Group of eight progress report 2009

TRANSPARENCY INTERNATIONAL
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2009

G8 PROGRESS REPORT

An Assessment of G8 Action on Anti-Corruption Commitments

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Transparency International is the global civil society organisation leading the fight against corruption. Through more than 90 chapters worldwide and an international secretariat in Berlin, Germany, 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.

TI chapters are active in every G8 country and contributed to this report.

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EXECUTIVE SUMMARY

In the Group of Eight's (G8) 2008 *Accountability Report: Implementation Review of G8 Anti-Corruption Commitments*, the first G8 self-assessment of action on anti-corruption commitments, leaders noted that corruption is a "corrosive activity" which "poses serious governance challenges and threats to the stability and security of societies, undermines the institutions and values of democracy and jeopardises sustainable development and economic prosperity. Global corruption also impedes efforts to combat international crime and terrorism."[1]

They acknowledged the importance of demonstrating G8 leadership by "setting examples to combat corruption and holding ourselves to the highest standards of transparency and accountability."

In June 2009, finding the world "in the middle of the worst crisis since the Great Depression," G8 Finance Ministers acknowledged that the "violation" of basic principles of propriety, integrity and transparency "contributed to undermine international economic and financial stability," and they underscored the importance of strengthening their commitment to these principles in the recovery. [2]

The G8 Finance Ministers' 13 June 2009 *"Lecce Framework"* notes that, despite a significant number of existing instruments related to these principles, *including on bribery, trade finance, market integrity and money laundering,* "in many cases, these initiatives suffer from insufficient country participation and/or commitment."[3]

Transparency International's (TI) 2009 *G8 Progress Report* confirms this disappointing conclusion. This report, the third annual TI review of G8 implementation of existing instruments, assesses progress and finds country participation and commitment woefully inadequate, particularly among many of those intent on "setting an example" and "reaching out to the G20 and beyond."[4]

With massive financial flows as part of the economic recovery moving rapidly through the financial system and global markets, the risk of corruption has increased exponentially. Global confidence and economic recovery depend on more than capital flows; they depend on urgent action to restore ethics and integrity in the conduct of official and commercial activity.

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[1] *G8 2008 Accountability Report: Implementation Review of G8 Anti-Corruption Commitments. Available at: www.mofa.go.jp/policy/economy/summit/2008/doc/pdf/0708_03_en.pdf*

[2] *Statement of G8 Finance Ministers, Lecce, Italy, 13 June 2009. Available at: www.g7finance.tesoro.it/export/sites/G8/en/2009ItalianPresidency/Meetings/June/Communiques/Documents/Comunicato_G8_Ministri_Finanziari__Lecce_13_giugno_2009.pdf.*

[3] *Id*

[4] *Id*

TI calls on G8 governments to fulfil promptly their commitment to "make every effort to pursue maximum country participation and swift and resolute implementation" with respect to *existing* commitments, notably to:

- Strengthen enforcement of anti-bribery laws adopted pursuant to the OECD Anti-Bribery Convention;
- Strengthen requirements for export credit support to be compliant with anti-bribery laws;
- Ratify and implement the UN Convention against Corruption and support an effective review mechanism; and
- Take steps to prevent misuse of financial institutions and markets and fight money laundering by increasing transparency and strengthening oversight of capital flows and markets.

TI calls on the G8 in its 2009 *Accountability Report* to indicate clearly and in detail how they are taking action on these commitments, with consistent statistics across countries, and with benchmarks and timetables for future progress.

This report's findings and recommendations are based on input from locally-based TI chapters in each of the G8 countries. Commitments were selected based on their centrality to the anti-corruption agenda and the capacity to measure progress.

FINDINGS AND RECOMMENDATIONS

Deterring Foreign Bribery: OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

The landmark OECD Convention promised to stem foreign bribery as a factor in international business and development. However, except for Germany and the United States, enforcement by other G8 countries – Canada, France, Japan and the United Kingdom – is insufficient to have a credible deterrent effect. Moreover, the United Kingdom has not enacted a law in compliance with the Convention. There is concern that cutting corners and corruption could become tempting options for companies struggling to survive the global economic crisis. Therefore, the G8 should vigorously and consistently enforce their foreign bribery laws, and they should encourage corporate integrity.

Leveraging Financing to Reduce Corruption: Export Credit Agencies

The G20 commitment to ensure US $250 billion (€192 billion) for trade finance through export credit agencies (ECAs) and the pressure to take prompt action to restore credit must be accompanied by effective measures to safeguard against heightened corruption and fraud risk. The G8 should adhere – in practice – to the requirements of the *2006 OECD Council Recommendation on Bribery and Officially Supported Export Credits (2006 Council Recommendation.)* This would help ensure that tax payers are not supporting transactions tainted by bribery and corruption. With the G20 commitment to increase lending by US $100 billion (€77 billion) by the Multilateral Development Banks (MDBs), including to low income countries, it is essential that the MDBs take action to safeguard against corruption to ensure aid effectiveness.

Globalising the Fight against Corruption: UN Convention against Corruption

The UNCAC established a global framework for the prevention, detection and prosecution of bribery and extortion and for the legal and technical cooperation necessary to prosecute cases and recover stolen assets. It has been ratified by 136 countries to date, including Canada, France, Russia, the United Kingdom and United States. Germany, Italy and Japan have signed but not ratified the UNCAC, and they should promptly do so. Effective implementation will depend on parties establishing and participating in an effective, transparent review mechanism with adequate and dependable long-term funding and civil society participation. All G8 countries should ratify the UNCAC and support the creation of an effective review mechanism at the November 2009 Conference of States Parties in Doha.

Restoring Integrity and Transparency in Financial Institutions and Markets

In the past, the G8 has pledged to protect financial markets from criminal abuse, including bribery and corruption. The economic crisis underscores a failure to apply principles of integrity and transparency in economic and financial activity. In this time of economic turmoil, G8 action on these commitments is urgent to ensure that funds expended in the global financial recovery are not lost to corruption. The G8 should immediately adopt stronger oversight and transparency rules and enhance cooperation, particularly on information exchange.

Urgent action is needed on these anti-corruption agenda priorities and the more detailed recommendations set forward in the body of this report.

Extractive Industries Transparency Initiative

Natural resources, particularly in the extractive sector, can play a significant and positive role in stimulating economic growth and stability. However, when transparency and accountability mechanisms are inadequate, these benefits can be lost to corruption and even fuel conflict and violence.

The Extractive Industries Transparency Initiative (EITI), a multi-stakeholder initiative comprised of producing and supporting governments, companies, and civil society, seeks to address this "resource curse" by enhancing transparency and accountability in resource-rich countries through full publication and verification of company payments and government revenues from the oil, gas and mining sectors.

TI calls on the G8 to support rigorous and effective validation of compliance with the EITI principles and criteria, to provide financial and technical support to governments seeking to implement the initiative, to encourage companies to actively participate and be fully transparent and to provide financial support and work actively to safeguard civil society organisations engaged in promoting and monitoring progress in countries implementing EITI.

