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UNCAC Coalition
input to the

OECD Working Group on Bribery
Public Consultation Document
Review of the
2009 OECD Anti-Bribery Recommendation

The UNCAC Coalition is a global network of over 350 civil society organisations (CSOs) in over 100 countries, committed to promoting the ratification, implementation and monitoring of the UN Convention against Corruption (UNCAC).[1]

With this submission, we seek to highlight relevant UNCAC provisions, promote synergies between the Anti-Bribery Convention and the UNCAC, and present positions the UNCAC Coalition has taken in UNCAC fora that are also relevant to the work of the OECD Working Group on Bribery.

11. What recommendation could be envisaged on the issue of transparency of beneficial ownership information, given this issue is currently already addressed in other fora?

States should require the public disclosure of beneficial ownership information for all companies, trusts and foundations to bolster existing anti-money laundering laws.[2] The WGB should thus recommend states to adopt beneficial ownership legislation that includes public disclosure requirements, building upon the standards established by the EU's 5th Anti-Money Laundering directive[3] and FATF recommendations,[4] as well as on UNCAC Article 12 (c) and on UNCAC Resolution 6/3, among others, which encouraged UNCAC States parties to take necessary measures "to obtain and share reliable information on beneficial ownership of companies, legal

[1] A list of the UNCAC Coalition's members and affiliated organisations is available at https://uncaccoalition.org/en_US/about-us/members-list/
[2] UNCAC Coalition Briefing Note: Public Disclosure of Beneficial Ownership, https://uncaccoalition.org/files/Briefing-Note-Beneficial-Ownership.pdf
[3] https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32018L0843
[4] http://www.fatf-gafi.org/documents/news/transparency-and-beneficial-ownership.html

structures or other complex legal mechanisms, including trusts and holdings, misused to commit or conceal crimes of corruption or to hide and transfer proceeds, thus facilitating the investigation process and execution of requests."[5]

The WGB should also provide guidance on the definition of beneficial ownership (BO) and applicable disclosure thresholds, including to ensure that all relevant legal forms are covered by disclosure and that the ownership disclosure cannot be easily circumvented, as well as on best practice approaches to ensure information is regularly updated and maintained.[6]

Furthermore, the WOB should recommend that states adopt and implement publicly accessible open data BO register of companies. Similar registers with information on directors and ownership structures should also cover other legal forms, including trusts and foundations. Importantly, the registers should be easily accessible online and provide extensive search functions, without the need to create accounts or pay fees for access or limit reuse of the information.

Similarly, the WGB could collect best practice approaches that can help to ensure that registers are kept up to date and that appropriate control mechanisms and sanctions are in place to ensure compliance.

In addition to the implementation of a publicly accessible BO register, the WBO should recommend that company registers: (i) include information on direct owners and directors (including unique identifiers), (ii) are easily accessible to the public online (free access without registration requirements) and (iii) allow the public to access relevant company filings.

As a best practice, data from both, the company registry and the BO registry – which may also be combined, as in the example of the UK registry – should be provided in technical formats (via an API) and under licenses that facilitate access and reuse of data by third actors.[7] Company and beneficial ownership information have become an essential source for corruption-related investigations conducted by reporters and civil society groups.[8] If social watchdogs cannot access this data, their ability to detect and investigate possible bribery cases is substantially weakened.

To facilitate the use, exchange and interoperability of beneficial ownership information, the WGB should promote the use of a common data standard for beneficial ownership information, building on work done by OpenOwnership and its member groups.[9]

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[5] CAC/COSP 6 Resolutions, https://www.unodc.org/unodc/en/treaties/CAC/CAC-COSP-session6-resolutions.html

[6] The EU Commission has found that the 25% ownership threshold set in the 4th Anti-Money Laundering directive was "fairly easy to circumvent", https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52016SC0223

[7] The methodology of OpenCorporates' Open Company Data Index, although no longer updated, can be consulted for guidance, http://registries.opencorporates.com/methodology.

