penalties of CHF 38.5 million (US \$42.2 million) including a mandatory donation of CHF 1 million (US \$1.1 million) to the International Committee of the Red Cross.¹⁹¹

It was reported in April 2012 that the European Investment Bank and the EBRD were investigating the company following allegations that it had bribed Slovenian officials for information on a rival bid submitted by Siemens AG for a €700 million (US \$537 million) power plant project.¹⁹² The company reportedly has been investigated in Mexico on suspicion of bribery and is reportedly under investigation in Brazil, Poland, the UK and the US.¹⁹³

Implications: The World Bank debarment of Alstom marks a significant commitment to anti-bribery enforcement by international development banks and highlights the reach of the cross-debarment agreement established in 2011, which de-bars any company banned by one bank within the network by the other four. Further, this is confirmation the World Bank's previous enforcement efforts through a fine of US \$100 million that was imposed on Siemens. Investigative journalism, including by the Wall Street Journal, has played a role in spotlighting emerging enforcement efforts against Alstom.

189 World Bank Group, 22 February 2012, "Enforcing Accountability: World Bank Debars Alstom Hydro France, Alstom Network Schweiz AG, and their Affiliates", <http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0%2c%2ccontentMDK:23123315~pagePK:34370~piPK:34424~theSitePK:4607%2c00.html>

190 Alstom, Half-year ended 30 September 2010, <http://www.alstom.com/Global/Group/Resources/Documents/30-09-10%20SEMESTRIAL%20FINANCIAL%20REPORT.pdf>

191 WSJ Corruption Currents Blog, 22 November 2011, "Alstom Fined By Switzerland In Bribery Case", <http://blogs.wsj.com/corruption-currents/2011/11/22/alstom-fined-by-switzerland-in-bribery-case/>

192 Wall Street Journal, 30 April 2012, "Alstom Bid Draws Scrutiny", <http://online.wsj.com/article/SB10001424052702304868004577375923946945092.html>

193 Responsible Investor, 6 December 2011, "Norwegian Finance Ministry puts France's Alstom on watch over corruption" http://www.responsible-investor.com/home/article/norwegian_finance_ministry_alstom/

Niko Resources Ltd.

Company headquarters – Canada
Case – Canada

On 24 June 2011, Niko Resources Ltd., a Calgary-based oil and natural gas exploration company, pleaded guilty to one count of bribery under the Corruption of Foreign Public Officials Act (CFPOA) for bribing an energy minister in Bangladesh in 2005.¹⁹⁴ The company paid a CAN \$9.5 million (US \$9.5 million) fine as part of the plea bargain with the Royal Canadian Mountain Police (RCMP), and also agreed to three years' surveillance to ensure the completion of compliance audits.¹⁹⁵

The RCMP's case was based on alleged gifts to the energy minister who was responsible for assessing compensation to be paid by the company to a Bangladeshi village following an explosion at a Niko drilling site. The company allegedly provided the minister with a Toyota Land Cruiser worth CAN \$200,000 (US \$200,000) and a trip to Calgary to visit an Energy Exposition, with a stop-off in New York for his family.¹⁹⁶ The company was notified in January 2009 that it was under formal investigation by the RCMP for the allegations, following the arrest of several Bangladeshi politicians and a Niko Resources executive by local authorities.¹⁹⁷

This case marked Canada's first resolution of a foreign bribery investigation with a plea bargain agreement. In addition to the fine, the Alberta Court of Queen's Bench imposed a probation order on the company requiring that, *inter alia*, the company adopt a detailed anti-corruption compliance programme, and that it appoint an independent auditor to review implementation of the programme and report annually to the Court, the RCMP and the Attorney General of Alberta.

Implications: This is one of the three cases that Canada has now filed and, in addition, 34 investigations are underway. This illustrates Canada's increased enforcement.

Securrency International Pty. Ltd. and Note Printing Australia Ltd.

Company headquarters – Australia
Case – Australia
Investigations – Malaysia, United Kingdom, cooperation of German authorities

Following a two-year investigation initiated in May 2009 by the Australian Federal Police (AFP) and with cooperation from the UK Serious Fraud Office, in July 2011 the AFP arrested six former employees of the Australian banknote printing company Securrency International Pty. Ltd. (Securrency) and Note Printing Australia Ltd. (NPA) on bribery-related charges.¹⁹⁸ The companies were also charged with conspiracy to bribe foreign officials, based on allegations that they had paid or offered bribes in Indonesia, Malaysia, Nepal and Vietnam.¹⁹⁹ The criminal inquiry reportedly started after revelations in the Australian newspaper The Age.

