TRANSPARENCY INTERNATIONAL
the global coalition against corruption

PROGRESS REPORT 2010

Enforcement of the OECD Anti-Bribery Convention

www.transparency.org

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

www.transparency.org

Acknowledgements The 2010 Transparency International Progress Report on Enforcement of the OECD Convention was authored by Fritz Heimann and Gillian Dell. The authors wish to express their appreciation to the many individuals who contributed to the preparation of this report. This includes the experts from TI chapters, listed in Appendix A, who responded to the Questionnaire. Particular thanks are due to Martin Leibrock, TI Secretariat for his assistance. Thanks are also due to Michael Fine for inputs regarding export credits, to Belinda Cooper and Mark Worth for editorial support, as well as to Craig Fagan, Gypsy Guillen Kaiser, Tinatin Ninua and Francois Valerian of the TI-Secretariat for their inputs and advice. Design: Susanne Bax, Printed on 100% recycled paper.

ISBN: 978-3-935711-55-5

PROGRESS REPORT 2010

ENFORCEMENT OF THE OECD CONVENTION ON COMBATING BRIBERY OF FOREIGN PUBLIC OFFICIALS IN INTERNATIONAL BUSINESS TRANSACTIONS

Fritz Heimann and Gillian Dell

28 July 2010

TABLE OF CONTENTS

INTRODUCTION

This is the sixth annual *Progress Report on Enforcement of the OECD Convention* prepared by Transparency International (TI), the global coalition against corruption. The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, adopted in 1997, required each party to make foreign bribery a crime. The Convention was hailed as key to overcoming the damaging effects of foreign bribery on democratic institutions, development programmes and business competition.

The Convention now has 38 parties and is administered by the OECD Working Group on Bribery, which meets five times annually. The Working Group conducts a country review process under which representatives of two governments and the secretariat visit each member country. The review process is now entering its third phase. The first phase reviewed the laws passed by each country to implement the Convention. The second phase looked at institutions, policies and practices for enforcing the prohibition on foreign bribery. The third phase focuses primarily on enforcement and steps taken by countries to follow up on recommendations in prior reviews.

The countries covered by the OECD Convention are: **Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea (South), Luxembourg, Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland, Turkey, United Kingdom** and **United States.**

ORGANISATION AND METHODOLOGY

The 2010 report covers 36 of the 38 parties to the Convention, all except Iceland and Luxembourg. It covers enforcement data for the period ending 2009 unless otherwise stated and includes reports on recent case developments through June 2010. Like prior reports, this report is based on information provided by TI experts in each reporting country selected by TI national chapters. Appendix A lists the experts and their qualifications. They responded to the Questionnaire, shown in Appendix B, taking into account the views of government officials and other knowledgeable persons in their countries, as well as the reports of the OECD Working Group on Bribery.

Section 1 of the report sets forth findings, conclusions and recommendations. Section 2 provides findings on selected issues including statutory and enforcement obstacles, access to information, export credits and facilitation payments. Section 3 summarises the country reports on enforcement of OECD parties. Section 4 provides information on selected foreign bribery cases.

Classification of Parties. The tables on pages 6-7 classify the parties into three categories: "Active Enforcement", "Moderate Enforcement", and "Little or No Enforcement". Active enforcement is considered an adequate deterrent to foreign bribery; moderate enforcement is considered an inadequate deterrent. The classification is based on the number and importance of cases and investigations, taking into account the size of the country's exports.

- **Active Enforcement:** Countries with a share of world exports over 2 per cent (the 11 largest exporters) must have at least 10 major cases on a cumulative basis, of which at least three were initiated in the last three years and at least three concluded with substantial sanctions.
  Countries with a share of world exports less than 2 per cent must have brought at least three major cases, including at least one concluded with substantial sanctions and at least one case pending that was initiated in the last three years.
- **Moderate Enforcement:** Countries that do not qualify for active enforcement but have at least one major case as well as active investigations.
- **Little or No Enforcement:** Countries that do not qualify for the previous two categories. This includes countries that have only brought minor cases, countries that only have investigations and countries that have no cases or investigations.

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

1 MAJOR FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

MAJOR FINDINGS

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

The data on which these findings are based are shown in the tables on pages 6-7. The basis for the individual country classifications is shown at the beginning of each country report in Section 3.

Assessment of Trends

The increase in the number of countries with active enforcement from four to seven is a very positive development, because active enforcement is considered a substantial deterrent to foreign bribery. With the addition of Denmark, Italy and the United Kingdom, which previously were in the moderate category, there is now active enforcement in countries representing about 30 per cent of world exports, 8 per cent more than in the prior year.

The number of countries in the moderate category has changed from 11 to 9 countries, because three countries have moved up to the active category and one country, Argentina have moved up from the lowest category. The risk of prosecution in the nine countries with moderate enforcement – representing about 21 per cent of world exports – is considered an insufficient deterrent. Among this group are G8 members France and Japan.

The most disappointing finding is that there are still 20 countries – including G8 member Canada – with little or no enforcement, representing about 15 per cent of world exports. That number has shown little change in the last five years. This is deeply disturbing because companies in these countries will feel little or no constraint about foreign bribery, and many are not even aware of the OECD Convention. Governments in these countries have failed to meet the Convention's commitment for collective action against foreign bribery.

CONCLUSIONS

Current Levels of Enforcement are too Low to Enable the Convention to Succeed

With active enforcement in only seven of the 38 parties to the Convention, the Convention's goal of effectively curbing foreign bribery in international business transactions is still far from being achieved. The current situation is unstable because the Convention is predicated on the collective commitment of all the parties to end foreign bribery. Unless enforcement is sharply increased, existing support could well erode. Danger signals include efforts in some countries to limit the role of investigative magistrates, shorten statutes of limitations and extend immunities from prosecution. The risk of backsliding is particularly acute during a time of recession, when competition for limited orders is intense.

Cause of Lagging Enforcement: Lack of Political Will

The principal cause of lagging enforcement is lack of political will. This can take a passive form, such as failure to provide adequate funding and staffing for enforcement. It can also take an active form, through political obstruction of investigations and prosecutions. The lack of political will must be forcefully confronted not only by the Working Group on Bribery but also by the active involvement of the OECD Secretary-General, as well as high-level pressure on the laggards from governments committed to enforcement.

Positive Developments

During the past year there have been several important developments that hold the promise of strengthening the fight against corruption.

- The OECD significantly strengthened its anti-corruption programmes in late 2009 and early 2010. A third phase of monitoring reviews has been launched, with country visits focusing on enforcement efforts and results. The OECD Council adopted extensive new recommendations for further combating foreign bribery, addressing a range of issues which arose during the Convention's first decade.
- The UK enacted a new anti-bribery law in April 2010. This was a crucial step because the need to reform the UK's antiquated laws was highlighted early in the OECD monitoring process, and lack of action by the fourth largest OECD exporter raised serious concern about the efficacy of the Convention. Passage of the new UK law provides important confirmation that the OECD monitoring process works. However, it is regrettable that the entry into force of the law has been delayed until April 2011. There should be no further delay. It is also important that the consultation on the publication of official government guidance on compliance will not result in weakening any provision of the law. Also important was Spain's substantial reform of its antiquated laws in June 2010, as well as significant legal reforms in a number of other countries, most notably Chile and Turkey.
- During the last year prosecutors in the US, Germany and the UK announced a number of settlements of important foreign bribery cases in which the defendants agreed to pay fines amounting to many hundreds of millions of dollars. These settlements demonstrate the ability of prosecutors to resolve cases without interminable litigation. The settlement levels provide a sharp wake-up call to international business regarding the gravity of foreign bribery. They should also make clear to laggard governments that investing in adequate enforcement can have substantial returns.

RECOMMENDATIONS

- The Working Group on Bribery must give highest priority to ensuring that lagging governments undertake effective programmes to investigate and prosecute foreign bribery.
- Governments should assign responsibility for foreign bribery cases to specialised staffs with adequate resources. Experience has shown that investigating and prosecuting foreign bribery cases is difficult and time-consuming. Thus, it is unrealistic to expect over-burdened local prosecutors to bring such cases. It is encouraging that many governments have already set up specialised staffs.
- The Working Group should report annually to the Secretary-General when governments have failed to take adequate action, and the Secretary-General should meet with the justice ministers of laggard governments to secure agreement on concrete steps to strengthen enforcement. Failure to take such steps should result in suspension of membership in the Convention.
- The Ministerial Council should provide regular oversight to ensure that the Convention succeeds in meeting its objectives. This should include a review of annual reports from the Working Group on the status of enforcement.
- The Secretary-General and the Ministerial Council should continue to encourage accession to the Convention by China, India and Russia. To achieve a level playing field all major exporters should play by the same rules.
- The Working Group should conduct annual meetings with prosecutors to obtain their views on how to overcome obstacles to enforcement. Recent meetings with prosecutors were very productive and such meetings should become a regular practice.
- The Working Group should undertake a study on the use of negotiated settlements to resolve foreign bribery cases. There are strong reasons for negotiated settlements, most importantly to avoid the high costs, long delays and unpredictable outcomes of litigation. However, there is concern that these settlements could be questionable deals between prosecutors and politically influential companies. Therefore, procedures should be adopted to make settlement terms public and subject to judicial approval. This should follow a public hearing where representatives of the country where the bribes were paid, competitors and other interested stakeholders such as public interest groups should be given an opportunity to present their views.

- The new OECD initiative to raise public awareness that fereign bribery is a crime should focus on countries where there has been little or no enforcement and on industry sectors where corruption is most prevalent, including defence procurement, construction and extractive industries. It should include not only OECD countries but those where foreign bribery is prevalent.
- The Working Group should begin to address Convention coverage of two issues: bribe payments to political parties and private-to-private corruption. These topics have been long-deferred and remain unresolved.

Scope of Report: Special Issues

This report deals with a number of issues that go beyond the requirements of the Convention. For example, it assesses whether countries have provided for corporate criminal liability, public access to information, whistleblower protection, export credits and facilitation payments. These issues are important to the success of foreign bribery enforcement and have been considered in OECD country reviews. The OECD Recommendation of November 2009 also covers most of these issues, underlining their importance. In particular, the Recommendation calls on governments to expand the liability of corporations by covering such steps as failure to implement adequate compliance programmes.

The country reports in Section 3 cover cases of domestic bribery by foreign companies. Such cases do not constitute foreign bribery as defined by the Convention because they are brought domestically by the country whose officials were bribed. However, they are important indicators of foreign bribery and should be of interest to prosecutors in the home countries of the companies that allegedly paid the bribes. These cases are not included in the numbers in the tables of foreign bribery cases.

TABLE A:
FOREIGN BRIBERY ENFORCEMENT IN OECD CONVENTION COUNTRIES

Country	Enforcement				Share of world exports, % for 2009	Share of FDI flow, % for 2009 (outward)
	Cases		Investigations			
	To end 2009	To end 2008	To end 2009	To end 2008		
ACTIVE ENFORCEMENT (7 COUNTRIES)						
Denmark	14 I	13 I	1	1	1.0	0.9
Germany	117	110	24	24 II	8.9	8.4
Italy	39	2	3	0 III	3.2	4.6
Norway	6	5	1	0 III	1.0	0.6
Switzerland	30	16	0 III	0 III	1.6	2.6
United Kingdom	10 IV	4	24	20 III	3.9	13.3
United States	168	120	100	110	10.0	15.7
MODERATE ENFORCEMENT (9 COUNTRIES)						
Argentina	2	1	0	0	0.4	0.1
Belgium	4 V	3	0 III	0 III	2.2	2.5
Finland	5	2	5	4	0.5	0.4
France	18	17	10	9	4.0	11.3
Japan	7	2	2 III	2 III	4.0	3.7
Korea (South)	16	16 II	1	0 III	2.8	0.8
Netherlands	7	7	0 III	4	3.6	1.6
Spain	11	3	1	2	2.2	6.0
Sweden	2	2	5	6	1.3	1.9
LITTLE OR NO ENFORCEMENT (20 COUNTRIES)						
Australia	1	1 II	4	1	1.3	1.2
Austria	0	0	4 III	0 III	1.3	1.6
Brazil	1	1	4	4	1.0	0.4
Bulgaria	3	3	1	1	0.1	0.1
Canada	2 IV	1	1 III	1 III	2.5	2.7
Chile	0	0	0	0	0.4	0.2
Czech Republic	0	0	0	4	0.9	0.2
Estonia	0	0	0 III	0 III	0.1	0.1
Greece	0	0	0 III	0 III	0.4	0.3
Hungary	27	24	0	1 III	0.6	0.2
Ireland	0	0	0 III	4	1.4	1.0
Israel	0	0	0	0	0.4	0.4
Mexico	0	0	0	0	1.5	0.4
New Zealand	0	0	2 III	6	0.2	0.1
Poland	0	0 III	0	0	1.1	0.2
Portugal	5	0	0 III	1 III	0.4	0.3
Slovak Republic	0	0	1	0	0.4	0.4
Slovenia	0	0	2	1	0.1	0.1
South Africa	0	0	0	1	0.5	0.2
Turkey	0	0	4	0	0.9	0.1

Notes: Export data provided by OECD Economic Outlook No. 86 (November 2009), except for the export data of Argentina and Bulgaria provided by the IMF World Economic Outlook. FDI data is from UNCTAD Handbook of Statistics online, 2009. Numbers of cases for Hungary, Italy, Norway and Portugal are taken from OECD Working Group on Bribery, Annual Report 2009, p. 29.

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

II Number corrected from last year's report.

III Number unknown or estimated based on media reports.

IV Includes 2010 cases.

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

TABLE B:
STATUS OF FOREIGN BRIBERY CASES

Country	Cases (to end 2009)		Date initiated latest major case	Criminal Sanctions [I] (to end 2009)		Share of world exports, % for 2009
				Individuals	Companies	
ACTIVE ENFORCEMENT (7 COUNTRIES)						
Denmark	14 [II]	Over 3	2008	0	0	1.0
Germany	117	Over 10	2009	26 [III]	4 [III]	8,9
Italy	39	10 [IV]	2009	21	18	3.2
Norway	6	3	2008	5	1	1.0
Switzerland	30	Over 3	2009	2	0	1.6
United Kingdom	10 [V]	10	2010	1	1	3.9
United States	168	Over 10	2009	40	48	10.0
MODERATE ENFORCEMENT (9 COUNTRIES)						
Argentina	2	2	2009	0	0	0.4
Belgium	4	1 [IV]	2006	-	-	2.2
Finland	5	1	2009	0	0	0.5
France	18	5 [IV]	2007	1	0	4.0
Japan	7	1	2007	6	1	4.0
Korea (South)	16	1	2007/2008	13	3	2.8
Netherlands	7	7	2007	0	0	3.6
Spain	11	2 [V]	2008	0	0	2.2
Sweden	2	1	2009	1	0	1.3
LITTLE OR NO ENFORCEMENT (20 COUNTRIES)						
Australia	1	1	2008	0	0	1.3
Austria	0	0	-	0	0	1.2
Brazil	1	0 [IV]	-	0	0	1.0
Bulgaria	3	0	-	0	0	0.1
Canada	2 [V]	0 [IV]	-	0	1	2.5
Chile	0	0	-	0	0	0.4
Czech Republic	0	0	-	0	0	0.9
Estonia	0	0	-	0	0	0.1
Greece	0	0	-	0	0	0.4
Hungary	27	0	-	27	0	0.6
Ireland	0	0	-	-	-	1.4
Israel	0	0	-	0	0	0.4
Mexico	0	0	-	0	0	1.5
New Zealand	0	0	-	0	0	0.2
Poland	0	0	-	0	0	1.1
Portugal	5	0	-	5	0	0.4
Slovak Republic	0	0	-	0	0	0.4
Slovenia	0	0	-	0	0	0.1
South Africa	0	0	-	0	0	0.5
Turkey	0	0	-	0	0	0.9

Notes: Information on convictions is taken from OECD Working Group on Bribery, Annual Report 2009, p. 29. Export data provided by OECD Economic Outlook No. 86 (November 2009), except for the export data of Argentina and Bulgaria provided by the IMF World Economic Outlook. Numbers of cases for Hungary, Italy, Norway and Portugal are taken from OECD Working Group on Bribery, Annual Report 2009, p. 29.

I The numbers do not include sanctions imposed in civil and administrative cases. To the end of 2009 there were 57 such cases in the US and one in Japan.

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

III The data refer to convictions in the years 2008 and 2009 only.

IV Number unknown or estimated based on media reports.

V Includes 2010 cases.

DETAILED FINDINGS

2

This year, as in previous years, the Progress Report Questionnaire covers statutory obstacles, inadequacies in the legal framework and inadequacies in the enforcement system, as well as access to information about cases and investigations. This year's Questionnaire also asks for an overall assessment of system weaknesses and covers two specific aspects of the enforcement system: requirements of export credit agencies and facilitation payments. This section summarises data and evaluations provided by country experts and follows the order of questions in the 2010 TI Questionnaire, which can be found in Appendix B. More detailed information can be found in the country reports in Section 3. The TI country experts found inadequacies in the majority of countries. These include countries classified in the active enforcement category, indicating that enforcement authorities in those countries had to overcome these obstacles to enforcement in order to bring foreign bribery cases.

Inadequacies in Legal Framework

TI experts in the following 27 countries found significant inadequacies in the legal framework for prohibiting foreign bribery (see table C): **Argentina, Australia, Austria, Brazil, Canada, Chile Czech Republic, Denmark, Estonia, France, Germany, Greece, Hungary, Ireland, Israel, Italy, Japan, Korea (South), Mexico, the Netherlands, New Zealand, Poland, Portugal, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland** and **Turkey.** Among the most serious inadequacies were:

- Insufficient definition of foreign bribery offence (e.g. Austria, Canada, Chile, Czech Republic, Estonia, Italy, Japan, Slovenia, Turkey);
- Jurisdictional limitations (e.g. Australia, Canada, Czech Republic, Denmark, Estonia, France, Greece, Ireland, Israel, Japan, the Netherlands, Poland, Spain);
- Lack of criminal liability for corporations (e.g. Argentina, Brazil, Czech Republic, Estonia, Germany, Greece, Ireland, Italy, Japan, New Zealand, Poland, Turkey); (Remark: The Convention requires corporate liability, not corporate criminal liability, but TI considers that the standard should be criminal liability.);
- Inadequate sanctions [1] (e.g. Brazil, Chile, Denmark, Estonia, Germany, Greece, Ireland, Japan, Korea (South), the Netherlands, New Zealand, Poland, South Africa, Sweden, Switzerland, Turkey);
- Inadequate provision for holding parent companies liable for subsidiaries, joint ventures or agents (e.g. Argentina, Australia, Brazil, Czech Republic, Denmark, Japan, Slovak Republic, Slovenia, Spain, Sweden, Turkey);
- Inadequate statutes of limitation (e.g. Argentina, Estonia, France, Hungary, Italy, Japan, Mexico, Spain, Sweden).

Inadequacies in Enforcement System

Experts in the following 32 countries found inadequacies in the enforcement system to punish foreign bribery (see table C): **Argentina, Australia, Austria, Belgium, Brazil, Bulgaria, Canada, Chile, Czech Republic, Denmark, Estonia, France, Greece, Hungary, Ireland, Israel, Italy, Japan, Korea (South), Mexico, the Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Switzerland** and **Turkey** Among the most frequent inadequacies were:

- Insufficiently ensured prosecutorial independence (e.g. Argentina, Austria, Czech Republic, Estonia, New Zealand, Portugal, South Africa);
- Decentralised or uncoordinated enforcement (e.g. Greece, Hungary, Mexico, the Netherlands, New Zealand, Portugal, Slovenia, Switzerland);
- Inadequate resources and/or specialised training (e.g. Argentina, Belgium, Brazil, Chile, Czech Republic, Estonia, France, Hungary, Israel, Italy, Korea (South), the Netherlands, New Zealand, Norway, Portugal, Slovak Republic, Slovenia, South Africa, Spain, Sweden, Turkey);
- Inadequate complaints system and/or whistleblower protection (e.g. Argentina, Australia, Austria, Belgium, Brazil, Chile, Czech Republic, Denmark, Estonia, Greece, Hungary, Ireland, Israel, Italy, Korea (South), Mexico, Netherlands, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Turkey);

- Inadequate accounting and auditing standards (e.g. Australia, Israel, Mexico, New Zealand, Spain, Slovenia, Turkey):
- Lack of awareness raising (e.g. Belgium, Brazil, Bulgaria, Canada, Chile, Denmark, Israel, Korea (South), New Zealand, Poland, Portugal, Slovenia, Spain);

Access to Information Issues

Access to information about foreign bribery cases is important in order for the public to know how laws are being enforced and how companies in their country are behaving abroad, as well as to ensure equitable treatment from case to case. Statistics on cases are also important in order to assess allocations of resources, determine success rates and identify trends. A new development is that the OECD Working Group on Bribery, for the first time this year, has compiled and published data on convictions/sanctions collected from members of the Working Group. TI experts in 25 of the countries surveyed reported insufficient access to information about judgments, settlements, prosecutions and/or investigations (see table C).

A lack of access to numbers of foreign bribery cases was reported by experts in: **Austria, Belgium, Brazil, Czech Republic, Denmark, Greece, Ireland, Israel, Italy, Japan, the Netherlands, New Zealand, Norway, Portugal, Slovenia, Spain, Switzerland** and **Turkey.**

Furthermore, experts reported that information on case details is not systematically accessible in **Argentina, Austria, Belgium, Brazil, Bulgaria, Chile, Czech Republic, Denmark, France, Germany, Greece, Hungary, Ireland, Israel, Italy, Japan, Korea (South), Mexico, the Netherlands, New Zealand, Norway, Portugal, Slovenia, Spain, Switzerland** and **Turkey.**

Requirements of Export Credit Agencies

Export credit agencies play a crucial role in facilitating trade and, through their standards and procedures, can help deter and detect foreign bribery. For this reason their role is surveyed in OECD Working Group on Bribery reviews and in *Recommendation of the Council for Further Combating Bribery of Rereign Public Officials in International Business Transactions* (December 2009 Recommendation). The TI Questionnaire inquired about four key areas related to export credit agencies: (1) whether there is a requirement of a no-bribery commitment in applications for export credit; (2) whether such commitment extends to conduct by an agent or business partner, including joint ventures or consortia; (3) whether companies must demonstrate that they have effective anti-bribery compliance programmes; and (4) whether companies are required to report on compensation for agents. [2]

Only in a few countries, including **Austria, Italy, Korea (South),** and **Norway,** were all these elements required, and in a number of others three out of the four requirements were met, including **Australia, Canada, Czech Republic, Denmark, Finland, France, Israel, New Zealand, Poland, Portugal, Slovenia, Spain, Sweden** and **the United Kingdom. O**n the other hand, in **Argentina, Brazil, Bulgaria, Chile, Greece, Mexico** and **South Africa,** three or four of the requirements were not imposed on recipients of export credits.

Facilitation Payments

The OECD's new Anti-Bribery Recommendation gives special attention to facilitation payments and calls on countries to periodically review policies on small facilitation payments "in order to effectively control the phenomenon" and encourage companies to prohibit or discourage the use of small facilitation payments in internal company controls, ethics and compliance programmes or measures, recognising that such payments are generally illegal in the countries where they are made, and must in all cases be accurately accounted for in such companies' books and financial records." TI has called for an end to exceptions for such facilitation payments because no forms of bribery are justified, such payments are detrimental in the countries where they are paid, and the exceptions may be used to justify large payments. This applies in the first instance to the following countries, where TI experts found that facilitation payments in foreign countries are explicitly allowed by law or policy in their countries: **Australia, Canada, Denmark, Germany, Japan, Korea (South), the Netherlands, New Zealand** and **the United States.**

TABLE C:
COUNTRY PERFORMANCE IN SELECTED AREAS RELATING TO FOREIGN BRIBERY ENFORCEMENT

Country	Adequacy of key legal provisions & enforcement measures			Requirements of export credit agencies and their enforcement					Access to information on cases	
	Legal provisions	Enforcement measures		No-bribery commitment	Conduct by an agent or business partner	Effective anti-bribery compliance programmes	Mandatory report on compensation for agents		Numbers of cases	Case details
Argentina	No	No		No	No	No	No		Yes	No
Australia	No	No		Yes	Yes	No	Yes		Yes	Yes
Austria	No	No		Yes	Yes	Yes	Yes		No	No
Belgium	Yes	No		Yes	Yes	No	No		No	No
Brazil	No	No		No	No	No	No		No	No
Bulgaria	Yes	No		No	No	No	No		Yes	No
Canada	No	No		Yes	Yes	Yes	No		Yes	Yes
Chile	Yes	No		No	No	No	No		Yes	No
Czech Rep.	No	No		Yes	Yes	Yes	No		No	No
Denmark	No	No		Yes	Yes	No	Yes		Yes	No
Estonia	No	No		Yes	Yes	No	No		Yes	Yes
Finland	Yes	Yes		Yes	Yes	No	No		Yes	Yes
France	No	No		Yes	Yes	No	Yes		Yes	No
Germany	No	Yes		Yes	Yes	No	No		Yes	No
Greece	No	No		No	No	No	No		No	No
Hungary	Yes	No		Yes	No	No	Yes		Yes	No
Ireland	No	No		-	-	-	-		No	No
Israel	No	No		Yes	Yes	No	Yes		No	No
Italy	No	No		Yes	Yes	Yes	Yes		No	No
Japan	No	No		Yes	Yes	No	No		No	No
Korea (South)	No	No		Yes	Yes	Yes	Yes		Yes	No
Mexico	No	No		Yes	No	No	No		Yes	No
Netherlands	No	No		Yes	Yes	No	No		No	No
New Zealand	No	No		Yes	Yes	No	No		No	No
Norway	Yes	No		Yes	Yes	Yes	Yes		No	No
Poland	No	No		Yes	Yes	No	Yes		Yes	Yes
Portugal	No	No		Yes	Yes	No	Yes		No	No
Slovak Rep.	No	No		Yes	Yes	No	No		Yes	Yes
Slovenia	No	No		Yes	Yes	No	Yes		No	No
South Africa	Yes	No		No	No	No	No		Yes	Yes
Spain	No	No		Yes	Yes	Yes	No		No	No
Sweden	No	No		Yes	Yes	No	Yes		Yes	Yes
Switzerland	No	No		Yes	Yes	No	No		No	No
Turkey	No	No		Yes	Yes	No	No		No	No
UK	Yes	No		Yes	Yes	No	Yes		Yes	Yes
United States	Yes	Yes		Yes	Yes	No	No		Yes	Yes

CURRENT CASES AND TRENDS

Cases discussed in this section are also discussed in more detail in the country reports in Section 3 or in the case information in Section 4.