[8] See the database compiled by the Organized Crime and Corruption Reporting Project (OCCRP), https://data.occrp.org/

[9] See: https://standard.openownership.org/ and https://standard.openownership.org/

In the undesirable case that the BO registry is not accessible to the public, the WGB should recommend that the legal framework clearly defines that relevant authorities (e.g. financial intelligence unit, tax authorities, public prosecutors, anti-corruption agencies, bodies supervising the implementation of asset disclosure of public officials, etc.) have access to beneficial ownership information and can carry out necessary searches.

Complementing, where needed, State Parties' UNCAC commitments and FATF recommendations, the WGB could provide guidance on situations when financial institutions should terminate a commercial relationship, if BO verification criteria are not met, on the grounds of doubts or distrust regarding the true ownership of assets.

We also note that compliance with UNCAC Article 12 is being reviewed in the ongoing second cycle of the UNCAC implementation review.

14. What recommendation could be envisaged to address non-trial resolutions in the enforcement of the foreign bribery offence?

According to recent data published by the OECD, non-trial resolutions have become the primary enforcement vehicle of anti-foreign bribery laws. The past decade has seen a steady increase in the use of coordinated multi-jurisdictional non-trial resolutions. They amount to 78% or 695 individual cases out of the total amount of 890 foreign bribery resolutions since the Convention entered into force in 1999. 15 of the 44 Parties to the Convention have used a non-trial resolution mechanism at least once to resolve a foreign bribery case with either a legal or a natural person or both.[10] However, non-trial resolutions should be one tool in a broader enforcement strategy in which prosecution also plays an important role. They should be executed on a proper legislative basis. If settlements are used, they must provide effective, proportionate and dissuasive penalties.[11]

Circumstances in which non-trial resolutions should not be used

Experience shows that a number of companies have been granted non-trial resolutions on multiple occasions.

Non-trial resolutions should not typically be used where a company has had previous corruption-related enforcement or regulatory action taken against it, especially where the current or previous case involves grand corruption. A company's size and, thus, its alleged importance should not become a determining factor in the prosecution against it. Rather, the gravity of current and

[10] OECD (2019), *Resolving Foreign Bribery Cases with Non-Trial Resolutions: Settlements and Non-Trial Agreements by Parties to the Anti-Bribery Convention,* www.oecd.org/corruption/Resolving-Foreign-Bribery-Cases-with-Non-Trial-Resolutions.htm

[11] Some of the principles outlined below have already been submitted to the OECD Secretary-General in late 2018 by the UNCAC Coalition, together with Transparency International, Global Witness and Corruption Watch UK, in a letter on "Principles for the use of non-trial resolutions in foreign bribery cases", https://uncaccoalition.org/files/CSO-Letter-to-OECD.pdf

previous offences should be a determining factor, and there should be a presumption that in a case of recidivism the “tone from the top” and compliance systems are lacking.

Although non-trial resolutions are predominantly considered as indirectly contributing to an overall increase in enforcement of the foreign bribery offence, they should not be used unless companies self-report, show full cooperation with law enforcement and have properly admitted and addressed the wrongdoing internally, including with a credible compliance programme. Non-trial resolutions must not be influenced by factors that fall outside the case such as Article 5 considerations or be used to protect companies from debarment.

Transparency

In some countries, prosecutors and other public authorities provide no information or very little public information about non-trial resolutions. Consequently, the resolutions do not adequately deter future wrongdoing and set up a barrier to accountability that undermines public confidence. This is particularly detrimental in grand corruption cases.

All non-trial resolutions should be made public, including the names of the offenders, the legal basis for the resolution, the terms of the agreement, a detailed justification for why a non-trial resolution is suitable for the case, the sanctions, and an agreed statement of facts which reflects a recognition of responsibility for wrongdoing and provides a significant level of detail. An admission of guilt is often appropriate. In addition, details of the performance of the non-trial resolution should also be published.

While settlements are cost-saving and incentivise companies to self-report, they should not be used in a way that undermines the justice system or public confidence in it. Parties and other major exporters should ensure that settlements meet adequate standards of transparency, accountability and due process. They should provide for effective, proportionate and dissuasive sanctions and be subject to meaningful judicial review, including an opportunity for affected stakeholders to be heard. Transparency is a key component of due process that cannot be abandoned in non-trial resolutions.

