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Progress Report 2011

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PROGRESS REPORT 2011
ENFORCEMENT OF THE OECD
ANTI-BRIBERY CONVENTION

Transparency International (TI) is the global civil society organisation leading the fight against corruption. Through more than 90 chapters worldwide and an international secretariat in Berlin, TI raises awareness of the damaging effects of corruption and works with partners in government, business and civil society to develop and implement effective measures to tackle it.

www.transparency.org

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FOREWORD

The key finding of TI's 2011 Progress Report on Enforcement is that enforcement is inadequate. There is active enforcement in only seven countries, moderate enforcement in nine countries and little no enforcement in 21 countries. There has been no improvement in these numbers from TI's 2010 Progress Report. This is a troublesome indicator of loss of momentum when compared with the steady improvement shown in prior reports.

Experts from TI's national chapters indicate that lagging enforcement in their countries is the result of lack of political commitment by government leaders. This is particularly dangerous in a troubled global economy in which companies are scrambling for orders and business organizations are criticizing anti-bribery enforcement as a competitive obstacle.

TI has begun a campaigning initiative to strengthen enforcement. With a focus on countries with inadequate enforcement, TI national chapters, including the experts who prepared the country reports included in this Progress Report, are inviting their governments to discuss actions needed to overcome current deficiencies and a timetable for taking action.

Fritz Heimann and Gillian Dell
Transparency International

I. INTRODUCTION

This is the seventh annual *Progress Report on Enforcement of the OECD Convention* prepared by Transparency International (TI), the global coalition against corruption. The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, adopted in 1997, requires each State Party to make foreign bribery a crime. The Convention has 38 parties and is overseen by the OECD Working Group on Bribery. The Working Group conducts a follow-up monitoring process under which representatives of two governments and the Secretariat visit each member country and assess its compliance with the Convention's provisions. The monitoring process is now in its third phase, which focuses primarily on enforcement and on the steps which countries have taken to follow up on recommendations in prior reviews.

The OECD Convention is a key instrument for combating global corruption because the parties are involved in two-thirds of international trade and three-quarters of international investment. The Working Group's monitoring process has been conducted in a rigorous and highly professional manner, which provides a model for other treaties. Follow-up monitoring is important to make sure that governments comply with their treaty commitments.

TI's annual progress reports represent an independent assessment of the status of OECD Convention enforcement. The reports have shown steady progress in the decade since the Convention went into effect. There is now active enforcement in seven countries, which represent 30 per cent of world exports, and moderate enforcement in nine countries, which represent 20 per cent of world exports. However, there is little or no enforcement in 21 countries, which represent 15 per cent of world exports. There has been no change in these numbers in the past year. This trend raises concern about whether the Convention is losing forward momentum. Continued lack of enforcement in 21 countries a decade after the Convention entered into force, notwithstanding repeated OECD reviews, clearly indicates lack of political commitment by their governments. And in some of those with moderate enforcement, the level of commitment is also uncertain. This is a danger signal because the OECD Convention depends on the collective commitment of all parties to ending foreign bribery.

II. ORGANISATION AND METHODOLOGY

The 2011 report covers 37 of the 38 parties to the Convention, all except Iceland.¹ It covers enforcement data for the period ending in 2010, as well as some developments to mid-May 2011. As in years past, this report is based on information provided by national experts in each reporting country, who are selected by TI and its national chapters. Appendix A lists the experts and their qualifications. In their responses to the Questionnaire, shown in Appendix B, they took into account the views of government officials and other knowledgeable persons in their countries, as well as the reports of the OECD Working Group on Bribery.

Section III of the report sets forth the major findings, conclusions and recommendations. Section IV provides findings on specific issues, including the adequacy of legal frameworks and enforcement systems; access to information; and the ability to prosecute parent companies for foreign bribery committed by their subsidiaries, agents and other intermediaries. Section V summarises the country reports by national experts on enforcement by OECD parties. Lastly, Section VI reviews foreign bribery cases and investigations concerning one developing country, Nigeria. Nigeria is particularly interesting because of the large number of OECD Convention cases concerning foreign bribery in Nigeria and because Nigerian authorities have recently been active in pursuing some of these cases.

CLASSIFICATION OF PARTIES

Tables A and B classify the parties into three categories: Active Enforcement, Moderate Enforcement and Little or No Enforcement. Active enforcement is considered an adequate deterrent to foreign bribery; moderate enforcement is considered an inadequate deterrent. And, of course, where there is little or no enforcement, there is no deterrent whatsoever. The classification is based on the number and significance of cases and investigations, taking into account the scale of the country's exports.

- **Active Enforcement:** countries with a share of world exports of more than two per cent (the 11 largest exporters) must have at least 10 major cases on a cumulative basis, of which at least three must have been initiated in the last three years and at least three concluded with substantial sanctions. Countries with a share of world exports of less than two per cent must have brought at least three major cases, including at least one concluded with substantial sanctions and at least one pending case, which has been initiated in the last three years.
- **Moderate Enforcement:** countries that do not qualify for active enforcement but have at least one major case as well as one active investigation.
- **Little or No Enforcement:** countries that do not qualify for the previous two categories. This includes countries that have only brought minor cases, countries that only have investigations and countries that have no cases or investigations.

As used in this report, the term "cases" encompasses criminal prosecutions, civil actions and judicial investigations (i.e. investigations conducted by investigating magistrates in civil law systems). The term "investigations" includes investigations by prosecutors and police, and excludes judicial investigations. Cases are considered "major" if they involve alleged bribery of senior public officials by major companies. For the purposes of this report, foreign bribery cases (and investigations) include cases involving alleged bribery of foreign public officials, criminal and civil, whether brought under laws dealing with corruption, money laundering, tax evasion, fraud, or accounting and disclosure. Oil-for-Food cases are included whether they were prosecuted as bribery cases or for violating restrictions on doing business with Iraq.

¹ Transparency International does not have a National Chapter in Iceland

III. MAJOR FINDINGS, CONCLUSIONS & RECOMMENDATIONS

MAJOR FINDINGS

- **Active Enforcement:** Seven countries: Denmark, Germany, Italy, Norway, Switzerland, United Kingdom and United States
- **Moderate Enforcement:** Nine countries: Argentina, Belgium, Finland, France, Japan, Korea (South), Netherlands, Spain and Sweden
- **Little or No Enforcement:** 21 countries: Australia, Austria, Brazil, Bulgaria, Canada, Chile, Czech Republic, Estonia, Greece, Hungary, Ireland, Israel, Luxembourg, Mexico, New Zealand, Poland, Portugal, Slovak Republic, Slovenia, South Africa and Turkey

The data on which these findings are based are shown in Tables A and B on pages 8 and 9. The basis for the individual country classifications is shown at the beginning of each country report in Section V.

MAJOR CONCLUSIONS

No overall progress in last year: There has been no progress since TI's 2010 progress report in the number of countries with active enforcement, which remains at seven; or those with moderate enforcement, which remains at nine. There is little or no enforcement in twenty-one countries. All of the countries have remained in the same category as reported in 2010. When compared with the record of improving enforcement recorded in TI's six prior reports, the lack of progress in 2010 is disappointing and raises concern that the Convention may be losing momentum. It is particularly disturbing that there are still twenty-one countries with little or no enforcement a decade after the Convention entered into force.

Risk of loss of momentum: The Convention has not yet reached the point at which the prohibition of foreign bribery is consistently enforced. With little or no enforcement by half of the signatory governments, backsliding by enforcing governments is a serious threat. This concern is aggravated in a troubled global economy in which companies are scrambling for business. Business organisations have increasingly criticised anti-bribery enforcement as a competitive obstacle. The present position of the Convention is unstable, and unless forward momentum is recovered, the progress made in the past decade could unravel.

Lack of political commitment: Reviews conducted by TI experts indicate that the principal cause of lagging enforcement is lack of political commitment by government leaders. In countries where there is committed political leadership, the OECD's rigorous monitoring programme has helped improve laws and enforcement programmes. However, in the absence of political will, even repeated OECD reviews have little effect.

MAJOR RECOMMENDATIONS

High-level political action is necessary to strengthen enforcement: Overcoming the lack of political commitment requires action at a higher political level than can be reached by the Working Group reports. This will require the active involvement of the OECD Ministerial Council, the Secretary-General, and government leaders as well as CEOs from countries committed to enforcement.

Twelve-month action programme: The OECD Ministerial on 25-26 May 2011 should launch a programme to strengthen enforcement of the Convention by laggard governments consisting of the following steps:

- Governments with lagging enforcement should promptly prepare plans for strengthening enforcement and a timetable for such action.
- The Secretary-General and the Chairman of the Working Group on Bribery should meet with top leaders of governments with lagging enforcement to review plans and timetable for strengthening enforcement.
- A full review of the status of foreign bribery enforcement should take place at the May 2012 Ministerial.
- The Working Group on Bribery should publish a list of governments with lagging enforcement. This would make clear that a higher level of due diligence is needed to do business with companies based in these countries.

COUNTRY-SPECIFIC FINDINGS

US and Germany: The number of cases prosecuted continues to increase in the United States and Germany. The US has 227 cases in the 2011 report, up from 169 in 2010. Germany has 135 cases, up from 117 in 2010. These numbers represent a very positive development in the fight against corruption. They also provide a useful comparative indicator for enforcement by other countries, recognising that levels of exports should be taken into account.

Brazil: The Office of the Comptroller General reports that eight investigations are under way, up from four in TI's last report. The increased number of investigations, as well as other indications of active commitment by the Office of the Comptroller General, is a promising sign of progress in Brazil.

Uncertainties in UK: A new Bribery Act passed by Parliament in April 2010 will go into effect in July 2011. Replacing antiquated laws dating back to Victorian times, the Act is a major step forward, particularly as it comes after a decade of procrastination, including the widely criticized termination of the BAE Systems investigation in 2006. However, the new law is accompanied by "Guidance" to companies on procedures for preventing bribery that raises questions about how rigorously certain aspects of the new law will be applied. These concerns are reinforced by recent reports about budget cuts and other threats to the future of the Serious Fraud Office, whose positive actions resulted in moving the UK to the active enforcement category in 2010. The country report on the UK, in Section V, reviews developments in the UK in detail.

Uncertainty regarding French prosecutions: There is concern as to whether French anti-bribery cases are being actively prosecuted. Based on the number of prosecutions filed and the considerable number of judicial investigations, France has been listed in the moderate enforcement category. However, of the eight French prosecutions reported last year, only one reportedly resulted in a conviction, while the others have apparently been closed. At the same time, one new prosecution has reportedly started up against a major French company.

Lack of progress in Canada: Canada is the only G7 country in the little or no enforcement category, and has been in this category since the first edition of this report in 2005. It is also the only OECD member that does not provide nationality jurisdiction, which presents a serious obstacle to enforcement. Other shortcomings in Canada's enforcement system are reviewed in the country report in Section V. TI welcomes that the government of Canada has publicly reported the number of investigations for the first time. It is promising that 23 foreign bribery investigations are under way. If these investigations lead to prosecutions, Canada may finally move out of the little or no enforcement category.

Russia: A law prohibiting foreign bribery has been passed by the Russian Parliament and signed by President Medvedev. Russia is expected to be invited to join the OECD's Working Group on Bribery at the OECD Ministerial on 25-26 May 2011.

China and India: A law prohibiting foreign bribery has been passed by the Chinese Parliament and a law prohibiting foreign bribery has been introduced in the Indian Parliament. Chinese and Indian representatives have attended Working Group meetings as observers. However, there is as yet no schedule for Chinese or Indian accession to the OECD Convention.

ADDITIONAL RECOMMENDATIONS

Accession by G20 states: OECD should continue its programme to secure accession to the Convention by China, India, Indonesia, Russia and Saudi Arabia.

Continuation of OECD monitoring: The monitoring programme of the Working Group on Bribery continues to be the essential tool to ensure the effectiveness of the Convention. As Russia and other new countries accede to the Convention, they must undergo rigorous reviews of the adequacy of their laws prohibiting foreign bribery (Phase 1 reviews) and of their enforcement programmes (Phase 2 reviews). In addition, the Phase 3 monitoring programme, which began in 2010, must determine whether the countries previously reviewed are correcting identified deficiencies and meeting the provisions of the Revised Recommendations.

Meetings of law enforcement officials: During the past year meetings of law enforcement officials have been held concurrently with OECD Working Group meetings. The interaction between the two groups is essential for

the success of the Convention. Such meetings should take place at least twice each year. There are continuing indications that foreign bribery investigations are hampered by problems in securing mutual legal assistance. The meetings with law enforcement officials should develop proposals to accelerate mutual legal assistance.

Consultation with civil society and the private sector: TI commends the OECD for its continuing programme of consultation with representatives of civil society and the private sector in its country reviews and other OECD anti-corruption programmes.

Reporting by the OECD: In 2010 the Working Group on Bribery for the first time issued a report on the outcomes of foreign bribery cases brought by each signatory. A similar report was issued on 20 April 2011. The scope of such reports should be expanded to cover the number of investigations and prosecutions filed as well as the outcomes of investigations and prosecutions.

Lack of data on investigations: TI has been unable to obtain data on investigations in at least ten countries. The number of investigations underway is a crucial indicator of the current status of foreign bribery enforcement, as is the start of new investigations in the last year. Failure to provide such data should be regarded as a danger signal. (TI understands that there are reasons for not disclosing the names of those under investigation. However, there are no good reasons why governments should not report the numbers of investigations under way.)

**TABLE A:
FOREIGN BRIBERY ENFORCEMENT IN OECD CONVENTION COUNTRIES**

Country	Enforcement ^I				Share of World Exports, % for 2010 ^{II}	Share of Foreign Investment, % for 2009 (outward)
	Total Cases		Investigations Under Way			
	2010	2009	in 2010	in 2009		
Active Enforcement						
Denmark	14 ^{III}	14 ^{III}	1	1	0.8	0.9
Germany	135	117	22	24	8.2	8.4
Italy	18	18	2 ^{IV}	3 ^{IV}	2.9	4.6
Norway	6	6	1	1	0.9	0.6
Switzerland	> 35	30	0 ^{IV}	0	1.6	2.6
United Kingdom	17 ^V	10	26	24	3.5	13.3
United States	227	169	106	100	9.8	15.7
Moderate Enforcement						
Argentina	2	2	0 ^{IV}	0	0.4	0.1
Belgium	4 ^{VI}	4 ^{VI}	0 ^{IV}	0	2.0	2.5
Finland	6	5	3	5	0.5	0.4
France	24	18	5	10	3.5	11.3
Japan	7	7	0 ^{IV}	0	4.5	3.7
Korea (South)	17	17 ^{VII}	0	1	2.9	0.8
Netherlands	9	7	3	0	3.3	1.6
Spain	11	11	0 ^{IV}	1	2.0	6.0
Sweden	2 ^{IV}	2 ^{IV}	4	5	1.2	1.9
Little or No Enforcement						
Australia	1	1	3	4	1.4	1.2
Austria	0	0	5 ^{IV}	4 ^{IV}	1.1	1.6
Brazil	1	1	8	4	1.3	0.4
Bulgaria	4	3	0	1	0.1	0.1
Canada	2	2	23	1	2.5	2.7
Chile	2	0	2	0	0.4	0.2
Czech Republic	0	0	0	0	0.8	0.2
Estonia	0	0	0	0	0.1	0.1
Greece	0 ^{IV}	0 ^{IV}	0 ^{IV}	0 ^{IV}	0.3	0.3
Hungary	27	27	2	0	0.6	0.2
Ireland	0	0	0 ^{IV}	0 ^{IV}	1.1	1.0
Israel	0	0	0	0	0.4	0.4
Luxembourg	2	-	Some ^{IV}	-	0.5	0.5
Mexico	0	0	0	0	1.7	0.4
New Zealand	1	0	1	2	0.2	0.1
Poland	0	0	0	0	1.0	0.2
Portugal	4	4 ^{VII}	6	0	0.4	0.3
Slovak Republic	0	0	1	1	0.4	0.4
Slovenia	0	0	2	2	0.2	0.1
South Africa	0	0	5	1	0.5	0.2
Turkey	0	0	5	4	0.9	0.1

I Case numbers are cumulative, starting from Convention entry into force; investigation numbers are those on-going in the year listed.

II Numbers from the OECD Working Group on Bribery 2010 Annual Report.

III Cases all related to UN Oil-for-Food Programme. Some of these cases may have been brought for sanctions violations.

IV Number unknown or based on media reports.

V Includes 2011 cases.

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

VII Number corrected from last year's report.

**TABLE B:
STATUS OF FOREIGN BRIBERY CASES**

Country	Total Cases through 2010	Major Cases	Year last major case was initiated	Criminal (and Civil) Sanctions – to end 2010		Acquittals ^I		Share of World Exports (% for 2010) ^I
				Individuals	Companies	Individuals	Legal Persons	
Active Enforcement								
Denmark	14 ^{II}	> 3	2008	0	0	0	0	0.8
Germany	135	> 16	2010	34 (4)	7	0	0	8.2
Italy	18	10	2009	21	18	1	0	2.9
Norway	6	3	2008	5	1	2	0	0.9
Switzerland	> 35	> 3	2010	3	0	0	0	1.6
United Kingdom	17 ^{III}	17 ^{III}	2011 ^{III}	8	7	0	0	3.5
United States	227	> 39	2011 ^{III}	40 (48)	48 (27)	0	0	9.8
Moderate Enforcement								
Argentina	2	2	2009	0	0	0	0	0.4
Belgium	4	1	2006	0 ^{II}	0 ^{II}	0	0	2.0
Finland	6	2	2010	0	0	0	0	0.5
France	24	6 ^{IV}	2010	3 ^{III}	0	2	0	3.5
Japan	7	1	2007	6	1 (1)	0	0	4.5
Korea (South)	17	1	2007/2008	13	3	0	0	2.9
Netherlands	8	8	2007	0	0	1	0	3.3
Spain	11	2	2008	0	0	0	0	2.0
Sweden	2	1	2009	1	0	0	0	1.2
Little or No Enforcement								
Australia	1 ^{II}	1	2008	0	0	0	0	1.4
Austria	0	0	-	0	0	0	0	1.1
Brazil	1	0	-	0	0	0	0	1.3
Bulgaria	4	0	-	0	0	0	0	0.1
Canada	2	0	-	0	1	0	0	2.5
Chile	2	0 ^{IV}	-	0	0	0	0	0.4
Czech Republic	0	0	-	-	-	1	0	0.8
Estonia	0	0	-	-	-	0	0	0.1
Greece	0	0	-	-	-	0	0	0.3
Hungary	27	0	-	25	0	2	0	0.6
Ireland	0	0	-	0	0	0	0	1.1
Israel	0	0	-	-	-	0	0	0.4
Luxembourg	2	0 ^{IV}	-	-	-	0	0	0.5
Mexico	0	0	-	-	-	0	0	1.7
New Zealand	1	0 ^{IV}	-	0	0	0	0	0.2
Poland	0	0	-	-	-	0	0	1.0
Portugal	4	0	-	6	0	1	0	0.4
Slovak Republic	0	0	-	-	-	0	0	0.4
Slovenia	0	0	-	-	-	0	0	0.2
South Africa	0	0	-	-	-	0	0	0.5
Turkey	0	0	-	-	-	0	0	0.9

^I Numbers from the OECD Working Group on Bribery 2010 Annual Report

^{II} Cases all related to UN Oil-for-Food Programme. Some of these cases may have been brought for sanctions violations. This was a civil settlement in Australia

^{III} Includes 2011 cases

^{IV} Number unknown or based on media reports

IV. FINDINGS ON SPECIFIC ISSUES

This year, as in previous years, the Progress Report Questionnaire covers inadequacies in the legal framework and in the enforcement system. This year's Questionnaire also covers the questions of whether existing national criminal and corporate laws are adequate to hold parent companies responsible for bribery in foreign countries by subsidiaries, agents and other intermediaries and whether there are special enforcement problems relating to subsidiaries, agents and other intermediaries.

INADEQUACIES IN THE LEGAL FRAMEWORK

An effective legal framework for enforcing the Convention should include the following: a definition of bribery in line with Article 1 of the Convention; nationality jurisdiction and broad territorial jurisdiction; criminal liability for corporations; effective, proportionate and dissuasive sanctions; and sufficiently-long statutes of limitations.

Experts in the following countries found significant inadequacies in the legal framework for prohibiting foreign bribery (see Table C): **Argentina, Australia, Austria, Brazil, Bulgaria, Canada, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Korea (South), Mexico, Netherlands, New Zealand, Poland, Spain, Sweden, Turkey**

Among the most serious inadequacies reported were:

- Insufficient definition of foreign bribery offence: **Austria, Canada, Czech Republic, Finland, Ireland, Italy, Japan, Turkey**
- Jurisdictional limitations: **Canada, Czech Republic, Denmark, France, Japan, Luxembourg, Netherlands, Poland**
- Lack of criminal liability for corporations: **Argentina, Brazil, Bulgaria, Czech Republic, Germany, Greece, Ireland, Italy, Japan, New Zealand, Poland, Turkey**
- (Remark: The Convention requires corporate liability, not corporate criminal liability, but TI considers that the standard should be criminal liability.)
- Inadequate sanctions in law and/or practice: **Argentina, Brazil, Bulgaria, Canada, Chile, Denmark, Estonia, Germany, Greece, Ireland, Japan, Korea (South), Netherlands, New Zealand, Poland, Portugal, Sweden, Switzerland, Turkey**
- Inadequacies in statutes of limitation (length and difficulties in extending): **Argentina, Austria, Chile, Estonia, Finland, Greece, Hungary, Italy, Japan, Mexico**

INADEQUACIES IN THE ENFORCEMENT SYSTEM

An adequate system for enforcing the Convention requires sufficient resources, adequate training and effective coordination amongst enforcement agencies. An adequate complaint procedure and whistle-blower protection are also critical for an effective enforcement system as reports or complaints made to law enforcement authorities by persons with inside knowledge is one of the best ways of uncovering evidence of foreign bribery.

Experts in the following countries found significant inadequacies in the enforcement system to punish foreign bribery (see Table C): **Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Chile, Czech Republic, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Korea (South), Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey**

Among the most frequently reported enforcement inadequacies were:

- Inadequate resources: **Australia, Belgium, Canada, Estonia, France, Hungary, Ireland, Italy, Japan, Korea (South), Luxembourg, New Zealand, Poland, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey**
- Decentralised or uncoordinated enforcement: **Chile, Greece, Hungary, Ireland, Mexico, Netherlands, New Zealand, Poland, Portugal, South Africa**
- Lack of coordination between investigation and prosecution: **Belgium, Bulgaria, Canada, Czech Republic, Greece, Hungary, Japan, Mexico, Portugal, South Africa**
- Lack of specialised training: **Argentina, Belgium, Bulgaria, Chile, Estonia, Finland, Greece, Ireland, Italy, Japan, Netherlands, Portugal, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Turkey**
- Inadequate complaints system and/or whistle-blower protection: **Argentina, Australia, Belgium, Brazil, Bulgaria, Chile, Czech Republic, Estonia, Finland, Germany, Greece, Hungary, Ireland, Italy, Korea (South), Luxembourg, Mexico, New Zealand, Norway, Slovak Republic, Spain, Sweden, Switzerland**
- Inadequate accounting and auditing standards: **Brazil, Estonia, Finland, Slovak Republic, Slovenia, Spain**
- Lack of awareness-raising: **Argentina, Belgium, Bulgaria, Chile, Czech Republic, Estonia, Finland, Greece, Italy, Korea (South), Luxembourg, New Zealand, Norway, Portugal, South Africa, Spain, Sweden**
- The following countries reported difficulties in obtaining mutual legal assistance from other countries: **Argentina, Brazil, Bulgaria, Finland, France, Germany, Greece, Israel, Japan, Portugal, Slovenia, Spain**

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 compliance with commitments as well as the progress of cases, especially of politically sensitive cases; to determine whether adequate resources are being devoted to the issue; to review emerging trends in prosecutions and their outcomes (including the increasing recourse to settlements); to analyse emerging fact patterns in foreign bribery cases; and more.

The national experts who reported adequate access to information indicated that they could obtain information from online government statistics, by filing access to information requests, and by means of individual contacts with government officials. On the other hand, many national experts reported obstacles to accessing relevant information, including a lack of response to access to information requests, a lack of response from government officials to written and emailed queries, and the absence of a centralised database with statistics and information on cases and investigations. Information in these countries is often limited to media reports. TI experts in 26 of the countries surveyed reported insufficient access to information about judgments, settlements, prosecutions and/or investigations (see Table C).

A lack of access to information about the number of foreign bribery cases was reported by experts in: **Austria, Belgium, Chile, Czech Republic, Denmark, Greece, Ireland, Japan, Luxembourg, Netherlands, New Zealand, Norway, Slovenia, Switzerland, Turkey**

Furthermore, experts reported that information on the status of cases and other details was not systematically accessible in: **Argentina, Austria, Belgium, Canada, Chile, Czech Republic, Denmark, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Korea (South), Luxembourg, Mexico, Netherlands, New Zealand, Portugal, Slovenia, Spain, Switzerland, Turkey**

LEGAL FRAMEWORK AND ENFORCEMENT SYSTEMS REGARDING SUBSIDIARIES, AGENTS AND OTHER INTERMEDIARIES IN FOREIGN COUNTRIES

The OECD Convention recognised from the beginning that intermediaries often play a key role in foreign bribery. Section 1(1) of the Convention expressly covers foreign bribery committed "directly or through intermediaries". It is essential for all States Parties to have legal frameworks and enforcement systems that adequately cover company liability for bribery through intermediaries. There is some evidence that in response to increased enforcement, businesses and public officials who engage in foreign bribery are making more use of intermediaries than in the past. As enumerated in the OECD's 2009 paper "Typologies on the Role of Intermediaries in International Business Transactions", intermediaries can include agents, sales representatives, consultants or consulting firms, suppliers, distributors, resellers, subcontractors, franchisees, joint venture partners, subsidiaries and other business partners including lawyers and accountants.

With regard to the legal framework, TI expert respondents reported several forms of liability for parent companies whose subsidiaries or other intermediaries engage in foreign bribery, ranging from low to high thresholds. At the low end, companies can be held liable for failing to prevent bribery by their intermediaries in cases of negligence, recklessness or wilful blindness to clear risks. At the high end, it must be demonstrated that a company employee knew about or even ordered the payment of bribes to foreign officials. Additional factors affecting liability can include rules on parent company responsibility for controlled subsidiaries; the threshold for invoking territorial jurisdiction over the parent company; and whether nationality jurisdiction can be used when employees of a subsidiary or other intermediary are citizens of the home country.

In terms of enforcement, TI experts most commonly reported difficulties in obtaining mutual legal assistance as the greatest obstacle for cases and investigations involving foreign bribery via subsidiaries, agents and other intermediaries. In the face of ever more sophisticated efforts to evade detection and prosecution, it is crucial for States Parties to have adequate legislation and effective enforcement systems to respond to these trends.

The following countries reported investigations or cases involving parent companies charged for bribery committed in foreign countries by their subsidiaries, agents and other intermediaries: **Australia, Belgium, Denmark, Finland, Germany, Hungary, Italy, Korea (South), Switzerland, United States**

Experts of the following countries reported inadequate criminal and corporate laws to hold parent companies responsible for bribery in foreign countries by subsidiaries, agents and other intermediaries: **Argentina, Australia, Belgium, Bulgaria, Chile, France, Hungary, Ireland, Japan, Mexico, Poland, South Africa, Sweden, Switzerland, Turkey**

A number of companies recently reached settlements for allegations involving foreign bribery or related offences committed by their subsidiaries, including settlements in the US by **Alcatel Lucent, Ball Corp, Hewlett Packard, International Business Machines (IBM)** as well as by **Siemens AG** in Germany, Nigeria and the US. Others are under investigation for such allegations, including **Bilfinger Berger GmbH** in Germany; **Allianz SE** and **manroland AG** in the US; and **Magyar Telekom** in Hungary.

Many companies are the subjects of cases or investigations of alleged foreign bribery involving the use of agents, including the **Missionpharma** investigation for undue commissions in Denmark, the **Denel** investigation in South Africa; and the **Panalpina** settlements in the US and Nigeria relating to that company allegedly serving as an agent for various companies. Companies have also been the subjects of cases or investigations for bribery committed by joint venture partners such as **MW Kellogg (MWKL)**, which settled in the UK for bribery via a partly owned company; and **Saab AB**, reportedly investigated in Sweden for alleged bribery by their partner BAE Systems.

**TABLE C:
COUNTRY PERFORMANCE ON SPECIFIC ISSUES
RELATING TO ENFORCEMENT OF THE CONVENTION**

Country	Adequacy of ^I		Liability of Parent Companies for Bribery by Subsidiaries, Agents and other Intermediaries		Access to Information on Cases	
	Legal Framework	Enforcement Measures	Adequacy of Legal Framework ^I	Cases/Investigations against Parent Companies	Number of Cases ^{II}	Case Details
Argentina	No	No	No	No	Yes	No
Australia	No	No	No	Yes	Yes	Yes
Austria	No	No	No	Unknown	No	No
Belgium	Yes	No	No	Yes	Yes	No
Brazil	No	No	No	No	Yes	Yes
Bulgaria	No	No	No	No	Yes	Yes
Canada	No	No	Yes	No	Yes	Yes
Chile	No	No	No	No	Yes	No
Czech Rep.	No	No	No	No	No	No
Denmark	No	No	No	Yes	No	No
Estonia	No	No	Yes	No	Yes	Yes
Finland	No	No	Yes	Yes	Yes	Yes
France	Yes	No	No	Unknown	Yes	No
Germany	No	No	Yes	Yes	Yes	No
Greece	No	No	No	Unknown	No	No
Hungary	Yes	No	No	Yes	Yes	No
Ireland	No	No	No	No	No	No
Israel	Yes	Yes	Yes	No	Yes	n/a
Italy	No	No	Yes	Yes	Yes	No
Japan	No	No	No	No	No	No
Korea (South)	No	No	Yes	Yes	No	No
Luxembourg	Yes	No	Yes	No	No	No
Mexico	No	No	No	No	No	No
Netherlands	No	No	Yes	Unknown	No	No
New Zealand	No	No	Yes	No	No	No
Norway	Yes	No	Yes	No	No	Yes
Poland	No	No	No	No	Yes	Yes
Portugal	No	No	Yes	No	Yes	No
Slovak Rep.	Yes	No	Yes	No	Yes	Yes
Slovenia	Yes	No	Yes	No	No	No
South Africa	Yes	No	No	No	Yes	Yes
Spain	Yes	No	Yes	No	Yes	No
Sweden	No	No	No	No	Yes	Yes
Switzerland	Yes	No	No	Yes	No	No
Turkey	No	No	No	No	No	No
United Kingdom	Yes	Yes	Yes	No	Yes	Yes
United States	Yes	Yes	Yes	Yes	Yes	Yes

^I A country's legal framework or enforcement system is classified as inadequate in this table if they have one or more major inadequacies.

^{II} The OECD now annually publishes the number of individuals and legal persons sanctioned or acquitted, while this column includes access to number of pending cases

V. REPORTS ON ENFORCEMENT IN OECD CONVENTION COUNTRIES

The following country reports summarise the assessments by TI experts of their countries' enforcement systems. This year the TI Questionnaire again asked country experts to provide information on foreign bribery cases and investigations as well as on specific aspects of the legal framework and enforcement system. Additionally, the experts were requested to provide information about domestic bribery cases and investigations involving foreign companies or their subsidiaries.

Please note that in the following reports convictions and sentences reported are 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.

ARGENTINA

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

Foreign bribery cases or investigations: Two pending cases and no known investigations. One case was brought against four companies in 2009. The companies named include the Argentine-Bolivian joint venture **Catler Uniservice** as well as Catler's Argentine suppliers, **Sica Metalúrgica**, **Lito Gonella e Hijos de Santa Fé** and **YPFB** (Yacimientos Petrolíferos Fiscales Bolivianos). The case is reportedly connected to the alleged bribing of Bolivian officials to obtain a US \$88 million contract from the state-owned petroleum company YPFB to build a hydroelectric plant in Bolivia in 2008.² The second case was brought in 2006 and involves **CBK Power Company**, regarding alleged bribes to a former Philippine minister of justice in connection with a hydroelectric construction and operation project.³ After one federal court declined jurisdiction and another ordered the case to be shelved due to lack of international cooperation, the case was reopened in February 2010.

In other jurisdictions, US beverage packing company **Ball Corp** reached a US \$300,000 civil penalty settlement with the US Securities and Exchange Commission to settle allegations that two executives of the company's Argentine subsidiary **Formametal** had between July 2006 and October 2007 paid at least US \$100,000 in bribes to Argentine customs officials to illegally import machinery and export copper scrap at lower rates.⁴

Domestic bribery by foreign companies: Eleven cases are known. One case was reportedly initiated in 2010 against the German company **Ferrostaal**, in relation to allegations that it had paid bribes to the Argentine armed forces in 2006 to obtain a contract to supply patrol boats.⁵ The Argentine Defence Ministry reportedly filed a criminal complaint against the former chairman of the board of Ferrostaal, high-ranking Argentine naval officers and others for alleged bribery, and asked to serve as plaintiffs in that case, a request which was reportedly denied by the judge.⁶ Three cases relate to contracts between **IBM Argentina SA** and three separate government institutions. One of these relates to allegations that the company paid bribes to government officials in order to receive a contract to

² La Nación, 15 January 2003, "Involucran a IMPSA en un caso de corrupción"

<http://www.lanacion.com.ar/466334-involucran-a-imp-sa-en-un-caso-de-corrupcion>

³ La Nación, 17 March 2009, "Bolivia castiga a firmas argentinas", www.lanacion.com.ar/nota.asp?nota_id=1109352

⁴ Metal Bulletin, 29 March 2011, "(AMM) Ball Corp settles SEC bribery allegations"

<http://www.metalbulletin.com/Article/2797222/AMM-Ball-Corp-settles-SEC-bribery-allegations.html>

⁵ Der Spiegel, 30 March 2010, "Germany's Ferrostaal Suspected of Organizing Bribes for Other Firms"

<http://www.spiegel.de/international/business/0,1518,686513,00.html> ; Der Spiegel, 16 June 2010,

"Verteidigungsministerium ermittelt gegen Ex-Ferrostaal Chef",

<http://www.spiegel.de/wirtschaft/unternehmen/0,1518,700948,00.html>;

Gaceta Mercantil, 15 August 2010, "Ferrostaal, el nombre de la causa sobre coimas que se viene"

<http://www.gacetamercantil.com/notas/136/ferrostaal-nombre-causa-sobre-coimas-que-se-viene.html>

⁶ Clarin, 7 August 2010, "Caso Ferrostaal: investigan al jefe de la Armada y hacen allanamientos"

http://www.clarin.com/politica/Caso-Ferrostaal-investigacion-Armada-allanamientos_0_294570583.html ;

Primer Pagina, 5 October 2010, "Armada: un testigo denuncia sobrepagos en un contrato"

<http://www.primerapagina.com.ar/site/politica/armada-un-testigo-denuncia-sobrepagos-en-un-contrato/> 3416/

provide software and hardware for a system to manage retirement funds.⁷ In that case, in January 2010, a federal prosecutor supported the petition of the Anti-Corruption Office to seize nearly 82 million pesos (US \$20 million) from IBM Argentina in order to recover suspected proceeds of corruption. IBM Argentina was also reportedly the subject of a separate judicial investigation into alleged irregularities in the renewal of the company's contract for the provision of IT products and services to the National Social Security Administration (ANSES). After an investigation reportedly lasting 16 years, the case was closed in March 2011 due to expiry of the statute of limitations.⁸ A third case involving IBM Argentina concerned allegations that in 1993 two IBM Argentina executives paid bribes to five public officials in order to win a contract from the Banco Nación to provide computer systems for the bank's 525 national branches and over a dozen branches and offices abroad.⁹ In November 2009, a settlement was reached in which seven individuals were convicted of bribery, including IBM Argentina executives and government officials. In May 2010, three of the defendants reportedly appealed their convictions.¹⁰

In December 2010, 22 former managers of **Siemens Argentina** were summoned by the judge of Criminal Court N° 4 in relation to allegations of bribery in the 1998 award of a public contract to the company to produce national ID cards.¹¹ In 2010 the Argentine authorities investigating the case received a response from Germany to a mutual legal assistance request, and sent other requests to the Bahamas, British Virgin Islands, Cayman Islands, Channel Islands, Costa Rica, Hong Kong, Panama, Switzerland, UAE, USA and Uruguay. Two public officials were reportedly indicted in December 2010, accused of accepting bribes from **Skanska Argentina**.¹² Other cases allegedly involving domestic bribery by foreign companies have been reported in the past involving **Accor Services**, **Thales Spectrum** and **Ansaldo Energia SpA**.¹³

Inadequacies in legal framework: There are several inadequacies. The OECD Working Group on Bribery Phase 2 report in September 2010 expressed concern about the scope and content of the foreign bribery offence in the Argentine Criminal Code. Inadequacies include the lack of criminal liability for corporations and the lack of dissuasive sanctions for legal persons. They also include an inadequate statute of limitations period as well as several inadequacies in the rules of penal procedure.

Inadequacies in enforcement system: The main inadequacies in the enforcement system are the lack of training for investigators and judges to investigate these kinds of offences and the inability of investigators and prosecutors to obtain mutual legal assistance. There are also indications from the press and civil society that some federal judges use political criteria in conducting their inquiries and there have been serious allegations that some judges lack independence.¹⁴ These sources have also called for greater transparency in the appointment procedure for judges.¹⁵ In terms of access to information, it is difficult to obtain case details or the status of the cases, though the number of cases in the country is accessible. Case files cannot be consulted by someone who is not a party, and court employees at the front desk typically are not allowed to provide information. TI Argentina had difficulties obtaining a response from the Ministerio de Relaciones Internacionales, Comercio Internacional y Culto (Ministry of External Relations, International Commerce and Culture), with regard to case information.

⁷ Clarin, 30 January 2010, "IBM-DGI: avanza el cobro de una multa por \$ 82 millones" <http://edant.clarin.com/diario/2010/01/30/elpais/p-02129912.htm>

⁸ La Nacion, 10 March 2011, "Tras 16 años de investigación, cierran la causa IBM-Anses" <http://www.lanacion.com.ar/1356342-tras-16-anos-de-investigacion-cierran-la-causa-ibm-anses>

⁹ La Nacion, 11 November 2009, "Se declaran culpables los siete acusados del caso IBM-Banco Nación" <http://www.lanacion.com.ar/1198415-se-declaran-culpables-los-siete-acusados-del-caso-ibm-banco-nacion>

¹⁰ Pagina 12, 11 June 2010, "El cuento de la buena pipa judicial" <http://www.pagina12.com.ar/diario/elpais/1-147386-2010-06-11.html>

¹¹ Clarin, 21 December 2010, "Caso Siemens: llaman a indagatoria a 22 empresarios por el caso" http://www.clarin.com/politica/Caso-Siemens-llamaron-indagatoria-empresarios_0_394160646.html

¹² Clarin, 18 December 2010, "Procesaron a dos ex funcionarios K e indagarán a Cameron por Skanska" http://www.clarin.com/politica/Procesaron-funcionarios-indagaran-Cameron-Skanska_0_392360992.html

¹³ La Nacion, 28 November 2007, "Separan al empresario denunciado por soborno" <http://www.lanacion.com.ar/966408-separan-al-empresario-denunciado-por-soborno> ;

La Nacion, 11 June 2004, "Investigan si Menem cobró un soborno," <http://www.lanacion.com.ar/609349-investigan-si-menem-cobro-un-soborno> ;

La Nacion, 15 September 2005, "Elevan a juicio oral la causa de Yacyretá" <http://www.lanacion.com.ar/738950-elevan-a-juicio-oral-la-causa-de-yacyreta>

¹⁴ El Sol, 8 April, <http://elsolonline.com/noticias/viewold/94050/--por-que-no-se-puede-eliminar-la-corrupcion-en-argentina-> ;

La Voz, 9 April 2011, <http://www.lavoz.com.ar/noticias/politica/eeu-alerta-sobre-corrupcion-debilidad-institucional> ;

CIPCE, August 2009, "Caso Skanska: ¿Corrupción entre privados o soborno transnacional?"

<http://www.cipce.org.ar/documentos/skanska.html>

¹⁵ Ibid.

Legal framework and enforcement system regarding subsidiaries, agents and other intermediaries: Argentine law expressly addresses foreign bribery of a public official via an intermediary.¹⁶ This covers cases in which the intermediary may not be aware of the extent of the bribery, and, if aware of the intent, the intermediary can be held responsible for the bribe together with the briber.¹⁷

Recent developments: There is a package of anti-corruption proposals under consideration by the Parliament. Should these proposals be approved, it is anticipated that most of the inadequacies in the legal framework to enforce the Convention will be removed.

Recommendations: Introduce legislation to protect whistle-blowers 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 and to enable them to avoid any political pressure. In particular, enhance the appointment procedure and reform the Judicial Council. Enhance the accountability and independence of the *Ministerio Público* (prosecutorial office) and fully implement the other anti-corruption conventions to which Argentina is party, namely the Inter-American and UN Conventions.

AUSTRALIA

LITTLE OR NO ENFORCEMENT: No prosecutions but one civil action in relation to alleged improper payments by an Australian company AWB in Iraq and three investigations. Share of world exports is 1.4 per cent.

