

Progress Report

OECD Anti-Bribery Convention

2008



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ISSN 1999-8570 Print Version

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Progress Report 2008

Enforcement
of the OECD Convention on
Combating Bribery
of Foreign Public Officials
in International Business
Transactions

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24 June 2008

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Introduction

In 1997 the Organisation for Economic Cooperation and Development (OECD) adopted a treaty to address the supply side of cross-border bribery, the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Convention). This is the fourth progress report on enforcement of the OECD Convention prepared by Transparency International (TI), the global coalition against corruption. TI's progress reports are intended to provide an annual assessment of enforcement by OECD Convention signatory states. It examines the enforcement performance in 34 of the 37 parties to the Convention (including all G7 countries). The first report issued in March 2005, covered 24 countries; the second in June 2006, covered 31 countries; and the third in July 2007 covered 34 countries.

The report is based on information provided by TI national experts in each country who are highly qualified professionals selected by TI national chapters. (Appendix A lists TI experts and their qualifications). They responded to a questionnaire (Appendix B), taking into account the views of government officials and other knowledgeable persons in their countries. They were aided in their work by the valuable Phase I and Phase II reports prepared by the OECD Working Group on Bribery in the course of its reviews of government compliance with the Convention.

The following table lists foreign bribery cases and investigations for the 34 countries covered by the TI report. Section I summarises the conclusions and recommendations of the report. Section II provides an overview of the data on enforcement. Section III covers access to information issues. Section IV summarises the country reports on enforcement systems highlighting deficiencies and notable recent developments. Section V provides examples of important cases or investigations involving multinational companies, namely **Alstom, AWB, BAE Systems, Halliburton, IMPSA & EME, and Siemens**.

Foreign Bribery Cases And Investigations

Country		Enforcement				Share of World Exports % for 2007 (UNCTAD, 2007)
		Cases		Investigations		
		2008	2007	2008	2007	
1.	Argentina	1	0	0	0	0,36
2.	Australia	1 (1)	u	s (s)	4 (1)	1,06
3.	Austria	0	0	2	0	1,25
4.	Belgium	4	4	s	s	2,90
5.	Brazil	u	0	s(s)	1	1,06
6.	Bulgaria	3	3	0	0	0,14
7.	Canada	1	1	s	s	3,14
8.	Chile	0	0	0	0	0,45
9.	Czech Rep.	0	0	1	0	0,73
10.	Denmark	17 (17)	1	0	21 (21)	0,97
11.	Estonia	0	0	0	0	0,09
12.	Finland	1	0	3	1	0,64
13.	France	19	9	16	u	4,11
14.	Germany	43+	+4	>88	>83 (63)	8,80
15.	Greece	0	u	1 or 0	u	0,38
16.	Hungary	23	18	1	27	0,58
17.	Ireland	0	u	3 (3)	3 (3)	1,23
18.	Italy	2	2	3	1	3,44
19.	Japan	1	1	u	u	5,15
20.	Korea (South)	5	5	1	2	2,20
21.	Mexico	0	0	0	0	1,80
22.	Netherlands	7 (7)	0	3	8 (7)	3,69
23.	New Zealand	0	0	s (s)	2 (2)	0,20
24.	Norway	4	2	u	u	1,04
25.	Poland	0	0	0	0	0,88
26.	Portugal	u	0	u	2	0,41
27.	Slovak Rep.	0	0	0	0	0,32
28.	Slovenia	0	0	0	0	0,17
29.	Spain	2	2	0	1	2,11
30.	Sweden	1	1	15 (12)	14 (12)	1,34
31.	Switzerland	16 (14)	1	36	23 (17)	1,31
32.	Turkey	0	0	1	0	0,72
33.	United Kingdom	0	0	20	15	4,56
34.	United States	103	67	69	60	9,84

() = Oil for Food cases; some not for bribery
u = unknown
s = some

Note: Cases include prosecutions, judicial investigations and civil actions and are recorded on cumulative basis through end 2007 even if discontinued. Investigations (excluding judicial investigations) are on current basis for 2007. Numbers do not include cases and investigations carried out by OECD countries regarding foreign bribes paid to their own officials. Numbers in brackets refer to cases arising out of the UN's Oil-for-Food Programme in Iraq (1996-2003), some of them not for bribery.

Conclusions and Recommendations: OECD Enforcement must be Re-energised

The adoption of the OECD Convention in 1997 was a landmark event in the fight against international corruption: a collective commitment by the governments of the leading industrialised states to ban foreign bribery. Because most major multinational companies are based in OECD countries, the Convention was hailed as the key to overcoming the damaging effects of foreign bribery on democratic institutions, development programmes and business competition.

TI's 2008 Report shows that there is significant enforcement¹ in sixteen countries, two more than in our 2007 Report, with little or no enforcement in the others. While our 2007 Report showed progress over 2006, the lack of enforcement in over half the countries is very disturbing. The political foundation of the Convention is a collective commitment by all the parties to stop foreign bribery. Thus, unless the laggards start enforcement without further delay, there is danger of backsliding by those that are now enforcing. The present stalemate is unsustainable; support for the Convention must be re-energised, or it will falter.

Focusing on the G-7 countries, enforcement has increased substantially in France, Germany, and the US. That is a very positive development. However, there is still little or no enforcement in Japan, the UK and Canada. While there was some enforcement in Italy in prior years, the current situation is uncertain.

Causes for the Current Stalemate

- The UK's termination of the investigation of Al Yamamah-related bribery allegations against BAE Systems (BAE) in December 2006 was a damaging setback for the Convention. The assertion that national security concerns overrode the obligation to enforce the Convention, created a dangerous precedent that other governments could readily follow. The termination of the BAE investigation compounded prior concerns about lack of UK commitment, including the failure to correct deficiencies in UK corruption legislation called for in OECD reviews, and the failure to bring any prosecutions, notwithstanding numerous UK investigations of foreign bribery.
- The international business community has received mixed messages, most graphically illustrated by strong enforcement action against Siemens in Germany, and the lack of enforcement action against BAE by the UK. The mixed messages have resulted in mixed responses. A considerable number of multinational companies have adopted strict anti-bribery compliance programmes. Others have adopted policy statements without compliance programmes. Many still believe that foreign bribery is acceptable where necessary to win orders.
- The growing role in international trade of non-OECD countries, including China, India and Russia, which are not constrained by the monitoring of the Convention's prohibition of foreign bribery.
- Delays in announcing plans for the future of OECD monitoring after the completion of the present Phase 2 programme raises concerns that the strong commitment previously demonstrated by the Working Group on Bribery may be flagging.

¹ "Significant enforcement" is defined based on the number and importance of cases and investigations taking into account the size of the country's exports. (Cases are defined here to include prosecutions, judicial investigations and civil actions). This definition recognises country differences in size of export business and differences in the importance of the cases. Investigations are important as the initial step toward prosecutions or civil actions. However, the number of investigations is important only if they lead to prosecutions or civil actions.

Recommended Actions

In TI's view, the next year will be crucial in determining whether the Convention will be successful. The following actions should be taken:

UK Commitment. Several important developments are likely to take place before the end of 2008 that could improve the situation in the UK, including the report of the Law Commission on changing corruption laws, and the House of Lords decision on the appeal of the High Court decision invalidating the termination of the BAE investigation. Sound recommendations from the Law Commission, followed by swift passage of a new Corruption Bill in the 2008-09 session of Parliament would be a major step forward. It is also important that the UK Serious Fraud Office proceed with foreign bribery prosecutions.

Foreclosing National Security Precedent. It is essential to prevent the erosion of the Convention resulting from the UK's assertion of an unlimited and unreviewable right to drop foreign bribery cases. This threat would be overcome if the House of Lords upholds the decision of the High Court invalidating the termination of the BAE investigation. However, if the House of Lords reverses the High Court decision, the Working Group on Bribery must take action to confirm the broad scope of Article 5 of the Convention, making clear that no exceptions are permissible, other than the limited doctrine of state necessity recognised under customary international law.

Other Lagging Governments. To revive forward momentum, it is essential that cases be brought in countries where there has been little or no enforcement. Action by Japan and Canada (in addition to the UK) is particularly important to demonstrate that all G-7 states are enforcing the Convention.

Action by Secretary-General and OECD Ministerial Council. The present status of the Convention is sufficiently problematic to justify high level political consideration by OECD. The monitoring reviews of the Working Group on Bribery have significantly contributed to progress in countries whose governments are committed to combating foreign bribery. However, they have not been able to effect change in countries where commitment by government leaders is ambiguous or non-existent.

Continuation of Rigorous Monitoring Programme. OECD reviews have provided the most important impetus for government action to enforce the Convention. The Working Group on Bribery should announce as soon as possible that a rigorous and well-funded monitoring programme will continue after the completion of Phase 2. That programme should include country visits to ensure that previously-identified deficiencies have been corrected, regular meetings with prosecutors, and publication of an annual report on foreign bribery prosecutions and investigations.

Accession by Other Major Exporting States. The objectives of the Convention would be enhanced by the accession of China, India, Russia and other major exporting states. Such action should proceed as quickly as possible. However, increased enforcement by the present parties should not be delayed until others come aboard. Demonstrating that the Convention can be an effective framework for combating foreign bribery provides the best incentive for other parties to join. We call on the Secretary-General and the OECD Council at Ministerial level to develop an action programme to ensure enforcement by lagging governments. This should include (a) publication of a watch list of countries where there is little or no enforcement; (b) high-level missions, led by the Secretary-General, meeting with the Justice Minister, or equivalent, of lagging governments, and (c) suspension from the Working Group if the high level visit fails to produce timely results.

Overview of Enforcement and Enforcement Systems

Main conclusions about enforcement:

- *There is now significant enforcement in sixteen countries, namely Argentina, Australia, Belgium, Denmark, Finland, France, Germany, Hungary, Italy, Korea, the Netherlands, Norway, Spain, Sweden, Switzerland, and United States*
- *There has been little or no enforcement in another eighteen countries, including three G7 countries, showing a lack of sufficient commitment to date in those countries. These are Austria, Brazil, Bulgaria, Canada, Chile, Czech Republic, Estonia, Greece, Ireland, Japan, Mexico, New Zealand, Poland, Portugal, Slovakia, Slovenia, Turkey and United Kingdom*

The strong performers in enforcement this year, as last year, are **France, Germany** and the **United States**, all three showing high numbers of prosecutions. The newcomers to enforcement this year are **Argentina** and **Australia**. It should be noted that in a number of countries where enforcement is assessed as significant, the level of enforcement will not necessarily be maintained.

Of the G7 countries, **Japan** and **United Kingdom** still have unsatisfactory levels of enforcement and **Canada** has also shown little enforcement.

Status of Cases and Investigations

Taking into account all cases counted on a cumulative basis and investigations currently pending, the situation can be summed up as follows:

- Major cases²:
Argentina, Australia, Belgium, Denmark, France, Germany, Italy, Norway, Spain, Switzerland, United States
- Major investigations (but no major cases):
Finland, Sweden, Turkey, United Kingdom
- Minor cases or investigations (no major ones known):
Austria, Brazil, Bulgaria, Canada, Czech Republic, Hungary, Ireland, Japan, Korea, the Netherlands, New Zealand
- No cases or investigations:
Chile, Estonia, Greece, Mexico, Poland, Portugal, Slovakia, Slovenia

This information is based on a variety of sources ranging from government statistics to media reports.

Status of Legislation

- Statutory obstacles:
Obstacles were reported in 18 countries, as follows: **Argentina, Australia, Austria, Brazil, Canada, Chile, Czech Republic, France, Greece, Germany, Ireland, Italy, Korea, Poland, Portugal, Slovakia, Spain, United Kingdom**

² In determining whether a case was major, experts were asked to consider such factors as whether the defendant is a large multinational, whether the allegations involve bribery of a senior government official and the amount of the alleged payments

- **New legislation passed:**
New legislation was recently passed in 8 countries that could help improve foreign bribery enforcement: **Australia, Austria, Belgium, Bulgaria, France, Japan, Mexico and Portugal**
- **New legislation pending:**
Legal reform proposals that could contribute to improved foreign bribery enforcement are pending in 8 countries: **Chile, Estonia, Germany, Ireland, Poland, Spain, Switzerland** and the **United Kingdom**. On the downside, a draft Constitutional Renewal Bill in the **UK** includes a provision that would give the Attorney General the power to block investigations and prosecutions on the grounds of national security. A new law close to adoption in **Italy** is also a matter of concern.

Status of Enforcement Systems

This year the Progress Report Questionnaire focused on three aspects of the enforcement system: organisation of enforcement; complaints procedure; and whistleblower protection. In addition; experts were asked about access to information. Experts were not asked to respond this year to questions about available resources, public awareness-raising efforts, accounting and auditing requirements and private sector efforts. The aspects selected for this report reflected areas that most experts reported as weak in previous reports.

- **Centralised office / coordination of enforcement:**
Lack of a centralised office for enforcement was reported in 14 countries: **Argentina, Austria, Brazil, Bulgaria, Canada, Chile, Germany, Greece, Ireland, Italy, Japan, Poland, Portugal** and **Turkey**. While a centralised office is generally helpful it could also be subjected to political abuse. In 7 countries, there was no centralised office and coordination of enforcement was also found to be unsatisfactory: **Argentina, Austria, Brazil, Germany, Greece, Ireland, and Poland**
- **Complaints procedure:**
In 13 countries there is a lack of an adequate complaints procedure: **Austria, Belgium, Brazil, Finland, Greece, Ireland, Italy, the Netherlands, Norway, Portugal, Slovenia, Spain, and Sweden**
- **Whistleblower protection:**
Deficiencies in this area were reported in numerous countries, with 26 countries reporting lack of protection in either the public sector, private sector or both. Those countries are: **Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Chile, Czech Republic, Denmark, France, Germany, Greece, Korea, Ireland, Italy, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, Slovenia, Spain, Sweden, Switzerland** and **Turkey**
Legislation on whistleblower protection was pending, passed or came into force in **Bulgaria, Canada, Chile, France, Germany, Korea, Norway, Portugal, and Switzerland**
- **Reforms:**
In **Austria, Belgium, Canada, Ireland, Mexico, Switzerland, Turkey** and the **United States** the experts have reported that improvements in the enforcement system have either been introduced or are expected soon. In **New Zealand**, the structure of responsible enforcement agencies is being reformed and the impact of this change is not yet clear. In **France, Italy** and **Korea** changes are reported that may undermine foreign bribery enforcement.



Access to Information Issues

TI experts in OECD countries reported varying levels of access to information about prosecutions and investigations. The greatest amount of access to information is provided in the **United States**. There, information on prosecutions and dispositions is publicly available but the enforcement authorities do not comment on investigations. However, information on investigations of publicly-traded companies is often publicly available through SEC filings made by companies to comply with securities regulation.

Public information about government enforcement is essential for citizens to know if their governments are complying with OECD Convention obligations and to hold them to account. Publicly-accessible statistics should be maintained on prosecutions, civil actions and investigations relating to foreign bribery. Indictments, judicial investigations, prosecutions, civil actions, settlements and court judgments in foreign bribery cases should be a matter of public record and easily accessible. Publicly-traded companies should be required to publicly disclose any investigations or prosecutions, as well as judgments and settlements.

TI experts in 24 countries report lack of access to information about cases and/or investigations. These countries are: **Argentina, Australia, Austria, Belgium, Brazil, Canada, Czech Republic, Denmark, France, Germany, Greece, Hungary, Ireland, Italy, Japan, Korea, the Netherlands, New Zealand, Poland, Portugal, Slovenia, Spain, Turkey and the United Kingdom**. Below are comments from the experts in these countries.

In **Argentina** there are no centralised databases for the federal courts in the 23 provinces and the city of Buenos Aires and an exhaustive search is difficult. The 12 Federal Criminal Courts of the city of Buenos Aires are the most likely to receive foreign bribery cases. It is extremely difficult to obtain information at the front desks of these courts since Article 204 of the Criminal Code says case information is only accessible to the parties, although this article was successfully challenged by an NGO on access to information grounds. Some information can be obtained but this is extremely difficult without prior information about the cases.

The **Australian** government provides information on the number of prosecutions on request but does not make available data on investigations.

In **Austria**, the official crime statistics do not provide information on offences under the relevant article of the Penal Code. However, a government working group is working on the general improvement of the criminal statistics, not least to provide the new Special Prosecutor for Corruption (starting in 2009) with the necessary information.

In **Belgium**, the general public does not have the right to access information about foreign bribery investigations as the police, magistrates and investigating judges are bound by a duty of secrecy (*secret de l'instruction*) to safeguard the presumption of innocence. The Public Prosecutor's Office may decide, on the basis of criteria that it determines, that a communication with the media is opportune or desirable through a press conference or a press release. The centralised national office in Belgium (OCRC) is not in the habit of issuing press releases.

In **Brazil**, the Judiciary Power bans access to information about proceedings on the grounds that they should be conducted in secrecy, and there is a lack of any official records of cases.

In **Canada**, the government is required to submit an annual report to Parliament on enforcement of the relevant legislation prohibiting foreign bribery. However, the report only includes data on prosecutions and not on investigations. Official information on the number of investigations is unavailable.

In the **Czech Republic**, the official statistics that are available to the general public do not include foreign bribery as an individual criminal act, as foreign bribery cases are prosecuted under the same rubric as cases of "domestic" bribery. The expert contacted the state prosecutor's offices but these do not record such cases as a general practice. On request, they conducted a search of their cases and found none involving foreign bribery.

In **Denmark**, the expert reports that the internal processes in Denmark's Serious Economic Crime Squad and the Ministry of Justice are not very transparent.

In **France**, the expert obtained statistical information on enforcement from the French government upon request. Further, information about major cases appears in the press, in part because investigating judges sometimes hold press conferences about cases under investigation.