Companies should also be required to strengthen and monitor compliance programmes and to report publicly on how they have met the terms of the settlement. Thus, settlements should be used to leverage full disclosure of wrongdoing within a company.

In addition, the risk of being named publicly has a strong deterring value and provides a significant incentive for corporations to implement effective procedures. Non-trial resolutions should require companies to report publicly on how they have met the terms of resolution. Additionally, transparency as to the recipients and intermediaries involved in the bribery helps ensure that those who seek and take bribes or facilitate corrupt transactions are exposed, and pressure is brought for action against them in their own jurisdictions.

Senior-level individual accountability

The lack of senior-level individuals facing prosecution where serious corporate wrongdoing has occurred is one of the major sources of public concern about the use of non-trial resolutions. Individual accountability that involves lower level employees being prosecuted, while those at a senior level who managed or allowed wrongdoing by these employees escape any accountability, undermines confidence – not just in the justice system but in the economic and political system as a whole. Any provisions should clearly state that senior-level individuals must face a serious prospect of prosecution or disqualification, where appropriate.

Judicial review

In some countries, the judicial review of non-trial resolutions is inadequate or completely lacking. For example, in some countries, the only state body involved in the procedure is a prosecutor, with no oversight whatsoever.

Judicial oversight which includes proper scrutiny of the evidence should be required. Judicial review of non-trial resolutions is the gold standard and must be required to safeguard the integrity of their use. This should include a public hearing that gives an opportunity for affected stakeholders to express their views, especially in cases of alleged grand corruption. This is the only real means to ensure application of clear standards and parameters that have been established for the use of non-trial resolutions and to prevent unfettered discretion by – or possible corporate capture of – prosecutors, or other forms of undue influence.

We believe that any recommendation made by the WGB with regard to non-trial resolutions must reflect the following principles in order to be effective, which we have also underlined in a letter to José Ángel Gurría, the OECD-Secretary General, in December 2018.[12]

15. What recommendation could be envisaged to further address the effective, proportionate and dissuasive nature of sanctions for foreign bribery?

In some countries, there are no sanctions or only weak sanctions imposed in non-trial resolutions, or else sanctions vary in an arbitrary way from case to case.[13] In some resolutions, the defence of "effective regret" is accepted, something consistently criticised by the OECD WGB as undermining the purpose of the Convention. In others, "ability to pay" considerations are taken into account. All of these approaches are of great concern. We also have strong concerns about a trend in some countries to lower sanctions in order to incentivise self-reporting by corporations.

Non-trial resolutions must impose significant penalties and sanctions if they are to provide genuine deterrence and dissuasive value and be consistent with the Convention. These should

[12] See *supra* note 11.

[13] Already in September 2014, the UNCAC Coalition addressed the need of strengthening sanctions for foreign bribery in a post written by Maud Perdriel-Vaissiere (the then UNCAC Coalition Advisor on Asset Recovery) titled: Is there an obligation under the UNCAC to share foreign bribery settlement monies with host countries? Available here: https://uncaccoalition.org/en_US/is-there-an-obligation-under-the-uncac-to-share-foreign-bribery-settlement-monies-with-host-countries/

reflect the gravity of the offence and should include disgorgement of profits. Further, we believe that non-criminal or civil sanctions cannot serve as a substitute for criminal law.

Non-trial resolutions must not preclude further legal actions in other jurisdictions that are not parties to the settlement, subject to the applicability of the *non bis in idem* principle (double jeopardy). Authorities should make all relevant evidence available to their counterparts in other relevant jurisdictions.

18. Which other enforcement challenges (e.g. the interaction of remedies in cross-border corruption cases) could be addressed as part of the review of the Anti-Bribery Recommendation?

Victim reparation and inclusion of affected country authorities and victims

Joint investigations and joint non-trial resolutions involving multiple countries are on the rise. However, non-trial resolutions still seldom involve notification of enforcement authorities or victims from affected countries to enable them to testify to the harm done and submit compensation claims within the non-trial resolution negotiations. State coffers in supply-side countries are in many cases filled with fines and disgorgement of profits, while the state and people affected by the corruption are “left out of the bargain”.