Key role of money laundering investigations

Some of the most important bribery investigations have been triggered by money laundering investigations (e.g. **Siemens, Alstom**). Switzerland has played a notable role in this regard. Moreover, the cases show over and again the role of financial institutions in a range of financial centres and the use of shell companies in facilitating foreign bribery. The locations mentioned in cases include **Austria, the Bahamas, Bahrain, Belize, the British Virgin Islands, the Cayman Islands, the Channel Islands, Cyprus, Gibraltar, Hong Kong, the Isle of Man, Liechtenstein, Malta, Monaco, Panama, Portugal (Madeira), the Seychelles, Singapore, Switzerland, UK (London)** and **USA (Miami, New York, Delaware, Wyoming).** There have also been references to bank accounts or shell companies in **Latvia, Lithuania, the Netherlands, New Zealand, Puerto Rico, St. Kitts, Thailand** and **Uruguay.**

Mutual legal assistance, joint investigations and joint settlements

Reports of joint investigations and sharing of information have increased. This has occurred, for example, in the **BAE Systems** and **Alstom**-related investigations but also in connection with multijurisdictional investigations in the **TSKJ-Nigeria** case that reached a conclusion in the US in the **Halliburton** case in September 2008 (see Section 4, "Cases"). The first-ever Swiss-Polish joint investigation was announced in connection with allegations involving **Alstom**. Regarding joint settlements, following the landmark US-German **Siemens** settlement in December 2008, the US-UK **BAE** and **Innospec** settlements continued this new joint approach in April 2010.
On the other hand there are still numerous cases hindered by lack of mutual legal assistance (MLA) from the country where the alleged bribe occurred or from banking centres that withhold evidence of money laundering. According to TI experts, problems with obtaining MLA were experienced by law enforcement authorities in **Argentina, Australia, Bulgaria, Canada, France, Greece, Japan, Norway, Portugal, Slovenia, Spain, Switzerland,** the **UK** and the **US.** The **IMPSA** case in Argentina is apparently being held up by lack of MLA from the Philippines, and an investigation in Bulgaria is not progressing due to lack of cooperation from Zambia. A bribery case in Germany involving a German citizen was held up due to a 10-year delay in extradition from Canada. The UK investigation of **Anglo-Leasing** in Kenya was terminated due to lack of cooperation from Kenya. Japanese authorities reported difficulties in obtaining mutual legal assistance from Thailand and Vietnam.

Penalties and settlements

The cases show significant differences among countries in the size of penalties imposed in foreign bribery cases and the basis for their calculation. In some cases, such as **Kyudenko** and **Pacific Consultants International,** the penalty appears to correspond to the amount of the bribe paid. In others, such as the **MAN Group** case in Germany, the penalty is related to the amount of profit or gain from the transaction. TI considers that corporate fines should exceed the amount of profit from the wrongdoing.
Additionally, two recent cases, one in a non-OECD Convention country, highlight the need to consider sanctions that benefit the country where the damage from the bribery was inflicted. In the Costa Rican settlement with **Alcatel** a new concept of "social damages" was introduced and represented the basis for the US $10 million penalty imposed. And in the **BAE Systems** case the UK settlement called for a part of the £30 million fine to be donated to Tanzania, the country in which the alleged bribery took place. It would be desirable for the OECD Working Group on Bribery to conduct a study on corporate liability and penalties. TI considers that part of the fines paid or profits reimbursed should be made available for the benefit of the country that suffered from the offence.

Settlements are increasingly in the public spotlight, with the amounts involved growing dramatically in the last two years. However, the approaches vary greatly across countries in terms of amounts and conditions attached to settlements, as well as whether the settlements are made public. While the amounts paid by companies are

rising steadily in some jurisdictions, the question remains whether there is adequate deterrence. TI considers that all settlements should be submitted to judicial review independent from the Prosecutor's Office. This review should include a public hearing with representatives of the country where the bribe was paid, competitiors and civil society organisations before the settlement becomes final and published detailed conclusions. All relevant information should be provided by the investigative authorities to the authorities in countries where the offenses were committed so that such countries can institute their own proceedings.

Countries and institutions that have entered settlements in foreign corruption cases

Country	Highest Known Amount	Company, Year
Denmark	8.5 million Danish crowns [3]	Leo Pharma, 2010
Germany	€ 201 million + € 395 million = € 596 million	Siemens, 2007 & 2008
Italy	Unknown	Unknown
Netherlands	€ 381,000 (a US $3 million penalty was imposed in the US)	AkzoNobel, 2008
Switzerland	Unknown	Unknown
United Kingdom	£30 million [4]	BAE Systems,
United States	US $800 million	Siemens, 2008
World Bank	US $100 million	Siemens, 2009

Private-to-private bribery, payments to political parties and intermediaries [5]

While private-to-private bribery is not covered by the Convention, some cross-border bribery cases of this kind are included in this report and illustrate the need for international approaches and international cooperation in such cases. A considerable number of the allegations involve the healthcare industry and relate to efforts to persuade doctors and hospitals to use specific products. These include the **Bayer** case in the US and the **Actavis** and **Novartis** cases in the Czech Republic, as well as allegations against **Novo Nordisk** in Sweden and **GlaxoSmithKline** in Italy and a US investigation of **AstraZeneca** activities in Croatia, Russia and Slovakia. Another affected industry is automobiles and automotive parts. An investigation in Germany reported in 2006 related to allegations of bribes by major European automotive parts makers, including companies such as **Faurecia, Grammer** and **Magna Steyr.** A more recent scandal in Germany relates to allegations that truck producer **MAN** paid bribes in Europe to secure the purchase of its vehicles. In the electronics industry, the Dutch company **Phillips** was under investigation in Germany in 2006 for alleged bribery of retailers to improve its sales.

Other case reports illustrate the need to ensure that foreign bribery enforcement addresses payments to foreign political parties. For example, in the **Halliburton/TSKJ/Bonny Island** case, payments allegedly were made to Nigerian political parties; **Siemens** allegedly bribed political parties in Greece; media reports about the **Ferrostaal** investigation include allegations of payments to a political party in Portugal; and press reports have claimed illicit payments by the Austrian companies **Rail Cargo** and **Strabag** to political parties in Hungary. There have also been allegations in South Africa of improprieties in a supply contract awarded to a consortium including **Hitachi Power Africa,** a company in which the ANC owns a 25 per cent stake through its investment company Chancellor House.

Some cases show that where companies form consortia, joint ventures or cartels in which a single intermediary serves a group of companies, the intermediary may be accused of paying bribes in furtherance of the joint venture's business. Examples include consortia in the **Lesotho Highlands Water** cases, the TSKJ joint venture in the **Halliburton** case and the cartels in the **Bridgestone** case, as well as in the **China State Construction** case, which concerned a World Bank project in the Philippines. Allegations in the **Panalpina** and **Ferrostaal** cases in effect accuse these companies of having served other companies in making questionable arrangements.

3 REPORTS ON ENFORCEMENT IN OECD CONVENTION COUNTRIES

The following country reports summarise the assessments by TI experts of their country's enforcement systems. This year the TI Questionnaire again asked country experts to provide information on foreign bribery cases and investigations as well as specific aspects of the enforcement system. Additionally, the experts were requested to provide information about domestic bribery cases and investigations involving foreign companies or their subsidiaries. It should be noted that some of the cases reported here in both the foreign and domestic bribery categories relate to private-to-private bribery, which currently is not covered by the OECD Convention.

ARGENTINA

MODERATE ENFORCEMENT: Two pending cases, one of them new. Share of world exports is 0.4%.

Foreign bribery cases or investigations: One case was brought in 2006 and involves **CBK Power Company.** It relates to alleged bribes to a former Philippine Minister of Justice in connection with a hydroelectric construction and operation project in the Philippines. Former Philippine president Joseph Estrada denied the allegations and reportedly said instead that **IMPSA** offered US $14 million, but his government never accepted the deal. [6] The two shareholders of CBK Power Company are the Argentinian corporation **IMPSA** *(Industrias Metalúrgicas Pescarmona Sociedad Anónima)* and the US company **Edison Mission Energy** (see also box below). The new case involves four companies as principal parties, namely **Catler Uniservice** (an Argentinean and Bolivian joint venture), **Sica Metalúrgica** and **Lito Gonella e Hijos de Santa Fé** (both Argentinian companies, suppliers of Catler Uniservice), as well as **YPFB** (Yacimientos Petrolíferos Fiscales Bolivianos). Catler Uniservice allegedly bribed Bolivian officials to obtain a US $88 million contract from the state-owned company YPFB in order to build a hydroelectric plant in the city of Santa Cruz, Bolivia, in 2008. The case became public following the murder of a Castler manager in January 2009 and the associated theft of a suitcase containing US $450,000 in cash. The resulting investigation triggered a bribery investigation, since the stolen money was allegedly intended to pay the former president of YPFB. The investigating judge in the case is waiting for assistance requested from Bolivia. There are reports that an investigation has also been opened in Bolivia.[7]

CBK POWER COMPANY: LACK OF MUTUAL LEGAL ASSISTANCE BLOCKING THE CASE

In the IMPSA case, [8] the responsible Federal Criminal Court declined jurisdiction, but on appeal the Supreme National Court of Justice ruled that it is competent. Thereafter, a judge of the Federal Criminal Court, Sergio Torres, reportedly ordered that the case be shelved due to lack of international cooperation with the Argentinean investigation. The Federal Chamber of Appeals reversed that decision and on 24 February 2010 the case was reopened. According to the Anti-Corruption Office, there were two mutual legal assistance requests, one to the Philippines and one to Switzerland. There was no response from the Philippines. [9]

Domestic bribery by foreign companies: Ten cases are known. These include cases involving allegations against **Accor Services, Skanska Argentina, Thales Spectrum, Ansaldo Energia SpA, Siemens Argentina, IBM Argentina** and other companies or their employees. [10]

Inadequacies in legal framework: There are some inadequacies, including an inadequate statute of limitations period and a lack of criminal liability and sanctions for corporations, as well as a failure to hold companies responsible for subsidiaries, joint ventures and/or agents. Concerning penalties, in Argentina the crime of transnational bribery is punishable by imprisonment for one to six years and special perpetual disqualification from holding a public office.

Inadequacies in enforcement system: There are some inadequacies, the main ones being lack of training of investigators and judges to investigate these kinds of offences. Some allege that the federal judiciary lacks sufficient protections for its independence and that political considerations excessively influence some investigations. There is lack of whistleblower protection in the public and private sectors. Investigators and prosecutors sometimes have difficulty in obtaining mutual legal assistance.

Access to information about cases and investigations: The number of cases is accessible but not the details. Case files cannot be reviewed by someone who is not a party, and employees at the front desk of the court usually are not allowed to provide information. Moreover, it is not easy to contact public officials of the *Ministerio de Relaciones Internacionales, Comercio Internacional y Culto* to ask them for information about the status of pending cases or new foreign bribery cases.

Requirements of export credit agencies: No commitments are required of companies nor are anti-bribery compliance programmes or reporting required.

Facilitation payments: These are prohibited in law but not in practice.

Recent developments: There has been deterioration in transparency policies due to the discontinuation of the Sub-Secretary of Modernization. This Sub-Secretary was in charge of promoting access to information in the executive branch.

Recommendations: Ensure the independence of judges and prosecutors in cases of bribery, including changes in appointment procedure. Reform the Judicial Council to ensure the independence and impartiality of the courts involved and thus avoid political pressure. Enhance accountability and independence of the *Ministerio Público* (Prosecutorial Office). Train prosecutors in investigation techniques. Fully implement anticorruption conventions ratified by Argentina (IACAC, OECD and UNCAC). Legislate to protect whistleblowers and other witnesses in corruption cases. Ensure access to information about bribery cases.

AUSTRALIA

LITTLE OR NO ENFORCEMENT: No prosecutions but there was a Royal Commission inquiry and at least one civil action in relation to alleged improper payments by an Australian company AWB in Iraq. Four investigations, two new in 2009. Share of world exports is 1.3%.

Foreign bribery cases or investigations: A Royal Commission was established in 2005 to inquire into alleged Oil-for-Food-related payments of US $220 million purportedly made in Iraq by the **Australian Wheat Board (AWB).** A set of civil cases was pending against six AWB executives for alleged breach of director's duties, brought by the Australian Securities and Investment Commission (ASIC) separate from enforcement of the Criminal Code. Only one of these cases proceeded, pending review of whether criminal charges should be brought against the executives. But in February 2010 a stay of a second ASIC action was reportedly overturned and on 3 June 2010 it was announced that the criminal aspects had been abandoned and the other five civil cases might be revived. [11] AWB settled a separate civil case brought by shareholders for A$39.5 million in February 2010 and the government of Iraq brought an Oil-for-Food-related civil action against AWB in the US in 2006 . (See US report)

In another case, according to media reports, the Australian Federal Police (AFP) opened an investigation in May 2009 about commission payments to offshore agents allegedly made by an Australian company **Securency Pty Ltd.** The AFP is reportedly investigating allegations of bribery of public officials in Nigeria, Malaysia and Vietnam in connection with the award of banknote contracts. Securency is 50 per cent owned by the **Australian Reserve Bank** and 50 per cent by a UK company **Innovia Films,** which in turn is majority owned by the UK private equity fund **Candover.** One of the transactions reportedly targeted is a contract awarded by the Vietnamese national bank. The agent allegedly used by Securency is the Company for Technology and Development, based in Hanoi, which is alleged to be a front for government officials in Vietnam. [12] The Australian police were also reportedly investigating Securency in connection with alleged improper payments made between 2006 and 2008 to officials of the Central Bank of Nigeria. In March 2010 the Australian Reserve Bank reportedly fired two top executives of the company following an investigation by KPMG Forensics that showed improprieties abroad and indicated payments of about A$47 million in commission and non-commission expenses to agents in foreign territories. [13] Australia reportedly is also now coordinating with the Serious Fraud Office in Britain in an investigation of **Alstom**, because evidence was allegedly found that the same agent used by Securency in Vietnam, the Company for Technology and Development, was also being used by European subsidiaries of Alstom to secure contracts in Vietnam. [14]

Meanwhile, in other jurisdictions, four **Rio Tinto** executives, including one Australian citizen, were convicted in China in March 2010 after admitting they had received bribes allegedly in order to funnel Rio Tinto's iron ore towards private Chinese steel mills. [15] In April 2010 there were reports of investigations in the UK and the US of **BHP Billiton** activities in countries thought to include Cambodia and Congo [16] (see also Section 4, "Cases"). In October 2009 there were reports that two managers of an Australian company were indicted in Portugal in connection with alleged

improper payments to doctors at a public hospital to secure a €1.2 million contract for the procurement of medical equipment. [17]

Domestic bribery by foreign companies: Not aware of any.

Inadequacies in legal framework: There are some inadequacies. The main one relates to the fact that only Australian resident entities are covered by the Criminal Code, insofar as improper payments abroad by an offshore subsidiary (incorporated abroad) or joint ventures are not proscribed unless made or shown to be permitted or authorised by an Australian citizen or resident. The audit of Australian-based groups may not catch offshore subsidiary dealings if they are deemed non-material to the audit, or perhaps in cases where the offshore accounting is done by another firm, separately from the audit of the parent group. Recent increases in the penalties for an offence are a significant development (see below).

Inadequacies in enforcement system: There are some inadequacies, including the lack of effective whistleblower protection under federal law. There are also difficulties in obtaining admissible evidence abroad. In Australia, the issue of enforcement of the offence of bribery of foreign officials remains in the "important and priority" category of the government, but apart from the AWB proceedings there have been no visible enforcement results.

Access to information about cases and investigations: Some information is accessible. When cases are brought, details will be available.

Requirements of export credit agencies: The government agency for export credits, EFIC, complies with the measures contained in the relevant recommendations of the OECD Council. Companies are required to make a no-bribery commitment that extends to conduct by an agent or business partner, but it is not clear how joint venture partners are treated. Companies are also required to report on compensation for agents, but apparently only "upon demand", and the standard EFIC practice is unclear. Companies are not required to demonstrate that they have effective anti-bribery compliance programmes.

Facilitation payments: They are not prohibited by law if paid to a foreign official within the strict limits and purposes set out in the Criminal Code.

Recent developments: The financial penalties for foreign bribery were significantly increased in December 2009 to dissuasive levels, up to $A1 million for executives and a minimum of A$10 million for corporations.

Recommendations: Demonstrate that a prosecution is feasible despite the evidentiary difficulties referred to. Continue the publicity, via workshops and otherwise, of how seriously the government views this offence and considers ways to facilitate voluntary disclosure of bribery.

AUSTRIA

LITTLE OR NO ENFORCEMENT: No cases. At least four pending major investigations.
Share of world exports is 1.2%.

Foreign bribery cases or investigations: Four major investigations have been reported in the press. The **Strabag** investigation concerns allegations that the road construction company acquired projects in Hungary valued at some € 660 million by means of illegal payments to a Hungarian political party. Business contacts between 2003 and 2005 were allegedly facilitated by the Viennese lobbying agency **eurocontact.** [18] The new Austrian Anti-Corruption Public Prosecutor indicated in April 2010 that his office was communicating with Hungarian authorities regarding the matter.

Another reported investigation involves the March 2009 purchase by the Czech Republic of 107 special tanks (so-called Pandur II Radpanzer) worth € 559 million, produced by **Steyr Daimler Puch Spezialfahrzeuge** (SSF),an Austrian company. [19] The Anti-Corruption Prosecutor was reported to have conducted searches in Vienna in February 2010 as part of this investigation. Former managers of Steyr interviewed by an undercover journalist allegedly admitted making payments to Czech political parties in connection with the purchase and said this was customary in the Czech Republic, [20] although they later claimed they were joking (see also report on Czech Republic).

The Anti-Corruption Prosecutor's Office also reportedly continues to investigate alleged money transfers estimated at US $17 million (€ 13 million) in connection with **BAE Systems'** sales of military planes to Austria, Czech Republic and Hungary. [21] Austrian lobbyist Alfons Mensdorff-Pouilly was arrested in Austria at the end of February 2009 as part of the investigation, but was released in early April 2009. The UK Serious Fraud Office arrested him again

in January 2010 but dropped all charges after reaching a settlement with BAE. [22] The Austrian investigation is reportedly continuing, following a determination by the Prosecutor's Office that the settlement is not seen as equal to a judgement and is thus not an obstacle to continuation of investigations in Austria. [23] The Vienna Prosecutor's Office is also reportedly investigating Mensdorff-Pouilly regarding his testimony at parliamentary commissions on the sale of Eurofighters to Austria. [24]

A fourth investigation reportedly concerns alleged bribery by managers of **Siemens AG Austria** in southeast Europe, including Bulgaria and Romania. In April 2010 Austrian investigators reportedly met with their southeast European counterparts to discuss the case. [25] Austrian authorities are reportedly assisting in the investigation of alleged bribery by the Finnish defence company Patria, due to suspected involvement of Austrian intermediaries [26]. On the private-to-private corruption front, there were reports in 2006 that **Magna Steyr,** an Austrian subsidiary of automotive parts supplier **Magna International,** was under investigation in Austria over suspected bribery by its employees of German automobile manufacturers. [27]

There has been no reported investigation of the Hungarian privatisation of MÁV Cargo awarded to **Rail Cargo Austria**, the freight branch o**f Austrian Federal Railways** and **Gysev**, another Austrian-owned rail company. According to press reports in Hungary, the sale included a success premium of 1.75 per cent of the purchase price (an estimated € 7 million) to a Hungarian PR firm, Geuronet Bt. [28] Meanwhile, it remains unclear whether the Austrian **Erste Bank** is under investigation following allegations by two former managers of bribes paid to politicians in the Czech Republic and other parts of Eastern Europe in connection with bank privatisations. The two former employees also reportedly claimed that the bank played a role in the Czech purchase of Gripen jets. [29] There are reports of a Croation investigation of the Balkan transactions of the Austrian **Hypo Group Alpe Adria (HGAA)** bank. [30]

Domestic bribery by foreign companies: No reliable statistics are available. A parliamentary inquiry was held in 2006 on Austria's 2002 purchase of **Eurofighters**. The new Anti-Corruption Prosecutor seems to have taken up this issue again. A criminal investigation in the **Siemens** case is focused on federal IT projects carried out by **SIS** (a Siemens software branch) in cooperation with the IT firm **OCO Organisationsberatungs- und Consulting GmbH**. A manager of OCO allegedly cooperated illegally with employees of Siemens-Austria-SIS and the official Financial Market Authority (*FMA-Finanzmarktaufsicht*), causing damages of more than € 1 million through alleged false accounting in several business transactions. [31] Allegations have been reported in the press concerning possible bribe payments to an Austrian provincial official in connection with the sale of the Austrian bank Hypo Group Adria Adria (HGAA) to the German bank **Bayern LB** in 2007. [32]

Inadequacies in legal framework: The existing inadequacies are not specific to foreign bribery but affect foreign bribery enforcement. In August 2009 the Austrian Parliament adopted a statute amending the anti-corruption penal law. It is deficient in several ways: (1) the meaning of *Amtsträger* (e.g. a public official as a legal subject of criminal corruption) was restricted to exclude some public officials from criminal jurisdiction; and (2) a higher level of proof was introduced to establish bribery.

Inadequacies in enforcement system: There is a continued lack of legal protection of whistleblowers. The Public Office for Prosecution of Corruption's prosecutions are directed by the Minister of Justice. The new Public Office for Prosecution of Corruption focuses exclusively on cases involving public officials. This limited competence does not address the general increase in financial and economic crimes in an interconnected world.

Access to information about cases and investigations: There are no reliable statistics to date. The responsibilities of the new Office for Prosecution of Corruption (since January 2009) include the compilation of statistics, which did not previously exist. But cases involving corruption of foreign public officials are not separately counted. Public officials dealing with criminal cases are under an obligation to act with strict discretion, which means that details of such cases are not accessible.

Requirements of export credit agencies: Companies are required to make no-bribery commitments. Since January 2007 the *Österreichische Kontrollbank,* the official Austrian export credit agency, in accordance with instructions from the Federal Ministry of Finance, has implemented the OECD Recommendations on officially supported export credits, with new credit application forms and a formal bribery check. Complex obligations exist for officially supported export credits, including up-to-date information on foreign business partners. Companies are required to demonstrate the presence of anti-bribery compliance programmes, but the importance of such programmes differs in practice depending on factors such as the size of the company etc.

Facilitation payments: These are forbidden by law, explicitly with regard to public officials.

Recent developments: As noted above, in August 2009 the Austrian Parliament adopted a federal statute amending the anti-corruption penal law (*Korruptionsstrafrechtsänderungsgesetz* BGBL I Nr. 98/2009) and introducing essential amendments to the anti-corruption legal framework.

Recommendations: Correct weaknesses in the new 2009 statute by extending the definition of a "public official," eliminating the higher level of proof, protecting whistleblowers and ensuring the independence of the Public Prosecutor's Office. Implement a leniency policy for chief witnesses. Introduce special public education on all types of economic and financial crimes. Introduce a *Wirtschaftsstaatsanwaltschaft* (Economic Crimes Prosecutor) instead of the newly institutionalised *Korruptionsstaatsanwaltschaft* (Anti-Corruption Public Prosecutor), who lacks any legal competence concerning the private sector role in corruption offences.

BELGIUM

MODERATE ENFORCEMENT: Four cases; number of investigations unknown. Ten additional EU cases. Share of world exports is 2.2%.

Foreign bribery cases or investigations: One new case in 2009. Since 2006, Belgian authorities have been investigating approximately 15 Belgian companies based on information in the 2005 report by the Independent Inquiry Committee (IIC) (Volcker report) about improper payments in connection with the UN Oil-for-Food Programme. Two of the cases have been transferred to the Central Office for the Repression of Corruption (OCRC) and the others to local public prosecutors, with the Federal Public Prosecutor coordinating the investigations, which are progressing slowly. A case underway since 2008 involves alleged bribery by a Belgian company to win European Union (EU) framework contracts to assist EU accession countries in establishing procurement guidelines. The investigation was initiated by OLAF. The new judicial investigation in 2009 concerns possible bribery by Belgian contractors of civil US Air Force personnel and Belgian military personnel involving building contracts for USAF installations in Belgium.

Domestic bribery by foreign companies: No known cases. There are, however, cases in other jurisdictions that allege bribery of Belgian public officials by foreigners.

Inadequacies in legal framework: Some inadequacies are present. The definition of foreign bribery in the Belgian Criminal Code is not yet autonomous, as recommended by the OECD. The Belgian definition refers to the country's case law, which is based on a very comprehensive interpretation of "public official." With respect to private corruption, article 504bis of the Code of Criminal Procedure stipulates that malpractice occurs only "when the act is committed without prior knowledge and without authorization of, depending on the case, the Board of directors or the General Assembly, the principal or the employer."