EITI candidate countries should complete their validation process within the agreed timeframe. In addition, all firms operating in the extractive sector and in weak governance zones should adopt programmes to comply with foreign bribery prohibitions.

DETERRING FOREIGN BRIBERY: OECD CONVENTION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS

"Winning the fight against bribery requires constant effort. It demands resources and political backing. It requires high technical capacity and a united resolve among partners to overcome very powerful interests." Angel Gurria, OECD Secretary General

WHAT HAS THE G8 COMMITTED TO DO?

The G8 has committed to vigorous enforcement of the OECD Convention. Specifically, they have committed to:

- **Enforce Foreign Bribery Laws:** Strengthen enforcement of anti-bribery laws (Evian 2003);
- **Strengthen Monitoring:** Strengthen and assist the implementation and monitoring of the OECD Convention (Kananaskis 2002); Accelerate peer reviews, complete a first cycle of reviews by 2007, and ensure stable, long-term financing for these reviews (Evian 2003); Adhere rigorously to the updated 2004-2007 enforcement review schedule (Sea Island 2004); Continue support for peer review (Gleneagles 2005); Ensure vigorous enforcement of the OECD Convention through further effective peer review (St. Petersburg 2006); Implement a permanent peer review mechanism (Heiligendamm 2007); Continue effective monitoring through the implementation of a rigorous and permanent peer review mechanism (Toyako 2008);
- **Engage Private Sector:** Support voluntary private sector anti-corruption initiatives (Kananaskis 2002); Encourage the private sector to develop, implement and enforce anti-bribery compliance programmes (Evian 2003, Sea Island 2004, Gleneagles 2005); and
- **Expand Adherence:** Engage with non-party emerging economies (Heiligendamm 2007); Call for accession to the Convention by emerging countries (Toyako 2008).

WHY IS THE OECD CONVENTION IMPORTANT?

The adoption 12 years ago of the OECD Convention by the leading exporting nations was a historical and much needed leap forward in the fight against bribery in international business and development. The rich countries of the world committed to put their houses in order, dealing a major blow to the supply side of corruption.

The Convention's strength is that it imposes a foreign bribery prohibition on competitors from most of the major industrialised nations simultaneously. In the current global recession, when business faces acute pressure to win declining orders, accelerated enforcement is even more critical to ensure fair competition and proper use of public resources. With trillions in government expenditures anticipated to flow as part of the economic recovery, the interests of taxpayers and those most in need will be undermined unless there is a renewed commitment to enforcement and credible sanctions for failure.

Enforcement is necessary not only to penalise those companies that resort to bribery, but also to create pressure for companies to implement effective anti-bribery controls and to ensure that they promote an ethical corporate culture.

Ultimately, the credibility of the G8 to promote good governance in emerging and developing markets depends on their demonstrated action to put their own house in order. Failure to enforce foreign bribery prohibitions will hinder efforts to ensure that emerging export giants, such as China and India, impose similar foreign bribery constraints, either by accession to the Convention or pursuant to their commitments under the UN Convention against Corruption.

WHAT ACTIONS HAS THE G8 TAKEN TO DATE?

Since the Convention's entry into force in 1999, all G8 countries have enacted laws making it a criminal offence to bribe foreign officials. But, despite substantial numbers of cases in Germany and the United States, other G8 members have failed to adequately enforce their laws so as to create a deterrent to bribery in international business and development. Unless all parties convey a credible threat of prosecution, the Convention will fail to achieve its purpose.

TI's 2009 *Progress Report on Enforcement of the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions*[5] paints a particularly disturbing picture.

Whereas Germany and the US each have more than 100 cases, the United Kingdom has only four. Italy and Japan each have brought two prosecutions, but the sanctions imposed in each case were weak. France has brought 17 investigations, but has had no convictions. Canada has brought only one minor case. Russia, while not yet a party to the OECD Convention, has committed to criminalise foreign bribery and to establish books and records provisions that prohibit off-the-book accounts or false entries as a party to the UN Convention against Corruption and as a party to the Council of Europe Criminal Law Convention on Corruption.

There are other danger signs as well. The most egregious may be the United Kingdom's continuing delay in enacting an adequate law and its termination of an investigation into alleged bribery in the BAE case in December 2006, claiming that national security concerns overrode the commitment to stop foreign bribery. The OECD Working Group on Bribery has criticised the United Kingdom on both grounds. (See UK country report below for additional information.) There are other deficiencies in implementation as well. Germany has so far failed to adopt corporate criminal liability; while in France, jurisdiction to prosecute certain cases has been limited and the power of investigative magistrates to bring bribery cases has been restricted. Investigative magistrates have been restricted in their operations in Italy and top officials have been granted immunity from prosecutions. These are but a few examples elaborated on in the following country reports.

Consistent, vigorous implementation and enforcement by all parties – and other major exporters – must be accelerated or the Convention will ultimately fail, harming prospects for sustainable development and the global economic recovery.

[5] *TI's OECD Convention Progress Report is based on assessments by independent, international experts engaged by TI chapters and are vetted with government officials and other knowledgeable persons in their country.*

COUNTRY REPORTS:
OECD ANTI-BRIBERY CONVENTION IMPLEMENTATION [6]

CANADA: **Since 1998, when Canada ratified the OECD Convention, it has brought only one minor case against a Canadian company for a small payment to a United States customs official, and reportedly opened one investigation into allegations that a Canadian oil and gas company bribed government officials in Bangladesh. Due to the lack of information into ongoing criminal investigation activity, other potential investigations are not known. However, in 2008, resources dedicated to investigating Canadian Corruption of Foreign Public Officials Act (CFPOA) offences increased substantially, enabling more activity in the future.**

Article 5. Canada is the only country to have taken an explicit reservation to Article 5 of the Convention, which expressly prohibits consideration of national economic interest or the potential effect on relations with another state to influence decisions whether to investigate or prosecute. The reservation would allow prosecutors to take into account a wide range of considerations in the decision whether to prosecute and could allow significant cases of foreign bribery to escape investigation and prosecution.

Canada's reservation is contrary to the 2009 OECD Ministerial Conclusions (adopted at the Council Meeting at Ministerial Level on 25 June 2009), which noted that "[w]e shall be vigilant in ensuring that investigations and prosecutions of the bribery of foreign public officials are not influenced by considerations of national economic interest, the potential effect upon relations with another State, or the identity of the natural or legal persons involved." Canada's reservation should be promptly withdrawn. (See UK report below for additional information on the national security exception.)

Definition of Foreign Bribery. Under the CFPOA, Canada defines foreign bribery to include improper payments only with respect to obtain or retain business *for profit*. The Convention does not draw a distinction between "for profit" and "not for profit", and the OECD Working Group recommended that Canada eliminate the "for profit" requirement because its coverage and application is unclear and could result in a substantial gap in coverage for the foreign bribery offence. Canada has not amended its law apparently out of concern for potential instances in "not for profit" circumstances, particularly with regard to humanitarian assistance, when bribes may have to be paid.