Foreign bribery cases or investigations: There are no pending cases but a civil action and three investigations, one of which was initiated in 2010. Ten other investigations were concluded during the year, without any prosecutions arising. In August 2010, the Victorian Supreme Court lifted a stay, clearing the way for the Australian Securities and Investment Commission (ASIC) to bring civil actions against five senior executives of the **Australian Wheat Board (AWB)** in relation to alleged payments of A \$300 million (US \$315 million) in kickbacks in Iraq in the context of the UN Oil-for-Food programme.¹⁸ The same month, AWB was acquired by the Canadian company **Agrium**. According to information currently available about the civil actions, they are scheduled for hearing in June 2011. An investigation of AWB by the Australian Federal Police (AFP) had reportedly been under-resourced and was dropped in August 2009.¹⁹ Since May 2009, the AFP have, with assistance from the UK Serious Fraud Office (SFO), been carrying out an investigation into foreign bribery allegations against the Australian banknote printing company **Securrency International Pty Ltd.**²⁰ Fifty per cent of the company is owned by the **Reserve Bank of Australia** and 50 per cent by the UK company **Innovia Films**, which in turn is majority owned by the UK private equity fund **Candover Investments**. According to media reports, from 1999 to 2010 Securrency allegedly provided benefits to senior officials in up to six countries, reportedly including Nigeria, Malaysia and Vietnam, via offshore accounts and overseas agents engaged to market the company's polymer banknotes.²¹ A news article in January 2011 reported allegations that the company provided the tuition of a child of the governor of the Vietnamese Central Bank from 1999 to 2007 via a slush fund, a middleman and bank accounts in Switzerland and Hong Kong, in return for contracts worth tens of millions of dollars.²² In February 2011, a newspaper reported allegations that "Securrency made regular multi-million-dollar payments to offshore accounts belonging to its overseas agents without requiring the agents

¹⁶ OECD Working Group on Bribery, October 2009, "Typologies on the Role of Intermediaries in International Business Transactions" <http://www.oecd.org/dataoecd/40/17/43879503.pdf>

¹⁷ OECD Working Group on Bribery, Phase 1 Report on Argentina, April 2001, <http://www.oecd.org/dataoecd/31/50/2078382.pdf>

¹⁸ The Age, 3 August 2010, "Court lifts stay order on AWB civil actions", <http://www.theage.com.au/business/court-lifts-stay-order-on-awb-civil-actions-20100802-113e5.html>; ASIC, 2 August 2010, <http://www.asic.gov.au/asic/asic.nsf/byheadline/07-332+ASIC+launches+civil+penalty+action+against+former+officers+of+AWB?openDocument>

¹⁹ The Australian, 29 August 2009, "Federal police drop AWB investigation", <http://www.theaustralian.com.au/business/news/federal-police-drop-awb-investigation/story-e6frg90f-1225767255737>

²⁰ SFO Press Release, 15 October 2010, <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2010/update-in-relation-to-securrency-international-pty-ltd.aspx>; SFO Press Release, 6 October 2010, <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2010/coordinated-global-searches-in-relation-to-securrency-international-pty-ltd.aspx>

²¹ Financial Times, 25 January 2011, "Former Vietnam bank chief linked to graft probe" <http://www.ft.com/cms/s/0/f5d1ef40-2880-11e0-bfcc-00144feab49a.html#axzz1ESPrR9aY>

²² The Age, 24 January 2011 "Firm 'bribed bank chief'" <http://www.theage.com.au/national/firm-bribed-bank-chief-20110123-1a17j.html>

to provide evidence they had conducted legitimate work."²³ As a result of the Securrency investigation, the AFP and SFO are also reportedly cooperating in an investigation of the French company **Alstom**, as evidence has allegedly revealed that the same agent used by Securrency in Vietnam, the **Company for Technology and Development**, was also used by European subsidiaries of Alstom to secure contracts in Vietnam.²⁴ The Australian Attorney General's Department informed the TI expert that it is looking into allegations of malfeasance in relation to the procurement of €1.2 million (US \$1.7 million) in medical equipment by a public hospital in Portugal from an Australian company via its Swiss subsidiary, but it has not initiated a formal investigation. A prosecution is underway in Portugal (see report on Portugal).

Domestic bribery by foreign companies: No cases or investigations.

Inadequacies in legal framework: There are some inadequacies, including a lack of effective criminal liability for corporations. There is a particular need to strengthen the ability of the Australian government to hold companies responsible for the actions of their overseas agents and subsidiaries, as discussed below. The law enforcement authority investigating these cases considers, based on Section 70.2 of the Criminal Code Act, that before a prosecution can be mounted it needs concrete proof from the relevant foreign authorities that the benefit derived by the foreign official was "not legitimately due" to him/her.

Inadequacies in enforcement system: The continued absence of prosecution for the past decade under the Criminal Code, as well as the absence of cases reported under the taxation law for this type of bribery offence, makes it difficult to demonstrate that successful prosecution is feasible under the present system. Other factors that could explain the failure to prosecute also include inadequate whistle-blower protection and the apparent lack of specialist skills such as forensic skills needed to investigate this type of offence.

Legal framework and enforcement system regarding subsidiaries, agents and other intermediaries: Jurisdiction extends only when it can be demonstrated that an Australian resident or citizen participated in the offence in some way or that part of the conduct occurred in Australia. The offence extends to conduct which amounts to "causing" a third party to offer or pay a bribe, which may catch some situations where the linkage to the resident parent or officer is clear. However, in the opinion of the TI expert, a range of less clear-cut cases would not be included. These problems are compounded by the difficulty of obtaining evidence abroad in many situations. While there are provisions in the Criminal Code to consider the acts of employees to be the fault of the company in order to make the company liable, these provisions are untested in the foreign bribery context.

Recent developments: No significant developments.

Recommendations: Set a higher standard with regard to the operations of offshore agents, subsidiaries and joint venture parties by requiring companies to adopt adequate procedures to prevent bribery by their agents, subsidiaries and other intermediaries. Enforcement authorities should demonstrate that prosecution is feasible based on facts uncovered in the investigation of credible reports or – in the event that they decide not to pursue an allegation or not to conclude an investigation – should explain the reasons for their decision.

AUSTRIA

LITTLE OR NO ENFORCEMENT: No cases and five known investigations. Share of world exports is 1.1 per cent.

Foreign bribery cases or investigations: There are no known cases and five known investigations, according to media reports. In 2010 the Austrian Anti-Corruption Prosecutor's Office initiated an investigation into the privatisation of **MÁV Cargo**, the freight arm of the Hungarian state-owned railway. MÁV Cargo was jointly acquired in 2008 by **ÖBB Group**, which controls **Rail Cargo Austria**, the freight branch of **Austrian Federal Railways**, and by **Gysev**, another Austrian-owned rail company. ÖBB acquired the freight company for 102.5 billion forints (US \$554 million), and allegedly paid €7 million (US \$10 million) to the Budapest consultancy group **Geuronet** for their services in the

²³ The Age, 12 February 2011 "Bank head admits bribery defences were inadequate" <http://www.theage.com.au/national/bank-head-admits-bribery-defences-were-inadequate-20110211-1aqna.html>

²⁴ New York Times, 29 March 2010, "Alstom at Center of Web of Bribery Inquiries"; www.nytimes.com/2010/03/30/business/global/30alstom.html?pagewanted=2

deal.²⁵ The Anti-Corruption Prosecutor's Office reportedly searched the ÖBB offices and the apartments of former ÖBB managers in October 2010.²⁶ Hungarian authorities are reportedly carrying out an investigation as well and cooperating with the Austrian authorities.²⁷ An investigation is reportedly on-going into allegations that **Siemens AG Austria** managers engaged in bribery in southeast Europe, including in Bosnia and Herzegovina, Bulgaria and Romania.²⁸ The Anti-Corruption Prosecutor's Office's is also continuing to investigate Austrian lobbyist Alfons Mensdorff-Pouilly, a former agent of **BAE Systems**, and his alleged role in the sale of military planes to Austria, the Czech Republic and Hungary by BAE Systems. The lobbyist has been under investigation in Austria intermittently since 2007, currently reportedly on charges relating to bribery, money laundering, false statements and falsification of evidence. In December 2010, the Vienna *Oberlandsgericht* (Regional Appeals Court) upheld the continuation of the investigation. Mensdorff-Pouilly had argued that it should be terminated as a result of the UK Serious Fraud Office's conclusion of their investigation of his case as part of their settlement of the BAE investigation in the UK.²⁹ A regional Parliamentary investigation into the activities of the bank **Hypo Alpe Adria** in a number of countries is reportedly under way, including deals in Croatia and Germany. Trials of the bank's former managers are also under way in Austria on charges of fraud and other offences.³⁰ In January 2011 it was reported that the Austrian investigation was stalled due to lack of responses to requests for legal assistance from the UK and Liechtenstein.³¹ There are no known developments in the previously reported investigations of **Strabag AG**, **Steyr Daimler Puch Spezialfahrzeuge** and **Steyr Mannlicher GmbH**.

In other jurisdictions there have been past reports of investigations involving **Strabag** in Germany.³² Currently, the Munich Public Prosecutor in Germany is reportedly investigating allegations that former managers of the state-owned bank BayernLB were bribed in the course of dealings with the Austrian bank **Hypo Alpe Adria**.³³ Israeli authorities are reportedly investigating Austrian businessman Martin Schlaff for alleged bribes to former Israeli Prime Minister Ariel Sharon and Foreign Minister Avigdor Lieberman (see report on Israel).³⁴

Domestic bribery by foreign companies: The investigation into Mensdorff-Pouilly reportedly includes allegations about his role as an agent in connection with Austria's 2002 purchase of Eurofighters, and he was called to testify about the sale before a Parliamentary committee in 2007.

Inadequacies in legal framework: There are numerous inadequacies. Austria's anti-corruption legislation was amended in 2009, weakening some aspects of foreign bribery legislation. The definition of *Amtsträger* (a public official as a legal subject of criminal law) excludes some public officials from criminal law jurisdiction. An offence is not committed if the advantage is not prohibited under the domestic law of the foreign public official.³⁵ In the Phase 1bis review of Austria in October 2010, the OECD Working Group on Bribery expressed concern that sanctions for foreign bribery are determined by a sliding scale of fines, and in many cases would not be high enough to be effective, proportionate and dissuasive. This particularly concerns sanctions for legal persons.³⁶ The period of limitation of five years until the end of an investigation or the initiation of prosecution for foreign bribery may be

²⁵ Duna TV, 7 October 2010, "Austria is also investigating the MÁV Cargo affair",

http://www.dunatv.hu/english/news/business/austria_investigates_mav_cargo.html ;

Austrian Times, 10 December 2010, "Italian 'no stops' order upsets ÖBB",

http://www.austriantimes.at/news/Business/2010-12-10/29019/Italian_%27no_stops%27_order_upsets_%D6BB

²⁶ Austrian Independent, 7 October 2010, "ÖBB would benefit from higher car fuel tax, says Kern",

http://austrianindependent.com/news/Business/2010-10-07/4826/%D6BB_would_benefit_from_higher_car_fuel_tax_says_Kern

²⁷ Duna TV, 7 October 2010, "Austria is also investigating the MÁV Cargo affair",

http://www.dunatv.hu/english/news/business/austria_investigates_mav_cargo.html

²⁸ Der Standard, 20 September 2010, "Bestechungsverdacht erhärtet und erweitert",

<http://derstandard.at/1284594731528/Siemens-Oesterreich-Bestechungsverdacht-erhaertet-und-erweitert>

²⁹ Der Standard, 30 December 2010, „Justiz ermittelt weiter gegen Mensdorff-Pouilly“,

<http://derstandard.at/1293369773243/Causa-Mensdorff-Justiz-ermittelt-weiter-gegen-Mensdorff-Pouilly>

³⁰ Die Presse, 17 September 2010, Hypo Alpe Adria, „Brisante Immobiliendeals in Kroatien“,

<http://diepresse.com/home/wirtschaft/economist/595368/Hypo-Alpe-Adria-Brisante-Immobilien-deals-in-Kroatien>

³¹ Der Standard, 24 January 2011, "Causa Mensdorff: Ermittlungen stocken",

<http://derstandard.at/1295570661697/Waffenlobbyist-Causa-Mensdorff-Ermittlungen-stocken>

³² Strabag SE Prospectus, 2 June 2008, [http://www.strabag.com/databases/internet/_public/files.nsf/SearchView/B0215B0ACD7F10CCC12574630049E40E/\\$File/Anleihenprospekt_04.06.08.pdf?OpenElement](http://www.strabag.com/databases/internet/_public/files.nsf/SearchView/B0215B0ACD7F10CCC12574630049E40E/$File/Anleihenprospekt_04.06.08.pdf?OpenElement) ;

³³ Der Standard, 28 February 2011, Justiz prüft mögliche Bestechung von BayernLB-Managern",

<http://derstandard.at/1297819106655/Hypo-Justiz-prueft-moegliche-Bestechung-von-BayernLB-Managern>

³⁴ Jerusalem Post, 1 February 2011, "Police: Sharon's sons mediated bribery transfers for ex-PM",

<http://www.jpost.com/NationalNews/Article.aspx?ID=206242&R=1>

³⁵ OECD Working Group on Bribery, Phase 1bis Report on Austria, October 2010, <http://www.oecd.org/dataoecd/63/57/46227111.pdf>

³⁶ Ibid.

insufficient, since Austria does not allow for delays in responses to mutual legal assistance requests as a ground for suspension. Other provisions do, however, extend the period of limitation. The partial immunity from prosecution granted to Parliamentary deputies is a further inadequacy.³⁷

Inadequacies in enforcement system: Law enforcement authorities are not well equipped for foreign bribery investigations and prosecutions, and there is a general lack of human resources as well as poor training of prosecutors.³⁸ The minister of justice directs prosecutions by the Public Office for Prosecution of Corruption. Additionally, these prosecutions focus exclusively on cases involving public officials. This limited competence does not address the general increase in financial and economic crimes across the world.

Legal framework and enforcement system regarding subsidiaries, agents and other intermediaries: Austria does not expressly cover bribery through an intermediary Report, and relies on penal code provisions on instigation and complicity.³⁹ As noted in the Phase 1bis OECD review, under Austrian law the briber is always punishable, regardless of how many intermediaries he or she uses, while the possible sanction imposed on the intermediary depends on his or her exact role.⁴⁰

Recent developments: Austria introduced a legal framework for whistle-blowers in early 2011.

Recommendations: Correct the amendments introduced in 2009 that weakened foreign bribery legislation. Make the definition of a public official autonomous and ensure the independence of the Public Prosecutor's Office. Carry out public awareness-raising on all types of economic and financial crimes and introduce a *Wirtschaftsstaatsanwaltschaft* (economic crimes prosecutor) instead of the *Korruptionsstaatsanwaltschaft* (anti-corruption public prosecutor), an office that lacks legal competence concerning the role of the private sector in corruption offences.

BELGIUM

MODERATE ENFORCEMENT: Four cases; additional EU cases. Share of world exports is 2.0 per cent.

Foreign bribery cases or investigations: A new case initiated in 2010 by the European Anti-Fraud Office (OLAF) and taken forward by Belgian authorities concerns alleged EU-level bribery by a Belgian company. An investigation into approximately 15 companies has been on-going since 2006 in response to allegations of improper payments connected to the UN Oil-for-Food Programme in Iraq. The federal public prosecutor is co-ordinating the investigations, and there have been no significant developments in the past year. A recent news report in Belgium comments with concern on the lack of progress.⁴¹ A Belgian investigation of the Belgian utility firm **Tractebel**, a subsidiary of the French multinational **GDF Suez**, attracted media attention in April 2011 due to an enquiry reportedly made by the UK Home Office to the Belgian authorities on behalf of steel magnate Lakshmi Mittal. According to one media report, in 2002, the Belgian authorities were investigating Tractebel on account of allegations that it paid over US \$55million in commissions to the Chodiev group for acting as its intermediaries in Kazakhstan.⁴² A more recent report referenced a Belgian investigation of money laundering and bribery surrounding a pipeline deal in Kazakhstan worth about €39million (US \$64 million).⁴³ Other reports referenced three Kazakh businessmen involved in the deal as well as a Kazakh prime minister, all reportedly shareholders of Tractebel's Kazakh unit.⁴⁴ There have been no reported developments in the case under way since 2008, which involves alleged bribery by a Belgian company

³⁷ Transparency International "Timed Out: Statutes of Limitations and Prosecuting Corruption in EU Countries", http://www.transparency.org/regional_pages/europe_central_asia/projects_and_activities/statutes_limitations

³⁸ Ibid.

³⁹ OECD Working Group on Bribery, OECD Report, October 2009, "Typologies on the Role of Intermediaries in International Business Transactions", <http://www.oecd.org/dataoecd/40/17/43879503.pdf>

⁴⁰ OECD Working Group on Bribery, Phase 1bis Review of Austria, October 2010, <http://www.oecd.org/dataoecd/63/57/46227111.pdf>

⁴¹ Le Soir, 20 May 2011, "La Belgique laisse impunie la corruption en Irak",

<http://www.lesoir.be/actualite/belgique/2011-05-20/la-belgique-laisse-impunie-la-corruption-en-irak-841120.php>

⁴² BBC News, 24 July 2002, "The Steel Maharajah", <http://news.bbc.co.uk/2/hi/business/2146757.stm>

⁴³ Mail Online, 14 April 2011, "Mittal: Controversy over steel firm grows"

<http://www.dailymail.co.uk/news/article-103734/Mittal-Controversy-steel-firm-grows.html>

⁴⁴ Intelligence Newsletter, 27 July 2000, "Corruption: How the money flows in Kazakhstan" <http://www.againstcorruption.org/BriefingsItem.asp?id=8522>; Reuters, 28 December 1999

to win EU framework contracts to assist EU accession countries in establishing procurement guidelines.⁴⁵ A case initiated in 2009 involving allegations of bribery by Belgian contractors in relation to construction contracts for US Air Force installations in Belgium has been closed for lack of evidence. Nor have there been any developments in the ongoing investigation of the sale of Mirage jets to Chile.

In other jurisdictions, in Chile the Belgian company **SABCA** was named in connection with allegations of bribery in the sale of Mirage jets to Chile in 1994. (See Chile report.) In 2002 **Tractebel** was reportedly the target of allegations that it paid US \$10 million in bribes to Peru's then-President Alberto Fujimori.⁴⁶ There were riots in Peru following the privatisation of Peru's state-owned power generators Egasa and Egesur to Tractebel for US \$167.4 million in a procedure in which Tractebel was reportedly the only bidder. According to allegations made by the local newspaper *La Republica*, a payment was made to the then-President through a Bermudian offshore company, **Aluminium Atlantic**.⁴⁷ A Peruvian congressional committee was reported in 2002 to be investigating the allegations, and an enquiry was also launched by then-Attorney-General Nelly Calderon.⁴⁸ The company vigorously denied any bribery.

Domestic bribery by foreign companies: No known cases or investigations. There are, however, cases in other jurisdictions involving alleged bribery of Belgian public officials by foreigners

Inadequacies in legal framework: There are several inadequacies. The definition of foreign bribery in the Belgian Criminal Code is not autonomous, referring to the country's case law, which is based on a very comprehensive interpretation of the term "public official". According to the Belgian Code of Criminal Procedure, an individual from or primarily residing in Belgium may only be prosecuted in Belgium for foreign bribery "on condition that these events constitute an offence in the country where they were committed."⁴⁹ The period of limitation of five years runs until the end of prosecution or the issuing of a sentence, though this is the minimum and can be extended in aggravated circumstances or due to suspension or interruption.⁵⁰

Inadequacies in enforcement system: Inadequacies include a lack of resources; a lack of co-ordination between investigation and prosecution; insufficient complaints mechanisms and whistle-blower protection; and a lack of awareness-raising. The lack of resources is highlighted in the 2008 Annual Report of the Central Office for the Repression of Corruption (OCRC), produced by the magistrate in charge of its supervision. The workload resulting from EU files is described as heavy and could hinder the fight against corruption at the national level. Several months are needed to open a file for fraud and corruption cases, and such cases take several years to conclude, as the police and the judiciary do not have enough resources and training to deal with these cases; therefore there is an imbalance between the resources and the cases. Further, there is no administrative body to handle complaints and lead administrative investigations. There is no whistle-blower protection in the public (except in the Flemish region) or private sectors, nor are there sanctions for civil servants who fail to inform the public prosecutor about crimes witnessed in the execution of their duties.

Legal framework and enforcement system regarding subsidiaries, agents and other intermediaries: As noted in the Phase 1 Report on Belgium, Article 256 § 2 of the Bribery Prevention Act states that the act of "proposing directly or through intermediaries" constitutes bribery. The intermediary may be an accomplice, a co-author or an individual who in good faith is unaware of the offence. It is not necessary that the foreign official be aware of the intermediary's role.⁵¹

Recent developments: A proposal for whistle-blower protection for federal public servants is currently being prepared, with the active involvement of TI Belgium.

Recommendations: Increase resources for enforcement and introduce whistle-blower protection legislation for both the public and private sectors.

45 2011 National Chapter Questionnaire Response - TI Belgium

46 *La Republica*, 21 March 2002, "Comisión Mulder enviará carta rogatoria a juez suizo y pedirá interrogar a testigo" <http://www.larepublica.pe/node/126176>

47 *La Republica*, 17 March 2002, "Tractebel, matriz de Energía del Sur, sobornó a dictador, según ex gerente de multinacional franco" <http://www.larepublica.pe/node/137115/comentario>

48 LatAm Energy, 27 March 2002, "Tractebel denies bribe: The Belgian utility denies that it paid an alleged \$10 million bribe to Peru's former president Alberto Fujimori", http://www.accessmylibrary.com/coms2/summary_0286-31082629_ITM

49 GRECO Third Evaluation Round, Theme I, Belgium, May 2009 http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282008%298_Belgium_One_EN.pdf

50 Transparency International "Timed Out: Statutes of Limitations and Prosecuting Corruption in EU Countries", http://www.transparency.org/regional_pages/europe_central_asia/projects_and_activities/statutes_limitations

51 OECD Working Group on Bribery, Phase 1 Report on Belgium, October 1999 <http://www.oecd.org/dataoecd/13/7/2385130.pdf>

BRAZIL

LITTLE OR NO ENFORCEMENT: One concluded case and eight investigations. Share of world exports is 1.3 per cent

Foreign bribery cases or investigations: No information is available on the one case. The Office of the Comptroller General of Brazil (CGU) has reported eight investigations. The Phase 2 follow-up report by the OECD Working Group on Bribery in June 2010 mentioned that "requests for information on 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**)."⁵² In addition, there have been past reports about four investigations of Brazilian companies involved in the UN Oil-for-Food Programme in Iraq. Of these, the criminal investigation of **Motocana Máquinas e Implementos Ltda.** was reportedly dismissed by the Federal Court in January 2008 at the request of the Public Attorney's Office on the grounds that there was no evidence that the company had committed any act of corruption in relation to a contract for the export of goods under the Programme.⁵³ Brazilian authorities informed the national expert that the Public Attorney's Office is about to initiate an additional formal investigation of another Brazilian company suspected of having committed foreign bribery.

In other jurisdictions, in August 2010, the US Department of Justice (DOJ) and Securities and Exchange Commission (SEC) settled Foreign Corrupt Practices Act (FCPA) charges brought against **Universal Leaf Tabacos Ltda.** (Universal Brazil), a subsidiary of the US **Universal Corporation**⁵⁴, for alleged bribes paid to employees of the state-owned **Thailand Tobacco Monopoly** to secure the sale of Brazilian tobacco between 2000 and 2004.⁵⁵ The company reportedly admitted to the conduct contained in the charging document and agreed to pay a US \$4.4 million fine.⁵⁶ According to court documents, the company allegedly collaborated in the bribery scheme with two leading US tobacco processing companies, **Dimon Incorporated** and **Standard Commercial Corporation** (which later merged to become **Alliance One International**). According to the US Justice Department, each of the three companies retained sales agents in Thailand, and collaborated through these agents to divide amongst themselves tobacco sales to the Thailand Tobacco Monopoly, to co-ordinate their sales prices and to pay kickbacks to officials of the Thailand Tobacco Monopoly in order to ensure that all three companies would share in the Thai tobacco market.⁵⁷

Domestic bribery by foreign companies: According to a German news magazine, Brazilian state prosecutors are investigating **Siemens** on the reported basis of allegations relating to three projects to build and maintain commuter railways in Sao Paulo and Brasilia in 2000, with contracts totalling around €1 billion (US \$1.4 billion).⁵⁸ There have also been reports since 2008 of investigations of **Alstom SA**. An Alstom spokesman was quoted in a March 2010 article as saying that "Several federal and state authorities in Brazil have launched investigations which allegedly concern Alstom among other companies, but none of these investigations has legally concluded on any charge against Alstom".⁵⁹ In April 2010 it was reported that the Sao Paulo state prosecutor's office had sent a request via the federal justice ministry to France and Switzerland for access to bank files required for the investigation.⁶⁰ Previous press reports included references to investigations of allegations of an Alstom role in alleged bribery in a Sao Paulo subway extension project and a hydroelectric project, as well as allegations of bribery of officials of the state-owned oil company Petrobras.⁶¹

⁵² OECD Working Group on Bribery, Phase 2 Follow Up Report on Brazil, June 2010, <http://www.oecd.org/dataoecd/50/39/45518279.pdf>

⁵³ Ordered by the Federal Court on 31 January 2008

⁵⁴ US Department of Justice Press Release 6 August 2010, <http://www.justice.gov/opa/pr/2010/August/10-crm-903.html>

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Reuters, 19 February 2011, citing Der Spiegel, "Brazil probes Siemens for bribes-Spiegel" <http://in.reuters.com/article/2011/02/19/siemens-brazil-idINLDE71I0DY20110219>

⁵⁹ New York Times, 29 March 2010 "Brazil to Ask French for Swiss Bank Details on Alstom Case" www.nytimes.com/2010/03/30/business/global/30alstom.html?pagewanted=2. AFP, 23 April 2010;

http://www.expatica.com/fr/news/french-news/brazil-to-ask-french-swiss-bank-details-on-alstom-case_62067.html?ppager=0

⁶⁰ AFP, 23 April 2010, "Brazil to ask French, Swiss details in Alstom case"

http://www.expatica.com/fr/news/french-news/brazil-to-ask-french-swiss-bank-details-on-alstom-case_62067.html?ppager=0

⁶¹ Folha de Sao Paulo, 29 May 2008, "Alstom pagou propina à Petrobras, diz testemunha" <http://www1.folha.uol.com.br/foha/brasil/ult96u406614.shtml>

A local newspaper reported in October 2010 that the assets of **Cisco do Brasil Ltda**, a subsidiary of the US technology company **Cisco Systems Inc.**, had been frozen in connection with a federal police investigation.⁶² The paper reported that the company had been accused of using two fake companies in order to import goods and to donate R\$ 500,000 (US \$299,000) to the Workers' Party during the 2006 presidential campaign. The company has denied these allegations.⁶³ In 2007, two of the company's executives and three other individuals were reportedly arrested in Brazil in relation to allegations of an import fraud scheme, in which local supplier **Mude Comércio e Serviços Ltda** was also allegedly involved.⁶⁴ In February 2011, according to another newspaper, the executives of **Mude** were sentenced to prison but Cisco's executives were not, as the court found insufficient evidence against them.⁶⁵ A new "denunciation" relating to old investigations of events in 2003 was filed against seven individuals, including executives from **Gtech Brasil Ltda.** by the Brazilian Public Ministry and was accepted by the Brazilian Federal Court at the end of 2010. This means that two Gtech executives will be criminally sued.⁶⁶ The company is a subsidiary of **Gtech Holdings Corporation**, a Rhode Island-headquartered technology services company providing computerised lottery systems and financial services transactions processing operating in 46 countries. The company was acquired in 2007 by the Italian **Lottomatica S.p.A** for US \$4.7 billion. Gtech's Brazilian subsidiary was reportedly under investigation in Brazil in relation to allegations that two former executives had offered employees of Caixa Econômica Federal (the Federal Savings Bank) improper inducements for the extension of the company's Brazilian lottery contract in 2003.⁶⁷ In March 2004, attorneys from the Brazilian Public Ministry reportedly recommended charging nine individuals for their alleged involvement, but the presiding judge reportedly rejected the recommendation on procedural grounds. The investigation was reportedly reopened in 2005.⁶⁸ In 2005 Gtech Holdings also reported a civil action by the Brazilian Public Ministry against Gtech Brasil.⁶⁹ The company reported in 2004 that it was under investigation in the US by the SEC.⁷⁰

Inadequacies in legal framework: There are significant inadequacies, which include the lack of liability for companies. Relevant OECD Convention provisions have been included in the Brazilian Criminal Code. Sanctions are generally inadequate but can include the obligation to return any amounts illegally received; the payment of indemnification for damage to the public administration; the loss of public position; the suspension of political rights; the payment of a fine and/or prohibition from receiving public incentives and contracts from the public administration for a maximum period of ten years, in addition to imprisonment.

Inadequacies in enforcement system: There are inadequacies. The government has not fully implemented the OECD Phase 2 recommendation to adopt protective measures for whistle-blowers in the public and private sectors.⁷¹ There is currently no legislation to protect whistle-blowers reporting suspicions of foreign bribery, though two bills have been introduced to Congress (A former Bill 5228 of 2009 was shelved in 2010 but a request for its revival was made in February 2011).⁷² Anti-money-laundering reporting obligations do not currently extend to the legal and accounting professions, though Bill 3443/2008, which would address this, has been presented to Congress.⁷³ A key difficulty has been mutual legal assistance, particularly in terms of bureaucratic obstacles to getting evidence from abroad.

⁶² Folha de Sao Paulo, 23 October 2010, "PF trava inquérito sobre doações de fantasmas ao PT"

<http://www1.folha.uol.com.br/poder/818966-pf-trava-inquerito-sobre-doacoes-de-fantasmas-ao-pt.shtml>

⁶³ Bloomberg News, 12 October 2010, "Brazil Court Freezes Cisco Assets in Fraud Probe, Folha Reports"

<http://www.bloomberg.com/news/2010-10-12/brazil-court-freezes-cisco-assets-in-fraud-probe-folha-de-s-paulo-says.html>

⁶⁴ Financial Times, 22 November 2007, "Cisco Director Charged in Brazil"

<http://www.ft.com/cms/s/2/061c3a02-9952-11dc-bb45-0000779fd2ac.html#axzz1E583j29C>

⁶⁵ Ministerio do Planejamento, Orcamento e Gestao, 23 February 2011 "Executivos de distribuidora da Cisco são condenados"

<http://clippingmp.planejamento.gov.br/cadastros/noticias/2011/2/23/executivos-de-distribuidora-da-cisco-sao-condenados>

⁶⁶ O Globo, 28 January 2011, "Justiça acolhe nova denúncia contra Waldomiro Diniz"

<http://oglobo.globo.com/pais/mat/2011/01/28/justica-acolhe-nova-denuncia-contrawaldomiro-diniz-923635114.asp>

⁶⁷ Lottomatica Circular Prospectus, http://www.lottomaticagroup.com/it/pdf/investor/Hybrid_Prospectus.pdf

⁶⁸ Shearman & Sterling LLP, FCPA Digest of Cases and Review Releases Relating to Bribes to Foreign Officials under the Foreign

Corrupt Practices Act of 1977 (March 4, 2010), <http://www.shearman.com/files/upload/FCPA-Digest-Spring-2010.pdf>

⁶⁹ O Globo, 28 January 2011, "Justiça acolhe nova denúncia contra Waldomiro Diniz"

<http://oglobo.globo.com/pais/mat/2011/01/28/justica-acolhe-nova-denuncia-contrawaldomiro-diniz-923635114.asp>

⁷⁰ SEC S-4 Filing of 15 April 2005 by Gtech Holding Corporation, Gtech Corporation, Gtech Rhode Island Corporation and Gtech Latin

America Corporation, <http://secwatch.com/gtech-rhode-island-corp/s4/a/registration-of-securities-iss/2005/4/15/5920462>

⁷¹ OECD Working Group on Bribery, Phase 2 Follow Up Report on Brazil, June 2010,

<http://www.oecd.org/dataoecd/50/39/45518279.pdf>

⁷² Ibid.

⁷³ Ibid.

Legal framework and enforcement system regarding subsidiaries, agents and other intermediaries: In general the framework in this area is inadequate. Article 337-B of the Brazilian Criminal Code expressly covers foreign bribery via an intermediary but this does not include liability for subsidiaries. There can be obstacles depending on the complexity of the business structure. The difficulty in proving the link between the various participants in the chain may hinder enforcement.

Recent developments: Bill 6826, put forward by the previous administration in February 2010, would improve the framework for subsidiaries, agents and other intermediaries, including by extending the responsibility for acts of corruption to entities that are part of an economic group. Under this legislation, legal entities would be held responsible for acts of corruption, independent of the organisation or corporate structure. The bill would also provide for civil and administrative (not criminal) liability of legal persons for foreign bribery of public officials. Further, Resolution 62 was approved in August 2010 by the Council of Ministers of the Foreign Trade Chamber. This was an important accomplishment in Brazil. The resolution requires exporters to sign the Declaration of Commitment to the Exporter, stating that the exporter is aware that Brazil has joined the OECD Convention; the exporter acknowledges that the Brazilian Criminal Code criminalises offences against foreign governments; the exporter will implement, if not yet existent, practices and internal control systems, including standards of conduct to combat the crime of bribery and influence-peddling in international business transactions. The exporter must also declare that it is aware that if it or any person representing it is found guilty of foreign bribery, the exporter will lose access to the export financing facility of the Brazilian financing bank (BNDES), the Export Financing Programme – PROEX, operated by *Banco do Brasil*.

Recommendations: The government should promptly approve the aforementioned Bill 6826 to extend responsibility for acts of corruption to entities that are part of an economic group. Pass Bill 5228 of 2009 to allow for greater protection for whistle-blowers. Pass Bill 3443 of 2008 to extend anti-money-laundering reporting obligations to the legal and accounting professions.

BULGARIA

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

Foreign bribery cases or investigations: There is one pending case in Bulgaria, and three cases have been concluded. The pending case concerns alleged bribery by a Bulgarian legal person in connection with the UN Oil-for-Food Programme. In 2010 the pre-trial proceedings were terminated by the Sofia Prosecution Office on the grounds that their request to the relevant UN committee for additional information had gone unanswered.⁷⁴ An investigation of a Bulgarian for alleged bribery of a permanent secretary in the Zambian Ministry of Health advanced to pre-trial proceedings but was dropped in 2010 due to the death of the defendant.⁷⁵

Domestic bribery by foreign companies: None known.

Inadequacies in legal framework: There are numerous inadequacies, including insufficient definition of the offence; lack of criminal liability for companies; complicated, over-formalised procedures; low sanctions; a potentially inadequate statute of limitations; and the availability of the defence of "effective regret", which can be invoked in cases of extortion.⁷⁶ With regard to sanctions, the Group of States against Corruption (GRECO) *Third Evaluation Report on Bulgaria* found that active and passive bribery of a foreign public official are punishable with imprisonment for up to six years and a fine of up to 5000 Leva (US \$3,600).⁷⁷ The OECD's Phase 3 Report of October 2010 noted that administrative sanctions and penalties for false accounting are too low.⁷⁸ The statute of limitations is insufficient in consideration of significant delays in court proceedings in Bulgaria. The period of limitation is ten years and runs to the end of prosecution or sentencing, during which time it can be extended up to 15 years due to suspension or interruption.⁷⁹ An additional weakness is that under Bulgarian law bribery entails the granting of a

⁷⁴ Consultation between TI Bulgaria and the Supreme Prosecution Office of Cassation

⁷⁵ OECD Working Group on Bribery, Phase 3 Report on Bulgaria, March 2011, <http://www.oecd.org/dataoecd/16/20/47468296.pdf>

⁷⁶ GRECO Third Round Evaluation of Bulgaria, October 2010,

http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282009%297_Bulgaria_One_EN.pdf

⁷⁷ Ibid.

⁷⁸ OECD Working Group on Bribery, Phase 3 Report on Bulgaria, March 2011, <http://www.oecd.org/dataoecd/16/20/47468296.pdf>

⁷⁹ Transparency International "Timed Out: Statutes of Limitations and Prosecuting Corruption in EU Countries", http://www.transparency.org/regional_pages/europe_central_asia/projects_and_activities/statutes_limitations

gift or another undue advantage, but it is not clear to what extent this extends to non-material advantages. Tax-deductibility of bribes is not explicitly excluded under Bulgarian tax law.⁸⁰

Inadequacies in enforcement system: Inadequacies include a lack of co-ordination between investigators and prosecutors; a lack of resources and training for investigators and prosecutors to investigate foreign bribery; and a lack of awareness-raising efforts. There is also no single, comprehensive whistle-blower law in Bulgaria, and there is no systemic collection of data on the number of whistleblowing disclosures or the proportion of cases that result in legal action.⁸¹

Legal framework and enforcement system regarding subsidiaries, agents and other intermediaries: Bulgarian law does not expressly cover bribery through an intermediary as a foreign bribery offence. Such coverage depends on the Penal Code provisions on instigation and complicity. However, there has been no confirmation in court practice.⁸² Failed intermediation, in which a principal seeks an intermediary to carry out the bribe, but the intermediary refuses or the public official rejects the bribe, is considered a crime under Bulgarian law.⁸³

Recent developments: Whistle-blower protection has been widely discussed in the public arena in recent years. However, though there has been public pressure for amendments to the Criminal Code, there have not yet been any legislative developments.

Recommendations: There is a need for increased training of investigative bodies; improved co-ordination between investigators and prosecutors; stronger international co-operation; improved complaint mechanisms and whistle-blower protection; and more awareness-raising in the public and private sectors. The Phase 3 OECD Report on Bulgaria also recommended that Bulgaria substantially amend and enforce its law on liability of legal persons for foreign bribery, streamline and amend its legal framework on confiscation, and implement its commitment to explicitly prohibiting the tax deduction of bribes.⁸⁴

CANADA

LITTLE OR NO ENFORCEMENT: Two cases and 23 investigations. Share in world exports is 2.5 per cent.

Foreign bribery cases or investigations: One pending case and 23 investigations. In the pending case, the Anti-Corruption Unit of the Royal Canadian Mounted Police (RCMP) reportedly filed charges against a Canadian citizen in an Ontario court in June 2010 alleging one count of violating the Corruption of Foreign Public Officials Act (CFPOA).⁸⁵ According to media reports, the individual is a former official of **Cryptometrics Canada Inc.** and is accused of bribing an Indian government official in connection with a contract for the supply of an airport security system.⁸⁶ In March 2010, a coalition of Canadian NGOs filed a memo with the RCMP alleging that the Canadian mining company **Blackfire Exploration Ltd.** had made improper payments in connection with a mining project in Mexico.⁸⁷ The number of active investigations of foreign bribery, which had previously been held confidential, was reported by the RCMP to the OECD Review Panel in October 2010 and shared with the TI expert in January 2011. Perhaps the OECD Working Group on Bribery had a special insight in their March 2011 Phase 3 Report on Canada, in which they called on Canada to "urgently dedicate resources for the soon expected CFPOA prosecution case-load of potentially more than 20 cases."⁸⁸

⁸⁰ OECD Working Group on Bribery, Phase 3 Report on Bulgaria, March 2011, <http://www.oecd.org/dataoecd/16/20/47468296.pdf>

⁸¹ Transparency International "An Alternative to Silence: Whistleblower Protection in Ten European Countries", 2009

⁸² GRECO Third Round Evaluation, Theme I, Bulgaria, October 2010, http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282009%297_Bulgaria_One_EN.pdf ;

OECD Working Group on Bribery, October 2009, "Typologies on the Role of Intermediaries in International Business Transactions" <http://www.oecd.org/dataoecd/40/17/43879503.pdf>

⁸³ Ibid.

⁸⁴ OECD Working Group on Bribery, Phase 3 Report on Bulgaria, March 2011, <http://www.oecd.org/dataoecd/16/20/47468296.pdf>

⁸⁵ RCMP Press Release, <http://www.rcmp-grc.gc.ca/ottawa/documents/IACU-eng.pdf>

⁸⁶ 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>

⁸⁷ Mining Watch Canada, 10 March 2010, "Groups File Documentation with RCMP on Canadian Mining Company's Involvement in Mexican Corruption Case" <http://www.miningwatch.ca/en/groups-file-documentation-with-rcmp-canadian-mining-company-s-involvement-mexican-corruption-case>

⁸⁸ OECD Working Group on Bribery, Phase 3 Report on Canada, March 2011, <http://www.oecd.org/dataoecd/55/25/47438413.pdf>

In other jurisdictions, in November 2010, **Sherwood International Petroleum Ltd.**, a company registered in the Cayman Islands and a subsidiary of **Bankers Petroleum Ltd.** of Canada, was indicted by the federal government of Nigeria alongside the TSKJ Consortium companies, four other companies and four individuals, for alleged bribery of Nigerian public officials in connection with the Bonny Island Liquefied Natural Gas Plant.⁸⁹

Domestic bribery by foreign companies: No publicly known cases or investigations.

Inadequacies in legal framework: The CFPOA does not provide for nationality jurisdiction, thus requiring investigators and prosecutors to devote scarce resources to developing a sufficient evidentiary basis to satisfy the Canadian jurisdictional test of "real and substantial connection to Canada". The CFPOA is limited to criminal enforcement, requiring proof "beyond a reasonable doubt" and the absence of civil and/or administrative provisions that can be invoked on a lower "balance of probabilities" standard places a significant evidentiary burden on all cases. Though the OECD Convention does not require these two elements, their absence undermines the effectiveness of the legal framework. Other inadequacies include the exclusion of charities from coverage, as the offence is defined as the conferring of a business-related benefit; the explicit allowance of facilitation payments; and an absence of provisions requiring the maintenance of accurate books and records. In addition, the OECD in its Phase 3 Report called on Canada to clarify that it would not violate Article 5 of the Convention, namely that in investigating and prosecuting offences under the CFPOA it would not take into account considerations of national economic interest, the potential effect upon relations with another state or the identity of the natural or legal persons involved.