In **Germany**, there are generally no official Federal Government or State reports on foreign bribery cases and investigations. However, the Federal Government in its Answer of March 10, 2008 responding to the inquiry of Bündnis 90/ Die Grünen about enforcement of the OECD Convention published much more detailed information than hitherto available on foreign bribery investigations and cases, based on communications from the federal States.

In **Hungary**, there are no statistics publicly available on foreign bribery investigations or prosecutions. By Decree No. 59 of 2007 of the Minister of Justice and Law Enforcement, there is provision for the maintenance of the Uniform Criminal Registry of the Police and Prosecution (UCR) but details of the investigations can only be published in particularly justified cases. The UCR and other police statistics are freely available on the Ministry's website, but do not contain separate information about foreign bribery investigations or cases involving other offences where foreign bribery is also involved. For those numbers, it is necessary to make a written request to the Department for Statistics of the Ministry of Justice. The UCR also does not contain criminal court statistics. The data after the trial phase is no longer secret, but in order to access this data, a special request for a case file audit must be submitted. If this is granted, the files given out for external research are kept anonymous.

In **Ireland**, for data protection reasons, there is no public access to information about foreign bribery cases.

In **Italy**, the expert reported that there were no readily available statistics on foreign bribery prosecutions and investigations.

In **Korea**, this year government authorities belatedly provided data on enforcement at the request of the TI expert.

The **Mexican** TI expert took the route of a Freedom of Information request to various government offices including the Ministry of Public Administration, the Federal Attorney General's Office and PEMEX. The first two provided responses in writing. PEMEX has yet to respond.

In **the Netherlands**, the Dutch justice system requires secrecy in investigations. Parties and suspects are seldom mentioned, at least during the investigation. Most verdicts are made public through the Internet after the names of the persons involved have been removed. No statistics appear to be available except on request. Last year a member of the Dutch delegation to the OECD Working Group on Bribery provided the data to TI. This year the Dutch Public Prosecutor for Corruption provided updated and corrected data for this report.

In **New Zealand**, details of the number of investigations undertaken by the authorities remain undisclosed and the number has to be estimated based on media reports or sourced by way of private discussions with officials.

In **Poland**, the website of the National Police Office provides anyone with access to statistics on bribery. However, the foreign bribery offence is not listed separately. Government officials provided data to the TI expert on request.

In **Portugal**, there is inadequate access to information about foreign bribery cases.

In **Slovenia**, there are no separate statistics held by the police, the prosecution service or the courts on foreign bribery. Data included in the expert's report was obtained as a result of a direct inquiry with the relevant services.

The Public Prosecutor's Office in **Spain** only provides the official statistics but no details about cases. However, this year, TI-Spain received detailed information about foreign bribery cases directly from the Special Office of the Attorney General for the Repression of Economic Offences related with Corruption (ACPO).

In **Switzerland**, the 2007 statistics were not released as of the delivery of the expert's report, but an announcement was made in March 2008 by the Swiss Attorney General's Office about its progress in the Oil-for-Food investigations. The number of cases is published on the website of the Swiss Federal Statistical Office, but without referring to any content or names of the parties.

In **Turkey**, there is a website for judicial statistics but the data is updated only to 2005 and the section of the Criminal Code on foreign bribery is not included.

In the **United Kingdom**, there continues to be a lack of information about foreign bribery cases. There is no publicly accessible register or database. Some statistics may be obtained from time to time in response to Parliamentary Questions and in government reports.

IV Reports on Enforcement Systems

The following summarises the assessments by TI experts of their country's enforcement systems.

Argentina

Cases or investigations: The TI expert reports one case (a judicial investigation) involving alleged bribery by **Industrias Metalurgicas Pescarmona Sociedad Anonima (IMPISA)** in the Philippines in connection with the construction of a hydroelectric power plant (case filed in 2006). The case was brought against **CBK Power Company**, whose two shareholders are IMPISA and the US company **Edison Mission Energy (EME)** (see Case Study in Section V). The TI expert also reports that there are domestic criminal cases with bribery charges against **IBM Argentina** (1994 and 1996, indictments in both), **Siemens** (1998), **Thales Spectrum Argentina** (2001, indictment decided) **Ansaldo Energia SpA** (Italian, 2001), a **Skanska** subsidiary (Swedish, 2006) and **Accor Services** (French, 2007).

Statutory obstacles: Lack of nationality jurisdiction and lack of criminal liability for corporations.

Organisation of enforcement: No centralised office and unsatisfactory coordination of decentralised offices. The Anti-Corruption Office of the Ministry of Justice only has jurisdiction to investigate cases in which a domestic public official is involved or the national budget is affected.

Complaint procedures: Satisfactory. The public prosecutor's office and police stations accept reports of any kind of crime.

Whistleblower protection: Unsatisfactory in the public and private sectors. There are deficiencies in the National Witnesses and Accused Protection Programme and there is no specific law to protect whistleblowers in the private sector.

Other enforcement issues: Significant delays in judicial investigations, mainly due to delays in mutual legal assistance requests and reports from expert witnesses. The delays result in a risk of exceeding the six-year statute of limitations. There is a need to develop investigation skills among prosecutors.

Recent developments: The Ministry of Justice included criminal liability for corporations in a draft bill amending the criminal code, but it is unlikely that the government will send the bill to Congress.

Recommendations: In addition to the need to address the above-mentioned deficiencies, the expert suggests:

- Awareness-raising and training for the private sector
- Training of prosecutors and court officials in investigation techniques and asset recovery
- Strengthening oversight capacity of national institutions regarding accounting and audit provisions
- Strengthening complaint procedures

Australia

Cases or investigations: A government Royal Commission (Cole Inquiry) was established in 2005 to investigate allegations that **AWB Ltd** (formerly the Australian Wheat Board) had made payments in 1999-2003 of US \$220 million to secure contracts worth around US \$2.3 billion under the UN's Oil-for-Food Programme in Iraq³. The Commission recommended criminal sanctions against 12 persons, including 11 executives of AWB. On 19 December 2007, the Australian Securities & Investments Commission launched civil proceedings against six AWB executives in the Victorian Supreme Court for non-bribery offences. (see Case Study in Section V).

³ AFP 26 November 2006

Statutory obstacles: Maximum penalties not high enough. (but the Australian Wheat Board inquiry required significant changes to be made).

Organisation of enforcement: Centralised office. The Australian Federal Police (AFP) is responsible for investigating all allegations of foreign bribery. The AFP assigns foreign bribery an 'essential' priority, to be acted on within a week of referral. The Commonwealth Director of Public Prosecutions (CDPP) has responsibility for prosecuting all foreign bribery offences. There are reports that the resources of the AFP have been increased to match the priority indicated.

Complaint procedures: Satisfactory. Many Commonwealth Government websites contain information about reporting foreign bribery, including the Attorney-General's Department, the AFP, Australian Securities and Investment Commission, Australian Public Service Commission and the Australian Tax Office.

Whistleblower protection: Unsatisfactory in the public and private sectors. There is federal and state whistleblowing legislation and the government reports it has plans to put in place best practice legislation following an evaluation of legislative regimes by Griffith University, due in mid-2008. There are voluntary standards for the private sector and some legislative protection.

Recent developments: The International Trade Integrity Act 2007 made amendments to the defence of "conduct lawful in the foreign official's country." The Act implemented the Working Group on Bribery recommendations to further align the defence allowed by the Criminal Code with the OECD Convention. A defence is now available where a benefit to a foreign public official meets the requirements of a 'facilitation payment' or the benefit was permitted or required by the written law governing the conduct of the foreign public official. Both of the defences in the Criminal Code now accord with the OECD Convention.

Recommendations: The TI experts in Australia recommend addressing the above-mentioned deficiencies as well as:

- Greater public emphasis by the authorities on the seriousness of the offence
- Externally monitored hotlines maintained by all companies with operations in high risk and less developed countries

Austria

Cases or investigations: No cases and two investigations. One investigation concerning procurement of medical instruments in Romania was started but subsequently handed over to Switzerland where the enterprise is headquartered. Austria was also involved in a multi-jurisdictional investigation of alleged bribery by **BAE Systems** and **Saab** which, in the Czech Republic and Hungary, reportedly involved an Austrian national as an agent⁴. There was a parliamentary investigation of alleged bribery of an Austrian government official by a lobbyist in connection with the purchase of **European Aeronautic Defence and Space Company (EADS)** Eurofighters⁵. In January 2008, the Vienna Public Prosecutor announced an investigation into payments relating to **Siemens AG Austria** and its subsidiary VAI⁶.

Statutory obstacles: Short statute of limitation (three years).

Organisation of enforcement: No centralised office and unsatisfactory coordination of decentralised offices. A special prosecution service with central jurisdiction for corruption cases will be established in 2009 (see Recent developments below).

Complaint procedures: Unsatisfactory. There is no systematic government effort to facilitate complaints procedures using state-of-the-art methods such as hotlines. Allegations can only be reported directly to the relevant institutions.

Whistleblower protection: Satisfactory in the public sector and unsatisfactory in the private sector. In the public sector, officials are required to report any suspicions they have. In the private sector there are no provisions for whistleblower protection in place.

⁴ International Herald Tribune, 11 May 2007: "This past week, van der Kwast (the Swedish prosecutor) met in The Hague with prosecutors from Britain, Switzerland, the Czech Republic and Austria to coordinate their investigations into Saab and the British defense giant BAE."

⁵ Reuters, 26 June 2007

⁶ Report by Siemens, Legal proceedings—First Half Fiscal 2008 dated 29 April, 2008 p. 2

Other enforcement issues: The Minister of Justice has the right to give directions to prosecutors.

Recent developments: The Criminal Law Amendment Act 2008 came into force on 1 January 2008 and contains new anti-corruption provisions, implementing UNCAC, OECD Convention, Council of Europe and EU standards. As of 2009 there will be a new Special Prosecutor for Corruption and a special prosecution service for corruption cases with central jurisdiction. Sanctions for foreign bribery were increased by one year to up to three years in prison and the definition of public official was broadened. The TI expert reports that preparation for the implementation of the new legal framework seems to be under way—in the form of additional prosecutors and experts for corruption cases and the introduction of special training measures.

Recommendations: Address the above-mentioned deficiencies.

Belgium

Cases or investigations: Two cases date back to 1999 and 2000 and another minor case relates to procurement of cleaning services by NATO. There are also reported to be a number of Oil-for-Food investigations under way, relating to some of the 30 Belgian companies named in the Volcker report. Additionally, the Belgian authorities have brought six European Union cases and one case related to an international organisation.

The TI expert notes the slow progress in the **Mirage** case that has been in the hands of an investigating judge in Brussels since 1999. This relates to a sale of excess Mirage jets by the Belgian armed forces to the Chilean armed forces. There are allegations of bribery by a Belgian firm and by Belgian military personnel.

Statutory obstacles: None

Organisation of enforcement: Centralised office, consisting of the federal police Centralised Corruption Office called OCRC, specialised in research and investigation of bribery cases (national and international). The number of public officials active in OCRC is limited by law to 64 which appears to be too few. The OCRC is overwhelmed with work and may in future lack the necessary expertise. The burden of work from the “European cases” and large municipal cases makes it difficult to invest resources in international cases.

Complaint procedures: Unsatisfactory. Public officials are still reluctant to report cases when they come across a crime or a misdemeanour in the discharge of their official duties. OCRC has created a new website, which may create an inducement for reporting (see Recent developments below).

Whistleblower protection: Unsatisfactory in both public and private sectors. Whistleblower protection is not a reality in the Federal public sector. Corporations are making more efforts on compliance (mainly through information and training) but continue to be relatively lukewarm on whistleblowing, partly due to the hesitant position of the National Agency for Protection of Privacy on the issue.

Other enforcement issues: The Belgian justice system is severely overburdened and lacks adequate resources. This results in long delays in investigations and prosecutions.

Recent developments: With the Act of May 11, 2007, Belgium implemented some of the recommendations of the OECD Working Group on Bribery, in particular regarding the definition of foreign public official, the extra-territorial competence for bribery of foreign public officials and the non-deductibility of bribes as professional expenses. The Federal government established a Bureau for Administrative Ethics and Deontology that is tasked with proposing among other things a “system for reporting of abuses” but only small progress has been achieved so far. The Bureau published a “Deontological Framework” in 2007, which lists the values, rights and duties of the federal public officials. These include a duty to report illegal behaviour to their superiors, but there is not one word about whistleblower protection.

Recommendations: The Belgian expert strongly recommends improving Belgium’s prevention efforts, including accounting and auditing standards.

Brazil

Cases or investigations: No cases but there are believed to be some Oil-for-Food investigations underway. Also, with regard to alleged bribery of domestic officials, there is reportedly an investigation involving the French company **Alstom**⁷ (2008) (see Case Study in Section V), and in 2004 Brazil's Public Ministry brought a civil action against **Gtech Holdings**, a U.S. lottery operator⁸.

Statutory obstacles: None

Organisation of enforcement: No centralised office and unsatisfactory coordination of decentralised offices. The Corruption Prevention and Strategic Information Department of Brazil's Office of the Comptroller General took on responsibility for the coordination and supervision of anti-corruption efforts in 2006.

Complaint procedures: Unsatisfactory. On the website of Brazil's Office of the Comptroller General there is a link for the reporting of bribery allegations. However, the system is unsatisfactory because the person pressing charges has to identify him/herself. At the state level, the experts found no agencies specifically in charge of fighting corruption, nor any hotlines or websites for reporting allegations.

Whistleblower protection: Unsatisfactory in both public and private sectors. There is some provision for witness protection but that is limited.

Other enforcement issues: Inadequate sanctions. Also, general ineffectiveness of the executive power agencies in the prevention and curbing of corrupt practices. Most subsidiaries of multinational companies have implemented compliance programmes but most national companies are unaware of the efforts to combat foreign bribery.

Recent developments: Noticeable increase in domestic anti-corruption efforts.

Recommendations: In addition to the need to address the above-mentioned deficiencies, the expert finds that there is a need for:

- Creation of a specific law on foreign bribery in Brazil
- Creation of a public agency charged with investigating and bringing cases of foreign bribery:
- Government to provide information to companies about bribery and tax incentives to fight corruption
- Awareness-raising programmes for the public and private sectors

Bulgaria

Cases or investigations: Three minor prosecutions were brought in 2004 and 2005 relating to bribery of border officials. There are no current investigations reported.

Organisation of enforcement: No centralised office but satisfactory coordination of decentralised offices. The two main bodies involved in foreign bribery enforcement cooperate closely; these are the National Service for Combating Organized Crime (NSCOC) in the Interior Ministry and the National Prosecution Office. The NSCOC has a special department dealing with the fight against corruption and investigation of corruption crimes, including bribery of foreign public officials.

Complaint procedures: Satisfactory. The websites of the Ministries of Justice and Economy and the Small and Medium Enterprises Promotion Agency have information about the OECD Convention.

Whistleblower protection: Unsatisfactory in both public and private sectors. There are currently no special legislative provisions on this subject (see Recent developments below).

Other enforcement issues: There are continuing reports of connections between high-level Bulgarian officials and organised crime.

Recent developments: Recent assessments by the European Union and the Council of Europe have expressed concerns about the justice system and about organised crime, although some progress was found to have been made⁹. In a mid-2007 report the EU noted that Bulgaria had adopted constitutional amendments to ensure the independence of the judiciary and provide for the creation of an independent judicial inspectorate to monitor the

7 The Wall Street Journal, 19 May 2008

8 The New York Times, 21 October 2007

9 Bloomberg Online, 27 June 2007; EurActiv.com, 5 February 2008

integrity of the judiciary and follow-up on complaints. It concluded at the time that it was too early to assess the effectiveness of these amendments given that the inspectorate had not yet been set up. It also found that the progress in the judicial treatment of high-level corruption and in the fight against serious and organised crime was insufficient.

The government drafted a bill on whistleblower protection in the public sector which comes into force at the end of 2008.

Recommendations: Bulgaria has been urged by the EU to continue with judiciary reforms. The EU also recommended that it implement a strategy to fight organised crime¹⁰.

Canada

Cases and investigations: One minor case and it is understood that there are some investigations in progress but no information is available on how many.

Statutory obstacles: Inadequate definition of foreign bribery (limited to transactions for profit) and jurisdictional limitations in the form of lack of nationality jurisdiction and a limited form of territoriality jurisdiction. Furthermore, Canada is the only country that made a reservation to Article 5 of the Convention, which means its prosecutors can take into account a range of restrictive considerations in the decision to prosecute.

Organisation of enforcement: No centralised office but satisfactory coordination of decentralised offices with some improvements currently in progress (see Recent developments below).

Complaint procedures: Satisfactory. The Royal Canadian Mounted Police (RCMP) has around 35 liaison officers located in 25 strategic locations around the world who are briefed on foreign bribery and the relevant legislation (CFPOA) before they leave on foreign assignment. Reports from these officers back to the newly created Officer in Charge of Sensitive Investigation and International Corruption regarding suspicious transactions in the region for which they are responsible play an important role in helping to detect bribery of foreign public officials.

In addition, the RCMP operates a website called "Reporting Economic Crime On-Line" (www.recol.ca) where complaints can be made by anyone, although it does not appear that this has generated anything of significant substance to date.

The Canadian International Development Agency (CIDA) has in place a Protocol for Dealing with Allegations of Corruption which outlines internal procedures for assessing and reporting allegations of corruption to the relevant Director and the Director of the Internal Audit Division for appropriate action.

Whistleblower protection: Satisfactory in both the public and private sectors. In 2004, the Canadian Criminal Code was amended to provide employees of both the public and private sectors with protection from reprisal by their employer when reporting breaches of provincial or federal law. Further changes also came into effect in 2007 (see Recent developments below).

Other enforcement issues: Canada is the only OECD country to prohibit its tax inspectors from reporting suspicions of foreign bribery to law enforcement officials.