Inadequacies in enforcement system: Real political will is often lacking, and measures in this field are taken only with the purpose of responding to the recommendations of the OECD and the Council of Europe GRECO. Inadequacy of resources is also an important issue. The departure of experienced and specialised staff at the local level will decrease capacity and will tend to increase the workload of the central OCRC, which is likely to be called on to assist local jurisdictions. The lack of resources is highlighted in the 2008 report on the OCRC, produced by the magistrate in charge of its supervision. The workload of the OCRC is excessive because it handles EU cases, and the office should be given additional resources to ensure that handling EU cases does not absorb all available capacity. Additionally, training for the OCRC is lacking, and the quality of recruits may drop, as official qualification requirements have been lowered. While statutes of limitations are not short, cases may still be time barred due to the slow progress of investigations. There is no administrative body to handle complaints, lead administrative investigations, and act as an information filter for the OCRC (similarly to the OLAF at EU level). There are also neither whistleblower protections nor sanctions on civil servants who fail to inform the public prosecutor of crimes witnessed in the execution of their duties. Mutual legal assistance is generally positive, in particular concerning states with which the country has signed cooperation agreements, but problems arise in obtaining banking information from countries that emphasise bank secrecy.

Access to information about cases and investigations: There is no public access to information about numbers or details of cases or investigations. No central register or list of cases exists that is available to the general public. For investigations, police forces, magistrates and investigating judges are bound by a duty of secrecy (*secret de l'instruction*) and by a general duty of reserve (*devoir de réserve*), to safeguard the "presumption of innocence." As the efficiency of the investigation also carries weight, the Public Prosecutor's Office may decide that communication with the media is desirable. However, the OCRC does not habitually issue press releases.

Requirements of export credit agencies: A no-bribery commitment is required regarding agents and other intermediaries, but not joint ventures and consortium members. Effective anti-bribery compliance programmes are not required, nor are companies required to report on compensation of agents.

Facilitation payments: The law does not distinguish between small and large amounts, and thus facilitation payments fall within its scope. However, the decision to investigate is at the discretion of the prosecutor, as there are no investigation guidelines for prosecutors. Lack of resources for law enforcement makes effective prohibition of facilitation payments uncertain.

Recent developments: An important development, dating to 2008, was the creation of an official Expert Network in Corruption Matters (*Réseau d'expertise en matière de corruption*) One of its goals is to improve information exchange on a national and international level. Corruption in the broadest sense, encompassing bribery, misappropriation of public funds, graft and embezzlement by a civil servant, was presented as the most important target in the 2008 National Security Plan, in effect until 2011.

Recommendations: Make foreign bribery a high priority on the federal government's agenda Make sure the OCRC can cope with its "national, international and international organisations" workload. Allow the OCRC to recruit the specialists it needs. Follow the OECD Working Group on Bribery recommendation to adopt measures guaranteeing adequate protection of employees who report acts of corruption. Learn from other countries' approaches to combating foreign bribery. For private corruption, modify article 504bis of the Code of Criminal Procedure. Continue to improve prevention efforts, including possible creation of a prevention institution to work with the general public and private companies. Grant civil society greater influence and support.

BRAZIL

LITTLE OR NO ENFORCEMENT: One pending foreign bribery case and four Oil-for-Food investigations. Share of world exports is 1.0%

Foreign bribery cases or investigations: No public information is available on the pending case. In Argentina, the firm **Norberto Odebrecht SA** and its Argentinian subsidiary were mentioned in the press in connection with an investigation of inflated invoices by subcontractor Skanska Brasil for the construction of a gas pipeline extension.[33] No charges or investigations were reported about the comany itself. Norberto Odebrecht SA, a Brazilian multinational conglomerate, is the largest construction company in Latin America. No new information is available on previously reported investigations of companies involved in the UN Oil-for-Food Programme in Iraq.

Domestic bribery by foreign companies: The press reported in 2008–2010 on investigations of **Alstom**[34] and **Siemens** reported in 2009 that it was under investigation by the Sao Paulo prosecutor's office.[35] In March 2010, an Alstom spokesman was quoted in the press as saying that federal and state authorities had as yet failed to bring any charges. In April 2010 the media reported that a prosecutor had asked France and Switzerland to hand over bank files required for an investigation into alleged illicit payments by Alstom in São Paulo to transportation and electricity companies, among others. Press reports in 2008 claimed investigations were looking into US $ 200 million in suspicious payments relating to a Sao Paulo subway expension project and a hydroelectric project in Brasil. The investigation reportedly targets a total of 19 people and seven companies. Another case under investigation in Brazil and Switzerland reportedly involves alleged payments from Alstom to executives of Petrobras, the Brazilian state-run oil company, through the consulting firm Aramza, based in Montevideo, Uruguay. [36]

Inadequacies in legal framework: Significant inadequacies are present, although the provisions of the OECD Convention are expressly included in the body of the Brazilian Criminal Code. A key deficiency is that, except in case of environmental crimes, no criminal liability of legal entities exists. Further, sanctions are generally inadequate in law and in practice. Corporations are not held responsible for subsidiaries, joint ventures and other agents. The only sanction applicable to companies found guilty of corruption is ineligibility to participate in bids for government contracts. However, high level company officials can be held responsible.

Inadequacies in enforcement system: Public agents may be susceptible to bribery, considering their low salaries and the lack of inspection. The police have insufficient manpower, training, equipment and motivation to fight bribery and related crimes. Complaint mechanisms and whistleblower protection exist in Brazil but are apparently not efficient. There is a lack of awareness-raising about the foreign bribery offence, but it has been helpful that US multinationals are increasingly providing training to their subsidiaries outside the US.

Access to information about cases and investigations: No statistics or case details are available in practice. The Corruption Prevention and Strategic Information Department of Brazil's Office of the Controller General was established in 2006; only then did the maintenance of records become a legal obligation at the federal level, with a specific agency created for that purpose. Article 792 of the Code of Criminal Procedure (CCP) provides that, as

a rule, hearings, sessions and procedural acts are public. Public access can be restricted only if those acts may result in scandal, severe inconvenience or disturbance of the peace. Police investigations are also public, although secrecy may be imposed if required to facilitate the investigation or in society's interest (art. 20, CCP). Thus, access to information on transnational corruption cases should be available to any interested party, except where secrecy is required for the development of the investigation, as determined by a substantiated court decision. However, in practice the judiciary bans access to proceedings, claiming the need for secrecy, and there is a lack of official records on cases.

Requirements of export credit agencies: Companies are not required to make a no-bribery commitment or demonstrate that they have robust compliance programmes for preventing and detecting bribery. Nor do they have to report on the use of agents. Eligibility is also not restricted in cases of previous bribery-related offences. There is no information about whether bribery has been identified in export credit-supported transactions and then referred to law enforcement authorities.

Facilitation payments: These are prohibited by law.

Recent developments: The Brazilian executive branch sent a bill to Congress in February 2010 to introduce civil and administrative liability for corporations and increase punishment for companies found to be engaged in acts of corruption and fraud involving the public administration. Pursuant to the bill, a company's assets can be seized for purposes of recovering damages. The bill also provides for new punishments, such as a fine of 1-30 per cent of the gross earnings of the company convicted of a bribery offence, corporate ineligibility for tax exemptions, partial suspension of corporate activities and most drastically winding-up of the company, depending on the seriousness of the illegal act. The new bill also allows the corporate veil to be pierced in cases of illicit practices by Brazilian companies. In such cases, penalties applicable to the convicted company likewise may be imposed on partners or shareholders with management powers, as well as managers of the company. In addition, a declaration by the public administration that a company is ineligible to bid on government contracts could be extended to the natural persons of partners and shareholders involved in illicit acts.

DEBARMENT REGISTER IN BRAZIL

On its website at www.portaltransparencia.gov.br/ceis, the Office of the Controller General of the State has made available the National Register of Disreputable or Suspended Companies (*Cadastro Nacional de Empresas Inidôneas ou Suspensas, CEIS*). This database was created in 2008 with information from federal institutions and federation units on suppliers that have committed any irregularities, especially fraud or corruption in public bids or procurement contracts with federal or state governments. Law #8666, on public bids and procurement contracts; Law #8443, the Federal Audit Court Organic Law; and #10520, the Trading Floor Law, ban hiring by the federal government of suppliers showing irregularities in public records.

Recommendations: Develop rules on the liability of legal entities for money laundering, organised crime and bribery (domestic and foreign) in compliance with the OECD Convention and the UNCAC. Create a specific public agency for investigating foreign bribery cases at the judicial level. Enforce the current anti-bribery legislation more strictly. Raise awareness about the foreign bribery offence, publicise government actions against companies, and offer tax incentives to companies for anti-corruption compliance. Promote academic research on the prevention of and fight against corruption.

BULGARIA

LITTLE OR NO ENFORCEMENT: Three cases, one pending and two concluded. One investigation.
Share of world exports is 0.1%.

Foreign bribery cases or investigations: Of the two concluded cases, one relates to alleged bribery of a border officer and the other of a customs officer. Both cases were terminated. With regard to the investigation, this concerns allegations that a Bulgarian paid a bribe of US $270,000 to a permanent secretary in the Ministry of Health of Zambia. The investigation has not yet been concluded because, in spite of the many letters of reminder from Bulgarian authorities, the Republic of Zambia has not provided the required help in the pre-trial proceedings commenced in 2008. Meanwhile, in Zambia in February 2007, a former high-ranking government official was sentenced to five years in prison for receiving bribes, the largest of which was allegedly given by a Bulgarian pharmaceutical company. The Zambian official is a former secretary of the country's Health Ministry and was found guilty on three charges,

including one that he received a bribe of around US $250,000 from a Bulgarian company that wanted permission to import the medicine Elexir-9 into Zambia. [37]

Domestic bribery by foreign companies: None known.

Inadequacies in legal framework: There are inadequacies including lack of criminal liability for companies and complicated, over-formalised procedures.

Inadequacies in enforcement system: The inadequacies include lack of training of investigators and lack of public awareness-raising. There are also significant delays in court proceedings.

Access to information about cases and investigations: There is access to numbers of bribery cases but without separate information on foreign bribery cases. There is no access to details of cases and disclosure may be made subject to penalties. Bulgaria's National Prosecution Office annually publishes on the Internet a report with information on bribery cases, including pre-trial proceedings, prosecutions brought to trial, number of persons sentenced and pardons.

Requirements of export credit agencies: Export credit agencies do not require no-bribery commitments or compliance programmes. Export credit insurance is provided by the Bulgarian Agency for Export Insurance (BAEZ) and according to its general rules for insurance of credits and financing, the BAEZ has not established any such obligations.

Facilitation payments: Prohibited by law.

Recommendations: Provide training of investigative bodies. Introduce tighter international cooperation.

CANADA

LITTLE OR NO ENFORCEMENT: One minor concluded case and one new case in 2010. Number of investigations unknown. Share in world exports is 2.5%

Foreign bribery cases or investigations: In the concluded case, which dates to 2005, the company **Hydro Kleen Group Inc.** pleaded guilty to bribery of a US customs official and was fined C$25,000. [38] No official information is available on investigations underway in 2009. In June 2010, an Ottawa resident was reportedly charged with corruption based on allegations that he bribed an Indian government official while trying to land a multi-million dollar airport security contract. According to a news report the company concerned is **Cryptometrics**, a firm that develops facial recognition software. [39] However, the Canadian company **Niko Resources Ltd.** (Niko) issued a public statement in mid-January 2009, that the Royal Canadian Mounted Police (RCMP) was investigating allegations that Niko or a Niko subsidiary may have made improper payments to government officials in Bangladesh. There were media reports to this effect. [40] Niko denies any wrongdoing. There is no additional information about the investigation available to date. In other jurisdictions, a prominent Canadian businessman was named by investigators as allegedly playing a role in money laundering in the Alcoa case (see Section 4, "Cases", on Alcoa case study). The Canadian company Magna International also was named in 2006 in connection with a German investigation of private-to-private bribery by auto-parts manufacturers. [41] There is no additional information about the potential FCPA violation reported in the US by **Petro-Canada.** [42]

Domestic bribery by foreign companies: At the end of May 2010, Judge Jeffrey Oliphant delivered his report on the Mulroney-Schreiber scandal about transactions in the early 1990s, in which former Prime Minister Mulroney claimed he legally accepted C$225,000 from German lobbyist Karl-Heinz Schreiber to help him sell peacekeeping vehicles to the UN, and that in exchange he lobbied for support from political leaders in Russia, China and France for a proposed UN purchase of peacekeeping vehicles. The judge's inquiry did not cover allegations of kickbacks in connection with Air Canada's purchase of Airbus planes in 1988. [43]

Inadequacies in legal framework: There are significant inadequacies in the Corruption of Foreign Public Officials Act (CFPOA), including: the lack of nationality jurisdiction (a nexus between the alleged offence and Canada is required); the exclusion of charities from coverage by defining an offence as the conferring of a business-related benefit; unnecessary qualifications to the definition of bribery, requiring the improper granting of a benefit to a foreign public official; explicit allowance of facilitation payments; and absence of provisions requiring the maintenance of accurate books and records.

Inadequacies in enforcement system: There are several inadequacies. Although the new RCMP task force to address

foreign anti-bribery has engaged in an outreach programme to educate Canadian businesses regarding foreign anti-corruption legislation, more could be done to promote greater awareness of the CFPOA in Canada within the Canadian business community, including via robust enforcement. On occasion, Canadian law enforcement agencies reportedly have had difficulty obtaining mutual legal assistance.

TEN-YEAR EXTRADITION PROCESS CANADA-GERMANY

Extradition proceedings against Karl-Heinz Schreiber were launched by the German authorities in 1999 to gain his return to Germany from Canada. Schreiber was wanted in Germany to answer for several criminal charges, including fraud and bribery, which allegedly had a role in bringing down a government there. On 15 November 2007, Schreiber lost his appeal of extradition to Germany and was extradited in August 2009. (See also report on Germany.)

Access to information about cases and investigations: Information is available except for information regarding active criminal investigations prior to charges being laid, as this information is considered confidential and could result in actionable damage to a person or company being investigated. Nor is it possible to obtain any information as to how many investigations are currently in process. Case details are accessible. Criminal trials and convictions are a matter of public record in Canada.

REASONS FOR INADEQUACIES

"One is left with the impression that the enforcement of anti-bribery and foreign corruption legislation is not a high enough priority with the Canadian federal government and that more could be done both in terms of strengthening the existing legislation and allocating greater human and financial resources to the education and enforcement of the CFPOA." (Bruce Futterer, TI Canada expert)

Requirements of export credit agencies: Export Development Canada (EDC) requires exporters requesting official export credit support to submit an anti-corruption declaration, with only a few exceptions. The EDC's standard anti-corruption declaration contains references to "agents" but not joint ventures or consortium members. The EDC on occasion may require a customer to demonstrate that it has an anti-bribery programme, but this is not normally a requirement for EDC support. The EDC's standard anti-corruption declaration states that information about payments to agents must be disclosed to EDC on demand.

Facilitation payments: These are not prohibited in law or in practice. The CFPOA specifically permits facilitation payments where they are made to expedite or secure the performance by a foreign public official of any "act of a routine nature" that is part of the foreign public official's duties or functions. Subsection 3(5) emphasises that an "act of routine nature" does not include a decision to award new business or to continue business with a particular party.

Recent developments: In March 2010 the Department of Foreign Affairs and International Trade Canada (DFAIT) released its Policy and Procedures for Reporting Allegations of Bribery Abroad by Canadians or Canadian companies. Any information that DFAIT officers receive about bribery or related offences is to be forwarded to the RCMP, in accordance with the procedures outlined. Amendments to the CFPOA addressing the lack of nationality jurisdiction were proposed in the previous parliamentary session but were not passed before Parliament was prorogued in early 2010. It is not clear as of the date of this report whether the earlier proposed nationality jurisdiction amendment will be reintroduced in the current parliamentary session

Recommendations: Amend the CFPOA to address the deficiencies in the legislation identified above, particularly the lack of nationality jurisdiction. Deploy greater financial and human resources to raise awareness and train Canadian businesses in their legal obligations under the CFPOA community of Canadian laws relating to foreign bribery, and to increase the investigative and prosecutorial capacity of the Canadian agencies tasked with enforcing the CFPOA.

CHILE

LITTLE OR NO ENFORCEMENT: No foreign bribery cases or investigations. Share of world exports is 0.4%.

Foreign bribery cases or investigations: No cases or investigations.

Domestic bribery by foreign companies: Two well-publicised cases are still ongoing. [44] One concerns embezzlement charges brought in January 2009 against four former high-ranking officers of the Chilean Air Force, including the

former Commanding General, in connection with the purchase of 24 Mirage jets from Belgium in 1994. The Chamber of Deputies Commission for the investigation of this case concluded in January 2010 that there was political responsibility on the part of two former presidents. In connection with this case, Special Judge Omar Astudillo has opened an investigation of reported embezzlement involving a former minister of defence of the Aylwin Administration. The second investigation, initiated by the Office of the Public Prosecutor with the participation of the State Defence Council, relates to an US $80 million contract awarded to the Indian company **Tata Consultancy Services** by the Civil Registry Office, and concerns allegations of bribery, fraud and infringing secrets against several high level executives of the company as well as former public servants, including the former Director of the Office. One of the public servants was convicted in January 2010 and sentenced to four-and-a-half years in jail.

Inadequacies in legal framework: There are no significant inadequacies following reforms in 2009 made with the aim of aligning the Chilean legal framework with recommendations of the OECD Working on Bribery. Several new laws are noteworthy: Law N°20.205, which protects public officials who report irregularities and serious misconduct (25-08-2009); Law 20.341, modifying the legal description of bribery in the Penal Code (22-04-2009); Law N°20.371, modifying the competence of the judiciary relating to cases of foreign bribery prosecutions (25-08-2009); Law N°20.393, related to criminal liability of corporations involved in money laundering, financing of terrorism and bribery (02-12-2009); and Law N°20.406, which permits the access to sensitive bank information by fiscal authorities (05-12-2009).

Inadequacies in enforcement system: There is still much to improve in the enforcement system. There is no effective whistleblower protection for domestic or foreign bribery cases, and the Office of the Public Prosecutor has no special budget to protect informants in these cases. Moreover, the Chilean prosecution system is highly decentralised, which is an obstacle to whistleblowers, resulting in unequal access in different parts of the country. There is also a lack of specialised staff in the Public Prosecutor's Office. Only in Santiago are there public prosecutors exclusively dedicated to bribery investigations and prosecutions. Moreover, it is well known that public prosecutors are overburdened with responsibilities that prevent them from persevering in long-term and complex bribery investigations. Some recent acquittals in bribery and embezzlement cases, involving politicians of Valparaíso and Santiago, have raised questions about the skills of public prosecutors for these kinds of offences. Further, taking into account the complexity of these investigations, the Public Prosecutor's Office lacks adequate special investigative tools – such as those used in drug trafficking cases – including authorisation for using police informers, conducting an investigation in secrecy for a longer period and interception of communications.

RESOURCES PRIORITISED FOR DOMESTIC CRIME NOT FOREIGN BRIBERY

Authorities from the executive branch and Public Prosecutor's Office give special attention to cases of theft, burglary, robbery or larceny, domestic violence against women and juvenile delinquency. This focus has resulted in an allocation of most of the state resources to those areas. (Jose Ignacio Escobar Opazo, TI Chile expert)

Access to information about cases and investigations: Numbers of cases are available, but details of cases are not accessible.

Requirements of export credit agencies: There is no requirement of a no-bribery commitment by the state agency that provides public financing, CORFO (*Corporación de Fomento de la Producción*, Corporation for the Promotion of Production). Most of the export credits are provided by private banks, which do not require this kind of commitment.

Facilitation payments: These are prohibited by law. Chile's Tax Service has issued a special Circular on this issue (N°56 of November 2007) that prohibits taxpayers from considering facilitation payments as a necessary expense to produce an income.

Recent developments: In January 2010, Chile has recently accepted the official invitation of the OECD to join the organisation, and the treaty was recently approved by Congress. As described above, 2009 was fertile in terms of legislative measures to improve the Chilean legal framework to investigate and prosecute foreign bribery. Furthermore, the head of the National Public Prosecutor's Office announced in 2009 that he was pushing a legal reform of Law N°19.640 in order to create a Special Unit for Complex Criminality (*Fiscalía Especial para casos de Criminalidad Compleja*) with at least 25 prosecutors. But to date the competent authorities (Minister of Justice and Treasury Department) have not taken this forward. There were some efforts in the last two years to provide proper training to professional diplomats and administrators who serve in Chilean embassies abroad, including skills needed to comply with their duty to receive and report allegations of foreign bribery and other offences subject to Chilean jurisdiction. There is also reportedly under review a Circular or General Instruction for public servants of the Chilean foreign affairs ministry.

Recommendations: Create a special unit for investigating complex crimes such as foreign bribery, centralising government efforts in this area. Promote legal reforms to give more resources and adequate investigative tools to prosecutors handling complex crimes. Promote extensive training to public officials, especially abroad, so they have open channels to receive and forward allegations. Strengthen mutual legal assistance relations, especially with neighbouring countries.

CZECH REPUBLIC

LITTLE OR NO ENFORCEMENT: No cases or investigations. Share of world exports is 0.9%.

Foreign bribery cases or investigations: One foreign bribery investigation was suspended in 2008 as unfounded. The former head of the parliamentary group of deputies of the Social Democratic Party, expected to be reelected to Parliament in May 2010, was investigated for alleged money laundering and bribery of Ghanaian public officials related to the purchase of a Ghanaian cocoa factory in 2001.

In other jurisdictions, in 2010 the Czech-owned company **Interblue Group** was named in investigations in Slovakia and Switzerland, and **J & T Banka** was cited in a major scandal in the Turks and Caicos, [45] a UK Overseas Territory. (See also report on Slovakia). However, a spokesman for the Czech Republic's Anti-Corruption Police (ÚOKFK) denies initiation of criminal proceedings against anyone connected to the Turks and Caicos case. In 2009 the ex-chairman of the Czech coal company **Tchas-Trade** (purchased by French **Eiffage Construction** in January 2010) stood trial in Poland for allegedly bribing the chairman of the Polish company Kompanii Weglowe regarding extension of a supply contract. No recent information is available about the case. [46]

Domestic bribery by foreign companies: Questions about the sale of **Gripen jets** to the Czech Republic reemerged, despite two investigations in eight years by the Department for Combating Corruption and Financial Crime of the Czech Republic Police (ÚOKFK), the second of which closed in November 2009. There were calls in February 2010 for the Czech Parliament to review the sale. [47] An investigation of the Pandur case involving the Austrian **Steyr** company begun in late February 2010 has not yet produced any evidence. [48] (See report on Austria.) A number of cases and investigations involved pharmaceutical companies. In one a former adviser to the president of the Czech Medical Chamber was acquitted in 2009 of accepting bribes from **Pfizer.** [49] Two investigations were suspended, one involving the Canadian pharmaceutical company **Apotex** [50] and the other the Icelandic company **Actavis.** However, Actavis CZ was penalised by the Czech Association of Pharmaceutical Firms (CAFF) for sending Czech doctors on an exotic holiday in Egypt. The CAFF suspended the firm's membership, blocking its access to information and legal services and imposing a fine. [51] In April 2010 ÚOKFK accused a doctor of taking bribes from **Novartis,** and the Czech Medical Chamber started a disciplinary proceeding against him. Two former bankers from the Austrian **Erste Bank** alleged it channelled bribes to politicians and officials when buying banking institutions in Central and Eastern Europe, including as part of the privatisation tender for the Czech bank Česká spořitelna in 2000. A ÚOKFK spokesman denies the initiation of criminal proceedings against persons involved in the privatisation of Česká spořitelna. [52] (See also report on Austria.)

Inadequacies in legal framework: There are some inadequacies. There is no criminal liability of legal persons in the Czech Republic. Additionally, under the Czech legal framework it seems difficult to establish jurisdiction in foreign bribery cases and to hold companies responsible for subsidiaries, joint ventures and/or agents. Foreign bribery is not covered as an individual criminal offence in the Czech Penal Code. Foreign bribery cases are prosecuted in the same regime as cases of domestic bribery.

Inadequacies in enforcement system: There are some inadequacies. Political decision-makers are increasingly heard to comment publicly on ongoing investigations and prosecutions, which may exert an undue influence. The Supreme Public Prosecutor, a political appointee chosen by the government, can intervene in any investigation and prosecution. There is frequent reshuffling in anti-corruption law enforcement – the UOKFK head has changed five times in recent years – and frequent personnel and organisational changes in the Ministry of the Interior, which is responsible for government anti-corruption policy; two such shakeups occurred in 2009. Competencies are unclear (shifting responsibility for the government's anti-corruption policy and strategies). The lack of sufficient knowledge of the technical non-criminal regulations (e.g. the Commercial Code, Act on Public Contracts, Taxes etc.) on the part of the police is a significant barrier to corruption enforcement (domestic and foreign). Protection for whistleblowers is lacking and the government does little to raise awareness about the prohibition on foreign bribery.

Access to information about cases and investigations: Publicly available statistics fail to distinguish between domestic and foreign bribery. The State Prosecutor's Office and Anti-corruption Police reportedly do not keep sepa-

rate statistics for foreign bribery. To determine the number of foreign bribery cases, it would be necessary to search all bribery cases for their foreign bribery components. Czech court proceedings are subject to the principle of public disclosure, and decisions are always declared publicly prior to publication.

ACCESS TO INFORMATION ABOUT COURT DECISIONS

The Constitutional Court ruled on 30 March 2010 that court judgments not yet in force (i.e. those that may be reversed on appeal) shall be made public. The Court explained that public discussion of decisions not yet in force could contribute to impartial decisions on appeal by disclosing possible inadmissible influences on judges.

Requirements of export credit agencies: The Czech Export Bank (CEB) requires companies to make a no-bribery commitment extending to their agents and business partners; prove that they apply management control systems to fight bribery; [53] declare that they have not been convicted for breach of anti-bribery laws; and, on request, identify persons acting on their behalf and the purpose of commissions and fees agreed upon and paid. Export credits can be withdrawn if a company fails to comply. There is a lack of information about enforcement of the requirements.

Facilitation payments: Any informal facilitation payment when dealing with public administration is considered illegal. Nevertheless, small gifts such as chocolate or alcohol to medical doctors and administrative personnel are very common. These gifts are usually permitted by supervisors and therefore not considered bribes in practice.