Inadequacies in enforcement system: The Canadian legal system and courts do not handle complex white-collar criminal cases well. Long delays occur due to limited co-operation between prosecutors and investigators at the pre-charge stage; a cumbersome disclosure process with judicial tolerance of defence counsel dragging out the disclosure process; and multiple successive judges hearing pre-trial proceedings rather than the assignment of a single "trial judge" early in a case.⁹⁰ Another concern is the inadequacy of resources for the RCMP Anti-Corruption Unit, which has only 14 officers, who periodically need to attend to non-CFPOA issues as well. Though the sanctions under the CFPOA are adequate, those imposed in Canada's only CFPOA prosecution to date were considered by the OECD Working Group on Bribery too low to be effective, proportionate and dissuasive.⁹¹

Legal framework and enforcement system regarding subsidiaries, agents and other intermediaries: The offence of bribing a foreign public official via an intermediary is expressly provided for under Canadian law. As far as subsidiaries are concerned, experience in Canadian competition law in the past two decades shows that it is possible to enforce white-collar criminal laws against major companies and their subsidiaries. Recent amendments to the Criminal Code have also facilitated the establishment of corporate liability by codifying certain measures with respect to the attribution to a corporation of the acts of a senior officer. Canadian criminal law generally, and the CFPOA in particular, do not provide for strict liability of parent companies for the conduct of their subsidiaries and third parties (e.g. agents and representatives). However, companies can incur liability for the conduct of subsidiaries, agents and intermediaries where the evidence discloses that the parent company has had knowledge of and involvement in the unlawful conduct. Canadian law will impute liability in cases of wilful blindness where there is evidence to show that the parent knew or ought to have known that a subsidiary or third party was going to engage in unlawful conduct and chose not to do anything about it. With regard to conduct abroad, the jurisdictional standard is that there must be a "real and substantial connection" between the conduct and Canada. There have been no cases to date that have addressed this issue in the context of the CFPOA. However, in the context of a treaty-based law such as the CFPOA that is inherently concerned with conduct abroad, it is likely that the court would find the requisite jurisdictional nexus where senior officials of the parent company in Canada had knowledge of the proposed unlawful conduct and encouraged, approved or acquiesced in the conduct, particularly where other links to Canada exist, such as the fruit of the unlawful act accruing to the benefit of the parent company in Canada (e.g. payment of fees, dividends, etc.), the parent company's conduct in facilitating the unlawful conduct (e.g. providing the financial resources to make the illegal payment), and other relevant factual connections to Canada.

Recent developments: The Public Prosecution Service of Canada (PPSC) has designated one prosecutor as the principal contact person for international corruption-related inquiries from other countries.

⁸⁹ Bankers Petroleum Ltd website, accessed 21 February 2011, <http://www.bankerspetroleum.com/index.php?page=structure> ; PMNews Nigeria, 9 March 2011, "Halliburton Bribery Scam: Court Summons Accused" pmnewsnigeria.com/.../halliburton-bribery-scam-court-summons-accused/

⁹⁰ Patrick J. Lesage, C.M., Q.C., Professor Michael Code, November 2008, Report of the Review of Large and Complex Criminal Case Procedures, http://www.attorneygeneral.jus.gov.on.ca/english/about/pubs/lesage_code/

⁹¹ OECD Working Group on Bribery, Phase 3 Report on Canada, March 2011, <http://www.oecd.org/dataoecd/55/25/47438413.pdf>

Recommendations: Adopt nationality jurisdiction and a civil or administrative enforcement option and take necessary measures to prosecute Canadian nationals for bribery of foreign public officials committed abroad. Ensure that sanctions applied in practice are effective, proportionate and dissuasive, considering jurisdictional limitations. Allocate further resources at both the investigative and prosecutorial levels. Show a more visible public commitment to enforcement. The PPSC should show greater commitment and designate an anti-corruption team so that these prosecutors can be trained in anti-corruption-related matters and benefit from establishing stronger links with their prosecutorial peers in other countries who have more focused anti-corruption expertise. Clarify that authorities may not consider factors such as the national economic interest and relations with a foreign state when deciding whether to investigate or prosecute foreign bribery. In the Phase 3 Report on Canada in March 2011, the OECD Working Group on Bribery also recommended that Canada amend the CFPOA so that it clearly applies to bribery committed by all international business, not just 'for profit' businesses.⁹²

CHILE

LITTLE OR NO ENFORCEMENT: Two cases and two investigations. Share of world exports is 0.4 per cent.

Foreign bribery cases or investigations: There are two cases and two investigations, all of which were initiated in 2010. Chilean authorities did not provide any details.

Domestic bribery by foreign companies: There were two well-publicised cases in 2009 and 2010, one involving alleged bribery in the sale of Mirage jets from the Belgian company **SABCA** to the Chilean Air Force in 1994. A former commander of the Chilean Air Force and two senior officials were charged with embezzlement and are out of jail on bail.⁹³ The other case concerns a US\$ 80 million government contract awarded to **Tata Consultancy Services** by the Civil Registry Office. In January 2011 a technology adviser for both for the Civil Registry and Tata, was found guilty of disclosing confidential information about the public tender for that project.⁹⁴ In January 2010, one public servant was convicted and sentenced to four-and-a-half years in jail. Other officials from the Civil Registry and Tata executives were reportedly indicted for fraud, bribery, and disclosure of secret information.⁹⁵ A Dutch newspaper in 2009 reported a prosecution in Chile of two Chilean military officials in relation to the 1998 sale of 202 Leopard tanks to Chile by the Dutch defence firm **RDM** for US \$63 million. The allegations reportedly came to light as part of a 2004 investigation into the fortune of former Chilean dictator General Augusto Pinochet. According to the news report, RDM reportedly admitted in 2005 that it had deposited US \$1.6 million into an account belonging to one of Pinochet's lawyers.⁹⁶ In addition, the UK newspaper *The Guardian* alleged that **BAE Systems**, Britain's biggest arms firm, had paid more than £1 million (US \$1.6 million) into a Miami bank account linked to General Pinochet, some of it through a front company in the British Virgin Islands.⁹⁷

Inadequacies in legal framework: The framework is generally sound, with some inadequacies relating to statutes of limitation and sanctions. Bribery falls within the category of *simples delitos* (simple criminal offences), which are more serious than *faltas* (minor offences), but not as serious as *crimenes* (crimes). According to Articles 94–96 of the Criminal Code, the statute of limitations for *simples delitos* is five years, begins to run from the date of the commission of the offense and is suspended from the moment a procedure starts against the offender. The National Office of the Public Prosecutor's circular letter N° 059 to public prosecutors in January 2009 attempts a broad interpretation to ameliorate this situation.

⁹² OECD Working Group on Bribery, Phase 3 Report on Canada, March 2011, <http://www.oecd.org/dataoecd/55/25/47438413.pdf>

⁹³ Minay, Sebastián, CIPER, 15 April 2009 "La conexión de Patricio Rojas con el caso Mirage y sus negocios con el Ministerio de Defensa", <http://ciperchile.cl/2009/04/15/la-conexion-de-patricio-rojas-con-el-caso-mirage-y-sus-negocios-con-el-ministerio-de-defensa/>; Saldivia, Miguel, CIPER, "Juez Astudillo indaga rol de Ministerio de Defensa en compra de aviones Mirage", 22 January 2009, http://www.latercera.com/contenido/674_95037_9.shtml

⁹⁴ Centro de Investigatcion Periodistica (CIPER), 8 November 2010, "Jueza sobresee temporalmente el proceso por irregularidades en el Registro Civil" <http://ciperchile.cl/2010/11/08/jueza-sobresee-temporalmente-el-proceso-por-irregularidades-en-el-registro-civil/>

⁹⁵ Ibid

⁹⁶ Nrc Handelsblad, 5 August 2009, "Netherlands looks into Chile bribe allegations" http://www.nrc.nl/international/article2320051.ece/Netherlands_looks_into_Chili_bribes_allegations;

Radio Netherlands Worldwide, 4 August 2009, "Chile Generals Accused of Taking Dutch Bribes" <http://www.rnw.nl/english/article/chile-generals-accused-taking-dutch-bribes>

⁹⁷ The Guardian, 15 September 2005, "Revealed: BAE's secret BPS 1 million to Pinochet" <http://www.guardian.co.uk/world/2005/sep/15/bae.freedomofinformation>

Inadequacies in enforcement system: There are several inadequacies, including the decentralised organisation of enforcement, a lack of public awareness-raising, poor complaints mechanisms and weak whistle-blower protection. With regard to the last, Law 20.205 on whistle-blowers provides insufficient protection for government employees and there is no law that protects whistle-blowers in the private sector. Article 33 of Law 19.913 provides for the protection of witnesses in cases of money laundering. Furthermore, the Public Prosecutors Office expressed in their Accountability Report 2010 that the sanctions of imprisonment imposed for corruption offenses are not always proportionate to the seriousness of the crime.

Legal framework and enforcement system regarding subsidiaries, agents and other intermediaries: Law 20.393 on the liability of companies does not make explicit mention of subsidiaries, agents and other intermediaries. It does, however, include provisions that allow companies to be held responsible for acts not committed directly by the corporation. Article 3° of Law 20.393 states that corporations will be held responsible for the acts of their owners, controllers, managers, senior executives, agents or those who perform administration and oversight activities, unless the corporation has implemented a model of organisation, administration and oversight for the prevention of such offences. For the application of criminal responsibility, the corporation must be constituted under Chilean law, thus raising some problems relating to territorial jurisdiction. However, if the prosecutor can prove that an employee committed a crime under orders from a manager in the parent company, the latter can be held liable. The prosecution of any company requires that it be part of, or have control over, a corporation constituted by Chilean law.

Recent developments: No recent developments.

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

CZECH REPUBLIC

LITTLE OR NO ENFORCEMENT: No cases or investigations. Share of world exports is 0.8 per cent.

Foreign bribery cases or investigations: No cases or investigations. In other jurisdictions, the Czech-owned **Interblue Group** is reportedly under investigation in Slovakia and for money laundering in Switzerland.⁹⁸ Payments made to public officials in connection to a resort development project in the Turks and Caicos Islands, a UK overseas territory, carried out by the Czech **J & T Banka** and the Slovak **Istrokapital** were the subject of an investigation in 2009 in Slovakia.⁹⁹

Domestic bribery by foreign companies: The Supreme Prosecutor's Office reported four investigations, at least three of which stem from requests for legal co-operation from law enforcement authorities in other countries. These include an investigation into the 2006 sale of **Pandur** armoured personnel carriers to the Czech military by the Austrian company **Steyr Daimler Puch Spezialfahrzeuge**, which was opened following a request for information from the Austrian government.¹⁰⁰ The Supreme Prosecutor's Office reportedly accepted an offer of US assistance to re-open an investigation into suspected bribery in the 2002 purchase of 24 **Gripen** jets from **BAE Systems**.¹⁰¹ The Czech police had twice previously investigated the case and then dropped it. Three members of the Czech Parliament reportedly claim that they were offered large bribes in connection with the deal but refused them.¹⁰² In another case, in September 2010, the Czech police and state attorneys reportedly questioned a former Czech prime minister and members of his cabinet about allegations of misconduct during the controversial partial privatisation of the **Mostecká uhelna** coal mining company in 1998. It was reported that representatives of the Swiss prosecutor's

⁹⁸ The Slovak Spectator, 24 March 2010, "Interblue: Swiss prosecutor confirms money laundering investigation" http://spectator.sme.sk/articles/view/38345/10/interblue_swiss_prosecutor_confirms_money_laundering_investigation.html

⁹⁹ 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 ;

The Observer, 1 February 2009, "Islanders blame UK for 'stolen land'" <http://www.guardian.co.uk/world/2009/feb/01/turks-and-caicos>

¹⁰⁰ Prague Post, 24 February 2010, "Police launch investigation of Pandur military vehicle deal", <http://www.praguepost.com/news/3676-police-launch-investigation-of-pandur-military-vehicle-deal.html>

¹⁰¹ Prague Post, 18 August 2010, "U.S. help sought in Gripen probe", <http://www.praguepost.com/news/5432-u-s-help-sought-in-gripen-probe.html>

¹⁰² Ibid.

office were present during the questioning as well. According to media, the Swiss suspect seven people of money laundering and unfair management of public interests in connection with the privatisation deal.¹⁰³

Inadequacies in legal framework: There is no criminal liability of legal persons, and foreign bribery is not covered as an individual criminal offence in the Czech Penal Code. Foreign bribery cases are prosecuted in the same regime as cases of domestic bribery and there is uncertainty about the establishment of jurisdiction in foreign bribery cases. The period of limitation until the end of prosecution or sentencing is three years, which can be extended through suspension or interruption, and can be greater in aggravated circumstances.¹⁰⁴

Inadequacies in enforcement system: There is an on-going tendency on the part of political decision-makers to comment publicly on investigations and prosecutions, resulting in possible improper influence.¹⁰⁵ Political infighting has reportedly caused considerable inconsistencies in enforcement, with many prominent positions changing at the end of 2010 and beginning of 2011.¹⁰⁶ There is no single, comprehensive whistle-blower law in the Czech Republic. Whistle-blowers can be subject to charges of false disclosure if information provided with honest intentions proves incorrect, and there is no systemic collection of data on the number of whistleblowing disclosures or the proportion of cases that result in legal action.¹⁰⁷

Legal framework and enforcement system regarding subsidiaries, agents and other intermediaries: In its Phase 1 evaluation by the OECD, the government emphasised that though section 161 of the Criminal Code does explicitly not cover foreign bribery via intermediaries, it should suffice that it covers "an indirect delivery of a material advantage or other advantages or services", though there has been no case law to support this claim.¹⁰⁸

Recent developments: There is a new Governmental Anti-Corruption Strategy, according to which the government will take the necessary steps to ratify the UN Convention against Corruption and will by 30 June 2011 fulfil all commitments arising from the OECD Convention and the Council of Europe Criminal Law Convention. In the past, the government has not followed through on its anti-corruption strategies and plans. In December 2010 the Ministry of Justice put forward a Draft Law on Criminal Liability of Legal Persons and Proceeding against Them. Since March 2011, there has been a serious government crisis closely related to corruption and changes of cabinet members, with accusations of illegal party financing, allegations of spying, as well as private security agency infiltration of the public administration.¹⁰⁹

Recommendations: Introduce criminal liability of legal entities and enhance protection of whistle-blowers in both the private and public sectors. Increase the independence of the Supreme Public Prosecutor as well as the independence and expertise of public prosecutors. Build capacity in law enforcement agencies, especially in the staff responsible for foreign bribery investigations in the Department for Combating Corruption and Financial Crime (UOKFK), and ensure the unit's independence and stability. Create units specialized in "corruption crimes" among law enforcement agencies (Special Court, Special Prosecutor's Office). Conduct an awareness-raising campaign.

DENMARK

ACTIVE ENFORCEMENT: 14 cases. One investigation. Share of world exports is 0.8 per cent.

Foreign bribery cases or investigations: Fourteen cases, all of which are connected to the UN Oil-for-Food programme in Iraq. Two of these cases were concluded in 2010, in addition to the 11 previously concluded cases. The two companies involved in the two cases concluded in 2010 agreed to confiscation, but were dismissed due to expiration of the statute of limitations. There is still one on-going case now in court. As the cases of February 2009, the

¹⁰³ Prague Daily Monitor, 16 September 2010, "Police question ex-PM Zeman over coal-mining company", <http://praguemonitor.com/2010/09/17/police-question-ex-pm-zeman-over-coal-mining-company>

¹⁰⁴ Transparency International "Timed Out: Statutes of Limitations and Prosecuting Corruption in EU Countries", http://www.transparency.org/regional_pages/europe_central_asia/projects_and_activities/statutes_limitations

¹⁰⁵ 2011 National Chapter Questionnaire Response - TI Czech Republic

¹⁰⁶ Ibid.

¹⁰⁷ Transparency International, "An Alternative to Silence" Whistleblower protection in Ten European Countries, 2009

¹⁰⁸ OECD Working Group on Bribery, Phase 2 Report on the Czech Republic, October 2006
<http://www.oecd.org/dataoecd/3/59/37727436.pdf>

¹⁰⁹ Zpravodajství v angličtině - Czech press survey - 2 October 2010,
http://www.ctk.cz/sluzby/slovni_zpravodajstvi/zpravodajstvi_v_anglictine/index_view.php?id=536288

Danish Public Prosecutor for Serious Economic Crime was investigating the pharmaceutical and medical equipment company **Missionpharma** for alleged unlawful commissions, after charges of bribery were dropped in January 2009.¹¹⁰ This is reportedly an investigation into 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 the Congo from 2005 to 2007.¹¹¹

Domestic bribery by foreign companies: None known.

Inadequacies in legal framework: There are some inadequacies. The GRECO evaluation of Denmark found that it is not clear in the legal framework that the offence of foreign bribery includes undue advantage.¹¹² The OECD Working Group on Bribery Phase 2 review of Denmark noted that sanctions for bribery and accounting offences are too low, that there is a dual criminality requirement for offences committed abroad and that small facilitation payments are not considered bribery under Danish law.¹¹³ The period of limitation is also too short with an outer limit of five years until the end of prosecution, though this can be greater in aggravated circumstances and can be extended due to suspension or interruption.¹¹⁴ The OECD Convention still has not been brought into force in the two Danish dependencies of the Faroe Islands and Greenland.

Inadequacies in enforcement system: Whistle-blower protection is inadequate and tax authorities are not provided with sufficient guidance on reporting suspicions of foreign bribery. In addition, enforcement officials lack knowledge of special investigative techniques in foreign bribery investigations. There are no databases of foreign bribery statistics or case law maintained in Denmark.¹¹⁵

Legal framework and enforcement system regarding subsidiaries, agents and other intermediaries: The legal framework is inadequate for holding companies responsible for bribery committed by subsidiaries, joint ventures and/or agents and for holding high-level company officials responsible for such bribery. Denmark does not expressly cover bribery through an intermediary as an offence of foreign bribery, and relies on its Penal Code provisions on instigation and complicity.¹¹⁶ Section 23 of the Criminal Code states that any person who contributes to the execution of a wrongful act by instigation, advice or action is liable according to the same rules as the principal offender, and the foreign official is not required to be aware that the intermediary is acting on behalf of the principal briber.¹¹⁷

Recent developments: No significant recent developments.

Recommendations: Increase sanctions and increase the periods of limitation so that they are not an obstacle to foreign bribery enforcement. Improve whistle-blower protection. Provide comprehensive guidance to tax authorities on foreign bribery and provide adequate training for investigators. Provide a comprehensive, public database of foreign bribery statistics.

¹¹⁰ Missionpharma website,

http://www.mission-pharma.com/content/us/about_us/news/news_archive/bribery_charges_dropped_242-09

¹¹¹ 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> ;

Missionpharma website: www.mission-pharma.com/content/us/about_us/news/news_archive/bribery_charges_dropped_242-09

¹¹² GRECO Third Round Evaluation of Denmark, Theme I, July 2009,

http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282008%299_Denmark_One_EN.pdf

¹¹³ OECD Working Group on Bribery Phase 2 Report on Denmark, June 2006, <http://www.oecd.org/dataoecd/14/21/36994434.pdf>

¹¹⁴ Transparency International "Timed Out: Statutes of Limitations and Prosecuting Corruption in EU Countries",

http://www.transparency.org/regional_pages/europe_central_asia/projects_and_activities/statutes_limitations

¹¹⁵ GRECO Third Round Evaluation, Theme I, Denmark, July 2009,

http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282008%299_Denmark_One_EN.pdf

¹¹⁶ OECD Working Group on Bribery, October 2009, "Typologies on the Role of Intermediaries in International Business Transactions"

<http://www.oecd.org/dataoecd/40/17/43879503.pdf>

¹¹⁷ OECD Working Group on Bribery, Phase 1 Report on Denmark, December 2000 <http://www.oecd.org/dataoecd/39/57/2018413.pdf>

ESTONIA

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

Foreign bribery cases or investigations: No cases or investigations.

Domestic bribery by foreign companies: No cases or investigations.

Inadequacies in legal framework: As noted in the Phase 2 and Phase 2 Follow-up Reports on Estonia, the statute of limitations for giving or arranging a bribe or a gratuity is five years from the commission of the offence to the date of conviction and ten for aggravated offences and the making of an mutual legal assistance request does not interrupt or suspend the limitation period. The review reports also noted the inadequacy of criminal sanctions for arranging a bribe (i.e., serving as an intermediary) which are considerably less for bribing, with a maximum one year imprisonment. Maximum sanctions for false accounting were also considered inadequate.¹¹⁸

Inadequacies in enforcement system: Though the system has yet to be tested by any cases or investigations, areas such as prosecutorial independence, reporting requirements and false accounting regulations need more attention. There is also a lack of government awareness-raising efforts. As the adoption of the draft act mentioned below has been postponed indefinitely, the protection of whistle-blowers remains problematic. In any event, the act would not extend to private sector whistle-blowers. Also, the requirement for making special investigative techniques available for all cases of foreign bribery has not been fully implemented.

Legal framework and enforcement system regarding subsidiaries, agents and other intermediaries: The corporate liability regime in Estonia allows for a parent company to be held liable for all acts committed by its authorised representatives, whether acting on behalf of the company or in the interest of the company. Agents can in certain cases be prosecuted under Penal Code § 296 for arranging a bribe, while the parent company can be charged under § 294. As mentioned above, arranging bribes is punishable with only up to one year's imprisonment, and as such special investigative techniques are not permitted for the investigation. The draft Anti-Corruption Act (ACA) currently pending in the Parliament would change the qualification of acts committed through an intermediary, making special investigative techniques available for this offence. Estonian law does not expressly cover cases of foreign bribery via the use of intermediaries. However, implicit coverage has been demonstrated in domestic case law, preparatory works and Parliamentary discussions.¹¹⁹

Recent developments: A new government regulation issued in January 2010 states that applicants for Ministry of Foreign Affairs funding for development assistance projects abroad will be deemed ineligible if they have been previously punished for administrative crimes, including bribery. Despite significant cuts in training budgets for judges and prosecutors in 2010, some training was provided and additional seminars are scheduled to take place in 2011. Amendments to the Prosecutor's Office Act have been submitted to the Parliament to increase the independence of prosecution. Sanctions and special investigative techniques concerning acts committed through intermediaries are redefined in the draft ACA currently pending in the Parliament. However, due to a lack of political will, it has not been adopted. The draft act is likely to be dropped from the legislative agenda due to Parliamentary elections taking place in March 2011 and termination of the term of authority of the Parliament. Envisaged changes in the public sector whistle-blower regime are unlikely to be introduced for the same reason.

Recommendations: Adopt the draft ACA. Provide practical assistance and training for the private sector as well as for auditing personnel. Provide police officials and prosecutors with training on more sophisticated forms of corruption, such as corrupt acts committed using intermediaries. Improve whistle-blower regulations and put in place clear reporting channels in high-risk areas such as health care and taxation. OECD's Phase 2 Follow-up Report on Estonia of October 2010 called for increased awareness-raising in both the public and private sectors as well as focused training of public officials, including tax officials and prosecutors.

¹¹⁸ OECD Working Group on Bribery, Phase 2 Report on Estonia, June 2008

<http://www.oecd.org/dataoecd/60/57/40953976.pdf> ; OECD Working Group on Bribery, Phase 2 Follow up Report on Estonia, October 2010, <http://www.oecd.org/dataoecd/13/57/46155745.pdf>

¹¹⁹ OECD Working Group on Bribery, October 2009, "Typologies on the Role of Intermediaries in International Business Transactions" <http://www.oecd.org/dataoecd/40/17/43879503.pdf>

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

Foreign bribery cases or investigations: There have been six cases and there are currently three investigations in Finland. There are two pending cases, one involving the company **Wärtsilä Finland Oy** and the other involving state-controlled arms company **Patria Vammass Oy** (see box below). In the case involving Wärtsilä Finland Oy, the company's 2010 annual report stated that the public prosecutor in Finland had brought charges in May 2009 against a former senior manager for aggravated bribery in relation to a consulting agreement.¹²⁰ According to other company statements this was connected with a 1997 power plant tender in Kenya and its delivery in 2001.¹²¹ In October 2009, the public prosecutor further filed an ancillary demand for a corporate fine from Wärtsilä as a result of the charges against the former senior manager. The case was heard before the Mustasaari District Court in November 2009. By its decision on 18 December 2009, the District Court dismissed all charges against the individual (on statute of limitations grounds) as well as the demands against Wärtsilä Finland Oy. In February 2010, the public prosecutor filed an appeal with the Vaasa Court of Appeals, and in September 2010 that court referred the case back to the District Court for reasons of procedural law. In November 2010, the former senior manager and Wärtsilä Finland Oy submitted a petition for leave to appeal the Court of Appeals' decision to the Supreme Court.¹²²

PATRIA VAMMAS OY

Five former employees of the defence company **Patria Vammass Oy** (which in 2005 was renamed Patria Weapon Systems Oy, and in 2008 merged into Patria Land & Armament Oy) and a citizen of Egypt are the defendants in an on-going major criminal case, including charges of aggravated bribery and accounting offences in 1999–2007.¹²³ The charges concern a technology transfer agreement entered into between Patria Vammass Oy and a company affiliated with the Egyptian Ministry of Military Production in 1999 for production in Egypt of certain artillery developed in Finland. The prosecutor general claims there is probable cause to suspect that representatives of Patria gave significant bribes to Egyptian officials, that an Egyptian agency was used in the alleged bribery and that the bribes were disguised in the firm's accounting by means of fake invoices.¹²⁴ The penalties sought are a corporate fine of €100,000 (US \$140,000) for Patria Land and Armament Oy and imprisonment for the former employees.¹²⁵ The case was expected to proceed in March 2011. However, according to the prosecutor general, the Egyptian prosecutor general denied a Finnish request for mutual legal assistance.¹²⁶

Two further investigations of Patria have been reported, in relation to sales contracts in Slovenia and Croatia. The Slovenian investigation concerns alleged bribes to politicians, including a former prime minister, in a €280 million (US \$400 million) deal in 2006 to supply armoured vehicles to the Slovenian army.¹²⁷ The former prime minister, now a member of Parliament, was indicted in Slovenia in September 2010 and his Parliamentary immunity was lifted by the Slovenian Parliament in October 2010. In January 2011, Finnish police were reported to have said that they were expanding their investigation into Patria group's arms sales in Croatia.¹²⁸ The National Bureau of Investigation said the investigation concerned money that was allegedly handed out to Croatian officials in 2007 in connection with sales of armoured vehicles then valued at €112 million (US \$160 million). The Croatian Interior Ministry reportedly said it was also conducting an investigation.¹²⁹

¹²⁰ Wärtsilä Annual Report 2010, <http://www.annualreport2010.wartsila.com/en/sustainability/personnel-and-social-performance/preventing-corruption-and-bribery>

¹²¹ Wärtsilä Press Release, 18 December 2009; Wärtsilä Press Release, 22 September 2010.

¹²² Wärtsilä Annual Report 2010, <http://www.annualreport2010.wartsila.com/en/sustainability/personnel-and-social-performance/preventing-corruption-and-bribery>

¹²³ OECD Working Group on Bribery, Phase 3 Report on Finland, October 2010, <http://www.oecd.org/dataoecd/59/30/46212643.pdf>

¹²⁴ Announcement of the Prosecutor General, 23 June 2010, <http://www.vksv.oikeus.fi/Etusivu/Ajankohtaista/Tiedotteet/1274105704144/pagename/Page/Tiedote>

¹²⁵ Ibid.

¹²⁶ Ibid.

¹²⁷ Novice Dnevnik, 16 December 2009, "Afera Patria: Obtožni predlog zoper Erjavca in Gutmana zaradi nevestnega dela", http://www.dnevnik.si/tiskane_izdaje/dnevnik/1042323677

¹²⁸ The Wall Street Journal Blogs, 4 January 2011, Finland Expands Patria Bribery Investigation into Croatia Sales, <http://blogs.wsj.com/corruption-currents/2011/01/04/finland-expands-patria-bribery-investigation-into-croatia-sales/>

¹²⁹ Ibid.

Another case, which has reportedly been under pre-trial investigation since 2004, involves allegations against Finnish consortium **Instrumentarium Medko Medical Corp**, a subsidiary of **General Electric Healthcare**, which acquired the consortium in October 2003.¹³⁰ Instrumentarium allegedly paid bribes to foreign officials in Costa Rica in relation to a 2002 million contract for €32 million (US \$45 million) to supply medical equipment, funded by the Finnish government.¹³¹ The deal was reportedly mediated by the local company Fischel Corp, which allegedly received about €6.5 million (US \$9.3 million) for installation costs and warranty repairs.¹³² In 2009, former Costa Rican president Calderón was reportedly convicted in Costa Rica of accepting funds from Instrumentarium Medko Medical Corp. His lawyers are reportedly appealing that conviction and a final ruling is pending.¹³³

Domestic bribery by foreign companies: No cases or investigations reported.

Inadequacies in legal framework: There is a more restrictive definition of foreign bribery in the Criminal Code than required by the Convention. The definition of public official does not include persons holding a legislative office in a foreign country. Accounting and auditing offences do not apply to legal persons. The statute of limitations period for foreign bribery may be insufficient, due to insufficient availability of extensions. The statute of limitations period for bribery offences is five years, which can be extended by one year under extraordinary circumstances, while for aggravated bribery it is ten years. Pursuant to the Auditing Act, certain companies may opt out of a voluntary external audit and may not be aware of the foreign bribery offence and related accounting and auditing offences. The Auditing Act does not expressly require external auditors who discover indications of foreign bribery to report to management and/or corporate monitoring bodies. There are no established, clear guidelines for tax inspectors, and there is no guidance to taxpayers on the non-deductibility of bribes to foreign public officials or on the type of expenses considered bribes.

Inadequacies in enforcement system: The training of law enforcement authorities and prosecutors is somewhat inadequate. Finland has not engaged in sufficient awareness-raising in the public and private sectors. Measures to facilitate reporting by public officials of suspected bribery are insufficient, and there is no mechanism for whistleblower protection. FINNVERA, Finland's export credit agency, has not yet established formal guidelines concerning due diligence, disclosure of evidence of bribery or the consequences of being the subject of bribery allegations or convictions. There are no mechanisms to ensure that persons applying for official development assistance (ODA) contracts be required to declare that they have not been convicted of corruption offences, that due diligence is carried out prior to the granting of ODA contracts, that ODA contracts specifically prohibit contractors and partner agencies from engaging in foreign bribery, or that sub-contractors and contracted local agents be bound by the same prohibition. Finland has not yet issued guidelines for public procurement authorities on international blacklists; mechanisms to verify the accuracy of information provided by applicants; or on the termination and suspension of contracts with companies found to have committed bribery.¹³⁴

Legal framework and enforcement system regarding subsidiaries, agents and other intermediaries: All of the pending cases and investigations involve situations in which the employees of a Finnish company and independent agents working for the Finnish company are suspected of bribery in a foreign country. The bribery offences under Chapter 16 of the Criminal Code do not expressly refer to bribery through an intermediary, but it is covered by Criminal Code provisions on instigation and abetting. All such investigations have involved an inquiry into the parent company's awareness of any bribery abroad. According to the Companies Act, a limited liability company is a distinct legal person and is not liable for the actions of the subsidiary, and it is unclear to what extent it must be involved in bribery by the subsidiary to invoke liability. It is also unclear whether a foreign subsidiary can be considered a "corporation, foundation or other legal entity" according to the Criminal Code. In such cases prosecutors would have to demonstrate that factual control remained with the Finnish parent company. In terms of jurisdiction over legal persons, if Finnish law applies to the offence, it also applies to the determination of corporate criminal liability.¹³⁵

¹³⁰ New York Times, 11 October 2003, "G.E. Earnings Decline 11%; Key Product Lines Are Sluggish", <http://select.nytimes.com/gst/abstract.html?res=FB0C10FE395B0C728DDA90994DB404482>

¹³¹ OECD Working Group on Bribery, Phase 3 Report on Finland, October 2010, <http://www.oecd.org/dataoecd/59/30/46212643.pdf>

¹³² Helsingin Sanomat, 23 September 2004, Foreign Ministry to Investigate Instrumentarium Deals in Costa Rica, <http://www.hs.fi/english/article/Foreign+Ministry+to+investigate+Instrumentarium+deals+in+Costa+Rica/1076154021146>

¹³³ Tico Times, 13 January 2011, The Alcatel Settlement in the US has Nothing to Do with President Rodriguez, http://www.ticotimes.net/News/Top-Story/News/The-Alcatel-Settlement-in-the-U.S.-has-nothing-to-do-with-President-Rodriguez_13-January-2011

¹³⁴ OECD Working Group on Bribery, Phase 3 Report on Finland, October 2010, <http://www.oecd.org/dataoecd/59/30/46212643.pdf>

¹³⁵ Ibid

Recent developments: Legislative amendments regarding bribery committed by MPs and covering certain money laundering issues have been proposed to the Parliament in government bills. The OECD delegation made a country visit to Finland in June 2010, and the resulting Phase 3 Report and recommendations have been widely analysed by the relevant authorities. Amendments to the legal framework as well as to the enforcement system will be internally recommended for the new government programme of the next government, which is to be appointed after the Parliamentary elections in April 2011.

Recommendations: Amend the foreign bribery offence to include persons holding legislative office in a foreign country. Introduce explicit corporate liability for accounting and auditing offences. Ensure that the limitation period for foreign bribery and mechanisms for extension are sufficient and reasonably available. Ensure that companies not obligated to carry out an external audit continue to do so voluntarily and are aware of foreign bribery and related accounting and auditing offences. Amend the Auditing Act to explicitly require external auditors to report suspected bribery to management and, as appropriate, to corporate monitoring bodies and competent, independent authorities. Establish clear guidelines for tax inspectors and provide guidance to taxpayers on the non-deductibility of bribes and the type of expenses considered bribes. Provide training and guidance for law enforcement authorities and prosecutors. Take urgent steps to raise awareness of the foreign bribery offence and relevant laws within the public and private sectors, especially in high-risk sectors. Require FINNVERA, Finland's export credit agency, to establish formal guidelines related to the offence, and provide guidelines for public procurement authorities as well. Take steps to ensure that bribery is not used in official development assistance projects. Introduce measures for public officials to report suspected bribery and mechanisms to protect public and private sector whistle-blowers.¹³⁶

FRANCE

MODERATE ENFORCEMENT: Ten concluded cases, 14 judicial investigations and five investigations.
Share of world exports is 3.5 per cent.

Foreign bribery cases or investigations: There are ten concluded cases reported, with none having been concluded in 2010 and another in 2011. Concerning the latter of these, on 25 March 2011 two employees of the French drilling services company **FORACO** were reportedly each convicted and fined 10,000 euros and have appealed their convictions. There are 14 judicial investigations and five police investigations reported. There have been numerous publicly reported judicial and police investigations of major French companies but the judicial investigations linger on formally and rarely reach any conclusion. French companies that have been named (or whose subsidiaries have been named) in connection with cases and investigations in France and other jurisdictions include **Alcatel, Alstom, Areva, Armaris,**¹³⁷ **DCN,**¹³⁸ **Dumez,**¹³⁹ **EADS,**¹⁴⁰ **Schneider Electric,**¹⁴¹ **Technip, Thales, Total** and **Vivendi.**¹⁴² In its half-year financial report released in November 2010, **Alstom**, the power and transport systems giant, stated that one of its subsidiaries in the hydro business had been formally charged in France for alleged illegal payments concerning operations in Zambia, and that it was under investigation by the World Bank and European Investment Bank in connection with these allegations as well.¹⁴³ According to a report in December 2010, Alstom works in Zambia through its affiliate **COMELEX Zambia Ltd.** and the allegations concern possible bribes paid to Zambian officials

¹³⁶ Ibid.

¹³⁷ Asia Sentinel, 16 April 2010 "Malaysia's Submarine Scandal Surfaces in France" www.asiasentinel.com/index.php?option=com_content&task=view&id=2406&Itemid=178 ; Libération, 2 April 2010 "Sous Marins Français : Le Malaise Malaisien" www.liberation.fr/societe/0101628017-sous-marins-francais-le-malaise-malaisien ; Malaysia Today, 16 April 2010 "Malaysia's submarine scandal erupts in France" www.malaysia-today.net/index.php?option=com_content&view=article&id=31215:malaysias-submarine-scandal-erupts-in-france&catid=21:special-reports&Itemid=100135 ;

¹³⁸ Ibid.

¹³⁹ Financial Times, 23 December 2003; on UNICORN www.againstcorruption.org/bribery-case.asp?id=812; Región Norte Grande, 25 June 2008; www.regionnortegrande.com.ar/?noticia=10774; Bretton Woods Project, 8 September 2003; www.brettonwoodsproject.org/article.shtml?cmd%5B126%5D=x-126-19055

¹⁴⁰ Defense Industry Daily, 18 February 2010; www.defenseindustrydaily.com/eurofighter-set-for-rough-ride-in-austria-updated-02701/; BBC News, 13 February 2003, <http://news.bbc.co.uk/2/hi/business/2756861.stm>

¹⁴¹ Probe International, 13 December 2003, <http://www.probeinternational.org/odious-debts/schneider-electric-stand-trial-bribery-case>

¹⁴² The Guardian, 14 July 2002; www.guardian.co.uk/politics/2002/jul/14/globalisation.greenpolitics

¹⁴³ Alstom, Half-year ended 30 September 2010, <http://www.alstom.com/assetmanagement/DownloadAsset.aspx?ID=ae372f8d-645e-463c-b69a-6961dc15c032&version=de0aedcbb51a4147acfdb37072bfbdf1.pdf>

in the water and power sector earlier this decade.¹⁴⁴ According to a 2010 quarterly report filed by **Halliburton**, French investigations related to alleged bribery in Nigeria are still on-going in France.¹⁴⁵ In April 2011, a French appeals court overturned the conviction of a former French minister who had been convicted in 2009 of influence peddling in a case relating to the trafficking of Soviet-made arms to Angola in the 1990s. The convictions of two businessmen in that case were also overturned.¹⁴⁶ In connection with the so-called "Angolagate", a Portuguese newspaper reported in 2008 that over US \$21 million was transferred to Angolan public officials via Portuguese banks, as allegedly evidenced by documents from a Paris court. The banks reportedly listed in the indictment include **Caixa Geral de Depósitos (CGD)**, the **Banco Comercial Português (BCP)**, Portugal's two largest banks, as well as the **Nacional de Crédito, Nacional Ultramarino** (since absorbed by the CGD), **Comercio e Industria, Totta & Açores, Pinto & Sotto Mayor** (part of the BCP) and the Portuguese branches of **Banco Bilbao Vizcaya and Barclays**.¹⁴⁷

In other jurisdictions, in April 2011, it was reported that the German authorities were investigating a joint-venture majority-owned by the nuclear power company **Areva SA**.¹⁴⁸ It was also reported in 2009 that Chinese authorities were investigating allegations that the former general manager of the China National Nuclear Corporation had taken bribes from Areva.¹⁴⁹ The company was reportedly awarded a US \$12 billion contract in 2007 to supply China with two nuclear reactors.¹⁵⁰ The former manager was jailed for life in November 2010 for corruption and for accepting US \$1 million in bribes.¹⁵¹ The French oil and gas engineering company **Technip** settled an FCPA case in the US in June 2010, agreeing to pay a total of US \$338 million (US \$98 million to the SEC in disgorgement and a US \$240 million criminal penalty) following charges arising from a joint venture project for the construction of a liquid natural gas facility in Nigeria.¹⁵² Nigerian authorities also detained Technip staff in November 2010 in relation to these allegations (see Section VI on Nigeria).¹⁵³

In December 2010, **Alcatel Lucent**, the French telecommunications company, and three of its subsidiaries reached settlements in the US in connection with alleged improper payments relating to the acquisition of telecommunications contracts in Costa Rica, Honduras, Malaysia and Taiwan in the period 2001 – 2006, as well as in connection with the use of third-party agents in Angola, Ivory Coast, Kenya, Mali, Nigeria, Uganda and Bangladesh.¹⁵⁴ Thereafter, the Malaysian Anti-Corruption Commission opened an investigation in December 2010, based on allegations that Alcatel had paid kickbacks to government officials in their country, allegedly to win a telecommunications contract worth US \$85 million. In March 2011, state-owned Telekom Malaysia (TM) and mobile operator Axiata (a unit of TM) both reportedly suspended Alcatel from tenders for twelve months.¹⁵⁵ South African authorities announced in October 2010 that they were closing an investigation into alleged bribery of South African officials by **Thales**.¹⁵⁶ Oil and gas company **Total SA** is reportedly in negotiations with the US DOJ to settle an investigation into allegations that it paid bribes to Iranian officials to obtain contracts in the early 2000s to develop parts of Iran's South Pars gas field.¹⁵⁷ The company was also reportedly under investigation in Italy in 2010 for allegedly having paid bribes to obtain permission to extract oil in the Basilicata region.¹⁵⁸

¹⁴⁴ International Rivers citing Africa Energy Intelligence No. 641, 8 December 2010, "Zambia: Alstom under EIB scrutiny over corruption allegations", <http://damsandalternatives.blogspot.com/2010/12/zambia-alstom-under-eib-scrutiny-over.html>

¹⁴⁵ New York Times, 24 December 2010, "Nigeria Drops Bribery Charges Against Cheney" <http://green.blogs.nytimes.com/2010/12/24/nigeria-drops-bribery-charges-against-cheney/>

¹⁴⁶ MSNBC, 29 April 2011, "3 acquitted in France-Angola arms traffic trial" <http://www.msnbc.msn.com/id/42815213>

¹⁴⁷ IPS, 4 November 2008, "„Angolagate" Bribes in Local Banks" <http://ipsnews.net/africa/nota.asp?idnews=44566>

¹⁴⁸ Reuters, 7 April 2011, "Offices in Areva-Siemens joint venture raided in bribery probe", <http://m.trust.org/trustlaw/news/german-prosecutors-raid-areva-np-in-bribery-probe>

¹⁴⁹ AFP, 5 August 2009, <http://www.google.com/hostednews/afp/article/ALeqM5iywgDuOVtVC3yJzkE9FoEsQcA3w>

¹⁵⁰ Ibid.