Recent developments: In 2005, the Canadian government enacted specific whistleblower protection legislation applicable to public sector employees, which came into force 5 April 2007 after amendments to increase protection contained in the Federal Accountability Act.

Following Canada's ratification of the UN Convention against Corruption in October 2007, the Royal Canadian Mounted Police established two seven-member International Anti-Corruption Teams, which focus on the detection, investigation and prevention of international corruption such as bribery, embezzlement and money laundering.

Recommendations: The TI expert in Canada recommends:

- Adoption by the Canadian government of "nationality" jurisdiction in addition to the existing "territorial" jurisdiction

¹⁰ EU Business 28 June 2007

- Greater efforts within government agencies involved in foreign countries or with foreign trade initiatives to report up the line and ultimately to enforcement agencies about allegations of bribery
- Amendment of the CFPOA to eliminate the present requirement that the transaction must be “for-profit”
- Greater efforts to promote anti-bribery compliance programmes among small and medium-sized businesses.

Chile

Cases: There is no information about cases or investigations. There was a serious allegation of bribery by a Chilean company in Peru in February 2007, which reportedly led to renegotiation by the Peruvian government of the contract involved. An investigation in Chile relating to alleged tax evasion by General Pinochet in 2004 uncovered allegedly suspicious payments by **BAE Systems** or its predecessors through banks in Miami and the British Virgin Islands continuing into 2004¹¹.

Statutory obstacles: Inadequacy in the definition of foreign bribery, limitations on the scope of territorial jurisdiction and inadequate sanctions for foreign bribery (see Recent developments below).

Organisation of enforcement: No centralised office but satisfactory coordination of decentralised offices with an inter-agency working group for implementation of the OECD Convention.

Complaint procedures: Satisfactory. The possibilities include reporting to the police, to the Public Prosecutor's Office and to the Judiciary.

Whistleblower protection: Satisfactory in the public sector and unsatisfactory in the private sector. Public sector protection was introduced in a new law Nr. 20.205 of July 24, 2007. The measures include protection against disciplinary sanctions or change of workplace during the investigation of the complaint. Additional improvements are still required⁹; for example, regarding adequate protection of the identity of the whistleblower. Some companies have established whistleblower protection.

Other enforcement issues: There is a question whether the Public Prosecutor's office has adequate resources and capacity to enforce the law on foreign bribery.

Recent developments: See above reference to new law of July 24, 2007. The expert also notes that based on recommendations from the OECD Working Group on Bribery there are now two reform bills pending in the Chilean Congress. The first introduces liability for legal persons in the money laundering framework, which includes money laundering relating to foreign bribery. The second amends the language in the law regarding the foreign bribery offence. It also extends territorial jurisdiction to cases in which the offence has been committed both in Chile and elsewhere.

Recommendations: The Chilean expert recommends addressing the above-mentioned statutory deficiencies, as well as improving the awareness of the OECD Convention in the public and private sectors.

Czech Republic

Cases or investigations: No cases. Czech law enforcement authorities were reported to be involved in a multi-jurisdictional investigation of bribery allegations against **BAE Systems** and **Saab**¹². Allegations were made in the Czech Republic in 2002 of improper payments in connection with the Czech government's lease/ purchase of 14 Gripen fighters from Gripen International — a joint venture of Britain's BAE Systems and Sweden's Saab.

Statutory obstacles: The lack of criminal liability of legal persons is the Achilles heel of the Czech fight against corruption, both at home and abroad.

Organisation of enforcement: Centralised office to investigate bribery cases but no special unit for foreign bribery cases.

¹¹ The Guardian, 15 September 2005

¹² International Herald Tribune 11 May 2007: “This past week, van der Kwast (the Swedish prosecutor) met in The Hague with prosecutors from Britain, Switzerland, the Czech Republic and Austria to coordinate their investigations into Saab and the British defense giant BAE.” In 2002, Michael Zantovsky — former chairman of the Czech Senate Committee on Foreign Affairs, Defense, and Security and advocate for the purchase of U.S. F-16 jets — reported to police that he had been offered a £1 million bribe if he supported the Gripen bid. Czech police then started investigations, but soon withdrew from the case due to the lack of evidence.” The probe was reportedly reopened following an investigative expose on Swedish television on 27 February 2007. Prague Post, 7 March 2007.

Complaint procedures: Satisfactory. Almost every ministry has its own hotline and anyone can contact the police and the state prosecutor's offices. The person has a right to be informed how his/her complaint is handled. Additionally, there is a hotline run by the Transparency International Chapter in the Czech Republic.

Whistleblower protection: Unsatisfactory in both public and private sectors. Unfortunately, under the witness protection programme the efforts to conceal the identity of witnesses are ineffective. The Labour Code contains no specific whistleblower protection provisions. An employee can only be dismissed for specific reasons, but this protection is not very effective because the employer is usually able to justify dismissal by giving any number of reasons or he may force the employee to end the work relationship through indirect means.

Other enforcement issues: The law enforcement agencies, especially in the investigative phase, lack knowledge of the complexities of corruption-related legislation.

Recommendations: The TI expert calls for the above-mentioned statutory deficiencies to be remedied and also for the government to:

- Increase the independence of Public prosecutors and create a specialised unit among law enforcement agencies
- Undertake awareness-raising in the private sector

Denmark

Cases or investigations: The TI expert reports 17 pending Oil-for-Food cases and no current investigations. He notes that the formal decision of the Minister of Justice is required to proceed with the pending cases. In 2006 the Danish Public Prosecutor decided to open investigations in relation to a number of companies that had been involved in the UN Oil-for-Food programme in Iraq, including **Novo Nordisk**¹³.

Statutory obstacles: None

Organisation of enforcement: Centralised office

Complaint procedures: Satisfactory

Whistleblower protection: Unsatisfactory in both public and private sectors

Estonia

Cases or investigations: None

Statutory obstacles: Improvements to be made in the legal definition of foreign official, the offence of bribery, jurisdiction and corporate liability, and illicit grounds for termination of prosecution (see Recent developments below).

Organisation of enforcement: No centralised office but satisfactory coordination of decentralised offices because there are specialised or semi-specialised units in the police and the Prosecutor's Office whose task is to investigate and prosecute corruption cases.

Complaint procedures: Satisfactory. There is a hotline and e-mail, accessible via the Anti-Corruption website of the government for reporting cases of corruption.

Whistleblower protection: Satisfactory in both public and private sectors. General protection for whistleblowers as employees or officials is guaranteed. However, there is no special legal act for protecting whistleblowers. The witness protection scheme is effective.

Recent developments: Draft amendments to the Penal Code and Code of Penal Procedure regarding the definition of foreign public official, the definition of the offence of bribery, jurisdiction and corporate liability, and illicit grounds for termination of prosecution have passed the first reading in Parliament.

¹³ Novo Nordisk Annual Report 2006 reported that on April 2006 the Danish Public Prosecutor initiated preliminary investigatory steps against Novo Nordisk, and against other Danish Companies, but on 21 September 2006, the Ministry of Justice decided not to pursue potential criminal charges against Novo Nordisk and other companies due to expiry of the limitation period. It stated that the Danish Prosecutor continues to investigate the possibility of disgorging profits earned under the programme and that Novo Nordisk could not determine or predict the outcome of these investigations, nor how long they will take.

Finland

Cases or investigations: According to the authorities, one minor case has been brought and concluded and three investigations are pending. One investigation relates to alleged bribery by the Finnish state-owned defence contractor the **Patria Group** in Slovenia in connection with the sale of armoured personnel carriers and in Egypt in connection with an artillery gun contract. On 3 June 2008, Finland's National Bureau of Investigation said they had arrested four people in connection with the alleged bribery in Egypt¹⁴.

Statutory obstacles: None

Organisation of enforcement: There is a centralised office to investigate bribery cases. However, investigation of significant cases is regularly carried out by the National Bureau of Investigation and prosecuted by the Office of the Prosecutor General.

Complaint procedures: Unsatisfactory. No specific procedures such as hotlines or websites have been introduced.

Whistleblower protection: Satisfactory in both public and private sectors. So far there is no specific legislation on protection of whistleblowers and witnesses but the protection can be regarded as comprehensive. Finnish labour legislation gives sufficient protection in the private sector (see also, Recent developments below).

Recent developments: In 2007, it was reported that the Ministry of Justice was preparing legislation on, among other things, protecting the anonymity of witnesses.

France

Cases or investigations: There are 19 judicial investigations pending, many of them new ones since the last report, and 16 preliminary investigations by prosecutors. Companies reported to be under investigation include **Halliburton** for alleged bribery in Nigeria (2003); **Alcatel** (2004), **Thales** (2004), **Total SA** (2004), and, most recently, **Alstom** (November, 2007) - (see Case Study on Alstom in Section V).

With regard to serious allegations, in early December 2007, the Government of India reportedly scrapped a US\$ 600 million deal to buy 197 military helicopters from the **Eurocopter** subsidiary of the **European Aeronautic Defence and Space Company (EADS)** after allegations of corruption in the bidding process¹⁵. Established in 1992, the Franco-German-Spanish Eurocopter Group is based in France.

Thales / Aramis in India

According to newspaper reports, in December 2007, the Indian High Court ordered police to complete a probe into charges that a bribe was paid in a relation to an Indian government contract in October 2005 to buy six Franco-Spanish Scorpene submarines worth € 2.4 billion. The purchase was from French defence firm Aramis and European defence firm MBDA. Aramis acts as the commercial arm of the French companies Direction des Constructions Navales (DCN) and Thales Naval France for international sales of the partners' warships, combat systems, and related services. The agreement calls for the Scorpenes to be assembled in India, but Direction des Compagnies Navales (DCN) was supposed to produce various key parts that require equipment unavailable at Indian shipyards.

The Delhi High Court told the Central Bureau of Investigation (CBI) to complete its inquiry within three months and report back to a two-judge bench. The judges also told the CBI to press criminal charges against "accused persons" if it could establish an offence had been committed. "In case CBI decides to close the case after the inquiry then it will have to satisfy the court that there was no evidence of kickbacks involved in the deal," Justices T. S. Thakur and Veena Birbal reportedly said. The order came a month after an Indian pressure group – the Centre for Public Interest Litigation – alleged the government was shielding Indian middlemen who took commissions from French defence giant Thales to clinch the deal. India's main opposition Bharatiya Janata Party party also alleges that 4 percent of the contract amount, estimated to be US\$ 100 million, was paid to the brokers, one of whom was claimed to be close to the ruling Congress party¹⁶.

¹⁴ Helsingin Sanomat, 15 May 2008 ; The Helsinki Times, 5 June 2008. The Finnish state owns 73 percent of Patria, while the European Aeronautic Defence and Space Company holds a 27 percent stake.

¹⁵ Deutsche Welle Online, 7 December 2007; The Times, 7 December 2007

¹⁶ AFP, 20 December 2007; Finanznachrichten.de 20 December 2007

In an earlier decision in April 2006, the Delhi High Court acting chief Justice Vijender Jain gave the CBI a month to answer charges made by the Centre for Public Interest Litigation (CPIL), that claimed that middlemen were involved in clinching the Scorpene deal despite a ban on military brokers in India.

Statutory obstacles: Short duration of the statute of limitations (three years). In addition, for foreign bribery cases, only the prosecutor can trigger prosecution, while for most other criminal matters, the victim can. The expert comments that a change in the law in that respect would be welcome.

Organisation of enforcement: There are several centralised offices, the Brigade Centrale de Lutte contre la Corruption (police); the Service Central de Prevention de la Corruption (for prevention); the Pôle Financier of the Paris Court (court specialised in financial crime) and TracFin in the Ministry of Finance, to combat money laundering.

Complaint procedures: Civil servants have a duty to report violations they witness. The Ministry of Foreign Affairs has emphasised this in its instructions to the diplomatic corps abroad.

Whistleblower protection: Unsatisfactory in the public sector and satisfactory in the private sector. In the public sector, the law should explicitly prohibit discriminatory measures against a public official because of a warning made in good faith. For the private sector there is progress in the Act of 13 December 2007, discussed in Recent developments below.

Other enforcement issues: The expert reports comments by the investigating judge Isabelle-Prévoist Desprez that the powers of investigating judges have been eroded recently in the following ways:

- Increased fragmentation of related cases among different judges that makes the work of judges more difficult because corruption involves networks
- Increased political pressures on prosecutors to slow the opening of new corruption cases, various changes in criminal procedure have slowed the work of investigating magistrates e.g. limitation on judicial warrants for searches in lawyers offices, obstacles in the procedure to recruit financial experts
- Judges at the "Pôle Financier" feel that they are not treated fairly by their hierarchy either in terms of promotions or in terms of the support they receive for their investigations

Recent developments: The Act of 13 November 2007 broadens the definition of the crime of foreign bribery by removing the condition that the purpose of bribery is a foreign trade transaction. It also extends the scope of the corruption being punished to the bribe recipients as well as the bribe payer. It further provides protection to whistleblowers. Finally, it adds to the investigative powers of prosecutors and judges by allowing them to use investigative means such as wiretapping, undercover police, and surveillance.

Recommendations: In addition to addressing the above-mentioned deficiencies, court resources (human and material resources) should be reinforced.

Germany

Cases or investigations: The expert reports more than 43 prosecutions and over 88 pending investigations, including 50 brought since the last report and more than 200 since 2001. Apart from the widely-reported Siemens bribery cases, many of the investigations relate to alleged payments to Iraqi public officials in connection with the UN Oil-for-Food Programme. A Munich district court imposed a € 201 million penalty (including € 200 million disgorgement of profits and € 1 million fine) on Siemens in October 2007 in connection with charges involving Communications Group bribery in Nigeria, Russia and Libya. Also in October, the company accepted a settlement with tax authorities for the Communications Group involving payment of over € 179 million plus interest in back taxes other tax charges were also assessed regarding other Groups and entities. In another case involving bribes paid to win contracts from the Italian utility company Enelpower, in May 2007 the Regional Court in Darmstadt sentenced two former Siemens employees to suspended prison sentences and ordered Siemens AG to disgorge € 38 million in profits. The case is on appeal (see Case Study in Section V). Prosecutors in Germany are also reported to be investigating allegations of bribes paid by German companies in the **German Frigate Consortium** and **MAN Ferrostaal** to South African officials in relation to a € 350 million defence contract in 1999¹⁷. They are also reported to be investigating foreign bribery cases relating to **Bristol Myers**¹⁸ and **DaimlerChrysler**¹⁹.

¹⁷ Der Spiegel, 3 July 2006 and 5 February 2007. The German Frigate Consortium, includes Blohm & Voss, Howaldtswerke Deutsche Werke AG and Thyssen Rhein Stahl Technik.

¹⁸ Report by Lucinda Low on FCPA Prosecutions, 5 May 2006 and Bristol Myers 10-K (Mar. 14, 2006)

¹⁹ The Globe and Mail, 5 August 2005

Statutory obstacles: Lack of criminal liability for corporations

Organisation of enforcement: No centralised office and unsatisfactory coordination of decentralised offices. At the same time, the expert notes a tendency in the last years in most Länder to concentrate the responsibility for the prosecution of foreign bribery cases in special prosecution units and an effort among the prosecution authorities of the Länder to exchange data, experiences and best practice models.

Whistleblower protection: Unsatisfactory in both public and private sectors. Regarding the public sector see Recent developments below. Regarding the private sector there is no specific whistleblower protection but legislation is under consideration by the government (see Recent developments below). Several large companies in Germany have, on a voluntary bases, stepped up their efforts to curb corruption by sharpening their internal procedures and by establishing reporting and disclosure mechanisms such as anti-bribery ombudsmen or whistleblower hotlines (see Recent developments below).

Recent developments: There has been an increase in mutual legal assistance with other countries, especially the US. The Federal Government last year submitted a bill to implement several international anti-corruption provisions. The draft law seeks, *inter alia*, to extend the scope of the offence of bribery involving foreign public officials. The Federal Government last year submitted to the Bundestag a bill allowing federal civil servants to report serious crimes — including any form of corruption — directly to a public prosecutor instead of to their immediate superior. The bill, which is close to adoption, would introduce a major advance in the protection of whistleblowers within the civil service. The Federal Ministry of Food, Agriculture and Consumer Protection is preparing draft legislation to provide for the protection of whistleblowers in the private sector.

Recommendations: Among the suggested actions needed in Germany according to the German expert, apart from correcting the above-mentioned deficiencies, are:

- Establish a Central Register to deter corrupt companies from competing for additional public contracts,
- Introduce a contact point or address to which a potential whistleblower could give his/her information

Greece

Cases or investigations: No foreign bribery cases or investigations are known. There is one investigation of alleged bribery of Greek officials by the former head of **Siemens** telecommunications-equipment sales in Greece. The investigation reportedly related to a contract for the 2004 Olympics in Athens and payments to political parties ahead of parliamentary elections the same year²⁰. There is also reportedly an investigation in connection with activities in Greece of employees of Siemens Transportation. Siemens is alleged to have paid over € 100 million in bribes in Greece over the last 17 years²¹.

Statutory obstacles: The legal framework is unclear in the view of some, which makes enforcement difficult²². The OECD Working Group noted that for nationality jurisdiction to be exercised in Greece there is an absolute requirement of a complaint by the government of the state where the crime was committed and recommended that this requirement be eliminated. They also recommended that Greece ensure that the liability of legal persons for foreign bribery be effective.