Nationality Jurisdiction. Canada is still the only OECD country not to have adopted nationality jurisdiction in its foreign bribery legislation. While the Convention does not require a country to adopt nationality jurisdiction,[7] it is essential because bribery of a foreign official will normally take place outside the boundaries of a company's home country. Because Canadian courts apply

[6] *Key findings of deficiencies are based on the 2009 TI OECD Convention Progress Report, OECD Working Group Country Reports and assessments by TI chapters. OECD Working Group Country Reports are available at: www.oecd.org/document/24/0,3343,en_2649_37447_1933144_1_1_1_37447,00.html. For France and Russia, key findings are also based on reports by reviewing body for The Council of Europe Criminal Law Convention against Corruption by its reviewing body, the Group of States against Corruption (GRECO), available at: www.coe.int/t/dghl/monitoring/greco/evaluations/index_en.asp.*

[7] *Article 4.2 of the Convention states that: "each Party which has jurisdiction to prosecute its nationals for offences committed abroad shall take such measures as may be necessary to establish its jurisdiction to do so in respect of the bribery of a foreign public official, according to the same principles." The OECD Convention can be found at www.oecd.org/dataoecd/4/18/38028044.pdf.*

"territorial" jurisdiction in almost all criminal matters and do not interpret it broadly, a significant portion of the activities constituting the offence must take place in Canada and there must be a "real and substantial link" between the offence and Canada.

[In May 2009, the Canadian Government introduced draft legislation in Parliament to amend the CFPOA to apply nationality jurisdiction to Canadians who engage in bribery or other forms of corruption involving foreign public officials outside Canada. If enacted, this legislation would close a serious loophole in Canadian law.]

Tax Authorities. Canada also prohibits its tax inspectors from reporting suspicions of foreign bribery to law enforcement officials, based, apparently, on the confidentiality afforded to taxpayer information. Tax officials are well-placed to detect bribes disguised as commissions. Canada's prohibition restricts an important source of information for prosecutors.

FRANCE: **France has brought 17 judicial investigations,[8] including five prosecutions against major multinational enterprises. Yet despite this robust start, four cases were dismissed and the other is on appeal. Moreover, to date, there have been no convictions.[9]**

France also has failed to remedy several deficiencies in Convention implementation and has introduced measures which raise concerns.

Jurisdiction. With respect to offences committed abroad, France has severely restricted its jurisdiction and ability to prosecute cases with international dimensions. Given the country's importance in the international economy and the scale of many of its companies this is regrettable.[10] Under French jurisdiction rules, corruption offences committed abroad can only be investigated by French authorities at the request of the foreign prosecutors and following a complaint from the victim or his or her beneficiaries, or an official report by the authorities of the country where the offence was committed. Complicity in any offence committed by a French citizen abroad is only investigated if a final decision in foreign courts has been reached. GRECO commented that the "provision makes it very difficult to prosecute acts of complicity that also include, for example, the instigation by the parent company in France of a corruption offence committed by a local branch abroad."[11]

Statute of Limitations. France's three-year statute of limitations continues to be a serious obstacle to enforcement, although the problems that it has created have been mitigated by the fact that courts have postponed the starting point of the limitation period to the last step in the chain of corruption, and the limitations period may be extended under certain circumstances.

Draft legislation would extend the limitation period from 3 to 7 years for offences punishable by over three years' imprisonment and from 3 to 5 years for those punishable by under three years.

Whistleblower Protection. Whistleblower protection, introduced in 2007 for the private sector, still does not extend to the public sector. Given the secretive nature of bribery, prosecution frequently

[8] *"Judicial Investigations" are investigations conducted by investigating magistrates in civil law systems.*
[9] *France's lack of convictions was noted as a concern in GRECO's February 2009 Third Evaluation Round Report on France's implementation of the Council of Europe Criminal Law Convention Against Corruption.*
[10] *Id.*
[11] *Id.*

depends on persons with knowledge coming forward with information. This is unlikely unless they are protected from retaliation.

Independence of and Resources for Enforcement Authorities. Recent developments raise serious concerns that the ability of independent judges and prosecutors to launch investigations and criminal actions where the Executive Branch is not willing to do so. Adequate support and career inducements for investigating judges and prosecutors in the field of corruption has also been lacking.

The Léger Commission released a report in March 2009, proposing to eliminate investigative judges and to entrust all penal investigations to the Public Prosecutor in the Justice Ministry. This would risk that corruption cases would not be initiated when likely to embarrass political or economic leaders. If investigative judges are indeed eliminated, the law would have to create the institution of Public Prosecutor of the Republic, independent of the Ministry of Justice. The right of NGOs to bring criminal claims on behalf of victims of corruption should also be reinforced.

In addition, a draft bill has been introduced that would limit prosecutor's access to classified documents – many of which relate to the defence sector – and limit access to places where such documents are held, requiring advance authorisation for searches. If enacted, the bill could have the effect of removing the 'surprise' element and further undermine efforts to constrain foreign bribery.

GERMANY: **Germany is actively enforcing the OECD Anti-Bribery Convention, with a total of 110 foreign bribery cases, many of them major, including 37 that are still pending, and seven brought since January, 2008. The most high-profile case involves Siemens AG. Following a €201 million (US $284.6 million) penalty imposed on Siemens in 2007 in connection with charges against the Communications Group for bribery in Libya, Nigeria and Russia, in December 2008, the Munich prosecutor terminated proceedings against Siemens following its agreement to pay a record penalty of €395 million (US $569 million). A settlement was reported on the same day by US enforcement authorities.**

In addition to its impressive enforcement record, Germany has made progress on remedying a number of deficiencies in OECD Convention implementation, although some remain.

Corporate Criminal Liability. German law does not provide for criminal liability for corporations; rather, corporate misconduct is treated as a regulatory offence and fines levied under the Administrative Offenses Act.

There is growing recognition, however, that to deal with complex crimes like foreign bribery, corporations should be held liable for lack of supervision or control, and the existence of a "corporate culture" that allowed the criminal conduct to take place. Criminal liability is also considered to have a higher deterrence factor than administrative or civil liability, and often carries higher sanctions, as is the case in Germany.

Centralised Enforcement Authority. Initially, the decentralisation of authority to the Länder to prosecute foreign bribery cases created some obstacles to enforcement. However, most Länder have taken steps recently to concentrate the responsibility for the prosecution of foreign bribery cases in special prosecution units and to increase the exchange of data, experience and best practice models. These efforts should continue to be continued and strengthened.

Some Länder bar corrupt companies from competing for additional public contracts and have established debarment registers. However, there is no central register on the Federal level and one should be established.