¹⁵¹ Bloomberg, 19 November 2010, <http://www.businessweek.com/news/2010-11-19/china-nuclear-ex-chief-jailed-for-bribery-xinhua-says.html>

¹⁵² Bloomberg Business Week, 28 June 2010, "Technip agrees to pay \$338 million in case" <http://www.businessweek.com/ap/financialnews/D9GKDL2G0.htm>

¹⁵³ Bloomberg Business Week, 7 December 2010, "Nigeria in Talks With Technip, Eni and JGC Over Bribe Case", <http://www.businessweek.com/news/2010-12-07/nigeria-in-talks-with-technip-eni-and-jgc-over-bribe-case.html>

¹⁵⁴ Wall Street Journal, 28 December 2010, "Alcatel-Lucent settles US bribery charges", <http://online.wsj.com/article/SB10001424052970203731004576046191673517686.html> ; International Business Times, 31 December 2010, "Alcatel-Lucent, subsidiaries settle corruption charges for \$92 million" <http://www.ibtimes.com/articles/96431/20101230/alcatel-lucent-subsidiaries-settle-corruption-charges-with-doj-for-92-mln.htm>

¹⁵⁵ AFP, 25 March 2011, <http://news.malaysia.msn.com/regional/article.aspx?cp-documentid=4737078> ; The Star, 25 March 2011, <http://biz.thestar.com.my/news/story.asp?file=/2011/3/25/business/8343435&sec=business>

¹⁵⁶ Financial Times, 24 October 2010, "Police accused of ANC bribe probe cover-up", <http://www.ft.com/cms/s/0/bd97d710-df8e-11df-bed9-00144feabd0.html#axzz1FJTrH63k>

¹⁵⁷ Wall Street Journal, 15 March 2011, http://online.wsj.com/article/SB10001424052748704662604576202433125109202.html?mod=googlenews_wsj

¹⁵⁸ Il quotidiano della Calabria, 4 May 2011 http://ilquotidianodellacalabria.ilsole24ore.com/it/Basilicata/potenza_Margiotta_deputato_Total_assoluzione_corruzione_Woodcock_petrolio_8237.html ; La Nuova del Sud, 5 May 2011 http://www.nuovadelsud.it/index.php?option=com_content&view=article&id=776:total-assolto-lon-margiotta&catid=4:cronaca&Itemid=2

Domestic bribery by foreign companies: No known cases or investigations.

Inadequacies in legal framework: There is one main inadequacy in the legal framework in France, but overall the framework is adequate. French jurisdiction over crimes committed abroad, including corruption offences, is restricted. For French jurisdiction to apply, either the person who committed the offence or the victim must be French. According to Articles 113-6 and 113-7 of the Criminal Code, French law is applicable to an offence committed abroad if the offence is punishable in the country where it was committed, and is also applicable if the victim is French. The French public prosecutor can file charges only after a complaint by the victim or an official denunciation by the government in the country where the offence was committed. Foreign bribery is classified as a misdemeanour, for which there is a short statute of limitations of three years. This has not been problematic, though, as the statute begins to run after the last step in the chain of corruption and the period is extended if any procedural steps have been taken in the meantime. Furthermore, judges have decided that since corruption is a concealed offence, the starting point of the statute of limitations is the time when the offence was discovered rather than the time when it was committed. A more important inadequacy is a French law, a "blocking statute", that gives companies the right to refuse to provide foreign investigative authorities with information.

Inadequacies in enforcement system: The expert reports that the most significant weaknesses are inadequate resources and difficulties in obtaining mutual legal assistance.

Legal framework and enforcement system regarding subsidiaries, agents and other intermediaries: Under French law, the parent company cannot be held responsible for an offence committed by a subsidiary, as it is considered an independent legal entity. But the parent company is responsible if it knew about the act of corruption. Concerning the jurisdictional limitations, if a subsidiary were to commit an act of corruption abroad, French criminal law would only be applicable to the foreign subsidiary if there were a link with French territory, that is, if (1) the victim were French; or (2) the parent company in France were considered an accomplice, but only if the offence were punishable by the foreign law; and (3) if there had been a final judicial decision abroad on the case. Another possible link with French territory could be that the commission had been paid in France or that the promised advantage was in France. In French law, the criminal responsibility is personal.

Recent developments: The European Court of Human Rights condemned France twice in 2010, in the *Medvedyev and Moulin* decisions, over the lack of independence of the public prosecutor.¹⁵⁹ A bill of law on plea bargaining has been prepared which would be applicable to corruption cases, including foreign bribery cases. In a landmark case of November 2010, the French Supreme Court opened to NGOs the right of action in criminal courts for wrongdoings related to corruption.

Recommendations: Address weaknesses in the legal framework and enforcement system. Introduce a *Procureur general de la République* (independent public prosecutor), regardless of the pending decision concerning investigative judges – the prosecutor should be at the top of the hierarchy, be appointed by Parliament and have authority over the careers of prosecutors so pressure could not be used by government. Authorise judicial settlements in cases of corruption.

GERMANY

ACTIVE ENFORCEMENT: One hundred thirty-five cases in total and 22 investigations underway. Share of world exports is 8.2 per cent.

Foreign bribery cases or investigations: There are currently 22 prosecutions underway in Germany, while 20 cases have been concluded since 1 January 2010. Two former senior managers of **Siemens AG** telecommunications group were convicted in April 2010 in a Munich court of breach of trust and abetting bribery in connection with contracts in Nigeria and Russia.¹⁶⁰ One was sentenced to two years' suspended sentence and fined €160,000 (US \$230,000). The other was sentenced to one and a half years' suspended sentence and ordered to pay €40,000 (US \$57,000) to charity.¹⁶¹

¹⁵⁹ European Court of Human Rights: Case of *Medvedyev and Others v France* - <http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionId=70291816&tskin=hudoc-en&taction=request>; ECHR: Case of *Moulin v. France* - <http://cmiskp.echr.coe.int/tkp197/portal.asp?sessionId=70291926&tskin=hudoc-en&taction=request>

¹⁶⁰ *Der Spiegel*, 12 April 2010, "Gericht kündigt Bewährungsstrafen für zwei Manager an", <http://www.spiegel.de/wirtschaft/unternehmen/0,1518,688465,00.html>

¹⁶¹ *Ibid.*

A former executive of German truck manufacturer **MAN Turbo AG** was convicted in June 2010 in a Munich court based on charges of having authorised the payment of over €9 million (US \$13 million) to public officials in Kazakhstan.¹⁶² He received a two-year suspended prison sentence and was ordered to pay €100,000 (US \$144,000) to charity.¹⁶³ The Munich public prosecutor was reportedly investigating **Ferrostaal** in 2010 concerning allegations of bribery in connection with the sale of submarines to Greece and Portugal and the delivery of shops and power plants in Africa and South America.¹⁶⁴ There were media reports in October 2010 that the German authorities were discussing with Ferrostaal a settlement involving payment of a penalty and disgorgement of profits of nearly €200 million (US \$289 million).¹⁶⁵ However, these discussions reportedly failed. It was reported in April 2011 that the Munich public prosecutor's office had brought charges against two former Ferrostaal employees alleging illegal payments in connection with the sale of submarines to Greece.¹⁶⁶ Thereafter there was a German press report that an internal investigation had been carried out by the law firm Debevoise and Plimpton regarding bribery allegations against Ferrostaal.¹⁶⁷

In August 2010, it was reported in the media that the Bielefeld public prosecutor's office had widened the bribery probe into **Gildemeister AG**, a German tool-making company.¹⁶⁸ The **Deutsche Bahn** announced in April 2010 that prosecutors in Frankfurt had opened an investigation into employees of the company's subsidiary **DB International**, on suspicion that they had paid bribes in Algeria, Greece and Rwanda.¹⁶⁹ This was followed by reports in July 2010 that the company had dismissed several employees in relation to these charges.¹⁷⁰ **Hewlett-Packard** stated in a filing to the US SEC in September 2010 that the company was under investigation by the German public prosecutor's office in relation to allegations that employees of the company's subsidiary **Hewlett-Packard ISE GmbH** had paid bribes in order to obtain a €35 million (US \$50 million) contract to install an IT network to the chief public prosecutor's office of the Russian Federation.¹⁷¹ It was reported in September 2010 that Bonn prosecutors were conducting an investigation into allegations of bribery by **Magyar Telekom**, a Hungarian subsidiary of **Deutsche Telekom**, including allegations against the German parent company.¹⁷² An investigation by the Wiesbaden Public Prosecutor of the engineering and construction company **Bilfinger Berger** relating to its activities in Nigeria dating to 2006 was reportedly ended in 2008 and then handed over to the Frankfurt public prosecutor's central anti-corruption office in 2010.¹⁷³ In March 2011 the Frankfurt office was reported to be examining allegations of corruption in Nigeria, which were also under investigation by US authorities. In another investigation, in April 2011, a news service reported that German prosecutors had searched offices at **Areva NP**, a nuclear power joint venture of **Areva SA** and **Siemens** in connection with a foreign bribery probe.¹⁷⁴ Raids were also reportedly conducted in the Czech Republic.¹⁷⁵ Siemens reportedly owns one-third of Areva NP.

¹⁶² Bloomberg, 28 June 2010, "Ex-MAN Turbo Chief Convicted of Bribery, Gets Two-Year Suspended Sentence" <http://www.bloomberg.com/news/2010-06-28/ex-man-turbo-chief-convicted-of-bribery-gets-two-year-suspended-sentence.html>

¹⁶³ Ibid.

¹⁶⁴ Reuters, 29 March 2010, "Second suspect arrested in Ferrostaal bribery probe" <http://af.reuters.com/article/idAFLDE62S15E20100329>; Der Spiegel, 30 March 2010, "Germany's Ferrostaal Suspected of Organizing Bribes for Other Firms", <http://www.spiegel.de/international/business/0,1518,686513,00.html>; Der Spiegel, 30 October 2010, "Ferrostaal droht Millionenstrafe", <http://www.spiegel.de/wirtschaft/unternehmen/0,1518,726290,00.html>

¹⁶⁵ Reuters, 17 December 2010, "MAN unsure of Scania tie-up in 2011-TV", <http://uk.reuters.com/article/2010/12/17/idUKLDE6BG OW520101217>

¹⁶⁶ Handelsblatt, 10 April 2011, "Staatsanwaltschaft erhebt Anklage gegen Ferrostaal Mitarbeiter," <http://www.handelsblatt.com/unternehmen/industrie/staatsanwaltschaft-erhebt-anklage-gegen-ferrostaal-mitarbeiter/4045318.html>

¹⁶⁷ Sueddeutsche.de, 10 May 2011, "Ferrostaal - plötzlich kein Hindernis mehr" <http://www.sueddeutsche.de/C5R38a/4083489/Ferrostaal-ploetzlich-kein-Hindernis-mehr.html>

¹⁶⁸ Handelsblatt, 15 August 2009 "Gildemeister-Manager wegen Korruption in Haft", <http://www.handelsblatt.com/unternehmen/industrie/gildemeister-manager-wegen-korruption-in-haft/3238720.html>

¹⁶⁹ Reuters, 23 April 2010, "Deutsche Bahn says international unit probed", <http://www.reuters.com/article/2010/04/23/us-deutsche-bahn-probe-idUSTRE63M3S320100423>

¹⁷⁰ Ibid.

¹⁷¹ The Wall Street Journal, 15 April, 2010, "H-P Executives Face Bribery Probes", <http://online.wsj.com/article/SB1000142405270230334850457518430211110966.html>; International Business Times, 10 September 2010, "HP Reveals Probe Of Russian Bribes", <http://www.ibtimes.com/articles/61283/20100910/hp-discloses-bribery-probe.htm>

¹⁷² Bloomberg, 13 September 2010, "Deutsche Telekom's Obermann Says Hungary Unit-Related Allegation Baseless", <http://www.bloomberg.com/news/2010-09-13/deutsche-telekom-s-obermann-says-bribery-allegation-in-probe-is-baseless.html> and The Economist, 10 August 2010, "Magyar Telekom, Bad Signal", http://www.economist.com/blogs/easternapproaches/2010/08/magyar_telekom

¹⁷³ Tagesschau.de, 1 March 2011, "Korruptionsverdacht bei Bilfinger Berger Nigeria" <http://www.tagesschau.de/wirtschaft/bilfinger-berger102.html>; [_rmn01.c.8721513.de.html](http://www.rmn01.c.8721513.de.html); Erneut Frankfurter Neue Presse, 2 March 2011, Staatsanwaltschaft ermittelt gegen Bilfinger Berger, <http://www.fnp.de/fnp/region/hessen/staatsanwaltschaft-ermittelt-gegen-bilfinger-berger>; Wall Street Online, 2 March 2011, Frankfurt übernimmt ermittlungen gegen Bilfinger Nigeria, <http://www.wallstreet-online.de/nachricht/3110625-frankfurt-uebernimmt-ermittlungen-gegen-bilfinger-nigeria>

¹⁷⁴ Reuters, 7 April 2011, "Offices at Areva-Siemens joint venture arrested in bribery probe", <http://www.trust.org/trustlaw/news/german-prosecutors-raid-areva-np-in-bribery-probe/>

¹⁷⁵ Ibid.

In other jurisdictions, **Daimler AG** reached a settlement in April 2010 in the US of US \$185 million with the SEC and US DOJ.¹⁷⁶ In Nigeria, two major German companies and their Nigerian subsidiaries reached multimillion euro settlements with the Nigerian government in 2010, namely **Siemens** and its Nigerian subsidiary and **Bilfinger Berger GmbH** and its Nigerian subsidiary (see Section VI on Nigeria).¹⁷⁷ In late January 2011 the Greek investment minister reportedly wrote to **Siemens Hellas**, a Siemens AG subsidiary, that Greece would "seek compensation for the damage it has suffered from the corruption practices that have been used by [the] company in the past." The statement was reportedly based on allegations that the company had engaged in bribery in connection with the awarding of contracts for the 2004 Olympic Games in Athens.¹⁷⁸

Domestic bribery by foreign companies: Two former Swiss bankers who formed the company **Value Partners Associates AG** were arrested in Germany in March 2010 and sentenced to imprisonment in January 2011 on charges that they bribed a public official in the city of Leipzig (see report on Switzerland).¹⁷⁹ The Munich Public Prosecutor in Germany is reportedly investigating allegations that former managers of the state-owned bank BayernLB were bribed in the course of dealings with the Austrian bank **Hypo Alpe Adria**.¹⁸⁰

Inadequacies in legal framework: There are some key inadequacies in the legal framework. There is no criminal liability for corporations and, in the opinion of TI Germany, the sanctions do not serve as an effective enough deterrent for foreign bribery. Though the OECD Convention does not require criminal liability, TI Germany maintains that its introduction together with criminal sanctions for companies would strengthen the prosecution and adequate sanctioning of foreign bribery in Germany. The OECD Phase 3 evaluation of Germany noted that sanctions, particularly criminal sanctions against individuals, may not be sufficiently dissuasive.¹⁸¹ The protection of whistle-blowers in the public sector has been improved, but the government has not adopted similar measures to protect whistle-blowers in private enterprises. Additionally, German law does not cover small facilitation payments. Furthermore, there is still no corruption register at the federal level despite several draft bills in different legislative periods.

Inadequacies in enforcement system: The main responsibility for the prosecution and investigation of crimes committed in Germany or abroad, including foreign bribery cases, lies within the *Länder* (federal states). As a result, organisational procedures and institutional structures for the investigation and prosecution of corruption cases may vary from state to state. There has been a tendency in the past few years in most of the states to concentrate responsibility for the prosecution of foreign bribery in special prosecution units, which is a positive development. There are also efforts among the state prosecution authorities to exchange data, experience and best practice models. The 2010 foreign bribery enforcement results are evidence of considerable progress in this area.

Legal framework and enforcement system regarding subsidiaries, agents and other intermediaries: German law does not expressly cover bribery through an intermediary as a foreign bribery offence, and relies on its Penal Code provisions on instigation and complicity. This implicit coverage has been demonstrated in practice in domestic case law in Germany.¹⁸²

Recent developments: There have been no significant improvements in the last year. A draft bill that would have improved the legal framework on bribery lapsed at the end of the last legislative period. In 2007 the federal government submitted this fairly comprehensive draft bill to Parliament (*Bundestags-Drucksache* 16/6558) in order to reform Germany's anti-bribery criminal law. This measure was intended, *inter alia*, to enable Germany to ratify the UN Convention against Corruption and the Council of Europe Criminal Law Convention on Corruption. Parliament did not agree on a complementary law to expand the offence of bribery of members of domestic assemblies, and

¹⁷⁶ US SEC Press Release, 1 April 2010, <http://www.sec.gov/news/press/2010/2010-51.htm>

¹⁷⁷ EFCC Press Release, 23 November 2010

http://www.efccnigeria.org/index.php?option=com_content&task=blogcategory&id=14&Itemid=33 ; All Africa, 27 September 2010, "Bribe Scandal- Julius Berger to Pay FG U.S.\$29.5 Million Fine" <http://allafrica.com/stories/201009271069.html>

¹⁷⁸ BBC "Greece to seek damages from Siemens over bribery claims", 24 January 2011 <http://www.bbc.co.uk/news/business-12272153>

¹⁷⁹ Sächsische Zeitung, 19 March 2010, "Neue Festnahmen im Wasserwerke-Sumpf",

<http://www.sz-online.de/nachrichten/artikel.asp?id=2416440> ; and Handelsblatt, 26 January 2011, "UBS in Finanzskandal verstrickt",

<http://www.handelsblatt.com/unternehmen/banken/ubs-in-finanzskandal-verstrickt/3741278.html> ; and Mephisto 97.6 Radio, 19

January 2011, "Heininger, Blatz und Senf kommen in Haft",

<http://mephisto976.uni-leipzig.de/themen/beitrag/artikel/heininger-blatz-und-senf-kommen-in-haft.html>

¹⁸⁰ Der Standard, 28 February 2011, Justiz prüft mögliche Bestechung von BayernLB-Managern",

<http://derstandard.at/1297819106655/Hypo-Justiz-prueft-moegliche-Bestechung-von-BayernLB-Managern>

¹⁸¹ OECD Working Group on Bribery, Phase 3 Review of Germany, March 2011

http://www.oecd.org/document/37/0,3746,en_21571361_44315115_47416549_1_1_1_1,00.html

¹⁸² OECD Working Group on Bribery, October 2009, "Typologies on the Role of Intermediaries in International Business Transactions" <http://www.oecd.org/dataoecd/40/17/43879503.pdf>

the bill lapsed. In terms of whistle-blower protection, the Federal Ministry of Food, Agriculture and Consumer Protection suggested inserting a new section 612a in the Civil Code that would protect whistle-blowers, but this proposal was turned down.

Recommendations: Introduce criminal liability of legal persons and ensure dissuasive sanctions against companies, as well as against individuals. Increase transparency in cases in which individuals pay a fine and avoid prosecution.¹⁸³ Establish a central register for the purpose of debarring corrupt companies from public contracts. Examine the rules of export credit insurance as to bribery and foreign bribery. Extend criminal law coverage to small foreign facilitation payments, namely by extending section 333 *StGB* (the penal code) to foreign payments. The TI Germany expert also recommends the ratification and implementation of key international anti-corruption conventions; including the UN Convention against Corruption, the two Council of Europe Conventions on Corruption. He also suggest implementation of the recommendations from the GRECO Round 3 Evaluation Report and the Phase 3 Report of the OECD Working Group on Bribery.

GREECE

LITTLE OR NO ENFORCEMENT: No known cases or investigations. Share of world exports is 0.3 per cent.

Foreign bribery cases or investigations: No known cases or investigations.

Domestic bribery by foreign companies: Greek prosecutors are reportedly continuing a three year-old investigation of **Siemens**-related activities in the period of 1997-2004 in connection with the awarding of telecom and security systems contracts for the 2004 Olympic Games in Athens.¹⁸⁴ Three executives of **Siemens Hellas**, a Siemens AG subsidiary, were reportedly charged in connection with the allegations, including a former chairman and former chief executive, but they have reportedly left the country.¹⁸⁵ The Greek Parliament conducted an eleven-month inquiry into the same allegations, and in late January 2011 the investment minister reportedly wrote to Siemens Hellas that Greece would "seek compensation for the damage it has suffered from the corruption practices that have been used by [the] company in the past."¹⁸⁶ The investigation estimated the cost to Greek taxpayers of the alleged bribery is US \$2.7 billion. A former transport minister reportedly admitted to the Parliamentary committee that he had accepted bribes from Siemens.¹⁸⁷ However, Socialist politicians under investigation reportedly cannot be prosecuted due to the statute of limitations that apply to politicians.¹⁸⁸ According to a media report, the Parliamentary committee is expected to name other ministers accused of accepting bribes from the company.¹⁸⁹ According to a report in May 2011 in the German weekly *Der Spiegel*, Siemens AG was seeking a settlement with the Greek government over unpaid bills and the government's damage claims relating to the bribery allegations.¹⁹⁰

There were media reports in July 2010 that Greek authorities were looking into alleged bribes paid by the German engineering company **Ferrostaal** to secure a US \$1.5 billion defence contract for the purchase between 2001 and 2005 of four submarines manufactured by **ThyssenKrupp**.¹⁹¹ In March 2011, it was reported that the Greek Financial Crimes Squad (SDOE) had found evidence of about €100 million in bribes paid to Greek politicians, civil servants, military officials and middlemen in connection with that purchase.¹⁹² The SDOE's final report was sent directly to a Greek prosecutor and 37 individuals have been called in to answer questions about the bribery

¹⁸³ OECD Working Group on Bribery, Phase 3 Review of Germany, March 2011
http://www.oecd.org/document/37/0,3746,en_21571361_44315115_47416549_1_1_1_1,00.html

¹⁸⁴ BBC "Greece to seek damages from Siemens over bribery claims" 24 January 2011,
<http://www.bbc.co.uk/news/business-12272153> ; Financial Times, 25 January 2011, Greece plans to seek damages from Siemens,
<http://www.ft.com/cms/s/0/a088fd0a-288d-11e0-bfcc-00144feab49a.html#axzz1ESPrR9aY>

¹⁸⁵ Financial Times, 25 January 2011, "Greece plans to seek damages from Siemens",
<http://www.ft.com/cms/s/0/a088fd0a-288d-11e0-bfcc-00144feab49a.html#axzz1ESPrR9aY>

¹⁸⁶ BBC, 24 January 2011, "Greece to seek damages from Siemens over bribery claims"
<http://www.bbc.co.uk/news/business-12272153>

¹⁸⁷ Ibid.

¹⁸⁸ Ibid.

¹⁸⁹ Wall Street Journal, 25 January 2011, Greek Politicians Accidentally Fail To Expose Siemens Bribes,
<http://blogs.wsj.com/source/2011/01/25/greek-politicians-accidentally-fail-to-expose-siemens-bribes/>

¹⁹⁰ Bloomberg, 9 May 2011, "Siemens Seeks Greek Settlement on Bribery, Bills, Spiegel Says"
<http://www.bloomberg.com/news/2011-05-09/siemens-seeks-greek-settlement-on-bribery-bills-spiegel-says.html>

¹⁹¹ EU Observer, 27 July 2010, "Calls for EU to Halt Corrupt Defense Deals",
http://www.businessweek.com/globalbiz/content/jul2010/gb20100727_597244.htm

¹⁹² Defense Industry Daily, 28 March 2011, "Greece U-214 Submarine Order: Default & Settlement"
<http://www.defenseindustrydaily.com/Greece-in-Default-on-U-214-Submarine-Order-05801/>

allegations.¹⁹³ In another case, the government is reportedly prosecuting twelve doctors for allegedly accepting bribes from **DePuy International Limited**.¹⁹⁴

Inadequacies in legal framework: A lack of criminal liability for corporations is a key inadequacy in the legal framework. Additionally, the penalties for foreign bribery are not high enough and there is a special defence of "effective regret", which exempts bribe-givers from prosecution if they report the bribe. Additionally, the Greek statute of limitations framework unduly favours certain persons, particularly politicians.¹⁹⁵

Inadequacies in enforcement system: There are several inadequacies. The TI expert expresses concern about the independence of the judiciary. Other inadequacies include decentralised organisation of enforcement; a lack of co-ordination between investigators and prosecutors; a lack of training of investigators for foreign bribery offences; inadequacy of complaints mechanisms and whistle-blower protection; and a lack of public awareness-raising. The expert also reports insufficient enforcement of anti-money-laundering legislation and notes that the authorities have difficulties in obtaining mutual legal assistance.

Legal framework and enforcement system regarding subsidiaries, agents and other intermediaries: A parent company can be held administratively responsible for failing to apply efficient internal auditing procedures that would detect possible corruption cases within their subsidiaries abroad. However, in order for officers of the parent company to be held criminally responsible for corruption committed by subsidiaries abroad, these officers must be directly involved (intentional act or omission). In terms of enforcement, the usual problems regarding cross-border cases of serious crimes apply, such as limited co-operation among states, legal and institutional fragmentation and a lack of co-ordination of the competent authorities.

Recent developments: The new law 3849/2010 was enacted in May 2010 to regulate disclosure and auditing of the sources of income of Parliamentarians, high-ranking public officials, media owners and others. The law allows the minister of justice to request an investigation by the competent prosecutor into the sources of income of these individuals. It provides for the confiscation of assets, loss of public position and loss of voting rights for those failing to declare or falsely declaring their sources of income. It also includes whistleblowing provisions.

Recommendations: Reinforce the judiciary's independence and enforce effectively the existing legal framework without preferential treatment. Apply stricter penalties for active and passive bribery. Introduce whistle-blower protection into the legal system. Enforce anti-money-laundering legislation effectively. Raise public awareness, from an early age, about the damage caused by corruption.

HUNGARY

LITTLE OR NO ENFORCEMENT: 27 cases concluded and two investigations. Share of world exports is 0.6 per cent.

Foreign bribery cases or investigations: Both the Hungarian Central Investigating Chief Prosecutor's Office and the Hungarian National Bureau of Investigation have reported that they are investigating allegations that **Magyar Telekom** paid bribes to public officials in 2005 in order to obtain state contracts in Macedonia.¹⁹⁶ This was allegedly done via fake contracts and via its subsidiaries in Macedonia and Montenegro. An investigation of the same allegations is reportedly under way in Germany, the seat of Magyar Telekom's parent company **Deutsche**

¹⁹³ Ekathimerini, 27 March 2011, "Submarine bribes reached 100 million euros, report says", http://www.ekathimerini.com/4dcgi/_w_articles_wsite1_1_27/03/2011_384723; UPI, 28 March 2011, http://www.upi.com/Business_News/Security-Industry/2011/03/28/Greek-inspectors-eye-German-sub-deal/UPI-23381301319251/
¹⁹⁴ Christian Science Monitor, "European markets fall as Greek debt crisis claims first politician's career", 17 May 2010, <http://www.csmonitor.com/Business/2010/0517/European-markets-fall-as-Greek-debt-crisis-claims-first-politician-s-career>
¹⁹⁵ Transparency International "Timed Out: Statutes of Limitations and Prosecuting Corruption in EU Countries" http://www.transparency.org/regional_pages/europe_central_asia/projects_and_activities/statutes_limitations
¹⁹⁶ Magyar Telekom website, "First Nine Months 2010 Results - Solid performance driven by successful strategic initiatives" http://www.telekom.hu/investor_relations/investor_news/2010/november_4; Vajda Éva: A végtelen vizsgálat. http://index.hu/velemeny/jegyzet/2010/11/10/a_vegtelen_vizsgalat/ ; Varga G. Gábor: Német fejek hullhatnak a Magyar Telekom miatt. http://nol.hu/gazdasag/20100904-nemet_fejehullhatnak_az_mtelekom_miatt

Telekom.¹⁹⁷ Additionally, a Wikileaks document released in 2010 indicated that the Hungarian Prosecutor's Office had conducted an investigation of **Podravka d.d.**, a Croatian food company, and had co-operated with Croatian authorities on a parallel investigation of the company.¹⁹⁸ Previous media reports in 2009 and 2010 had suggested possible misconduct in the acquisition of the Croatian oil company **INA (Industrija Nafta d.d.)** by the Hungarian oil and gas company **MOL Magyar Olaj és Gázipari Nyrt (MOL)** with the participation of the Hungarian **OTP Bank Nyrt (OTP)** and **Podravka d.d.**¹⁹⁹ MOL has denied wrongdoing.

Domestic bribery by foreign companies: The National Investigation Bureau carried out an investigation into **Rail Cargo Austria** that was extended twice in 2010, the first time until 25 April 2010²⁰⁰ and the second time until 25 October 2010.²⁰¹ In January 2011, it was reported in the Hungarian press that the Budapest Police had opened an investigation into **Alstom** for the alleged misuse of funds in connection with a contract with the Budapest Transport Company **BKV**, and that the police later handed the case over to the National Investigation Office due to the gravity of the allegations.²⁰²

Inadequacies in legal framework: The framework is generally adequate. Under Section 33 of the Criminal Code, the period of limitations for bribery and trading in influence varies between three and ten years, depending on the gravity of the offence.

Inadequacies in enforcement system: The absence of a central authority for strategic planning or for the co-ordination of enforcement has been problematic, as more than ten national authorities are involved in anti-corruption work, and training for investigators is insufficient. Whistle-blower protection is inadequate as the law on whistle-blowers cannot be enforced due to legislative shortcomings. There is also no systemic collection of data on the number of whistle-blowing disclosures or the proportion of cases that result in legal action.²⁰³

Legal framework and enforcement system regarding subsidiaries, agents and other intermediaries: The investigations into Magyar Telekom reportedly relate to the activities of the company's subsidiaries in Macedonia and Montenegro.²⁰⁴ Hungarian law covers foreign bribery via an intermediary, with language that is similar to Article 1 of the OECD Convention.²⁰⁵ In accordance with the Criminal Code, a parent company can be held liable for bribery committed by a subsidiary if it had knowledge that the bribery was taking place. Under Hungarian law, cases of failed intermediation are considered an offence – that is, when a principal seeks an intermediary to carry out the bribe, but the intermediary refuses or the public official rejects the bribe.²⁰⁶

Recent developments: There were a number of reforms in 2010 that aimed to improve anti-corruption efforts in Hungary. The Central Investigative Prosecution Office based in Budapest received significant funds to improve the investigation and prosecution of corruption cases, though it is still early to determine the effects of this increase. The Act on Public Procurement was modified, and some of the changes may decrease the risks of corruption, but others may result in less transparency. Parliament adopted an act to strengthen regulations for transparency and

197 Bloomberg, 13 September 2010, "Deutsche Telekom's Obermann Says Hungary Unit-Related Allegation Baseless", <http://www.bloomberg.com/news/2010-09-13/deutsche-telekom-s-obermann-says-bribery-allegation-in-probe-is-baseless.html> ; The Economist, 10 August 2010, "Magyar Telekom, Bad Signal",

http://www.economist.com/blogs/easternapproaches/2010/08/magyar_telekom
198 Wikileaks, "Podravka Corruption Case Tied to [redacted] and [redacted] Deal", <http://wikileaks.tetalab.org/mobile/cables/10ZAGREB97.html>

199 Die Presse, 30 October 2009, "Kroatiens Vizepremier tritt zurück" <http://diepresse.com/home/politik/aussenpolitik/518414/index.do?from=suche.intern.portal> ; wieninternational.at, 7 January 2010, "Croatian government tackles corruption" www.wieninternational.at/en/node/17540

200 hvg.hu, 29 March 2010, "Üzleti korrupció: a Strabagtól a Daimlerig", http://hvg.hu/gazdasag/20100329_korrupcios_botranysok_osszealltas/2

201 Nepsava.hu, 6 October 2010, "MÁV Cargo: Garamhegyi cáfolja a korrupció-gyanút", <http://www.nepsava.hu/articles/article.php?id=354337>

202 Hirado.hu, 19 January 2011, Nyomoz a rendőség az Alstom-szerződéssel kapcsolatban, http://www.hirado.hu/Hirek/2011/01/19/15/Nyomoz_a_rendorseg_az_Alstom_szerzodesessel_kapcsolatban.aspx ; Realdeal.hu, 25 January 2011, Police investigating contract between Alstom and BKV; misuse of funds suspected, <http://www.realdeal.hu/20110125/police-investigating-contract-between-alstom-and-bkv-misuse-of-funds-suspected>

203 Transparency International "Timed Out: Statutes of Limitations and Prosecuting Corruption in EU Countries", http://www.transparency.org/regional_pages/europe_central_asia/projects_and_activities/statutes_limitations

204 The Economist, 10 August 2010, "Magyar Telekom, Bad Signal", http://www.economist.com/blogs/easternapproaches/2010/08/magyar_telekom

205 OECD Working Group on Bribery, Phase 2 Evaluation of Hungary, May 2005

<http://www.oecd.org/dataoecd/39/34/34918600.pdf>; OECD Working Group on Bribery, October 2009,

"Typologies on the Role of Intermediaries in International Business Transactions" <http://www.oecd.org/dataoecd/40/17/43879503.pdf>

206 Ibid.

objectivity in the judiciary, including changes in the appointment process, although there are some issues to be resolved in that connection. Several NGOs, including TI Hungary, reported in July 2010 that the government had been undermining rule of law guarantees by adopting bills into law without following due process. In a follow-up report, these groups highlighted the violation of the rule of law and other critical issues in the field of transparency and the system of checks and balances.²⁰⁷ An act on lobbying activity was repealed in 2010.

Recommendations: There are many fields in which improvements are necessary. Introduce effective whistle-blower protection. Introduce and enforce party and campaign finance regulation. Improve strategic planning of anti-corruption efforts. Raise awareness and communication of anti-corruption efforts and tools.

IRELAND

LITTLE OR NO ENFORCEMENT: No cases and unknown number of investigations. Share of world exports is 1.1 per cent.

Foreign bribery cases or investigations: Four Oil-for-Food investigations were reported in 2008 and there were no developments in 2010.

Domestic bribery by foreign companies: On 22 March 2011, the Tribunal of Inquiry into Payments to Politicians and Related Matters (the 'Moriarty Tribunal') published its final report on its nine-year investigation into the awarding of Ireland's second mobile phone licence in 1996. The report found that the Norwegian company **Telenor Mobile** had in December 1995 made a US \$50,000 political donation indirectly to *Fine Gael* (then the ruling party) on behalf of telecommunications company **Esat Digifone**, a consortium including Telenor and the Irish company Esat Telecommunications (Esat Telecom).²⁰⁸ The donation was allegedly made through an agent and *Fine Gael* fundraiser, was channelled through an offshore account in Jersey, and an invoice was issued to Telenor for 'consultancy services'.²⁰⁹ According to the report, the amount was later reimbursed to Telenor by Esat Telecom. The Tribunal's findings are now subject to review by *An Garda Síochána* (the Irish police service) and have been brought to the attention of the Norwegian authorities.²¹⁰

Inadequacies in legal framework: The Prevention of Corruption (Amendment) Act of 2010 has considerably improved the legal framework relating to foreign bribery (see below). However, there is no specific foreign bribery offence and no definition of foreign bribery. Furthermore, there are inconsistencies between the Prevention of Corruption Act and the bribery offences contained in the Criminal Justice (Theft and Fraud Offences) Act 2001.

Inadequacies in enforcement system: There is little information or data on resources and training allocated for enforcing the Convention. There is no single, comprehensive law for whistle-blower protection in Ireland²¹¹ and there is a serious lack of transparency regarding investigations and enforcement of the Convention.

Legal framework and enforcement system regarding subsidiaries, agents and other intermediaries: There is no explicit provision under the Prevention of Corruption Act (1889 – 2010) for the prosecution of parent companies for failure to prevent bribery. Nationality jurisdiction can be applied to Irish citizens, persons ordinarily resident in Ireland, and corporate bodies established in the State believed to have bribed a public official overseas.

Recent developments: In December 2010, the *Oireachtas* (Irish Parliament) passed the Prevention of Corruption (Amendment) Act 2010. The Act makes some welcome changes to the law on corruption in Ireland by addressing many of the shortcomings highlighted by the OECD in its 2010 Phase 2 report on compliance with the Convention. In particular, it amends the Prevention of Corruption Act 1906 and the Prevention of Corruption Act 2001 so as to provide for whistle-blower protection; provide for nationality-based jurisdiction for offences under the Act; define the term "corruptly" as used in that act; amend the definition of the term "agent" to cover officials of

²⁰⁷ Assessing the First Wave of Legislation by Hungary's New Parliament, 23 July 2010, http://helsinki.hu/dokumentum/Hungarian_NGOs_assessing_legislation_July2010.pdf

²⁰⁸ Report of the Tribunal of Inquiry into Payments to Politicians and Related Matters, March 2011, <http://www.rte.ie/news/2011/0322/moriarty.html>

²⁰⁹ Ibid.

²¹⁰ Ibid.

²¹¹ Transparency International "Timed Out: Statutes of Limitations and Prosecuting Corruption in EU Countries", http://www.transparency.org/regional_pages/europe_central_asia/projects_and_activities/statutes_limitations

public international organisations to which the state is not a party and officials at sub-national level; extend the concept of a bribe to cover an "advantage"; and expressly provide that the Act applies to bribery by unincorporated bodies. Furthermore, the enactment of the UK Bribery Act 2010 is likely to have significant consequences for Irish companies in view of the territorial scope of the offence of failing to prevent bribery under that act.

Recommendations: Provide detailed statistics and information on the number of investigations initiated, the number of cases referred to the Director of Public Prosecutions, and the number of prosecutions. Conduct a criminal investigation with regard to evidence of any prima facie criminal offences identified in the Moriarty Tribunal report. Harmonise the Prevention of Corruption Act and the Criminal Justice (Theft and Fraud Offences) Act and introduce a clear definition of foreign bribery. Clarify the basis for imposing liability on a corporation in criminal law and introduce an offence of failing to prevent bribery along the lines of that contained in the UK Bribery Act 2010.

ISRAEL

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

Foreign bribery cases or investigations: No cases or investigations. According to the OECD Phase 2 Report of December 2009, Israeli law enforcement authorities have made preliminary inquiries into foreign bribery allegations over the past few years, but none of these has yet materialised into investigations. The Israeli police are currently undertaking a preliminary examination of allegations against four Israelis charged in the US following a sting operation, and are co-operating with the US authorities in this case (see below). Two of the preliminary inquiries did not lead to formal investigations, as it was determined that the events in question occurred before the enactment of the foreign bribery offence under Israeli law. Two other inquiries did not lead to prosecutions because Israeli police requests to foreign authorities for information were denied.

In other jurisdictions, in October 2010 it was reported that two Israeli businessmen had been arrested in Georgia on suspicion of attempting to bribe Georgia's deputy finance minister. The arrest followed an international arbitration (ICSID) award against Georgia in the amount of approximately US \$98 million in favour of one of the businessmen and his Greek partner, in compensation for the Georgian government's 1996 cancellation of a permit to develop oil pipeline services. According to the allegations, the businessmen paid a US \$7 million bribe to encourage the Georgian government not to challenge the arbitration award. The two men deny the allegations. The trial of one of the men began in Georgia in January 2011.²¹² Following a two-and-a-half-year sting operation, the US Department of Justice indicted four Israelis in a case alleging conspiracy to violate the US Foreign Corrupt Practices Act and to engage in money laundering. The four Israelis, in addition to 18 others arrested in connection with the sting operation, were allegedly involved in a conspiracy to bribe the defence minister of an unnamed African country in order to secure a multi-million-dollar contract to supply military and law enforcement equipment. Those indicted reportedly include the president and CEO of the Israeli company **Paz Logistics**, which acts as a sales agent for companies in the law enforcement and military products industries; and an Israeli national who is the president of a Florida company that serves as a sales agent for companies in the law enforcement and military products industries.²¹³

Domestic bribery cases or investigations: In January 2011, a Norwegian newspaper reported serious allegations about alleged extortion by Israeli officials at the border crossing to Gaza contained in a 2006 US diplomatic cable supplied by Wikileaks.²¹⁴ The companies that allegedly told US government officials about this situation reportedly included Coca-Cola, Dell, Motorola, and Procter & Gamble. Coca-Cola is reported to have questioned this allegation.²¹⁵ According to media reports in September 2010, Israeli National Fraud Squad investigators completed a seven-year corruption probe concerning former Israeli prime minister Ariel Sharon and recommended that Austrian financier

²¹² HAARETZ. Com, 16 October 2010, "Two Israeli businessmen arrested on suspicion of offering bribe to Georgian official", <http://www.haaretz.com/news/international/two-israeli-businessmen-arrested-on-suspicion-of-offering-bribe-to-georgian-official-1.319430> ;

Evolutsia.net, 14 February 2011, "Georgia: Israeli bribery case puts spotlight on court system", <http://www.evolutsia.net/georgia-israeli-bribery-case-puts-spotlight-on-court-system/>

²¹³ HAARETZ.Com, 20 January 2010, "U.S. indicts four Israelis in international bribery case", <http://www.haaretz.com/news/u-s-indicts-four-israelis-in-international-bribery-case-1.261760> and US Department of Justice, Press Release, 19 January 2010, <http://www.justice.gov/opa/pr/2010/January/10-crm-048.html>

²¹⁴ HAARETZ.Com, 6 January 2011, "Wikileaks: Israel demanded bribes for goods", <http://www.haaretz.com/news/diplomacy-defense/wikileaks-israel-demanded-bribes-for-goods-entering-gaza-1.335585>

²¹⁵ Ibid.

Martin Schlaff be indicted for transferring some US \$4.5 million into the bank accounts of Gilad and Omri Sharon, the sons of the former prime minister.²¹⁶ The funds were allegedly transferred in 2002 to pay off debts Sharon had acquired during the 2001 elections in Israel. The results of the investigation, including a reported recommendation that the two sons be charged,²¹⁷ have reportedly been passed on to the office of the state prosecutor as well as to the head of the Police Investigations Department. Police also reportedly carried out an investigation ending in 2009 into allegations that Schlaff had sent Foreign Minister Avigdor Lieberman hundreds of thousands of dollars in funds between 2001 and 2004 while Lieberman was serving as national infrastructures and transportation minister.²¹⁸

Israeli prosecutors have reportedly been thwarted in their efforts to secure the extradition from Peru of a former judge, Dan Cohen, on charges of accepting bribes from **Siemens** in connection with a purchase of turbines while he was director and chairman of the asset committee of the Israel Electricity Corporation.²¹⁹ The amount of the bribes is allegedly in the millions.²²⁰ The extradition was originally upheld by the Peruvian Supreme Court in July 2010 but a lower court later reversed this decision based on an appeal by Cohen on the grounds that the legal process against him had been flawed and that there were no diplomatic relations between Peru and Israel (although both countries are parties to the UN Convention against Corruption.) The Supreme Court then reportedly launched a counter-appeal, which was upheld by the Lima district court and thus opened the way for the Peruvian government to sign the extradition warrant. However, in January 2011 the international department of the Israeli prosecution services was informed that they had failed to obtain the extradition.²²¹

Inadequacies in legal framework: There are no significant inadequacies in the legal framework.