Recent developments: A new, completely revised Criminal Code took effect in January 2010, abrogating the present Criminal Code No. 140/1961 Coll., as amended. Although the new legislation still fails to recognise the criminal liability of legal persons, it provides increased opportunities to establish the criminal liability of individuals (members of statutory bodies, senior staff and others) responsible for the above-mentioned crimes in business relations (with business partners or consumers). The scope of liability has also been significantly broadened. The new Code clearly criminalises passive and active bribery in private business relations, and introduces the crime of failure to report an offence (§ 368), with a maximum sentence of up to three years imprisonment. An amendment to the Public Contracts Act effective January 2010 introduces a so-called blacklist and debarment in public contracting. The Ministry of Justice is currently preparing a draft law on criminal liability of legal persons and proceedings against them (see "Resolution of the Government of the Czech Republic No. 1451", dated 30.11.2009).[54]

Recommendations: Introduce criminal liability of legal entities. Enhance protection of whistleblowers in both the private and public sectors. Increase the independence of the Supreme Public Prosecutor. Increase the independence and expertise of public prosecutors. Build capacity in law enforcement agencies, especially in the UOKFK's staff responsible for foreign bribery investigations, and ensure the unit's independence and stability. Create specialised units for "corruption crimes" in law-enforcement agencies (Special Court, Special Prosecutor's Office). Conduct an awareness-raising campaign.

DENMARK

ACTIVE ENFORCEMENT: 14 cases. One investigation. Share of world exports is 1.0%.

Foreign bribery cases or investigations: Fourteen Danish companies have been charged in Oil-for-Food-related cases for violation of the law implementing the EU foreign trade directive and, in at least one case, bribery. Eleven have reportedly settled their cases. [55] One of these cases involved water and gas supply and treatment company **AVK Holding,** which was reported in February 2010 to have paid a total of 1.2 million Danish crowns to the Public Prosecutor for Serious Economic Crime (SOK) in a settlement consisting of a 875,000-crown penalty plus statutory interest of 325,000 crowns. Prosecutors had initially demanded confiscation of AVK Holding's profits received through an order to Iraq eight years ago. One of its employees in Dubai illegally entered into an agreement with an agent in Jordan to pay bribes in connection with the order. In the same week, pharmaceutical company **Leo Pharma** paid 8.5 million crowns to the SOK to settle another Oil-for-Food case. [56] In spring 2008 **Missionspharma** was formally put under investigation by the Danish authorities for alleged bribery and, in the alternative, alleged unlawful commissions in connection with a UN project in the Democratic Republic of Congo. In late January 2009 the Danish Public Prosecutor dropped the core charge of bribery. [57] UK police were also reportedly conducting an investigation in relation to the Congo project. [58] In other jurisdictions, the healthcare company **Novo Nordisk** entered into a settlement with the US Securities and Exchange Commission and Department of Justice in May 2009, paying a US $18 million fine for alleged kickbacks in relation to the UN Oil-for-Food Programme. The company was reportedly under investigation in Sweden in 2009 in relation to payments for a trip to South Africa for Swedish medical personnel. [59]

Domestic bribery by foreign companies: None known.

Inadequacies in legal framework: The *OECD Phase 2 Report* on Denmark of June 2006 called on Denmark to amend its law to increase penalties for foreign bribery, and the *GRECO Third Evaluation Round report on Denmark* of July 2009 was also critical of Denmark's low sanctions for bribery of public officials. [60] The legal framework has inadequate provision for holding companies responsible for subsidiaries, joint ventures and/or agents and for holding high level company officials responsible. Denmark has a dual criminality requirement for offences committed abroad, which weakens its ability to punish corruption committed in other states. To date, the OECD Convention has not been brought into force in the two Danish dependencies, the Faroe Islands and Greenland.

Inadequacies in enforcement system: First and foremost there is a lack of political will. There is also inadequate whistleblower protection, especially in the private sector, and an inadequate framework for reporting by key agencies.

Access to information about cases and investigations: The government provides no information on numbers or details of cases and investigations.

Requirements of export credit agencies: Companies are required as a condition for export credit eligibility to make a no bribery commitment and to disclose if they have been debarred by a multilateral development bank, but they are not required to sign an anti-corruption clause as part of the contract nor is eligibility restricted based on previous bribery-related offences. They are also required to declare whether they are using an agent and state the agent's fee. Export credits will be suspended if the above-mentioned commitments are violated. Bribery has not been identified in export credit-supported transactions and referred to law enforcement authorities.

Facilitation payments: Facilitation payments are not clearly prohibited under Danish law, so the situation is unclear.

Recommendations: Introduce higher sanctions and a high level of whistleblower protection.

ESTONIA

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

Foreign bribery cases or investigations: None.

Domestic bribery cases or investigations: None known.

Inadequacies in legal framework: There are several weaknesses. The OECD's *Phase 2 Report on Estonia of June 2008* recommended that Estonia should broaden the foreign bribery offence; broaden liability of legal persons; establish nationality jurisdiction for legal persons for foreign bribery; and take steps to ensure dissuasive sanctions.[61]

Inadequacies in enforcement system: The OECD Working Group on Bribery's *Phase 2 Report of June 2008* recommended that Estonia ensure prosecutorial independence; provide training for prosecutors and other law enforcement personnel; strengthen protection of whistleblowers in the public and private sectors. The special state prosecutors should be educated on leading the investigation and prosecution of foreign bribery cases.

Access to information about cases and investigations: Details are not available on investigations. Court rulings are accessible.

Requirements of export credit agencies: Companies applying for export credits are required to make a no-bribery commitment that extends to conduct by anyone acting on behalf of the applicant. The agency responsible for officially supported credits in Estonia is the Credit and Export Guarantee Fund (KredEx), which voluntarily applies the 2006 OECD Council Recommendation on Bribery and Officially Support Export Credits. Companies do not appear to be required to demonstrate that they have effective anti-bribery compliance programmes. They are also not required to report on compensation for agents.

Facilitation payments: Prohibited by law. Anti-Corruption Act § 26 prohibits acceptance of gifts or other benefits made or granted by persons to any official or his or her close relatives or close relatives by marriage.

Recent developments: As noted by the *Compliance Report on Estonia* adopted by GRECO in March 2010, Section 288 (3) of the Penal Code has been amended in order to provide for broader coverage in respect of officials of foreign states and international organisations. The draft Anti-Corruption Act, currently pending before Parliament, extends the definition of an official to persons who, *inter alia,* perform "legislative tasks". Furthermore, draft amendments to

the Penal Code, also pending in Parliament, contain a reference to that definition in order to criminalise active and passive bribery of members of domestic public assemblies in Estonia. The draft laws are expected to be adopted in 2011.

Recommendations: Adopt the new Anti-Corruption Act and amendments to the Penal Code, which would help establish a comprehensive legal framework for countering foreign and domestic bribery. Provide stronger awareness-raising that targets private sector organisations both on the newest legislation adopted and also on the risks of doing business in certain countries. Also help increase the general knowledge of businesses on anti-corruption programmes.

FINLAND

MODERATE ENFORCEMENT: Five cases and five investigations. Share of world exports is 0,5%.

Foreign bribery cases or investigations: One major criminal case was concluded and one was commenced in 2009. In May 2009 the engineering company **Wärtsila** reported that a retired senior executive had been charged with bribery in relation to a power station deal in Kenya a decade earlier. [62] In February 2010 a court found the former executive not guilty. There have been no further reports about the **Patria** investigation concerning alleged bribery in Slovenia to obtain a contract to supply 135 armoured vehicles to the Slovenian army, as well as allegations of bribery in Croatia and Egypt. In another case concluded in 2005, a court reportedly found the company **Wärtsila Finland**, a subsidiary of Wärtsila Corporation, and one of its employees not guilty of bribery.[63] The Finnish company **Instrumentarium** was reportedly under investigation by the Finnish National Bureau of Investigation in connection with the sale of hospital equipment destined for Costa Rican hospitals. [64]

In other jurisdictions, the Bangladesh Anti-Corruption Office has reportedly been investigating since 2007 a graft case against a former prime minister accused of taking bribes from **Wartsila Power Development Ltd Consortium** in exchange for contracts for three barge-mounted power plants. [65] Further, in 2003 the Office of the Prosecutor General in Sweden opened an investigation of Finnish ship engine manufacturer **Wärtsilä** based on allegations that the company paid a bribe of € 1 million in 2000 and 2001 to an executive of a Swedish shipping company, Rederi AB Gotland. According to media reports, Wärtsilä claimed the Swedish executive had misled the company, and as a result Wärtsilä paid the money to a private bank account in Switzerland held by a Singapore-based consultancy called Euro Marine [66] In other jurisdictions, two Norwegian employees of the state Labour and Welfare Service were convicted in Norway in June 2009 of taking bribes from a Finnish businessman for the award of contracts for language courses for Finnish nurses. In Slovenia, the Patria case is also under investigation. The current investigation in Germany of alleged **Hewlett Packard** bribery in Russia named a former Finnish executive of the company as a target of the probe. [67]

Domestic bribery by foreign companies: One investigation is in progress, so no information is available.

Inadequacies in legal framework: The statute of limitations for bribery is only five years and ten years for aggravated bribery. This may be extended by one year in extraordinary circumstances. The GRECO *Third Evaluation Report of 7 December 2007* found that the extension period appeared short and might hamper the initiation of investigations and prosecutions.

Inadequacies in enforcement system: None significant.

Access to information about cases and investigations: Numbers and details of cases are accessible.

Requirements of export credit agencies: Companies are required to make a no-bribery commitment but this does not extend to conduct by an agent or business partner. As a condition for export credit eligibility, companies are not required to demonstrate they have effective anti-bribery compliance programmes nor is reporting on compensation for agents required.

Facilitation payments: Not prohibited in law.

FRANCE

MODERATE ENFORCEMENT: 18 cases and 10 investigations (as of April 2010).
Share of world exports is 4.0%.

Foreign bribery cases or investigations: Of the 18 cases, eight were prosecutions, all of which have been concluded. One of these resulted in conviction (2009), another was discharged, three were dismissed and three were closed after preliminary investigation. The rest were judicial investigations. There is no official information about the cases, but in 2008 it was reported that investigating magistrate Philippe Courroye had pushed five Oil-for-Food cases to the prosecution stage, including one involving **Total** executives, but they had stalled following the reassignment of that magistrate. [68] In April 2010, according to media reports, a French investigating magistrate filed preliminary charges accusing Total of having bribed Iraqi officials while Saddam Hussein was in power in order to secure oil supplies in connection with the UN Oil-for-Food Programme. This reportedly marked the first time the company itself was being investigated, rather than only company executives. [69] There have been media reports in the past about other judicial investigations concerning **Total** (2002), **Halliburton** (2003), **Alcatel** (2004), **Thales** (2004) and **Alstom** (2007).

A number of older cases also re-emerged in 2009-10. In December 2009 French lawyers filed a complaint with Parisian prosecutors at the request of the Malaysian human rights organisation Suaram, on behalf of Malaysian victims, requesting an investigation of alleged bribery and kickbacks in a 2002 sale of submarines to Malaysia by the stateowned French company **DCN**, whose subsidiary **Armaris** is the manufacturer of Scorpene-class diesel submarines. [70] As a result of this complaint the Public Prosecutor opened an investigation in February 2010. **DCN** was also named in an article in the French newspaper *Liberation* in in November 2009 in connection with allegations of bribery in Pakistan. The article cited documents allegedly showing that in June 1995 two intermediaries received 55 million francs in connection with a 5.41 billion franc (approximately € 825 million or US $1.23 billion) sale by DCN of three Agosta-90 submarines to Pakistan in 1994. [71] The sale was allegedly associated with commissions promised by the French presidential candidate Eduard Balladur, and the president of Pakistan allegedly received about US $4.3 million. [72] Jacques Chirac reportedly cancelled the commissions when he came into power.

Investigations, prosecutions or settlements in other jurisdictions involving French companies, their subsidiaries or their employees have related to **Alcatel** (now Alcatel-Lucent, in Costa Rica, Switzerland, US); **Alstom** (Australia, Brazil, Greece, Poland, Spain, Switzerland, UK)[73]; **Areva** (Mexico, fine imposed), **Armaris** (India, case)[74], **Dumez** (Argentina, Lesotho and Switzerland)[75], **EADS** (Austria, India, South Africa; no charges brought)[76]; **Schneider Electric** (Spie Batignolles; Lesotho, fine); **Technip** (US)[77]; **Thales** (Argentina, pending; South Africa, charges dropped); **Total** (Italy) and **Vivendi** (Aeolia) (Italy, senior executive convicted). In May 2010 an international court of arbitration found against Thales in the Taiwan frigates case concerning the unauthorised use of commissions in its 1991 sale of six frigates to Taiwan. The court found that Thales must pay around € 630 million (US $ 830 million) in damages. Thales disputes the decision. Media reports have claimed that the main stake in the contract was held by DCN and that the French government would pay 70%. [78] Further, **Alcatel-Lucent** concluded settlements in Costa Rica [79] and the US in 2010. [80] (See also relevant country reports; and see Section 4, "Cases", for more details on the Alcatel and Alstom investigations.)

Domestic bribery by foreign companies: No known cases.

Inadequacies in legal framework: There are several inadequacies. Currently, one main difficulty is the short duration of the statute of limitation, three years, which is the same for all crimes of the same category. However, the period may be extended if certain procedural steps have been taken in the meantime. Furthermore, courts have postponed the starting point of the limitation period to the date of the last step in the chain of corruption. The GRECO *Third Evaluation Report on France of March 2009* also found problematic the restrictions on jurisdiction when an offence is committed abroad. [81] The jurisdiction problem, according to GRECO, is that corruption offences committed abroad can only be investigated by French authorities at the request of the foreign prosecutors and following a complaint from the victim or his or her beneficiaries, or an official report by the authorities of the country where the offence was committed. Complicity in any offence committed by a French person abroad is only investigated if a final decision in foreign courts has been reached. This makes it very difficult to prosecute acts of complicity that include, for example, the instigation by the parent company in France of a corruption offence by a local branch abroad.

Inadequacies in enforcement system: Key weaknesses include inadequate resources and difficulties experienced by investigators and prosecutors to obtain mutual legal assistance. GRECO's *Third Evaluation Report on France of November 2009* expressed concern about the fact that fines imposed are apparently not always enforced and recommended all necessary steps be taken to ensure the penalties imposed are properly enforced in regard to corruption and trading in influence. (See also the discussion of proposed elimination of investigating judges below in "Recent developments".)

Access to information about cases and investigations: There is access to information about the numbers of cases but not case details. According to the law, no information can be disclosed about pending investigations unless it is a public disclosure by the prosecutor or the judge.

Requirements of export credit agencies: A no-bribery commitment is required. This declaration is part of the export credit agency (ECA) application and extends to conduct by an agent or business partner. When the applicant is not the exporter but a bank, the bank and the exporter must fill in the declaration. They must make the declaration again when the contract has been completed. The commitment applies also to the persons working for the exporter or the bank within the scope of the contract. Companies are not required to demonstrate that they have effective anti-bribery compliance programmes, but the declarations are subject to sanction for false statements. Declarations are verified by the ECA only if the firm is on an exclusion list. Exporters do have a continuing obligation to inform the ECA of changed circumstances. Until now, the French ECA has never questioned and/or rejected a no-bribery declaration.

Facilitation payments: Prohibited by law, but there have been no convictions. The Act of 2000 does not expressly prohibit facilitation payments as such, but it also does not fix a threshold above which corruption is prohibited, thus meaning that even small facilitation payments are prohibited.

Recent developments: The government has prepared a draft bill to extend the statute of limitation from three to six years, but with the starting point of the prescription period when the offence occurred. Currently, while the statute of limitations is only 3 years, the courts have postponed the starting point of the limitation period to the date of the last step in the chain of corruption. Fortunately this part of the reform was dropped on 20 April 2010. The Minister of Justice has expressed the intention to extend to all crimes, including corruption, a prescription period that sets the starting point of the three-year prescription period at the date the facts were discovered (instead of the date when those facts occurred). A positive development is a new draft bill on plea bargaining, which would be applicable in corruption cases. On the negative side, the government has proposed a legal reform entailing elimination of the independent investigating judge (*juge d'instruction*): all the investigations would be launched by the Public Prosecutor, who would have a choice whether or not to open an investigation upon receiving a complaint. Currently, one can make a complaint either to the prosecutor or, if he does not open an investigation, to the chief judge of the court (*doyen des juges d'instruction*), who will open it automatically. The government's proposal is a matter of concern because the Public Prosecutor receives his instructions from the Ministry of Justice and there would be a chance that sensitive cases would not be prosecuted.

Recommendations: Introduce an independent public prosecutor if the suppression of investigative judges occurs. The prosecutor would be at the top of the hierarchy and appointed by Parliament and would have authority over the careers of prosecutors so pressure could not be used by government. Establish the right of specialised NGOs to lodge admissible complaints for foreign bribery cases. Address weaknesses in the legal framework and enforcement system.

GERMANY

ACTIVE ENFORCEMENT: 117 cases in total. 24 investigations underway. Share of world exports is 8.9%.

Foreign bribery cases or investigations: Seven new cases were brought and 20 were concluded in 2009, with 7 convictions and 13 terminations. Of the 117 cases, 93 have been concluded and 30 led to convictions.

CONVICTION OF KARL-HEINZ SCHREIBER FOR TAX EVASION

In May 2010, after a 10-year process of extradition from Canada, Karl-Heinz Schreiber was sentenced to eight years imprisonment for tax evasion after being found to control two shell companies in Liechtenstein and Panama. The prosecution claimed he had received DM 67.75 million in commissions between 1988 and 1993. The German magazine Der Spiegel wrote that Schreiber had received these commissions from Thyssen and Airbus [82] on sales of aircraft and tanks to Canada, Thailand and Saudi Arabia, some of which he transferred to recipients in politics and business. [83] Schreiber was wanted in Germany from 1999 onwards to answer several criminal charges, including fraud and bribery, which allegedly had a role in bringing down a government there.

One of the concluded cases involved a December 2009 settlement by **MAN SE (MAN Group)**, a leading manufacturer of trucks and engineering equipment (29.9 per cent owned by Volkswagen). It resolved an investigation by the Munich Prosecutor's Office into alleged bribery between 2002 and 2009 inside and outside of Germany by its truck

and turbine manufacturing units, **MAN Nutzfahrzeuge AG** and **MAN Turbo AG.** Some of the alleged bribes were made to procure sales of trucks and buses in the period 2002-09 to procure sales of trucks and buses. Under the settlement, the MAN Group agreed to € 150.6 million (US $222 million) in fines, equal to the illegal profits from contracts won between 2002 and 2009, for which the alleged bribes were paid. [84] The fine was divided equally between the two units. The Munich Prosecutor's Office reportedly fined MAN Nutzfahrzeuge AG for failing to provide adequate oversight to prevent bribes. While prosecutors noted MAN SE's "willingness to cooperate", the company admitted no wrongdoing as part of the settlement. The settlement came relatively quickly, after investigators raided 59 company sites and seven private homes in May 2009 and questioned more than 100 people, including employees at MAN and potential customers, about possible bribery and tax-evasion in connection with the case. [85] German prosecutors are continuing their investigation of individuals. According to media reports, the former chief executive of MAN SE's turbine manufacturing unit, MAN Turbo AG, was indicted on eight counts of bribery in the came case, [86] to which he pled guilty in June 2010 in exchange for a suspended sentence. He reportedly paid a bribe to obtain a major contract with MunayGaz in Kazakhstan for construction of a gas turbine compressor station, which he claimed was solicited in 2004. [87]

In April 2010 a German court found two former **Siemens** managers guilty of breach of trust and abetting bribery for their roles in a scandal involving alleged bribery of government officials and business contacts to win telecom contracts in Russia and Nigeria. [88] The former financial head of Siemens' telecommunications unit was sentenced to two years' probation and a € 160,000 (US $215,300) fine, and the former accounting head of the same unit received 18 months' probation and a € 40,000 fine. In April 2010 **Hewlett Packard** was reportedly under investigation in Germany and Russia. [89] German prosecutors are said to be looking into the possibility that HP executives paid some € 8 million (US $10.9 million) in bribes to win a € 35 million contract to sell computer gear through a German subsidiary to the prosecutor general of the Russian Federation – the office that handles criminal prosecutions in Russia, including corruption cases. It was reported the next day that the US had joined the probe. [90] HP reportedly claimed the "alleged conduct occurred almost seven years ago, largely by employees no longer with HP". [91] Three former executives, one US American, one German and one Finnish, are reportedly being targeted by the probe.

In the ongoing **Gildemeister** investigation, first reported in 2008, the Bielefeld prosecutor is reportedly looking into allegations of illicit payments from 2002 to 2005 in connection with machine sales to Russian customers. One suspect is the former managing director of **DMG Russland**, part of the Gildemeister group. [92] Arrests were made and witnesses questioned in 2009. Additionally, according to media reports, **Ferrostaal**, a provider of industrial services, is under investigation in Germany for a range of alleged illicit transactions. In April 2010 the Munich Public Prosecutor indicted the president of Ferrostaal. (see case study on Ferrostaal in Section 4, "Cases"). **Giesecke & Devrient** is also reportedly under investigation in connection with that case. An investigation has reportedly been underway since 2006 concerning alleged corruption in Nigeria by employees of **Julius Berger Nigeria**, one of Nigeria's largest companies, in connection with the Bonny Island liquid natural gas (LNG) project; it includes allegations of payments to a political party. [93] Julius Berger is minority-held (49 per cent in 2008) by **Bilfinger Berger Nigeria**, a wholly owned subsidiary of **Bilfinger Berger AG**. [94] In another case, the Munich Public Prosecutor is investigating possible bribery in connection with the sale of the Austrian Hypo Group Adria Alpr to the German bank **BayernLB**. [95]

In other jurisdictions, a US investigation of **Daimler** ended in a settlement in April 2010 (see US report) and an investigation of a **Deutsche Telekom** subsidiary in Hungary was terminated (see Hungary report). In May 2010 Nigeria's Economic and Financial Crimes Commission (EFCC) reportedly asked German authorities for information in connection with the sentence imposed by a Munich court on two former Siemens managers found guilty of paying bribes to obtain telecommunications contracts in Nigeria. [96]

Domestic bribery by foreign companies: The US previously brought FCPA cases against US companies **Bristol Myers Squibb, Micrus Corporation** and **Syncor** on charges of bribery in the health sector in Germany. [97] On the private-to-private corruption front, Frankfurt prosecutors in 2006 were reportedly investigating at least 10 automotive parts suppliers for bribery of carmakers. [98] The suppliers included the French company **Faurecia** (70 per cent owned by the French PSA); **Grammer,** a German subsidiary of the US company **Lear**; and a subsidiary of the Austro-Canadian company **Magna Steyr** (a subsidiary of Canadian company Magna International). [99] The car manufacturers involved reportedly included Volkswagen, Audi and BMW. Also in 2006 Hamburg prosecutors were reportedly investigating alleged private-to-private bribery of purchasing officers of German companies, such as Media Markt and Saturn, by senior sales staff of the Dutch company **Philips** in exchange for better shelf space. [100]

Inadequacies in legal framework: Inadequacies are present in the form of lack of criminal liability of corporations and inadequate sanctions, although this has not prevented enforcement. The Federal Ministry of Justice refers to the *Ordnungswidrigkeitengesetz* (Act on Administrative Offences), which allows imposition of strict sanctions and fines on corporations, and points out that such fines have in fact been imposed (e.g. in the Siemens case). The

Ministry also argues that Germany is required to impose only liability, not criminal liability, on corporations. The TI Germany expert nevertheless believes that these elements of the legal system should be improved.

Inadequacies in enforcement system: There are no significant inadequacies although there is room for improvement. Organisational procedures and institutional structures for the investigation and prosecution of corruption cases vary from state to state. But in recent years, the *Bundesländer* (federal states) have tended to concentrate responsibility for prosecution of foreign bribery cases in special prosecution units and made efforts to exchange data, experience and best practice models among prosecution authorities.

Access to information about cases and investigations: In general, neither the federal government nor individual *Bundesländer* issue reports on foreign bribery cases and allegations. This lack of information is especially true of pending cases, in which investigations are not yet complete. However, the Federal Ministry of Justice did make an "anonymised" report available to the OECD Working Group on Foreign Bribery in August 2009. Official information from prosecutors or courts on investigations or pending cases is limited by protection of defendants' privacy rights and the legal presumption of innocence. On the other hand, public information in the press and other media on interesting investigations and bribery cases, including foreign bribery, is not restricted. Multiple news services quote court documents and statements by prosecutors in reporting foreign bribery prosecutions and investigations, such as those involving Ferrostaal and Hewlett Packard, as well as a recent court judgments against Siemens employees.

Requirements on export credit agencies: As a condition for export credit eligibility, companies are required to make no-bribery commitments that extend to agents, although they are not required to demonstrate robust compliance programmes for preventing and detecting bribery or to report on use of agents. Export credits are suspended if these commitments are violated. Eligibility is restricted in case of previous bribery-related offences. Bribery has not as yet been identified in export credit-supported transactions.

Facilitation payments: These are not prohibited by law for foreign bribery, only for domestic bribery.

Recent developments: In December 2009 GRECO published its *Third Evaluation Round Report on Germany* which that criticised the fact that most German bribery offences (including foreign bribery offences) are too narrow and should be expanded. The federal government submitted a bill to the Parliament (after a broad public consultation process) that would have incorporated into German law several obligations The GRECO report also indicated that "a particular source of concern is the fact that certain categories of persons (including members of parliament and local council members who are not officials) are subject to limited anti-corruption provisions. This could generate the impression, within the wider public, that parts of German society are not subject to the same rules as the rest of the population, when it comes to the preservation of integrity in social, political and business relations." Germany has subscribed to in international conventions, including the UNCAC. Unfortunately, the Parliament failed to adopt the draft law in the last legislative period and the bill lapsed.