As of June 2012, nine former executives and an agent of the two companies had been charged in Australia with bribery of foreign officials.²⁰⁰ Those arrested included former top management of the companies as well as agents used by the companies.²⁰¹ In September 2011, Australia extradited a former NPA executive from Germany to face

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

195 Ibid.

196 Ibid.

197 The Globe and Mail, 23 June 2011, "Calgary-based oil and gas firm to admit to bribing Bangladeshi minister", <http://www.theglobeandmail.com/news/national/calgary-based-oil-and-gas-firm-to-admit-to-bribing-bangladeshi-minister/article2073507/>

198 News.com.au, 1 July 2011, "Banknote bribery scandal: police bosses of RBA company Securrency", http://www.news.com.au/business/federal-police-makes-arrests-over-foreign-bribery/story-e6frfm1i-1226085438224?from=igoogle+gadget+compact+news_rss

199 News.com.au, 1 July 2011, "Banknote bribery scandal: police bosses of RBA company Securrency", http://www.news.com.au/business/federal-police-makes-arrests-over-foreign-bribery/story-e6frfm1i-1226085438224?from=igoogle+gadget+compact+news_rss

200 Sydney Morning Herald, 25 February 2012, "Reserve chief admits bank knew of corruption", <http://www.smh.com.au/national/reserve-chief-admits-bank-knew-of-corruption-20120224-1tu2l.html>;

Sydney Morning Herald, Smh.com.au, 9 June 2012, "Securrency boss to testify against other bribe accused", <http://www.smh.com.au/national/securrency-boss-to-testify-against-other-bribe-accused-20120608-201g7.html>

201 News.com.au, 1 July 2011, "Banknote bribery scandal: police bosses of RBA company Securrency", http://www.news.com.au/business/federal-police-makes-arrests-over-foreign-bribery/story-e6frfm1i-1226085438224?from=igoogle+gadget+compact+news_rss

charges of bribery in connection with the scandal, marking the first time the Australian authorities had carried out an extradition for such charges.²⁰² They are also reportedly in the process of trying to extradite the Indonesian agent to Australia. In June 2012, it was reported that Securrency's chief financial officer was planning to plead guilty to two counts of bribery-related false accounting and give evidence at the committal proceedings of several colleagues in 2013.²⁰³ He was reported to be the first executive to indicate a guilty plea.

Securrency is half owned by the Reserve Bank of Australia (RBA) and half owned by the UK company Innovia Films (majority owned by the UK private equity fund Candover Investments), while NPA is fully owned by the RBA. Securrency, which produces polymer banknotes, allegedly paid bribes to officials in exchange for contracts to supply central banks. The company allegedly paid AUS \$21 million (US \$22 million) in commissions to Vietnamese agents and officials to win banknote printing contracts in the country.²⁰⁴ The company reportedly also paid the university tuition for a child of the governor of the Vietnamese Central Bank, through bank accounts in Switzerland and Hong Kong, in return for contracts.²⁰⁵ NPA is alleged to have been involved in the offences Indonesia and Malaysia as a joint-venture partner with Securrency as well as being charged with conspiring to offer bribes in Nepal. Allegations have also surfaced that Australia's trade agency Austrade recommended a colonel of the Vietnamese Ministry of Public Security as an agent to arrange contracts in the country.²⁰⁶ There are also reports that RBA members on the NPA board discussed the bribery allegations in a 2007 board meeting, but decided to address the issue internally.²⁰⁷

In other jurisdictions, the Malaysian Anti-Corruption Commission is reportedly collaborating with the AFP in investigations of a former assistant governor for the Malaysian Central Bank in connection with the case.²⁰⁸

In Nigeria, it was reported in 2009 that the National Assembly was planning to investigate the country's former central bank governor over allegations that he was bribed to award a contract to a company controlled by the Reserve Bank of Australia.²⁰⁹ Nigeria's House of Representatives passed a motion requesting the assembly's banking and justice committees to investigate the Central Bank of Nigeria's previous administrators for "brazen cases" of corruption, money laundering, reckless spending and issuing of non-performing loans.²¹⁰

The AFP is continuing investigations with cooperation from the UK Serious Fraud Office (SFO), Malaysian authorities and the Indonesian National Police.²¹¹ In the UK, more than 100 police and investigators have carried out searches at nine properties, marking one of the biggest raids that the SFO has carried out.²¹² Australia extradited a former NPA executive from Germany in September 2011, marking the first time the Australian authorities had carried out an extradition for foreign bribery charges.²¹³

Implications: This is the first foreign bribery prosecution in Australia, and is a major one. The international cooperation underway among various Convention parties and other governments is noteworthy. The involvement of Central Bank officials in at least five other countries are matters of great concern. Also of great concern is the decision by Australian central bank officials not to refer to police the written allegations they had received of serious corruption. They say this was based on legal advice and not a cover-up. It is also worth noting that another banknote-printing company foreign bribery scandal is currently under investigation in Austria. (See Austria country report.) Investigative journalism continues to play a critical role in combating corruption.