Reparation or compensation for harm and the inclusion of authorities from affected countries at an early stage in the development of non-trial resolutions are essential to the fight against corruption. Reparation of harm is crucial in the interests of justice and in recognition of the fact that corruption is not a victimless crime. The inclusion of authorities from affected countries at an early stage, meanwhile, is essential to ensure that those who seek and take bribes can be pursued within their own jurisdictions, as well as facilitators of bribery.

Further, where appropriate, such as in cases of grand corruption and state capture, classes of victims should be given the opportunity to have representation other than from the authorities in affected countries. Compensation to victims, based on the full harm caused by corruption, must be an inherent part of a settlement. Countries and, as far as possible, all persons who would be affected by the settlement should be notified of the intention to enter into a settlement, given a right to representation at settlement hearings and be informed of how to make representations about compensation.

At the same time, arrangements for reparation or compensation should exclude the possibility of those subject to non-trial resolutions, implicated in wrongdoing, having a say in how that reparation and compensation is used and administered, and of gaining reputational advantage from reparation and compensation. The process should include giving voice and representation to the victims and aim to benefit the public good.

Admission of guilt

Countries vary in their practice regarding admission of guilt. In some countries, it is always required; in others, it is never required; and in a third group, it is sometimes required. In most cases, at least an admission of responsibility is required.

We believe that enforcement authorities should adopt a flexible approach with regard to admissions of guilt, with decisions made on a case-by-case basis. However, this should not mean that in practice admissions of guilt are never required. In particular, country authorities should aim to obtain admissions of guilt in cases of grand corruption. Moreover, in the absence of an admission of guilt, there should always be an admission of responsibility.

23. What recommendation could be envisaged to address the issue of awareness-raising in the public and private sectors?

In order to enable an informed debate concerning a country's performance in terms of combating foreign bribery, the periodic publication of statistics on criminal, civil and administrative investigations, charges, proceedings, outcomes and mutual legal assistance activity is crucial and the WGB should recommend and support the regular release of such information to the public.

Publications of case and enforcement data should clearly indicate the implications foreign bribery has. While confidentiality for ongoing investigations is legitimate, there is no reason why general, anonymised data on the number of investigations cannot be published. In most cases, the benefits for the public to learn about the details of case dispositions outweigh the negative implications on the defendant's right to privacy.[14]

Statistics and data

Experience from the first cycle of the UNCAC implementation review has shown that regularly updated data on cases and enforcement in many countries is not easily accessible to the public – or may not available at all.

Access to data and statistics is crucial in order to raise awareness of the risks of foreign bribery and to deter its use, as well as for policymakers, interested parties and the public to be able to assess enforcement results. Nevertheless, states parties to the OECD Convention are failing in transparency. In 37 of the 42 countries recently surveyed by Transparency International, there were no published statistics on foreign bribery enforcement, or only partial information was published.[15] 57% of the OECD countries that are party to the Convention, including China, Hong Kong, India and Singapore, provide no data on enforcement of foreign bribery, whilst only 11% provide substantial data. Hence, in some countries, there are no up-to-date criminal law enforcement statistics at all available to the public, while others provide such statistics, but do not record foreign bribery separately.

[14] See: Exporting Corruption - Progress report 2018: assessing enforcement of OECD Anti-Bribery Convention, p.13, https://www.transparency.org/whatwedo/publication/exporting_corruption_2018
[15] *Ibid*.

UNCAC Article 13 requires that countries take measures to facilitate access to information about prevention and the fight against corruption. Most countries enable access to data through official requests for information, but this is much less effective than proactively publishing information, as it requires the person requesting to invest significant effort and to know precisely what they are looking for. Results need to be made accessible to the broader public – domestically and also on an OECD-wide level – e.g. through an open database of international corruption cases. Thus, parties to the Convention should publish comprehensive annual statistics on foreign bribery enforcement, court rulings and non-trial resolutions. The annual statistics should cover each stage of the foreign bribery enforcement process and should include not only the foreign bribery offence but also related money laundering, tax and accounting violations as well as information on the handling of requests for mutual legal assistance.