Inadequacies in enforcement system: As the law prohibiting foreign bribery is relatively new in Israel, it is still early to determine the effectiveness of the enforcement system. In the export credit field, although Ashra (the Israeli Export Insurance Corporation Ltd.) requires anti-bribery declarations by companies seeking insurance or export licenses, it does not require that such companies demonstrate the accuracy of these declarations, in particular with regard to subsidiaries and agents.

Legal framework and enforcement system regarding subsidiaries, agents and other intermediaries: Israeli Penal Law 5737-1977 holds an Israeli company liable for bribery of foreign public officials, whether the bribes are paid by third parties, subsidiaries, agents or other intermediaries acting on its behalf.

Recent developments: Israel has recently adopted regulations on internal controls for public companies, including controls against fraud. In 2010 the State Attorney issued Guideline No. 9.15 (Aggravation of Sanctions and Sanctioning Policy for Bribery Offences) instructing state prosecutors to implement a recent increase in sanctions for bribery offences, including bribery of foreign public officials. Furthermore, the Ministry of Defence (MOD) reported that it had introduced the requirement of a new anti-bribery declaration for exporters in connection with defence marketing and export license applications.²²² Export licences also now include a provision stating that a violation could lead to the suspension or revocation of the licence. Additionally, during 2011 major defence exporters will be required to adopt and implement corporate anti-bribery compliance programmes in stages as a precondition for receiving marketing and export licenses. In the first stage major defence exporters will be required to notify the MOD that their board of directors has decided to develop and implement an anti-bribery compliance programme. In January 2011, the Israel Tax Authority issued Income Tax Circular 2/2011 on the prohibition of bribery of foreign public officials, referring to the amendment to Article 32 of the ordinance prohibiting the tax-deductibility of payments made in violation of any law and clarifying explicitly that the amendment also applies to payments of bribes to foreign public officials. Ashra reported that it has taken all necessary steps to comply with all clauses of the Recommendation on Bribery and Officially Supported Export Credits.

²¹⁶ France 24, 7 September 2010, "Austrian tycoon may face Israel bribery charges", <http://www.france24.com/en/20100907-austrian-tycoon-may-face-israel-bribery-charges>; HAARETZ.com, 7 September 2010, "The Schlaff saga" <http://www.haaretz.com/weekend/week-s-end/the-schlaff-saga-1.312804>

²¹⁷ Jerusalem Post, 1 February 2011, "Police: Sharon's sons mediated bribery transfers for ex-PM", <http://www.jpost.com/NationalNews/Article.aspx?ID=206242&R=1>

²¹⁸ Ibid.

²¹⁹ HAARETZ.Com, 26 January 2011, "Peru denies extradition of former Israeli judge", <http://www.haaretz.com/news/diplomacy-defense/peru-denies-extradition-of-former-israeli-judge-1.339202>;

La Republica, 15 January 2011, "Declaran improcedente libertad provisional tramitada por ex juez israeli" <http://www.larepublica.pe/23-09-2009/declaracion-improcedente-libertad-provisional-tramitada-por-ex-juez-israeli>

²²⁰ Ibid.

²²¹ Ibid.

²²² Israel Ministry of Defense Export Control Site "תענימל תויצ תוינכת משיילו שבגל מיינוחטיבה מינאוציל ארוק ט"בהשמ ל"כנמ" "מיר רוביצ ידבועל דחוש נתמו תותיחש"; Globes, 24 October 2006, <http://www.globes.co.il/serveen/globes/docview.asp?did=1000145240>

Recommendations: Require public companies involved in significant export activities to ensure that they have sufficient internal controls in place to prevent and detect bribery of officials, both domestic and foreign. Require all Israeli companies that export goods and services as a significant part of their operations to adopt and implement anti-bribery compliance programmes and, if required, to obtain a license for such export. Such a license should be subject to the adoption of an anti-bribery compliance programme.

ITALY

ACTIVE ENFORCEMENT: 18 cases and unknown number of investigations. Share of world exports is 2.9 per cent.

Foreign bribery cases or investigations: There were three pending cases and no new cases in 2010. On 13 December 2010, the trial of the owner of **Gold Rock Trading** began, reportedly on allegations that he had in 2003 paid US \$250,000 in bribes to a Libyan officer in the ministry of defence in order to obtain permission to sell guns, rockets and other weapons to the Libyan government for approximately €60 million (US \$86 million).²²³ One pending case was dismissed in 2010 due to a time bar. This case reportedly concerned an employee and a representative of the Italian oil company **COGEP**, who were convicted in April 2009 of bribery of Iraqi officials in connection with the UN Oil-for-Food programme. The conviction was appealed. On 16 April 2010, the Court of Appeal closed this case due to the expiry of the statute of limitations, with the conviction rendered void.²²⁴ An investigation into allegations of foreign bribery in Nigeria involving **Snamprogetti Netherlands BV**, a Dutch subsidiary of the Italian company **ENI SpA**, has reportedly been under way in Italy since 2009. A related investigation involving ENI is also reportedly under way in Italy.²²⁵ The Dutch subsidiary had been part of the TSKJ joint venture that was awarded contracts for the development of the Bonny Island liquefied natural gas plant in Nigeria from 1994 to 2004. In March 2011 Italian magistrates in Milan reportedly opened an investigation of the oil services company **Saipem SpA**, a subsidiary of ENI, regarding suspicions of corruption in the company's activities in Algeria.²²⁶ In other jurisdictions, in July 2010 Snamprogetti and ENI entered into a settlement with the US Department of Justice and US Securities and Exchange Commission, under which the two companies together agreed to pay US \$365 million, and entered into a deferred prosecution agreement, but without a compliance monitor.²²⁷ In December 2010, Snamprogetti reportedly reached a US \$32.5 million settlement with the Nigerian government in relation to alleged Bonny Island-related bribery (see Section VI on Nigeria).²²⁸

Domestic bribery by foreign companies: In 2010 there were reports that the Swiss multinational company **Ferring Pharmaceuticals** was under investigation by the Prosecutor's Office in Milan in connection with the alleged payment of a bribe of €100,000 (US \$144,000) in 2005 via a consultant to the then under-secretary of the Italian Ministry of Health, in order to obtain authorisation for a higher price for one of its products. In March 2010 the Prosecutor's Office reportedly asked the investigating magistrate in the case to temporarily enjoin the Italian branch or subsidiary of Ferring from having any contact with the Italian National Health System.²²⁹ The multinational oil company **Total SA** was reportedly under investigation in 2010 for allegedly having paid bribes in order to obtain permission to extract oil in the Basilicata region of southern Italy.²³⁰ A US diplomatic cable provided to a leading UK newspaper by Wikileaks reported serious allegations against Prime Minister Silvio Berlusconi. In the cable, US diplomats reported suspicions that the prime minister "could be profiting personally and handsomely" from secret deals with Russian Prime Minister Vladimir Putin.²³¹ Some of the allegations referenced energy deals between Russia and Italy. No evidence has been provided to substantiate these allegations.

²²³ Il Giorno, 13 December 2010, "In aula un affare da 60 milioni...."

²²⁴ Corriere Della Sera, 16 April 2010; Il Giornale, 16 April 2010; La Repubblica, 16 April 2010

²²⁵ ANSA: "Tangenti in Nigeria", 30 December 2010, 20 December 2010, 26 November 2010

²²⁶ Reuters, 31 March 2011, "Italy magistrates open Saipem probe", <http://uk.reuters.com/article/2011/03/31/saipem-investigation-idUKN3116752120110331>

²²⁷ US Department of Justice Press Release, 7 July 2010, <http://www.justice.gov/opa/pr/2010/July/10-crm-780.html>; FCPA Blog, 7 July 2010, "Snamprogetti, ENI In \$365 Million Settlement" <http://www.fcpablog.com/blog/2010/7/7/snamprogetti-eni-in-365-million-settlement.html>

²²⁸ Wall Street Journal, 20 December 2010, "Eni Unit Reaches \$32.5 Million Settlement With Nigeria", <http://blogs.wsj.com/corruption-currents/2010/12/20/eni-unit-reaches-325-million-settlement-with-nigeria/>

²²⁹ Corriere della Sera, "Primo Piano" 26 March 2010

²³⁰ Il quotidiano della Calabria, 4 May 2011 http://ilquotidianodellacalabria.ilssole24ore.com/it/Basilicata/potenza_Margiotta_deputato_Total_assoluzione_corruzione_Woodcock_petrolio_8237.html ;

La Nuova del Sud, 5 May 2011 http://www.nuovadelsud.it/index.php?option=com_content&view=article&id=776:total-assolto-lon-margiotta&catid=4:cronaca&Itemid=2

²³¹ The Guardian, 2 December 2010, "Wikileaks cables: Berlusconi profited from 'secret deals' with Putin", <http://www.guardian.co.uk/world/2010/dec/02/wikileaks-cables-berlusconi-putin>

Inadequacies in legal framework: There are some inadequacies. There is no criminal liability for companies, only administrative liability, and the defence of *concussione* (extortion) still exists in cases of foreign bribery. The statutes of limitation are five and seven-and-a-half years, and run until the last appeal, which is highly problematic.

Inadequacies in enforcement system: Resources for enforcement are inadequate, and there is a lack of awareness-raising carried out by the government. Further, there is a lack of whistle-blower protection and adequate complaints procedures, as there is no single, comprehensive whistle-blower law, nor are there provisions for anonymous reporting in public sector laws. There is no systemic collection of data on the number of whistle-blowing disclosures or the proportion of cases that result in legal action.²³²

Legal framework and enforcement system regarding subsidiaries, agents and other intermediaries: There are some potential loopholes in the provisions regarding subsidiaries, agents and other intermediaries. Legislative Decree 231/2001 covers agents, as it extends to persons serving as representatives or holding administrative or senior executive positions within the body or an organisational unit of a corporation, as well as persons actually exercising management and control of same; and to persons under the direction or supervision of one of these persons. One weakness is that Article 5 of the decree allows a defence if it is claimed that a company-related person acted in his or her own interest. It does not call for company internal controls to prevent this.²³³ Moreover, Italian authorities may not pursue a case if a case is brought in the jurisdiction where the crime is committed. Where the law provides that the guilty party is punishable subject to a request being made by the Minister of Justice, prosecution is only brought against the body if the request is also made against the latter. There have been no prosecutions in which parent companies have been held liable for bribery of a foreign public official committed by their subsidiaries or other intermediaries. However, the above-mentioned investigation of ENI involves bribery via a subsidiary. For lack of cases it is not possible to assess to what extent the responsibility of the company is admitted, including any of the following situations: (1) persons serve as representatives, or hold administrative or senior executive positions within the body or an organisational unit of same, being financially and functionally independent; (2) persons actually exercise management and control of same; (3) persons under the direction or supervision of one of the [above-mentioned] persons or (4) persons act in the interest of the company (not in their own interest or in a third party's interest).

Recent developments: Parliament is currently discussing a new draft law proposed by the government which includes a provision for a central supervising body, the *Osservatorio sulla Corruzione*. The tasks of this body are to include the compilation and analysis of all corruption cases in the country.²³⁴ In July 2010 there were protests against a parliamentary bill proposed by the government, which claimed to safeguard privacy.²³⁵ According to a leading Italian newspaper most of Italy's editors, judges and prosecutors said it was intended to shield politicians, and particularly the prime minister. This "gagging law" would curb the ability of police and prosecutors to record phone conversations and plant listening devices. Law enforcement officials, the National Magistrates' Association and the press have reportedly said that this "gagging law" would shield politicians, in particular the prime minister; would curb the ability of police and prosecutors to use phone tapping technology; would stop journalists from publishing the resultant transcripts; and would have very serious consequences for the fight against crime and for the administration of justice. Though the bill excludes mafia and terrorism investigations, the police unions have reportedly said it would cripple inquiries into money-laundering and drug-trafficking offences, thus indeed affecting mafia and terrorism investigations.²³⁶ The draft Law against Corruption was presented to the Senate in May 2010 and amendment 2.0.3 on whistle-blower protection was introduced in September 2010. The law is still under discussion by both the Commission for Constitutional Affairs and the Commission of Justice. Discussions have stalled, as the commissions have asked for the opinion of a third commission, the Budget Commission, in order to analyse the impact of the law on the state budget.

²³² Transparency International "Timed Out: Statutes of Limitations and Prosecuting Corruption in EU Countries", http://www.transparency.org/regional_pages/europe_central_asia/projects_and_activities/statutes_limitations

²³³ Article 5 of the Legislative Decree 231/2001 is the provision that would cover crimes committed abroad by subsidiaries and agents. It covers acts of "persons serving as representatives, or holding administrative or senior executive positions within the body or an organisational unit of same, and being financially and functionally independent, as well as by persons actually exercising management and control of same; or by persons under the direction or supervision of one of the [above mentioned] persons". On the other hand, "companies are not responsible if the person acted in his own interest or in a third party's interest." According to Article 4, the liability for foreign bribery applies "provided that prosecution is not brought by the State in the place where the act is committed."

²³⁴ The Guardian, 9 July 2010, "Silvio Berlusconi's "gag law" sparks media strike in Italy", <http://www.guardian.co.uk/world/2010/jul/09/silvio-berlusconi-media-gag-law>

²³⁵ Ibid.

²³⁶ Ibid.

Recommendations: Introduce criminal liability for legal persons. Amend the provisions on statutes of limitations to extend the limitations period and remove the requirement that it runs until the final appeal. Improve the whistleblower protection system to encourage reporting of bribery and create a central supervising body for cases of corruption.

JAPAN

MODERATE ENFORCEMENT: Seven cases and no known investigations. Share of world exports is 4.5 per cent.

Foreign bribery cases or investigations: In January 2011 the Fisheries Agency ordered a suspension of operations of four Japanese fishing companies in connection with alleged bribes paid to Russian border officials to circumvent a fishing quota.²³⁷ The agency took this action after tax authorities in Sapporo and Sendai reportedly imposed back taxes on the four companies for allegedly concealing combined taxable income of about 500 million yen (US \$5.9 million) over a three-year period ending in 2009 by disguising payments to Russian guards as legitimate expenses. The agriculture, forestry and fisheries minister was quoted as saying he would refer the case to the Public Prosecutors Office and Economy, Trade and Industry Ministry to investigate whether there had been an infringement of the Unfair Competition Law.²³⁸ No new information is available on the **Bridgestone** investigation referenced in last year's report. In connection with that case, in the US in 2009 a Japanese former general manager of Bridgestone pleaded guilty in a district court to conspiring to violate the FCPA.²³⁹ According to the plea agreement, the former formal general manager authorised or participated in corrupt payments by local agents of the company's US subsidiary to employees of state-owned customers in Latin America (Argentina, Brazil, Ecuador, Mexico and Venezuela), especially in Mexico, in the period 2004 – 2007. The company's other regional subsidiaries were also allegedly involved.²⁴⁰

In other jurisdictions, in April 2011 the Japanese engineering and construction company **JGC Corporation** agreed to pay a criminal penalty of nearly US \$219 million and agreed to a deferred prosecution agreement to settle US Department of Justice FCPA charges.²⁴¹ The company had been part of the **TSKJ** consortium that allegedly paid bribes to the Nigerian government to secure contracts in the period 1994 – 2004 for the expansion of the Bonny Island liquefied natural gas plant in the Niger Delta (see report on US and section VI on Nigeria).²⁴² In relation to the same case, it was also reported in February 2011 that JGC Corp had reached a settlement with the Nigerian government calling for payment of US \$28.5 million.²⁴³ In addition, the US company Halliburton reported in an SEC filing in 2004 that another Japanese company was retained to pay bribes to low-level officials in Nigeria in the above-mentioned TSKJ Consortium scandal.²⁴⁴ Another Japanese company, **Sojitz Group**, is the subject of a foreign-bribery-related criminal investigation in the US, following a civil suit brought against the company in 2009 by the state-owned Aluminum Bahrain BSC.²⁴⁵ Bahraini prosecutors are also investigating the Sojitz case.²⁴⁶ In November 2010 several Russian government officials were reportedly arrested for extorting bribes for state

²³⁷ Daily Yomiuri Online, 19 January 2011, "Bribe-paying' fishing firms to stay ashore", <http://www.yomiuri.co.jp/dy/national/T110118004897.htm>

²³⁸ Ibid.

²³⁹ United States District Court, Southern District of Texas, Houston Division, Plea Agreement, 10 December 2008, <http://www.justice.gov/atr/cases/f243700/243716.htm>

²⁴⁰ OECD Working Group on Bribery, October 2009, "Typologies on the Role of Intermediaries in International Business Transactions" <http://www.oecd.org/dataoecd/40/17/43879503.pdf>

²⁴¹ Bloomberg, 6 April 2011, "JGC to Pay \$218.8 Million to Resolve Foreign Bribery Charges"

<http://www.bloomberg.com/news/2011-04-06/jgc-agrees-to-pay-218-8-million-to-resolve-u-s-claims-of-nigerian-bribes.html> ;

²⁴² Bloomberg Business Week, 7 December 2010, "Nigeria in Talks With Technip, Eni and JGC Over Bribe Case", <http://www.businessweek.com/news/2010-12-07/nigeria-in-talks-with-technip-eni-and-jgc-over-bribe-case.html> ;

Bloomberg, 6 April 2011, "JGC to Pay \$218.8 Million to Resolve Foreign Bribery Charges"

<http://www.bloomberg.com/news/2011-04-06/jgc-agrees-to-pay-218-8-million-to-resolve-u-s-claims-of-nigerian-bribes.html> ; FCPA Blog, 12 July 2010, "JGC Confirms DOJ Investigation" <http://www.fcpablog.com/blog/2010/7/12/jgc-confirms-doj-investigation.html>

²⁴³ Templars, Firm News, 1 February 2011,

<http://www.templars-law.com/pages/posts/jgc-corp-reaches-us-28-million-settlement-112.php>

²⁴⁴ OECD Working Group on Bribery, October 2009, "Typologies on the Role of Intermediaries in International Business Transactions", <http://www.oecd.org/dataoecd/40/17/43879503.pdf> ; Reuters, 11 March 2011, "Lawyer pleads guilty in Nigeria bribery case"

<http://www.google.com/hostednews/afp/article/ALeqM5j3tsPWuyUrRceWpQZAxtkvK8zPHw?docId=CNG.3dd45eb241c8502e6bdf77a2885cc060.aa1>

²⁴⁵ Bloomberg, 28 May 2010, "Sojitz Group Faces Criminal Probe of Possible Bribes to Aluminum Bahrain"

<http://www.bloomberg.com/news/2010-05-28/sojitz-group-faces-criminal-probe-of-possible-bribes-to-aluminum-bahrain.html>

²⁴⁶ Wall Street Journal, 4 June 2009, "Bahrain Kickback Investigation Widens"

<http://online.wsj.com/article/SB124405834546582249.html>

contracts from companies, allegedly including the Japanese technology company **Toshiba Corp.** and other medical equipment companies.²⁴⁷

Domestic bribery by foreign companies: None known.

Inadequacies in legal framework: There are several inadequacies. There is a lack of criminal liability for corporations in Japan. The five-year statute of limitations is too short for effective enforcement of the OECD Convention.

Inadequacies in enforcement system: Inadequacies in the enforcement system include insufficient resources; a lack of co-ordination between investigators and prosecutors; and a lack of training for investigators and prosecutors regarding foreign bribery. The available sanctions do not appear to be effective deterrents to foreign bribery in practice, and there have been difficulties in obtaining mutual legal assistance from other countries.

Legal framework and enforcement system regarding subsidiaries, agents and other intermediaries: There has been a failure to hold parent companies responsible for subsidiaries, agents and joint ventures, and it is unclear whether territorial jurisdiction is sufficient to cover such cases. The involvement of intermediaries in foreign bribery is not expressly mentioned in Japanese law, but authorities have asserted that domestic bribery case law shows that intermediaries are indeed covered. However, instances of failed intermediation are not considered a crime in Japan.²⁴⁸ Japanese law has not been tested in foreign bribery cases. See the Bridgestone case mentioned above.

Recent developments: No significant developments.

Recommendations: Introduce criminal liability and nationality jurisdiction for corporations. Ensure the provisions on territorial jurisdiction are sufficient to hold parent companies liable for bribery committed by subsidiaries, agents, joint ventures or other intermediaries. Introduce longer statutes of limitation.

KOREA (SOUTH)

MODERATE ENFORCEMENT: Seventeen cases, no investigations. Share of world exports is 2.9 per cent.

Foreign bribery cases or investigations: Of the 17 foreign bribery cases in South Korea, the last was concluded in 2008. There were no investigations under way in South Korea in 2010. However, in May 2011, there were news reports quoting the Incheon Prosecutor's Office saying that a South Korean employed by an air cargo company was being prosecuted for foreign bribery for paying bribes to a Chinese public official who heads the South Korean branch of a Chinese airline company. It was also reported that the Chinese official had been arrested for taking bribes and that there were eight more suspects in the case. The South Korean suspects had reportedly been using a slush fund in the period May 2006 to January 2011. The Prosecutor is reported to have said that it was the first time the South Korean Foreign Bribery Act was being applied.²⁴⁹

Domestic bribery by foreign companies: In October 2010 there were news reports that South Korean security authorities were looking into allegations that Swedish company **Saab AB** had paid off a local research institute in exchange for classified information regarding a military project to develop new fighter jets.²⁵⁰ Two employees of **Diageo Korea**, a subsidiary of the UK alcoholic beverages company **Diageo Plc.**, were reportedly convicted of making improper payments to a customs official in South Korea.²⁵¹

²⁴⁷ Bloomberg, 29 November 2010, "Kremlin Official, Ex-Minister Arrested in Toshiba Bribe Probe", <http://www.businessweek.com/news/2010-11-29/kremlin-official-ex-minister-arrested-in-toshiba-bribe-probe.html>

²⁴⁸ OECD Working Group on Bribery, October 2009, "Typologies on the Role of Intermediaries in International Business Transactions" <http://www.oecd.org/dataoecd/40/17/43879503.pdf>

²⁴⁹ Media.Daum.Net, 18 May 2011, <http://media.daum.net/society/affair/view.html?cateid=1010&newsid=20110518183104470&tp=yonhap>; Yon Hap News, <http://www.yonhapnews.co.kr/bulletin/2011/05/18/0200000000AKR20110518175900065.HTML?did=1179m>;

²⁵⁰ The Local, 6 October 2009, "Saab Targeted in Bribery Probe", <http://www.thelocal.se/22500/20091006/>; Defense News, 2 November 2009, "Warrants Sought in Saab Bribery Case", <http://www.defensenews.com/story.php?i=4355929>

²⁵¹ Shearman & Sterling LLP, FCPA Digest of Cases and Review Releases Relating to Bribes to Foreign Officials under the Foreign Corrupt Practices Act of 1977 (March 4, 2010), <http://www.shearman.com/files/upload/FCPA-Digest-Spring-2010.pdf>

Inadequacies in legal framework: Sanctions for foreign bribery remain inadequate, as fines cannot exceed 20 million won (US \$18,000). Individuals convicted of foreign bribery are imprisoned for up to five years. The TI expert also notes the high rate of indictments without physical detention and the high number of suspended sentences.²⁵²

Inadequacies in enforcement system: The TI expert reports inadequate resources; the possibility that whistleblower protection does not apply to foreign bribery; and a lack of public awareness-raising.

Legal framework and enforcement system regarding subsidiaries, agents and other intermediaries: The offence of bribery through an intermediary is not expressly covered in South Korean law, but implicit coverage has been demonstrated in domestic case law.²⁵³ A person who directs another person to bribe a foreign official can be subject to criminal punishment as an accomplice, but not if the intermediary does not deliver the offer, promise or gift.²⁵⁴ The South Korean Foreign Bribery Prevention Act has been used to convict an individual who paid a bribe to a foreign public official via his wife.²⁵⁵

Recent developments: In 2010 TI South Korea, acting through a member of Parliament, petitioned Parliament to introduce a prohibition on facilitation payments, but the effort was unsuccessful.²⁵⁶

Recommendations: 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 South Korean's Independent Commission against Corruption (KICAC) that existed before it was merged with the Ombudsman and Administrative Appeals Commission in 2009.

LUXEMBOURG

LITTLE OR NO ENFORCEMENT: Two cases and multiple related investigations related to that case. Share of world exports is 0.5 per cent.

Foreign bribery cases or investigations: Two reported cases, which are connected to each other and reportedly branch into multiple investigations. In the past it was reported that there was an investigation in Luxembourg in relation to allegations that the German company **Ferrostaal** had transferred several hundred million D-Marks into secret accounts of a son of Nigerian dictator Sani Abacha with the Luxembourg subsidiary of the Hamburg-based bank **M.M. Warburg**.²⁵⁷

In other jurisdictions, **Tenaris S.A.**, a Luxembourg energy services company notified the US Securities and Exchange Commission in a November 2009 filing of questionable payments associated with one of its subsidiary companies in Central Asia and is reportedly currently under investigation in the U.S. for FCPA violations.²⁵⁸

Domestic bribery by foreign companies: No cases or investigations. The US companies **Micrus Corporation** and **Syncor International** were alleged to have made payments in the early 2000s to doctors and hospital personnel in a number of countries, including Luxembourg, to push their products.²⁵⁹

Inadequacies in legal framework: No major inadequacies were reported. New legislation in 2010 addressed the problem of lack of criminal liability for companies.

²⁵² The Hankyoreh / Namil Kim, 24 November 2008, http://www.hani.co.kr/arti/society/society_general/323735.html

²⁵³ OECD Working Group on Bribery, October 2009, "Typologies on the Role of Intermediaries in International Business Transactions" <http://www.oecd.org/dataoecd/40/17/43879503.pdf>

²⁵⁴ OECD Working Group on Bribery, Phase 2 Report on Korea, November 2004 <http://www.oecd.org/dataoecd/17/13/33910834.pdf>

²⁵⁵ Ibid.

²⁵⁶ 2011 National Chapter Questionnaire Response - TI Korea

²⁵⁷ 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>

²⁵⁸ Shearman & Sterling LLP, FCPA Digest of Cases and Review Releases Relating to Bribes to Foreign Officials under the Foreign Corrupt Practices Act of 1977 (March 4, 2010), <http://www.shearman.com/files/upload/FCPA-Digest-Spring-2010.pdf>

²⁵⁹ M Koehler, "A Malady in Search of a Cure—The Increase in FCPA Enforcement Actions Against Health-Care Companies" http://www.foley.com/files/tbl_s31Publications/FileUpload137/5016/Koehler_FCPA.pdf; Report by Lucinda Low on FCPA Prosecutions, 5 May 2006; In the Matter of Syncor Int'l Corp., SEC Administrative Proceeding Filing No. 3-10969

Inadequacies in enforcement system: Inadequacies in the enforcement system include inadequate resources and lack of specialist staff. Resources are insufficient in relation to the size of the financial sector. There is a lack of awareness-raising by public authorities. Despite new legislation in 2011, whistle-blower protection is still limited.

Legal framework and enforcement system regarding subsidiaries, agents and other intermediaries: Bribery by intermediaries is explicitly covered under Article 247 of the Penal Code. However, there is no requirement under Luxembourg law for parent companies to maintain adequate procedures for preventing bribery by their subsidiaries. Direct involvement would need to be proven in order to hold a parent company responsible for foreign bribery committed by a subsidiary.

Recent developments: A committee has been created for internal governmental anti-corruption coordination, including high-level representatives from all relevant agencies, including police, prosecution service and tax authorities. Other recent developments include the enactment of a law on whistle-blower protection in February 2011; enactment of a law on the criminal liability of companies in March 2010; enactment of a law changing the definitions of corruption; and enactment of two laws in October 2010 enhancing the anti-money-laundering framework and international judicial co-operation in matters of criminal law. The TI expert notes that these are overdue changes that are the result of international commitments and that, as they are only what is required by international obligations, they may not be adequate for the particular anti-bribery environment in Luxembourg.

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

MEXICO

LITTLE OR NO ENFORCEMENT: No cases or investigations. Share of world exports is 1.7 per cent.

Foreign bribery cases or investigations: No cases or investigations.

Domestic bribery by foreign companies: A past case concerning **Alstom** resulted in a fine. The Ministry of Public Administration is reportedly investigating contracts issued by the state-owned electricity company *Comisión Federal de Electricidad (CFE)*. This relates to allegations that **ABB Inc.**, a U.S. subsidiary of **ABB Ltd.**, a Swiss-Swedish power and automation technology company, and **Lindsey Manufacturing Co.**, a US manufacturer of systems for power transmission lines, paid and laundered bribes of over US \$80 million to government officials at the CFE in connection with contracts between 1997 and 2005.²⁶⁰ The CFE announced in October 2010 that it had dismissed some employees and brought bribery charges against both the US companies as well as against former officials. The CFE also filed a civil case against ABB and in January 2011 was awarded damages of US \$2.3 million by a Mexican court, equivalent to the amount allegedly paid in bribes by ABB.²⁶¹ In relation to the same case, in September 2010, US authorities charged ABB Inc. and Lindsey Manufacturing Co with violations of the FCPA and reached settlements with the two companies.²⁶² In November 2010 the Mexican Ministry of Public Administration reportedly launched a criminal investigation into alleged bribes paid by Swiss pharmaceutical company **Novartis** to the *Instituto Mexicano del Seguro Social* (Mexican Social Security Institute) in order to obtain a US \$6.5 million contract.²⁶³

Inadequacies in legal framework: Statutes of limitations are inadequate, as they run for a period of three years beginning from the time the bribery occurred. Article 222bis of the Federal Criminal Code criminalises bribery of foreign officials, and establishes that a Mexican company that commits foreign bribery can be sanctioned with a fine of up to the equivalent of one thousand days of minimum wage (US \$4900), as well as suspension or dissolution of the company.

Inadequacies in enforcement system: There is a low conviction rate for corruption and money laundering offences due to a lack of co-ordination of the several anti-corruption bodies in the Federal Public Administration in charge

²⁶⁰ CNN, 30 December 2010, "CFE se defiende por caso de corrupción"

<http://www.cnnexpansion.com/economia/2010/09/30/cfe-corrupcion-eu-texas-abb-cnnexpansion>

²⁶¹ CFE Press Release, 5 February 2011, <http://saladeprensa.cfe.gob.mx/boletin/index.ala?docID=8481&tsecID=2>

²⁶² ABB Website, <http://www.abb.com.mx/cawp/seitp202/b7aa479846d0fe19c12577ae0017bfa0.aspx>

²⁶³ Bloomberg Business Week, 12 November 2010, "Mexico pharma scandal sparks probe, suspensions", <http://www.businessweek.com/ap/financialnews/D9JES2180.htm>

of the administrative, financial and criminal aspects of a bribery investigation. These include the Ministry of Public Administration, the Finance Ministry, the Attorney General's Office and the Supreme Court. Once a case is finally put together it is brought to a court that already has an excess workload, so there is little chance that an act of corruption actually ends in conviction. Additionally, although there have been some changes in recent years, there is still no proper whistle-blower protection system in Mexico. Many companies do not have codes of conduct or protect internal whistle-blowers. Both the Ministry of Public Administration and the Ministry for Public Security have included strategies and actions to develop better whistle-blower protection programmes in their plans of action for the current administration (2006–2012). However, the efforts have not yet materialised into anything concrete.

Legal framework and enforcement system regarding subsidiaries, agents and other intermediaries: Although there are no specific references to the responsibility of parent companies in Mexican corporate laws, the General Law on Mercantile Associations contains some articles that may help establish responsibility. This law establishes that company directors and executives are individually responsible to the company for obeying the law and the company's articles of association (Articles 158 and 169). Thus, intermediaries can be held responsible depending on the parent company and subsidiary's articles of association and anti-corruption policies, and depending on whether the individual is a director or commissioner of both the parent and the subsidiary. Criminal laws do not make specific reference to subsidiaries, agents and other intermediaries in foreign countries, only to bribery of a foreign official by a Mexican company. In the case of foreign bribery by a subsidiary, the sanctions will depend on the degree of knowledge of the administrative bodies regarding the offence.

Recent developments: No recent developments.

Recommendations: Ensure greater co-ordination with the legislative and judicial branches by the agencies of the Federal Administration, and by agencies at local government level. Create an information system that concentrates all available information regarding the enforcement of the international anti-corruption conventions in Mexico, and make this information accessible to the public.

NETHERLANDS

MODERATE ENFORCEMENT: Nine cases and three investigations. Share of world exports is 3.3 per cent.

Foreign bribery cases or investigations: There are nine cases, one of which is pending, and three investigations, one of which began in 2010. In February 2011 the prosecution service in the Hague confirmed that they would be questioning politicians in Jamaica about bribes allegedly paid by **Trafigura Beheer BV**, the world's third largest independent oil trader.²⁶⁴ The probe reportedly started in 2007 and according to some media reports is investigating alleged multi-million-dollar payments to the CCOC Association, into an account reportedly used by a Jamaican political party, in exchange for the extension by the Petroleum Corporation of Jamaica of an oil lifting contract.²⁶⁵ A prosecution spokesman said that in November 2010 the Jamaican Supreme Court had ruled that Dutch investigators could question Jamaican politicians about the alleged bribery. This was preceded by a resolution in the Jamaican Parliament in 2007 giving Dutch investigators permission to probe the donation.²⁶⁶ In 2010, the Jamaican Contractor General's Office recommended that charges be brought against the former secretary-general of the PNP political party in connection with the case.²⁶⁷ Trafigura has denied any wrongdoing.²⁶⁸

In other jurisdictions, **Snamprogetti Netherlands BV**, a Dutch subsidiary of the Italian company **ENI SpA**, has faced bribery investigations in the US, Nigeria and Italy for its role in the TSKJ joint venture that was awarded contracts for the development of the Bonny Island liquefied natural gas plant in Nigeria from 1994 to 2004. In connection with these investigations, Snamprogetti and ENI entered into a settlement with the US authorities in July 2010 and Snamprogetti reportedly reached a US \$32.5 million settlement with the Nigerian government in December 2010.²⁶⁹ The Italian investigation has reportedly been under way since 2009.²⁷⁰ **Royal Dutch Shell Ltd.**

²⁶⁴ AFP, 1 February 2011, "Dutch to Probe claims of Trafigura bribes in Jamaica",

http://www.expatica.com/nl/news/dutch-news/dutch-to-probe-claims-of-trafigura-bribes-in-jamaica_127033.html

²⁶⁵ Jamaica Observer, 24 August 2010, "Trafigura haunts PNP", <http://www.jamaicaobserver.com/news/Trafigura-haunts-PNP>;

Jamaica Gleaner, 24 November 2010, PNP Peeved at Trafigura Revelations, <http://jamaica-gleaner.com/gleaner/20101124/lead/lead4.html>

²⁶⁶ Ibid.

²⁶⁷ Ibid.

²⁶⁸ Ibid.

²⁶⁹ Wall Street Journal, 20 December 2010, "Eni Unit Reaches \$32.5 Million Settlement With Nigeria",

<http://blogs.wsj.com/corruption-currents/2010/12/20/eni-unit-reaches-325-million-settlement-with-nigeria/>

²⁷⁰ ANSA: "Tangenti in Nigeria", 30 December 2010, 20 December 2010, 26 November 2010

also reached a settlement with US authorities in 2010 over alleged bribes paid to Nigerian officials by the company Panalpina on its behalf and **Royal Dutch Shell Plc.** reportedly paid US \$10 million in fines to the Nigerian government in late December 2010 in connection with the same case (see Section VI on Nigeria).²⁷¹

It was reported in May 2011 that 23 individuals, including two former employees of the Dutch consumer appliance, healthcare and lighting company **Royal Philips Electronics NV**, and **Philips Polska**, and managers of Polish public hospitals, were due to go on trial in Poland in June 2011 on corruption charges. The allegations relate with equipment purchases by the hospitals.²⁷² Philips is reportedly conducting an internal investigation which has been expanded to include the company's office in Hamburg.²⁷³ In April 2011 the board of directors at **Turkcell** reportedly confirmed that it was internally investigating allegations of bribery in Kazakhstan by its subsidiary KCell which is 51 per cent controlled by the Dutch company **Fintur Holdings BV**.²⁷⁴ In 1995, according to a media report, a businessman, whose company **LMN Holdings** was registered in the Netherlands Antilles, allegedly gave a commission of US \$100 million to the Chodiev group for its role as an agent in dealing with the then president of Kazakhstan, to secure the purchase of a steel plant in that country for US \$310 million.²⁷⁵

Domestic bribery by foreign companies: There is reportedly an on-going investigation into allegations that an employee of UK-headquartered **Armor Holdings** (acquired by **BAE Systems** in 2007) bribed a Dutch officer of the National Police Services Agency (KLPD) via a Dutch intermediary to obtain a contract to supply pepper spray to the KLPD.²⁷⁶

Inadequacies in legal framework: Monetary sanctions for bribery provided for by law are too low, although they have recently been increased. The independent territories of Curacao and Sint Maarten still have not ratified the OECD Convention. This may hamper mutual legal assistance.

Inadequacies in enforcement system: The National Police Internal Investigation Department (NPIID, the *Rijksrecherche*) is the authority responsible for investigating cases of alleged foreign bribery. This can be problematic, as the NPIID is more specialised in investigating passive corruption by Dutch public officials rather than the complex financial constructions used in cases of foreign bribery.²⁷⁷ However the NPIID has recently begun to increase its co-operation with the FIOD-ECD, an investigation authority specialised in financial investigations. These investigations are often led by the National Office of the Public Prosecution Service on Economic Crime (*Functioneel Parket*), instead of or in co-operation with the national public prosecutor on corruption. There is also a lack of whistle-blower protection in the public and private sectors.

Legal framework and enforcement system regarding subsidiaries, agents and other intermediaries: The Dutch Penal Code makes executives criminally liable for acts by their employees if it can be proven that the executive accepted the act and allowed it to happen. Legal persons can also be held criminally liable. In theory, therefore, parent companies can be held responsible for acts of their subsidiaries. In practice, this is not known to have occurred. The executive or parent company can be cleared of criminal liability if it can be demonstrated that adequate procedures are in place to prevent bribery.

Recent developments: Since 1 April 2010 the maximum fine for all types of bribery (active and passive) has been fixed at the fifth category (€ 76,000), (US \$100,000). The fine for legal persons is at the sixth category, which since 1 January 2010 has been € 760,000 (US \$1 million).

Recommendations: Increase sanctions for foreign bribery. Expand and institutionalise the co-operation between the NPIID and financial investigation authorities. Introduce whistle-blower protection in the public and private sectors.

²⁷¹ Bloomberg, 5 November 2010, "Shell Bribes Among 'Culture of Corruption,' Panalpina Admits", <http://www.businessweek.com/news/2010-11-05/shell-bribes-among-culture-of-corruption-panalpina-admits.html>

²⁷² Ibid.

²⁷³ Ibid.

²⁷⁴ Cellular-news.com, 15 April 2011, "Turkcell to Investigate Bribery Allegations at Kazakh Subsidiary" http://www.cellular-news.com/story/48754.php?source=rss&utm_source=feedburner&utm_medium=feed&utm_campaign=Feed:+cellular-news/LmiX+%28cellular-news%29

²⁷⁵ BBC News, 24 July 2002, "The Steel Maharajah" <http://news.bbc.co.uk/2/hi/business/2146757.stm>

²⁷⁶ Nederlandsch Dagblad Online, 25 January 2010, www.nd.nl/artikelen/2010/januari/25/vs-corruptie-bij-pepperspraycontract-klpd

²⁷⁷ Rijksrecherche – English homepage – http://www.om.nl/vast_menu_blok/english/the_national_police/

NEW ZEALAND

LITTLE OR NO ENFORCEMENT: One case and one investigation. Share of world exports is 0.2 per cent.

Foreign bribery cases or investigations: One case and one investigation were initiated in 2010 but no details are available. In the 2010 report two investigations were reported. The first was an investigation of **SP Trading Limited**.²⁷⁸ This case involved a New Zealand shell company allegedly implicated in the sale of 35 tonnes of North Korean explosives and anti-aircraft missiles to Iran. The police and the Serious Fraud Office undertook an investigation, which has been completed without any resulting prosecution. The second investigation concerned possible involvement of a New Zealand company in connection with allegations that **Hewlett Packard** had paid bribes to secure a contract in Russia.²⁷⁹ According to the TI expert, government officials have indicated that New Zealand's involvement in that investigation has ended.

Domestic bribery by foreign companies: No known cases or investigations.

Inadequacies in legal framework: The OECD Phase 2 Report on New Zealand, dated 13 March 2009, expressed serious concern that New Zealand had not rectified the law on the liability of legal persons to bring it in line with Article 2 of the OECD Convention. To the extent that the report's criticism is that corporations cannot be prosecuted under New Zealand law for bribery of a foreign official, the New Zealand TI expert considers that the criticism is not warranted. Although the provisions of the Crimes Act dealing with bribery do not specifically note that a corporation can be prosecuted, the Act allows the prosecution of "every one" who commits an act of bribery (which the contributor considers includes corporate as well as real persons), and the Sentencing Act allows for sentences of imprisonment to be varied to fines (which would be required for a corporate prosecution)." New Zealand lacks anti-bribery offences comparable to the offence of failing to prevent bribery now present in UK law. There is also an equivocal position in law regarding facilitation payments.