202 Corruption Currents, 13 September 2011, "Australia Marks A First With Extradition Of Currency Company Executive", <http://blogs.wsj.com/corruption-currents/2011/09/13/australia-marks-a-first-with-extradition-of-currency-company-executive/>

203 Sydney Morning Herald, Smh.com.au, 9 June 2012, "Securrency boss to testify against other bribe accused", <http://www.smh.com.au/national/securrency-boss-to-testify-against-other-bribe-accused-20120608-201g7.html>

204 Sydney Morning Herald, 12 July 2011, "Vietnam dumps former banker and joins the paper money trail", <http://www.smh.com.au/national/vietnam-dumps-former-banker-and-joins-the-paper-money-trail-20110711-1hats.html#ixzz1RoRa04eH>

205 Ibid.

206 Ibid.

207 Sydney Morning Herald, 25 February 2012, "Reserve chief admits bank knew of corruption", <http://www.smh.com.au/national/reserve-chief-admits-bank-knew-of-corruption-20120224-1tu2l.html>

208 Trust Law, 7 July 2011, "International bribery laws could push enforcement boundaries in Malaysia, say lawyers", <http://www.trust.org/trustlaw/news/international-bribery-laws-could-push-enforcement-boundaries-in-malaysia-say-lawyers>

209 The Age, 23 October 2009, "Nigeria to act on RBA bribe claim", <http://www.theage.com.au/national/investigations/nigeria-to-act-on-rba-bribe-claim-20091022-hbfl.html#ixzz1wWiFKyI0>

210 The Age, 23 October 2009, "Nigeria to act on RBA bribe claim", <http://www.theage.com.au/national/investigations/nigeria-to-act-on-rba-bribe-claim-20091022-hbfl.html#ixzz1wWiFKyI0>

211 Sydney Morning Herald, 25 February 2012, "Reserve chief admits bank knew of corruption", <http://www.smh.com.au/national/reserve-chief-admits-bank-knew-of-corruption-20120224-1tu2l.html>

212 Field, Fisher, Waterhouse, "SFO Investigations", <http://www.ffw.com/feature/the-bribery-act-2010/sfo-investigations.aspx>

213 WSJ Corruption Currents Blog, 13 September 2011, "Australia Marks A First With Extradition Of Currency Company Executive", <http://blogs.wsj.com/corruption-currents/2011/09/13/australia-marks-a-first-with-extradition-of-currency-company-executive/>

Wal-Mart International and Wal-Mart de México

Company headquarters – United States
Investigations – Mexico, United States

On 21 April 2012, the New York Times broke the story of an alleged massive campaign of bribery by Wal-Mart de México (Walmex), a subsidiary of the world's biggest retailer Wal-Mart International.²¹⁴ Hundreds of bribes amounting to at least US \$24 million were reportedly paid to mayors and city council members to secure zoning approvals, reductions in environmental impact fees and the support of neighbourhood leaders, allegedly to expedite the company's expansion in Mexico.²¹⁵ According to the New York Times, in 2005, a whistleblower in Walmex informed the parent company about the bribery campaign. Walmex executives reportedly tried to conceal the information from the US-based headquarters.²¹⁶

Wal-Mart International conducted an internal investigation, with the initial finding that there was "reasonable suspicion to believe" that US and Mexican anti-bribery laws had been violated.²¹⁷ The investigation was then shelved by the parent company and transferred to Walmex's general counsel. The general counsel, was himself alleged to have authorised bribes and soon after exonerated his fellow Walmex executives.²¹⁸

The company has been under investigation by US authorities since late 2011, and it is reported that a Mexican investigation into the allegations is also underway.²¹⁹ The allegations against the company, which employs nearly 800,000 individuals in 5,651 stores in 27 countries, will likely lead to further questioning of the company's activities in other countries.²²⁰ Wal-Mart reported in a regulatory filing in May 2012 that its internal investigation had expanded beyond its Mexican subsidiary.²²¹ The company has now been sued by Calstrs, the public pension fund for California teachers, to "remedy the damages sustained by Wal-mart as a result of alleged gross misconduct by Wal-mart's executive officers and directors."²²²

Implications: The proceedings against Wal-Mart are still at an early stage and the full implications cannot be assessed at this time. However, the following observations appear pertinent:

Investigative journalism continues to play a crucial role in combating corruption.