Organisation of enforcement: No centralised office and unsatisfactory coordination of decentralised offices

Complaint procedures: Unsatisfactory

Whistleblower protection: Unsatisfactory in both public and private sectors

Other enforcement issues: Delays in judicial processes

Recommendations: The TI expert recommends the following steps in Greece

- Create a centralised independent authority for foreign bribery enforcement
- Speed up and enhance judicial enforcement

20 Spiegel 28 November 2006; UPI 20 May 2008, citing Kathimerini newspaper. German engineering giant Siemens redirected US\$ 2 million to Greek politicians before the 2004 national elections, a prosecutor's report says. The Greek newspaper said paperwork submitted in a Munich, Germany, court by Greek prosecutor Panayiotis Athanassiou included a note that indicated a former Siemens managing director diverted 2 percent of the company's Greek telecommunications revenue to Greek politicians.

21 Kathimerini, 28 January 2008

22 Ioanna Anastassopoulou and Alexandra Mitsokali, "Greece" Anti-Corruption Regulation in 37 Jurisdictions Worldwide (IBA 2008), p.70

Hungary

Cases or investigations: There have been 23 prosecutions, including one in 2006 (terminated), and none in 2007. There is one pending investigation. No details about the cases are available.

An investigation was commenced in the US in 2007 for alleged improper payments by Hungarian company **Magyar Telecom** in connection with business in Macedonia and Montenegro²³. Hungarian authorities were said to be investigating **Siemens Zrt Hungary** and certain of its employees in relation to alleged suspicious payments related to consulting agreements with a variety of shell corporations and bribery relating to the award of a contract for the delivery of telecommunications equipment to a hospital in 2003²⁴. Additionally, following an expose on Swedish television, a parliamentary committee was appointed in June 2007 to carry out an investigation of Hungary's 2001 lease/ purchase of 14 **Saab Gripen** fighter jets²⁵. The deal, modified in 2003, is valued at approximately € 823 million. The committee, headed by a state secretary in the Ministry of Defense, reportedly planned to deliver its findings to Parliament in September 2007. However, in November 2007 the head of the committee reportedly said that they did not receive authority to investigate for corruption, and therefore did not pursue this possibility. She reportedly said that to investigate for corruption, a new parliamentary committee would need to be formed²⁶.

Statutory obstacles: None

Organisation of enforcement: Centralised Office of the Investigating Chief Prosecutor

Complaint procedures: Satisfactory. The National Police Department runs a special service called "Phone Witness" which anyone can use anonymously and free of charge to provide the police information in relation to the commission of offences, including foreign corruption cases. Moreover, the National Crime Prevention Board operates a special email hotline accessible through its own website in Hungarian and in English.

Whistleblower protection: Satisfactory in both public and private sectors. It is a criminal offence if any person takes detrimental action against a person who has made a report of public concern. From 2001 it is a criminal offence if a public official who has learned from credible sources about an act of bribery omits to report it to the authorities immediately. Legislation concerning public officials protects them from repercussions or retribution. Regarding the private sector, there is no special provision in the Labour Code providing protection against unjustified sanctions for whistleblower employees. However, according to general legal principles, the employee is required to respect only legal actions of the employer.

Recommendations: The Hungarian expert recommends the following actions to improve foreign bribery enforcement:

- Improvements to the legal framework, such as inclusion of foreign bribery offences in the future Hungarian Criminal Code
- Public awareness-raising about the foreign bribery prohibition
- Preference in public procurements for companies that adopt comprehensive and detailed anti-corruption programmes
- Stricter requirements in accounting and auditing
- Establishment of a website to facilitate reporting allegations of foreign bribery
- Inclusion of the issue of foreign bribery in the draft government anti-corruption strategy

Ireland

Cases or investigations: No cases and three investigations related to the UN Oil-for-Food Programme in Iraq. An Irish company **CRH** was named in a parliamentary inquiry into bribery allegations in Poland in 2004. (See report on Poland.)

Statutory obstacles: Inadequate definition of foreign bribery, jurisdictional limitations and inadequate sanctions. More generally, the Irish legislation is a complicated patchwork and has been criticised as outdated by the OECD Working Group on Bribery.

Organisation of enforcement: No centralised office and unsatisfactory coordination of decentralised offices.

23 2008 Foreign Corrupt Practices Act (FCPA) Trends and Patterns Report, Shearman & Sterling

24 International Herald Tribune, 10 May 2008

25 New York Times, 25 November 2007

26 New York Times, 25 November 2007

However, efforts were initiated in April 2007 by the Department of Justice, Equality and Law to ensure adherence to and enforcement of the OECD Convention. The Senior Officials Compliance Committee composed of officials from different departments was established for this reason but seems to focus on prevention.

Complaint procedures: Unsatisfactory (but see Recent developments below).

Whistleblower protection: Unsatisfactory in both public and private sectors. There are no legislative measures in existence protecting public or private sector employees who report their suspicions of foreign bribery.

Recent developments: To address the inadequate definition of foreign bribery, the Department of Justice announced in March 2007 that the government approved a proposal by the Minister of Justice for the drafting of a Prevention of Corruption (Amendment) Bill. The Bill has not yet been published. In addition, Section 41 of the Finance Bill 2008 once adopted will explicitly exclude the tax deductibility of expenditures involved in the commission of a criminal offence, such as bribery. On 15 May 2008, a website www.anti-corruption.ie was launched to raise awareness of the offence of foreign bribery. The website has a section devoted to complaints procedures.

Recommendations: In addition to the need to address the unsatisfactory areas mentioned above, the Irish expert recommends the following steps to improve foreign bribery enforcement:

- Prioritisation of foreign bribery in the justice sector and increased resources for investigation and enforcement
- Increased information and awareness-raising

Italy

Cases or investigations: The expert notes that there are at least two cases, including a 2004 case involving **Enelpower, Siemens and Alstom** and there are also a number of Oil-for-Food-related investigations in the preliminary stages. Italian law enforcement officials are also reportedly playing a role in investigations relating to **Immucor, UDI and Siemens**²⁷. The firm **Agusta** of Italy was mentioned as being one of the targets of a South African defence spending probe in 2002²⁸. The firm **Snamprogetti**, an affiliate of Italy's **Eni SpA**, was allegedly part of a joint venture whose activities in Nigeria are under investigation in France, Nigeria, the UK and the US in connection with allegations of bribery²⁹. (see Case Study on Halliburton in Section V)

Statutory obstacles: A number of statutory and legal difficulties are noted by the OECD Working Group on Bribery. These include the complicated definition of the foreign bribery offence, which could hamper enforcement. Further, the short statute of limitations and the lack of adequate sanctions or penalties weaken enforcement.

Organisation of enforcement: No centralised office.

Complaint procedures: Unsatisfactory. The High Commissioner against corruption started a hotline service in November 2007. However, on 25 June 2008, the Italian Government passed a decree abolishing the Office of the High Commissioner against corruption, effective 24 August 2008.

Whistleblower protection: Unsatisfactory in both public and private sectors. Regarding the public sector, no steps were taken to introduce stronger whistleblower protection for employees who report suspicions of foreign bribery as recommended by the Working Group on 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. For this reason, whistleblowing is rare.

Other enforcement issues: The TI expert considers that the available resources and awareness-raising among the public are unsatisfactory.

Recent developments: In June 2008, the Italian Prime Minister, with the support of the head of the justice and constitutional reform commission, introduced an amendment to an anti-crime package mandating the suspension for a year of all trials for crimes committed before mid-2002, except all crimes punishable with a sentence of 10 years or more in prison and those that involve violence, the Mafia and workplace accidents. The amendment was approved by the Italian Senate on Wednesday 18 June 2008. The proposals also include reintroduction of a

27 International Herald Tribune, 10 May 2008; 2008 Foreign Corrupt Practices Act (FCPA) Trends and Patterns Report* Shearman & Sterling (2008). See also, report by Siemens, Legal proceedings—First Half Fiscal 2008 dated 29 April, 2008 which states that in November 2007 the public prosecutor in Milan filed charges against two employees of Siemens S.p.A. and one of its subsidiaries. The prosecutor's investigation concerned alleged illegal payments to employees of the state-owned gas and power group ENI.

28 BBC News Online, 28 May 2001

29 Bloomberg Online, 18 June 2004

controversial immunity bill to protect those holding the highest positions of public office from prosecution³⁰.

Recommendations: The TI expert recommends addressing the above-mentioned deficiencies.

Japan

Cases or investigations: One minor concluded case against a Philippines subsidiary of **Kyudenko Needs Creator IT Corp**, affiliated with Kyushu Electric Power Co.

The TI expert advises there were media reports in early 2008 about an investigation by Japan's Fair Trade Commission into alleged inappropriate payments of US\$ 1.4 million made by **Bridgestone Corp**. The payments were allegedly made to foreign agents who transferred these amounts to public officials in Latin America and Southeast Asia.

The expert also reports on a March 2007 case that was in the media involving nine Japanese shipping companies engaged in transporting lumber from Malaysia. Their failure to report income allegedly had a link to bribery payments. The Japanese tax authorities finally determined that the companies' remuneration payments to a Hong Kong agent were not legitimate expenses, and required them to pay 400 million Yen in back taxes along with penalties³¹.

A Japanese company **JGC Corporation** (formerly Japanese Gasoline Co. Ltd), the largest engineering business in Japan, was allegedly part of a joint venture whose activities in Nigeria are under investigation in France, Nigeria, the UK and the US in connection with allegations of bribery³². Another Japanese company reportedly acted as an agent in connection with activities in Nigeria, according to a recent SEC filing in the US by Halliburton.

In March 2002, there were news reports that an employee at a Chinese branch of **Mitsui & Co.** had been convicted in China of bribing local officials, including a Vice Minister, in connection with a bid to build a power station in 1997³³. In August 2002, the TI expert reports there were serious allegations of bribe payments of around 1.3 million Yen by Mitsui & Co to officials in Mongolia³⁴.

More recently, there have been reports of an investigation in Japan into suspected tax evasion by the construction consulting company **Pacific Consultants International (PCI)**. Part of its corporate income was allegedly hidden in a secret fund used to pay high-ranking foreign officials to secure contracts for official development assistance projects in Southeast Asia financed with low-cost loans from the Japanese government³⁵. The case is being investigated by the special investigation squad of the Tokyo District Public Prosecutors Office. The prosecutors reportedly said at least 500 million Yen was channeled into the subsidiary and that they suspected PCI hid more than 100 million Yen in a slush fund at the subsidiary over the past few years. It is alleged this practice also occurred during the 1990's³⁶.

Statutory obstacles: None

Organisation of enforcement: There is no centralised national office or unit for foreign bribery enforcement in Japan, and there is unlikely to be one in the near future. However, thanks to the recent Phase 2bis review and the Japanese government's responses to it, the ministries concerned – Foreign Affairs, Justice and Trade and Industry – and other authorities such as police, tax, and financial, show a certain degree of coordination among themselves, albeit not satisfactory.

Complaint procedures: Satisfactory but more could be done. There is a Ministry of Economy, Trade and Industry (METI) website with information about the OECD Convention and related legislation and guidelines. It also has a help-line for information and another one for complaints. The site should be advertised more widely.

Whistleblower protection: Satisfactory in both public and private sectors. A 2004 law that came into force in 2006 provides protection for whistleblowers in both sectors.

Recent developments: The expert notes that the Act on Prevention of Transfer of Criminal Proceeds came into force partially in March 2007 and fully in March 2008. The Act requires financial institutions, leasing and real

30 BBC News Online, 17 June 2008, CNN.Com, 19 June 2008

31 Japan Times, 29 March 2007

32 The New York Times, 3 September 2004

33 The Japan Times, 2 March 2002

34 The Yomiuri Shimbun, 4 June 2008

35 The Japan Times, 6 June, 2008

36 Daily Yomiuri Online, 4 June 2008

estate businesses and other operators to ensure client identification and to secure records of transactions. These entities, with the exception of legal and accounting professionals, are also required to report suspicious transactions to financial authorities.

Recommendations: The Japanese TI expert recommends the following government actions

- Enact an independent law specifically regulating the offence of foreign bribery
- Establish a special intelligence unit within the National Police Agency or the Public Prosecutors Office to proactively collect investigative leads and other information concerning foreign bribery and share that information. It could also be a centre for receiving whistleblowing communications, an improvement over the current decentralised system

Korea

Cases or investigations: There were five prosecutions in the period 2002-2004 regarding payments by Korean companies in connection with US military procurement. Another case is reported in 2008 involving bribes of US\$ 20,000 to Chinese immigration officials, with 3 persons prosecuted. Concerning domestic cases, in February 2004 three former officers of **IBM Korea** were reportedly given jail sentences for bribery and illegal business activities in a case involving contracts for computer parts and services.

Statutory obstacles: Inadequate sanctions. The maximum penalty is 5 years imprisonment or approximately US\$ 20,000 in fines. If the amount of the proceeds of crime exceeds US\$ 10,000 the maximum penalty is 5 years imprisonment or fines equal to twice the amount of the profits.

Organisation of enforcement: Centralised national authority exists

Complaint procedures: The now-disbanded Korea Independent Commission Against Corruption (KICAC) and the newly established Anti-Corruption and Civil Rights Commission (ACRC) have both had an adequate Corruption Reporting Center. But concerns persist as to its effectiveness, because of the lack of authority to investigate.

Whistleblower protection: Unsatisfactory in the private sector. In February 2008, the newly amended anti-corruption law finally provided protection for private sector whistleblowers but its effectiveness has yet to be determined.

Other enforcement issues: The disbanding of KICAC is a matter of concern. The TI expert notes fears that its February 2008 replacement, the Anti-Corruption and Civil Rights Commission (ACRC), may not be effective in enforcement.

Recent developments: The disbanding of KICAC is mentioned above. Apart from that, the enactment of the Special Act on the Confiscation and Recovery of Proceeds of Corruption on 28 March 2008 following ratification of the UN Convention Against Corruption is a significant breakthrough in two respects: it has broadened the definition of "corruption" to cover the supply side of bribery; and it has provided a legal basis on which whistleblowers in the private sector can be protected. Further, on 28 February 2007, the Korean government amended the Enforcement Decrees of the Income Tax Act (Article 78) and the Corporate Tax Act (Article 50) to expressly deny tax deductibility of "bribes under the Criminal Act or bribes under the Act on Preventing Bribery of Foreign Public Officials in International Business Transactions."

Recommendations: Apart from the need to address the above deficiencies, the Korean TI expert recommends the following actions to improve enforcement:

- Provide more information to corporations explaining that foreign bribery is an offence and raising awareness about its seriousness
- Increased and timely disclosure of information about cases and statistics
- Re-establishment of an independent anti-corruption body that is more independent from the executive branch and centralisation of all anti-corruption related tasks in this body

Mexico

Cases or investigations: None. There was one investigation in 2001 which was terminated without a case being brought involving alleged bribery by a Mexican company of a high public official in Nicaragua. One case brought against a multinational for domestic bribery is described in the box below.

Areva and Alstom in Mexico

The Mexican TI expert reports cases of bribery of domestic public officials brought by the Ministry of Public Administration (SFP) in 2001 against **Areva, Alstom T & S.S de C.V** (now known as Areva) and **Alstom International**. In July 2004, Areva was penalised with a two-year disqualification from public tender procedures. Areva challenged the ruling and the charges were dropped due to a technicality. The SFP brought new charges against Areva and on 18 October 2007 Areva and SFP reached a plea bargain whereby the sanctions were reduced to a fine of US\$ 31,000. For its part, in July 2004, Alstom International was penalised US\$ 31,000 and a two-year disqualification from participating in public tender procedures. Alstom International filed a series of appeals. On 11 July, 2007 the original sentence was re-instated.

Statutory obstacles: None

Organisation of enforcement: There is a centralised office. In August 2004, the Federal Attorney General's Office (PGR) established the Special Prosecutor's Office for Combating Corruption in the Federal Public Service (*Fiscalía Especial para el Combate a la Corrupción en el Servicio Público Federal*). The express mandate of the Special Prosecutor's Office includes foreign bribery enforcement, but the Ministry of Public Administration (SFP) and Internal Organs of Control (*Órganos Internos de Control, OIC*) in all departments and agencies of the Federal Public Administration also participate in investigating and prosecuting cases of foreign bribery.

Complaint procedures: Satisfactory. There are many channels for reporting to the SFP, OIC and PGR, including via phone hotline and website.

Whistleblower protection: Unsatisfactory in public and private sectors. No current law considers or provides provisions for the protection of whistleblowers in criminal proceedings. There still appears to be no significant progress in implementing corporate whistleblower protection measures to protect employees from being fired or from other forms of reprisal for reporting transnational bribery.

Other enforcement issues: Important administrative inadequacies. The alarmingly low conviction rate for corruption offences in the country is attributed to the inefficient and overly bureaucritised judicial system. In addition, the Mexican legal system hampers proactive criminal investigations because the prosecution services cannot initiate an investigation or bring charges without the filing of a formal complaint.

Recent developments: The TI expert reports that the country recently switched to an adversarial oral criminal procedure, as part of a package approved in February 2008, and sees this as potentially benefiting the fight against corruption.

Recommendations: In addition to addressing the above deficiencies, the TI expert suggests prosecutors should receive guidelines on how the accounting provisions can be effectively used in bribery cases.

The Netherlands

Cases or investigations: The Dutch Public Prosecutor for Corruption reported to TI seven Oil-for-Food cases against Dutch companies and three investigations. One Dutch company **Akzo Nobel** has been named in investigations in other countries in connection with allegations arising out of the Volcker Report on the UN Oil-for-Food programme in Iraq. Another Dutch company **Paradigm B.V.**, an oil and gas services company with its principal place of business in Houston, Texas entered into a non-prosecution agreement with the U.S Department of Justice in September 2007 in connection with violations of the US Foreign Corrupt Practices Act. The agreement related to improper payments made in China, Indonesia, Kazakhstan, Mexico and Nigeria and included a fine of US\$ 1 million. There have also been foreign bribery allegations relating to the **European Aeronautic Defence and Space Company (EADS)**, which has its headquarters in the Netherlands but reportedly has its principal place of business elsewhere³⁷.