Inadequacies in enforcement system: There are some barriers to the investigation and prosecution of foreign corruption, but it is hard to gauge how significant they are in practice. For example, prosecutions are required to be authorised by the attorney-general, which in theory suggests a lack of independence for investigating agencies such as the Serious Fraud Office (SFO). The SFO shows a clear interest in investigating and prosecuting corruption matters, although most of their focus is on domestic rather than foreign matters. The SFO advises that it plans to actively pursue a new education programme for New Zealand businesses explaining legal and illegal business practices. However, the agency arguably lacks sufficient financial resources to ensure investigation of complex cases of foreign corruption, and these may slip down the agency's agenda if more prominent domestic fraud or corruption cases require investigation. Furthermore, whistle-blower protection legislation only applies to the public sector, and does not provide absolute guarantees of confidentiality.

Legal framework and enforcement system regarding subsidiaries, agents and other intermediaries: This is an untested area of New Zealand law, but it is likely that the current law would provide sufficient scope for prosecution of parent companies, as long as there was evidence of the parent company being complicit in the alleged crime. However, stronger legislation (more akin to the UK Bribery Act) would strengthen this position.

Recent developments: There is increasing public discussion about when New Zealand will implement new bribery legislation. Significant new legislation regulating financial advisors and increasing the anti-money laundering and countering financing of terrorism measures has now been passed and it is possible that anti-corruption legislation will now appear on the legislative agenda in the near future.

Recommendations: Strengthen legislative provisions. Make additional financial resources available to investigative agencies for education and investigations. Strengthen whistle-blower legislation to cover the private sector and tighten confidentiality protections.

²⁷⁸ Times Online, 17 December 2009, "North Korean Plane has 'links to New Zealand'", <http://www.timesonline.co.uk/tol/news/world/asia/article6959978.ece>; Otago Daily Times, 9 January 2010, "NZ firm allegedly sold arms to Iran", <http://www.odt.co.nz/news/national/88526/nz-firm-allegedly-sold-arms-iran>;

²⁷⁹ Financial Times, 16 April 2010, "Ex-HP Managers in Bribery Probe", <http://www.ft.com/intl/cms/s/0/ec53c924-48ee-11df-8af4-00144feab49a.html#axzz1N6h7mQ7v>

NORWAY

ACTIVE ENFORCEMENT: Six cases and one investigation. Share of world exports is 0.9 per cent.

Foreign bribery cases or investigations: There is a major pending criminal case against **Norconsult AS**, the largest consulting company in Norway. It reportedly concerns allegations of bribery of Tanzanian public officials from 2003 to 2006 in order to obtain contracts from the Dar Es Salaam Water and Sewage Authority on a World Bank project.²⁸⁰ Three Norconsult employees were fined by the *Økokrim* (National Authority for Investigation and Prosecution of Economic and Environmental Crime), and the company itself faced a fine of 4 million kroner (US \$730,000) which was rejected by the company in November 2009.²⁸¹ The company maintains that it cannot be fined because the individuals engaged in bribery and not the company.²⁸² The trial of the company was expected to begin in May 2011.²⁸³ In March 2011 it the Moriarty Tribunal in Ireland, a public inquiry tribunal appointed by the Irish Parliament that the Norwegian company **Telenor Mobile** had made a questionable political donation in 1995.²⁸⁴ (See also report on Ireland)

Domestic bribery by foreign companies: No new cases or investigations.

Inadequacies in legal framework: There are no significant inadequacies in the legal framework. However, criminal proceedings against companies or their subsidiaries can be easily hindered by changing the company's name and number while continuing to do business under the same owners, supervisors and employees. The Norwegian Penal Code does not have a provision for gross or aggravated trading in influence.

Inadequacies in enforcement system: There is a lack of whistle-blower protection by Norwegian authorities and there is no transparency in follow-up efforts when whistle-blowers are the subject of reprisals. Public authorities and private businesses are not obligated to report or follow up on whistle-blowing cases.

Legal framework and enforcement system regarding subsidiaries, agents and other intermediaries: Norwegian law does not expressly cover bribery of public foreign officials via intermediaries. It relies on implicit coverage, as indicated by accompanying explanations of Act 79 of 2003 on anti-bribery legislation in Norway.²⁸⁵ The legislative history states "it has no significance for criminal liability if the active party to bribery uses another person, for example a person who resides in the passive party's home country, to carry out the act of bribery itself."²⁸⁶ According to section 48(a) of the Norwegian Criminal Law, an enterprise may be liable to a penalty when a penal provision is contravened by a person who has acted on behalf of the enterprise. This applies even if no individual person may be punished for the contravention. There may be some formal legal hindrances concerning the applicability of the Norwegian criminal law section 12 and 13, but according to *Økokrim* this has not proven problematic in practice.

Recent developments: There has been a welcome increase in resources available for foreign bribery enforcement, due to increased budgets and the re-organisation of the corruption team in *Økokrim*.

Recommendations: There is still a need for better protection of whistle-blowers and increased training of investigators and prosecutors.

²⁸⁰ 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>

²⁸¹ Ibid.

²⁸² 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>

²⁸³ Development Today, "World Bank will not Participate in Norconsult Trial" http://www.development-today.com/magazine/2011/dt_3/business/world_bank_will_not_participate_in_norconsult_trial

²⁸⁴ Report of the Tribunal of Inquiry into Payments to Politicians and Related Matters, March 2011, <http://www.rte.ie/news/2011/0322/moriarty.html>

²⁸⁵ OECD Working Group on Bribery, October 2009, "Typologies on the Role of Intermediaries in International Business Transactions" <http://www.oecd.org/dataoecd/40/17/43879503.pdf>

²⁸⁶ OECD Working Group on Bribery, Phase 2 Report on Norway, April 2004, <http://www.oecd.org/dataoecd/3/28/31568595.pdf>

POLAND

LITTLE OR NO ENFORCEMENT: No cases or investigations. Share of world exports is 1.0 per cent.

Foreign bribery cases or investigations: There are no cases or investigations.

Domestic bribery by foreign companies: In March 2010, a US Securities and Exchange Commission (SEC) complaint against **Daimler AG** alleged that in 2004, former executives from the company made cash payments of €100,000 to a high ranking Polish government official to secure the sale of 30 trucks.²⁸⁷ Further, it was reported in May 2011 that 23 individuals, including former employees of the Dutch **Royal Philips Electronic NV**, were due to appear in court in Poland in June 2011 in response to allegations of bribes paid in relation to the purchase of medical equipment by hospitals in the period 1999–2007.²⁸⁸

Inadequacies in legal framework: There are numerous inadequacies. There is no effective corporate criminal liability and the fines provided for in the Law on Liability of Collective Entities are rarely imposed. Fines for companies range from PLN 1,000 to PLN 20,000,000 (US \$350 to \$7 million) but cannot exceed ten per cent of the revenue earned in the fiscal year in which the offence was committed. The *sine qua non* prerequisite for liability is the prior conviction of a natural person who acted on behalf of the collective entity. The Law on Liability of Collective Entities is rarely applied; it came into effect in 2003, but of 66 cases prosecuted in 2006–2008, only 26 ended in penalisation of the collective entity. The low level of penalties imposed is also a problem; the highest penalty to date has been PLN 12,000 (US \$4,000) and the majority of penalties are set at PLN 1000 (US \$350). There is still an impunity provision that allows offenders to escape prosecution by notifying the authorities of an offence. In the Polish legal system many holders of public office, including parliamentarians, have immunity from prosecution.

Inadequacies in enforcement system: The fight against corruption and bribery is the task of state agencies such as the Central Anti-Corruption Bureau, the Internal Security Agency and the Central Office of Investigations. It seems that a lack of a clear division of competences has become a problem in practice, as these agencies compete. The Polish legal system often fails to hear cases within a reasonable time period. Delays are lengthy, with long periods of remand, which accounts for the majority of complaints to the European Court of Human Rights. "International" investigations, often involving mutual legal assistance requests and expert opinions, mean significant costs for prosecuting authorities, which can also be problematic. Whistle-blower protection is still inadequate in both the public and private sectors.

Legal framework and enforcement system regarding subsidiaries, agents and other intermediaries: Polish law attributes criminal liability to the perpetrator of a crime, and the existing system of corporate liability applies only when the corporation 'controlled' the perpetrator or was represented by the perpetrator, acting on behalf of the company. Corporate criminal liability cannot be attributed if the company indirectly profited from the act of bribery without awareness of the criminal conduct. There are legal instruments to deprive perpetrators of the profits gained from the crime. Polish law does not expressly cover bribery via intermediaries, but companies can be held responsible for such bribery according to the Penal Code provisions on instigation and complicity.²⁸⁹

Recent developments: There were no significant developments in 2010.

Recommendations: Enforce laws for corporate criminal liability effectively so that they serve as adequate deterrents to foreign bribery. Impose sanctions on organisations gaining from illegal acts. Increase the minimum sanctions for foreign bribery to an amount that serves as a sufficient deterrent, and amend laws to avoid undue immunity.

²⁸⁷ US SEC, 22 March 2010, <http://www.sec.gov/litigation/complaints/2010/comp-pr2010-51.pdf>

²⁸⁸ The Boston Globe, AP, 17 May 2011, "Dutch Philips cited in bribes scandal in Poland" http://www.boston.com/business/articles/2011/05/17/dutch_philips_cited_in_bribes_scandal_in_poland/; Radio Netherlands Worldwide, 17 May 2011, "Philips on trial for bribery in Poland" <http://www.rnw.nl/english/article/philips-trial-bribery-poland>; Wall Street Journal, 19 May 2011, "Philips: Alleged Bribery Case Limited To Poland So Far" <http://online.wsj.com/article/BT-CO-20110519-705520.html>;

²⁸⁹ OECD Working Group on Bribery, October 2009, "Typologies on the Role of Intermediaries in International Business Transactions" <http://www.oecd.org/dataoecd/40/17/43879503.pdf>

PORTUGAL

LITTLE OR NO ENFORCEMENT: Four cases and six investigations. Share of world exports is 0.4 per cent.

Foreign bribery cases or investigations: There are four cases and six investigations. No details are available.

Domestic bribery by foreign companies: In the "Submarines Affair," the Public Prosecutor's Office has reportedly initiated a prosecution accusing the defendants of defrauding the Portuguese state of about €34 million (US \$49 million) in connection with the Portuguese Navy's 2004 purchase from the **German Submarine Consortium** of two submarines for €1 billion (US \$1.4 billion) and in connection with associated offset contracts.²⁹⁰ The consortium includes the German engineering company **Ferrostaal**, the shipbuilding company **Howaldtswerke-Deutsche Werft** and the shipyard **Nordseewerke**.²⁹¹ The defendants in the case reportedly include a former Ferrostaal vice-president and two other Ferrostaal employees.²⁹² While the case focuses on charges of aggravated fraud and forgery of documents, the Public Prosecutor's Office is also investigating allegations of corruption-related crimes, including allegations about contributions made to the political party of the defence minister.²⁹³

The Public Prosecutor's Office announced in July 2010 that it was dropping an investigation into allegations that in 2002 the UK property development company **Freeport Plc** had paid bribes to public officials and provided illegal finances to the political party of the environment minister (who subsequently became prime minister) in return for the waiver of environmental restrictions for its construction of a shopping centre.²⁹⁴ State prosecutors concluded that the former environment minister and current prime minister had no case to answer, but charged two agents hired by Freeport Plc with tax evasion and aggravated fraud and issued mutual legal assistance requests to the Cayman Islands, Greece and the Isle of Man. However, a week after making the announcement that the investigation of the prime minister's role was being closed, the Public Prosecutor's Office ordered an inquiry into the investigation that had just ended. According to Portuguese daily newspaper *Público*, one of the questions to be addressed was why the prime minister had never been interrogated by police during the five years of the investigation.²⁹⁵ Previously, in December 2009, a disciplinary committee of the Public Prosecutor's Office had reviewed accusations that Lopes da Mota, the Portuguese President of Eurojust, had pressured investigating magistrates to drop the probe into the Freeport case. The committee decided to suspend da Mota for thirty days, leading to his resignation from Eurojust. An SFO investigation into the Freeport case was dropped in 2009.²⁹⁶

A number of Portuguese banks were reportedly listed in the indictment in the "Angolagate" scandal in France, reportedly including **Caixa Geral de Depósitos**, the **Banco Comercial Português**, Portugal's two largest banks, as well as the **Nacional de Crédito**, **Nacional Ultramarino**, **Comercio e Industria**, **Totta & Açores**, **Pinto & Sotto Mayor** and the Portuguese branches of **Banco Bilbao Vizcaya** and **Barclays** (see report on France).²⁹⁷

Inadequacies in legal framework: There have been several improvements to Portuguese Criminal Law regarding corruption-related crimes. However, the key inadequacy remains the lack of easily understood legal mechanisms, which may lead to legal uncertainty and misinterpretation of the legal framework. Further, the fines provided for corruption-related crimes committed by legal persons are considered too low. Though adequate for smaller companies, these fines are equivalent to small taxes when it comes to large multinational corporations.

Inadequacies in enforcement system: The independence of prosecution authorities has been called into question by the fact that in both above-mentioned cases of domestic bribery, the Portuguese public prosecutor initiated disciplinary proceedings against the prosecutor's teams involved. Co-operation requests made by the Prosecutor's Office to certain public administration institutions (such as the General Inspectorates) to aid in investigations

²⁹⁰ EU Observer, 27 July 2010, "Calls for EU to Halt Corrupt Defense Deals", http://www.businessweek.com/globalbiz/content/jul2010/gb20100727_597244.htm ; The Algarve Resident, 4 February 2011, "German submarines scandal goes to court", <http://www.algarveresident.com/story.asp?ID=40110>

²⁹¹ HDW is a subsidiary of ThyssenKrupp and Nordseewerke is a subsidiary of Schaeff Industrie AG. United Press International, 29 December 2010, "Portugal takes delivery of second sub", http://www.upi.com/Business_News/Security-Industry/2010/12/29/Portugal-takes-delivery-of-second-sub/UPI-14931293622740/

²⁹² EU Observer, 27 July 2010, "Calls for EU to Halt Corrupt Defense Deals", http://www.businessweek.com/globalbiz/content/jul2010/gb20100727_597244.htm

²⁹³ The Algarve Resident, 4 February 2011, "German submarines scandal goes to court", <http://the-resident.com/story.asp?XID=40124>

²⁹⁴ Euronews, 28 July 2010, "Freeport Investigation Dropped against Socrates", <http://www.euronews.net/2010/07/28/freeport-investigation-dropped-against-socrates/>

²⁹⁵ The Algarve Resident, 6 August 2010, "Inquiry to be Held into Freeport Investigation", <http://www.algarveresident.com/story.asp?XID=37411>

²⁹⁶ SFO Press Release, 13 November 2009, <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2009/freeport-plc.asp>

²⁹⁷ IPS, 4 November 2008, "„Angolagate" Bribes in Local Banks" <http://ipsnews.net/africa/nota.asp?idnews=44566>

are not treated as a sufficiently high priority. Additionally, there is a lack of specific training of investigators and prosecutors and a lack of public awareness-raising. Although there have been some awareness-raising initiatives in co-operation with the Portuguese External Investment and Exportation Agency, such as a workshop and the planned distribution of a booklet, these measures are still inefficient when it comes to creating awareness amongst private companies. Export companies are still unaware of the criminal liability for legal persons and the sanctions that may result from foreign bribery. Barriers to mutual legal assistance (MLA) continue to be a severe obstacle to investigations. Several countries take too long to provide the requested assistance (such as Germany in the MAN/Ferrostaal case) and other countries do not provide any assistance at all.

Legal framework and enforcement system regarding subsidiaries, agents and other intermediaries: According to Article 7 of Law 20/2008, 21 April, a person is criminally responsible for foreign bribery even if the bribe is paid through another person. The intermediary, be it a subsidiary or an agent, can be a legal or a physical person. For a company to be held liable, it must approve or consent in some way.

Recent developments: There have been a number of improvements both in the legal framework and the enforcement system. Only time will tell whether these will have an impact. Among the improvements are Law 36/2010 of 2 September 2010, which creates a central database of bank accounts at the Portuguese Central Bank that will be available for judges or prosecutors within the framework of criminal investigations. Another improvement is contained in Law 37/2010 of 2 September 2010, which makes minor changes to the derogation of bank secrecy in the context of tax investigations, including the removal of bank secrecy as a basis for refusal of co-operation with law enforcement authorities. Additionally, Law 26/2010 of 30 August allows for the suspension of criminal investigation periods while an MLA request is pending. This suspension does not, however, interrupt or suspend the statute of limitations for the corresponding crime. In addition, the Portuguese Parliament has recently approved a bill on the creation of an Assets Recovery Office. Further, the Prosecutor's Office has created a website to provide a channel for whistle-blowing, protecting the privacy of whistle-blowers. Finally, the judiciary police are recruiting 100 additional criminal inspectors.

Recommendations: Establish the high priority of Prosecutor's Office requests for assistance in investigations made to other institutions with specialised human resources (e.g. experts from the General-Inspectorates). Assistance should be expeditiously provided. Provide focused, in-depth, specialised training for prosecutors, criminal investigators and judges. Increase public awareness about the foreign bribery offence in the private sector, in particular regarding the liability of legal persons and possible sanctions. Encourage companies to establish special communications channels and internal protection for whistle-blowers. Increase pecuniary sanctions applicable to legal persons for corruption-related crimes, including foreign bribery.

SLOVAK REPUBLIC

LITTLE OR NO 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 by the Anti-Corruption Unit of the Slovak Police into allegations that the companies **Istrokapitál Slovensko a.s.** and **J & T Banka** paid at least US \$100,000 to the political party of the prime minister of the Turks and Caicos Islands, and provided US \$6 million in loans, and in return were able to lease valuable land for a golf course and hotel resort.²⁹⁸ (According to one report, the land was valued at US \$8 million and leased at about US \$240 per year for 99 years.²⁹⁹) Istrokapital a.s. is a subsidiary of **Istrokapital SE**, which is registered in Cyprus. Another reported investigation, dropped in early 2011, was believed to be connected to the UN Oil-for-Food Programme, but no further details are known.

²⁹⁸ 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

²⁹⁹ The Observer, 1 February 2009, "Islanders blame UK for 'stolen land'"
<http://www.guardian.co.uk/world/2009/feb/01/turks-and-caicos>

Domestic bribery by foreign companies: Czech-owned company **Interblue Group** reportedly purchased Slovakia's excess carbon dioxide emissions quotas at well below market price in 2008. The Slovakian environment minister announced in September 2010 intentions to pursue the company for US \$15 million owed, and also said he would seek a criminal investigation.³⁰⁰ A related money-laundering investigation is reportedly under way in Switzerland.³⁰¹

Inadequacies in legal framework: There are no significant inadequacies in the legal framework. The lack of criminal liability of legal persons had been a major issue, but this was addressed by an amendment to the Slovak Penal Code No. 224/2010 Coll in May 2010. It remains problematic that the defence of effective regret still exists in Slovak law for foreign bribery cases.

Inadequacies in enforcement system: Whistle-blower protection remains the key concern in the enforcement system. There is no single, comprehensive whistle-blower law: there are no provisions for anonymous reporting, and there is no systemic collection of data on the number of whistle-blowing disclosures or the proportion of cases that result in legal action.³⁰²

Legal framework and enforcement system regarding subsidiaries, agents and other intermediaries: Under Slovak law, the offence of foreign bribery expressly covers bribery via intermediaries but the provisions may not result in liability for subsidiaries.³⁰³ The intermediary can be held responsible for aiding foreign bribery, as Section 10c of the Criminal Code states that "a participant to a completed or attempted criminal offence is any person who wilfully... aids to commit a crime, mainly by procuring the means, by removing the obstacles, by advice, by strengthening the determination, by a promise of acting as an accessory" and if the intermediary is aware the he or she is paying a bribe, the individual may be punishable for bribery itself.³⁰⁴

Recent developments: The extension of criminal liability to legal persons entered into force in May 2010, and became effective in September 2010.

Recommendations: Provide guidelines, instructions and training to tax examiners on detecting foreign bribery during tax audits. Ensure that accounting and auditing issues related to bribery are regularly examined in the context of the mandatory training requirements for auditors, including auditors of the Supreme Audit Office. Continue efforts to make the provisions on whistle-blower protection in Section 13 of the Labour Code more widely known to companies and the general public.

SLOVENIA

LITTLE OR NO ENFORCEMENT: No cases and two investigations. Share of world exports is 0.2 per cent.

Foreign bribery cases or investigations: No cases and two reported investigations. One investigation, which commenced in 2009, reportedly concerns the Slovenian company **LEK d.d.**, which is owned by the **Sandoz** division of the Swiss pharmaceutical company **Novartis AG**. According to media reports, LEK is alleged to have paid bribes to doctors in Albania, Serbia and Slovenia to induce them to use the company's medical products.³⁰⁵

³⁰⁰ The Slovak Spectator, 28 September 2010, "Future Environment Minister Nagy will seek € 15 million from Interblue Group" http://spectator.sme.sk/articles/view/40276/10/future_environment_minister_nagy_will_seek_15_million_from_interblue_group.html and 17 December 2010, "Nagy: Slovakia won't try to claim €15 million from Interblue via court" http://spectator.sme.sk/articles/view/41155/10/nagy_slovakia_wont_try_to_claim_15_million_from_interblue_via_court.html and 24 March 2010, "Interblue: Swiss prosecutor confirms money laundering investigation" http://spectator.sme.sk/articles/view/38345/10/interblue_swiss_prosecutor_confirms_money_laundering_investigation.html

³⁰¹ Ibid.

³⁰² Transparency International "Timed Out: Statutes of Limitations and Prosecuting Corruption in EU Countries", http://www.transparency.org/regional_pages/europe_central_asia/projects_and_activities/statutes_limitations

³⁰³ OECD Working Group on Bribery, October 2009, "Typologies on the Role of Intermediaries in International Business Transactions" <http://www.oecd.org/dataoecd/40/17/43879503.pdf>

³⁰⁴ OECD Working Group on Bribery, Phase 1 Report on the Slovak Republic, February 2003, <http://www.oecd.org/dataoecd/16/15/2389408.pdf>

³⁰⁵ STA, 5 October 2009, "POP TV: Novartis Involved in Major Corruption Scandal" www.sta.si/en/vest.php?s=a&tid=1433993

Novice Dnevnik, 7 October 2009, "Evropska komisija bo izvedla preiskavo tudi v Sandozu", <http://dnevnik.si/novice/eu/1042305167>

Domestic bribery by foreign companies: According to media reports, the police and Public Prosecutor's Office initiated three criminal proceedings in relation to alleged bribery of Slovenian public officials by the Finnish defence company **Patria** in the sale of armoured vehicles to the Ministry of Defence.³⁰⁶ The bribe recipients allegedly include a former prime minister. The trial was reported of a former defence minister and a former general in the Slovenian army accused of causing damages of €16.8 million (US \$24 million) in their purchase of the armoured vehicles.³⁰⁷ In April 2011 the defendants were found not guilty on all counts and the prosecution appealed.³⁰⁸ In August 2010 the Supreme Public Prosecutor's Office reportedly initiated a second criminal proceeding against five individuals, involving charges of complicity in a criminal offence and accepting gifts.³⁰⁹ The third reported procedure involved an artist and former employee in the Ministry of Defence, charged with giving undue preference to Patria.³¹⁰

Inadequacies in legal framework: There are a few inadequacies but not major ones, including a lack of an autonomous definition of the term "foreign official" in the Criminal Code and the availability of the defence of "effective regret". Also, to establish corporate liability it is necessary to establish a link between a natural person and the legal person.

Inadequacies in enforcement system: There are a number of major obstacles to enforcement, including lack of resources and lack of training for investigators and prosecutors working on foreign bribery. There are bureaucratic obstacles and the exchange of data among government agencies is insufficient. The police system is decentralised, with national, regional and local levels all involved in enforcement, but the lower levels are dependent on orders from the top management. The 2009 Phase 2 Follow-Up report by the OECD noted government efforts to strengthen the independence of police investigations but also noted that more could be done. Accounting and auditing requirements are adequate in law but inadequate in practice, as auditors do not conduct sufficient assessments of fraud and bribery issues in companies that engage in a substantial amount of business abroad. Internal controls, standards and monitoring bodies are also not very strong or efficient. There are also occasional difficulties in gaining mutual legal assistance, including low quality of responses and delays in responses from financial institutions.

Legal framework and enforcement system regarding subsidiaries, agents and other intermediaries: The TI expert reports that there is an adequate legal framework for holding parent companies responsible for bribery committed by subsidiaries or intermediaries. According to Article 4 of the Liability of Legal Persons for Criminal Offences Act, a legal person is liable for a criminal offence committed in the name, on behalf, or in the interest of that legal person if (1) the offence was committed to carry out an unlawful resolution, order or endorsement of its management or supervisory bodies; (2) its management or supervisory bodies influenced the perpetrator or enabled him to commit the criminal offence; (3) it has at its disposal an unlawfully obtained property benefit or uses objects obtained through a criminal offence; or (4) its management or supervisory bodies have omitted due supervision of the legality of the actions of employees subordinate to them, including employees of subsidiaries.

Recent developments: The Commission for the Prevention of Corruption (the Commission) and Ministry of Public Administration prepared the Integrity and Prevention of Corruption Act, which came into force in May 2010 and designates the Commission as the monitoring body for all foreign bribery cases. According to the Act, international corruption refers to any corruptive act in which at least one of the participants is a natural or legal person from abroad. The police, state prosecutor's offices and courts are obliged to inform the Commission about concluded proceedings in which Slovenian or foreign citizens or legal persons holding a registered office in Slovenia are suspected, informed, accused or convicted of a corruption offence. The Act also includes new regulations regarding whistle-blower protection. Also, as a result of a major re-organisation of the police structure, the National Bureau of Investigation was established and became operational on 1 January 2010. The Bureau is a specialised national-level criminal investigation unit for the detection and investigation of serious criminal offences, especially economic and financial crime and corruption. This re-organisation has led to greater co-ordination and co-operation between investigation and prosecution services and other relevant bodies in Slovenia such as the tax office and the Commission for the Prevention of Corruption. Amendments to the Court Act of 2009 entered into force on 1 January 2010 and led to creation of a specialised department established at the Regional Court of Ljubljana to deal

306 Novice Dnevnik, 16 December 2009, "Afera Patria: Obtožni predlog zoper Erjavca in Gutmana zaradi nevestnega dela", http://www.dnevnik.si/tiskane_izdaje/dnevnik/1042323677

307 Ibid.

308 SiOL, 4 April 2011, "Erjavec in Gutman oproščena" http://www.siol.net/slovenija/novice/2011/04/sodisce_sodba_erjavec_gutman_v_zadevi_patria.aspx

309 RTV SLO, Accessed May 2011 "Afera Patria – obtožni predlog čaka na sodno obravnavo" <http://tvsllo.si/predvajaj/afera-patria-obtozni-predlog-caka-na-sodno-obravnavo/ava2.83879415>

310 Delo.Si, 27 March 2010, "Najprej bosta ovadena Cekuta in Zupan" <http://www.delo.si/clanek/102465>

with serious cases of organised and economic crime, corruption and other similar criminal offences. However, due to cuts in funding and reorganisation, there has been a decrease in training for state institutions working on foreign bribery.

Recommendations: Provide more independence to investigators and prosecutors. Enforce the solid legal framework against foreign bribery. Adopt a reversed burden of proof in civil proceedings and improve the use of tax procedures to detect money trails.

SOUTH AFRICA

LITTLE OR NO ENFORCEMENT: No cases and five investigations. Share of world exports is 0.5 per cent.

Foreign bribery cases or investigations: There are no known cases. However, there are five investigations, four of which began in 2010. One of the new investigations, which began in February 2010, is reportedly into allegations of wrongdoing involving **Delta Mining Consolidated** in connection with bidding for an iron ore project in Liberia.³¹¹ Another investigation, which is also believed to have started in February 2010, reportedly relates to efforts to clear allegations in India against **Denel Pty Ltd.**, the country's largest defence equipment manufacturer. In 2005, the Indian Central Bureau of Investigation (CBI) reportedly was investigating allegations that Denel had tainted a US \$3.9 million arms deal in India by paying commissions to a middleman, the British Isle of Man firm **Varas Associates**, as part of an effort to influence government officials.³¹² The Indian government suspended the contract and pending the CBI investigation no contracts could be awarded to Denel. Reportedly in an effort to remove this effective blacklisting, in June 2010 the South African government agreed to co-operate with authorities in India in their criminal investigation in order to bring the matter to a close.³¹³ The South African company **Core Mining and Minerals**, part of the joint venture **Canadile Miners**, was reported in December 2010 to have been blacklisted by the Zimbabwean government on charges of fraud and corruption in connection with a diamond-mining project.³¹⁴

Domestic bribery by foreign companies: In October 2010, the South African Directorate for Priority Crime Investigations announced that it had dropped its investigation into the remaining two companies in a larger probe of defence companies operating in South Africa. The two companies named were **BAE Systems** and **Thales International**.³¹⁵ The Directorate reportedly stated that the investigation had been closed due to the contamination of evidence and because continuing the probe would be a waste of public funds. In other jurisdictions, it was reported in September 2010 that criminal charges were filed by three NGOs in Sweden against **Saab AB** for alleged bribery relating to the sale of JAS 39 Gripen aircraft to South Africa in 1999 (see report on Sweden).³¹⁶ In May 2011, the company reportedly said it planned to examine the award of a contract by a subsidiary Sanip linked to the sale of Gripen jets to South Africa. According to a news report, this concerned alleged payments between 2003 and 2005 of about 50 million Swedish kronor (\$7.9 million) to ensure the South African government didn't terminate the Gripen deal.³¹⁷

³¹¹ Christian Science Monitor, 25 September 2008, "Persistent corruption threatens Liberian stability", <http://www.csmonitor.com/World/Africa/2008/0925/p07s03-woaf.html>

³¹² Mail and Guardian Online, 19 October 2005, "Denel ,did nothing wrong in India", <http://www.mg.co.za/article/2005-10-19-denel-did-nothing-wrong-in-india> ; Independent Online, 10 October 2006, "SA's Denel linked to arms kickback raid" <http://www.iol.co.za/news/world/sa-s-denel-linked-to-arms-kickback-raid-1.297069>

³¹³ Business Daily, 21 June 2010, "New bid to clear bribe cloud over Denel in India", <http://www.businessday.co.za/articles/Content.aspx?id=112289>

³¹⁴ Mail and Guardian, 17 December 2010, "South African businesses face backlash in Zimbabwe", <http://www.mg.co.za/article/2010-12-17-south-african-businesses-face-backlash-in-zimbabwe> Times (South Africa), 13 February 2011 "Twist in diamond warfare as state drops some charges", <http://www.timeslive.co.za/africa/article909465.ece/Twist-in-diamond-warfare-as-state-drops-some-charges>

³¹⁵ Financial Times, 24 October 2010, "Police accused of ANC bribe probe cover-up", <http://www.ft.com/cms/s/0/bd97d710-df8e-11df-bed9-00144feabdc0.html#axzz1FJTrH63k>

³¹⁶ Mail and Guardian online, 9 September 2010, "Saab charged over sale of Gripens to SA", <http://mg.co.za/article/2010-09-09-saab-charged-over-sale-of-gripens-to-sa>

³¹⁷ Dow Jones, 18 May 2011, "Saab Looking At New Allegation Of Bribery In Fighter-Jet Deal" <http://www.tradesignalonline.com/charts/news.aspx?id=800827&filter=&catid=0>

Inadequacies in legal framework: The OECD Working Group on Bribery's Phase 2 report on South Africa concluded that the legal framework in South Africa is of a high standard. One notable inadequacy is that the Protected Disclosures Act that provides protection for public and private sector whistle-blowers does not extend to auditors. Auditors are not specifically required to report suspected acts of bribery, though they are required to report "an unlawful act or omission committed by a person responsible for the management of the audited company which is... fraudulent or amounts to theft."³¹⁸

Inadequacies in enforcement system: The Phase 2 report on South Africa found that there are some inadequacies in the enforcement system. There are insufficient resources, in particular for training relevant law enforcement authorities. There are not enough investigators and prosecutors specialised in foreign bribery, and there is inadequate co-ordination between police and prosecutors. Furthermore, there has been insufficient awareness-raising in the public and private sectors about the offence of foreign bribery and about whistle-blower protection provisions.

Legal framework and enforcement system regarding subsidiaries, agents and other intermediaries: It is possible to hold a parent company liable for acts of a subsidiary or an agent if it can be proved that the parent company instructed and/or gave permission to the subsidiary to commit the crime. Furthermore, Section 5 of the Prevention and Combating of Corrupt Activities Act (PRECCA) provides that a person will be guilty of an offence of corrupt activities relating to foreign public officials if he or she directly or indirectly benefits through another person. Section 35 of the PRECCA provides for extraterritorial jurisdiction over legal persons if the company was incorporated or legally registered in South Africa (physical connection); or if the act and/or offence affects or is intended to affect a public body, a business or any other person in South Africa (harmful consequences). In terms of the actual application of extra-territorial jurisdiction, guidance is provided by the Constitutional Court interpretation in *S V Basson 2005 (12) BCLR 1192 (CC)*, which held that "a significant portion of the offence has to take place in South Africa and that a real and substantial link needs to be established between the offence and South Africa."

Recent developments: There were no significant developments in 2010.

Recommendations: Adopt a more proactive approach to the investigation and prosecution of foreign and domestic bribery. Provide further training to investigators and prosecutors and develop specialised units to deal with foreign bribery. Allocate resources to raise the level of awareness of the foreign bribery offence. Ensure that the private sector is investigated and prosecuted for engaging in unlawful activities, including corruption and/or foreign bribery.

SPAIN

MODERATE ENFORCEMENT: 11 cases and no investigations. Share of world exports is 2.0 per cent.

Foreign bribery cases or investigations: There were no new prosecutions and no known on-going investigations in 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**.³¹⁹

Domestic bribery by foreign companies: No known cases or investigations.

Inadequacies in legal framework: The deficiencies include jurisdictional limitations and the failure to hold companies liable for subsidiaries. Dual criminality is necessary to extend jurisdiction to acts committed abroad. Persons who have committed active bribery can in some cases invoke the defence of effective regret.³²⁰ As noted in the Third Evaluation Round Compliance Report by GRECO, the definition of the offence provided the Spanish Penal Code makes reference only to active bribery in the context of international transactions, while passive bribery of foreign officials is not included. The Report also notes the lack of specific regulations concerning the terms and conditions for granting loans for party/campaign funding purposes, as well as other concerns related to the lack of transparency in political party funding.³²¹

³¹⁸ OECD Working Group on Bribery, Phase 2 Report of South Africa, June 2010, <http://www.oecd.org/dataoecd/8/39/45670609.pdf>

³¹⁹ 2011 National Chapter Questionnaire Response - TI Spain

³²⁰ GRECO Third Round Evaluation, Theme I, Spain, May 2009, http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282008%293_Spain_One_EN.pdf

³²¹ GRECO Third Evaluation Round Compliance Report on Spain, 28 March – 1 April 2011, http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoRC3%282011%295_Spain_EN.pdf

Inadequacies in enforcement system: Key inadequacies include insufficient resources, inadequacy of complaints mechanisms and whistle-blower protection, and a lack of public awareness-raising. Accounting and auditing requirements are inadequate and obtaining mutual legal assistance often takes too long.

Legal framework and enforcement system regarding subsidiaries, agents and other intermediaries: The offence of foreign bribery expressly covers bribery via intermediaries in Spanish law.³²² Bribery offences also extend to cases in which a gift benefits the recipient or a third party.³²³ The GRECO Third Round Evaluation Report on Spain found that negligently committed acts are not punishable in accordance with the Penal Code unless specifically provided for in the relevant offence. As the provisions on bribery do not state that it can be caused by negligence, bribery can only be committed intentionally.³²⁴

Recent developments: The most recent amendment to the Penal Code by Organic Act 5/2010 in June 2010 entered into force in December 2010 and adapted Spanish criminal law to the OECD Convention. Specifically, the crime of bribery of a foreign public official is now set out as an autonomous crime through the new wording of Article 445 and there is no need to refer to Articles 419 to 427 of the Penal Code (on national bribery) to determine the penalty. This new regulation has increased penalties to two to six years' imprisonment and fines, and has extended the statute of limitations to ten years. This amendment now expressly allows for the criminal liability of legal persons for foreign bribery of public officials. Furthermore, in April 2010 Spain ratified the Council of Europe Criminal Law Convention on Corruption, which entered into force in respect of Spain on 1 August 2010. In January 2011 Spain ratified the Additional Protocol to the Convention, which will enter into force on 1 May 2011.

Recommendations: Improve whistle-blower protection. Introduce more transparency in the Public Prosecutors Office. Provide more resources for combating international corruption.

SWEDEN

MODERATE ENFORCEMENT: Two cases and four investigations. Share of world exports is 1.2 per cent.

Foreign bribery cases or investigations: There is one pending case, which is a major criminal prosecution, brought in 2009 against three executive of **Volvo Construction Equipment International AB**, a subsidiary of **Volvo AB**, based on allegations that they paid bribes in Iraq in connection with the UN Oil-for-Food programme.³²⁵ The National Anti-Corruption Unit has stated that the trial is expected to commence in the third quarter of 2011. Swedish prosecutor Nils-Eric Schultz announced in late 2010 that he was preparing to file charges against several company officials of **Scania AB**, a truck manufacturing company, also in connection with Oil-for-Food-related allegations.³²⁶ The National Anti-Corruption Unit reported that two investigations were dropped in 2010. One of these concerned allegations that **Saab Tank Control** paid bribes in connection with the Oil-for-Food programme. In September 2010 three Swedish NGOs requested a new criminal investigation of **Saab AB** for alleged bribery relating to the 1999 sale of JAS 39 Gripen aircraft to South Africa via the company's South African subsidiary Sanip.³²⁷ A previous investigation by the Swedish Public Prosecutor was dropped in 2009. In May 2011, Saab reportedly said it planned to examine the role of its subsidiary Sanip in the award of a contract linked to the sale of the jets to South Africa, and alleged payments between 2003 and 2005 of about 50 million Swedish kronor (\$7.9 million).³²⁸ A bribery investigation of officials of the demining equipment manufacturer **Countermine Technologies AB** was also

³²² OECD Working Group on Bribery, October 2009, "Typologies on the Role of Intermediaries in International Business Transactions" <http://www.oecd.org/dataoecd/40/17/43879503.pdf>

³²³ GRECO Third Round Evaluation, Theme I, Spain, May 2009, http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3%282008%293_Spain_One_EN.pdf

³²⁴ Ibid.

³²⁵ The Local, 6 March 2009, "Volvo execs charged for Saddam-era bribes", <http://www.thelocal.se/18032/20090306/>

³²⁶ AP, 29 October 2010, "Sweden's Scania accused of oil-for-food kickbacks", http://www.boston.com/news/world/europe/articles/2010/10/29/swedens_scania_accused_of_oil_for_food_kickbacks/; The Local, 1 November 2010, "Scania accused of Iraq oil-for-food bribes", <http://www.thelocal.se/29958/20101101/>

³²⁷ Mail and Guardian online, 9 September 2010, "Saab charged over sale of Gripens to SA", <http://mg.co.za/article/2010-09-09-saab-charged-over-sale-of-gripens-to-sa>

³²⁸ Dow Jones, 18 May 2011, "Saab Looking At New Allegation Of Bribery In Fighter-Jet Deal" <http://www.tradesignalonline.com/charts/news.aspx?id=800827&filter=&catid=0>

dropped due to lack of evidence and handed over to the Swedish National Economic Crimes Bureau to investigate the remaining allegations of fraud. The company was alleged to have paid bribes in relation to a mine-clearing contract in Libya. These allegedly took the form of a luxury car for a top official and €18,000 (US \$26,000) in cash for three officers in the Libyan army.³²⁹

In other jurisdictions, in Argentina two former government officials were indicted in December 2010 on charges that they had accepted bribes from **Skanska Latin America**, a subsidiary of Swedish construction company **Skanska AB**.³³⁰ South Korean security authorities are reportedly looking into allegations that **Saab AB** paid off a local research institute in exchange for classified information (see report on Korea).³³¹ In 2010 the Czech police reportedly re-opened an investigation into suspected bribery in the purchase of **Gripen** jets from the Saab and UK **BAE Systems** joint venture.³³² The board of directors at **Turkcell** reportedly confirmed in April 2011 that it was internally investigating allegations of bribery in Kazakhstan by its subsidiary **KCell** and the subsidiary's supplier, Swedish company **Ericsson**. **KCell** is 51 per cent controlled by the Dutch company **Fintur Holdings BV**, which is 41.45 per cent owned by Turkcell, and 58.55 per cent owned by the Swedish company **TeliaSonera**.³³³

Domestic bribery by foreign companies: The National Anti-Corruption Unit reported that there is an on-going investigation into alleged bribery of a Swedish public official by a foreign company. Investigations were also reported in the past.

Inadequacies in legal framework: The maximum fine for corporations and other legal entities is only SEK 10 million (US \$1.5 million), which, according to the TI expert, does not serve as an effective deterrent. Sweden maintains a requirement of dual criminality, meaning that Swedish courts will not accept jurisdiction if foreign bribery is not also a criminal offence in the jurisdiction in which the bribery is committed.

Inadequacies in enforcement system: The TI expert cites insufficient resources, complaint mechanisms and whistle-blower protection; inadequate training of investigators; and a lack of public awareness-raising as key inadequacies in enforcement of foreign bribery laws.

Legal framework and enforcement system regarding subsidiaries, agents and other intermediaries: Existing laws are not adequate but the expected new legislation (see below) might solve the problem to some extent by penalising representatives of the parent company, though not the parent company itself, for "negligent financing of bribery." Enforcement obstacles include inadequate resources and issues with money-laundering techniques to cover up the financial trail.