Whistleblower Protection. While whistleblower protection for the public sector has been enhanced, whistleblower protection for the private sector is still not sufficiently comprehensive. Several large German companies have, on a voluntary basis, stepped up their efforts by strengthening their internal procedures and by establishing reporting and disclosure mechanisms such as anti-bribery ombudsmen or whistleblower hotlines.

Anti-Money Laundering. The bribery of a foreign Member of Parliament still does not constitute a predicate offence of the crime of money laundering.

***ITALY:* Italy has brought only two cases, including one major case against a major multinational. It also continues to have several deficiencies in Convention implementation.**

Definition of Foreign Bribery. There are a number of statutory and legal difficulties in the Italian foreign bribery law, including a complicated definition of the foreign bribery offence that includes a chain of cross-references to various domestic bribery offences, which may hamper enforcement. The OECD Working Group also has recommended that Italy exclude the defence of "concussion," which applies when a payment is made in response to serious psychological pressure, although no action has been taken.

Complaint Procedures. Italy has neither a hotline nor a website available for reporting allegations or concerns about foreign bribery. Publicly known and readily accessible procedures for reporting foreign bribery allegations are essential to encourage reporting.

Whistleblower Protection. There is little protection for public employees who report suspicions of foreign bribery. For the private sector, Italian law provides for the possibility of applying special witness protection measures, but citizens would prefer to deal with an independent body such as the High Commissioner. There is also an insufficient level of available resources and awareness-raising efforts by government, although the High Commissioner has agreed to cooperate with civil society to increase awareness.

Other Enforcement Issues. There are significant questions of political will and the extent of support and resources for the work of investigating magistrates. There is also an insufficient level of awareness-raising efforts by government. For example, Italian public officials have an obligation to report suspicions of foreign bribery and are subject to penalties for failing to do so, but there is a lack of awareness-raising by the government in this regard.

Accounting and Auditing Requirements. The OECD *Phase 2 Follow-Up Report* recommended that Italy correct deficiencies in its accounting provisions by eliminating two criteria for the application of the offence: (i) that the false accounting appreciably distorted the trading, balance sheet or financial situation of the company; and (ii) that there was an intent to deceive the shareholders, creditors or the public.

Anti-Money Laundering Efforts. While regulations and penalties appear to be satisfactory, there is no well-functioning regulatory body ensuring compliance with corruption-related money laundering.

High Level Immunity. A new law passed in July of 2008 granting immunity from prosecution to Italy's top four officials, including the Prime Minister, has sparked much public debate. The law, which led to a suspension of a legal proceeding against Prime Minister Silvio Berlusconi, has been challenged in Italy's Constitutional Court, which struck down a similar law in 2004.

JAPAN: **The Japanese government took a step in 2008 by bringing its first major foreign bribery case against a Japanese construction company for bribing Vietnamese government officials in connection with a large infrastructure project. Earlier, Japan prosecuted a minor case against a Japanese electrical and engineering firm for alleged bribery of two Philippine government officials. However, despite this beginning, Japan's enforcement efforts are unsatisfactory and it has not yet addressed several deficiencies in Convention implementation.**

Foreign Bribery Offence. Implementation of the offence of foreign bribery in the Unfair Competition Prevention Law, rather than in the Penal Code, is viewed as having reduced its priority and contributed to the absence of formal investigations and prosecutions. The OECD Working Group has recommended moving the foreign bribery offence to the Penal Code to give it greater priority and enhance its visibility. Some commentators have claimed that would be impractical because corporations are not subject to the Penal Code. TI Japan has recommended enactment of a stand-alone legislation regulating the foreign bribery offence. The government has rejected the recommendation.

Centralised Enforcement Authority. Japan has no centralised office or unit for foreign bribery enforcement. In response to the 2005 OECD Working Group *Phase 2bis Review*, there seems to be better coordination among the Foreign Affairs, Justice, and Trade and Industries Ministries and other authorities such as police and tax. The OECD Working Group has also recommended that Japan establish a special intelligence unit within the National Police Agency or the Public Prosecutors Office to pro-actively collect investigative leads and other information concerning the offence of foreign bribery.

Jurisdiction. The March 2007 OECD *Phase 2 Follow-Up Report* called on Japan to consider whether territorial jurisdiction in Japan is adequate for covering the acts of Japanese parent companies (*e.g.,* incitement and authorisation) in relation to foreign bribery by subsidiaries. The report also called for Japan to clarify the application of the foreign bribery offence to cases where the bribe is transferred directly to a third party, such as a charity or political party, in accordance with an agreement between the briber and the foreign public official.

Accounting and Auditing Requirements. Following recommendations of the OECD's *Phase 2 Report*, the Japanese government took several measures to meet the objectives of Article 8 of the Convention. The Working Group noted, however, in its March 2007 report that 'the standard of materiality for fraudulent accounting offences under the Securities Exchange Law still applies, and the penalties for fraudulent accounting pursuant to the new Corporate Code are very low'. The standard of materiality problem remains identified as one of areas where recommendations have only been partially implemented. (See new developments below.)

Anti-Money Laundering. Japan has not made foreign bribery a predicate offence for the purpose of applying money laundering legislation, which is a serious deficiency.

Lack of Awareness. There is a lack of awareness of the foreign bribery offence, especially within the legal profession, and about the Japanese whistleblower law, which should be addressed.

Recent Developments. The Japanese Government has encouraged the Diet to pass a bill to amend the *Anti-Organized Crime Law (AOCL), the Penal Code* and the *Criminal Procedure Law* to remove the deficiencies in Japanese legislation. The bill, which amends the definition of "crime proceeds" to include the proceeds of bribing a foreign public official, has been before the Diet for some time. As the bill also purports to incorporate the controversial concept of conspiracy, which is totally new to the Japanese legal system, it faced strong opposition in society which has prevented it from passing the Diet for almost three years. This delay of the bill in the Diet also prevents the government from ratifying the UNCAC.

A bill has been introduced which enhances the penalties for the falsification of disclosure statements and raises the penalty to under 10 years of imprisonment or less than 10 million yen (US $104,000) in fines.

RUSSIA: **In the Volcker report on the UN Oil-for-Food scandal in Iraq,[12] Russian companies and individuals were prominent among those benefiting from the illegal contracts. Companies named included leading Russian oil firms such as Alfa Eco, Gazprom, Lukoil, Zarubezhneft, and Tyumen Oil Company. Yet, Russia has no known foreign bribery cases or investigations.**

Foreign Bribery Offence. According to the December 2008 GRECO *Evaluation Report* on the Russian Federation, bribery of foreign public officials had not been criminalised as a separate offence under Russian law. Bribery of a foreign public official could only be prosecuted as a private sector offence (bribery in a profit making organisation) if the act took place in the Russian Federation, or outside Russia if the bribe-giving is contrary to Russian interests (Article 12 CC).

Accounting and Auditing Requirements. According to GRECO, accountants reported that they are not permitted to check accounts with a view to discovering corruption. GRECO recommended that the government encourage auditors and other advisory and legal professions to report suspicions of corruption to the authorities.