³⁷ The U.S. magazine Fortune reported in 2002 that 40 percent of the 500 largest companies in the United States were based in the Netherlands, as 245 Japanese and 2,485 European transnational firms. Inter-Press Service, 30 April 2002

Statutory obstacles: None

Organisation of enforcement: The Rijksrecherche (National Police Internal Investigations Department) is the centralised national office for investigating allegations of foreign bribery. If an investigation leads to prosecution, this is done by the Landelijk Parket van het Openbaar Ministerie (the National Prosecutors' office). In the Landelijk Parket there is a public prosecutor specially appointed to handle corruption cases.

Complaint procedures: Unsatisfactory. The Dutch government has no special hotline for reporting foreign bribery allegations. However, crimes can in general be reported anonymously by phone.

Whistleblower protection: Unsatisfactory in the public sector and unsatisfactory in the private sector. Every government body (both federal government and local governments) is obliged by law to have a whistleblower protection policy. But these policies are very rarely used, especially by local government officials. Listed companies (companies with a stock exchange notation) are obliged to have a whistleblower protection policy. Otherwise, the Dutch government has chosen a self-regulatory approach in the private/commercial sector, so it is up to the companies whether they develop a whistleblower protection policy. An evaluation of this self-regulatory system performed on behalf of the Ministry of Social Affairs and Employment showed that only 10 percent of the Dutch companies have a whistleblower protection policy and those policies are rarely used.

Recent developments: The legal rules framework is in place and the written policy based on these rules has been changed and simplified since 1 August 2007. It is to be seen whether this will improve enforcement.

Recommendations: The TI expert recommends increased whistleblower protection.

New Zealand

Cases or investigations: No cases. Based on media reports and discussions with officials, it is estimated that there are around 6 investigations of foreign corruption matters, including companies involved in the Oil-for-Food scandal.

Statutory obstacles: None

Organisation of enforcement: Satisfactory. (Note: organisational structures are changing, with the establishment of a new Organised and Financial Crime Agency).

Complaint procedures: Satisfactory. The Ministry of Justice maintains a website providing information regarding anti-corruption, including a hotline. Other government agencies also provide web-based information and contact details.

Whistleblower protection: Unsatisfactory in the public and private sectors. The Protected Disclosures Act provides protection but does not provide a comprehensive protection of identity.

Recommendations: The TI expert recommends that in addition to addressing the above-mentioned deficiencies, the following steps should be taken:

- The new Organised and Financial Crime Agency should be specifically resourced to deal with foreign corruption, so that funding for such work is not lost to other "higher priority" matters
- The creation of the new Agency could serve as a catalyst for encouraging closer work with foreign agencies in order to share information regarding potential trans-border investigations and prosecutions, and the methods used to detect foreign corruption

Norway

Cases or investigations: Four cases concluded including two major cases in which the defendants paid fines. One of the cases involved **Statoil** in Iran and was concluded in 2004. In December 2007, it was reported that the Norwegian Crime unit Okokrim had charged 12 Norwegian military officers with corruption, accusing them of

accepting bribes in the form of gifts, expensive dinners and luxurious golfing trips from **Siemens AS**, the Norwegian subsidiary of the German company. Two executives at Siemens AS have also been charged. In April 2008, Siemens AG reported that Norway's Department of Defense had stopped doing business with the company while alleged bribes to ministry officials are being investigated³⁸.

Statutory obstacles: None

Organisation of enforcement: Centralised national office, the National Office for Investigation and Prosecution of Economic Crime (Okokrim).

Complaint procedures: Satisfactory. The Ministry of Justice maintains a website and hotline that provide information regarding anti-corruption. Other government agencies also provide web-based information and contact details.

Whistleblower protection: Not entirely satisfactory. There are new legal provisions for whistleblower protection in force since 1 January 2007. However, there is a requirement that whistleblowers must have acted with justification that is counterproductive.

Other enforcement issues: Insufficient resources for police and prosecutors

Recommendations: The above-mentioned deficiencies should be corrected and Government ministries and foreign embassies must play a more proactive role in providing information and training about the legal provisions on corruption and the seriousness of bribing public officials.

Poland

Cases or investigations: None

CRH in Poland

A parliamentary inquiry in Poland in 2004 looked into whether Ireland's largest company **CRH** was involved in bribing a public official in connection with the privatisation of the Ozarow cement factory in 1995. Marek Dochnal, a Polish lobbyist claimed that he arranged a US\$ 1 million bribe to a government minister to ensure that CRH would acquire the plant. Dochnal allegedly stated to the parliamentary commission that the minister's representative demanded a bribe on the minister's behalf and CRH met this commitment. The minister told the inquiry that he had not requested or received a bribe from Dochnal³⁹.

Statutory obstacles: Lack of liability of legal persons

Organisation of enforcement: The Organised Crime Bureau of the National Prosecutor's Office coordinates all corruption cases. However, the OECD Working Group on Bribery recommended that Poland should consider safeguards, including a division of the functions between the Ministry of Justice and the National Prosecutor to ensure that the exercise of investigative and prosecutorial power will not be prejudiced by Article 5 considerations i.e. of national economic interest, the potential effect on relations with another state or the identity of a natural or legal person.

Complaint procedures: Satisfactory. Bribery can be reported on the National Police Office website.

Whistleblower protection: Unsatisfactory in the public and private sectors

Other enforcement issues: Need to introduce explicit non-tax deductibility of bribes

Recent developments: To address points raised by the OECD Working Group on Bribery, the Ministry of Justice is working on amendments to introduce liability of legal persons and divide the functions of Ministry of Justice and National Prosecutor. Additionally, the Ministry of Finance is working on an amendment to the Tax Law in order

³⁸ Report by Siemens, Legal proceedings – First Half Fiscal 2008 dated 29 April, 2008, p. 2

³⁹ Irish Times, 5 July 2005.

to implement the non-tax deductibility of bribes.

Recommendations: The TI expert refers to the recommendations of the Working Group on Bribery. The expert also calls for the government to increase transparency particularly in transactions of selling public/state owned property (privatisation, re-privatisation, selling state owned land or real estate).

Portugal

Cases or investigations: There is no information available.

Statutory obstacles: Inadequate definition of foreign bribery, jurisdictional limitations and lack of criminal liability for corporations (see Recent developments below).

Organisation of enforcement: No centralised office though the Central Department for Penal Action and Investigation of the Attorney General's Office handles domestic bribery cases

Complaint procedures: Unsatisfactory. There are no publicly known or accessible procedures for reporting foreign bribery allegations

Whistleblower protection: Unsatisfactory in the public and private sectors

Other enforcement issues: The expert notes the following problems in the domestic context:

- Lack of political will (unclear role played by business sections of Portuguese diplomatic representations)
- Lack of expertise of investigators and magistrates for this type of crime
- Perceived lack of willingness of judicial authorities to commit investigative resources to combat a type of crime which in some instances results from state sponsored/mediated business activities and for which there is little chance of success under the current anti-corruption institutional framework
- Minimal legal tradition concerning the substantiation of evidence in the courts
- Difficulties concerning the complex and transnational nature of business transactions facilitated by the ability to resort to non-regulated financial systems (offshore)
- Lack of business culture based on transparency and corporate responsibility
- Lack of business competition

Recent developments: An important recent development in Portugal is the "Anti-corruption legislative package" that was adopted by the Portuguese Parliament on 22 February 2008, which has not yet entered into force. The Decree 196/X of the Portuguese Parliament creates a new legal framework of penal responsibility for bribery in international business transactions and corruption in the private sector. This includes a new framework for foreign bribery, with rules on the applicability of Portuguese law and jurisdiction, penalty reductions and exemptions. The new law clarifies many of the definitional and jurisdictional problems raised under the previous Decree-Law 28/84 (art. 41^o-A and following articles) concerning the definition of corporate employee, but is still ambiguous on the definition of international trade. The new law adopts the solution introduced under the 2007 revision of the Portuguese Penal Code (Law 59/07) concerning corporate criminal liability. It also provides for an increase in whistleblower protection in the public sector and enhanced possibility of breach of professional secrecy in the investigation and collection of evidence relating to corruption crimes. It is still too early to see how this new statutory development will be put into practice by the Portuguese courts.

Recommendations: The expert recommends that in addition to addressing the above-mentioned deficiencies, the following actions should be taken:

- Creation of an anti-corruption agency
- Better coordination between the Public Ministry and the Judiciary Police
- Introduction of multi-disciplinary teams and new investigation methods

Slovakia

Cases or investigations: None

Statutory obstacles: No liability of legal persons for foreign bribery despite the strong recommendation of the OECD Working Group on Bribery. In addition, contrary to the Working Group's recommendation, the defence of "effective regret" has not been removed.

Organisation of enforcement: Despite no centralised national office or unit for foreign bribery enforcement, the coordination of enforcement appears satisfactory.

Complaint procedures: Satisfactory. There is a standard system for reporting bribery complaints in Slovakia (hotlines and websites). Many Slovak authorities run their own websites and hotlines. There is no hotline intended solely for reporting foreign bribery.

Whistleblower protection: Satisfactory. Slovakia was identified by the Working Group on Bribery in its mid-term report in 2006 as the only OECD Convention country with comprehensive whistleblower protection legislation, although the public and companies are unaware of this. Slovak tax officials are subject to the general duty to report crimes.

Recommendations: Apart from the need to address the deficiencies mentioned above, the expert recommends the following actions in Slovakia, drawing on the report of the OECD Working Group on Bribery:

- Provide guidelines and training to tax examiners
- Ensure that the mandatory training requirements of auditors include bribery-related accounting and auditing issues
- Make whistleblower protection requirements more widely known
- Ensure effective and dissuasive sanctions for false accounting
- Enhance cooperation among law enforcement agencies
- Ensure that the Special Court and Office of the Special Prosecutor are adequately staffed
- Organise training programmes for the Special Judges and Special Prosecutors

Slovenia

Cases or investigations: None.

Statutory obstacles: None

Organisation of enforcement: There is a centralised office, the Group of Prosecutors for Organised and Serious Economic Crime in the Supreme Prosecutor's Office.

Complaint procedures: Unsatisfactory. No efforts in this direction.

Whistleblower protection: Unsatisfactory in the public and private sectors. The legal framework is inadequate.

Other enforcement issues: Lack of resources and capacity of the Group of Prosecutors for Organised and Serious Economic Crime. It is currently understaffed even for domestic corruption cases.

Recommendations: Apart from addressing the above-mentioned deficiencies, the TI expert notes a major need for awareness-raising that foreign bribery is a crime

Spain

Cases or investigations: Two major cases have been brought in Spain and there are no known investigations under way. One case filed in 2004 and still pending involves the company **Instalaciones Inbensa** (Grupo Abengo) and alleged bribes paid to former Costa Rican President Miguel Angel Rodriguez to obtain a US\$ 55 million contract to supply electricity to the City of San Jose. The other case, dating to 2002, involved charges of bribery, fraud and money laundering against the leading Spanish bank **Banco Bilbao Vizcaya Argentaria SA (BBVA)** in relation to activities in Peru and Puerto Rico.

The expert also mentions serious allegations in 2003-2004 of bribery by major Spanish companies **ENDESA**, **TELEFÓNICA**, **REPSOL-IPF**, **BBVA**, and **BSCH** in Argentina, Chile and Colombia.

Statutory obstacles: There are numerous statutory and other legal obstacles to enforcement in Spain. These include an inadequate definition of foreign bribery, short statutes of limitation, jurisdictional limitations and inadequate sanctions. The expert also notes a problem in the form of a requirement that a suspect has to be informed at the initial stage of an investigation of the alleged offences of bribery.

Organisation of enforcement: There is a centralised enforcement office. Spain has conferred on the Special Office of the Attorney General for the Repression of Economic Offences related with Corruption (hereafter ACPO) the power to prosecute in all relevant cases of bribery of foreign public officials without the Attorney General having to declare, in each specific case, that the matter is of special significance. From 12 June 2006, when Direction 4/2006 of the Office of the Attorney General came into force, any serious allegation of bribery of a foreign official involving a legal person is in the competence of the ACPO without requiring the intervention of the Attorney General.

Complaint procedures: Unsatisfactory but improving. The Ministry of Industry, Tourism and Commerce continues to provide information to counsellors in its Commercial Offices abroad on bribery of foreign public officials. The counsellors must report to the central services of the Ministry on any credible information released by the media in their service area on alleged bribery by Spanish natural or legal persons. The Office of the Attorney General has initiated a modification of its web home page www.fiscal.es publishing and clarifying the effects of article 262 of the Law of Criminal Procedure.

Whistleblower protection: Unsatisfactory in the public and private sectors. Under Spanish law, there is no whistleblower protection. The expert comments that it is not enough to have a hotline for foreign bribery complaints, because if there is a prosecution the whistleblower has to be identified. The US Sarbanes-Oxley legislation requires that all Securities Exchange Commission (SEC) companies must implement mechanisms facilitating confidential whistleblowing for corruption, fraud or waste. Almost half of the 35 Spanish SEC (IBEX 35) have such mechanisms. But only 20 percent have an appropriate level of whistleblower protection.

Other enforcement issues: In 2002, during his investigation of BBVA, Spanish judge Baltasar Garzon reported that he had not received solid responses to his formal requests for information from the Cayman Islands, Gibraltar, Liechtenstein, Monaco, Puerto Rico, the British isle of Jersey, and the north eastern U.S. state of Delaware⁴⁰.

Recent developments: New legislation in the form of the Bill of Amendment of the Penal Code was introduced to address the above-mentioned statutory deficiencies but has not been approved yet. The proposed Bill of Amendment increases penalties for crimes of bribery of a foreign public official, and extends the limitation period to 10 years. The Bill will ensure that foreign bribery offences do not require recourse to foreign law for their application and provides for criminal liability for legal persons for bribery.

The Office of the Attorney General has initiated a modification of its website to clarify the effects of articles 262 of the Law of Criminal Procedure. A legal reform is in preparation to extend the period allowed for the investigations carried out by the ACPO, so that the Prosecutors have more time – up to one year – to investigate before having to comply with the obligation to inform. Consequently, the Spanish Parliament is working on a reform of the Organic Statute of the Public Prosecution Service which, when it comes into force, will allow the ACPO to carry out year-long investigations. For other prosecutor's offices the period is six months – which can be extended by the Attorney General as needed.

Recommendations: The TI expert notes with approval the progress that will be made with the Bill of Amendment once it is adopted, but considers that it is also necessary to improve the protection of whistleblowers and that there should be a specialised agency for combating foreign bribery.

Sweden

Cases or investigations: There has been one case brought relating to a World Bank project and there are currently 15 investigations, including 12 Oil-for-Food investigations relating to companies named in the Volcker report including **AstraZeneca**, **Atlas Copco**, **Scania** and **Volvo**⁴¹.

40 Inter-Press Service, 30 April 2002

41 International Herald Tribune, 3 November 2005; International Herald Tribune, 11 May 2007

The chief prosecutor in Sweden is also reported to be looking into allegations of bribery in relation to leasing/sales of **Saab Gripen** jets to the Czech Republic and Hungary, and joined a multi-jurisdictional investigation⁴².

The construction company **Skanska** has been named in an investigation of bribery in Argentina⁴³ but after further fact finding the chief prosecutor has not opened an investigation because the Swedish management cannot be implicated in payments made by an Argentine subsidiary.

The TI expert reports that during 2005 there were allegations of foreign bribery in the Swedish media concerning the Swedish companies **Tetrapak**⁴⁴ and **Ericsson**⁴⁵.

Statutory obstacles: The obstacles include the prerequisite of double criminality and lack of total criminal liability for corporations.

Organisation of enforcement: Centralised. There is a national unit for bribery enforcement but not limited to foreign bribery.

Complaint procedures: The national unit generally gets information about suspected cases from the media, tax authorities and whistleblowers. Anonymous reports and complaints are not unusual.

Whistleblower protection: Unsatisfactory in the public and private sectors. There is no specific and explicit whistleblower protection, although public servants have "source-protection" if they tip off journalists and there is also a prohibition of dismissal without "grounds of fact" in the labour legislation.

Recommendations: In addition to suggesting that the above-mentioned deficiencies be addressed, the Swedish expert recommends increasing the resources for investigations and prosecutions and awareness-raising about the foreign bribery offence.

Switzerland

Cases or investigations: There were eight prosecutions and convictions relating to the Oil-for-Food Programme and CHF 17 million was confiscated. Six additional cases are pending with the Attorney General's Office awaiting international judicial assistance that has been requested. In total, Switzerland has conducted investigations regarding 36 Swiss-based companies mentioned in the Volcker report. Switzerland has also been involved in a wide range of money laundering investigations.

In December 2003 a British-based businessman was found by the Attorney General of Geneva to be guilty and fined for laundering tens of millions of dollars in bribes for General Sani Abacha, then President of Nigeria. According to news reports of the Swiss sentencing order, the bribes were found to have been paid by several international companies, including **Ferrostaal** of Germany and India's **Tata**⁴⁶. The Attorney-General of Geneva also was reported to have found that **Dumez Nigeria**, a subsidiary of the French construction firm later taken over by Groupe Vinci, had paid nearly US\$ 8 million in bribes to the Abacha-linked account⁴⁷.

Money laundering investigations by the Swiss authorities triggered the **Siemens** probe in Germany⁴⁸ (together with an Italian investigation), investigations into **Alstom** in Brazil and France⁴⁹ and **Total** investigations in France⁵⁰. In May 2007, it was reported that the Swiss federal prosecutor's office in Bern had opened an investigation into allegations of corruption in connection with the British firm **BAE Systems**⁵¹.

Statutory obstacles: None

Organisation of enforcement: The Attorney General of Switzerland has the central competence since 2002.