Readily available statistics and enforcement data would also provide synergies, supporting other monitoring efforts, including the UNCAC implementation review process as well as follow-up efforts on previous UNCAC recommendations, the monitoring of the Sustainable Development Goal 16, of Open Government Partnership Action Plans, and of the implementation of FATF recommendations.

27. What recommendation could be envisaged to enhance awareness and effective use of reporting channels for foreign bribery?

Whistleblowing has broad importance in the fight against corruption by providing information about corruption, misuse of power, abuse, threats to people and the environment or are made to the correct people, including sometimes directly to the public.[16]

Building on UNCAC Articles 32 and 33,[17] UNCAC CoSP resolution 7/8,[18] the Council of Europe's recommendation on the protection of whistleblowers,[19] the standards of the new EU directive on whistleblower protection,[20] as well as international best practice examples, the WGB should recommend states to adopt and implement frameworks that not only recognise the importance of whistleblowers but also provide adequate rights and protection to reporting persons. Strong protection of whistleblowers in law and practice may be the most effective approach to promote the use of reporting channels for foreign bribery.

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[16] See: statement by David Banisar of Article 19 at the 2014 UNCAC IRG, https://uncaccoalition.org/files/IRG-Article-19-Statement.pdf

[17] See also Transparency International's 2013 publication *"Whistleblower Protection and the UN Convention against Corruption"*, https://uncaccoalition.org/resources/whistleblower-protection/whistleblower-protection-and-the-un-convention-against-corruption.pdf and UNODC's 2015 "*Resource Guide on Good Practices in the Protection of Reporting Persons"*, https://www.unodc.org/documents/corruption/Publications/2015/15-04741_Person_Guide_eBook.pdf

[18] https://www.unodc.org/unodc/en/corruption/COSP/session7-resolutions.html

[19] Council of Europe: Recommendation CM/Rec(2014)7 of the Committee of Ministers to member States on the protection of whistleblowers, https://search.coe.int/cm/Pages/result_details.aspx?ObjectId=09000016805c5ea5

[20] http://www.europarl.europa.eu/news/en/press-room/20190311IPR31055/first-eu-wide-protection-for-whistle-blowers-agreed

The 2009 OECD Recommendation states that member countries should ensure that reporting channels are easily accessible. Yet, at the legislative level, the OECD should provide for further guidance on the nature of such reporting channels and as well as on their accessibility. Benchmarking studies for both public and private sectors could be of help in understanding, measuring and monitoring of the impact that different reporting channels have, generating insights and best practice approaches. Furthermore, the WGB could also specify and elaborate more on the definition of "channels". Both internal and external reporting channels should be included and defined, including a recommended timeline on the use of different channels (i.e. use of internal reporting mechanisms before enacting external ones).

The WGB should also recommend that states regularly release statistics and report on the use of whistleblower mechanisms, cases reported through them, follow-up actions taken, and outcomes of reported cases (such as number of cases that went to court, convictions, recovered assets, etc.) to help build public awareness in reporting mechanisms, as well as public trust in their effectiveness.

The WGB should also recommend that authorities operating whistleblower mechanisms provide sufficient resources to their case officers to allow them to inform reporting persons, where appropriate, about follow-up action that has been taken, and to advice whistleblowers on how to protect themselves and defend their rights.

29. What recommendation(s) could be envisaged to further strengthen whistleblower protection?

The OECD has adopted a "restrictive" interpretation of the term "whistleblower", limiting the recognition only to employees. We urge the WGB to expand the definition of whistleblower and the categories of individuals entitled to report to include any citizen who is in possession of information and willing to disclose, building on UNCAC Article 33, which guarantees protection to any person who reports on good faith and reasonable grounds.[21]

30. What recommendation(s) could be envisaged to:
a. Enhance detection and reporting of foreign bribery by financial and non-financial professions subject to AML requirements?
b. Address the mechanisms of detection of foreign bribery by FIUs?
c. Address access by law enforcement authorities to information held by financial institutions relevant to foreign bribery enforcement?