Independence of the Judiciary. A December 2008 GRECO report found that further improvements are needed in the area of independence of the judiciary, in particular in respect of recruitment and promotion procedures and the exercise of judicial functions.

[12] *Independent Inquiry Committee into the UN Oil-for-Food Program, Manipulation of the Oil- for- Food Program by the Iraqi Regime, October 27, 2005: www.iic-offp.org/story27oct05.htm.*

Immunities from Prosecution. GRECO found that immunities from prosecution are very broad in scope and influenced by political considerations. It recommended reducing the categories of persons enjoying immunity.

Recent Development. A Presidential Council on Counteracting Corruption was established in May 2008 chaired by the President of the Russian Federation. In July 2008 a National Anti-corruption Plan was approved by the Council and a legislative package introduced thereafter would establish a new legal framework in the fight against corruption.

Russia is reported to have adopted new anti-corruption legislation on 25 December 2008, including a Law against Corruption and three legislative acts amending existing legislation to bring Russian law into compliance with the UNCAC and the Council of Europe Criminal Law Convention.

Finally, Russia stated its intention to become a party to the OECD Convention at the Toyako G8 Summit in 2008[13]. In June 2009, Russia formally launched negotiations for its future accession to the OECD by submitting a formal "Initial Memorandum."[14]

UNITED KINGDOM: **Since ratifying the Convention in 1998, the UK has brought four foreign bribery cases, which were all during the past year. It has about 20 ongoing investigations. Despite these encouraging signs, there continue to be serious deficiencies in the UK's enforcement of the Convention.**

Inadequate Implementing Legislation. Ten years after signing the OECD Convention, the UK has still failed to modernise its foreign bribery law. Inadequacies in the UK foreign bribery law were first identified by the OECD Working Group in its initial monitoring review in 1999, and again in follow-up reviews in 2005. An extraordinary review conducted in March 2008 was specifically designed to address the UK's continuing failure to enact a law compliant with the Convention.

Following heavy pressure from the OECD and TI-UK, the UK Ministry of Justice published a draft bill in March for pre-legislative scrutiny. The Bill, based on Law Commission proposals, is intended to provide a consolidated scheme to address domestic and foreign bribery and to comply with the OECD Convention.

The draft bill represents the best consensus that can be attained among a range of stakeholders and provides a good foundation for fast-tracking the adoption of a bill in the fourth session of this Parliament. Although the Government has indicated its intention to pass the Bill before the 2010 general election, no firm timetable has been set for action. Many fear that if action on the bill is deferred to the fifth Parliamentary session (2009/10), which will be a short session because of the general election in 2010, there is a danger that other issues may encumber consideration of the bill.

[13] *G8 2008 Accountability Report: Implementation Review of G8 Anti-Corruption Commitments. Available at: www.mofa.go.jp/policy/economy/summit/2008/doc/pdf/0708_03_en.pdf*
[14] *OECD press release, 24/06/2009 www.oecd.org/document/52/0,3343,en_2649_34487_43159691_1_1_1_1,00.html*

Transparency International UK has called for the Government to fast-track enactment of a new anti-bribery law in the 2008/09 Parliamentary session that is: (1) consistent with the UK's OECD Convention commitments; (2) comprehensible to a wide audience; and (3) effective and easily enforceable in a modern legal context. It has also recommended that the law provide for corporate criminal liability and that the government work with the business community and small businesses in particular, to increase awareness of bribery and corruption and the importance of adopting strong corporate anti-bribery systems.

Political Influence Over Enforcement. The premature termination by the Serious Fraud Office (SFO) of its investigation of the BAE Al Yamamah case in 2006 is still a major issue.[15] At present, special consent of the Attorney General is required for the prosecution of bribery offences. The draft Bribery Bill and the Government's draft Constitutional Renewal (CR) bill provides for corruption offences to be removed from those needing the Attorney General's consent. However, the draft CR Bill contains a disturbing new general power for the Attorney General to intervene in investigations/prosecutions on grounds of safeguarding national security.

Auditing and Accounting Requirements. Generally UK accounting and auditing standards represent best practice, and auditors are required to report suspicions of a crime to law enforcement authorities.

However, in its 2005 evaluation of UK implementation of the OECD Convention[16], the OECD Working Group on Bribery questioned the "adequacy of UK accounting requirements to prevent and detect bribery of foreign public officials." The report noted the "failure to consider the existence of possible accounting offences linked to bribery" in the UK, and questioned whether there was sufficient case law in place to punish accounting offences linked to bribery. There have been no reported cases of false accounting being used as a charge related to or founded upon alleged corruption/bribery.

UNITED STATES: **The OECD Working Group has noted that the US has implemented the Convention's foreign bribery prohibitions in a "detailed and comprehensive manner." The US has by far the strongest enforcement record with 120 cases, a broad scope of coverage and severe penalties. Among the cases concluded in 2008, were major criminal proceedings against Halliburton and Kellogg, Brown & Root, major construction and services companies, for bribery of Nigerian officials. In addition, the US settled charges that Siemens violated the internal controls and books and records provisions of the US Foreign Corrupt Practices Act for a record fine of US $800 million (€598 million). In addition, an independent monitor will oversee implementation of a comprehensive compliance programme for four years, and Siemens agreed to cooperate with ongoing investigations of company employees and agents.**

Facilitation Payments. The Working Group has noted the potential for misuse of the "facilitation payments" exception from the Foreign Corrupt Practices Act (FCPA). According to the Convention Commentary, "Small 'facilitation' payments do not constitute payments made 'to obtain or retain business or other improper advantage' within the meaning of paragraph 1 and, accordingly, are also

[15] *The UK Government and the Director of the SFO claimed that the decision was taken on grounds of national and international security and not for any reasons prohibited by Article 5 of the OECD Convention. On 10 April 2008, the Administrative Court held that the SFO Director was wrong to discontinue the investigation. In July 2008, the House of Lords, the highest appellate court of law in the country, upheld the SFO's appeal and overturned the Administrative Court decision.*

[16] *UK OECD Working Group Phase 2 Report, 2005. Available at: www.oecd.org/dataoecd/62/32/34599062.pdf*

not an offence." However, such payments are generally illegal in the country where paid and there is growing pressure on and support in the private sector to eliminate the use of such payments.

Resources for Enforcement Authorities. Vigorous enforcement activity and the additional burden created by recent cases of financial crime have put a strain on the resources of the Department of Justice and the Securities and Exchange Commission. Further resources are needed to continue vigorous enforcement, including prosecution of non-US based offenders. The US Congress has recently moved on appropriation of substantial additional resources.

WHAT MUST THE G8 DO NOW?

Unless all major exporters aggressively attack foreign bribery, it will continue to undermine international business and development. Governments that have brought cases may diminish their efforts if their exporters appear to be losing orders to competitors that are free to win orders by paying bribes. With trillions in government expenditures anticipated globally, the recovery and the interests of taxpayers and those most in need will be undermined unless there is a renewed commitment to action and credible sanctions for failure.