Complaint procedures: Satisfactory. In February 2007 the Federal Department of Development and Cooperation opened a compliance office to receive reports of bribery allegations. At the canton level, Zurich announced in

42 International Herald Tribune, 11 April 2008; Reuters, 11 September 2007. International Herald Tribune 11 May 2007: "This past week, van der Kwast met in The Hague with prosecutors from Britain, Switzerland, the Czech Republic and Austria to coordinate their investigations into Saab and the British defense giant BAE." The chief prosecutor also was reported considering looking into South Africa's purchase of 28 Gripens in 1999, the first export order for the aircraft but in 2007 was awaiting the results of an investigation by the UK Serious Fraud Office.

43 Ibid.

44 See eg. New York Times, 12 January 2004 concerning Parmalat scandal in Italy

45 See eg. UPI, 21 November 2007 in relation to payments to a Minister in Oman via an agent

46 Financial Times, 22 December 2003

47 Ibid.

48 Der Spiegel, 17 November 2006

49 The Times, 22 March 2007

50 International Herald Tribune, 6 May 2008

51 International Herald Tribune, 14 May 2007

March 2007 that it would widen the institution of ombudsman to cover bribery cases in the near future. It is the most important canton in Switzerland for mandate of the bribery cases.

Whistleblower protection: Unsatisfactory since in Switzerland people who disclose information about malpractice in a company or organisation are not protected by Swiss law (see Recent developments below).

Recent developments: In June 2007, the National Council of States passed a motion directing the government to examine the introduction of an obligation that employees of the Confederation notify the competent authority if, in the course of performing their official duties, they have firm cause to suspect that an illegal act has been committed. The government is preparing a bill that will probably be submitted to Parliament in 2008. Additionally, since 2006 there is a motion pending in Parliament that calls for legal whistleblower protection in the private sector. Overall, the process for providing legal whistleblower protection will take a long time.

Recommendations: The Swiss expert proposes that in addition to addressing the above-mentioned deficiencies the following steps should be taken:

- Awareness-raising in the private sector
- Establishment of a centre of competence against corruption in the federal administration
- Ensure more transparency in the financing of political parties

Turkey

Cases or investigations: There have been no cases. One major investigation into bribery by a **Barmek Holding** subsidiary in Azerbaijan was dropped. (see box)

Barmek Holding

The TI expert in Turkey reports that the company, **Barmek Azerbaijan Ltd**, is a private power distribution company operated by the Turkish multinational Barmek Holding. Barmek is considered one of the major foreign investors in Azerbaijan. The Azerbaijani government concluded long-term management contracts with Barmek for the operation of three electricity distribution networks. The Barmek Holding Board Chairman, along with others, was charged by the Azerbaijani general prosecutor's office for making a deal with the former Minister of Economic Development in Azerbaijan, to take a stake in Barmek Azerbaijan Ltd. The TI expert was informed that 13 officials of this company were convicted in Azerbaijan. The Ministry of Justice in Turkey was informed by the Azerbaijan government about the Barmek case through a mutual legal assistance request and the Ministry of Justice informed the Ankara Public Prosecutor's Office. The Ankara Public Prosecutor's Office commenced investigations, but decided not to pursue them. The reasons given by the prosecutor were that Barmek Azerbaijan Ltd., a subsidiary of Barmek Holding, was not a Turkish company and that the directors that committed the crimes were not Turkish citizens.

Organisation of enforcement: Unsatisfactory during 2007 but at the end of 2007 the government decided to appoint a special centralised unit in the Ministry of Justice for the coordination of foreign bribery enforcement, since the efforts of the government institutions were scattered. This unit started work in January 2008 and meets every 45 days with 15 different institutions. Four judges were appointed to the unit.

Complaint procedures: Satisfactory. Although there are no easily accessible procedures such as hotlines or websites specifically for reporting foreign bribery allegations, there are other publicly-known and accessible procedures available for general complaints.

Whistleblower protection: Unsatisfactory in the public and private sectors. Public officials have a duty to report offences encountered during the performance of their work but no explicit protection. Whistleblowing is easier in the private sector but sensitive due to cultural issues.

Other enforcement issues: The expert sees a need for greater resources to be allocated to improve enforcement in addition to tighter accounting and auditing requirements and more private sector efforts with regard to preventing corruption.

Recommendations: Apart from addressing the above deficiencies, one of the most important actions needed in Turkey to improve enforcement, according to the TI expert, is awareness-raising among the public, particularly in regard to reporting channels.

United Kingdom

Cases or investigations: There have been no cases brought but about 20 investigations are under way. There are major investigations relating to alleged bribery by **BAE Systems** in several countries. The UK Serious Fraud Office (SFO) said in February 2007, after termination of the Al Yamamah investigation, that it was actively pursuing investigations into allegations of corruption by British companies, including BAE, in Qatar, South Africa, Tanzania, Romania, Chile and the Czech Republic⁵². The SFO termination in December 2006 of its investigation of alleged bribery by that company in Saudi Arabia, in connection with the Al Yamamah deal, was a major setback to enforcement and a High Court judgement overturning that decision is currently on appeal. The SFO is now reportedly investigating allegations of BAE Systems bribery in Czech Republic, Romania, South Africa and Tanzania.

From 2005, the SFO was reported to be investigating **EFT Ltd**, an electricity trading enterprise, in relation to alleged corruption in the Balkans. This investigation was terminated on 3 June 2008⁵³. The SFO is also looking into alleged corruption in the Philippines and Iraq by the British bridge-building firm **Mabey & Johnson**⁵⁴.

In 2006, the SFO was reported to have started investigations into **M. W. Kellogg**, a company owned jointly by former Halliburton subsidiary KBR and Japan's JGC Corporation, in relation to the construction of a gas liquefaction plant in Nigeria⁵⁵.

In February 2007, the SFO also confirmed that it was investigating **Astra Zeneca, Eli Lilly and Company Ltd** and **GlaxoSmithKline** in relation to alleged infractions in connection with the UN Oil-for-Food programme⁵⁶.

From 2007, the SFO was reported to be investigating the company **De La Rue**⁵⁷, a banknote printer, following allegations of corruption in relation to its activities in Cameroon and other countries. The SFO was also reportedly investigating **Anglo Leasing** for corruption in Kenya⁵⁸.

It was also reported that **Chevron Texaco** and **Royal Dutch Shell** were under investigation in the UK for allegedly making improper payments in Nigeria to a Nigerian company, M.E.R Engineering⁵⁹.

Statutory obstacles: The key problem is the prolonged lack of progress in enacting a new bribery law that would make it easier to prosecute foreign bribery. There is a lack of criminal liability of legal persons in the context of active and passive bribery.

Organisation of enforcement: The Serious Fraud Office is the centralised office.

Complaint procedures: Satisfactory. The Overseas Anti-Corruption Unit (OACU) of the City of London Police has set up a Reporting Line, which allows callers to report their suspicions anonymously.

Whistleblower protection: Satisfactory in both the public and private sectors, with some room for improvement in both.

Other enforcement issues: There has been an increase in resources for foreign bribery investigations as well as an increase in the number of investigations. However, no case has come to court and the government is now proposing as part of its draft Constitutional Renewal Bill to give the Attorney General the power to intervene in investigations/ prosecutions on the ground of national security, with inadequate safeguards to ensure this new power will be exercised responsibly and insufficient provision for scrutiny by Parliament and the judiciary. The TI expert finds a lack of political will on the part of the Government to prosecute foreign bribery.

Recent developments: The Al Yamamah case is discussed elsewhere in this report.

52 The New York Times, 28 April 2007; The Sunday Times, 13 May 2007; The Guardian 13 November 2007

53 The Guardian, 15 February 2005. On 3 June 2008, it was announced by the SFO that plans for a prosecution had been scrapped because it had decided there was no realistic prospect of convicting the chairman of the London-based energy company.

54 The Guardian, 21 December 2005. The SFO confirmed in February 2007 that it was investigating this firm for alleged bribery under the Oil-for-Food Programme.

55 Financial Times, 29 January 2008

56 The Guardian, 14 February 2007

57 Financial Times, 29 January 2008

58 The Guardian, 1 October 2007

59 Financial Times, 17 November 2007

Recommendations: In addition to the need to address the above-mentioned concerns, the TI expert recommends that:

- The Government should fast-track the enactment of a new corruption law in the 2008/2009 Parliamentary session.
- UK law should provide for the liability of legal persons in the context of both active and passive bribery and the new corruption law should make provision for corporate liability
- The Government should abandon that part of its Constitutional Renewal Bill that would give the Attorney General the power to intervene in future investigations/ prosecutions of foreign bribery on the grounds of “national security” as defined by the Attorney General
- The Government should operate an advisory service that companies could approach when confronted with difficult situations. This could be modelled along the lines of the service provide by the US Department of Justice

United States

Cases or investigations: There were 36 new cases brought in 2007 for a total of 103, with 69 investigations in 2007. Among the most recent companies charged are **Lucent Technologies**, **Akzo Nobel**, **Ingersoll-Rand Co**, **Chevron Corp**, **Bristow Group** and **Textron**. In 2007, the US Department of Justice (DoJ) and Securities and Exchange Commission (SEC) launched a record number of investigations, continuing a six-year trend. At the same time, penalties and fines have also grown dramatically. In February, the DoJ imposed a US\$ 26 million penalty on three subsidiaries of **Vetco International, Inc.**, followed in April by penalties of US\$ 44.1 million imposed against **Baker Hughes Inc.** and one of its subsidiaries. For SEC actions, mandatory disgorgement of profits from illegal activity – now common to almost all SEC dispositions – has also increased total monetary penalties.

Both the SEC and DoJ have increased their focus on company employees who they view as bearing significant responsibility for Foreign Corrupt Practices Act (FCPA) violations. The SEC’s settlement of charges against Charles Martin, a former Government Affairs Director for **Monsanto Company** and against Si Chan Wooh and Robert Phillip, both former executives of **Schnitzer Steel**, are examples.

The DoJ has articulated an explicit strategy of focusing on foreign companies registered on US stock exchanges. While the FCPA has always applied to foreign issuers, efforts to enforce the law against them are on the rise.

Statutory obstacles: None

Organisation of enforcement: The federal government has two centralised agencies, the Department of Justice (DoJ) and the Securities and Exchange Commission (SEC), responsible for enforcement of the US laws against trans-national bribery. The responsibility of the DoJ is to enforce the prohibition against foreign bribery (a criminal offence); the responsibility of the SEC is to enforce the “books and records” provision of FCPA (a civil violation). Although they have distinct jurisdictional authority, in practice the existence of two agencies creates a more stringent enforcement regime. One agency may elect to prosecute even if the other declines to pursue or settles a given matter. Persons accused of bribery often have to resolve matters with both agencies.

Complaint procedures: Satisfactory. With respect to complaints by the general public, including employees and other whistleblowers, the Sarbanes-Oxley Act requires publicly-traded companies to establish a mechanism for the confidential receipt of employee complaints. The government also encourages corporate hotlines and reporting procedures. The SEC receives reports of potential violations of the securities laws including the Foreign Corrupt Practices Act (FCPA) via the Internet, via email, and via mail. The Fraud Section of the Criminal Division of the DoJ publishes its address, fax number, and email address for “specific questions” related to the FCPA. Some FCPA cases have been initiated based upon such reports.

Whistleblower protection: Satisfactory in the public and private sectors. The federal Sarbanes-Oxley and Whistleblower Protection Acts and similar state laws protect government employees who report alleged violations of law, including trans-national bribery of government officials in the United States. The federal Sarbanes-Oxley legislation increased the protections for whistleblowers in the private sector. These protections have been invoked in recent high profile cases.

Other enforcement issues: In the last two years, there have been three main sources of cases:

- The UN Oil-For-Food Programme scandal, accounted for 20 percent of all FCPA dispensations in 2007;

- Voluntary disclosures. 64 percent of FCPA investigations publicly disclosed between 2006 and 2007 resulted from voluntary disclosure;
- Enforcement efforts by foreign governments. Formal information-sharing with foreign governments, foreign media reports, and the like have informed DoJ and SEC enforcement decisions. The US investigation of BAE is a prime example.

Recent developments: In 2007, the Federal Bureau of Investigation (FBI) created a new five-member team to investigate FCPA violations.

In May 2008, the Hawaii Structural Ironworkers Pension Trust Fund reportedly started proceedings against aluminium producer **Alcoa Inc.** and its board of directors. In the lawsuit, it accuses Alcoa's board of "causing and/or failing to prevent Alcoa's illegal payment of hundreds of millions of dollars in illegal bribe payments" to senior Bahraini government officials. The pension fund, which owns Alcoa shares, is seeking unspecified damages for financial losses incurred due to the alleged bribery. The bribery allegations first surfaced in February, when a company controlled by the Bahrain government, Aluminum Bahrain B.S.C. or Alba, filed a civil lawsuit against Alcoa and affiliates, seeking more than US\$ 1 billion in damages. The Bahraini company accused Alcoa, the world's third-largest aluminium producer, of bribing officials through overseas shell companies to secure hundreds of millions of dollars in overpayments over a 15-year period starting in 1993⁶⁰.

Another pension fund in the US has brought a lawsuit against directors of **BAE Systems** (see Case Study in Section V).

Recommendations: The expert considers that the enforcement system could be strengthened by

- Clarification of the nature of the benefit of voluntary disclosures by companies
- Promoting compliance programmes by issuing guidelines
- Continuing to improve collaboration with counterpart authorities in other countries
- Continuing to aggressively prosecute non-US-based offenders
- Protecting attorney-client privilege to encourage prospective resolution of areas of potential violations

New Approach to Enforcement

With the recent surge in the number of US enforcement actions against companies, prosecutors have turned increasingly to settlement agreements under which the government will defer an enforcement action in exchange for the company taking on specific obligations.

Such deferred prosecution agreements (DPA) typically require companies to (1) admit wrongful conduct, (2) cooperate in any ongoing investigation (which can lead to criminal prosecution of individuals), (3) waive relevant statutes of limitation and the right to a speedy trial, (4) pay significant fines – often in the tens of millions of dollars, (5) implement a compliance programme to address the underlying criminal conduct and prevent future problems, and (6) engage an independent compliance monitor for up to three years to review the implementation of programmes and controls and to report back to the government on its findings. Failure to fulfill all the required conditions can lead to reinstatement of the charges.

DPAs, which have been used in other legal areas, have several attributes. First, the independent monitor requirement ensures that compliance commitments are implemented and observed. Second, they avoid the long delays and high cost of litigation, allowing prosecutors to investigate and effectively "settle" many more cases. This is particularly useful given the current upsurge in cases. Third, the practical consequences for companies that enter into a DPA – significant fines, required cooperation, mandated compliance programmes and monitors – are comparable to those available through more traditional enforcement, and corporate officials may still be prosecuted and jailed. Fourth, they may encourage companies to undertake more proactive internal investigation and voluntary reporting.

One example is the 2007 **Baker Hughes Inc.** DPA with the US Department of Justice and civil settlement with the SEC. Baker Hughes agreed to pay a US\$ 44.1 million settlement, to retain a compliance monitor for a period of three years, and to continue to cooperate fully with the government's investigation of FCPA violations by individual employees.

60 International Herald Tribune, 8 May 2008

V Cases and Investigations

Available information about cases and investigations pending or concluded show that foreign bribery is practiced in a wide range of sectors including construction and engineering, arms and military equipment, telecommunications, oil and natural resources, medical equipment and many others. It also shows that money-laundering centres play an important role in facilitating foreign bribery crime.

ALSTOM

Name of company, home country: Alstom, France

Type of Business: Alstom is a global company specialising in equipment and services for power generation and rail transport. The Group is present in more than 70 countries worldwide and employs around 76,000 people.

Home countries of other persons, companies and bank accounts allegedly involved in the supply side of the bribery: Bahrain, Hong Kong, Liechtenstein, Singapore, Switzerland, Thailand, Uruguay

Destinations, amounts and time frames of alleged bribery: In May 2008 it was reported that investigations were under way in France and Switzerland concerning alleged Alstom-related payments of hundreds of millions of dollars in bribes to secure contracts in Asia and Latin America between 1998 and 2003. The final destination of the funds allegedly included marketing officials in Brazil, Indonesia, Singapore and Venezuela in connection with projects in those countries. According to the Wall Street Journal, two former Alstom representatives questioned by French police in 2007 confirmed that the company used a "caisse noire" or slush fund to pay commissions to win contracts. The funds were not recorded in Alstom's regular financial books and the arrangement was allegedly ordered by senior company managers.

The investigations reportedly started in Switzerland in 2004 with the accidental discovery of documentation detailing about € 20 million worth of Alstom-related transfers to companies in other countries. The discovery was made during an audit by KPMG Fides Peat of a small privately-owned bank—Tempus Privatbank AG.

In Brazil, prosecutors are reportedly scrutinising 139 contracts signed with the state of São Paulo and valued at about US\$ 4.6 billion. The Wall Street Journal reports having reviewed bank records showing that between 1998 and 2001 one of Alstom's consultants in Brazil received about US\$ 1.4 million via a Swiss account belonging to a company he controlled. One set of allegations relate to a US\$ 1.4 billion hydroelectric power plant built by Alstom in Itá, Brazil, a project completed in 2001. The company allegedly budgeted around US\$ 200 million, or 15 percent of the contract value, to pay commissions to secure the deal. According to news reports, around half of that, or 7.5 percent, was to be paid through offshore bank accounts, potentially violating the French disclosure requirements on international sales commissions. In another case in Brazil, US\$ 6 million worth of suspicious payments were alleged to have been used to secure a US\$ 45 million contract for equipment installation for a São Paulo subway extension. Additional allegations have recently emerged.

Countries where investigations are currently or previously under way: Switzerland (official investigation opened in May 2007); France (started November 2007) ; Brazil (2008). A case was brought in Mexico in 2001 and has been concluded. See Mexico country report in this report.