Publicly accessible asset and interest declarations of public officials
One important source for journalists and civil society groups to identify potential conflicts of interest or corruption schemes involving public officials are publicly accessible asset and interest

[21] See an extensive study on article 33 UNCAC on Transparency International: Whistleblower protection and the UN Convention against Corruption https://uncaccoalition.org/resources/whistleblower-protection/whistleblower-protection-and-the-un-convention-against-corruption.pdf

declarations, a panel discussion hosted by the UNCAC Coalition on the side-lines of the UNCAC IRG meeting in September 2018 highlighted.[22] Such declarations made by public officials should be accessible to the public, machine-readable, be regularly (at least annually) updated, and be checked for accuracy and completeness by an independent oversight body.

The WGB should not only issue a recommendation for countries to require public interest and asset declarations of senior public officials (including senior officers of state-owned enterprises), it should also recommend countries to introduce effective, proportionate and dissuasive sanctions for non-compliance. A number of countries have criminalised severe violations of asset and interest disclosure requirements. As a result, public officials can also be prosecuted for undisclosed assets in cases where evidence may not be sufficient to prove bribery and/or money laundering.

Relevant to this section are also our answers related to transparency in public procurement and beneficial ownership registries.

34. What recommendation could be envisaged to enhance detection and reporting of foreign bribery by the media?

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35. To what extent and how would it be useful for the WGB to turn its attention to legal frameworks protecting freedom, plurality and independence of the press, as well as laws allowing journalists to access information from public administrations?

Journalists and the media play a key role in investigating and uncovering national as well as transnational corruption. The OECD WGB should, where possible, work to promote legal frameworks and practices protecting freedom, plurality and independence of the media, supporting the work of the OSCE Representative on Freedom of the Media and other advocates for freedom of the media.

Several provisions of the UNCAC, including Articles 7, 9, 10, 12 and 13, highlight the importance of public access to information to assist the fight against corruption and to ensure effective government and accountability.[23]

It is crucial for countries to establish and protect a constitutionally guaranteed right to information and adopt state-of-the-art access information legislation, in line with SDG 16.10. Some States Parties to the Convention to this date have not introduced a right to information that includes the right to access government documents (Austria being one such example).[24]

[22] https://uncaccoalition.org/en_US/uncac-bodies/implementation-review-group-irg/9th-irg/
[23] For more details, see also: UNCAC Coalition: The right of access to information and the UNCAC, https://uncaccoalition.org/en_US/learn-more/access-to-information/
[24] For good standards of access to information legislation, please see the Right to Information Rating, produced by Access Info Europe and the Centre for Law and Democracy, and its methodology: https://www.rti-rating.org/ and https://www.rti-rating.org/methodology/

As a best practice, an independent Information Commissioner (or similar institution) should be tasked with monitoring the implementation of the access to information framework (including provisions on the proactive release of information) and with deciding on complaints filed by journalists and other persons who see their right to information violated.

The right to access public information should not be limited to journalists. Anybody (including foreign citizens) shall enjoy the right to access information. Privileged rights may be given to social watchdogs (journalists, civil society groups, researchers and other actors that act in the public interest and shape public debates), in line with the approach taken by the European Court on Human Rights.[25]

While the EU has comprehensive access to information rules, other multinational and international organisations, as well as some development banks, have catching up to do and establish strong access to information frameworks, as well as sound review and mechanisms, that allow journalists, civil society activists and other actors to access information and documents.

42. What step could the Working Group take to further support the efforts to promote transparency in public procurement, including in collaboration with the OECD Public Governance Committee for the implementation of the principles contained in the 2008 Council Recommendation on Enhancing Integrity in Public Procurement?

Article 9 of the UNCAC requires that countries set up appropriate systems of procurement, based on transparency, competition and objective criteria in decision-making.

Building on this standard, the WGB should recommend that countries use electronic procurement and contracting procedures and that large parts of the procurement process should become publicly accessible by default. Countries that have implemented the use of electronic means, as well as a high level of transparency, to conduct public procurement have reported efficiency gains from 10 per cent to 20 per cent of the total volume procured through electronic means, according to the World Bank.[26] These gains likely originate from reduced waste and corruption as well from efficiency gains (including from increased market transparency, benefiting the public sector) and higher levels of competition.