A key rule for corporate compliance programmes is that responsibility for conducting internal investigations of bribery allegations should not be assigned to the organisational component where the alleged misconduct occurred.

It is surprising that the alleged misconduct involved one of the largest companies in a country with many years of active foreign bribery enforcement.

The allegations of massive bribery by Wal-Mart undermine the political arguments that enforcement of the FCPA should be weakened.

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Alfons Mensdorff-Pouilly

The Austrian lobbyist Alfons Mensdorff-Pouilly has been a central figure in a number of investigations in the US and Europe.

In June 2012, Mensdorff-Pouilly was charged in Austria with money laundering and perjury, reportedly based on allegations that he made payments to public officials in eastern and central Europe for weapons contracts. The prosecutor in the case stated that the lobbyist had received from BAE Systems Plc. €12.6 million (US \$15.7 million) withdrawn by BAE via fake contracts.²²³ Mensdorff-Pouilly had previously been arrested in Austria in March 2009 reportedly in connection with an alleged €13 million (US \$16.5 million) payment made to him by BAE Systems Plc, for whom he had been a consultant for 16 years.²²⁴ The arrest followed an investigation carried out by the UK Serious Fraud Office (SFO), Ministry of Defence, London police, Vienna police and prosecutors, and the Europe-wide prosecutors' group Eurojust.²²⁵ In January 2010, the SFO announced that Mensdorff-Pouilly had been charged with conspiracy to give corrupt payments between 2002 and 2008 to agents or officials of Central European governments (Austria, Czech Republic and Hungary) in relation to contracts for the supply of Saab/ Gripen fighter jets by BAE Systems.²²⁶ These charges were dropped a month later in February 2010 reportedly as part of a settlement with BAE Systems²²⁷ and in 2011 a UK court awarded the lobbyist US \$665,000 for a week spent in prison there.²²⁸

Since 2009 the US Securities and Exchange Commission and Department of Justice have reportedly also been conducting an investigation into the role of Mensdorff-Pouilly and Motorola Solutions in relation to allegations of bribery in the Middle East and seven European countries to win public contracts.²²⁹ According to a news report, the investigation relates to allegations that in April 2004, Motorola transferred up to US \$3.12 million to three firms controlled by the lobbyist.²³⁰ In Austria, Mensdorff-Pouilly allegedly helped secure a contract for a digital radio project of the Austrian government, for a consortium including Motorola and Telekom Austria, and US authorities are also investigating whether the lobbyist paid bribes to win a 2004 contract to upgrade Austria's emergency-services communications networks for a joint venture including Motorola and Alcatel Lucent.²³¹

Mensdorff-Pouilly was also among the lobbyists, former ministers and EADS and Eurofighter executives questioned in an Austrian parliamentary probe from November 2006 into the 2003 sale to Austria of Eurofighter jets made by BAE, EADS and Finmeccanica SpA of Italy. The inquiries looked into whether money from a consulting contract had been used to pay Austrian politicians or to finance election campaigns to secure the sale of the Eurofighter jets. The inquiries ended in July 2007, finding no evidence of bribery.²³²

Implications: Whether or not the charges against Mensdorff-Pouilly stand up in court, the charges and investigations in relation to various transactions he has been involved in highlight the role that agents and intermediaries can potentially play in international marketing and transactions. Increased international law enforcement cooperation is needed to address challenges in such cases.