In the Argentinian case against two former executives of **Skanska Latin America**, a subsidiary of Swedish **Skanska AB** (see report on Argentina), Argentinian authorities reportedly stated suspicions of involvement of Skanska management in Sweden.³³⁴ Argentinian authorities reportedly supplied the Swedish National Anti-Corruption Unit with extensive information and documents on the case. However, the Unit determined that this and other information did not provide a basis to assume that a Swedish citizen in Skanska's management had initiated the payments in question or had known about them in a way that could lead to punishment according to Swedish law. Consequently, no preliminary investigation was initiated. In 2009 the Swedish chief prosecutor terminated an investigation under way since 2007 into allegations that Swedish company **Saab AB**, a joint venture partner of **BAE Systems**, was involved in foreign bribery in the sale of Gripen jets to the Czech Republic, Hungary and South Africa.³³⁵ According to a statement by the Swedish chief prosecutor, Swedish law does not effectively cover the type of arrangement made between intermediaries and consultants.³³⁶ Furthermore, the Swedish statute of limitations ruled out prosecution for any bribes prior to 2004.

329 Di.se, 25 September 2010, "Countermine utreds för mutbrott i Libyen",

<http://di.se/Artiklar/2010/9/25/215810/Countermine-utreds-for-mutbrott-i-Libyen/> and di.se, 10 August 2010, "Likvidation för Countermine", <http://di.se/Artiklar/2010/10/8/216834/COUNTERMINE-STYRELSEN-FORESLAR-FRIVILLIG-LIKVIDATION-NY/>

330 Clarin, 18 December 2010, "Procesaron a dos ex funcionarios K e indagarán a Cameron por Skanska", http://www.clarin.com/politica/Procesaron-funcionarios-indagaran-Cameron-Skanska_0_392360992.html

331 The Local, 6 October 2009, "Saab Targeted in Bribery Probe", <http://www.thelocal.se/22500/20091006/>;

Defense News, 2 November 2009, "Warrants Sought in Saab Bribery Case", <http://www.defensenews.com/story.php?i=4355929>

332 Prague Post, 18 August 2010, "U.S. help sought in Gripen probe"

<http://www.praguepost.com/news/5432-u-s-help-sought-in-gripen-probe.html>

333 Cellular-news.com, 15 April 2011, "Turkcell to Investigate Bribery Allegations at Kazakh Subsidiary"

http://www.cellular-news.com/story/48754.php?source=rss&utm_source=feedburner&utm_medium=feed&utm_campaign=Feed:+cellular-news/LmiX+%28cellular-news%29

334 The Local, 26 June 2007, "Skanska faces Argentine bribery allegations", <http://www.thelocal.se/7711/20070626/>

335 The Local, 16 June 2009, "Prosecutor shuts down Gripen bribes probe" www.thelocal.se/20110/20090616/

336 2011 National Chapter Questionnaire Response – TI Sweden

Recent developments: The government set up a commission in 2009 to revise the legislation relating to corruption. It submitted its report in 2010 and new legislation is expected to be adopted and to take effect in 2011. The TI expert notes, however, that the commission has only partly addressed the inadequacies that currently exist in Sweden's legal framework on foreign bribery.

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. Criminalise trading in influence. Abolish the prerequisite of dual criminality. Introduce an effective, specific law on the protection of whistle-blowers.

SWITZERLAND

ACTIVE ENFORCEMENT: At least 35 cases. Share of world exports is 1.6 per cent.

Foreign bribery cases or investigations: Of the 35 known cases, eleven have been concluded. This includes eight cases related to the UN Oil-for-Food Programme. The number of investigations is not available. The 35 cases are at the federal level, and all three concluded cases not related to the Oil-for-Food Programme involved criminal sanctions against individuals rendered in cantonal courts, with one concluded in 2001, one in 2009 and the most recent in 2010. Furthermore, according to a 2007 statement by the Swiss attorney general, eight Swiss companies have agreed to pay penalties following charges relating to the Oil-for-Food Programme.³³⁷ According to press reports, the Swiss Attorney General's Office is carrying out an investigation into allegations of bribery, money laundering and false accounting by **Alstom Prom**, subsidiary of the French power and transport systems multinational **Alstom SA**.³³⁸ Swiss authorities arrested a former private bank executive as part of a series of raids in 2008 and in May 2010 he was formally charged with laundering and managing corruption money for a 'French industrial group, a reference to Alstom'.³³⁹

In other jurisdictions, in 2010 the Swiss company **Swiss Timing** was the target of allegations by India's Central Bureau for Investigation (CBI) relating to procurement of equipment by the Organising Committee for the 2010 Commonwealth Games. The CBI claimed that the secretary-general and one other member of the Organising Committee had inflated costs in the procurement of timers and scoring equipment from the company, allegedly costing the government nearly US \$24 million. In February 2011 the CBI charged the two Committee members with financial irregularities related to the bidding process.³⁴⁰ In Germany, two former Credit Suisse investment bankers, partners in the company **Value Partners Associates AG**, were arrested in March 2010 on allegations that they had bribed the head of the Leipzig Waterworks with €2.2 million (US \$3.1 million) in relation to the purchase of collateral debt obligations from UBS. This alleged bribe reportedly resulted in a gain of €20.5 million (US \$29.5 million) for Value Partners Associates but a loss of nearly €300 million (US \$433 million) for the city of Leipzig. In January 2011, the Leipzig official and one of the former bankers were each sentenced to almost five years in prison, while the second banker was sentenced to three years and five months.³⁴¹ In August 2010 the Swiss tobacco leaf merchant **Alliance One International AG (AOIAG)** pleaded guilty in a US District Court to a three-count criminal information charging it with conspiring to violate the FCPA, violations of the anti-bribery provisions of the FCPA and violations of the books and records provisions of the FCPA.³⁴² The company, which was formed in 2005 as the result of a merger between **Dimon Incorporated** and **Standard Commercial Corporation**, was charged in relation to alleged kickbacks that the companies paid via an agent to Thai government officials from 2002 to 2004 to secure contracts with the state agency Thailand Tobacco Monopoly for the sale of tobacco leaf.³⁴³ It was reported in October 2010

³³⁷ American Lawyer.com, 24 June 2008, "Following the Money",

<http://www.law.com/jsp/tal/PubArticleTAL.jsp?id=1202422506261&tslreturn=1&thbxlogin=1>

³³⁸ Bloomberg, 9 January 2011, "Alstom Executives Challenge U.K. Arrest, Searches in Bribery Investigation",

<http://www.bloomberg.com/news/2011-01-10/alstom-executives-challenge-u-k-arrest-searches-in-bribery-investigation.html>

³³⁹ The Local, 11 April 2011, Swiss banker on trial over Alstom slush fund, http://www.thelocal.ch/money/20110411_119.html

³⁴⁰ BBC, 23 February 2011, "Indian Commonwealth Games bosses are arrested",

<http://www.bbc.co.uk/news/world-south-asia-12558443>

³⁴¹ Sächsische Zeitung, 19 March 2010, "Neue Festnahmen im Wasserwerke-Sumpf",

<http://www.sz-online.de/nachrichten/artikel.asp?id=2416440>; and Handelsblatt, 26 January 2011, "UBS in Finanzskandal verstrickt",

<http://www.handelsblatt.com/unternehmen/banken/ubs-in-finanzskandal-verstrickt/3741278.html>; and Mephisto 97.6 Radio, 19 January 2011, "Heininger, Blatz und Senf kommen in Haft",

<http://mephisto976.uni-leipzig.de/themen/beitrag/artikel/heininger-blatz-und-senf-kommen-in-haft.html>

³⁴² US Department of Justice, Press Release, 6 August 2010, <http://www.justice.gov/opa/pr/2010/August/10-crm-903.html>

³⁴³ Ibid.

that the American-Swiss electrical equipment manufacturing company **Maxwell** was expecting to have to pay US \$6.35 million in an FCPA case alleging bribery by a Swiss subsidiary in China.³⁴⁴ In November 2010, the federal government of Mexico reportedly launched a criminal investigation into alleged corrupt practices by the pharmaceutical company **Novartis**, in connection with the awarding of a US \$6.5 million contract for the *Instituto Mexicano del Seguro Social* (IMSS, Mexican Social Security Institute).³⁴⁵ The Swedish-Swiss company **ABB Inc.** was also involved in probes in Mexico and the US in 2010 (see reports on Mexico and the US). The Swiss company **Panalpina Inc.** was also involved in settlements in the US and Nigeria (see report on the US and Section VI on Nigeria).

Domestic bribery by foreign companies: No cases of domestic bribery by foreign companies are known.

Inadequacies in legal framework: A key inadequacy is the limitation of fines to CHF 5 million (US \$5.3 million) for legal entities, which is considered by the TI expert as too low in view of the profits that often result from foreign bribery and in view of the fines recently imposed in proceedings in other countries.

Inadequacies in enforcement system: Inadequacies include insufficient resources devoted to investigating and prosecuting foreign bribery, a decentralised enforcement system and inadequate whistle-blower protection.

Legal framework and enforcement system regarding subsidiaries, agents and other intermediaries: A parent company can be held liable based on its responsibility to maintain adequate procedures to prevent bribery by its controlled subsidiaries as well as by its agents or intermediaries. Direct involvement by the principal or parent company is not necessary. However, company liability may be restricted by jurisdictional requirements for companies. According to some Swiss prosecutors, they have jurisdiction over a company only if they also have jurisdiction over the individual who committed the act of corruption. According to other prosecutors, jurisdiction over the author of the act of corruption is not required because the liability of the Swiss parent company is based on its responsibility to maintain adequate procedures in the activities it controls. The courts have not yet had the opportunity to settle this point.

Recent developments: The new Article 22a of the Federal Personnel Act, which entered into force on 1 January 2011, provides the basis for improvements for whistle-blowers in the public sector. This new law will regulate the duty to report, the right to report and the protection of federal employees reporting in good faith on crimes or other irregularities of which they have become aware in the course of official work activities. A new regulation for whistle-blowers in the private sector is in preparation. On 1 January 2011, the new Federal Code of Criminal Procedure entered into force, replacing the 26 cantonal codes for criminal procedures; this should help to unify and streamline proceedings. A new law adopted in October 2010, with entry into force in February 2011, considerably improves the asset recovery framework in Switzerland. The new law permits the freezing and ultimate confiscation of funds presumed to have been acquired illegally, should their beneficial owner's wealth have substantially increased in relation to a public office in a country known to have a high level of corruption. The law allows for the return of the funds to benefit the population of the country where the beneficial owner resides, rather than to the person or individuals closest to him/her.

Recommendations: Improve the availability of statistics on foreign corruption by providing information on investigations initiated by prosecutors; on the way police investigations have been completed (whether resulting in prosecution or being dropped); and on concluded cases such as information on court decisions. Improve the resources for prosecuting authorities. Develop a co-ordinated national strategy for combating corruption, involving the federal and cantonal governments and the administrative and judicial authorities. Pass the bill on whistle-blower protection in the private sector.

³⁴⁴ Swissinfo.ch, 21 November 2010, "United States market proves a legal minefield", http://www.swissinfo.ch/eng/Specials/Rebuilding_the_financial_sector/News,_results,_regulations/United_States_market_proves_a_legal_minefield.html?cid=28833538

³⁴⁵ Bloomberg Business Week, 12 November 2010, "Mexico pharma scandal sparks probe, suspensions", <http://www.businessweek.com/ap/financialnews/D9JES2180.htm>

TURKEY

LITTLE OR NO ENFORCEMENT: No cases and five investigations. Share of world exports is 0.9 per cent.

Foreign bribery cases or investigations: No cases and five investigations, one of which was initiated in 2010. The board of directors at **Turkcell** reportedly confirmed in April 2011 that it was internally investigating allegations of bribery in Kazakhstan by its subsidiary **KCell** and the subsidiary's supplier, Swedish company **Ericsson**. KCell is 51 per cent controlled by the Dutch company **Fintur Holdings BV**, which is 41.45% owned by Turkcell, and 58.55 per cent owned by the Swedish company **TeliaSonera**. The remaining 49 per cent stake in KCell is held by **KazakhTelecom**.³⁴⁶

Domestic bribery by foreign companies: The Ankara Prosecutors Office reportedly received a mutual legal assistance request from the US in 2010 concerning allegations that the Turkish subsidiary of the US company **3M** had engaged in bribery to secure sales of goods and services to Turkish public institutions.³⁴⁷ The parent company reportedly initiated an internal investigation.³⁴⁸ In December 2010, the German media reported allegations that German state-owned **HSH Nordbank** made payments to Turkish judges in 2009 to influence an action for damages filed against it by a Turkish company. According to reports, the bribes allegedly were paid via the German security company **Prevent**.³⁴⁹ These allegations reportedly resulted from an audit carried out by KPMG.³⁵⁰

German automotive company **Daimler AG** settled a lawsuit in the US in April 2010 for alleged bribery of public officials in a number of countries, including Turkey (see report on the US).³⁵¹ In early 2011 it was reported that the Prime Ministry Inspection Board had opened an investigation into allegations that the Daimler subsidiary in Turkey, **Mercedes Benz Turk**, had paid bribes to public transport officials in the city of Izmir and to the police in Ankara to secure the purchase of vehicles between 1998 and 2008³⁵², and that legal proceedings in connection with the case had been initiated in Izmir.³⁵³ **Siemens AG** and its Turkish subsidiary **Siemens Sanayi ve Ticaret A.S.**, which both paid fines in the US in 2008 for FCPA violations, are the subject of another investigation opened in early 2011 by the Turkish Prime Ministry Inspection Board. The Under-Secretariat of Foreign Trade has also reportedly initiated an investigation into the matter, which has turned into a prosecution.³⁵⁴

Inadequacies in legal framework: There are some inadequacies in the framework, including a lack of criminal liability of legal persons, a complex framework for the incrimination of bribery, and an overly narrow definition of bribery. As noted in the GRECO Third Evaluation Round on Turkey, in 2009 new corruption-related provisions were introduced in the Turkish Penal Code, which allow for the special defence of "effective regret."

Inadequacies in enforcement system: There are some inadequacies in the enforcement system, including insufficient resources and inadequate sanctions.

Legal framework and enforcement system regarding subsidiaries, agents and other intermediaries: There have been no cases or investigations in which a parent company has been held responsible for bribery committed by a subsidiary or intermediary. In order for a parent company to be held liable, there would need to be evidence of direct involvement of the parent company.

Recent developments: No significant recent developments.

³⁴⁶ Cellular-news.com, 15 April 2011, "Turkcell to Investigate Bribery Allegations at Kazakh Subsidiary" http://www.cellular-news.com/story/48754.php?source=rss&utm_source=feedburner&utm_medium=feed&utm_campaign=Feed:+cellular-news/LmiX+%28cellular-news%29

³⁴⁷ Hurriyet Daily News, 20 October 2010, "3M launches investigation into alleged bribe by Turkish branch", <http://www.hurriyetcailynews.com/n.php?n=3m-launches-investigation-on-bribe-by-its-turkish-branch-2010-10-20>

³⁴⁸ Ibid.

³⁴⁹ Hurriyet Daily News, 6 December 2010, "German bank bribed Turkish judges, media says", <http://www.hurriyetcailynews.com/n.php?n=german-bank-bribed-turkish-judges-media-says-2010-12-06>

³⁵⁰ Ibid.

³⁵¹ The Times, 24 March 2010, "Daimler agrees to \$185m bribe charge settlement", http://business.timesonline.co.uk/tol/business/industry_sectors/engineering/article7073450.ece

³⁵² Haber Program, 17 January 2011, <http://www.haberprogram.com/h/2011/01/17/107889-hukumetten-kuresel-rusvet-operasyonu.php> and Radikal, 25 March 2010, <http://www.radikal.com.tr/Radikal.aspx?aType=RadikalDetayV3&ArticleID=987641&CategoryID=80>

³⁵³ Ibid.

³⁵⁴ Ibid.

Recommendations: Public prosecutors should collect information about allegations of foreign bribery, as recommended by the OECD Working Group on Bribery. Provide training to law enforcement officials and relevant government officials. Introduce clear definitions of gifts and souvenirs, as well as distinctions between bribes and gifts. Adopt legislation to broaden the scope of external company audits.

UNITED KINGDOM

ACTIVE ENFORCEMENT: 17 cases and 26 investigations. Share of world exports is 3.5 per cent.

Foreign bribery cases or investigations: There are currently two pending cases and 26 investigations in the UK. Of the two pending cases, one is a major criminal case in connection with the UN Oil-for-Food Programme and the second is Baker et al., which is still on-going from last year. In October 2010, a major criminal case was concluded against Julian Messent, the director of the London-based insurance business **PWS International Ltd.** Messent pleaded guilty to two counts of making corrupt payments of almost US \$2 million from 1999 to 2002, contrary to the Prevention of Corruption Act 1906. These payments were reportedly made to Costa Rican public officials, their wives and associated companies as inducements for assisting in the appointment or retention of PWS International as reinsurance broker on behalf of the Costa Rican State insurance company INS, which was the insurer for another state institution, ICE.³⁵⁵ Messent was sentenced to 21 months' imprisonment and was also ordered to pay £100,000 (US \$160,000) in compensation to the Republic of Costa Rica within 28 days or serve an additional 12 months' imprisonment.³⁵⁶

Several recent cases in the UK have stemmed from misconduct in relation to the UN Oil-for-Food Programme in Iraq. In December 2010, the **Weir Group** was fined £3 million (US \$4.9 million) by a Glasgow court based on two charges of paying over £3 million (US \$4.9 million) in kickbacks to win contracts to supply £35 million (US \$57 million) worth of pumps in Iraq under the UN Oil-for-Food Programme. (It had already agreed to repay over £13 million (US \$21 million) in profits from the contracts).³⁵⁷ In a second case, two former executives and a sales manager of engineering firm **Mabey and Johnson**, were found to have made illegal payments of over €420,000 (US \$600,000) in Iraq through banks in Jordan in 2001 and 2002 in breach of UN sanctions, in order to secure an inflated contract to supply 13 steel bridges to the Iraqi government. The illegal payments amounted to ten per cent of the total contract value.³⁵⁸ One executive was sentenced to 21 months' imprisonment, disqualified from acting as a company director for five years and ordered to pay prosecution costs of £75,000 (US \$122,000). Another was sentenced to eight months' imprisonment, disqualified from acting as a company director for two years and ordered to pay prosecution costs of £125,000 (US \$204,000), while the last individual was sentenced to eight months' imprisonment and suspended for two years.³⁵⁹

³⁵⁵ SFO Press Release, 26 October 2010, <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2010/insurance-broker-jailed-for-bribing-costa-rican-officials.aspx>

³⁵⁶ Ibid.

³⁵⁷ The Guardian, 15 December 2010, Weir Group fined further £3m for kickbacks to Saddam's regime <http://www.guardian.co.uk/business/2010/dec/15/weir-group-fined-3-million-bribes-saddam-hussein-iraq>

³⁵⁸ SFO Press Release, 23 February 2011, <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>

³⁵⁹ Ibid.

SENTENCING BAE SYSTEMS

The UK defence company **BAE Systems (BAE)** was sentenced in December 2010 in the Crown Court in connection with a £28 million (US \$45 million) defence contract awarded to the company in 1999 for the supply of an air traffic control system to the government of Tanzania.³⁶⁰ The company was charged with aiding and abetting contravention of section 221(5) of the Companies Act 1985 for its failure to keep adequate accounting records in relation to the defence contract. The Crown Court imposed a fine of £500,000 (US \$815,000) and also ordered BAE to pay £225,000 (US \$368,000) in costs to the UK Serious Fraud Office (SFO).³⁶¹ This outcome followed a settlement between the SFO and BAE regarding the Tanzania contract, in which BAE agreed to make an ex gratia payment for the benefit of the people of Tanzania of £30 million (US \$49 million) minus any fine imposed by the Crown Court. The SFO had commenced its investigation into BAE in 2004, prompted by allegations concerning a major defence contract with Saudi Arabia, and later expanded its investigations to include contracts between BAE and a number of other countries, including the Czech Republic, Romania and South Africa.³⁶² The SFO investigation relating to Saudi Arabia was discontinued in December 2006 on the stated grounds of national security. By settling with BAE, the SFO agreed to terminate all investigations into BAE, providing—to the surprise of sentencing judge Justice Bean—a “blanket indemnity” to BAE not to prosecute or bring a civil action against BAE for any conduct or offences committed prior to February 2010, whether disclosed or not, and making no allegations against BAE or its officers of any corruption offences.³⁶³ The SFO’s published background information on the case did, however, state that “BAE’s practice was to engage advisers to help with its marketing. These advisers were either classified by BAE as ‘overt’ (i.e. they operated openly as BAE’s in-country representatives), or ‘covert’. The latter operated in circumstances where there was a need for confidentiality. In order to maximise confidentiality with regard to its use of covert advisers and the making of payments to them, BAE set up Red Diamond Trading Company, incorporated in the British Virgin Islands.”³⁶⁴ The SFO also noted that between January 2000 and December 2005 around US \$12.4 million was paid to two companies of a local Tanzanian businessman and that BAE had “accepted that there was a high probability that part of this sum would be used to favour it in the contract negotiations”.

In a civil settlement in February 2011, **MW Kellogg (MWKL)** was ordered by a UK High Court to pay just over £7 million (US \$11 million). The case arose from the involvement of MWKL and its parent company **Kellogg Brown and Root LLC (KBR)** in a joint venture – **TSKJ** – in the awarding of contracts to build a liquefied natural gas project in Nigeria. The contracts were made with a company partly owned by MWKL, and according to the SFO some were obtained through bribe payments.³⁶⁵ The SFO reported that MWKL was due to share dividends payable from profits and revenues generated by these contracts. As a result, MWKL reported concerns to the SFO under the “self referral” scheme and co-operated with the subsequent investigation, which resulted in a settlement and the High Court’s Order under Part 5 of the Proceeds of Crime Act 2002.³⁶⁶ In that connection, the SFO, working with the US Department of Justice, recognised that MWKL had taken no part in the criminal activity that generated the funds and was not a willing participant in the corruption, but had been used by the parent company. The US parent company has been subject to criminal and civil investigations and sanctions in the US and Nigeria (see report on the US and Section VI on Nigeria).³⁶⁷

Domestic bribery cases or investigations: The premier of the UK Overseas Territory Turks and Caicos resigned following allegations that he had received favours, gifts and loans from Czech and Slovak companies. The UK Parliament and Home Office carried out inquiries into the allegations and the UK assumed direct rule of the territory. The UK government also set up a Special Prosecuting Team in the Turks and Caicos. In early 2011, it was reported that the first of more than a dozen cases was expected to be prosecuted in the course of the year. A team of civil

³⁶⁰ SFO, Press Release, 21 December 2010,

<http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2010/bae-fined-in-tanzania-defence-contract-case.aspx>

³⁶¹ Ibid.

³⁶² BBC News, 17 November 2004, “BAE included in SFO investigation” <http://news.bbc.co.uk/2/hi/business/4020905.stm> ;

The Sunday Times, 6 February 2010, “Six-year BAE investigation ends with minor accountancy charges”

http://business.timesonline.co.uk/tol/business/industry_sectors/industrials/article7016732.ece

³⁶³ BBC News, 20 December 2010, BAE Systems faces fine for Tanzania accounting offence,

<http://www.bbc.co.uk/news/business-12036628>

³⁶⁴ SFO Website, 21 December 2010,

<http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2010/bae-fined-in-tanzania-defence-contract-case.aspx>

³⁶⁵ SFO Press Release, 16 February 2011, <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2011/mw-kellogg-ltd-to-pay-%C2%A37-million-in-sfo-high-court-action.aspx>

³⁶⁶ Ibid.

³⁶⁷ Ibid.

lawyers is reportedly seeking to recover unpaid fees and government assets that were allegedly stolen or given away illegally, including large amounts of Crown land.³⁶⁸ The lead prosecutor has reportedly said that the investigations have led to inquiries in five or six other countries, including the US, and cover political activity over the last 10 years.³⁶⁹ An investigation is still on-going in the Slovak Republic (see report on the Slovak Republic).³⁷⁰

Inadequacies in legal framework: A new Bribery Act, which received Royal Assent on 8 April 2010, will enter into force on 1 July 2011. It will provide a greatly improved legal framework for foreign bribery prosecutions and make the UK fully compliant with the OECD Anti-Bribery Convention. However, TI UK is concerned that parts of the 'Guidance' to companies on procedures to prevent bribery (in relation to Section 9 of the Act), which was published by the Government on 30 March 2011, undermine key features of the Act as passed into law by Parliament. Although the Guidance is non-statutory and does not modify the provisions of the Act, UK courts will have to take account of its contents. Examples of loopholes that could be exploited by unscrupulous companies are as follows:

- A non-UK company listed on the London Stock Exchange (LSE) is not automatically covered by the Bribery Act. This means that a) it could use capital raised in the UK to pay bribes overseas, and b) a UK-based company that loses a contract to a non-UK company listed on the LSE, which paid a bribe to win the contract, may have no recourse in the UK courts. [Guidance para 36]
- A non-UK parent company A with a large UK subsidiary B could pay bribes through subsidiary C based in a third country. If UK subsidiary B did not directly benefit from the bribes, the non-UK parent company A would not be caught by the Bribery Act – even if its other subsidiary C was competing unfairly with honest UK companies. [Guidance paras 36 & 42]
- A UK company would be able to outsource bribery by building a chain of subcontractors sufficiently long to distance itself from bribe-paying. [Guidance para 39]

TI-UK recommends that after the Bribery Act has come into force in July, the Government's Guidance should be revised to remove these weaknesses. This issue should be addressed in the Phase 3 review of the UK by the OECD Working Group on Bribery later this year.

There are also some jurisdictional issues, highlighted in the UK Phase 1ter Report of the OECD Working Group on Bribery (WGB),³⁷¹ that are of concern. The UK Overseas Territories (OTs) Anguilla, Turks and Caicos, Bermuda, Gibraltar and Monserrat are not compliant with the OECD Convention. The UK Government has taken the position that it cannot impose legislation directly on OTs. However, it would be desirable for the Government to agree with these OTs an urgent time-frame for their compliance, because inaction could limit the Bribery Act's effectiveness. Another deficiency, also highlighted by the WGB, is that the Bribery Act does not provide the UK with jurisdiction to prosecute legal persons incorporated in the Crown Dependencies (CDs) and OTs. It confers nationality jurisdiction to prosecute natural persons from the CDs and OTs, but not with respect to legal persons incorporated there. The Section 7 'failure to prevent bribery' offence would apply to a company incorporated in the CDs and OTs only if the company carries a business, or a part of a business, in the UK. Companies incorporated in CDs and the Cayman Islands are subject to prosecution by the authorities in those Dependencies. However, companies incorporated in other OTs which do not carry on a business in the UK could be used to commit foreign bribery. This is a significant loophole since some OTs are major financial centres where many companies are incorporated and/or operate. This underscores the urgency of encouraging the remaining OTs to become fully compliant with the Convention so that it can be extended to them.

Inadequacies in enforcement system: The issues of resources and the institutional arrangements for the enforcement of the Bribery Act are of increasing concern to TI UK. The budget of the Serious Fraud Office (SFO), which currently leads the UK's enforcement efforts, has already been reduced substantially. It is reported that the SFO is to be disbanded, with its investigative function merged with a new National Crime Agency (NCA) (expected to be set up in 2013) and its prosecutorial function subsumed into the Crown Prosecution Service.³⁷² Since the NCA (into which the Serious Organised Crime Agency will be subsumed) is expected to have a mandate to focus chiefly on anti-terrorism and organised crime, there is a danger that the prosecution of bribery will be given a much lower priority. The separation of the investigatory and prosecutorial functions may also have an adverse impact on law enforcement

³⁶⁸ FP Turks & Caicos, 12 March 2011, "UK to Pay for Criminal Investigation. Police crackdown", http://www.fptci.com/index.php?option=com_content&view=article&id=2313:uk-to-pay-for-criminal-investigation-police-crackdown&catid=18:local&Itemid=26

³⁶⁹ FP Turks & Caicos, 29 March 2011, "SIPT Makes Arrest on Grand Turk", http://tcfreepress.org/index.php?option=com_content&view=article&id=2360:sipt-makes-arrest-on-grand-turk&catid=18:local&Itemid=26

³⁷⁰ Website of the Turks & Caicos Islands Commission of Inquiry <http://www.tci-inquiry.org/>

³⁷¹ OECD Working Group on Bribery, Phase 1 Ter Report on the UK, December 2010, <http://www.oecd.org/dataoecd/58/43/46883138.pdf>

³⁷² Alex Spence, The Times 21 February 2011, 'Elite force won't have time to chase fraudsters, lawyers fear', <http://www.thetimes.co.uk/tto/business/industries/banking/article2920285.ece>

against bribery. The Home Office has stated that "No decisions have been taken" on institutional restructuring.³⁷³ Unfortunately, uncertainty about the future has led to the departure from the SFO of several senior prosecutors in recent months.

Legal framework and enforcement system regarding subsidiaries, agents and other intermediaries: There have been no cases or investigations against parent companies in the UK for bribery committed by their subsidiaries, agents, or other intermediaries abroad. The Working Group on Bribery's Phase 2bis report (October 2008) pointed out that under UK law, it may not be a crime for a person to use a non-UK national as an intermediary to bribe a foreign public official if the act of bribery takes place outside the UK. This is because the UK has implemented bribery through intermediaries under Article 1 of the OECD Convention via the doctrine of secondary liability. Under this doctrine, when the act of bribery takes place outside UK territory, the intermediary has not committed a crime under UK law since he/she is not a UK national. It follows that the person who used the intermediary cannot be secondarily liable for aiding or encouraging the commission of a crime. The WGB concluded that this was a significant shortcoming in the current UK law. It is widely accepted that the use of foreign intermediaries is a common *modus operandi* for companies that bribe foreign public officials. The WGB's Phase 1ter report (December 2010) does not make reference to this issue and it is therefore assumed that the 2010 Bribery Act has rectified the previous deficiency in UK bribery law.

Recent developments: The new Bribery Act, which received Royal Assent on 8 April 2010 and will come into force on 1 July 2011, is a major development (see legal framework section above).

Recommendations: Firstly, after the Bribery Act has come into force, the Government's Guidance should be revised to remove the weaknesses identified above. The Working Group on Bribery's Phase 3 review of the UK should address this issue. Secondly, adequate human and financial resources should be allocated for the Act's effective enforcement. Thirdly, any changes to the institutional arrangements for the investigation and prosecution of foreign bribery should not reduce resources for enforcement, downgrade the priority given to combating foreign bribery, or fragment responsibility for investigations and prosecutions among different agencies. There should be public consultation on the government's proposals for re-organising the machinery of law enforcement against bribery.

UNITED STATES

ACTIVE ENFORCEMENT: 227 cases and 106 investigations. Share of world exports is 9.8 per cent.

Foreign bribery cases or investigations: The Department of Justice (DOJ) and Securities and Exchange Commission (SEC) intensified their prosecution of FCPA cases in 2010, including a significant number of cases against foreign entities and a record number of fines, penalties and disgorgements. The trends in the cases include expanding jurisdictional reach, increased potential for parent company liability and greater focus on private equity. The DOJ and SEC initiated 56 cases (up from 51 the previous year) and charged a record 21 corporations, ten of which were foreign companies. Twelve individuals pleaded guilty, and 40 more were awaiting trial by the year's end. From January 2001 to the end of 2010, the DOJ and SEC had brought 227 cases and concluded 181 of them. They cumulatively had reached 106 settlements with corporations and individuals as of 2010. In addition, 106 publicly disclosed investigations were under way, with 28 begun in 2010 and some dating back a number of years.

In terms of expanding jurisdiction, one of the examples related to the French company **Technip**, a partner of one of the joint venture partners of the **TSKJ** consortium, which allegedly used agents and intermediaries to bribe Nigerian government officials over a ten-year period in order to win construction contracts in Nigeria worth more than US \$6 billion in relation to the construction and expansion of the Bonny Island liquefied natural gas facility.³⁷⁴ US authorities exerted jurisdiction over Technip based on the company's trading of American Depositary Receipts on the New York Stock Exchange between 2001 and 2007, as well as its use of New York banks to route payments. The SEC brought books and records charges against Technip based on consortium group records that Technip maintained, which documented how the company had paid the bribes (characterised as "consulting" and "service" fees) to Nigerian officials through UK and Japanese intermediaries. Under the settlement with the DOJ

³⁷³ Ibid.

³⁷⁴ Wall Street Journal, 6 December 2010, "Former KBR Consultant Pleads Guilty to Conspiring to Violate the FCPA" <http://blogs.wsj.com/corruption-currents/2010/12/06/former-kbr-consultant-pleads-guilty-to-conspiring-to-violate-fcpa/>

and SEC, Technip agreed to pay US \$338 million in criminal penalties and disgorgement of profits. The consortium partners collectively paid fines and disgorgement of over US\$ 1.5 billion. (See Section VI on Nigeria). The Technip case also signals the continuing trend in international co-operation. US authorities recognized the assistance they received from France, the UK, Switzerland, Italy, Africa and Asia.

Another example of assertive US jurisdiction came in the case of **Panalpina World Transport Holdings, Inc.**, a Swiss freight forwarding company, and its US subsidiary involving allegations of payments of over US \$49 million to officials in foreign countries, US \$27 million of which was allegedly made by Panalpina subsidiaries in Angola, Azerbaijan, Brazil, Kazakhstan, Nigeria, Russia and Turkmenistan. Panalpina entered into settlement agreements with the DOJ and SEC in which it agreed to pay over US \$11 million in disgorgement to the SEC and a criminal fine of US \$70.6 million to the DOJ.³⁷⁵ The SEC settlement marks a first for FCPA charges against a corporation that is neither an "issuer" of securities in the US nor a subsidiary of an issuer. Panalpina is an independent third party that acted as an agent for US issuers.

The US issuers involved included **Royal Dutch Shell Ltd.**, **Tidewater Inc.** (workboat fleet and compression services), **Transocean Inc.** (offshore drilling), **Pride International** (offshore drilling) and **Noble Corp.** (offshore drilling) (see Section VI on Nigeria). These settlements represented the first large-scale industry sweep resulting in multiple concurrent DOJ and SEC settlements.³⁷⁶ The settlements also mark the first time the SEC and the DOJ have charged companies with FCPA violations for their authorisation of reimbursements to contractors that subsequently reimbursed another subcontractor for improper payments.³⁷⁷

Another French company, **Alcatel Lucent SA**, and its subsidiaries in Costa Rica, France and Switzerland entered into a settlement in 2010 over charges of improper payments through third-party consultants around the world in connection with telecommunications contract awards.³⁷⁸ The parent agreed to pay a US \$92 million criminal fine and entered into a three-year Deferred Prosecution Agreement with the DOJ. Alcatel-Lucent S.A. also separately settled with the SEC, agreeing to pay US \$45 million in disgorgement, a permanent injunction, and entry into judgment against it for alleged violations of the FCPA's books and records and internal controls provisions.³⁷⁹ The Director of the SEC enforcement division noted, "Alcatel and its subsidiaries failed to detect or investigate numerous red flags suggesting that their employees were directing sham consultants to provide gifts and payments to foreign government officials to illegally win business."³⁸⁰

In May 2011, Costa Rica's state-owned telecommunications authority, *Instituto Costarricense de Electricidad* (ICE) filed a petition in a Florida federal court in relation to the Alcatel-Lucent settlement asking it to reject the company's plea agreement and proposed Deferred Prosecution Agreement. The ICE's 2001 mobile phone contract with Alcatel had allegedly been secured by bribes. The ICE reportedly maintains that it is entitled to the benefit of the federal statutes that provide rights to victims and reportedly argued that the settlement does not sanction individuals from Alcatel-Lucent; that illegal proceeds are distributed to the US authorities; that the settlement waives the routine pre-sentence investigation and report; and that it was never contacted by the DOJ or SEC prior to the announcement of the settlement.³⁸¹

The SEC is also increasing its attention to private equity companies and their holdings. According to press reports, it is investigating a disclosure made by German insurance company **Allianz SE** (listed on the NYSE until 2009) about alleged bribery by **manroland AG**, a German printing press company majority-held since 2006 by Allianz's private equity unit **Allianz Capital Partners**.³⁸² Allianz disclosed to US and German authorities the results of an internal investigation revealing irregularities in sales commission payments made from 2002 through 2007 through a bank account held by manroland's Swiss subsidiary **Votra SA**.³⁸³ The SEC is also reportedly investigating allegations about companies owned by a number of other private equity firms. These include **Bain Capital**, owner

³⁷⁵ Bloomberg, 5 November 2010, "Shell Bribes Among 'Culture of Corruption'; Panalpina Admits", <http://www.businessweek.com/news/2010-11-05/shell-bribes-among-culture-of-corruption-panalpina-admits.html>

³⁷⁶ Ibid.

³⁷⁷ Steptoe & Johnson, 29 November 2010, "Resolution of Panalpina and Related Cases Yields Significant Penalties, New Enforcement Theories," <http://www.stepto.com/publications-newsletter-27.html>

³⁷⁸ Wall Street Journal, 28 December 2010, "Alcatel-Lucent settles US bribery charges", <http://online.wsj.com/article/SB10001424052970203731004576046191673517686.html> ;

International Business Times, 31 December 2010, "Alcatel-Lucent, subsidiaries settle corruption charges for \$92 million" <http://uk.ibtimes.com/articles/96431/20101231/alcatel-lucent-subsidiaries-settle-corruption-charges-with-DOJ-for-92-mln.htm>

³⁷⁹ International Business Times, 31 December 2010, "Alcatel-Lucent, subsidiaries settle corruption charges with DOJ for \$92 mln", <http://uk.ibtimes.com/articles/96431/20101231/alcatel-lucent-subsidiaries-settle-corruption-charges-with-DOJ-for-92-mln.htm>

³⁸⁰ SEC News Digest, Issue 2010-243, 27 December 2010

³⁸¹ FCPA Blog, 5 May 2011, "Costa Rican 'Victim' Objects To Alcatel-Lucent Settlement" <http://www.fcpablog.com/blog/2011/5/5/costa-rican-victim-objects-to-alcatel-lucent-settlement.html>

³⁸² Dow Jones, Newswires, 23 December 2010, "US probing Allianz for possible bribery", <http://www.efinancialnews.com/story/2010-12-23/allianz-bribery-investigation>

³⁸³ Ibid.

of **Sensata Technologies Holding NV**, which has reported that it is investigating possible bribery in China.³⁸⁴ Another company, **Allison Transmission**, owned by the **Carlyle Group** and **Onex Corp**, is reportedly being sued by a former employee alleging he lost his job after reporting bribery in China.³⁸⁵ The SEC has never before charged a private equity firm based on the conduct of a foreign private company in its portfolio.³⁸⁶

Finally, the SEC is also reportedly probing whether banks and private equity firms violated foreign bribery laws in their dealings with sovereign wealth funds.³⁸⁷ Under the Foreign Corrupt Practices Act, sovereign wealth funds are considered government-owned entities, and therefore their employees are government officials. Companies including **Bank of America Corp.**, **Morgan Stanley** and **Citigroup Inc.** reportedly received letters of inquiry from the SEC.³⁸⁸ According to commentators, the genesis of the SEC's broad look into the industry may have come from disclosures in 2009 by Morgan Stanley and 2010 by **CB Richard Ellis Group Inc.** Both reportedly involved allegations about employees in China's real estate investment market, in Morgan Stanley's case an employee in a real estate subsidiary in China.³⁸⁹

Along with the Alcatel-Lucent case, two other recent settlements highlight a parent company's responsibility for its subsidiaries' actions. In March 2011, the world's biggest computer services provider, **International Business Machines Corp. (IBM)**, agreed to pay US \$10 million to the SEC to settle charges that its subsidiaries had paid bribes to government officials in China and South Korea from 1998 to 2009 in order to receive about US \$54 million in government contracts. The payments were allegedly made via employees of three IBM subsidiaries, including **LG IBM PC Co.**, a joint venture between the company and **LG Electronics Inc.**³⁹⁰ The settlement demonstrates how FCPA liability for the conduct of employees in foreign subsidiaries and majority-owned joint ventures can attach to the parent company even if it has no knowledge or reason to know of corrupt activity.³⁹¹

Kraft Foods Inc. disclosed in a regulatory filing in February 2011 an SEC investigation for possible violations of the FCPA.³⁹² The SEC reportedly requested information about relations with government officials in India and the company **Cadbury Plc**, that Kraft had acquired.³⁹³ The investigation illustrates possible parent company liability for acts of a subsidiary committed prior to its acquisition.³⁹⁴

Domestic bribery by foreign companies: No new cases have been reported since the last report.

Inadequacies in legal framework: The US has a strong legal framework for criminalising foreign bribery. The OECD Working Group on Bribery recommended in its Phase 3 report that the US ensure an adequate statute of limitations for the investigation and prosecution of foreign bribery cases. According to the Phase 3 report, representatives from the DOJ stated that the five-year statute of limitations period could lead to challenges, in particular in cases in which the bribery schemes are complicated, well concealed and involving numerous jurisdictions. This has led to criminal charges being dropped in one case and transferred to other countries in another.³⁹⁵ The Phase 3 report also "recommended a US review of the exception for facilitation payments for 'routine governmental action.'" The DOJ has stated that companies should change their policies and practices to disallow these payments. During the Phase 3 evaluation, the DOJ stated that these payments may be deducted from taxes if classified as "ordinary and necessary" payments but the IRS noted that the "typically small monetary value of facilitation payments renders them a minor aspect of companies' accounts".³⁹⁶

³⁸⁴ WSJ Blogs, 20 January 2011, "Bribery is a Top Risk for PE Firms", Says Corporate Investigator, <http://blogs.wsj.com/privateequity/2011/01/20/bribery-is-top-risk-for-pe-firms-says-corporate-investigator/>

³⁸⁵ Ibid.

³⁸⁶ WSJ Blog, Corruption Currents, 22 December 2010, "US Investigating Allianz Over Payments By Portfolio Company" <http://blogs.wsj.com/corruption-currents/2010/12/22/us-investigating-allianz-over-payments-by-portfolio-company/>

³⁸⁷ Wall Street Journal, 14 January 2011, SEC Probes Banks, Buyout shops over Dealings with Sovereign Funds", <http://online.wsj.com/article/SB10001424052748704307404576080403625366100.html>

³⁸⁸ Ibid.