[25] In particular, see Magyar Helsinki Bizottság v. Hungary (Application no. 18030/11) https://hudoc.echr.coe.int/eng#{%22fulltext%22:[%22f%20Magyar%20Helsinki%20Bizotts%C3%A1g%20v.%20Hungary%22],%22documentcollectionid2%22:[%22GRANDCHAMBER%22,%22CHAMBER%22],%22itemid%22:[%22001-167828%22]}

[26] World Bank: Benchmarking Public Procurement 2017, p28, http://pubdocs.worldbank.org/en/121001523554026106/BPP17-e-version-Final-compressed-v2.pdf

High levels of transparency and openness at all stages of the procurement process, as well as opportunities for the public to engage in the procurement process, should thus be recommended, building on the Open Contracting Principles developed by the Open Contracting Partnership.[27]

Furthermore, it is crucial that the WGB promotes access to information legislation that anybody can request access to information and documents related to public procurement that are not published online.

As a best practice approach, the WGB should consider recommending a legal framework requiring that specific types of contracts between the public sector and third parties cannot enter into force until they are published in full text online.

Slovakia has successfully pioneered this principle – it has been copied by others, including the Czech Republic and the German region of Hamburg – and not only applies it to public procurement but also to other areas, such as privatisations, licenses, or lease agreements involving public bodies. A report by Transparency International Slovakia found that within four years of the approach being first implemented, the number of average bidders per tender almost doubled (from 1.6 firms in 2010 to 3.7 in 2014), while the use of the least transparent and competitive procurement procedures by public bodies saw a sharp decline (from 21% of tenders in 2010 to 4% in 2014).[28]

Importantly, the WGB should recommend not only a high level of transparency to be applied to public procurement but also to public-private partnership agreements, privatisations and license agreements, among other areas.

In addition, the WGB should recommend the use of the Open Contracting Data Standard as a common data standard for public procurement.[29] A common data standard would allow for the linking and cross-referencing of procurement data with other relevant data sets, such as budget data, beneficial ownership registries, asset disclosure data, campaign contributions or data from asset declarations of public officials.

The use of a common data standard would facilitate the interoperability of procurement data and could be used, for example, to compare procurement data from different countries in an effort to better identify possible indicators for irregularities or corruption (red flags).[30]

Another recommendation should ask countries to require bidders participating in public procurement (as well as privatisations, licensing procedures and PPPs) to disclose their corporate structure and ultimate beneficial owners. This information could be used to detect potential

[27] https://www.open-contracting.org/implement/global-principles/.
[28] Transparency International Slovakia: Not in Force Until Published Online – What the Radical Transparency Regime of Public Contracts Achieved in Slovakia, p13 http://transparency.sk/wp-content/uploads/2015/05/Open-Contracts.pdf
[29] http://standard.open-contracting.org/latest/en/
[30] See the Red Flags project of K-Monitor and TI Hungary, https://www.redflags.eu, as well as the outputs of the Digiwhist project, http://digiwhist.eu/.

conflicts of interest, red flags for possible bribery or collision. The BO information should also be made accessible to the public (as is the case in Slovakia) – in particular, if the country has not implemented a publicly accessible BO registry, or if the company is registered in or controlled through a different jurisdiction.

Furthermore, the WGB should consider recommending to ban (or at least regulate) the use of agents and other intermediaries as well as of offset-deals in public procurement.[31]

44. What recommendation could be envisaged to further clarify the existing legal requirements that serve as a basis for mutual legal assistance and extradition?

Upon recommendation of the WGB, countries should ensure adequate organisation, resourcing and training of enforcement authorities, so they can competently make requests for mutual legal assistance and handle requests received without undue delay. Joint investigation teams and other forms of cooperation in cross-border investigations can be powerful approaches.[32] This should also include the exchange of experience and expertise among law enforcement practitioners, whilst constantly improving cooperation and intelligence on the matter. Crucial are designated points of contact for foreign states to make their claims, and that efforts are made to improve the capacity to respond to those requests.

45. What recommendation(s) could be envisaged to facilitate MLA and extradition in foreign bribery cases?

One of the challenges faced by oversight bodies monitoring and verifying asset and interest declarations filed by public officials, as well as sanctioning cases of non-compliance, is a lack of access to the necessary data sources to check the information, in particular bank account registries or beneficial ownership registries. Often, there is no access to data from countries in the region, where public officials may be involved in companies or may have set up bank accounts.