ALL G8 COUNTRIES SHOULD:

- Vigorously enforce their foreign bribery laws and urge others to do the same;
- Promptly correct deficiencies in Convention implementation;
- Support a serious OECD programme to promote vigorous Convention enforcement;
- Call for an OECD annual report listing all foreign bribery prosecutions, including convictions and other dispositions and reflecting failures to correct deficiencies identified in the country reviews;
- Insist on high-level technical participation by all member governments in the OECD Working Group with continued adequate funding and continued rigorous on-site visits and candid assessments of countries' enforcement efforts;
- Support accession by China, India and Russia, including participation in the follow-up process to promote consistent enforcement;
- Increase outreach to the private sector to encourage implementation of effective anti-bribery programmes and compliance cultures; and
- Increase outreach by diplomatic missions engaged in advocacy on behalf of companies to promote anti-bribery compliance.

LEVERAGING FINANCING TO REDUCE CORRUPTION: EXPORT CREDIT AGENCIES

WHAT HAS THE G8 COMMITTED TO DO?

In 2005, the G8 committed to help reduce foreign bribery by the private sector by "strengthening anti-bribery requirements for those applying for export credits and credit guarantees."

WHY IS EXPORT CREDIT AGENCY ACTION IMPORTANT?

Export credit agencies (ECAs) provide government-backed loans, guarantees and insurance to companies that do business abroad, often in financially and politically risky environments. Today, ECAs are among the largest sources of *public* financial support for companies operating in fiercely competitive export markets.

In recent years, serious concerns have been raised that ECAs are supporting projects tainted by bribery. For example, the OECD Working Group report on the UK raised questions about Export Credit Guarantee Department's continued and renewed support (estimated at US $1.5 billion - €1.12 billion - in 2008) for the BAE - Saudi Arabia arms deal and its lack of due diligence in light of allegations of bribery.

With the G20 commitment to add US $250 billion (€192 billion) to the pipeline and the critical need for rapid disbursement in response to the economic crisis, the risk of corruption and fraud and the need for accountability are more important than ever.

WHAT ACTIONS HAS THE G8 TAKEN TO DATE?

The 2006 OECD Council *Recommendation on Bribery and Export Credit Supported Transactions*[17] reflects a consensus roadmap of the steps that all ECAs should take to ensure that funds are used solely for their intended purposes and are not diverted for corrupt ends. Its terms require ECAs to:

- Require exporters to certify they will not engage in bribery and to disclose bribery charges, convictions or administrative sanctions;
- Require exporters to provide, upon demand, the names of agents and amounts of payments;
- Verify whether exporters appear on publicly available debarment lists;
- Conduct enhanced due diligence of the exporters' business practices and contract terms in specified cases;

[17] *OECD Council Statement available at: www.oecd.org/document/62/0,2340,en_2649_34169_37858750_1_1_1_1,00.html.*

- Verify that internal corrective measures are in place for exporters convicted of foreign bribery; and
- Suspend approval of credit where evidence of bribery is found, denying credit and seeking indemnification and refund where bribery is proven; and disclosing evidence of bribery to law enforcement authorities.

A 2008 survey by the OECD Working Party on Export Credit and Credit Guarantees (ECGD)[18] seems to indicate that all G7 members of the OECD have taken steps to amend their rules governing export credits to comply with the Recommendation. However, it is unclear to what extent members are adhering to the Recommendation in practice.

To illustrate what may be more widespread among other ECAs, recent UK legislation, the UK *Industry and Exports (Financial Support) Act,* which came into force in May 2009, may have the effect of weakening the application of the UK ECGD anti-bribery rules. For example, it will allow the ECGD to provide insurance cover retroactively for existing projects, foreclosing the deterrent effect of pre-project due diligence. Sanctions for breach of anti-bribery rules are not clear. Moreover, a new proposal (currently under consultation), if implemented in its present form, would allow the ECGD to introduce a new short-term credit scheme without effective anti-bribery due diligence. A review of the operation of ECGD's anti-bribery rules is to be undertaken in 2009 and should address these issues.

WHAT MUST THE G8 DO NOW?

While the *2006 Council Recommendation* is a step forward in meeting the G8 commitment to reduce bribery by strengthening requirements for companies applying for export credit, its provisions must be fully and consistently applied in practice. To ensure that financial flows through ECAs are actually used to restore growth to the world economy, it is essential that the G8 ECAs take steps to ensure they do not support deals secured through bribery, fraud or collusion and publicly report on their actions.

If G8 leaders are to fulfil their November 2008 pledge to "help emerging and developing economies gain access to finance in current difficult financial conditions, including through liquidity facilities and programme support," they must not only "coordinate export credit support" as promised in their April 2009 statement. They must provide assurance that appropriate corruption risk management and accountability measures, as agreed in the *2006 Council Recommendation*, are in place to safeguard these funds.

TI welcomes the OECD survey of member efforts to implement the Recommendation, but notes that the on-site reviews by the OECD Working Group on Bribery have provided important additional information on how the recommendation is being applied in practice. The G8 should call on the OECD to integrate the efforts of the two working groups in order to report annually on actual steps to prevent and sanction corruption in officially supported projects.

[18] *See Export Credits and Bribery: Annex to 2008 Review of Responses to the 2006 Survey on Measures Taken to Combat Bribery in Officially Supported Export Credits – Situation as of 31 December 2008, available at: www.olis.oecd.org/olis/2008doc.nsf/LinkTo/NT00007E2A/$FILE/JT03258230.PDF.*

It should support other important measures, including expanded coverage to other participants in the transaction, such as the exporters' joint venture and consortium partners and major sub-contractors, and requiring *all participants* (1) to certify that they will not engage in bribery and will implement an effective anti-bribery programme; and (2) to disclose information related to agents as well as to charges, convictions or administrative sanctions.

GLOBALISING THE FIGHT AGAINST CORRUPTION: UN CONVENTION AGAINST CORRUPTION

"The United Nations Convention against Corruption, which came into force in December 2005, contains strong measures for building integrity and fighting corruption that apply to both the public and private sectors. There is an urgent need to make the Convention work and become the global norm." UN Secretary-General Ban Ki-moon, December 4, 2008.

WHAT HAS THE G8 COMMITTED TO DO?