Recommendations: Ratify the UNCAC and expand the possibility of punishing members of Parliament for corruption. Ratify and implement the two Council of Europe Conventions on Corruption. Introduce criminal liability of legal persons. Strengthen and centralise prosecution entities for combating foreign bribery in the *Bundesländer* by creating special prosecution units within the *Länder* and continue to promote effective exchange of experiences and best practices among law enforcement authorities. Establish a Central Register for the purpose of debarring corrupt companies from public contracts. Strengthen the rules of export credit insurance as to bribery and foreign bribery.

GREECE

LITTLE OR NO ENFORCEMENT: No known cases. Share of world exports is 0.4%

Foreign bribery cases or investigations: There is no information available about any cases.

Domestic bribery by foreign companies: The only information available is from law enforcement authorities in other jurisdictions and from the media. The **Siemens** case is a major scandal in Greece, with Siemens managers convicted by foreign courts for bribing Greek politicians of the two major political parties, as well as high-ranking government officers. Cases are reportedly pending before Greek courts involving six Siemens employees relating to government telecommunications and transportation contracts. A Siemens-related case has also been brought against a former government minister. [101] In other jurisdictions, in a case in the UK in April 2010, a **DePuy** executive pleaded guilty in connection with £4.5 million in corrupt payments to medical professionals within the Greek state healthcare system. (See report on UK) Munich prosecutors were reported in March 2010 to have evidence that allegedly showed that € 10-12 million was paid to officials in Greece to secure the purchase in 2000 of German

submarines by the Greek navy from **Ferrostaal**, then a subsidiary of the German **MAN Group.** Sources close to Greek Defence Minister Evangelos Venizelos reportedly said the matter would be investigated once information was made available by the German authorities. [102] The **Daimler** settlement in the US in April 2010 followed a Securities and Exchange Commission complaint that included, inter alia, allegations of payments to officials in Greece to secure the sale of 645 vehicles to a Greek government agency. [103] (See also US report).

Inadequacies in legal framework: The main inadequacies are jurisdictional limitations and lack of criminal liability for corporations. In addition, the penalties for foreign bribery are not high enough and there is a special defence of "effective regret", which exempts bribe givers when they report the bribe and results in return of the bribe to the briber. Also there is a special law statute of limitation for the prosecution of members of government and former members of government. Finally, the Minister of Justice may, with approval of the Council of Ministers decide to postpone prosecution of "political acts" and "offences through which the international relations of the State may be disturbed".

Inadequacies in enforcement system: There are several inadequacies. These include: a decentralised organisation of enforcement with lack of coordination between investigation and prosecution; lack of training of investigators to investigate this kind of offence; inadequacy of complaints mechanisms and whistleblower protection; and a lack of public awareness-raising. There are also delays in judicial processes and concerns have been raised about judicial independence. Additionally, investigations are hampered by the inability of investigators and prosecutors to obtain mutual legal assistance.

Access to information about cases and investigations: Neither number nor details of cases are accessible. Information is provided only by the media, as well as political rumours and cases in other jurisdictions.

Requirements of export credit agencies: There are no requirements of no-bribery commitments or effective anti-bribery compliance programmes, nor are companies required to report on payments to agents.

Facilitation payments: Prohibited by law but not in practice.

Recommendations: Introduce effective enforcement of the existing legal framework without preferential treatment, including anti-money laundering legislation. Introduce stiffer penalties for active and passive bribery. Reinforce the judiciary's independence. Introduce whistleblower protection. Educate the public, from an early age, about the unpleasant consequences of the phenomenon of corruption.

HUNGARY

LITTLE OR NO ENFORCEMENT: 25 cases concluded and no investigations. Share of world exports is 0.6%.

Foreign bribery cases or investigations: One of the 25 cases was concluded in 2009, involving the offence of "profiteering with influence in international relations." Nineteen of the cases were interrelated and date back to 2004. No data is publicly available on investigations. The media reported on a Hungarian investigation in 2007 and 2008 into **Magyar Telekom** activities in Macedonia and Montenegro. The investigation was aborted, reportedly for "jurisdictional reasons" in autumn 2008. However, information has emerged as indicated in the box below.

MAGYAR TELEKOM SEC FILING AND INTERNAL INVESTIGATION

In December 2009 Magyar Telekom made a filing with the US Securities and Exchange Commission containing information about its activities in Macedonia, including the following: [104]

- Between 2000 and 2006 a small group of unnamed former senior executives from headquarters and a Macedonian affiliate spent € 24 million through over 20 consultancy, lobbying and other contracts.
- The contracts were used to create a pool of unaccounted cash.
- The purpose of the contracts and unaccounted cash was to "obtain specific regulatory and other benefits from the government of Macedonia".
- Magyar Telekom "generally received the benefits sought and then made expenditures under one or more of the suspect contracts".

continuation next page

On 3 December 2009 Magyar Telekom announced on its homepage the final results of an internal investigation into the Montenegro case based on the findings of the White and Case law firm. [105] This included the following conclusions:

- There was insufficient evidence that expenses for the four advisory contracts (€ 7 million) had legal purposes.
- There was convincing evidence that those expenses occurred in dealings for unlawful aims.
- There was evidence that documentation on the actions in Montenegro were destroyed.
- Apart from the above-mentioned expenses, between 2000 and 2006 some € 24 million was paid for 20 contracts for unclear (advise, lobbying) unlawful purposes. The ultimate beneficiary of these payments was not clear in the investigations.

It is unknown what the next steps will be following these conclusions.

There were press reports in 2007 and 2010 about improprieties in the acquisition by the Hungarian oil and gas company **MOL Magyar Olaj és Gázipari Nyrt (MOL)** of the Croatian oil company **INA (Industrija Nafte d.d.)** with the participation of the Hungarian **OTP Bank Nyrt (OTP)** and **Podravka d.d**, a Croatian food company (which had its own scandal running). [106] Some of the information is based on announcements by representatives of OMV Aktiengesellschaft, a competitor of MOL in the acquisition. MOL announced that there is no case at all. [107] According to the allegations some government-related officials planned the acquisition of Podravka shares with the financial support of the OTP Bank using funds received from MOL. In turn, MOL was interested in the privatisation of the Croatian company INA. The companies in the two cases described above, Magyar Telekom, MOL and OTP are among the biggest in Hungary.

Domestic bribery by foreign companies: There are no publicly available data or statistics on domestic bribery by foreign companies. The National Asset Management Company is reportedly now investigating **Daimler's** 2005 sales contract with the state-owned bus company Volanbusz. The Prime Minister mandated the investigation in March 2010 after the US Justice Department charged Daimler with paying bribes to officials in at least 22 countries to win lucrative contracts, including more than € 300,000 to win the 2005 Volanbusz contract. [108] Additionally, the media has speculated that an investigation is under way of the acquisition of 170 underground trains from **Alstom** by a contract in March 2006. [109] There were also media reports about Hungarian investigations of alleged corruption in deals involving sales of **Gripen** jets to the Hungarian government; **Siemens'** sale of trains to the Budapest City Council; **Strabag's** road construction contracts valued at € 660 million; and **Rail Cargo Austria's** purchase of MAV Cargo in a privatisation. In the Gripen case a parliamentary committee was appointed in 2007 to investigate Hungary's procurement of Gripen jets from 2001 but did not look into the question of corruption. In both the Strabag and the Rail Cargo cases there were allegations of payments to political parties. There were also allegations of improprieties in relation to possible government financial support for **Grupo Milton** for the MOTO GP racing track at Sávoly. After protests by NGOs such as TI Hungary the government support was stopped. [110]

Inadequacies in legal framework: The main inadequacy is that the statute of limitations terms are three years and in some cases five years, which begins to run from the time the bribery occurred (not discovered). It is interrupted, though, by any actions of the investigators or prosecutors taken in the criminal case, and after that it begins to run again from that time.

Inadequacies in enforcement system: There are several deficiencies. Although there is no proven evidence of political control over enforcement, some experienced experts and Hungarian NGOs have drawn attention to structural problems (campaign and party funding, public procurement, lobbying registration, legal environment of local governments). Furthermore, it seems that authorities only start investigations based on complaints that are not based solely on press information. Training for investigators is insufficient and whistleblower protection is inadequate. A further inadequacy is the absence of a central authority for strategic planning or for the coordination of enforcement and more then 10 authorities are obliged to participate in the fight against corruption. The task of coordination and control over enforcement is only partly fulfilled by the government. Further, there are no government anti-corruption campaigns.

Access to information about cases and investigations: There are still no publicly available statistics on foreign bribery investigations or prosecutions. The so-called "Uniform Criminal Registry of the Police and Prosecution" (UCR) is available on the Ministry of Justice website, but it does not contain separate information on foreign bribery investigations or cases. Nor does the UCR contain criminal court statistics. Only the number of recorded cases is available in the statistics, and there is no detailed information on concrete cases.

Requirements of export credit agencies: A no-bribery commitment is required. The representatives of the company have to sign a commitment that no bribery actions were taken on behalf of the company or its employees or

agents, and they have not been investigated for bribery in the previous five years. Commitments do not extend to conduct of an agent or business partner. The applicants are obliged to designate the name of agents associated with the supported transaction, their beneficiary, commission fee and the legal basis. Companies are not required to demonstrate that they have effective anti-bribery compliance programmes.

Facilitation payments: Prohibited by law (criminal law) but not in practice.

Recent developments: The anti-corruption action plan of 2008 was improved in 2009, introducing whistleblower protection, ethical guidelines for civil servants and establishment of the so-called "Authority for Protection of Public Interest, but no anti-corruption strategy was adopted. Parliament approved two acts in 2009 relating to whistleblowers. The first act on the protection of whistleblowers was adopted, but the second act on the Authority for Protection of Public Interest, which would have provided guarantees of the process and institutional features, was not signed by the president. The result is that effective enforcement is impossible. Some improvements were planned to the act on lobbying, but these were not initiated in the Parliament. Another initiative to make party incomes and expenses more transparent was not accepted by Parliament in November 2009.

Recommendations: Improve the legal framework, including strengthening whistleblower protection and regulating lobbying. Restart the work of the Anti-Corruption Coordination Committee and include the issues on foreign bribery in the government's anti-corruption strategy. Train officials at the Hungarian Tax and Financial Control Administration (APEH) to recognise bribery. Investigators, prosecutors and judges should also be trained to provide more effective enforcement. Improve awareness-raising about foreign bribery and establish a website to facilitate reporting of bribery cases. Strengthen regulation of finance of political parties and campaigns to make it more transparent and to meet auditing and accounting requirements. Simplify the act on public procurement aiming at transparency and efficient enforcement. Strengthen coordination and investigation in procurement and in cartel cases. Strengthen coordination of the fight against corruption at a governmental level. Strengthen the regulation of EU-financed programmes.

IRELAND

LITTLE OR NO ENFORCEMENT: No cases and number of investigations unknown.
Share of world exports is 1.4%.

Foreign bribery cases or investigations: Four Oil-for-Food investigations were reported in 2008. The latest information is that a preliminary file was submitted to the Director of Public Prosecutions for legal direction and a number of matters are currently being clarified.

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

Inadequacies in legal framework: There are numerous inadequacies. In its March 2010 *Phase 2 Follow-up Report on Ireland* the OECD Working Group on Bribery noted that it was "seriously concerned as regards Ireland's legal regime for liability of legal persons. The lack of effective corporate liability for foreign bribery in Ireland has not been rectified, which poses major issues in terms of compliance with Article 2 of the Convention. Ireland has also not addressed the issue of coverage of unincorporated legal persons." [111] The March report also said the OECD "remains deeply concerned that Ireland has not taken any step to address the issue of the dual criminality exception for the money laundering offence under Irish law, which constitutes a breach of Article 7 of the OECD Anti Bribery Convention." The OECD also found fault with Ireland's level of sanctions for foreign bribery and false accounting. Apart from that, GRECO has identified a number of flaws in Irish anti-corruption legislation. In its Third Evaluation Report on Ireland in December 2009, it stated: "An important lacuna refers to the lack of jurisdiction of Irish authorities over a national who commits a bribery offence abroad, when this person does not have the status of a public official." The GRECO report also found that "Irish bribery statutes are the product of more than a century of incremental change. As a result, the relevant statutes dealing with corruption offences sometimes overlap, contain differing and unusual terminology, prescribe dissimilar punishments and have proved to be difficult to fully reconcile with the exact wording of other European and international conventions".

Inadequacies in enforcement system: There are some inadequacies. Despite the OECD's recommendation, Ireland has not yet enacted legislation to protect whistleblowers in the public and private sectors who report suspected instances of foreign bribery. Little information is provided to Irish companies by the government on the risks of doing business in weak governance zones. It is also not clear whether the Garda Bureau of Fraud Investigations is sufficiently trained and resourced to enforce the prohibition of foreign bribery.

Access to information about cases and investigations: There is no access to information about cases and investigations.

Requirements of export credit agencies: The Irish state does not operate an official export credit guarantee system.

Facilitation payments: Facilitation payments are not defined under Irish law. No distinction is made between "against" and "according to" rule corruption.

Recent developments: Some of the above-mentioned deficiencies would be addressed by the Prevention of Corruption (Amendment) Bill 2008, which has yet to complete its passage through the Oireachtas (Parliament) but has now passed the Committee stage. In March 2010 the OECD Working Group on Bribery report expressed its concern that the above-mentioned bill, "which addresses a number of serious issues outlined in the Phase 2 and 2bis recommendations", had still not been discussed or enacted by Parliament. The Working Group noted Ireland's confidence that the bill would be presented to the Parliamentary Committee in January 2010 and would be adopted by March 2010. However, this confidence did not prove justified.

Recommendations: The Prevention of Corruption (Amendment) Bill should be enacted as soon as possible and adequate resources allocated for its enforcement. While an improvement has been noted in the Government's efforts in raising awareness of the foreign bribery offence, export agencies and business associations should provide information on corruption risks to their member companies through their own websites, conferences and free resources available through third party sites.

ISRAEL

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

Foreign bribery cases or investigations: There were four serious allegations in the media. In February 2010 it was reported that a Kazakhstan military court sentenced an Israeli businessman and a local deputy defence minister to 11 years in jail on corruption charges in connection with a deal for the sale of defective military hardware from Israel. In July 2010, the Indian Central Bureau of Investigation reportedly recommended that its defence ministry blacklist six companies, including the Israeli firm **Israel Military Industries** in connection with alleged kickbacks to the director-general of the Indian Ordnance Factory Board to gain favourable treatment. [112]

Domestic bribery by foreign companies: There were press reports that the Office of the State Attorney was investigating allegations against a former judge that he received millions of shekels in bribes from the German company **Siemens** while he was director and chairman of the asset committee of the Israel Electricity Company (IEC). [113] Allegedly, in return he encouraged the IEC to acquire turbines from Siemens without conducting a tender process. In 2002 the IEC reportedly acquired from Siemens three turbines for the production of electricity from natural gas at a cost of € 100 million per turbine. Subsequently, the IEC acquired two turbines from Siemens in 2004 for a similar cost without conducting a tender process. In January 2010 the authorities transferred its investigative material to the Office of State Prosecutor, leading to an indictment. The former judge left Israel for Peru in 2005 and Israel is now attempting extradition, but the two countries do not have an extradition treaty.

Inadequacies in legal framework: The OECD Working Group on Bribery in its *Phase 1 Report on Israel of March 2009* raised questions about the interpretation given to elements of Israel's foreign bribery offence, and how the offence is applied to third parties in foreign bribery cases. That report and the OECD *Phase 2 Report on Israel of December 2009* recommended that Israel raise sanctions to make them more effective. [114] The Phase 2 Report expressed concerns about restrictions on nationality and territoriality jurisdiction and recommended that Israel "take steps to ensure the effectiveness in practice of territorial jurisdiction concerning offences committed in whole or in part abroad, in particular with regard to acts involving foreign subsidiaries".

Inadequacies in enforcement system: The OECD Working Group on Bribery in its Phase 1 and Phase 2 Reports considered that more could be done to raise awareness of the foreign bribery offence, including among the sizable defence industry. They also recommended that whistleblower protection be enhanced and measures be taken to strengthen the detection of foreign bribery through a reporting requirement. The Phase 2 report found some deficiencies in accounting and auditing standards and practices and found that Israel had inadequate resources in place to provide effective legal assistance when requested. It further expressed concerned about the lack of progress in investigating serious allegations regarding companies in the defence industry. The Phase 1 Report raised questions about existing guidelines for closing foreign bribery cases when there is no "public interest".

Access to information about cases and investigations: There is no access to information about cases and investigations.

Requirements of export credit agencies: Ashra (the state-owned Israel Export Insurance Corporation Ltd) requires companies to make a no-bribery declaration regarding export transactions. Companies are also required to agree to waive the right to insurance coverage if it or anyone on its behalf was involved in such bribery, and that it will indemnify Ashra for losses and expenses caused to Ashra as a result of the company being involved in such bribery. Companies also have to provide information about whether they (1) are listed in any debarment list of international institutions (e.g. World Bank), or (2) were ever found guilty of bribery. In addition they must give information about their agent; specify the commission percentage paid to the agent for the export transaction; and declare that all payments and commissions are related to the products or services and are reasonable in light of those products or services. Companies must also declare that they have conducted a reasonable inquiry into the agent and have concluded that the agent is not involved in any bribery with regard to the transaction. Proof of anti-bribery compliance programmes is not requested nor must companies demonstrate that they in fact have taken the required steps to ensure their declarations are accurate. Additionally, the Defence Export Controls Directorate of the Ministry of Defence does not require applicants to demonstrate the steps they have taken in order to prevent foreign bribery.

Facilitation payments: Prohibited by law.

Recent developments: In March 2010 an amendment to the Penal Law 1977 came into force that provides for a substantial increase in the sanctions applicable to persons convicted of bribery from three-and-a-half years imprisonment for bribing or offering a bribe and seven years for taking a bribe to seven years and 10 years, respectively. In addition, the fines for such offences were increased to a maximum of about NIS 1.1 million for individuals and NIS 2.2 million for companies, or up to four times the benefit obtained by the offence or intended to be obtained by the offence, whichever is higher. In February 2010 an amendment to the Penal Law 1977 entered into force that eliminated the requirement of dual criminality in foreign bribery cases. In November 2009 the Income Tax Ordinance was amended to clarify that bribery payments made by companies are not deductible. In the same month the Attorney General published an official Guideline regarding the foreign bribery offence, which among other things instructs the police to open investigations whenever sufficient suspicion arises from complaints, news reports or other sources. Israel also recently adopted some of the principles embodied in US Sarbanes-Oxley legislation regarding international accounting controls for public companies. These new regulations require public companies to certify the adequacy of their internal controls, including controls against fraud. Finally, the Civil Service Commission published a circular to all government employees under the Commission's jurisdiction, clarifying the obligation to report any serious suspicions regarding the payment of bribes.

Recommendations: Ensure that the legal framework for foreign bribery is strong and effective, and in particular increase the level of sanctions. Ashra should require companies to demonstrate that they have in fact taken the required steps to ensure that their declarations are accurate. The Defence Export Controls Directorate of the Ministry of Defence should require applicants to demonstrate the steps they have taken in order to prevent foreign bribery. Public companies involved in significant export activities should be required to ensure that they have sufficient mechanisms in place to prevent and detect bribery of officials, both domestic and foreign.

ITALY

ACTIVE ENFORCEMENT: 18 cases, including two in 2009. Three investigations.
Share of world exports is 3.2%.

Foreign bribery cases or investigations: Of the two new criminal cases brought in 2009, one involves an Italian businessman who was manager and partner of a construction company, **Co.G.Im.**. He was indicted and charged with paying bribes to the person formerly in charge of procurement for the UN Peacekeeping Office. [115] The trial is pending. The second case concerns **Gold Rock Trading Ltd.**, an Italian/Cypriot company dealing with weapons. Its owner was indicted in July 2009 and charged with paying bribes to Libyan public officials. [116] One of the cases concluded in 2009 was an Oil-for-Food case involving allegations that the Italian oil company **C.O.G.E.P.** paid bribes to Iraqi public officials. The owner of the company, a manager and an adviser were sentenced to two years in prison in March 2009. [117] An earlier case that resulted in convictions concerned charges that two senior officials of **Enelpower SpA** paid bribes to government officials in three Gulf States to secure construction contracts for power and desalination plants in 2000 worth over € 1 billion. [118] There were also three foreign bribery investigations underway in 2009, one of which one began in 2009. One reportedly involves **Cantiere Navale Vittoria,** an Italian shipyard company, which is alleged to have used an Italian middleman, a Councillor for Tourism in the Lombardy Region, to pay bribes in the

amount of € 749,000 to Eritrean public officials in order to obtain an order for eight ships. [119] The second reportedly involves **Saipem**, a subsidiary of leading Italian gas company **ENI**, and its unit **Snamprogetti.** The unit was part of the joint venture TSKJ that is alleged to have paid bribes of US $184 million in Nigeria in the period 1994-2004 in order to obtain a major contract for the Bonny Island liquid natural gas facility. The third investigation involves allegations that an Italian manager representing communications company **Telecom Italia** paid bribes. [120] Reports in 2008-09 also indicated Oil-for-Food investigations against at least 18 companies, including one involving the oil refiner **Saras SpA**. [121]

In the US, automobile manufacturer **Fiat SpA** reached a settlement in 2008 with the US Justice Department and the SEC involving payment totalling of $17.8 million for FCPA violations in connection with the UN Oil-for-Food programme. The criminal and civil charges related to activities of **Fiat** and four subsidiaries, including one in France and one in the Netherlands. [122] In July 2010 **ENI** and its former Dutch subsidiary **Snamprogetti Netherlands BV** entered a settlement in the US involving payment of US $365 million in fines in connection with the TSKJ joint venture in Nigeria. [123] (See also Section 4, "Cases".) In 2009 a case was reportedly brought in Turkey against the general manager of the Italian-owned company **Fintecna** who was accused of bribing academics acting as court experts to prepare false favourable expert reports with respect to the construction of a dam. [124] (See also report on Turkey) Apart from these cases, in 2003, a South African consultant reportedly pleaded guilty to charges of that he made illicit payments on behalf of **Impregilo SpA** to a Lesotho government official in a case relating to the Lesotho Highlands Water Project. Impregilo was the lead partner in the Lesotho Highlands Water Venture consortium.

Domestic bribery by foreign companies: In 2008 the Public Prosecutor, as part of an investigation of alleged corruption in the award of oil drilling contracts to **Total SA** in the Basilicata region, suspended Total operations in the region and arrested the managing director. [125] The year 2008 also saw the conclusion of the **Alstom** case involving charges of bribery and money laundering in connection with a contract awarded by a division of the state-controlled utility Enel. Two Alstom subsidiaries, **Alstom Power** (US) and **Alstom Prom AG** (Switzerland), and four Alstom executives (including the former head of Alstom Power) pleaded guilty and were fined. The two subsidiaries pleaded guilty to an administrative offence, as there is no criminal liability for companies in Italy. [126] In 2004 an Italian judge investigating alleged bribes paid by **Siemens** executives to Enelpower employees issued an order banning Siemens from selling gas turbines to the Italian public administration for one year. [127] In the **Vivendi** case a senior manager was convicted in 2001 of allegations of bribing the Milan city council president to win a tender for a wastewater treatment plant. [128] There have also been investigations reported in the past in Italy regarding **United Defence Industries**, **Immucor** and **GlaxoSmithKline Italy**. [129] In 2007 **ABB** reported suspect payments made by employees of company subsidiaries, among them in Italy (see Section 4 "Cases" on ABB).

SETTLEMENT IN SIEMENS / ENI CASE

Prosecutors in Milan reportedly filed charges in November 2007 against a current and a former employee of Siemens SpA and one of its subsidiaries alleging that the two individuals made illegal payments to the Italian state-owned oil and gas company ENI SpA.[130] The two individuals, Siemens SpA., and its subsidiary reportedly entered into a "patteggiamento" (plea bargaining agreement without the recognition of any guilt or responsi bility) with the Milan prosecutor which was confirmed by the Milan court on April 27, 2009. Under the terms of the patteggiamento, Siemens S.p.A. and the subsidiary were each fined € 40,000 and ordered to disgorge profits in the amount of € 315,562 and € 502,370 respectively. [131] The individuals accepted suspended prison sentences.

Inadequacies in legal framework: There are some inadequacies. The statutes of limitations are five and 7.5 years but this runs until the last appeal. Further, at its meeting in March 2010 the OECD Working Group on Bribery expressed its continued concern that the time limitations on trial periods envisaged under the Bill 1880 could adversely affect the enforcement of the foreign bribery offence and Italy's compliance with its obligations under the OECD Convention.[132] In the March 2007 *OECD Phase 2 Follow-up report* on Italy found that Italy had not followed the recommendation to eliminate the defence of '*concussione*' (extortion) from the offence of bribing a public official. [133] There is no criminal liability for companies, only administrative liability.

Inadequacies in enforcement system: There are inadequacies including weaknesses in the whistleblower protection system and in complaint procedures. There is also an insufficient level of resources for enforcement and a lack of awareness-raising by the government.

Access to information about cases and investigations: Numbers and case details are accessible in principle, but there is no central database of cases and in practice information is difficult to obtain. In practice, collecting data is very difficult in Italy because there are 1200 Tribunals from which to collect information. However, the recent draft law against corruption provides for the creation of a central supervising body (*Osservatorio sulla Corruzione*) responsible for collecting data and statistics about corruption.

Requirements of export credit agencies: Companies are required to make a no-bribery commitment. They do extend to conduct by an agent or business partner. They are required to demonstrate that they have effective anti-bribery compliance programmes and to report on compensation of agents.

Facilitation payments: They are prohibited by law.

Recommendations: Lengthen the statute of limitations, introduce criminal liability for companies and eliminate the defence of "*concussione*". Improve the whistleblower protection system to encourage bribery reports, increase the resources for foreign bribery enforcement and increase awareness-raising.

JAPAN

MODERATE ENFORCEMENT: Seven cases and an estimated two investigations.
Share of world exports is 4.0%.