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232 Bloomberg News, 1 October 2008, "BAE Probed in Austria Over Jet-Fighter Bribery Claims", <http://www.bloomberg.com/apps/news?pid=newsarchive&tid=aiv9e4feZEZA&refer=mideast>

APPENDIX A 2012 EXPORTING BRIBERY REPORT – NATIONAL EXPERT RESPONDENTS

Country	National Expert ²³³
Argentina	Germán Cosme Emanuele, Lawyer, Fundación Poder Ciudadano
Australia	Michael Ahrens, Executive Director, TI Australia Jane Ellis, Board of Directors, TI Australia; Commercial Lawyer
Austria	Magdalena Reinberg-Leibel, TI Austria Johann Rzeszut, Board of Directors, TI Austria; Head of the Austrian Supreme Court 2003-2006
Belgium	Chantal Hebette, TI Belgium
Brazil	Isabel C. Franco, Partner, KLA – Koury Lopes Advogados Rubem Mauro, Associate, KLA – Koury Lopes Advogados
Bulgaria	Ralitzka Ilkova, Lawyer, Sofia Bar Association; Assistant Professor at Faculty of Law of Sofia University "Sv. Kliment Ohridski" Kalin Slavov, TI Bulgaria; Assistant Professor, Faculty of Tax Law at Sofia University
Canada	Milos Barutciski, Board of Directors, TI Canada; Bennett Jones LLP
Chile	Francisco Sanchez, TI Chile
Czech Republic	David Ondracka, TI Czech Republic
Denmark	Knut Gotfredsen, TI Denmark
Estonia	Asso Pii, Executive Director, TI Estonia
Finland	Anna Huilaja, Associate, Asianajotoimisto White & Case Oy
France	Marina Yung, TI France Jacques Terray, Vice-Chairman, TI France
Germany	Max Dehmel, Head of Working Group on International Conventions, TI Germany
Greece	Anna Damaskou, TI Greece; Legal Counsel, Hellenic Capital Market Commission
Hungary	David Vig, Research Fellow, National Institute of Criminology
Ireland	John Devitt, CEO, TI Ireland
Israel	Galia Sagi, TI Israel Heather A. Stone, Partner – GKH Law Offices Niv Sivan, Associate – GKH Law Offices Joshua Ravitz, Associate – GKH Law Offices
Italy	Davide del Monte, TI Italy Giulio Nesi, PhD Candidate in International Law and Economics at Bocconi University
Japan	John Bray, Control Risks Professor Toru Umeda, Vice Chair, TI Japan
Korea (South)	Professor Joongi Kim, Lawyer, TI Korea (South)

Luxembourg	Yann Baden, Lawyer, TI Luxembourg
Mexico	Deniz Devrim, Transparencia Mexicana Alejandra Rascón Rodríguez, Transparencia Mexicana
Netherlands	Dick Alblas, TI Netherlands
New Zealand	Aaron Lloyd, Partner, TI New Zealand Member; Minter Ellison Rudd Watts Fiona Tregonning, TI New Zealand Board Member; Commercial Litigator, Bell Gully,
Norway	Guro Slettemark, Lawyer, TI Norway Stephen Kabera Karanja, Lawyer
Poland	Janusz Tomczak, Lawyer, Senior Associate, Wardyński & Partners
Portugal	Luís de Sousa, Research Fellow, Institute of Social Sciences, University of Lisbon; Transparência e Integridade, Associação Cívica (TIAC) David Marques, Researcher, Transparência e Integridade, Associação Cívica (TIAC) Thierry Dias Coelho, PhD Researcher and Assistant Professor, New University of Lisbon; Invited Researcher, Transparência e Integridade Associação Cívica (TIAC) Susana Duarte Coroado, Research Assistant, Transparência e Integridade, Associação Cívica (TIAC)
Slovakia	Pavel Nechala, TI Slovak Republic, Lawyer, Pavel Nechala & Co s. r. o.
Slovenia	Simona Habic, CEO, Integriteta – TI Slovenia Vid Doria, Integriteta – TI Slovenia Bojan Dobovsek, PhD, Lawyer, Professor, University Maribor Alja Stanko, Volunteer, Integriteta –TI Slovenia
South Africa	Basetsana Molebatsi, Attorney, Dm5 Incorporated
Spain	Manuel Villoria, TI Spain; Professor, Department of Public Law and Political Science, University Rey Juan Carlos Silvina Bacigalupo, Professor, Criminal and Economic Criminal Law, Universidad Autónoma de Madrid
Sweden	Thorsten Cars, Former Head of Department at the Office of the Prosecutor General; former Counsellor at the Ministry of Justice; former Chief Judge at the Stockholm District Court; former Chief Justice at the Svea Court of Appeal (Stockholm) Birgitta Nygren, Board Member, TI Sweden Birgitta Johansson, Board Member, TI Sweden
Switzerland	Jean Pierre Mean, President, TI Switzerland; Lawyer
Turkey	Hande Özhabeş, TI Turkey
UK	Chandrashekhar Krishnan, Executive Director, TI-UK
USA	Lucinda Low and Tom Best, Steptoe & Johnson LLP