Since 2002, the G8 has committed to promoting the adoption and implementation of the UNCAC, the global anti-corruption convention. Specifically, they have committed to:

- **Ratification:** Become parties to the UNCAC (Sea Island 2004); Work for early ratification (Gleneagles 2005); Support global ratification and implementation (St. Petersburg 2006); Support the ratification of the UNCAC by all countries (Heiligendamm 2007); Call for the ratification of the UNCAC by all countries (Toyako 2008);

- **Review Mechanism:** Contribute to the completion of the UNCAC with effective follow-up mechanism (Evian 2003); Promote effective implementation of commitments; vigorously enforcing laws against foreign bribery (St. Petersburg 2006); Coordinate closely to promote effective implementation of the UNCAC, particularly related to developing effective review mechanisms (Heiligendamm 2007); Call for a strong and consistent follow-up by ensuring effective implementation of UNCAC, including the development of a review mechanism (Toyako 2008); and

- **Asset Recovery:** Establish effective mechanisms for the recovery and return of assets and encourage all countries to promulgate rules to deny entry and safe haven to officials and individuals guilty of public corruption and their assets (Gleneagles 2005); Work with international financial centres and our private sectors to deny safe haven to assets illicitly acquired by individuals engaged in high level corruption (St. Petersburg 2006); Deny safe haven through our national laws to individuals found guilty of corruption and return illicitly acquired assets with high priority (Heiligendamm 2007); Strengthen international measures on asset recovery, and encouraging provision of technical assistance supporting the work of UNODC, Interpol, the OECD and other international bodies to coordinate implementation of the UNCAC (Heiligendamm 2007); Redouble our efforts to deny safe haven through our national laws to public officials found guilty of corruption and strengthen international cooperation on asset recovery including supporting initiatives of relevant international organisations such as the StAR Initiative promoted by the World Bank and the UNODC (Toyako 2008).

WHY IS THE UN CONVENTION IMPORTANT?

Since the 2005 entry into force of the UNCAC, 136 nations have ratified it, creating a globally accepted, comprehensive framework for combating corruption. The UNCAC has changed the global debate from what *should* be done to combat corruption to how best to implement universal norms. If implemented, the UNCAC will help promote rule of law, good governance and accountability worldwide.

Its most significant provisions include:

Prevention: Parties are to implement codes of conduct and conflict of interest rules for public officials; provide public access to information, and ensure transparent procurement and public financial management. The private sector is urged to implement internal controls and enhanced accounting and auditing provisions to prevent and detect corruption.

Criminalisation: Parties are required to criminalise foreign bribery and solicitation and other acts of corruption such as embezzlement and misappropriation of public funds.

Mutual legal assistance: Parties must afford one another the broadest possible mutual legal assistance – an often critical part of investigating and prosecuting transnational corruption cases. Bank secrecy cannot be the basis for declining a mutual legal assistance request.

Asset Recovery: Parties are required to adopt procedures to trace, freeze, seize and repatriate stolen assets, which will make it more difficult for "kleptocrats" to hide their illicitly-acquired assets and enjoy the fruits of their criminal behaviour.

WHAT ACTIONS HAS THE G8 TAKEN TO DATE?

Ratification:

- **Completed:** Canada, France, Russia, the United Kingdom and United States.
- **In Process:** 21 May 2009 the Italian Council of Ministers approved the UNCAC and on 26 June, the Italian Senate gave its approval as well. A Parliamentary Commission is now reviewing it for final approval, and commentators are hopeful that the UNCAC will be approved by the Commission before the L'Aquila meeting.
- **No Action:** Germany and Japan have not ratified the UNCAC, but ratification in Japan is expected once certain domestic legislation is in place. German parliamentarians show no willingness to change German law according to the UNCAC requirements with respect to the bribery of parliamentarians, which would be essential for ratifying the Convention.

Implementation: The extent of UNCAC implementation by each G8 country is difficult to assess as few self-assessment reports on implementation have been published and no formal review mechanism exists yet to provide information.

All G8 countries, with the exception of Japan[19], have completed a self-assessment questionnaire, circulated by the UN Office of Drugs and Crime (UNODC), the UNCAC Secretariat, [20] regarding the

[19] *As of January 2008. A list of the published reports is available at: www.unodc.org/documents/treaties/UNCAC/COSP/session2/V0850425e.pdf*

status of UNCAC implementation. The United Kingdom and United States have posted their responses on their governments' websites.[21] A summary of responses is available on the UNODC website.[22] France, the United Kingdom and United States have agreed to submit their questionnaire responses to peer review and consultation, in a "pilot monitoring" programme, which is scheduled to conclude at the end of 2009.

WHAT MUST THE G8 DO NOW?

Germany, Italy and Japan should ratify the UNCAC immediately. In addition, all G8 governments should:

- Fully implement the UNCAC;
- Publish their responses to the UNODC self-assessment questionnaire on implementation;
- Exert their full political leadership in creating and funding a robust monitoring mechanism at the 2009 CoSP, with adequate funding and including on-site visits, published reports and opportunities for civil society participation;
- Encourage multilateral development institutions to fully support country efforts to ratify and implement the UNCAC; and
- Cooperate on asset tracing and recovery, and encourage all countries to adopt and enforce rules to deny entry and safe haven to officials and individuals guilty of public corruption with similar prohibitions on their assets.

The ultimate success of the UNCAC will remain uncertain until a credible and effective review mechanism is created to promote progress, create peer support and peer pressure for reform and ensure adequate transparency to enable civil society to provide meaningful oversight.

An effective review process is particularly essential for the UNCAC, which includes numerous country Parties, widely divergent in terms of levels of development, capacity and political will to enact its terms. While the text of the UNCAC provides for the creation of a mechanism to assist in Convention implementation, the Parties themselves are charged with its development. Although in 2006, the Conference of States Parties or "CoSP" agreed that a mechanism is "of paramount importance and urgent," the Parties still have made little progress.

It is essential that the Parties come to agreement on the terms of a formal and permanent review mechanism when they meet in November for the Third CoSP in Doha. Further delay will damage the credibility of the Convention as an effective instrument for progress.

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[20] *Germany and Italy responded to the questionnaire without having ratified the Convention.*
[21] *UK response available at: www.dfid.gov.uk/Global-Issues/Working-to-make-Global-Aid-more-effective/Tackling-corruption/*
US response available at: www.state.gov/documents/organization/91995.pdf.
[22] *A summary of the responses to the self-assessment questionnaire is available at: www.unodc.org/documents/treaties/UNCAC/COSP/session2/V0788913e.pdf and www.unodc.org/documents/treaties/UNCAC/COSP/session2/V0850425e.pdf.*

RESTORING INTEGRITY AND TRANSPARENCY IN FINANCIAL INSTITUTIONS AND MARKETS

WHAT HAS THE G8 COMMITTED TO DO?