Foreign bribery cases or investigations: Japan has reported to the OECD that there have been seven foreign bribery convictions in Japan. [134] One of the concluded cases involves **Kyudenko Needs Creator IT Corp**, concerning alleged bribery in the Philippines. In 2007 two executives in that case were fined a combined ¥700,000 (US $6,000). [135] That same year Japanese tax authorities required nine Japanese shipping companies to pay a total of ¥400 million (US $3.4 million) in back taxes and penalties. The tax authorities initially alleged that the failure to report income was related to bribery payments and ultimately determined that the companies' payments to a Hong Kong agent were not legitimate expenses. The other is the **Pacific Consultants International (PCI)** case, concerning alleged bribery in Southeast Asia, including Vietnam. The case was concluded in January 2009 when four former executives who had pleaded guilty were sentenced by the Tokyo District Court and PCI was fined over US $770,000. [136] Of two investigations referenced in the last report, one reportedly involved **Nishimatsu Construction Co**, a second-tier general contractor in Japan, and its Thai subsidiary, which were alleged to have given a total of ¥400 million (US $4.4 million) in bribes to a local Bangkok official to secure a contract to build a drainage system. At a meeting with the TI expert in March 2010, a Nishimatsu compliance officer said the prosecutor's office had not informed the company that the case was closed without prosecution, or that it was still pending. In the **Bridgestone** investigation, involving allegations the company made improper payments to foreign agents including foreign public officials in Latin America and South East Asia, a company PR department manager said that an in-house investigation team continues to investigate the allegations and the Tokyo prosecutor's office has not reached any conclusion that the case be dropped, so the formal investigation seems to be continuing. [137]

In other jurisdictions there have been reports of cases in China involving **Mitsui & Co** [138] (2002) and **Hitachi** [139] (2006). In the US in December 2008, a former Bridgestone executive pleaded guilty to charges of conspiracy to rig bids in violation of the Sherman Act and to bribe foreign officials in Argentina, Brazil, Ecuador, Mexico and Venezuela in violation of the US FCPA. **JGC Corporation** has been named along with another Japanese company in connection with the TSKJ case in Nigeria and is reportedly under investigation by the US Justice Department. [140] In February 2010 the South African public protector's reportedly found that a former chairman of the electricity utility Eskom, a person influential in the ANC, had failed to manage a conflict of interest that arose when the utility awarded the R16 billion contract to supply boilers for the Medupi power station to the **Hitachi** consortium. The consortium includes **Hitachi Power Africa** in South Africa, a Hitachi subsidiary, a company in which the ANC, through its investment company Chancellor House, has a 25 per cent stake. [141] In December 2009, Aluminum Bahrain BSC, one of the world's largest smelters, filed a US $31 million civil suit in federal court in Houston, Texas against Japanese trading company **Sojitz Corp.** and its U.S. subsidiary, Sojitz Corporation of America alleging that from 1993 to 2006, Sojitz paid US $14.8 million in bribes to two of Alba's employees in exchange for access to metals at below-market prices. (See also Section 4 "Cases" on Alcoa)

Domestic bribery by foreign companies: No serious cases of domestic bribery by foreign companies have been recently reported in Japan.

Inadequacies in legal framework: The legal framework has not been fully tested. There is no nationality jurisdiction and the OECD Working Group on Bribery *Phase 2 Follow-up Report on Japan of October 2007* [142] called on Japan to consider whether territorial jurisdiction in Japan is adequate for covering the acts of Japanese parent companies in relation to bribery by subsidiaries. The report also called on Japan to clarify the application of the foreign bribery offence where the bribe is transferred directly to a third party, such as a charity or political party. There is also no criminal liability for legal persons under Japanese law and the 5-year statute of limitation in Japan is too short for effective foreign bribery enforcement.

Inadequacies in enforcement system: Sanctions thus far applied do not appear to have been proportionate. The OECD Working Group on Bribery has expressed concern about the level of priority given to the prosecution and investigation of foreign bribery and about whether placement of the foreign bribery offence in the Unfair Competition Law impedes implementation of the Convention. [143] Law enforcement authorities reportedly have difficulties in proving payments to intermediaries or third parties, which reportedly continue to be common in transactions in Southeast Asian countries. Japanese authorities reported mutual legal assistance difficulties with Thailand and Vietnam.

Access to information about cases and investigations: Neither information on number of cases or investigations, nor details about cases or investigations is accessible. The OECD Working Group on Bribery criticised Japan in March 2010 for its unwillingness to disclose to them information about cases and investigations. [144]

Requirements of export credit agencies: Companies may be required to make a no-bribery commitment, which extends to conduct by an agent or business partner. No anti-bribery compliance programmes are required. It may be required to report on compensation for agents. With respect to actual practice, JBIC (Japan Bank for International Cooperation) considers that the requirements will be imposed on companies when deemed necessary while NEXI (Nippon Export and Investment Insurance) regards it as a case-by-case matter.

Facilitation payments: These are prohibited by law but in practice there is room left for such payments. As noted by the OECD Working Group on Bribery in its *Mid-Tern Study of Phase 2 Reports*: "Another Party (Japan) provides in practice an exception for facilitation payments, according to Guidelines issued by the Ministry of Economy, Trade and Industry (METI) although the exception is not expressly provided under the implementing legislation". [145] However, the Working Group does not suggest that by providing an exception for small facilitation payments Japan is in contravention of the Convention. In a study by a leading Japanese scholar, among the Japanese companies with anti-foreign bribery provisions about 48 per cent (22.1 per cent of the total respondents) take a clear stance against facilitation payments while only 7.2 per cent (3.4 per cent) take a clear stance for tolerating facilitation payments, and 32 per cent answered they did not make any decision on how they deal with facilitation payments.

KOREA

MODERATE ENFORCEMENT: Sixteen cases. One investigation. Share of world exports is 2.exports%.

Foreign bribery cases or investigations: There were five cases 2002 and 2004 that related to illicit payments by Korean companies and individuals to the US military and led to convictions. In one of the 2002 cases a company called **Olson and Sky Co. Ltd** was fined KRW 100 million, the highest amount to date. [146] Two of the cases resulted in jail terms for the individuals convicted in 2007. Two further cases concluded in 2008 reportedly related to a US $206 million telecommunications contract awarded to **Samsung Rental Co. Ltd.** by the Army Air Force Exchange Service and resulted in Samsung being fined KRW 20 million. [147] Three other related cases in 2008 led to small fines (KRW 1-3 million). In May 2008 a South Korean businessman was charged in the US in connection with the Samsung Rental case.[148]

Domestic bribery by foreign companies: After the US Department of Justice brought charges against **Control Components Inc.** and its former executives in April 2009 for bribery in over 30 countries including South Korea, South Korean authorities reportedly opened investigations into the conduct of officials allegedly involved. [149] In 2009 there was one case in which Korean military officials stationed overseas were arrested for receiving bribes from foreign entities. The criminal case appears to be proceeding currently. In 2008 four officials were convicted of receiving bribes from foreign persons.

Inadequacies in legal framework: The main inadequacy is that sanctions for foreign bribery remain inadequate, as the fines cannot exceed KRW 20 million (about € 12,600 or US $15,500), except where the proceeds are greater than KRW 10 million.

Inadequacies in enforcement system: Weaknesses include inadequate resources, the possibility that whistleblower protection does not apply to foreign bribery, and a lack of public awareness-raising. The current government merged the anti-corruption agency KICAC with the Ombudsman of Korea and Administrative Appeals Commission to establish a combined agency called the Anti-Corruption & Civil Rights Commission (ACRC), whereas the KICAC should have remained independent.

REASONS FOR INADEQUACIES IN ENFORCEMENT
"Compared to previous administrations, the current administration gives less importance to the issue and places greater priority on promoting growth and development." (Prof. Joongi Kim, TI Korea expert)

Access to information about cases and investigations: Information on the numbers of cases is provided on request by the Ministry of Justice. Due to privacy protections, information on case details is only accessible through the media and through some special case reports.

Requirements of export credit agencies: Companies are required to make no-bribery commitments and these do extend to conduct by an agent or business partner. They are required to demonstrate effective anti-bribery compliance programmes and to report payments to agents.

Facilitation payments: Not prohibited either by law or in practice.

Recent developments: Recent domestic corruption issues that have come to light may also impact on foreign bribery enforcement. Samsung Electronics Chairman Lee Kun-hee was charged in April 2008 with tax evasion and breach of trust and convicted on both charges in what became known as the Samsung slush fund scandal. [150] He then received a presidential pardon and returned to the chairmanship of Samsung. [151] On 22 April 2010 members of the People's Solidarity for Participatory Democracy submitted to the Supreme Prosecutors Office (SPO) a lawsuit against 57 prosecutors accused of accepting bribes from a businessman in the "entertainment list" scandal, but there is no information about any charges having been brought. [152] There are therefore continuing concerns regarding the prosecutor's office ability and determination to conduct effective enforcement involving foreign bribery cases. President Lee has reportedly indicated that a reform of the prosecution and the police is in the offing.[153]

Recommendations: Engage in stronger foreign bribery enforcement. Provide more information to corporations. Establish a separate, central, independent anti-corruption agency such as KICAC that existed before. Increase access to and disclosure of information.

MEXICO

LITTLE OR NO ENFORCEMENT: No cases or investigations. Share of world exports is 1.5%.

Foreign bribery cases or investigations: No cases or investigations.

Domestic bribery by foreign companies: The Ministry of Public Administration brought a case against an **Alstom** subsidiary in 2001 and in 2004 the company was penalised US $31,000 and subjected to a two-year disqualification from public tender procedures. After a series of appeals, the sentence was confirmed in July 2007. (See also Section 4 "Cases" on Alstom) Cases were reported in the US regarding alleged bribery in Mexico. In December 2008 the US Securities and Exchange Commission (SEC) charged **Siemens** with violating the FCPA by engaging in bribery in countries including Mexico. [154] The SEC alleged that in late 2004, Siemens PG and Siemens S.A. de CV, a regional entity, made three separate illicit payments totalling approximately US $2.6 million to a politically connected business consultant to assist in settling cost overrun claims in connection with three refinery modernisation projects in Mexico. Some portion of these payments was allegedly routed to a senior official of the Mexican state-owned petroleum company, *Petróleos Mexicanos* (PEMEX), which was in a position to influence the settlement. There have been media reports about this case and the Mexican authorities have now reportedly initiated a formal investigation. In a second US case, the former general manager of a Sugar Land, Texas-based business unit of the Swedish-Swiss company **ABB**, were arrested in November 2009 and charged with violating the FCPA for his alleged role in a conspiracy to bribe Mexican government officials of the Comisión Federal de Electricidad (CFE) to secure contracts. [155] In a related case, the head of a Mexican company acting as sales representative for the Sugar Land unit pleaded guilty in November 2009 to charges based on his role in the conspiracy. [156] (See also report on Switzerland and Section 4 "Cases" on ABB.)

Inadequacies in legal framework: The are some deficiencies, the main one being inadequate statutes of limitation. According to article 34 of the Federal Law on Public Officials' Administrative Responsibilities, statutes of limitation begin to run from the time the bribery occurred for a period of three years.

Inadequacies in enforcement system: There are numerous inadequacies. These include a lack of coordination between investigation and prosecution, and among federal government agencies in charge of the administrative, financial and criminal aspects of a bribery investigation (the Ministry of Public Administration, the Ministry of

Finance, the Attorney General's Office and the Supreme Court.) Additionally, there is a lack of skills and resources on the part of the courts. Further, complaint mechanisms and whistleblower protection are inadequate, despite some improvements in recent years. Many companies do not have codes of conduct or protection for internal whistleblowers. There are inadequate accounting and auditing requirements. Accountants are professionally bound to confidentiality by the law and professional norms and thus not obliged like other citizens to report suspicions of bribery and other crimes. There is a continuing reluctance of the auditing profession to make such reports.

NO PRIORITY FOR ANTI-CORRUPTION ENFORCEMENT

"The present administration does not give priority to fighting corruption. The fight against drugs has been a main priority, leaving many other issues behind. Although some topics covered in the OECD Convention review process – like anti-money laundering and creating better witness and whistleblower protection programmes – are included in the strategies for the fight against drug dealers, there has not been much improvement in those areas." (Lucia Cortes, TI Mexico expert)

Access to information about cases and investigations: Access to statistics is in general accessible, but not so for case details.

ACCESS TO PUBLIC INFORMATION IN MEXICO

Access to information is a right guaranteed by Article 6 of the Mexican Constitution, and federal implementing legislation was passed in 2002. Article 33 of this law states that the Federal Institute of Access to Public Information (IFAI) is in charge of promoting this right and resolving access to information requests. To facilitate the process, IFAI has created a system called INFOMEX, which has been adopted by the federal government, the judicial power and several state governments. Any individual or legal person can make a request via INFOMEX, and that agency then has 20 days to give an official response. If the official response is unsatisfactory, it is possible to file a petition of review.

To obtain the number of foreign bribery cases, Transparencia Mexicana accessed the Ministry of Public Administration's registry of suppliers that have been sanctioned and cannot participate in bidding processes for different reasons. In addition, Transparencia Mexicana made an official request for information to the Attorney General's Office about the number of foreign bribery cases and was informed that there were none. However, government institutions do not consider it mandatory to reveal case details. In connection with the anti-corruption policies of Bancomext, the official export credit agency, Transparencia Mexicana made an official request for information to the agency for documents and Bancomext replied with the information requested.

Requirements of export credit agencies: Companies are required to make a no-bribery commitment when signing a contract with Bancomext (Banco Nacional de Comercio Exterior) but there are no other anti-bribery requirements at Bancomext or other export credit agencies. There are no requirements for companies to demonstrate efforts to prevent bribery when applying for a credit.

Facilitation payments: Facilitation payments are prohibited by law, since there are no exceptions to the offence of bribery of foreign public officials in the Mexican Federal Penal Code.

Recent developments: There have been a few low-impact developments. There have been some legislative modifications for whistleblower protection in drug-related crimes that may help produce protection for bribery cases, but this has not yet occurred. Both the Ministry of Public Administration and Ministry for Public Security have included in their plans of action for the current administration (2006-12) strategies and actions to develop better whistleblower protections programmes. However, the efforts have not materialised into anything concrete.

Recommendations: Increase the coordination among all levels of government. Develop an information system that concentrates all available information regarding the enforcement of the international anti-corruption conventions that Mexico has ratified and make it accessible to the public.

THE NETHERLANDS

MODERATE ENFORCEMENT: Seven cases; number of investigations unknown.
Share of world exports is 3.6%.

Foreign bribery cases or investigations: Seven Oil-for-Food cases were settled out of court by the Dutch Public Prosecutor's office in June 2008, with the companies paying a total of € 1.3 million. This included a fine of € 381,000 (US $600,000) imposed on a subsidiary of the Dutch company **AkzoNobel N.V.** in one case. The company also entered a deferred prosecution agreement in the US in December 2007 and paid fines of about US $3 million, including disgorged profits. [157] There are no reports about investigations of **Trafigura (Beheer B.V.)** and **Saybolt International Group B.V.**; which were named in the Volcker Report on the Oil-for-Food scandal. [158] Trafigura is a trading firm specialising in raw materials that is reportedly registered for tax purposes in Amsterdam, with its headquarters in Lucerne, Switzerland, and its operational headquarters in London. A Dutch investigation of Trafigura was reportedly started in January 2007 by the Public Prosecutor's Office concerning an alleged payment of US $31 million by the company in Jamaica to an entity known as CCOC Association allegedly connected to a government official or party. [159]

In other jurisdictions, Trafigura was named in a criminal investigation and civil proceeding in South Africa in 2001[160] and entered an Oil-for-Food settlement in the US. [161] Saybolt and a vice president of its US subsidiary were fined and sentenced in connection with a 1998 FCPA case in the US concerning alleged bribery in Panama. An FCPA case in the US, settled in December 2008, involved charges of violations in connection with the UN Oil-for-Food Programme by another Italian company **Fiat** and its Dutch subsidiary **CNH Global N.V.**. [162] In July 2010 the Italian company **ENI** and its former Dutch subsidiary **Snamprogetti Netherlands B.V.** entered a settlement in the US involving payment of US $365 million in fines in connection with the TSKJ joint venture in Nigeria. [163] (See also Section 4, "Cases".)

Domestic bribery by foreign companies: No known cases and one serious allegation in connection with the Bistrong case, which was initiated in 2010. According to the allegations, in or around June 2001 an employee of UK-headquartered **Armor Holdings** (acquired by **BAE Systems** in 2007) paid US $15,000 through an intermediary to a Dutch officer of the National Police Services Agency (KLPD) for help in winning a tender for the supply of pepper spray to the KLPD. The Dutch officer has not yet been prosecuted. The KLPD reportedly said that it is investigating the case.[164]

Inadequacies in legal framework: The OECD Working Group on Bribery in its *OECD Phase 2 Follow-up Report on the Netherlands of December 2008* noted concerns that monetary sanctions for legal persons were too low. [165] The reports also noted that the OECD Convention still had not been ratified by Aruba and the Netherlands Antilles. The 2006 report found that this could limit jurisdiction of the Netherlands based on nationality jurisdiction and hamper mutual legal assistance. Those territories, which are autonomous, are still not covered by the OECD Convention.

Inadequacies in enforcement system: There are some inadequacies but these do not appear to be responsible for the lack of enforcement. There is a lack of adequate whistleblower protection in the public and private sectors. Further, the National Police Internal Investigations Department (*Rijksrecherche*), which currently is designated as the specialised organisation for investigating foreign bribery, might not be the best choice for the job. This department is specialised in investigating integrity breaches within the government, public services and the police, and therefore focuses on passive corruption. Investigating foreign bribery requires financial investigation within companies. Other parts of Dutch law enforcement might be better equipped to do the job. At least an improved cooperation between investigation services would be desirable. At least until recently, priorities in crime fighting did not include fighting international corruption, although this may be changing due to OECD pressure. However, even now there are still no visible results.

Access to information about cases and investigations: The number of cases is not easy to access. There is no publicly accessible official record of numbers of criminal investigations. And in the non-accessible record-keeping that is being kept and is gradually improving, foreign bribery cases were not until recently separately recorded. Concerning cases that are brought a selection of court decisions is published online, after deleting the names of the parties involved. Information on case details is not accessible. Under the Dutch legal system there's a rule of secrecy for cases that are under investigation, but not yet brought before a judge. Even once a case is brought, names and addresses of suspects, victims and witnesses are kept secret at all times, although some case details may be made available.

Requirements of export credit agencies: A no-bribery commitment is required by Atradius Dutch State Business (DSB) N.V., the exclusive state insurance facility, in application forms and this extends to conduct by an agent or

business partner. Anti-bribery compliance programmes are required. No reporting of payments to agents is required. Under certain circumstances Atradius DSB will perform an 'enhanced due diligence'. This includes a check on whether the applicant has taken sufficient internal measures and preventive measures (which also means an anti-corruption management control system). [166]

Facilitation payments: The Penal code does not exclude facilitation payments from the offence of bribery, but in the official instructions for public prosecutors facilitation payments are excluded. [167] These instructions can be seen as a law because they are published, but they are not as strict as the penal code and are composed by the public prosecution office itself.

Recent developments: As a result of the Second Round Evaluation by GRECO in 2005, a bill was passed in 2009, entering into force in April 2010, that introduces a new criminal sanction for active bribery of (foreign and domestic) public officials and judges. Bribe-payers who bribe in the exercise of their profession can now be disqualified from that profession by a criminal conviction. Also, the maximum fine for one kind of active bribery of a public official has been raised. Further, an inaccuracy in the provisions regulating Dutch jurisdiction over foreign bribery was corrected. A new single regulation on the reporting of wrongdoing was introduced for all central government bodies, including provisions on protection of reporting persons. [168] This replaces a patchwork of different regulations. In 2009 the central government started planning for an 'information and referral point' for whistleblowers. The institution will probably not itself provide protection to whistleblowers, but will provide information and will refer potential whistleblowers (who want to go external) to people or institutions that can help. As for the Netherlands Antilles and Aruba, they still have not ratified the OECD Convention but are in the process of doing so.

Recommendations: Establish a special organisation to detect bribery working closely with the tax authorities. Introduce better whistleblower protection. Undertake more proactive investigation, with more follow-up action, which could involve reviving a project to that end that was started in 2004 but closed down in 2007. Make more use of existing means for detecting crimes. Invest in more effective mutual legal assistance.

NEW ZEALAND

LITTLE OR NO ENFORCEMENT: No cases. Some investigations. Share of world exports is 0.2%.

Foreign bribery cases or investigations: It appears that at least one investigation was started in 2009, which may have had a foreign corruption element to it. There were media reports that in January 2010 New Zealand police were interviewing people linked to **SP Trading Ltd**, an alleged shell company, in connection with the sale of 35 tons of North Korean explosives and anti-aircraft missiles to Iran. This investigation, which appears to relate to sanctions-busting rather than foreign bribery, began after Thai police seized a cargo plane in December 2009 chartered by the New Zealand shell company. [169] The aircraft was reportedly carrying explosives, rocket grenades and anti-aircraft missiles. There were indications in January 2010 that US authorities planned to indict the New Zealand company, but to date this has not occurred. No action has been taken against the company in New Zealand. A second matter relates to a multi-jurisdictional investigation of alleged bribes in Russia by senior managers of **Hewlett Packard**[170] (see Section 4, 'Cases'). New Zealand authorities received a request for mutual assistance from Germany in this investigation following reports that a New Zealand shell company may have been used to set up false invoices that assisted in concealing an alleged bribe payment. [171] To date no charges have been laid. The foregoing two allegations have prompted a nationwide review of the operation and registration of shell companies in New Zealand.

As reported in previous years there have also been media reports of suspected foreign corruption, involving **Radiola Aerospace** [172] and other New Zealand companies, including in relation to the UN Oil-for-Food Programme, and it appears every reported case has been investigated by either the New Zealand Police or the Serious Fraud Office. In 2008 it was reported that the authorities had dropped their investigation of **the New Zealand Dairy Board** (now known as **Fonterra Co-operative Group Limited**), which, in connection with the UN Oil-for-Food Programme, reportedly sent massive quantities of milk powder to be repackaged for Iraq by a Vietnamese syndicate. [173]

Domestic bribery by foreign companies: No known cases.

Inadequacies in legal framework: There are several inadequacies. New Zealand's foreign bribery provisions are very simple and far less thorough than overseas examples such as the US FCPA or the new UK Bribery statute. Draft proposals for legislative change have existed for some time now, although there is no indication as to when they will be progressed. The OECD Working Group on Bribery in its *Phase 2 Follow-up Report on New Zealand of March 2009*[174] expressed serious concern that New Zealand had not rectified the New Zealand law on the liability of legal persons to bring it in line with Article 2 of the OECD Convention. They also found that New Zealand had not addressed

the issue of sanctions against legal persons for foreign bribery other than in a proposed bill applying generally to confiscation. The report also noted that New Zealand had not removed the requirement of Attorney-General consent for the prosecution of foreign bribery and has not amended the Solicitor-General's Guidelines to require that the factors identified in Article 5 of the Convention be excluded from consideration with respect to the investigation and prosecution of foreign bribery cases.

Inadequacies in enforcement system: The main inadequacies are limited resources allocated specifically to foreign corruption; lack of a coordinating agency; and the historical position that no government agency has made foreign corruption investigations and prosecutions a priority. There is also inadequate awareness-raising about the foreign bribery offence. The *OECD Phase 2 Follow-up Report* of March 2009 expressed serious concern that New Zealand had not taken steps to allow the exchange of information between the tax authorities and prosecutors in foreign bribery cases. It also highlights that the division of jurisdiction between the Serious Fraud Office (SFO) and Organised and Financial Crime Agency of New Zealand (OFCANZ, a division of the police) with regard to foreign bribery cases remains uncertain.

Access to information about cases and investigations: Numbers and details of cases are not accessible. There is media coverage regarding the high profile cases mentioned above, but it appears that smaller investigations may not be publicised. The Serious Fraud Office and Ministry of Justice are willing to provide limited information regarding the number and detail of cases, if the information is being used for a proper purpose. However, in general there is little information available.

Requirements of export credit agencies: A no-bribery commitment is required and extends to conduct by an agent or business partner. Companies are not required to demonstrate they have effective anti-bribery compliance programmes. However, it is encouraged by the New Zealand Export Credit Office. There is no requirement for reporting of payments to agents.

Facilitation payments: Neither prohibited by law nor in practice. Recent TI research has shown that only 18 per cent of New Zealand's listed companies have restrictions or prohibitions with respect to facilitation payments. Whilst additional companies refuse to make them in practice, it would appear they nevertheless remain in a large number of cases.

Recent developments: New Zealand has been focused for some time on the passage of the Anti-Money Laundering and Countering Financing of Terrorism Act 2009 to conform to FATF requirements. This will provide statutory tools which will assist the detection of foreign corruption and will free up government to focus on other white-collar crime priorities, one of which is likely to be foreign corruption. Previous indications that the foreign corruption legislation in New Zealand will be strengthened have yet to be followed through by central government. The recent formation of the OFCANZ supplements the work of the SFO. However, at this stage no agency clearly assumes overall responsibility for foreign corruption investigations; it is shared between the police (which includes OFCANZ) and the SFO. The SFO's new Chief Executive/Director has made significant organisational changes to the office and has publicly stated that investigating and prosecuting foreign corruption will be one of the two principle goals of the office moving forward, which is an encouraging sign in terms of commitment to the issue.

Recommendations: The government should make a clear and public statement that foreign corruption is a priority and publicly direct that the lead agency in the area (which is understood to be the SFO) has the government's full support to make investigations a priority. This should be supported with the allocation of additional funding if required by the SFO.

NORWAY

ACTIVE ENFORCEMENT: Five cases, one major pending. One investigation. Share of world exports is 1.0%.