³⁸⁹ Law 360, 17 February 2011, "SEC Corruption Probe Prompts Scrutiny of Deals", <http://www.mayerbrown.com/litigation/article.asp?id=10465&nid=258> ; Pensions & Investments, 24 January 2011, "SEC Probe of SWFs seen as wake-up call".

³⁹⁰ Bloomberg, 18 March 2011, "IBM Agrees to Pay \$10 Million to Settle SEC Bribery Claims" <http://www.bloomberg.com/news/2011-03-18/ibm-is-said-to-pay-10-million-to-settle-sec-foreign-bribery-allegations.html>

³⁹¹ Kaye Scholer, 22 March 2011, "IBM Agrees to Settle Foreign Bribery Allegations for \$10 Million," http://www.kayescholer.com/news/client_alerts/20110322

³⁹² Wall Street Journal, 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/>

³⁹³ Ibid.

³⁹⁴ The Economic Times, 5 March 2011 "SEC Probing Possible Corrupt Act by Cadbury in India: Kraft," http://articles.economictimes.indiatimes.com/2011-03-05/news/28657201_1_cadbury-india-spokesperson-kraft-foods-second-biggest-food

³⁹⁵ OECD Working Group on Bribery, Phase 3 Evaluation of the United States, October 2010 <http://www.oecd.org/dataoecd/10/49/46213841.pdf>

³⁹⁶ Ibid.

Inadequacies in enforcement system: The US has a vigorous enforcement system, as evidenced by the number of cases and investigations. The OECD Working Group on Bribery's Phase 3 report called for more information gathering on FCPA cases, including about the affirmative defence of "reasonable and bona fide" expenses, and it suggested that guidance material reflect a broad interpretation of the "business nexus" test in the FCPA. The Phase 3 report also contained recommendations regarding Non-Prosecution Agreements and Deferred Prosecution Agreements. It was recommended that the US (1) study the deterrent effect of these agreements; and (2) make public more detailed reasons for the choice of a particular type of agreement, the choice of the agreement's terms and duration and the basis for imposing compliance monitors. The Phase 3 report further recommended that the US ensure that debarment from public contracting and arms export license denials are applied in practice as a sanction in both domestic and foreign bribery cases. The Phase 3 report also indicated that the Working Group on Bribery will follow up the detection and prosecution of violations of FCPA bribery provisions by non-issuers, which are not subject to the books and records provisions in the FCPA.

Legal framework and enforcement system regarding subsidiaries, agents and other intermediaries: The large majority of enforcement actions by the DOJ and/or SEC for FCPA violations concern the acts of foreign subsidiaries and agents. In many settlements, the corporate parent has been held liable for the acts of its subsidiaries or agents in foreign jurisdictions. Under the FCPA, all "issuers" of securities in the United States (the definition of "issuer" includes US and non-US companies) are required to maintain a system of internal controls sufficient to reasonably detect and deter foreign bribery, and to make and keep books, records, and accounts which, in reasonable detail, accurately and fairly reflect the transactions and dispositions of the assets of the issuer. While these requirements technically apply to the issuer entity only, in practice the DOJ and SEC routinely hold the issuers liable for acts of their agents and/or subsidiaries that result in improperly accounted-for transactions. The FCPA also provides for three bases for jurisdiction under its anti-bribery provisions: (a) that relating to US issuers, requiring only that some act in furtherance of an illicit payment take place using the "means and instrumentalities of [US] commerce"; (b) nationality jurisdiction, under which a US person may be held liable for improper payments, wherever made; and (c) territoriality jurisdiction, under which any person (US or foreign) may be held liable if he/she/it takes an act in furtherance of a payment within the United States.

Recent developments: Many recent FCPA enforcement actions followed disclosure by the company to authorities. Under voluntary disclosure, companies voluntarily report to authorities their internal findings, the steps they have taken to respond to misconduct and remediate possible FCPA violations and to demonstrate their overall commitment to compliance. As the OECD's Phase 3 report observes, sanctions for foreign bribery offences have become consistently more severe in recent years in the US. The report noted that an 87-month sentence was imposed on an individual in 2010 and over US \$1 billion has been recovered through disgorgement actions since 2004. In the first nine months of 2010 alone, the SEC obtained over US \$400 million in disgorgement, interest and civil penalties from thirteen companies and eight individuals.³⁹⁷ Additionally, the Dodd-Frank Wall Street Reform and Consumer Protection Act (the Dodd-Frank Act) was signed into law by the president in July 2010, significantly reforming many aspects of the regulatory regime applicable to the US financial services sector and issuers of securities more broadly. The Act contains provisions that will provide protection, and in some cases even significant rewards, to whistle-blowers who provide information to the SEC or the CFTC (Commodity Futures Trading Commission) regarding violations of securities laws that result in recoveries of over US \$1 million. The SEC will issue rules in 2011 and should balance the need for protecting whistle-blowers and respect for good corporate compliance programmes. The Dodd-Frank Act will also require companies in the oil, gas and natural resources sector to disclose more information on payments made to governments. It will further require disclosure of corporate involvement in the manufacture, mining or final-end use of certain minerals defined as "conflict minerals" or other minerals that the US Secretary of State has determined to be financing conflict in the Democratic Republic of the Congo.

Recommendations: Extend the limitation period for bringing foreign bribery cases. Provide more specific guidance on the facilitation payments exception. When reaching DPAs and NPAs, provide more detailed information on how and why these agreements and terms have been determined. TI-USA recommends that the SEC, DOJ or US Sentencing Commission (whose Federal Sentencing Guidelines Manual at Chapter 8 deals with the sentencing of organizations) clarify incentives for voluntary disclosure through guidance indicating the potential benefits and the conditions under which such benefits might be accorded.

³⁹⁷ Ibid.

VI. IMPACT ON DEVELOPING COUNTRIES: THE EXAMPLE OF NIGERIA

In developing countries, foreign bribery causes immense damage to the economy and to institutions of governance. Nigeria is a particularly interesting case in point because of the large number of foreign bribery cases and investigations in OECD Convention countries that include allegations of bribery in Nigeria. It is also interesting because Nigeria is currently one of the developing countries most active in pursuing domestic bribery by foreign companies.

Some of the recent cases and investigations by law enforcement authorities in Nigeria, Germany, the US and other countries are listed below, giving an idea of the scope of the harm done by foreign bribery in Nigeria. The majority of these cases involve companies in the oil industry.

1. CONSTRUCTION OF LIQUID GAS PLANT IN THE NIGER DELTA

Numerous cases and investigations relate to a US \$6 billion contract in Nigeria, originally dating to the mid-1990s, to construct and expand the Bonny Island liquefied gas plant in the Niger Delta.³⁹⁸ The contract was secured by the TSKJ consortium made up of **Kellogg Brown Root Inc. (KBR Inc.** of the US, a **Halliburton** subsidiary); **Technip SA** (of France), **Snamprogetti Netherlands BV** (a former unit of **ENI SpA** of Italy), and **JGC Corp.** (formerly Japanese Gasoline Corporation of Japan). TSKJ was registered in Madeira, Portugal.³⁹⁹ The allegations concern claimed payments of a total of US \$180 million in bribes to Nigerian government officials (and reportedly a political party) between 1994 and 2004 in connection with the project.⁴⁰⁰ Separate allegations reportedly relate to payments allegedly made to a political party in connection with the project by employees of the Nigerian company **Julius Berger Nigeria**, minority held by **Bilfinger Berger Nigeria**, which is wholly owned by the German construction company **Bilfinger Berger**.⁴⁰¹

Cases and investigations in the USA and other jurisdictions

In the US in September 2008, the former CEO of **Kellogg Brown & Root LLC (KBR)** pled guilty to charges relating to his participation in the Bonny Island scheme, in which he received a payment of over US \$10 million.⁴⁰² Thereafter, in 2009 - 2011, US authorities entered a series of settlements in relation to the case in which they imposed fines totalling almost US \$1.5 billion.

In February 2009, **Halliburton** and KBR paid a record US \$579 million in fines to settle civil and criminal charges brought by the US Department of Justice (DOJ) and Securities and Exchange Commission (SEC). In June 2010, the French oil and gas engineering company **Technip SA** agreed to pay US \$98 million in disgorgement and prejudgment interest to the SEC and a US \$240 million criminal penalty in a settlement with the DOJ.⁴⁰³ In July 2010, **Snamprogetti Netherlands BV** and **ENI SpA** entered into a settlement under which the two companies together will pay US \$365 million in criminal penalties and disgorgement. Both companies entered into a deferred

³⁹⁸ Bloomberg Business Week, 7 December 2010, "Nigeria in Talks With Technip, Eni and JGC Over Bribe Case", <http://www.businessweek.com/news/2010-12-07/nigeria-in-talks-with-technip-eni-and-jgc-over-bribe-case.html>

³⁹⁹ <http://allafrica.com/stories/200410190265.html>; and <http://allafrica.com/stories/200810270616.html>

⁴⁰⁰ Bloomberg Business Week, 7 December 2010, "Nigeria in Talks With Technip, Eni and JGC Over Bribe Case", <http://www.businessweek.com/news/2010-12-07/nigeria-in-talks-with-technip-eni-and-jgc-over-bribe-case.html>; Bloomberg, 6 April 2011, "JGC to Pay \$218.8 Million to Resolve Foreign Bribery Charges"

<http://www.bloomberg.com/news/2011-04-06/jgc-agrees-to-pay-218-8-million-to-resolve-u-s-claims-of-nigerian-bribes.html>

⁴⁰¹ Vanguard, 30 June 2009, "Halliburton: Julius Berger linked with \$190m bribe", <http://www.vanguardngr.com/2009/06/halliburton-julius-berger-linked-with-190m-bribe/>

⁴⁰² Plea agreement, US District Court, 3 September 2008, <http://news.lp.findlaw.com/hdocs/docs/kbr/20080903stanleyplea.pdf>; All Africa, 6 September 2010, "Halliburton Scam - Trial of Obasanjo's Aide Begins", <http://allafrica.com/stories/201009070888.html>

⁴⁰³ Bloomberg Businessweek, 28 June 2010, "Technip agrees to pay \$338 million in case" <http://www.businessweek.com/ap/financialnews/D9GKDL2G0.htm>

prosecution agreement with the DOJ, but without a compliance monitor.⁴⁰⁴ A UK manager of **Kellogg Brown & Root LLC / KBR** pleaded guilty to FCPA violations in December 2010 and was due to be sentenced in April 2011.⁴⁰⁵

In March 2011, a British solicitor and legal advisor to KBR, Jeffrey Tesler, pleaded guilty to conspiring to violate the FCPA and to one count of violating the act.⁴⁰⁶ Tesler was hired as a consultant by TSKJ to pay bribes to high-level Nigerian government officials, and about US \$132 million in consulting fees was paid to a Gibraltar corporation that he controlled.⁴⁰⁷ He admitted to using part of these fees for bribing Nigerian officials. Tesler agreed with the DOJ to pay US \$148 million in fines, and faces a maximum of five years' imprisonment for each of the two charges. He is due to be sentenced in June 2011.⁴⁰⁸ It was reported in April 2011 that **JGC Corp** had agreed to pay a US \$218.8 million criminal penalty to the DOJ and had agreed to a deferred prosecution for two years.⁴⁰⁹

In addition, in May 2009, a pension-fund shareholder lawsuit was reportedly filed in a state court in the US against executives of KBR, alleging widespread corporate malfeasance, including a reference to the case of bribery in Nigeria that was affecting the company's profits.⁴¹⁰ The shareholder was reportedly the Policemen and Firemen Retirement System of the City of Detroit.

Apart from the US, according to a 2010 quarterly report filed by **Halliburton**, civil and criminal investigations are still on-going in France, Switzerland and the UK (see report on the UK).⁴¹¹ In Italy, an investigation has reportedly been under way since 2009 in relation to allegations of foreign bribery in Nigeria involving **Snamprogetti Netherlands BV**, and a trial involving **ENI SpA** is reportedly also under way.⁴¹² **Saipem SpA**, a subsidiary of ENI, is due to stand trial in 2011 in connection with an investigation into TSKJ activities in Nigeria.⁴¹³ In a civil settlement in February 2011, **MW Kellogg (MWKL)** was ordered by a UK High Court to pay just over £7 million (US \$11 million) in connection with the case.⁴¹⁴ In Germany, an investigation by the Wiesbaden public prosecutor of the engineering and construction company **Bilfinger Berger** relating to the activities of its Nigerian subsidiary Julius Berger dating to 2006 was reportedly ended in 2008 and handed over to the Frankfurt Public Prosecutor's Central Anti-Corruption Office in 2010.⁴¹⁵ In March 2011 the Frankfurt office was reported to be examining allegations that the subsidiary had made payments to a political party in connection with the Bonny Island project.⁴¹⁶

Cases and investigations in Nigeria

The Nigerian House of Representatives conducted the first investigation of alleged bribery in connection with the Bonny Island project in 2004 and the Nigerian Senate opened a new investigation in 2009.⁴¹⁷ In November 2010, the Economic and Financial Crimes Commission (EFCC) in Nigeria arrested 23 executives, including ten employees of **Halliburton Energy Services Nigeria Limited** in Lagos, as well as one employee each from **Saipem Contracting**

404 FCPA Blog, 7 July 2010, "Snamprogetti, ENI In \$365 Million Settlement"

<http://www.fcpablog.com/blog/2010/7/7/snamprogetti-eni-in-365-million-settlement.html>

405 Reuters, 6 December 2010, "UK man pleads guilty in U.S. over KBR Nigeria bribes"

<http://www.reuters.com/article/2010/12/06/us-kbr-nigeria-idUSTRE6B55CH20101206>

406 AFP, 11 March 2011, "Lawyer pleads guilty in Nigeria bribery case" <http://www.google.com/hostednews/afp/article/ALeqM5j3tsPWuyUrRceWpQZAxtkvK8zPHw?docId=CNG.3dd45eb241c8502e6bdf77a2885cc060.aa1>

407 Ibid.

408 Ibid.

409 Bloomberg Business Week, 7 December 2010, "Nigeria in Talks With Technip, Eni and JGC Over Bribe Case", <http://www.businessweek.com/news/2010-12-07/nigeria-in-talks-with-technip-eni-and-jgc-over-bribe-case.html> ;

Bloomberg, 6 April 2011, "JGC to Pay \$218.8 Million to Resolve Foreign Bribery Charges"

<http://www.bloomberg.com/news/2011-04-06/jgc-agrees-to-pay-218-8-million-to-resolve-u-s-claims-of-nigerian-bribes.html>

410 Bloomberg, 15 May 2009, "KBR, Halliburton Accused in Investor Suit of 'Reign of Terror'",

<http://www.bloomberg.com/apps/news?pid=newsarchive&sid=aiFOLzEZ2wEw>

411 NY Times, 24 December 2010, "Nigeria Drops Bribery Charges Against Cheney",

<http://green.blogs.nytimes.com/2010/12/24/nigeria-drops-bribery-charges-against-cheney/>

412 ANSA: "Tangenti in Nigeria" 30 December 2010, 20 December 2010, 26 November 2010

413 Wall Street Journal, 26 January 2011, "Saipem To Face Trial In Italy For Nigeria Bribery"

<http://blogs.wsj.com/corruption-currents/2011/01/26/saipem-to-face-trial-in-italy-for-nigeria-bribery/>

414 SFO Press Release, 16 February 2011, <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2011/mw-kellogg-ltd-to-pay-%C2%A37-million-in-sfo-high-court-action.aspx>

415 Tagesschau.de, 1 March 2011, „Erneut Frankfurter Neue Presse, 2 March 2011, Staatsanwaltschaft ermittelt gegen Bilfinger Berger, <http://www.fnp.de/fnp/region/hessen/staatsanwaltschaft-ermittelt-gegen-bilfinger-berger> ;

Korruptionsverdacht bei Bilfinger Berger Nigeria <http://www.tagesschau.de/wirtschaft/bilfingerberger102.html>;

Wall Street Online, 2 March 2011, Frankfurt übernimmt ermittlungen gegen Bilfinger Nigeria,

<http://www.wallstreet-online.de/nachricht/3110625-frankfurt-uebernimmt-ermittlungen-gegen-bilfinger-nigeria>

416 Tagesschau.de, 1 March 2011, "Erneut Korruptionsverdacht bei Bilfinger Berger Nigeria",

<http://www.tagesschau.de/wirtschaft/bilfingerberger102.html>

417 This Day, 1 September 2004, "\$180m LNG Bribe: Halliburton Submits FG Officials' Names to French Judge"

http://www.nigerianmuse.com/spotlight/?u=Halliburton_names.htm

Nigeria (subsidiary of an ENI subsidiary) and **Technip Offshore Nigeria**.⁴¹⁸ In December 2010, the federal government of Nigeria filed charges and began settlement negotiations against nine individuals and entities, including the TSKJ consortium and its four partners.⁴¹⁹ In addition to the companies that make up the TSKJ consortium, the indictment also charged **Urban Shelter Ltd** (Nigeria); **Intercellular Nigeria Ltd**; **Sherwood International Petroleum Ltd** (registered in Cayman Islands; subsidiary of **Bankers Petroleum Ltd** of Canada⁴²⁰); **Tri-Star Investment Ltd**; **Maizube Holdings Limited**; and two individuals. The Nigerian attorney general reported in late December that each of these companies had approached the Nigerian government with settlement proposals.⁴²¹ In December 2010, Saipem reported that **Snamprogetti Netherlands BV** had entered into a settlement and non-prosecution agreement with Nigerian authorities, agreeing to a criminal penalty of US \$30 million and reimbursement of US \$2.5 million in legal costs. Saipem also reported that ENI, the former parent of Snamprogetti, had agreed to pay the costs.⁴²² It was reported in February 2011 that **JGC Corp** had reached a settlement with the Nigerian government amounting to US \$26.5 million and US \$2 million.⁴²³

On 2 December 2010, the EFCC filed sixteen criminal charges against former US vice-president Dick Cheney and three other executives of **Halliburton Co**, as well as the company itself. On 17 December 2010 the charges were dropped after an agreement was reached for a settlement of US \$35 million to be paid by Halliburton.⁴²⁴ Former US president George H. W. Bush and former secretary of state James Baker reportedly assisted with the negotiations. A related case was brought in the Federal High Court was against Nigerian construction company **Julius Berger Nigeria Plc**, **Bilfinger Berger GmbH** and four agents for the companies. Julius Berger was charged by the attorney-general and minister of justice with violating money-laundering laws for its alleged role in channelling bribes of the TSKJ consortium to the Nigerian government.⁴²⁵ In September 2010, in a plea bargain with the Nigerian attorney-general and minister of justice, the company reportedly pleaded guilty to being an accessory and conduit for US \$5 million in bribes paid to a former presidential assistant. The company agreed to pay US \$29.5 million to the Nigerian government. In October 2010 the former presidential assistant was charged with six counts of money laundering⁴²⁶ and with accepting US \$1.5 million in bribes between 2002 and 2003 from employees connected to KBR.⁴²⁷

2. CONSTRUCTION OF NATURAL GAS PIPELINE IN THE NIGER DELTA

Two former executives of **Willbros International**, a subsidiary of the Houston-based engineering and construction firm **Willbros Group**, were fined and sentenced in a US district court in January 2010. One was fined US \$17,500 and sentenced to twelve months imprisonment, while the other former executive was fined US \$2000 and sentenced to fifteen month's imprisonment. The individuals pleaded guilty to conspiring to violate the FCPA for their role in paying US \$6 million in bribes to Nigerian officials to win a major natural gas pipeline contract worth \$387 million in the Niger Delta, known as the Eastern Gas Gathering System. It was reported that at one point the two individuals carried US \$1 million in cash in a suitcase for bribes, and that they typically received 3 per cent of the company's contract revenue in compensation for their role.⁴²⁸ Two others were charged, one being a former consultant and the other another former executive, and the company agreed to pay US \$32.3 million in penalties in a deferred adjudication settlement.⁴²⁹

⁴¹⁸ Reuters, 27 November 2010, "Nigeria detains 12 in Halliburton bribery case"

<http://uk.reuters.com/article/2010/11/27/uk-nigeria-halliburton-idUKTRE6AQ1TA20101127>

⁴¹⁹ IOL, 22 December 2010, "Halliburton will pay Nigeria in graft case"

<http://www.iol.co.za/news/africa/halliburton-will-pay-nigeria-in-graft-case-1.1003951>

⁴²⁰ Bankers Petroleum Ltd website, accessed 21 February 2011, <http://www.bankerspetroleum.com/index.php?page=structure>

⁴²¹ Bloomberg News, 22 December 2010, "Shell pays \$10 million fine to Nigerian government"

<http://www.chron.com/dispatch/story.mpl/business/7350717.html>

⁴²² Saipem website, 20 December 2010, "Snamprogetti Netherlands BV enters agreement with Federal Government of Nigeria", <http://www.saipem.com/site/Home/Press/Corporate/articolo6034.html>

⁴²³ Templars, Firm News, 1 February 2011,

<http://www.templars-law.com/pages/posts/jgc-corp-reaches-us-28-million-settlement-112.php>

⁴²⁴ Reuters Africa, 18 December 2010, "Nigeria drops charges against Halliburton, Cheney"

<http://af.reuters.com/article/investingNews/idAFJ0E6BH01K20101218>; All Africa, 22 December 2010, U.S.\$170 Million Recovered From Halliburton, Siemens, Julius Berger, Others – Adoko; <http://allafrica.com/stories/201012230376.html>

⁴²⁵ All Africa, 27 September 2010, "Bribe Scandal- Julius Berger to Pay FG U.S.\$29.5 Million Fine"

<http://allafrica.com/stories/201009271069.html>

⁴²⁶ Bloomberg News, 13 October 2010, "Nigeria Files Charges in \$180 Million Bribery Case",

<http://www.bloomberg.com/news/2010-10-13/nigeria-files-charges-in-180-million-bribery-case-update1-.html>

⁴²⁷ Bloomberg News, 4 November 2010, "Shell Bribes Among 'Culture of Corruption,' Panalpina Admits,"

<http://www.bloomberg.com/news/2010-11-05/shell-bribes-among-culture-of-corruption-panalpina-admits.html>

⁴²⁸ Houston Chronicle, 28 January 2010, "Former Willbros executives get prison in bribery case"

<http://www.chron.com/dispatch/story.mpl/business/6841149.html>

⁴²⁹ Ibid.

3. CUSTOMS PROCESSING FOR OIL AND GAS EQUIPMENT

In November 2010, Swiss freight forwarding company **Panalpina World Transport Holding** admitted in the US to having paid at least US \$49 million in bribes to public officials in seven countries, including Nigeria, from 2002 to 2007.⁴³⁰ Panalpina was contracted by a number of oil and gas companies operating in Nigeria to help transport rigs, ships and other equipment, yet also reportedly operated in a "culture of corruption", paying bribes on behalf of these companies to help them circumvent customs processes.⁴³¹ The companies benefiting from such services allegedly included three **Shell** companies.⁴³² In a statement filed in court, Panalpina said that Shell's Nigerian employees "specifically requested Panalpina Nigeria to provide false invoices with line items to mask the nature of the bribes." They reportedly wanted to "hide the nature of the payments to avoid suspicion if anyone audited the invoices".⁴³³ Several oil-servicing companies were also charged with involvement in the alleged bribery scheme.⁴³⁴

Cases in the USA

In November 2010, **Panalpina Inc., Royal Dutch Shell Ltd., Transocean Inc., Tidewater Inc., Pride International** (of France) and **Noble Corp.** settled charges in the US relating to alleged bribery in seven foreign countries, including Nigeria, and agreed to collectively pay fines totalling US \$236.5 million.⁴³⁵ **Shell Nigeria Exploration and Production Co. Ltd., Royal Dutch Shell Plc., and Shell International Exploration and Production Inc.** were charged with violating the FCPA by using a broker to make payments to Nigerian customs officials from 2002 to 2005 to obtain preferential treatment.⁴³⁶ Royal Dutch Shell and Shell International Exploration and Production agreed to pay disgorgement and prejudgment interest of over US \$18 million, while Shell Nigerian Exploration and Production agreed to pay a criminal fine of US \$30 million, and a deferred prosecution agreement was signed in November 2010.⁴³⁷ Shell agreed to a fine of US \$48.5 million and a deferred prosecution agreement. Shell separately admitted paying \$2 million to Nigerian sub-contractors on its deep-water Bonga Project which, according to its admission in federal court in Houston, Shell knew would be used as bribes to Nigerian officials to circumvent the customs process and give the company "an improper advantage".⁴³⁸

Cases and investigations in Nigeria

In November 2010, the EFCC reportedly summoned an executive from **Royal Dutch Shell Plc** for questioning, and arrested nine employees of **Panalpina World Transport Holding Ltd.** in connection with alleged bribes of US \$240 million to Nigerian customs officials.⁴³⁹ Panalpina admitted to paying bribes on behalf of a number of their clients. In late December 2010, Royal Dutch Shell Plc. reportedly paid US \$10 million in fines to the Nigerian government over the alleged bribes paid by Panalpina on its behalf.⁴⁴⁰ In January 2011 the EFCC arrested twelve executives from four multinational oil-servicing companies suspected to be involved in the Panalpina bribery scheme, including executives from **Noble Inc., Tidewater Inc., Murphy Shipping and Transocean Ltd.**⁴⁴¹

⁴³⁰ Bloomberg Business Week, 5 November 2010, "Shell Bribes Among Culture of Corruption", <http://www.businessweek.com/news/2010-11-05/shell-bribes-among-culture-of-corruption-panalpina-admits.html>

⁴³¹ Ibid.

⁴³² Ibid.

⁴³³ Ibid.

⁴³⁴ Wall Street Journal, 13 January 2011, "Nigeria Arrests 12 Oil Executives Over Alleged Bribery", <http://blogs.wsj.com/corruption-currents/2011/01/13/nigeria-arrests-12-oil-executives-over-alleged-bribery/>

⁴³⁵ Reuters Africa, 4 November 2010, "UPDATE 1-Panalpina, others settle to end US bribery probes", <http://af.reuters.com/article/idAFNO49495420101104>

⁴³⁶ SEC Press Release, 4 November 2010, <http://www.sec.gov/news/press/2010/2010-214.htm>

⁴³⁷ Ibid.; Bloomberg, 5 November 2010, "Shell Bribes Among 'Culture of Corruption'; Panalpina Admits", <http://www.businessweek.com/news/2010-11-05/shell-bribes-among-culture-of-corruption-panalpina-admits.html>

⁴³⁸ Ibid.

⁴³⁹ All Africa, 30 November 2010, "Nigeria: \$240 Million Scam - EFCC", <http://allafrica.com/stories/201012010722.html>

⁴⁴⁰ Bloomberg, 22 December 2010 "Shell Pays \$10 Million Fine to Nigerian Government", <http://www.bloomberg.com/news/2010-12-22/shell-pays-10-million-fine-to-nigerian-government-update1-.html>

⁴⁴¹ Wall Street Journal, 13 January 2011, "Nigeria Arrests 12 Oil Executives Over Alleged Bribery", <http://blogs.wsj.com/corruption-currents/2011/01/13/nigeria-arrests-12-oil-executives-over-alleged-bribery/>

4. TELECOMMUNICATIONS CONTRACTS

Among the allegations against **Siemens AG** are charges that company employees paid bribes to public officials in Nigeria and these have been the subject of investigations and settlements in Germany and the United States as well as investigations in Nigeria.

Cases in Germany and the USA

In recent years the German engineering company **Siemens AG** has concluded massive settlements with US and German authorities in the amounts of US \$800 million and €596 million (US \$781 million), respectively, for bribes paid to public officials across the world, including in Nigeria. With respect to Nigeria, a ruling by a Munich court found that four former Nigerian telecommunications ministers as well as other officials had received bribes from the company in connection with telecommunications contracts.⁴⁴² In the US, according to the settlement with the DOJ, an external auditor discovered that the Siemens telecommunications group had transported approximately US \$5 million in cash to Nigeria.⁴⁴³ Furthermore, in April 2010 a Munich court found two former Siemens managers guilty of breach of trust and abetting bribery for their roles in alleged bribery of government officials to win telecommunications contracts in Nigeria (and Russia). A former financial head of Siemens's telecommunications unit admitted to covering up bribery and slush funds used by his employees to win contracts.⁴⁴⁴ The former financial head was sentenced to two years' probation and a €160,000 (US \$215,300) fine, while the former accounting head of the same unit received 18 months' probation and a €40,000 (US \$57,000) fine. As of April 2010, there were reportedly 300 individuals still under investigation by German authorities for their involvement in the global bribery scheme.⁴⁴⁵

Cases in Nigeria

In November 2010, the EFCC filed charges against Siemens AG and **Siemens Nigeria Ltd** as well as against a former permanent secretary in the Nigerian Ministry of Power and Steel, and ten other people,⁴⁴⁶ in relation to the alleged bribery of top government officials between 2001 and 2004, amounting to €17.5 million (US \$25 million).⁴⁴⁷ The bribes reportedly consisted of vacation expenses and medical bills for former ministers, other public officials and their families, allegedly via secret accounts and consultants.⁴⁴⁸ The 35-count charge against Siemens AG, Siemens Nigeria Ltd and the eleven others was filed at both the Federal High Court of Abuja and the High Court of the Federal Capital Territory.⁴⁴⁹ The barrister prosecuting the case moved an application before the Justice of the Abuja High Court to withdraw charges, and a settlement was reached on an ultimate fine of N7 billion (US \$46 million) to be paid by Siemens.

5. SALES AND GIFTS OF CARS

Investigations and settlements relating to the activities of German car manufacturer **Daimler AG** have been reported in the US and Nigeria.

Case in the USA

In April 2010, German car manufacturer **Daimler AG** reached a settlement of US \$185 million with the US SEC and DOJ.⁴⁵⁰ The company was charged with violating FCPA laws by paying millions in bribes and giving cars to public officials to win contracts in 22 countries, including Nigeria. The SEC reported that the company used dozens of

⁴⁴² The Sunday Times, 16 November 2007, "Siemens bribes reached around world" http://business.timesonline.co.uk/tol/business/industry_sectors/engineering/article2881841.ece

⁴⁴³ Wilmer Hale, 22 December 2008, http://www.wilmerhale.com/siemens_agrees_to_record-setting_800_million_in_fcpa_penalties_12-22-2008/; BBC News, 21 November 2007, <http://news.bbc.co.uk/2/hi/africa/7105582.stm>

⁴⁴⁴ Reuters Online, 20 April 2010; "Ex-Siemens execs found guilty in bribery case" www.reuters.com/article/idUSLDE63J11N20100420

⁴⁴⁵ Ibid.

⁴⁴⁶ All Africa, 22 November 2010 "Nigeria: Bribe Scandal - Siemens Fined N7 Billion", <http://allafrica.com/stories/201011230832.html>

⁴⁴⁷ EFCC Press Release, 23 November 2010, http://www.efccnigeria.org/index.php?option=com_content&task=blogcategory&id=14&Itemid=33

⁴⁴⁸ Ibid.

⁴⁴⁹ Ibid.

⁴⁵⁰ US SEC Press Release, 1 April 2010, <http://www.sec.gov/news/press/2010/2010-51.htm>

ledger accounts or "internal third party accounts" to maintain credit balances for the benefit of government officials. The balances were controlled by Daimler subsidiaries or other intermediaries to make payments to foreign government officials. The SEC also reported that Daimler used artificial discounts or rebates on sales contracts, and all or a portion of the discount was kicked back through a ledger account to a foreign government official.⁴⁵¹

Investigation in Nigeria

In June 2010, a spokesperson for the EFCC announced an investigation into Daimler and **Anambra Motor Manufacturing Company (Anammco)**, a Nigerian company that assembles Mercedes trucks and buses, and was set up in the 1970s as a joint venture between Daimler, the Nigerian government and local investors (Daimler sold its stake in 2007 in line with its policy not to invest in partly government-owned companies).⁴⁵² The investigation concerns a suspected US \$15 million allegedly paid in bribes by the two companies to Nigerian officials.⁴⁵³ At least four officials and representatives of the two companies have been questioned by the EFCC.⁴⁵⁴

6. CONTRACT TO PRINT BANKNOTES

The Australian polymer banknote company **Securrency International Pty Ltd** is reportedly under investigation in Australia, the UK and Nigeria.

Investigations in Australia and the UK

In October 2010, UK police arrested three individuals, who were then questioned by the UK Serious Fraud Office as part of an investigation into the polymer banknote company **Securrency International Pty Ltd**, which is half-owned by the Reserve Bank of Australia.⁴⁵⁵ The arrests were made in relation to a joint investigation between the Serious Fraud Office and the Australian Federal Police involving the activities of the employees and agents of Securrency and their alleged corrupt role in securing international polymer banknote contracts. Australian news media reported that the individuals were believed to have been questioned about allegedly suspicious overseas bank transfers of about US \$1 million by the company and about their alleged role in deals with high-ranking Nigerian officials on behalf of the company.⁴⁵⁶

Investigation in Nigeria

It was announced in October 2009 that Nigeria's National Assembly was planning to investigate a former central bank governor over allegations that he was bribed by agents of Securrency in 2006 to award a contract to the company.⁴⁵⁷ A resolution read by an assembly representative stated that "...Securrency is believed to have paid millions of dollars in bribe money to Nigerian officials to secure the contract to print Nigeria's new banknotes." The company has supplied Nigeria with almost 2 billion polymer strips with which to print banknotes.⁴⁵⁸

⁴⁵¹ Ibid.

⁴⁵² Reuters, 7 June 2010, "Nigeria launches \$15 million Daimler bribery probe"
<http://www.reuters.com/article/2010/06/07/retire-us-daimler-nigeria-idUSTRE6564VE20100607>

⁴⁵³ Main Justice, 7 June 2010, "Nigeria Investigating Bribes Stemming from Daimler FCPA Case"
<http://www.mainjustice.com/justanticorruption/2010/06/07/nigeria-investigating-bribes-stemming-from-daimler-fcpa-case/>

⁴⁵⁴ AFP, 8 June 2010, "Nigeria Probes Daimler, Anammco Scam"
http://www.industryweek.com/articles/nigeria_probes_daimler_anammco_scam_21996.aspx

⁴⁵⁵ SFO Press Release, 15 October 2010, <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2010/update-in-relation-to-securrency-international-pty-ltd.aspx>

⁴⁵⁶ The FCPA Blog, 18 October 2010, "Nigeria Bribes Alleged In Securrency Case"
<http://www.fcpablog.com/blog/2010/10/18/nigeria-bribes-alleged-in-securrency-case.html>; The Age, 16 October 2010, "Couple seized in multimillion-dollar banknotes bribery probe",
<http://www.theage.com.au/world/couple-seized-in-multimillion-dollar-banknotes-bribery-probe-20101015-16nkb.html>

⁴⁵⁷ 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>

⁴⁵⁸ Ibid.

VII. APPENDICES

APPENDIX A

2011 OECD PROGRESS REPORT

NATIONAL EXPERT RESPONDENTS

COUNTRY	EXPERTS
Argentina	Romina Arcos, Lawyer, Poder Ciudadano Hernan Charosky, Executive Director, Poder Ciudadano
Australia	Michael Ahrens, Executive Director, TI Australia Jane Ellis, Commercial Lawyer, Board Member of TI Australia
Austria	Magdalena Reinberg, TI Austria Johann Rzeszut, Board of Directors, TI Austria Head of the Austrian Supreme Court 2003-2006
Belgium	Anne de la Vallée Poussin, Magistrat Honoraire
Brazil	Isabel C. Franco, Partner, KLA – Koury Lopes Advogados
Bulgaria	Diana Kovatcheva, TI Bulgaria
Canada	Milos Barutciski, Bennett Jones LLP
Chile	Rocio Noriega, TI Chile
Czech Republic	Vladan Brož, TI Czech Republic
Denmark	Jens Bertelsen, TI Denmark
Estonia	Asso Prii, Executive Director, TI Estonia
Finland	Anna Huilaja, Associate, Asianajotoimisto White & Case Oy
France	Jacques Terray, Lic. and LLM, Vice-Chairman, TI France Marina Yung, 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	Heather A. Stone (Advocate - GKH Law Offices)
Italy	Co-ordination: Maria Teresa Brassiolo, Quintiliano Valenti, Davide del Monte; Legal experts: Michele Calleri, Fabrizio Saredella, Marcello Spissu, Giorgio Frascini
Japan	Professor Toru Umeda, Vice Chair, TI Japan
Korea (South)	Professor Joongi Kim, Lawyer, TI Korea (South)
Luxembourg	Yann Baden, Lawyer, TI Luxembourg
Mexico	Lucía Cortés, Transparencia Mexicana
Netherlands	Gerben Smid, TI Netherlands
New Zealand	Aaron Lloyd, Partner, Minter Ellison Rudd Watts, TI New Zealand Member
Norway	Guro Slettemark, Lawyer, TI Norway

COUNTRY	EXPERTS
Poland	Janusz Tomczak, Wardyński & Partners Grażyna Kopyńska, Stefan Batory Foundation
Portugal	Luís de Sousa, Research Fellow, Institute of Social Sciences, University of Lisbon; TI Portugal David Marques, LL.M, Researcher, Transparência e Integridade, Associação Cívica (TIAC)
Slovakia	Pavel Nechala, TI Slovak Republic, Lawyer, Pavel Nechala & Co
Slovenia	Simona Habic, CEO, Integriteta (TI Slovenia) Bojan Dobovsek, Lawyer, Professor, University Maribor Vid Doria, 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
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)
Switzerland	Jean Pierre Mean, Lawyer, President, TI Switzerland
Turkey	E.Oya Özarlan, International Lawyer, TI Turkey
UK	Chandrashekhar Krishnan, Executive Director, TI UK
USA	Lucinda Low and Tom Best, Steptoe & Johnson LLP

APPENDIX B

2011 QUESTIONNAIRE FOR NATIONAL EXPERT RESPONDENTS

I. 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. 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 2010 (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 2010: _____

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

4 INVESTIGATIONS

Please provide available information on 2010 government investigations of allegations of bribery of foreign public officials:

a Total number of known investigations under way in 2010: _____

b Number of those investigations begun since 1 January 2010: _____

c Developments during 2010:

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: _____

5 SERIOUS ALLEGATIONS

Total number of serious allegations of foreign bribery: _____

Please provide information about serious allegations of foreign bribery or related offences by companies or individuals based in your country, that (a) have been published in reputable international or domestic publications since the OECD Convention became effective in your country, and (b) with respect to which, as far as you know, no investigation or prosecution has been undertaken.

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 2010

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 SERIOUS ALLEGATIONS OF FOREIGN BRIBERY

For each matter, please provide any details about the following:

a Names of companies and/or individuals involved: _____

b Date of publication: _____

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 allegation

5 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: _____

II DOMESTIC BRIBERY BY FOREIGN COMPANIES (LAST 5 YEARS)

Please provide a list of all known cases and investigations of domestic bribery by foreign companies in your country. Please provide citations to information sources about these cases and include information about dates and parties in the cases.

Please note: Domestic bribery by foreign companies here refers to the bribery of domestic public officials by foreign companies or subsidiaries of foreign companies

III. LEGAL FRAMEWORK AND ENFORCEMENT SYSTEM

Note: If the information is the same as last year, please refer to last year's questionnaire.

A INADEQUACIES IN LEGAL FRAMEWORK AND ENFORCEMENT SYSTEM

1 Are there significant inadequacies in the legal framework for foreign bribery prosecutions in your country?

Yes___ No___

If yes, please provide a short explanation of the main inadequacies in the legal framework such as:

- Inadequate definition of foreign bribery
 - Jurisdictional limitations
 - Lack of criminal liability for corporations
 - Failure to hold companies responsible for subsidiaries, joint ventures and/or agents
 - Inadequate sanctions
 - Inadequate statutes of limitation
-

2 Are there significant inadequacies in the enforcement system for foreign bribery prosecutions in your country?

Yes___ No___

If yes, please provide a short explanation of the main inadequacies in the enforcement system such as:

- Inadequate resources
 - Decentralised organisation of enforcement
 - Lack of coordination between investigation and prosecution
 - Lack of training of investigators and prosecutors to investigate this kind of offence
 - Inability to obtain mutual legal assistance
 - Inadequacy of complaints mechanisms and whistleblower protection
 - Lack of public awareness-raising
 - Inadequate accounting and auditing requirements
-

3 Have there been significant improvements in the legal framework or enforcement system in the last year?

Yes___ No___

Please provide a short explanation. _____

4 What are the priority actions still needed?

Please provide a short explanation. _____

B LEGAL FRAMEWORK AND ENFORCEMENT SYSTEM REGARDING SUBSIDIARIES, AGENTS AND OTHER INTERMEDIARIES IN FOREIGN COUNTRIES

1 Have there been any investigations or cases involving parent companies charged for bribery committed in foreign countries by their subsidiaries, agents and other intermediaries?

Yes___ No___

If so, please provide a short explanation. _____

2 Are existing criminal and corporate laws adequate to hold parent companies responsible for bribery in foreign countries by subsidiaries, agents and other intermediaries?

Yes___ No___

Possible issues include:

- Parent company responsibility to maintain adequate procedures to prevent bribery by their subsidiaries
- Parent company responsibility for controlled subsidiaries
- Requirements of direct involvement by the parent company
- Jurisdictional limitations
*(Is there a low threshold for invoking territorial jurisdiction over the parent company?
Can nationality jurisdiction be used when employees of a subsidiary or other intermediary are citizens of the home country?)*

Please provide a short explanation. _____

3 Are there special enforcement problems relating to subsidiaries, agents and other intermediaries?

Yes___ No___

Please explain the reasons why such as:

- Inadequate resources
- Difficulties in obtaining mutual legal assistance
- Use of money-laundering techniques to cover up the financial trail

Please provide a short explanation. _____

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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