233 For a copy of the questionnaire completed by these national experts, please consult Appendix B.

APPENDIX B 2012 QUESTIONNAIRE FOR NATIONAL EXPERT RESPONDENTS

NUMBERS AND DETAILS OF FOREIGN BRIBERY CASES, INVESTIGATIONS & ALLEGATIONS

A NUMBERS

Please note: Foreign bribery cases (and investigations) shall include all cases involving bribery of foreign public officials, criminal and civil, whether brought under laws dealing with corruption, money laundering, tax evasion, fraud, or accounting and disclosure provisions. See Guidelines for definition of "case". Information is requested for foreign bribery cases brought since the OECD Convention became effective in your country.

1 PENDING CASES

a Total number of pending cases: _____

b Cases pending brought since 1 January 2011 (NEW): _____

2 CONCLUDED CASES:

Including convictions, settlements, dismissals or other final dispositions of cases

a Total number of concluded cases: _____

Please list all concluded foreign bribery cases brought since the OECD Convention became effective in your country.

b Cases concluded since 1 January 2011: _____

3 TOTAL CASES (Sum of 1. and 2. above): _____

4 INVESTIGATIONS

Please provide available information on 2011 government investigations of allegations of bribery of foreign public officials:

a Total number of known investigations under way in 2011: _____

b Number of those investigations begun since 1 January 2011: _____

c Developments during 2011:

If possible, please provide information on any investigations that

(1) turned into prosecutions or (2) were dropped in the course of the year.

(1) Investigations turning into prosecutions: _____

(2) Investigations dropped: _____

B DETAILS ABOUT CASES, INVESTIGATIONS & ALLEGATIONS

1 PENDING CASES

For each pending case that was not included in last year's country report please list if possible the following:

a Name of case, including parties _____

b Is this a major case? (See Guidelines for definition)

Yes___ No___

Note: For major cases please provide as much detail as possible to the questions below.

c Is it a criminal or civil case? _____

d Summary of principal charges, including name of the country whose officials were allegedly bribed

e Penalties or other sanctions sought _____

f Status of case, including expected trial date or appeal date. _____

g To your knowledge are there any obstacles holding up the case, such as

- lack of resources
- lack of mutual legal assistance from other governments?
- political interference

If so please explain: _____

h To your knowledge has a case involving the same facts or defendants been brought in another country?

If so where and when? _____

Note: Please state source of information for each case

2 CONCLUDED CASES

For each concluded case that was not included in the last country report please list if possible the following:

a Name of case, including principal parties and when it was brought or lodged in court _____
(Please indicate if major multinationals involved)

b Is this a major case? (See Guidelines for definition.) _____

Yes___ No___

Note: For major cases please provide as much detail as possible to the questions below.

c Is it a civil or criminal case? _____

d Summary of principal charges, including name of the country whose officials were allegedly bribed

e Disposition of case, including penalties or other sanctions imposed including:

Please indicate whether

- penalties against individuals or companies;
 - court decision or settlement out of court
 - requirements for compliance programmes imposed, including provisions for verification
 - if settlement
- was there court approval?
– was there public consultation?
– was the agreement published with accompanying explanation of the terms?

f To your knowledge were there any obstacles, holding up the case?

If so, please explain: _____

g To your knowledge has a case involving the same facts or defendants been brought in another country?

If so where and when? _____

Note: Please state source of information for each case

3 INVESTIGATIONS UNDER WAY IN 2011

Please provide any available details about the following:

- a Names of companies and/or individuals involved: _____
- b Date commenced: _____
- c Nature of allegations: _____
- d Name of country whose officials were allegedly bribed /
Name of company allegedly involved in bribery process: _____

Note: Please state source of information for each investigation

4 ACCESS TO INFORMATION

Information available about foreign bribery cases:

- a Is information on numbers of cases accessible? _____
If not, please indicate the official or other reasons why not: _____
- b Is information on case details accessible? _____
If not, please indicate the official or other reasons why not: _____

5 Recommendations on the basis of case related information

C UPDATE ON INFORMATION ON THE LEGAL FRAMEWORK AND ENFORCEMENT SYSTEM

I have shown this report to a member of my country's delegation to the OECD Working Group on Bribery and taken into account their feedback:

Yes___ No___

Report prepared by:

(signature)

Name of respondent: _____

Affiliation:

Professional experience: _____

APPENDIX

List of persons consulted (with affiliation):

List of references and sources used in responding to this questionnaire:

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