Foreign bribery cases or investigations: The pending case involves **Norconsult AS**, the largest consulting company in Norway, concerning alleged bribery in connection with a water project in Tanzania. Norconsult was fined NOK 4 million by Ökokrim in November 2009 but the company has refused to accept the fine and a trial is scheduled for the second half of 2010. A major case concluded in 2004 concerned allegations of bribery against **Statoil ASA** in connection with a contract with the Iranian government to develop a major oil and gas field. The company paid a fine of € 2.4 million. A related case was also brought in the US leading to a fine of US $10.5 million (US $7.5 million after deducting the Swedish fine). A further concluded case related to bribery of a Swedish public official by three Norwegian individuals and sentence was handed down in 2005. [175] Also in 2005 Ökokrim was reported to be investigating a case involving alleged corrupt practices by **SINTEF Petroleumforskning** in connection with a

contract with Iran. [176] The trade union Nopef reportedly raised the corruption complaint on 24 June. The reports reference a payment to a company in the Virgin Islands. SINTEF reportedly said that it had cancelled the deals in 2003 after investigating their propriety. Another Ökokrim investigation reportedly concerned alleged bribery in connection with a contract for the construction of the Bujagali power plant in Uganda. A consortium led by the Norwegian company **Veidekke** was awarded the construction contract in 2000 but in July 2002 it was allegedly discovered that Veidekkes English subsidiary had bribed the Ugandan Minister of Energy with US $10,000 in 1999. [177] This led the World Bank Executive Board to suspend approval of the project, and Veidekke pulled out. The Ökokrim investigation was dismissed in 2003.

In October 2008 **StatoilHydro** released an independent report claiming that **Hydro ASA** had made improper payments to secure oilfields in Libya in 2000-01. Additionally, **Scancem International ANS** reportedly brought a civil action in 2007 alleging misappropriation of bribe funds by an employee. [178] In other jurisdictions there were news reports of an investigation in Peru concerning the auction of oil concessions by state-owned PeruPetro that was suspended in 2009 following the release in late 2008 of a series of taped telephone conversations discussing alleged bribes to favour the Norwegian firm **Discover Petroleum**. The scandal, in which people close to the governing APRA party were also implicated, led to the resignation of President Alan Garcia's entire Cabinet. Most of the people implicated in the tapes lost their positions. The matter is reportedly still under investigation. [179]

Domestic bribery by foreign companies: One case involved bribery of public officials of the National Employment Service in Norway by a company established in Finland for the award of a contract for language training. [180] In another case Ökokrim brought bribery charges in 2008 against two employees of **Siemens AS**, a subsidiary of the German company Siemens, and 12 Norwegian military officers in connection with allegations that members of the armed forces had accepted bribes in the form of gifts, expensive dinners and luxurious golfing trips. [181] The Norwegian national telecommunications operator in 2008 barred the Chinese company **ZTE Corporation** from participating in tenders for six months due to breaches of Telenor's code of conduct. [182]

Inadequacies in legal framework: There are no major inadequacies. However, any criminal proceeding against companies or their subsidiaries may easily be hindered by the company continuing the business by the very same owner, supervisors and employees but changing the company name and company number. There is no provision for gross or aggravated trading in influence in the Norwegian penal code. Cases of gross corruption should not be adjudicated on appeal by a panel of only laymen as is currently done..

Inadequacies in enforcement system: The major challenge for the Norwegian police seems to be the lack of resources and skilled investigators and prosecutors to investigate and prosecute complex cases of corruption, including foreign bribery cases. There is lack of protection of whistleblowers coming forward with information in criminal cases. The control authority in Norway does not seem to have a practice on how to handle whistleblowers or protect them from reprisals, and there is no transparency in follow-up efforts in such cases. Public authorities and private businesses do not have any obligation to report or follow up on whistleblowing cases. The rules and regulations for mutual legal assistance outside Norway are too bureaucratic and complex for corruption cases to be investigated efficiently. Information sharing on possible foreign bribery cases seems to be ineffective and based too much on personal contacts between senior investigators or prosecutors.

Access to information about cases and investigations: Norway publishes statistics on criminal offences reported, including financial crime, offences investigated, sanctions and imprisonments. However, there are no statistics available on foreign bribery cases and access to information about numbers of prosecutions and investigations are insufficient. As to case details, all judgments and sentences are public. Those of the Supreme Court, some courts of appeal and some district courts are available on the website www.lovdata.no, but this requires a paid subscription. Other judgments and sentences can be obtained by contacting the court that pronounces the judgment. The only information source on pending investigations and cases is media reports.

Requirements of export credit agencies: A no-bribery commitment is required that extends to conduct by agent or business partner, provided the company is aware of, or should have been aware of, the business partners' violation of the relevant penal code section. Companies applying are required to state they have not acted and will not act in violation of the prohibition in the Norwegian penal code section 276a to 176c, which applies to corrupt actions and trading in influence in the public and private sector. Companies are required to demonstrate an effective anti-bribery compliance programme. However, the export credit agency GIEK does not check the accuracy of the self-declaration made by companies. The companies are also required to state the name and contact details of the agent and the agent's assignment on behalf of the company.

Facilitation payments: These are prohibited under act no. 79 of 4 July 2003 amending the penal code §276a, provided that payment is regarded as an 'undue' advantage. However, the preparatory work states that some payments cannot be characterised as 'undue', e.g. if the payment is made in a situation of extortion such as where a

person is forced to pay a small sum in order to get his passport back or get permission to leave the country. It is not possible to provide an answer as to how they are treated in practice. There have been no cases in Norway regarding facilitation payments.

Recent developments: One case of gross domestic corruption was brought to the court of appeal in 2010. This was the first case of corruption ever to be brought to the appeal court for the jury (panel of only laypersons) and provided lessons about the difficulty of conducting criminal proceeding in complex cases of foreign bribery. The findings of the *GRECO Third Evaluation Round Report on Norway of February 2009* should be considered also in connection to foreign bribery.

Recommendations: Protect whistleblowers and demand transparency of actions taken based on information from whistleblowers. Change the process of appeal in corruption cases. Strengthen the resources and training of investigators and prosecutors fighting corruption.

POLAND

LITTLE OR NO ENFORCEMENT: No cases or investigations. Share of world exports is 1.1%.

Foreign bribery cases or investigations: No pending or concluded cases and no investigations.

Domestic bribery by foreign companies: In connection with an investigation of **Alstom**, the first Polish-Swiss criminal investigation team in history was formed in October 2009 as a result of an agreement between the Polish Justice Ministry and the Swiss Prosecutor's Office. The team, which was formed following discovery by the Swiss authorities of suspicious Polish accounts, consists of investigators from the Central Anti-Corruption Bureau (CBA) and Federal Criminal Police in Bern. It is investigating alleged corruption in a € 105 million contract award made by Warsaw MetriProjekt, the capital's transportation authority, to purchase Alstom subway cars. The suspected bribery allegedly took place between 1998 and 2002. [183] In January 2010 the Polish Central Anti-Corruption Bureau arrested the former director general of MetriProjekt on charges of fixing the results of the tender in Alstom's favour. Following a mutual legal assistance request from Poland, Spanish officials arrested a consultant in Spain in March 2010 and other suspects have also been arrested in Switzerland. [184] In 2009 the ex-chairman of the Czech coal company **Tchas-Trade** (purchased by French **Eiffage Construction** in January 2010) stood trial in Poland for allegedly bribing the chairman of the Polish company Kompanii Weglowe regarding extension of a supply contract. No recent information is available about the case. [185] There was a report in 2009 about the arrest of an employee of **Siemens Healthcare Poland** on charges of alleged manipulation of a public tender by a hospital. [186] In other jurisdictions, the US Securities and Exchange Commission (SEC) complaint against **Daimler** of March 2010 alleged, *inter alia*, bribery of a high-ranking government official to secure the sale of 30 trucks. [187]

Inadequacies in legal framework: There are several inadequacies. There is no criminal liability for corporations and there are significant barriers to non-criminal sanctions against legal entities due to the low cap on fines in the Law on Liability of Collective Entities (i.e. 10 per cent of the 'revenue' generated in the tax year when the offence was committed) which could potentially prevent adequate sanctions. This law also includes a requirement that a natural person be finally and validly convicted as a prerequisite to proceeding against a collective entity. Additionally, there is an impunity provision that allows offenders to escape prosecution by notifying authorities of the offence and under the Polish legal system many public office-holders including parliamentarians enjoy immunity from prosecution.

Inadequacies in enforcement system: There are some inadequacies. Until recently, these included the fact that the office of the Prosecutor General was occupied by the Minister of Justice, a political office-holder and thus not independent. However, in a recent development, the Prosecutor General has been separated from the Ministry of Justice. Polish public officials are not always aware of their obligation to report foreign bribery to law enforcement officials and the accounting and auditing professions are not always informed about their obligation to report suspicions to the appropriate bodies. Moreover, there is insufficient proactive effort by law enforcement to use a range of sources for detection purposes. Though improving, whistleblower protection is still not strong enough and there is a lack of awareness-raising in the private sector about the foreign bribery prohibition.

Access to information about cases and investigations: Numbers and details of cases are accessible.

Requirements of export credit agencies: A no-bribery commitment is required and extends to conduct by an agent or business partner. Companies are not required to have an effective anti-bribery compliance programme. They are, however, required to report on compensation for agents. Recommendations for foreign bribery prevention measures are being implemented by the Export Credit Support Organization in Poland.

Facilitation payments: Prohibited by law.

Recent developments: The separation of the Prosecutor General from the Ministry of Justice is a major development. The trainings recommended by the OECD Working Group in their 2007 report on Poland are in progress. The Ministry of Finance is collaborating with auditors' associations to increase knowledge flow on the Convention and has prepared an act that would oblige auditors to report indications of a possible illegal act of foreign bribery to law enforcement authorities. The General Inspector of Financial Information has taken steps to improve the flow of information and feedback to obligated institutions on the use of suspicious transaction reports by the authorities, with the view to further strengthening the anti-money laundering reporting system, such as sending feedback to reports of obliged institutions and leaving information in after-the-control recommendations

Recommendations: Address the deficiencies outlined above. In particular, introduce criminal liability for legal entities and adequate sanctions.

PORTUGAL

LITTLE OR NO ENFORCEMENT: Five convictions reported to the OECD. Share of world exports is 0.4%.

Foreign bribery cases or investigations: There is hitherto no public information on cases and investigations except for published information provided by Portugal to the OECD indicating five foreign bribery convictions. [188] No information about these cases is available.

Domestic bribery by foreign companies: At least one prosecution and two known investigations. The prosecution relates to alleged malfeasance in a public hospital's procurement of € 1.2 million in medical equipment from an Australian company via its Portuguese distributor and its Swiss subsidiary. Doctors at the hospital who were part of the decision-making jury were offered leisure trips with their families in 2003 and 2004. In October 2009 seven actors were indicted, including three medical doctors and two managers of the Australian company, one of them Swiss. [189] There have also been media reports about an investigation triggered by an anonymous complaint, involving **Freeport**, a major UK property development company (a subsidiary of the Carlyle Group since 2007) in connection with the licence it obtained in 2002 to build a shopping centre. The investigation reportedly has been extended by the Public Ministry until June 2010 under cloak of judicial secrecy[190] (see Section 4, 'Cases', on Freeport).

The Portuguese investigation of the 'Submarines Affair' continues, in which the **German Submarine Consortium** and the German company **Ferrostaal** are suspected of having influenced the sale of two **Thyssen-Krupp**-built submarines to the Portuguese Navy in 2004 for € 1 billion, **inter alia**, through contributions to the political party of the defence minister. [191] There are new developments in the German investigation of Ferrostaal and in April 2010 Portuguese authorities investigating the case reportedly uncovered an alleged commission invoice for € 30 million.[192] The invoice was found at Espírito Santo Group company ESCOM, which the Public Ministry reportedly suspects may have been used as a bogus consultancy firm to pay millions of euros in bribes to crooked Portuguese officials (see also report on Germany and Section 4, 'Cases', on Ferrostaal).

Inadequacies in legal framework: A key inadequacy in the legal framework lies in the amount of separate laws dealing with corruption-related issues, originating with a confusing web of intercepting articles that provide for interpretation issues and a lack of easy-to-understand mechanisms that can ultimately lead to legal uncertainty.

Inadequacies in enforcement system: The main flaw is the lack of resources for the judiciary police to conduct financial and other investigations. Other key reasons for unsuccessful enforcement are a lack of coordination between investigating police organs and the Prosecutor's Office and a lack of specialised in-service training of inspectors/investigators. There is also inadequate protection for whistleblowers and insufficient awareness-raising about the foreign bribery prohibition. Authorities notice a slight improvement in mutual legal assistance due to increasing harmonisation through European legal instruments, such as the European Arrest Warrant, the creation of Joint Investigation Teams and the Schengen Agreement.

REASONS FOR LACK OF ENFORCEMENT

"The reasons why the inadequacies and flaws in the Portuguese legal and enforcement systems have not yet been addressed by the Portuguese government may be the lack of political interest in the enforcement of this particular offence and, on the other hand, the influence played by certain key actors in the Portuguese economy." (Luis de Sousa and David Marcão, TI experts in Portugal)

Access to information about cases and investigations: The publicly available information continues sometimes to be incomplete, mostly due to the large number of units responsible for collecting and treating corruption related information. Furthermore, criminal proceedings are kept confidential during investigations.

Requirements of export credit agencies: COSEC is the main state ECA in Portugal and includes an anti-bribery statement in application forms, which must be subscribed both by banks and/or exporters. This commitment extends to any person acting on behalf of the exporter/bank, whether an agent or a business partner. However, companies are usually not required to demonstrate they have an effective anti-bribery compliance programme. This is because it is considered is too 'burdensome' for companies, mostly small and medium-sized enterprises (SMEs), although the difficulties faced by SMEs were not specified. Only if there has been a court conviction or other equivalent administrative sanction for violation of laws against bribery will COSEC demand some additional verification on compliance programmes from its applicants, although this has never occurred. On the compensation of agents, applicants are required to provide information about the percentage of commission fees paid. If these commission fees seem to be excessive in respect of the services rendered or sector of activity, additional requests for information (enhanced due diligence) are addressed to the applicant to clarify this issue, which may even lead to a refusal to cover these amounts. In case of bribery, COSEC will inform authorities of the issue, invalidate its coverage, seek to recover already paid claims and deny access to official credit support for a specified period of time.

Facilitation payments: Such payments are forbidden in Portugal as they are covered by the general provisions on domestic corruption offences. [193] This does not mean, however, that these kinds of payments are challenged by law enforcers in practice. There is an underlying social adequacy criteria, which allows common social practices (disregarding the value of the offering, as the social adequacy may differ on context). Facilitation payments, in the form of gifts and hospitality, are a common feature of Portuguese business culture.

Recent developments: Two new laws were passed in 2009 relating to the principle of mutual recognition of judicial orders and immediate execution of judicial decisions, such as decisions to freeze property or evidence, or confiscate criminal proceeds. [194] These result from the previous successful implementation of the European arrest warrant (EAW) and other international harmonisation efforts. None of these instruments has had any practical application as of yet. This means that recognition of decisions can be quicker, as the dual criminality of the acts or 'double jeopardy' does not need to be verified. This in turn helps with prescription periods (statutes of limitations). On the role export credit agencies, recent legislation replaced the former Financial Guarantees Council (FGC) with the Export and Investment Financial Guarantees Board (CGFEI), which has implications for oversight and decision-making in this area.

Recommendations: Rethink corruption-related legal provisions, their content and their interaction with general crime related provisions. Assure the independence of judiciary authorities and police bodies. Improve financial investigation and other types of analysis through strengthening the information treatment system and diversifying investigation teams. Provide criminal police bodies with the necessary means and resources to prevent corruption-related proceedings from dragging in time. Ensure better protection for whistleblowers. Do more to raise awareness about the foreign bribery prohibition.

SLOVAK REPUBLIC

LITTLE OR NO ENFORCEMENT: No cases and one investigation. Share of world exports is 0.4%.

Foreign bribery cases or investigations: The Anti-Corruption Unit of the Slovak Police is reportedly conducting a major investigation, begun in 2009, on the basis of instructions from the Special Prosecutor's Office. It concerns allegations that the companies **Istrokapitál** and **J&T** arranged for favours, gifts and millions of dollars in loans for the premier of the Turks and Caicos, a British Overseas Territory. [195] The *quid pro quo* was allegedly a below market-price lease and sale of land for the purpose of constructing a golf course/luxury resort. [196] A € 400 million investment was reportedly planned. The Czech bank J&T Banka is claimed to have provided loans and credit cards. [197] The scandal led to an inquiry by the Foreign Affairs Committee of the UK Parliament and a Home Office Commission of Inquiry; to the resignation of the Turks & Caicos Premier; and to the partial suspension of the Territory's Constitution and assumption of direct rule of the Territory by Britain. At the end of April 2010, the first legal action was filed by the Special Investigative Prosecuting Team set up in the Turks and Caicos islands with a writ naming three property development companies seeking damages and rescinding of the property development agreements and leases. [198]

Domestic bribery by foreign companies: There is no official information available. Slovakian authorities have reportedly been investigating allegations about the **Interblue Group,** a private Czech-owned company, in connection with its purchase of Slovakia's excess carbon dioxide emissions quotas (and options for additional quotas)

in late 2008 at well below market price following negotiations with previous Slovak environment ministers. [199] According to media reports, the Interblue Group reportedly resold the quotas to four Japanese companies at a profit of € 45 million. According to Slovak authorities they are not investigating bribery but rather misuse of power, money laundering and other offences. Interblue business agents allegedly include Slovak citizens with very close connections to the Slovak government and Slovak National Party. The Swiss Federal Reporting Office for Money Laundering is said to be investigating a suspicious transaction between Interblue and Crataegus Development, a firm based in the tax haven of Belize, [200] and has requested mutual legal assistance from Slovakia. The Swiss investigation is also reportedly looking into suspected money laundering via the US, Switzerland, St. Kitts & Nevis, and possibly other locations. [201] US and Swiss investigators reportedly flew to Bratislava in late 2009 to brief Slovak government officials about their findings concerning the ownership structure and offshore bank details of individuals behind the company,, which is said to include Russian stakeholders.

Inadequacies in legal framework: There most significant inadequacies are the lack of criminal liability for corporations up until June 2010 (see Recent developments below) and failure to hold companies responsible for subsidiaries, joint ventures and/or agents. Although Slovakia approved a law (from 1 September 2009) abolishing the defence of "effective regret" in foreign bribery cases the defence remains available for domestic bribery and a defined group of foreign officials (international judges, foreign MPs etc) is therefore not fully implemented.

Inadequacies in enforcement system: There are inadequacies in complaints mechanisms and whistleblower protection. Concerning whistleblower protection, current legislation (labour law) does not provide for anonymous disclosure and ensure protection of the identity of the whistleblower, nor does it ensure protection of whistleblowers against retribution and in other respects. There is a need for external reporting channels and statistics about whistleblower cases, and there should be financial rewards to whistleblowers who disclose illicit practices.

Access to information about cases and investigations: Information on number and details of cases is accessible.

Requirements of export credit agencies: Companies are required to make no-bribery commitments, which extend to conduct by an agent or business partner. They are not required to have anti-bribery compliance programme nor to report on agent's compensation

Facilitation payments: Prohibited by law.

Recent developments: New legislation in 2009 (Act No. 576/2009 Coll) regarding the offence of bribery amended 300/2005 Coll. Criminal Code. A May 2010 amendment to the Penal Code (amendment No. 224/2010 Coll.) allows for the imposition of protective measures on legal persons in the form of seizure of property or confiscation of money for certain criminal offences. However, despite these developments it appears that the government's interest in tackling corruption is decreasing.

Recommendations: Address weaknesses in the legal system and the system for reporting complaints and whistleblower protection. Provide guidelines, instructions and training to tax examiners on detecting foreign bribery during tax audits. Ensure that accounting and auditing issues related to bribery are regularly examined in the context of the mandatory training requirements for auditors, including auditors of the Supreme Audit Office. Enhance cooperation among law enforcement agencies involved in combating foreign bribery. Ensure adequate staffing, training and resources for the Special Criminal Court, the Office of the Special Prosecutor and other institutions responsible for countering corruption and bribery. Organise training programmes on foreign bribery for the special judges and special prosecutors, including new recruits. Facilitate the legal possibilities of using legal instruments (such as agents, tapping and monitoring of persons) in the fight against corruption. Facilitate a system of administration and realisation of detained and confiscated property that has been forfeited in favour of the state during the criminal proceeding.

SLOVENIA

LITTLE OR NO ENFORCEMENT: No cases and two investigations in 2009. Share of world exports is 0.1%

Foreign bribery cases or investigations: Of the two investigations underway, one began in 2009. No investigations were dropped nor did they lead to prosecutions. According to the media, one investigation concerned the Slovenian company **LEK**, owned by the **Sandoz** division of the Swiss pharmaceutical company **Novartis**, for alleged bribery of doctors in Slovenia, Serbia and Albania, with money and trips. [202] Bribery in Serbia allegedly took place in the form of a € 10,000 payment to each of three medical oncology institutes in Belgrade for the inclusion of the medicine 'Aredia' in a so-called clinical protocol. The case is currently in pre-trial investigation under the jurisdiction of the District Public Prosecutor's Office in Ljubljana.

Domestic bribery by foreign companies: One pending investigation concerns an allegedly improper procurement by the Ministry of Defence of 135 armoured vehicles from the Finnish defence company **Patria**. [203] The case began with an inquiry by the Commission for the Prevention of Corruption in 2006 following a complaint by another bidder on the tender.

Inadequacies in legal framework: There are a few inadequacies but not major ones. The Criminal Code does not provide an autonomous definition of the term 'foreign official', but refers to the definition in the national law of the state in which the person in question performs that function. The defence of 'effective regret' is still available as a basis for not imposing punishment, and to establish corporate liability it is necessary to establish a link between a natural person and the legal person.

Inadequacies in enforcement system: There are several inadequacies. The *October 2009 Phase 2 Follow-up Report on Slovenia* of the OECD Working Group on Bribery noted government efforts to strengthen the independence of police investigations but considered at the time of the report that more could be done. [204] Other inadequacies include lack of coordination between investigation and prosecution; lack of resources and training for prosecutors; and lack of adequate whistleblower protection in practice. In addition court delays pose a potential obstacle to enforcement, as do problems with mutual legal assistance, including low quality of responses and delays by financial institutions. With respect to accounting and auditing requirements, Slovenian auditors do not conduct a sufficiently focused and in-depth assessment of fraud and bribery issues when a company engages in a substantial amount of business abroad. Internal controls, standards, monitoring bodies, etc. are not very strong or efficient.

Access to information about cases and investigations: No adequate statistics are available and there is no access to information about cases and investigations because of the protection of personal data and classified information data, and to protect the investigation underway.

ACCESSING INFORMATION IN SLOVENIA

There is an Access to Public Information Act in Slovenia, [205] and the TI experts in Slovenia sent a written request for data to the Prosecutor's Office, which is obliged to respond within 20 days from the date of the request. However, after 20 days the experts had received no response, nor even a refusal. They are preparing a complaint regarding passivity of the Prosecutor's Office, which will be sent to the Information Commissioner.

Requirements of export credit agencies: The Slovenian Export and Development Bank (SID Bank), the export agency, requires companies to make a no-bribery commitment and these extend to conduct by an agent or business partner, including but not limited to joint ventures and consortium members. Companies are not required to demonstrate they have effective anti-bribery compliance programmes because almost all Slovenian exporters that use medium-to-long term export credits are small and medium-sized enterprises and complex compliance programmes are not suitable for them. However, SID Bank encourages them to establish such programmes and promote them via best practice presentations and via benefits in the process for rating companies. Companies are required to report on compensation for agents.

Facilitation payments: These are prohibited in law.

Recent developments: The Slovenian police was recently reorganised, with the creation as of 1 January 2010 of the first National Bureau of Investigation, a specialised criminal investigation unit at the national level for detecting and investigating serious criminal offences, especially economic and financial crime and corruption. Besides setting up this body, the reorganisation also brought more coordination and cooperation between investigation and prosecution and other competent bodies in Slovenia (e.g. tax office, Commission for the Prevention of Corruption). The police have set up a new analytical office for the (planned) intelligence-led policing model. Additionally, the police will try to establish a common base for all data and information gathered from all competent bodies in Slovenia. The Slovenian government devoted more money to the Commission for the Prevention of Corruption and appears committed to adopting a new Law on Integrity in Public Sector, which has already been drafted, and which will regulate lobbying, whistleblower protection, integrity plans, political party funding, etc. Slovenia adopted a new Criminal Code in 2008, which implemented OECD and GRECO recommendations.

Recommendations: Expand the liability of companies implicated in crimes and ensure the law criminalises bribery through intermediaries and bribery for acts not falling within the foreign official's regular duties. Educate employees in the tax office, prosecutors, judges and other state officials and stakeholders. Enhance the expertise and resources available to police and prosecutors to fight complex economic crimes. Promote joint investigation and exchange of information by anti-corruption and organised crime bodies. Improve the coordination and implementation of anti-foreign bribery measures by the commission or any other independent body. Streamline pre-trial procedures and reduce court delays. Work with companies to develop better strategies for preventing and detecting foreign bribery.

SOUTH AFRICA

LITTLE OR NO ENFORCEMENT: No cases and four preliminary investigations.
Share of world exports is 0.5%.

Foreign bribery cases or investigations: There are many allegations of South African companies being involved in foreign bribery, particularly in other African countries. There are four reported preliminary investigations, two opened in December 2009 and two in February 2010.