The WGB should take note of a regional effort to set up a *Treaty on Exchange of Data for the Verification of Asset Declaration* in the Western Balkans, which – if successful – could serve as a role model for other regions. The OECD could take a leading role in encouraging and facilitating international agreements to facilitate such data exchange, thus improving authorities' ability to detect foreign bribery cases.[33]

[31] For approaches to offset-deals in the defence sector, see: Transparency International: Defence Offsets – Addressing the Risks of Corruption & Raising Transparency, http://ti-defence.org/publications/defence-offsets-addressing-the-risks-of-corruption-raising-transparency/

[32] Transparency International: Exporting Corruption. Progress report 2018: assessing enforcement of the OECD Anti-Bribery Convention; https://www.transparency.org/whatwedo/publication/exporting_corruption_2018

[33] Regional Anti-Corruption Initiative: Laxenburg – Vienna, Austria 3-5 October 2018: Negotiations Meeting on International Treaty on Exchange of Data for the Verification of Asset Declarations, http://rai-

If beneficial ownership registries and company registries, procurement portals and asset declaration platforms were all open to the public and used a common data standard, as we recommend in this document, there may be no need for such data exchange agreements.

47. What recommendation could be envisaged to address the issue of international asset recovery and related challenges, given work already undertaken in this area in other fora?

When high-level officials are involved in large-scale bribery or the embezzlement of state assets, the effect is widespread harm to both individuals and society, whilst often providing impunity to the perpetrators. Thus, practical steps to counter grand corruption should include the fostering of international cooperation in asset recovery. States should enact and implement comprehensive laws providing for the confiscation of any asset obtained through or derived from the commission of any proceeds of bribery.[34] Gathering knowledge and data in regard to the link between bribery and asset recovery should be crucial to the WGB in order to assess the impact of current tools and to move forward in future activities on that matter.

The WGB should work to promote asset recovery, complementing the work done in UNCAC fora, since depriving proceeds of crime is the most effective way of combating corruption. In regard to proactive cooperation, the establishment of Financial Intelligence Units can considerably endorse international assistance in this regard.[35] Strongly linked with this provision, the WGB should also endorse the provisions under article 56 of the UNCAC, which foresee Special Cooperation amongst states. This refers to actively, i.e. without a specific request, forwarding information about an investigation or on proceeds of offences under the UNCAC, which could help another state in initiating or carrying out an investigation or judicial proceedings.

Besides recommending that states establish a designated domestic asset recovery team or unit that should be equipped with sufficient resources, the WGB should also endorse international cooperation networks focusing on asset recovery (such as the StAR initiative) which constitute valuable support in international cooperation for recovering assets, and promote principles on the transparent return of assets, building on the GFAR principles.[36]

Furthermore, it is crucial to include civil society groups in the asset recovery process to ensure that assets are returned in a transparent manner and benefit the victims of corruption.

When it comes to the return and disposal of assets, debates have focused on whether, when and to what extent victim states can claim ownership of such property.[37] In cases of bribery under the

see.org/events_tip/3-5-october-2018-negotiations-on-international-treaty-on-exchange-of-data-for-the-verification-of-asset-declarations/

[34] See: https://uncaccoalition.org/en_US/statement-by-gillian-dell-transparency-international-uncac-implementation-review-group-briefing-for-ngos-2016/

[35] Technical Guide to the United Nations Convention Against Corruption: https://www.unodc.org/documents/treaties/UNCAC/Publications/TechnicalGuide/09-84395_Ebook.pdf

[36] See: GFAR Principles for Disposition and Transfer of Confiscated Stolen Assets in Corruption Cases, https://star.worldbank.org/sites/star/files/20171206_gfar_communique.pdf

[37] Legislative Guide to the United Nations Convention Against Corruption https://www.unodc.org/documents/treaties/UNCAC/Publications/LegislativeGuide/UNCAC_Legislative_Guide_E.pdf

OECD-Convention, the WGB can assist in establishing claims and facilitating clarifications of ownership by developing guidelines and providing assistance to the concerned states to overcome obstacles in asset recovery.