Current status: In February 2008, a French investigative magistrate reportedly flew to Brazil to discuss one of the cases. Brazilian authorities are also investigating alleged bribe payments by Alstom. Investigators are also looking into Alstom's contracts and suspicious payments Alstom allegedly made in connection with projects in Venezuela, Singapore and Indonesia.

Alstom has denied any wrongdoing and has joined the case as a civil party.

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AWB

Name of company, home country: AWB, formerly Australian Wheat Board

Type of Business: Exclusive manager and marketer of all Australian bulk wheat exports through a supply pooling system arrangement with Australian wheat growers. The Australian wheat exporter was the largest single supplier of humanitarian goods under the UN Oil-for-Food Programme in Iraq which began in 1996.

Destinations, amounts and time frames of alleged bribery: An Australian government inquiry found that between November 1999 and March 2003, AWB had knowingly made prohibited payments of hard currency to an Iraqi Government-controlled company of more than US\$ 200 million. AWB reportedly thereby secured contracts worth around US\$ 2.3 billion under the UN's Oil-for-Food Programme in Iraq⁶¹.

Countries where investigations are currently or previously under way: In November 2005, the Australian Government launched a Royal Commission of inquiry into the actions of the AWB in relation to the sale of Australian wheat to Iraq through the United Nations Oil-for-Food Programme. It concluded that AWB knew these payments were going to the Iraqi Government and therefore contravened UN sanctions but made the payments to avoid losing trade with Iraq.

Current status: The scandal has led to important consequences within Australia that are still unfolding. There have been significant personnel changes at AWB. The first resignation was that of AWB's managing director, Andrew Lindberg, on 9 February 2006. On 19 December 2007, the Australian Securities & Investments Commission launched civil penalty proceedings against six AWB directors and officers in the Victoria Supreme Court. Investigations into possible breaches of Australian criminal laws by AWB directors and officers are continuing. Further, the Australian Government recently introduced legislation into Parliament with the aim of removing the AWB's monopoly over the bulk export of Australian wheat by 1 July 2008.

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BAE Systems Plc

Name of company, home country: BAE Systems plc is a UK company formed in 1999 with subsidiaries and significant production overseas (e.g. BAE Systems Inc. in USA). The company was formed following a merger of companies that included British Aerospace.

Type of Business: BAE Systems is the world's third largest arms producer, specialising in military aircraft, boats, vehicles, munitions and associated military systems.

61 AFP 27 November 2006

Home countries of other persons and companies allegedly involved in the supply side of the bribery:

Gripen International is a Swedish company originally set up as a 50-50 joint venture between SAAB and BAE Systems but BAE's shareholding has since been reduced to just over 20 percent. Gripen International is responsible for marketing, selling and supporting the Gripen fighter plane worldwide and was allegedly involved in sales of Gripen aircraft to the Czech Republic and Hungary.

Natural persons include an Austrian agent for BAE in Eastern Europe, a Zimbabwean tycoon, an intermediary in South Africa, a UK middleman and his Romanian-born wife, and two Tanzanian businessmen. Companies allegedly include Robert Lee International Ltd., Red Diamond Trading, and other companies registered in the British Virgin Islands.

Additional countries home to alleged bank accounts: Channel Islands (Tanzania deal); Florida, USA (Chile deal; the bank involved, Coutts, has since been sold to Santander), Jersey (Qatar & Tanzania deal), and Switzerland (Tanzania deal)

Destinations, amounts and time frames of alleged bribery: The largest case relates to an alleged £1 billion in illegal payments in connection with arms sales to Saudi Arabia estimated at £ 43 billion starting in 1985 and then extended. The full extent of the deal has never been disclosed but involved British Aerospace and then BAE Systems as the prime contractors supplying Tornado fighter jets and other military equipment which Saudi Arabia reportedly paid for by supplying the British Government with oil. BAE has throughout denied any wrongdoing.

There are also reported to be investigations into allegations including:

- Argentina: Allegations by the Guardian newspaper referring to period 1998 and beyond
- Chile: £ 1 million in alleged payments from 1997-2004, into accounts controlled by General Pinochet and persons close to him, detected by Chilean investigation
- Czech Republic: Undisclosed amounts allegedly relating to leasing/ sale of Gripen fighter jets under discussion from 2001. The Czech government reportedly originally planned to purchase 24 JAS 39 Gripen jets for £ 1 billion but after 2002 flooding in the Czech Republic leased 14 fighters for £ 400 million in 2004
- Hungary: Undisclosed amounts allegedly relating to 2001 lease/ purchase of 14 Gripen jets. The Hungarian government's original decision to buy Lockheed Martin F-16 fighter jets was allegedly reversed by Prime Minister Viktor Orban in favour of the Gripens. This led to objections by a representative of the Pentagon's overseas sales who claimed a lack of transparency in the negotiations.
- Qatar: £ 7 million in commissions allegedly paid to a (former) Foreign Minister for an arms package in 1996
- Romania: £ 7 million in allegedly secret commissions relating to the 2003 sale of two refurbished UK frigates to Romania valued at £116 million
- South Africa: £ 75 million in allegedly payments to government officials in connection with £ 1.5 billion purchase of planes from BAE Systems in 1999. Recipients of the payments alleged to include the Defence Minister and additional payments allegedly made to the ANC ahead of the 1999 election campaign.
- Tanzania: Payments of US\$ 11 million allegedly paid, including at least US\$ 1 million to the Attorney General at the time (who subsequently became the Infrastructure Minister) in relation to sale of a £ 28 million radar system
- Bosnia, Costa Rica, Egypt, Nigeria and Zambia: According to a statement of the UK Solicitor General in February 2007 allegations of bribery and fraud by BAE in these countries were being investigated

Countries where investigations currently or previously under way: In the United Kingdom it was reported at different times in 2006 and 2007 that the Serious Fraud Office (SFO) was conducting investigations relating to alleged BAE bribery in 8 or more countries; the SFO recently confirmed in 2008 there are investigations relating to 4 countries (Czech Republic, Romania, South Africa and Tanzania). Investigations have also been reported in Austria (2007), Chile (2004), Czech Republic (2002 & 2007), Hungary (2007), Romania (2007), South Africa (2001 and 2007), Sweden (2007), Switzerland (2007, Al Yamamah), Tanzania (2007) and the United States (June 2007, Al Yamamah)

In September 2007, a Michigan public pension fund in the US holding 14,000 BAE shares reportedly filed a lawsuit in the US District Court in Washington D.C. against the company's directors over bribery and corruption claims, alleging negligent and reckless breaches of their duties as company officers. As well as seeking damages, the lawsuit is demanding a complete overhaul of corporate governance standards at BAE including establishment of

an anti-corruption committee and a reduction in the number of board seats for executive directors.

Current status: The most public and controversial of the investigations concerns the Al Yamamah arms deal between the UK and Saudi Arabia. The SFO began an inquiry in 2004 following a series of corruption allegations by a whistleblower that were reported in the press. By early 2005 this inquiry had reportedly generated complaints by then Prime Minister Tony Blair and the UK Attorney General's office. After reportedly resisting initial attempts to terminate the investigation, on 14 December 2006, the UK's SFO announced that it was ending the investigation into the Al Yamamah case. The SFO Director Robert Wardle claimed that continuing the investigation could risk serious damage to the UK's national and international security stating, "It has been necessary to balance the need to maintain the rule of law against the wider public interest. No weight has been given to commercial interests or to the national economic interest." The same day, the Attorney General Lord Goldsmith made a statement to Parliament in support of Wardle's decision, stating that the decision was reached after consultations with the Prime Minister, the Defence Secretary, the Foreign Secretary and the intelligence services. However, the heads of the MI5 and MI6 intelligence agencies refused to endorse the national security basis for the decision.

In April 2008, following a request for judicial review by two NGOs, Corner House and Campaign Against the Arms Trade, the UK High Court found that the Al Yamamah investigation had been unlawfully terminated in what Lord Justice Moses and Mr Justice Sullivan described as "a successful attempt by a foreign government to pervert the course of Justice in the United Kingdom". The SFO has appealed this decision and the UK House of Lords will hear the appeal in early July 2008.

In connection with the US investigation, on 18 May 2008, BAE Systems Chief Executive Mike Turner and a senior colleague were questioned by US authorities when they arrived on business in Houston. BAE Systems Inc, a subsidiary of BAE Systems plc, has about 43,000 employees in the US.

Other investigations: A South African Parliamentary inquiry into 1999 arms sales was quashed. Subsequently, in 2007, the Scorpions or Directorate of Special Operations (DSO), a special unit of the National Prosecuting Authority, were involved assisting in a UK investigation of BAE's role in alleged defence procurement irregularities in 1999 but the Scorpions were disbanded in May 2008. In connection with the Romanian purchase of frigates, the Government of Romania is reported to have made a request to the UK Government to release details of the repayment clause in the confidential 2003 sales contract. The Hungarian Government inquiry in 2007 into that country's purchase of Gripen jets in 2001 reportedly did not look into possible corruption.

In the wake of the above-referenced allegations, BAE established a Committee, chaired by former Chief Justice Woolf, to identify the ethical standards to which the company should adhere, the extent to which it meets those standards and to recommend actions the company should take. The Woolf Committee report was issued on 6 May 2008 and made twenty-three recommendations. TI-UK has broadly welcomed the report and has issued a detailed analysis of the recommendations.

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CBK Power Company/ IMPSA/ EME

Name of company, home country: CBK Power Company, is a partnership between Industrias Metalurgicas Sociedad Anonima (IMPISA), of Argentina and EME (Edison Mission Energy), a US company.

Type of business: IMPISA is a global company providing integrated solutions for power generation from renewable resources, for processes required by different industries and for port cargo movement and logistics. EME is an independent power producer engaged in the business of owning or leasing, operating and selling energy and capacity from electric power generation facilities. EME also conducts price risk management and energy trading activities in power markets open to competition. EME is a wholly owned subsidiary of Mission Energy Holding Company. Edison International is EME's ultimate parent company.

Destination of alleged bribery: Philippines. Recipients allegedly included the Justice Secretary and other high level officials.

Amount of alleged bribes and time frame: US\$ 14 million to high Philippine government officials around 2000 or 2001 in connection with the January 2001 approval of a contract and related sovereign guarantee to repair the Caliraya-Botocan-Kalayaan (CBK) Power Complex in Laguna at a cost of US\$ 470 million. The contract reportedly included the reactivation, construction and operation (build-rehabilitate-operate-transfer) of three hydroelectric power plants in the Caliraya, Botocan and Kalayaan areas. The contract was approved in 2001 two days after a new government entered office.

Additional countries home to alleged bank accounts: Trade and Commerce Bank in the Cayman Islands, Coutts Bank in Hong Kong, and EFG Private Bank in Geneva Switzerland

Countries where investigations / prosecutions under way: Argentina, Philippines.

Current Status: A foreign bribery case was filed against CBK Power Company in a criminal federal court in Argentina in 2006 and is being investigated by a judge.

In the Philippines, it is reported that there were unsuccessful efforts in the Senate to initiate an investigation into the deal in 2002. In the same year, Philippines law enforcement authorities commenced and concluded an investigation into alleged irregularities in connection with the CBK contract. In 2003, the TI expert reports that three Philippines Congressman made public allegations of corruption against the former Justice Secretary in connection with the deal. In January 2007, it was reported that members of the Philippines Senate were planning to reopen an investigation into the alleged bribery in connection with the sovereign guarantee for the CBK deal. In 2008, the Philippines Ombudswoman recommended criminal charges for extortion against the former Justice Secretary and against other persons in connection with the CBK case. In April 2008, an arrest warrant on grounds of extortion was reported to have been issued against the former Justice Secretary who approved the sovereign guarantee, as well as against his wife and brother-in-law.

It is also reported that the former Justice Secretary has been accused of falsifying his 2001 statement of assets and liabilities and of failing to disclose his and his wife's bank deposits in Switzerland.

Note: In 2005 – 2006, TI-Philippines conducted a study of 42 Power Producers Agreements (PPA) entered into by the Philippines government, including 41 agreements entered into before the present government came into office in 2001 and the agreement with CBK Power Company concluded two days after the new government took office. The first problem they encountered was that they were unable to gain access to any of the agreements, which reportedly contain very onerous conditions.

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HALLIBURTON

Name of company, home country: Halliburton, USA. Also Halliburton's US subsidiary Kellogg Brown & Root (KBR); and M.W.Kellogg, a private limited UK company jointly owned by KBR and a Japanese company called JGC Corporation (JGC). KBR was divested by Halliburton in late 2007.

Type of business: Oilfield technology and services, with nearly 50,000 employees in approximately 70 countries.

Destination of alleged bribery: Nigerian officials including ministerial level. Also, officials outside Nigeria by M.W. Kellogg.

The primary case focuses on the construction and extension of the Nigeria LNG natural gas liquefaction plant on Bonny Island in the eastern Niger delta. The plant is 49 percent owned by the Nigerian government's National Petroleum Corporation, 25.6 percent by Royal Dutch/Shell, 15 percent by Total of France and 10.4 percent by Italy's Eni. The value of the original construction contract was estimated at US\$ 2 - 5 billion (the original bids were around US\$ 2 billion). More than US\$ 12 billion has reportedly been invested in the plant.

Amount of bribes alleged and time frame: US\$ 180 million in period 1995 - 2002 in the construction contract case, and US\$ 2.4 million in a tax case disclosed in a 2003 Securities and Exchange Commission (SEC) filing by Halliburton. Additional amounts in connection with a KBR-managed project called the Shell EA project and also other projects. Additional amounts by M.W. Kellogg Company to government officials in countries other than Nigeria.

Home countries of other companies or persons involved in supply side of the alleged corruption: France, Italy, Japan, Spain, Portugal, Switzerland, United Kingdom. Contracts for construction of the plant were awarded by the Nigerian government to a consortium of four engineering firms involved in a joint venture called TSKJ. The companies consisted of M.W. Kellogg, a British joint venture in which KBR had a 55 percent stake, Technip of France, Italy's Snamprogetti, and JGC Corporation. The consortium is described in the media as being KBR-led. KBR was a subsidiary of Halliburton at the time.

The TSKJ consortium hired British lawyer Jeffrey Tesler, a principal in a Gibraltar-based company Tri-Star Investments. In addition, TSKJ incorporated a subsidiary company, called LNG Servicos, in the Portuguese tax-haven Madeira.

Additional countries where alleged bank accounts are held: Monaco, Switzerland.

LNG Services allegedly made illegal payments into a score of different Tri-Star controlled bank accounts in Switzerland and in Monaco for what was described as "commercial support services". In documents submitted to SEC in November 2004, Halliburton acknowledged that TSKJ had paid Tesler US\$ 132 million in advisory fees between 1995 and 2002.

Countries where investigations / prosecutions under way: France (2003), Nigeria (2004), Switzerland (2004), US (2004), UK (2006)

The French inquiry was launched by the Public Prosecutor's office and the Financial Crimes unit in Paris after Georges Krammer, a former top executive at consortium member Technip, informed a French magistrate that the Bonny Island contracts were obtained as a result of bribes.

The Nigerian government initiated its own investigation in 2004, carried out by a legislative committee within its National Assembly and the Economic and Financial Crimes Commission, which is organised as part of the executive branch of the government. The Swiss public prosecutor's office in Geneva also opened an inquiry in 2004 and froze TKST-related bank accounts reportedly containing US\$ 100 million. In 2005, TSKJ told the Nigerian Attorney General they would not oppose his efforts to have sums of money on deposit in Tri-Star bank accounts in Switzerland transferred to Nigeria or to have the legal ownership of such sums determined in the Nigerian courts.

Current status: To date, there have been no dispositions in the case. However, investigations are reported to be continuing in all countries. In the US, the statute of limitations for bringing cases was extended in late 2006 by agreement of Halliburton. On 25 April 2008, Halliburton made a detailed SEC filing about SEC and DOJ investigations currently under way against the company. The filing referenced the LNG case, and Halliburton's examination of TSKJ's engagements not only with Tri-Star Investments but also with a Japanese trading company that acted

as a subcontractor. The report also references other pending investigations against the company. The company has severed ties with two former employees, including a former KBR chairman, for alleged improper personal benefit.

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 Floyd Norris, Halliburton settles SEC accusations, The New York Times, 4 August, 2004
 Doug Ireland, Will the French Indict Cheney?, The Nation, 29 December, 2003
 Eric Decouty, A Nigerian Contract at the Heart of a Corruption Affair, Le Figaro, 20 December 2003
 Jon Henley, French sleaze inquiry targets US oil subsidiary, The Guardian, 11 October 2003

SIEMENS

Name of company, home country: Siemens AG and subsidiaries. In Germany and other countries

Type of business: Electronics and engineering. The conglomerate has around 475,000 employees worldwide with products ranging from lightbulbs to power trains.

Destination of alleged bribery: Azerbaijan, Brazil, Cameroon, China, Egypt, Greece, Hungary, Indonesia, Israel, Italy, Kuwait, Libya, Malaysia, Nigeria, Norway, Poland, Russia, Saudi Arabia, Spain and Vietnam.

Amount of alleged bribes and time frame: Siemens has acknowledged the existence of covert funds in the amount of € 1.3 billion used as bribes to win contracts worldwide and that there was a system of front firms and bank accounts to facilitate the transfers of cash. The allegations concern the payment of bribes by high-level Siemens employees in connection with Siemens telecommunications, power generation, power transmission, transportation systems, health care and industrial solutions groups. The time frames of the alleged bribery mentioned in reports run largely from 1998 to 2006 with one case dating to 1996.

In May 2008, the trial began in Munich of an ex-manager in Siemens' ICM mobile communications unit, who testified on his first day in court regarding an intricate system of slush funds and bribery at the company. A former employee invited as a witness told the court that it was customary with large projects that as much as 30 percent of the contract sum was paid as an agency fee, and that the sums were sometimes between € 5 million and € 10 million.