At past Summits, they have committed to:

- **Due Diligence:** Require financial institutions to establish procedures for enhanced due diligence on Politically Exposed Persons (PEPS) (Evian 2003); Encourage all countries to require enhanced due diligence for financial transactions involving PEPS (Gleneagles 2005);

- **Transparency:** Further enhance transparency and supervisory standards in financial markets, in particular non-compliant off-shore centres; urge all financial centres to adopt high standards of transparency (Sea Island 2004); Press all financial centres to obtain and implement the highest international standards of transparency and exchange of information (Gleneagles 2005); Take concrete steps to ensure that financial markets are protected from criminal abuse, including bribery and corruption, by pressing all financial centres to attain and implement the highest international standards of transparency (St. Petersburg 2006); Urge all financial centres to implement the highest international standards of transparency, exchange of information and the fight against money laundering (Heiligendamm, 2007);

- **FATF & Money Laundering:** Support issuance of revised Financial Action Task Force (FATF) recommendations and for all countries to comply (Evian 2003); Implement the FATF revised recommendations (Sea Island 2004); Fight vigorously against money laundering, including by prosecuting money laundering offences and by implementing the revised recommendations of the FATF-related customer due diligence, transparency of legal persons and arrangements which are essential to tackling corruption (St. Petersburg 2006);

- **Asset Recovery and No Safe Haven:** Return illicitly-acquired assets with and develop additional measures to prevent individuals found guilty of corruption from gaining access to the fruits of their criminal activities in their financial systems (Heiligendamm, 2007); Reaffirming our previous commitments, we will redouble our efforts to deny safe havens through our national laws to public officials found guilty of corruption and strengthen international cooperation on asset recovery including supporting initiatives of relevant international organisations such as the StAR Initiative promoted by the World Bank and the UNODC (Toyako 2008); and

- **Tax Information:** Urge all countries that have not yet fully implemented the OECD standards on transparency and effective exchange of information in tax matters to do so without further delay, and encourage the OECD to strengthen its work on tax evasion and report back in 2010 (Toyako 2008).

WHY IS TRANSPARENCY IN FINANCIAL INSTITUTIONS AND MARKETS IMPORTANT?

Recognising that "[t]his crisis has highlighted fundamental weaknesses in the international financial system and that urgent reforms are needed," the G7 Finance Ministers Statement of 14 February 2009, appropriately called for "propriety, integrity and transparency of international economic and financial activity" and to "accelerate reforms of the regulatory framework."

Even before the crisis, it was clear that the global financial system and financial centres and institutions were being misused for corrupt purposes. Unscrupulous government officials and companies engaged in international commerce used major financial centres and offshore centres to move illicit funds into secret bank accounts for personal enrichment or to use as bribes to secure contracts, concessions and other favourable treatment.

Lack of transparency, inadequate cooperation among tax and judicial authorities and opaque and unregulated financial products permit illicit transfers and obstruct investigations of embezzlement, foreign bribery, tax evasion and other crimes. By creating black holes in the global financial system, they contribute to and even increase systemic risk, best illustrated in the current crisis. They also provide shelter for funds misappropriated by kleptocrats, as illustrated by the secret accounts of the former Nigerian dictator Sani Abacha.

WHAT ACTIONS HAS THE G8 TAKEN TO DATE?

In responding to the financial crisis, the G8 has made important commitments in addition to those of prior G8 summits. The G8 leaders meeting as part of the G20 Summit in April 2009, acknowledged that "[m]ajor failures in the financial sector and in financial regulation and supervision were fundamental causes of the crisis." They concluded that "[c]onfidence will not be restored until we rebuild trust in our financial system" and committed to "take action to build a stronger, more globally consistent, supervisory and regulatory framework for the future financial sector, which will support sustainable global growth and serve the needs of business and citizens."

In agreeing that "[s]trengthened regulation and supervision must promote propriety, integrity and transparency"[23], the G8 agreed to much needed, fundamental reforms, including, inter alia:

- To extend regulation and oversight to all systemically important financial institutions, instruments and markets;
- To take action against non-cooperative jurisdictions, including tax havens. The era of banking secrecy is over. We note that the OECD has today published a list of countries assessed by the Global Forum against the international standard for exchange of tax information;
- To call on the accounting standard setters to work urgently with supervisors and regulators to improve standards on valuation and provisioning and achieve a single set of high-quality global accounting standards; and
- To extend regulatory oversight and registration to Credit Rating Agencies to ensure they meet the international code of good practice, particularly to prevent unacceptable conflicts of interest.

[23] *G20 final communiqué, 2 April 2009. Available at: www.g20.org/Documents/final-communique.pdf*

In the June 2009 *Lecce Framework*, the G8 Finance Ministers concurred on the need for urgent action to promote transparency, strengthen regulatory and supervisory systems and strengthen business ethics. They committed to take action on specific issues, including regulation of systemically important institutions, credit rating agencies, accounting standards, cross-border exchange of information, bribery, tax havens, non-cooperative jurisdictions and money laundering.

They expressed support for further progress on exchange of tax information and peer review to assess compliance with agreed standards. They committed to improve and implement international money laundering standards and called for a report back by September 2009 on non-cooperative jurisdictions. They also endorsed FATF's call for protecting the financial system from illicit financing.

WHAT MUST THE G8 DO NOW:

TI calls for accelerated action and for benchmarks, timetables and reporting on action to implement both prior G8 commitments and the more recent G20 and G8 commitments. It is imperative that funds and programmes devised to meet this economic crisis are used solely for their intended purpose and are not diverted for corrupt ends in either the developed or developing world. Promotion of greater transparency of all financial centres and cross border capital flows and better coordination of national controls and exchange of information will be crucial to this effort. Further progress is urgently needed to:

- Publish FATF and IMF assessments of countries' compliance with anti-money laundering, politically exposed persons (PEPs) and transparency standards and require financial institutions to take that information into account; update a credible FATF list of non-cooperative jurisdictions in meeting anti-money-laundering requirements and providing international legal assistance;
- Make the placement of illicitly obtained proceeds in bank accounts, including offshore, as risky as possible; adopt stronger transparency rules for the global financial markets to effectively prevent the abuse of legal schemes (such as trusts, company services and foundations) for purposes of hiding illicit transfers of funds across borders, while protecting legitimate privacy concerns; and create public national registries of trust and investment funds, indicating the identities of their founders and beneficiaries and the names and qualifications of the trustees;
- Strengthen their support for the Stolen Assets Recovery (StAR) Initiative as well as other initiatives to help developing countries recover and protect stolen assets and the proceeds of corruption;
- Ensure that international accounting standards require disclosure of special purpose vehicles and other off -book entities and that financial institutions disclose in annual reports activities involving offshore centres;
- Enhance transparency and regulation of asset-backed securities, hedge funds and entities;
- Make tax evasion through offshore accounts a predicate offence subject to rigorous prosecution under relevant anti-money laundering laws; promote international coordination to deter tax evasion, including the ongoing OECD assessment and enhancement of tax information exchange practices; and,
- Extend efforts to enhance information exchange to mutual legal assistance, including on foreign bribery.

CONCLUSION

As the world's leading economies, G8 countries bear a special responsibility to ensure that transparency, accountability and integrity are at the forefront of the global agenda. The backdrop of the global economic crisis increases the urgency for G8 countries to fulfil and build on past pledges. Committed and concerted action is needed to shield the most vulnerable from being affected disproportionately by the crisis and to restore global confidence and growth. It is critical that the G8 delivers.

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