Home countries of banks and other companies or persons involved in supply side of the alleged corruption: Siemens' bribe money was allegedly transferred through a network of intermediaries, front companies and bank accounts in Austria, the British Virgin Islands, Cyprus, Hong Kong, Italy, Liechtenstein Monaco, Puerto Rico, Switzerland, and the United States.

Countries where investigations / prosecutions under way: Germany, Austria, China, Greece, Hungary, Indonesia, Israel, Italy, Liechtenstein (transferred to Swiss and German prosecutors), Malaysia, Nigeria, Norway, Russia, Switzerland and the United States (2007, DoJ and SEC). Additionally, Siemens has been contacted by regional development banks in relation to corruption inquiries and other matters, including the Inter-American Development Bank, the Asian Development Bank, the African Development Bank, the European Bank for Reconstruction and Development and the European Investment Bank.

Current Status: Regarding the Siemens Communications Group, in October 2007 the Munich district court found that a former manager of Siemens had paid bribes on behalf of the company in Nigeria, Russia and Libya in 77 cases between 2001-2004. In Russia, 38 bribes totaling approximately € 2 million were allegedly paid to the heads of nearly two dozen regional state-controlled telephone companies in the east and west of the country. In Libya, six bribes amounting to approximately € 300,000 were allegedly paid to two officials at Libya's state-

run General Post and Telecommunications Co. Siemens agreed to pay a penalty of € 201 million in settlement of these proceedings. The penalty reflected unlawfully obtained economic advantages in the amount of at least € 200 million which the Company derived from the illegal acts of the former company manager found to have bribed foreign officials in several countries, as well as an additional € 1 million penalty. Siemens also paid a tax liability of around € 179 million and agreed to examine and revise its internal anti-corruption safeguards. The decision by the Munich Court and the settlement with the tax authorities ended German investigations into illegal conduct and tax violations at its former Communications Group. However, there are investigations of the Communications Group still ongoing in other countries including Greece, Italy and Switzerland.

Regarding the Power Generation Group, in May 2007, the Regional Court in Darmstadt sentenced two employees to suspended prison sentences and ordered Siemens AG to disgorge € 38 million in profits. The case is on appeal. The charges related to € 6 million in bribes allegedly paid between 1999 and 2002 to executives at Enelpower, an Italian utility company, to win turbine contracts worth an estimated € 450 million. Also related to the Power Group, in 2004, the public prosecutor in Wuppertal began an investigation against five former Siemens managers in the power division over allegations that they participated in bribery related to the awarding of an EU contract for the refurbishment of a power plant in Serbia in 2002. In 2006, a spokesman for the prosecutor said that case was so complicated that an end to the investigation was nowhere in sight. The investigation is currently ongoing.

In April 2008, Munich prosecutors said they had expanded their corruption probe into Siemens to include at least four divisions and 270 suspects. Siemens itself reported investigations by the Munich public prosecutor into the activities of the Power Transmission and Distribution Group, the Power Generation Group, the Medical Solutions Group, the Transportation Systems Group and the IT Solutions & Services Group.

Following the opening of the German probe in November 2006, Siemens established an external anti-corruption task force to carry out its own investigation into the allegations. Siemens hired a New York law firm, Debevoise & Plimpton, to conduct the independent investigation and Debevoise retained the accounting firm, Deloitte & Touche, to scrutinize Siemens books. To bolster compliance controls, Siemens hired an anti-corruption expert to advise the management board of Siemens and the audit committee of its supervisory board. In September 2007, the company established a new managing board position for legal and compliance matters. And in January 2008, Siemens postponed a planned vote by shareholders at the annual meeting that would have freed members of the executive board of liability as a result of bribery investigations.

Siemens has been cooperative with the different authorities involved in reviewing the matter. It has admitted that dubious payments were made, but asserts that these were the actions of rogue employees rather than authorized company policy.

SOURCES:

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Acknowledgements

The authors of this report want to express their appreciation to the many individuals who contributed to this TI Progress Report on Enforcement of the OECD Convention. This includes the experts from TI national chapters, listed in Appendix A, who responded to our Questionnaire. Thanks are also due to Edward Hughes and Paul Zoubkov at the TI-Secretariat as well as to Clarissa Jones who assisted in the preparation of the report. We are grateful also to Leslie Benton of TI-USA, Dolores Espanol of TI-Philippines, Anupama Jha of TI-India, Monica Maroiu of TI-Romania, Osita Ogbu of TI-Nigeria, Dominic Scott of TI-UK, Marina Yung of TI-France as well as Kirstine Drew of UNICORN, Anne Feltham of CAAT, Nick Hildyard and Sarah Sexton of Corner House and Adam Sharpe of Yale Law School who provided information for the report.

VI Appendix A List of Experts

COUNTRY	EXPERTS
Argentina	<p>Nicolás Dassen Partner of Jorge & Dassen, Consultants on Anticorruption and Governance; Part time professor of Anticorruption and Constitutional Law; Advisor to Poder Ciudadano; TI-Argentina Former legal advisor at the Federal Judicial Council and at the Bureau of Transparency Policies of the Anticorruption Office of Argentina, where he was appointed as lead expert before the Follow Up Mechanism on the Implementation of the Inter-American Convention Against Corruption</p>
Australia	<p>Michael Ahrens Executive Director, TI-Australia Frank Costigan, QC Melbourne barrister at law; author of a major anti-corruption report as a Royal Commissioner</p>
Austria	<p>Ruth Bachmayer Economist; Board Member TI-Austria Former civil servant at the Ministry of Finance of Austria and former Executive Board Member at the World Bank</p>
Belgium	<p>François Vincke Lawyer; Member of the Brussels Bar; Board Member TI-Belgium Chair of the ICC Anti-corruption Commission</p>

Brazil	<p>Isabel Franco Senior Partner, Demarest & Almeida Consults on Foreign Corrupt Practices Act matters in Brazil and related anti-corruption legal issues</p> <p>Leonardo Palazzi Lawyer</p> <p>Luis Antonio Marimon Lawyer</p> <p>Juliana Flavia Latre Lawyer</p>
Bulgaria	<p>Diana Kovatcheva Executive Director, TI-Bulgaria</p>
Canada	<p>Michael Davies Vice Chair, Canadian Centre for Ethics & Corporate Policy; Individual Member TI-Canada; Former of TI-Canada; Former Vice President & General Counsel, General Electric Canada</p> <p>Bruce N. Futterer Vice President, General Counsel & Secretary, GE Canada; Member, TI-Canada</p>
Chile	<p>Gonzalo Medina Schulz Lawyer, Law Firm Harasic & Lopez Ltda.; National Public Defence Service; Ph.D studies in criminal law at the University of Dresden and University of Freiburg, Germany</p>
Czech Republic	<p>Petr Prchal Lawyer, member of the Czech Bar Association; Advocacy and Legal Advice Center (ALAC) work; TI-Czech Republic</p>
Denmark	<p>Jens Berthelsen Consultant; Chair, TI-Denmark Ten years consultancy and legal advice</p>
Estonia	<p>Tarmu Tammerk Chairman of the Board, TI-Estonia</p>
Finland	<p>Antti Pihlajamäki, LL.D Chief District Prosecutor; Adjunct Professor in Criminal Law; Vice-Chair, TI-Finland Public prosecutor for 20 years; Former legislative counsellor in the Ministry of Justice, Former Chair of TI-Finland; Former member of the OECD Working Group on Bribery; Former GRECO Evaluator</p>
France	<p>Jacques Terray, Lic. and L.L.M Vice-Chairman, TI-France; Former partner of Gide Loyrette Nouel law firm, expert in French and European regulatory matters and securitisation</p>
Germany	<p>Dr. jur. Max Dehmel, MCL Individual Member, TI-Germany Ministerialrat a.D.; Former head of section for media, film and book policy in the Federal Ministry of Economics and with the Federal State Minister for Culture and Media</p>
Greece	<p>Thanos Gekas Lawyer</p>

Hungary	<p>Dr. Katalin Ligeti Assistant professor at the Faculty of Law of the Eötvös Loránd University in Budapest; Research fellow at the Institute of Legal Studies of the Hungarian Academy of Sciences; Legal advisor of the Hungarian Ministry of Justice and Law Enforcement</p>
Ireland	<p>Diarmuid Griffin Lecturer in Criminal Law, Criminology, Criminal Justice and Public Law, The Law Faculty, National University of Ireland, Galway</p> <p>Kelly McCarthy LLM Reseacher, National University of Ireland, Galway</p>
Italy	<p>Fabrizio Sardella Lawyer</p> <p>Michele Calleri Lawyer; Author of numerous articles on transport law and stocks and shares trading law. Is currently consultant to numerous Trade Associations</p> <p>Luca Franchi Lawyer; Legal consultant to various companies in the field of compliance programmes</p>
Japan	<p>Prof. Toru Umeda Professor of international law and Deputy Director of Business Ethics and Compliance Research Centre at Reitaku University, Japan; Vice-Chair, TI-Japan</p>
Korea	<p>Prof. Joongi Kim Founding Executive Director of Hills Governance Center and Professor of Law, College of Law, Yonsei University Attorney, Foley & Lardner, Washington, D.C.; Assistant Professor, Business Administration Department, Hongik University; Visiting Associate Professor, Faculty of Law, National University of Singapore; Principal author of National Integrity Systems (NIS) TI Country Study Report Korea 2006</p>
Mexico	<p>Jeremy Biddle Project Consultant, TI-Mexico Co-authored the phase-2 civil society report for the Follow-up Mechanism on the Implementation of the Inter-American Convention Against Corruption of the Organization of American States.</p> <p>Eduardo Bohórquez Executive Director, TI-Mexico</p>
Netherlands	<p>G.K. van der Mandele Chair, TI-Netherlands</p> <p>Gerben Smid, LL.M. Secretary to the Board, TI-Netherlands PhD Student in Criminal Law</p>
New Zealand	<p>Aaron Lloyd Senior Associate, Minter Ellison Rudd Watts Convenor, White-Collar Practice Group</p>
Norway	<p>Jan Borgen Lawyer; Secretary General, TI-Norway</p> <p>Gro Skaaren-Fystro Special Adviser, TI-Norway</p>

Poland	Ola Demczyszak TI-Poland
Portugal	Luís de Sousa, PhD Research associate in political science at the CIES-Centro de Investigação e Estudos de Sociologia, ISCTE, Lisbon; Project Director of the research network of anti-corruption agencies (ANCORAGE-NET) and Head of the Portuguese Observatory of Ethica in Public Life; Coordinator of the various expenditure monitoring programmes commissioned by the new monitoring body on political financing (Entidade das Contas e Financiamentos Políticos) of the Portuguese Constitutional Court
Slovak Republic	Pavel Nechala Advocate, Pavel Nechala & Co. law firm; Individual Member, TI-Slovakia
Slovenia	Goran Klemecic Senior Lecturer, Faculty of Criminal Justice and Security Studies, University of Maribor
Spain	Manuel Villoria Professor of the Department of Public Law and Political Science from the University Rey Juan Carlos, Madrid, Spain; Individual Member, TI-Spain
Sweden	Thorsten Cars, LL.D Former Head of Department at the Office of the Prosecutor General; Former Counsellor at the Ministry of Justice (responsible for legislation concerning corruption); Former Chief Judge at the Stockholm District Court; Former Chief Justice at the Svea Court of Appeal (Stockholm); Former Chairman of the Swedish Institute to Combat Corruptive Practices (Institutet Mot Mutor); Author of commentaries on Swedish legislation concerning corruption
Switzerland	Dr. jur. Jean-Pierre Méan Lawyer. Member of the Board, TI-Switzerland Dr. jur. Pertrand Perrin Lawyer, designated member of the Board, TI-Switzerland
Turkey	E. Oya Cetinkaya International Lawyer, Mediterranean Legal Counsel, AIG Sigorta A.S.
United Kingdom	Chandrashekhhar Krishnan Executive Director, TI-United Kingdom
United States	Lucinda A. Low Lawyer, Steptoe & Johnson LLP; Board of Directors, TI-USA; FCPA Practitioner Owen Bonheimer Lawyer, Steptoe & Johnson, LLP

VI

Appendix B Questionnaire for TI National Chapters in OECD Signatory States

Questionnaire for (Name of country): _____

Date: _____

I. Current Status of Enforcement

Please note: Foreign bribery cases (and investigations) shall include all cases involving bribery of foreign public officials, criminal and civil, whether brought under laws dealing with corruption, money laundering, tax evasion, fraud, or accounting and disclosure.

A. TOTAL FOREIGN BRIBERY CASES, PENDING AND CONCLUDED: _____

(= Sum total of numbers under B. & C.)

B. PENDING CASES: Pending foreign bribery cases

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

Total number of pending cases: _____

Cases pending brought since 1 January 2007: _____

For each case please list if possible the following:

(1) Name of case, including principal parties:

(2) Is this a major case? (See Guidelines for definition) _____ Yes No *Note: For major cases please provide as much detail as possible to the questions below. Less detail is needed for minor cases.*

(3) Is it a criminal or civil case?

(4) Date and court where filed?

(5) Current status of case i.e. likely trial date of

(6) Summary of principal charges, including name of the country whose officials were allegedly bribed. ____

(7) Penalties or other sanctions sought

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

(9) To your knowledge, is there a pending request or requests for mutual legal assistance lodged with another country?

C. CONCLUDED CASES:

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

Total number of concluded cases: _____

Cases concluded since 1 January 2007: _____

For each case please list if possible the following:

(1) Name of case, including principal parties (Please indicate if major multinationals involved)

(2) Is this a major case? (See Guidelines for definition.) _____ Yes No *Note: For major cases please provide as much detail as possible to the questions below. Less detail is needed for minor cases.*

(3) Date and court where filed

- (4) Is it a civil or criminal case? _____
- (5) Summary of principal charges, including name of the country whose officials were allegedly bribed
- (6) Penalties or other sanctions sought
- (7) Criminal or civil case
- (8) Disposition of case (Please describe form and substance of disposition)
- (9) To your knowledge has a case involving the same facts or defendants been brought in another country? If so where and when?

D. INVESTIGATIONS UNDER WAY

Please provide available information on government investigations of allegations of bribery of foreign public officials which were commenced since the OECD Convention became effective in you country.

Total number of known investigations: _____

Number since 1 January 2007: _____

If information unavailable, please indicate: _____

E. ACCESS TO INFORMATION: Information available about foreign bribery cases

Is there adequate public access to information about foreign bribery cases? _____ Yes No

If yes, please specify what kind of access is provided? _____

If no, in what way is the access inadequate? What reasons are given for the lack of access?

F. SERIOUS ALLEGATIONS

Please provide information about serious allegations of foreign bribery or related offences by companies or individuals based in your country, that (a) have been published in reputable international or domestic publications since the OECD Convention became effective in your country, and (b) with respect to which, as far as you know, no investigation or prosecution has been undertaken.

Total number of serious allegations: _____

For each matter, where available, please list the following:

- (1) Names of companies and/or individuals involved
- (2) Date of publication:
- (3) Nature of allegations
- (4) Name of country whose officials were allegedly bribed

II. Actions to Promote Enforcement

A. Organisation of Enforcement

1. Is there a centralised national office or unit for foreign bribery enforcement? _____ Yes No

2. If foreign bribery enforcement is not centralised, what level of coordination and supervision is provided for foreign bribery enforcement?

Please circle one of the following:

UNSATISFACTORY

SATISFACTORY

Explanation for choice, including any difference from last year:

B. Complaint Procedure

How would you assess your government's efforts to provide publicly-known and accessible procedures for reporting foreign bribery allegations, such as hotlines and websites?

Please circle one of the following:

UNSATISFACTORY

SATISFACTORY

Explanation for choice, including any difference from last year:

C. Whistleblower Protection

1. How would you assess the level of whistleblower protection in law and in practice in the public sector for foreign bribery complaints?

Please circle one of the following:

UNSATISFACTORY

SATISFACTORY

Explanation for choice, including any difference from last year:

2. How would you assess the level of whistleblower protection in law and in practice in the private sector for foreign bribery complaints?

Please circle one of the following:

UNSATISFACTORY

SATISFACTORY

Explanation for choice, including any difference from last year:

D. Statutory and Other Legal Obstacles

1. Are there significant inadequacies in the legal framework for foreign bribery prosecutions in your country? _____ Yes No

2. If so, please indicate if these include:

• Inadequate definition of foreign bribery _____ Yes No

• Short statutes of limitation: _____ Yes No

• Jurisdictional limitations: _____ Yes No

• Lack of (criminal) liability for corporations: _____ Yes No

• Inadequate sanctions: _____ Yes No

3. Please list any additional inadequacies:

Explanation for choice, including any difference from last year (at least 1 paragraph):

E. Political control over enforcement actions/ Independence of prosecutors

Are you aware of any instances where a foreign bribery investigation or prosecution has been terminate vby political decision-makers? _____ Yes No

F. Actions Needed in Your Country

1. Your suggestions

Please list, in order of importance, the most important actions the government in your country should take to promote enforcement and compliance. Please consider the actions listed above, but feel free to add other actions.

- 1) _____
- 2) _____
- 3) _____
- 4) _____

G. Enforcement Trends

1. How would you assess the current level of foreign bribery enforcement in your country?

Please circle one of the following:

UNSATISFACTORY

SATISFACTORY

2. Did your government's enforcement efforts increase since last year?

Please choose one of the following:

- 1) Decreased enforcement _____
- 2) No change _____
- 3) Increased Enforcement _____

Report prepared by : _____
(signature)

Name of respondent: _____

Affiliation: _____

Professional experience: _____

Appendix

List of persons consulted (with affiliation) :

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

Transparency International is the civil society organisation leading the global fight against corruption. For more information go to:

www.transparency.org



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