Domestic bribery by foreign companies: Two cases that were brought as a result of investigations of South Africa's 1999 US $5.5 billion arms deal were stricken from the court roll in 2009. They were brought by the National Director of Public Prosecutions against then-Deputy President Zuma and **Thint (Pty) Ltd**, a subsidiary of the French defence company **Thales.** [206] In an earlier related case brought in 2004, a former director of **Thint (Pty)** and **Thint Holding** was convicted of corruption and sentenced to 15 years' imprisonment. [207] In February 2009 the South African public protector reportedly found that a former chairman of the electricity utility Eskom had failed to manage a conflict of interest that arose when the utility awarded the R16 billion contract to supply boilers for the Medupi power station to the **Hitachi** consortium. The consortium includes **Hitachi Power Africa** in South Africa, a Hitachi subsidiary. [208] The African National Congress (ANC), through its investment company, Chancellor House, is a 25 per cent shareholder in the consortium. An investigation by the South Africa Parliamentary Accounts Committee begun in 2001 related to the South African government's multi-billion dollar arms purchase in 1999. Investigations of parts of the deal were also conducted in Germany and the UK. [209] An investigation of **Sanip**, a subsidiary of the Swedish company **Saab** was reported in January 2009.

BAE CASE: DISCONTINUING A PRESERVATION ORDER

In 2008 there were media reports about an investigation by the National Prosecuting Authority (NPA) and the now-defunct Directorate of Special Operations (or Scorpions) of allegations that the British arms manufacturer **BAE Systems** paid £115 in 'commissions' to various agents in relation to a £1.5 billion arms deal in South Africa in 1999, part of a large arms purchase that year. [210] The allegations include claims that some of the payments were made to a special advisor to the South African Defence Minister and that they were made to secure for BAE Systems and Swedish **Saab** the award of a contract to supply BAE trainer jets and Saab Gripen fighter jets. [211] In that connection the South African Asset Forfeiture Unit was granted a 'preservation order' on 5 March 2010 by Judge Willem van der Merwe in the High Court in Pretoria, freezing £437,594 in the account of a trust held by the special adviser in Liechtenstein's Bank Pasche – money that allegedly had come from BAE's agent. The case was scheduled to go back to court on 6 April 2010 but was abandoned two weeks later on the recommendation of the new National Director of Public Prosecutions. In his statement on his decision to abandon the preservation order against the special advisor, the National Director said the freezing order could not be continued 'as there is no evidence of criminal conduct'. [212]

Inadequacies in legal framework: In its *Phase 1 Report on South Africa of June 2008*, the OECD Working Group on Bribery expressed concerns about the liability of legal persons; sanctions for legal persons; the requirements for territoriality jurisdiction; and the role in decisions to prosecute of 'the economic impact of the offence on the community'. [213]

Inadequacies in enforcement system: The OECD Working Group on Bribery *Phase 2 Report on South Africa of June/July 2010*, expressed 'serious concern' about the lack of progress and proactivity by South African law enforcement authorities in investigating foreign bribery allegations in light of publicly available information about allegations of foreign bribery. [214] The examiners also expressed concerns about the lack of awareness-raising and training initiatives about foreign bribery, as well as about the scope and the effectiveness in practice of its whistleblower protection legislation. The OECD report expressed concerns about the adequacy of resources dedicated to investigation and prosecution of foreign bribery and recommended specialised training. They also called on South Africa to ensure the police and prosecutors are working together effectively. With respect to prosecutorial independence, the Phase 2 report noted that the National Director of Public Prosecutions (NDPP) is nominated by the head of the executive without any requirement for formal consultation and has the power to review the decision to prosecute or not to prosecute in all cases. The examiners considered that South Africa should consider strengthening safeguards to ensure that the exercise of investigative or prosecutorial powers is not influenced by considerations of national economic interest or other considerations prohibited by Article 5. A number of commentators have raised questions about the independence of the National Prosecuting Authority. [215] The report further recommended extension of requirements for internal controls to additional companies. The Phase 2 examiners also expressed serious concerns about delays in providing mutual legal assistance with regard to certain foreign bribery allegations.

Access to information about cases and investigations: If the case has gone to court there is reasonable access to information, but there is no access to information about investigations.

Requirements of export credit agencies: There is no requirement of a no-bribery commitment by companies. There is also no requirement to demonstrate that they have effective anti-bribery compliance programmes nor is reporting of payments to agents required.

Facilitation payments: These are prohibited by law.

Recent developments: There are a few significant changes in the South African landscape, namely the new Companies Act No. 71 of 2008, which has introduced the concept of personal liability for directors. Secondly, there is the new Directorate for Priority Crime Investigations – the Hawks – which took over for the dismantled Scorpions. Whereas the Scorpions reported to the National Prosecuting Authority (NPA), the new unit now reports to the police (South African Police Service). It remains to be seen what they will undertake in terms of prosecuting priority crimes. We will have to wait to see if they will prove to be successful, independent and impartial in their enforcement activity.

Recommendations: The government should ensure the independence of the National Prosecuting Authority and address the concerns raised by the OECD Working Group on Bribery. Business should take up the issue of foreign bribery more seriously.

SPAIN

MODERATE ENFORCEMENT: 11 cases, of which nine are pending and two have been concluded. One investigation. Share of world exports is 2.2%.

Foreign bribery cases or investigations: **Instalaciones Inabensa SA**, a subsidiary of the Spanish conglomerate **Abengoa SA**, was charged in 2008 with bribing the former president of Costa Rica to obtain a US $55 million public contract to provide electricity to the city of San Jose. [216] In the media, another Spanish electricity firm **Union Fenosa** was also mentioned as a target of accusations of bribery in Costa Rica. [217] A case brought in 2002 concerned **Banco Bilbao Vizcaya Argentaria (BBVA)** and reported secret accounts allegedly used to make political payoffs at home and abroad. [218] In March 2005 the former president of BBVA was sentenced on charges of false bookkeeping. In connection with the Swiss-Polish investigation of a case involving **Alstom**, the Spanish police was requested in January 2010 to arrest a consultant on the basis of a European Arrest Warrant and, after some delay, did so in March 2010. Polish Justice Minister Krzysztof Kwiatkowski reportedly requested assistance from the Spanish investigating magistrate Baltasar Garzon. [219] (See also report on Poland and report on Alstom in Section 4, 'Cases'.) In other jurisdictions, there is a case against Telefonica in Argentina. There have been serious allegations reported in the press in the past against the oil and gas company **Repsol YPF**, as well as against **Endesa** and **Indra**. [220]

Domestic bribery by foreign companies: There was one case brought charging **Siemens** with bribery of members of the Socialist Party in the 1990s, before the OECD Convention was enacted. It concluded with a conviction in November 2008 (after 17 years of trial) when the Supreme Court sentenced to six months in prison the former finance coordinator of the Socialist Party for false bookkeeping related to the bribes of Siemens for the party. [221] Spanish law enforcement has devoted considerable resources in recent years to the fight against Russian and other organised crime groups in Spain. There were three major operations producing arrests, in 2005/2006, 2008 and 2010, with the Office of the Public Prosecutor against Corruption and Organised Crime playing a role in 2008 and 2010. [222] The 2010 operation led to the arrest of members of a Georgian organised crime group, in a coordinated six-country action (Austria, France, Germany, Italy, Spain and Switzerland.) [223]

Inadequacies in legal framework: There are numerous inadequacies, but the new Penal Code of 9 June 2010 improved the legislation. It now includes an adequate definition of foreign bribery; it has introduced criminal liability for corporations; and it has introduced improvements in sanctions, statutes of limitation and the responsibility of high-level company officials. The deficiencies still include jurisdictional limitations and failure to hold companies responsible for subsidiaries, joint ventures and/or agents. Furthermore, a suspect had to be informed at the initial stage of an investigation about the alleged offences of bribery, which may enable that person to destroy evidence or flee the jurisdiction. However, the new clarification of the competence of the Special Prosecutor's Office against corruption provides that the initial investigations in serious foreign bribery cases will last one year (rather than six months for investigations carried out by normal prosecutors). This extended period lessens the concern expressed in different reports that the rule requiring that the suspect be informed during the initial investigation might interfere with the effectiveness of the investigation.

Inadequacies in enforcement system: The many inadequacies include inadequate resources due to other priorities; the Public Prosecutor's Office is investigating almost 800 cases of domestic corruption. Whistleblower protection is still weak even though there have been improvements and there is also a lack of public awareness-raising. Accounting and auditing requirements are also inadequate. For example, contradictions remain in the law and in the ICAC Technical Standards, notably on the breach of the duty of secrecy. Similarly, the procedures to follow in cases of inaction after appropriate disclosure within the company have not been addressed. Mutual legal assistance is too dilatory for investigations to be effective.

Access to information about cases and investigations: There is no adequate public access to information on foreign bribery cases. Nor is there adequate access to information about domestic bribery by foreign companies. There is some data, but no details about the cases.

Requirements of export credit agencies: Companies are now required to make a no-bribery commitment and this commitment extends to conduct by an agent or business partner. The Spanish export credit agency recently adopted a new anti-bribery policy and organised internal meetings to present the new policy to its staff. Exporters must now declare that neither they nor anyone acting on their behalf have failed to comply with the Convention or any related Spanish laws.

Facilitation payments: Facilitation payments are clearly prohibited in the new Penal Code art. 424.1.

Recent developments: In December 2006 the Spanish authorities undertook a major legislative initiative to implement 11 of the recommendations made to Spain by the OECD Working Group on Bribery, on the foreign bribery offence, the liability of legal persons, the available sanctions and related statute of limitations, and on removing the uncertainty concerning which courts are competent to hear foreign bribery cases. However, this initiative was aborted with the dissolution of Parliament in January 2008. A new bill modifying Spanish Penal Code was sent to Parliament in November 2009 and was enacted on 9 June 2010. There is also a new law against money laundering, Law 10/2010, 28 April 2010. Additionally, Spain has taken measures to enhance the institutional framework for the enforcement of the foreign bribery offence. The Public Prosecutor's Office against Corruption and Organised Crime now has the power to investigate and prosecute all significant foreign bribery cases without the intervention of the Prosecutor General for a case-specific determination of the special significance criteria. That office has modified its Internet homepage (www.fiscal.es), publishing and clarifying the effects of article 262 of the Law of Criminal Procedure, including the possibility of anonymous complaints and pointing out the obligation to report crimes, on penalty of fines. (See also the new export credit policy, above.)

Recommendations: Implement soon the bill amending the Penal Code. Introduce training activities focusing on the police, prosecutors and the judiciary, lawyers and the private sector to be developed once the amendments to the Penal Code are adopted. Introduce measures to protect whistleblowers. The flow of information from the judiciary to the authorities responsible for the administrative sanctions system should be improved. Improve the fight against money laundering.

SWEDEN

MODERATE ENFORCEMENT: Two cases, with one pending and one concluded. Two investigations pending. Share of world exports is 1.3%.

Foreign bribery cases or investigations: The concluded case involved two Swedish consultants found guilty in 2005 of bribing three World Bank officials and sentenced to one year and 18 months in prison, respectively. A major prosecution was commenced in 2009 of three executives of **Volvo Equipment International AB** for breaching UN sanctions in Iraq in connection with the UN Oil-for-Food programme. [224] The date of the trial has not yet been determined. The two ongoing investigations also relate to suspected misconduct in connection with the UN Oil-for-Food Programme. The media has also referenced an investigation of **Scania** managers relating to the Oil-for-Food Programme. [225]

Three investigations were dropped in 2009. One of these was a major criminal investigation begun in 2007 of suspicions of bribery in the sale of JAS Saab Gripen jet-fighters to other countries. The Swedish Prosecutor's Authority was quoted as saying that "BAE Systems, the UK-based defence and aerospace firm at the centre of the investigation, made 'large hidden payments' as a part of its efforts to sell the Gripen in the Czech Republic, Hungary, and South Africa". [226] (See also country reports on Czech Republic, Hungary and South Africa). In closing that investigation in June 2009, the prosecutor reportedly stated he was unable to prove that representatives of Sweden's **Saab AB** and **Gripen International** had intentionally assisted alleged bribe payments by **BAE Systems** after July 2004. He noted

that the statute of limitations had run out on any crimes committed before that date. [227] A preliminary scoping by the Swedish prosecutor did not lead to an investigation. The case concerned alleged bribery by an Argentinian subsidiary of the Swedish construction company **Skanska** in connection with a contract to build a pipeline. [228] However, Skanska Argentina is still under investigation in Argentina, where investigators reportedly found evidence that in the course of two years Skanska Argentina paid over 118 false invoices to at least 23 shell companies. [229] (See also report on Argentina.) Concerning the same company, Skanska, Swedish police in 2004 conducted and dropped an investigation into allegations of possible bribes given by an employee of Skanska related to the Bujagali Hydropower Project in Uganda. That same year, the Swedish National Economic Crimes Bureau reportedly investigated charges of tax fraud by **Ericsson** employees in connection with allegations that about US $408 million was paid to handlers to obtain orders for telecommunications systems in 1998 and 1999. The investigation was supposedly triggered by a 2000 report from the Swiss bank UBS about a growing number of accounts in Ericsson's name. [230]

Swedish companies named in investigations or prosecutions in other jurisdictions currently or in the past include **ABB** (US fines of about US $16 million); [231] **AstraZeneca** (UK and US investigations); [232] **Ericsson** (Costa Rican and Swiss investigations); [233 + 234] and **Volvo** and subsidiaries (several US cases concluded with settlements and fines, including an Oil-for-Food-related settlement in 2008 with a fine of US $20 million). [235] In addition **Saab** has been named in connection with a bribery investigation in South Korea but has denied any misconduct. [236] In February 2010, the furniture retailer **Ikea** reportedly said that it had fired two executives in Russia for allowing a contractor to pay a bribe. [237]

Domestic bribery by foreign companies: There is one investigation underway concerning bribery by a foreign company in Sweden. Additionally, a case in 2003 involved alleged bribery by the Finnish company **Wärtsilä** of a Swedish shipping company employee in connection with sales of ship engines in 1999 and 2000. [238] There were media reports that the UK company **Rolls Royce** was also alleged to have paid bribes to the same Swedish employee.[239]

Inadequacies in legal framework: There are several inadequacies including inadequate penal law provisions against corporations bribing through subsidiaries, joint ventures and/or agents, and inadequate sanctions. The maximum fine is SEK 10 million (about € 1 million). The TI expert considers this is not a sufficient deterrent. The statute of limitations is five years for bribery and 10 years for aggravated bribery. The *GRECO Third Evaluation Round Report on Sweden of February 2009* expressed concern that Sweden applies the jurisdictional principle of dual criminality for foreign bribery offences and called on Sweden to consider abolishing this requirement. [240]

Inadequacies in enforcement system: There are inadequacies specifically with regard to inadequate resources, training of investigators, complaint mechanisms and whistleblower protection, as well as lack of public awareness-raising.

LACK OF PRIORITY FOR FOREIGN BRIBERY ENFORCEMENT

'The impression is that the government does not attach sufficient importance to the shortages in the implementation system specifically the shortage of competent investigators when needed.'
(Thorsten Cars, Swedish TI expert)

Access to information about cases and investigations: Access to numbers is possible and details of cases are available as soon as a public prosecutor has decided to bring an indictment.

Requirements of export credit agencies: Companies are required to make a no-bribery commitment but this does not extend to conduct by an agent or business. Companies are expected to report on compensation for agents but do not need to demonstrate they have effective anti-bribery compliance programme.

Facilitation payments: Prohibited by law.

Recent developments: A new commission has been set up by the government for the purpose of revising the legislation relating to corruption. The commission submitted its report (SOU 2010:38) in June 2010, including some, but not all, of the reforms recommended by TI-Sweden under "Recommendations" below.The Chancellor of Justice (the government's legal advisor or attorney) has initiated an examination of the investigative resources of the Anti-Corruption Unit.

Recommendations: Introduce adequate penal law provisions against corporations bribing through subsidiaries, joint ventures and/or agents. Criminalise trading in influence. Abolish the prerequisite of 'dual criminality', i.e. the requirement that the deed is punishable not only in Sweden but also in the country where it is committed. Introduce an effective, specific law about protection of whistleblowers. Provide a sufficient number of well-trained police investigators directly subordinate to the Anti-Corruption Unit. Introduce heavier fines for corporations and other legal entities (*företagsbot*).

SWITZERLAND

ACTIVE ENFORCEMENT: 30 cases. Share of world exports is 1.6%.

Foreign bribery cases or investigations: Of the 30 cases, 12 were judicial investigations initiated in 2009. According to a 2007 statement by the Office of the Attorney General, eight companies in Switzerland agreed to plead guilty and pay penalties in relation to charges stemming from the UN Oil-for-Food Programme. [241] The Swiss also seized about US $16 million in connection with Oil-for-Food cases. According to press reports, one of the investigations currently underway involves the Swiss subsidiary of the French engineering company **Alstom SA** and was initiated in 2004, following the accidental discovery through an audit of a private bank of documentation detailing money transfers in other countries. Swiss authorities subsequently conducted raids in connection with the case and in 2008 arrested a former private bank executive – in May 2010 the banker was formally charged with laundering and managing corruption money for a 'French industrial group', according to a reported statement of the Swiss Prosecutor's Office.[242] Although the company was not identified in the statement, according to a media report federal prosecutor Lienhard Ochsner later said the charges related to transfers of CHF 9 million from Alstom into special bank accounts. [243] The private banker was also charged with money laundering related to drug trafficking (see also Section 4, 'Cases'). Swiss investigations in the past triggered the **Siemens** case in Germany and the **Total** case in France, and assisted investigations in many other countries including the UK investigation of **BAE Systems.** [244]

In other jurisdictions, the Swiss-Swedish engineering company **ABB** has been named in an investigation in the US and reportedly also in China (see Section 4, 'Cases'). Another company, a US subsidiary of **Panalpina World Transport Holding Ltd**, was reportedly under investigation in the US in 2008 for alleged FCPA violations in relation to services provided in Kazakhstan, Nigeria and Saudi Arabia for a limited number of customers. In April 2010 Panalpina announced an expected settlement in the US with expected fines and other costs of CHF 120 million (US $114 million). [245] The Swiss pharmaceutical company **Novartis** was reportedly under investigation in Slovenia [246] (See report on Slovenia). In India, the Indian Central Bureau of Investigation reportedly recommended in July 2010 that its defence ministry blacklist six companies, including the Swiss company **Rheinmetall Air Defence** (formerly **Oerlikon Contraves**) in connection with alleged kickbacks to the director-general of the Indian Ordnance Factory Board to gain favourable treatment. [247]

Domestic bribery by foreign companies: No cases are known.

Inadequacies in legal framework: The main inadequacy is that the limit of CHF 5 million for fines for legal entities is too low. The amount of the fine should rather be commensurate with the amount of profit derived from the corrupt transaction which may be much higher.

Inadequacies in enforcement system: There are several inadequacies. One is the difficulty in coordinating federal and cantonal policies. Another is that training offered in the fields of ethics, corruption and prevention for federal and cantonal public officials is insufficient. There is also no legal requirement for public officials to report suspected cases of corruption and no protection for those making such reports. While money laundering applies to the handling of the proceeds of most acts of corruption, it does not apply to the granting of an advantage to a foreign official. Accordingly, there are no reporting obligations for financial institutions in these cases. There is no obligation to report 'slush funds' according to the Swiss Money Laundering Reporting Office.

CONFISCATION ISSUE: MOBUTU AND DUVALIER FUNDS

Two recent cases illustrate the difficulty in dealing with the proceeds of corruption without the cooperation of the country where the corruption took place. The recent decision of the Swiss Federal Tribunal to allow the family of Mobutu Sese Seko, former president of the Republic of Congo, to recover funds confiscated in Switzerland has produced an unsatisfactory situation in the view of the TI-Switzerland expert. It based its decision on the fact that there had not been any court judgment against Mobutu in the Republic of Congo, and that prosecution for money laundering charges in Switzerland was no longer possible because the statute of limitations had run out.

continuation next page

The Congolese government refused to cooperate with efforts to return the Mobutu funds to the government of Congo. The argument that Mobutu and others constituted a criminal organisation, which would have allowed their continued confiscation, was rejected on the basis that any criminal organisation would have ceased to exist with the death of Mobutu. [248]

A similar situation arose with respect to the funds deposited in Switzerland by François Duvalier, former president of Haiti. The Swiss Federal Tribunal invalidated a decision to return these funds to the government of Haiti on the grounds that the statute of limitations had run out. In order to avoid the return of these funds to the Duvalier family, the Swiss government maintained their confiscation. [249]

Access to information about cases and investigations: The number of cases is not accessible nor are details available. The Federal Office of Statistics publishes annual data about the numbers of convictions, which includes a heading for foreign bribery convictions under the Criminal Code. The information is limited to the number of convictions recorded in the Swiss criminal registry and is published with a six-month lag time. A conviction is recorded only once it is no longer appealable which may be several years after the occurrence of the crime. Since 2010 the Federal Office of Statistics also makes available a data bank with information on numbers of crimes registered by the police and on indictments. [250] However, no information is provided on the parties involved, the specifics of the case itself and the place or time when the act of corruption or alleged act of corruption occurred.

Requirements of export credit agencies: A no-bribery commitment is required and this extends to conduct of an agent or business partner. No anti-bribery compliance programmes are required nor is it required to report payments to agents.

Facilitation payments: There are specific provisions in the Criminal Code prohibiting the granting or accepting of an advantage, including facilitation payments, with respect to domestic bribery but not with respect to the bribery of foreign officials. In practice the prohibition of facilitation payments is rather strictly observed in the domestic sphere while, in the view of the TI-Switzerland expert the absence of prohibition in the international field leads to tolerance of facilitation payments with respect to foreign bribery. There are, however, signals of a change of mood in this area

Recent developments: There is a bill before Parliament for the protection of whistleblowers but it has not yet been passed. Following the unsatisfactory situation with regard to the Duvalier funds (see box, above), the Swiss government asked the Department of Foreign Affairs to draft a bill on the restitution of illicit funds of politically exposed persons; this bill was published in February 2010.

Recommendations: Increase priority given to anti-corruption and foreign bribery agenda. Fast-track the bill on the restitution of illicit funds of politically exposed persons in order to avoid other embarrassing situations like the cases of the Mobutu and Duvalier funds. Extend money-laundering-related reporting obligations, including extension to 'slush funds'. Pass the bill on whistleblower protection. Improve the collection of publicly available information on foreign bribery cases. Create an appropriate body to coordinate anti-corruption policies.

TURKEY

LITTLE OR NO ENFORCEMENT: No cases; four investigations. Share of world exports is 0.9%.

Foreign bribery cases or investigations: Of the four investigations underway in 2009, two began in 2009 and one investigation was dropped. There has been very slow progress on the allegations about improprieties in the UN Oil-for-Food Programme. An investigation reported in 2007 related to a **Barmek Holding AS** subsidiary in Azerbaijan was terminated by the Public Prosecution Office in Ankara, taking account of the fact that an Azerbaijan court had reached a verdict convicting the suspects of breach of trust. [251] In the US, the Turkish company **Kiska Construction Corporation** was named in a bribery case in New York City. [252]

Domestic bribery by foreign companies: Several cases have been reported in the press. In 2006 two representatives of the Swiss pharmaceutical company **Roche** were reportedly charged with making misleading statements and bribing government officials in the Ministry of Health in connection with the sale of two drugs. Ministry officials were charged with negligence and bribery. The case is reportedly still pending. [253] In April 2008 a public prosecutor in Istanbul launched a criminal inquiry into the city's transport authority for alleged illegal transactions in connection with acquisitions and contracts during the period 2005-07, including bus purchases from Dutch and German companies. [254] An interior ministry report had revealed the agency systematically avoided public tenders for contracts worth more than F 100 million (US $134.5 million). In 2009 a case was reportedly brought against the general manager of **Fintecna SpA**, an Italian business services company wholly owned by the Italian Ministry of

Economy and Finance and specialising in privatization and management services. Fintecna was executive partner with Cukurova Elektrik AS (a member of Uzan group) for the construction of a dam that started in the mid-1990s and the manager was accused of bribing academics acting as court experts to prepare false expert reports in their favour. The case has gone to trial but no final verdict has yet been reached. [255] In 2008 an investigation was reported of a Turkish developer who sold an Istanbul site to a UK supermarket chain and was accused of bribing a Turkish politician to speed through planning permission. [256] Documents reportedly showed the deputy chairman of a leading political party had signed a business contract that would give him TL1.5 million (US $1 million) in exchange for changing the building permits. No allegations were reported of any involvement of the UK company.

In other jurisdictions, the US Securities and Exchange Commission settled an FCPA enforcement action in July 2007 against **Delta & Pine Land Company,** a Mississippi-based cottonseed producer, and its 100 per cent-owned subsidiary, **Turk Deltapine, Inc.** It was alleged that from 2001 to 2006, Turk Deltapine made payments of approximately US $43,000 (including cash and in-kind gifts) to officials of the Turkish Ministry of Agricultural and Rural Affairs in order to obtain various governmental reports and certifications related to the monitoring of genetically modified seeds. The parent and subsidiary jointly paid a US $300,000 civil penalty and agreed to engage an independent compliance consultant. [257] In another US case, charges were brought against **Siemens AG,** including claims that the company and its subsidiary **Siemens Turkey** paid US $57 million in bribes in Turkey in relation to a public procurement by BOTAS, the Turkish state enterprise for natural gas supply. The aim was allegedly to secure mandatory use of Siemens' equipment in the project. [258] The May 2010 announcement by the US Justice Department of its settlement with the German auto company **Daimler AG** included allegations that the company's subsidiary in Turkey, **Mercedes Benz Turk** (MB Turk), made improper payments to the Ankara Police Department and the İzmir Metropolitan Municipality to help secure contracts for the purchase of vehicles between 1998 and early 2008. According to allegations in the US case, there was evidence that MB Turk paid a total of F 3.3 million to 'third parties' following the sale of Daimler vehicles to governments and local customers. The Turkish subsidiary was also allegedly involved in payments to government officials in relation to sales to Latvia North Korea and Turkmenistan. [259]

Inadequacies in legal framework: There have been major improvements in the legal framework including the reintroduction of corporate liability, which had been eliminated. However, a number of deficiencies remain, including lack of criminal liability of legal persons. The GRECO *Third Evaluation Round Report on Turkey of March 2010* found that the Turkish legal framework for the incrimination of bribery was quite complex and lacking in coherence and also noted the overly narrow concept of bribery offences. [260] Additionally, it found the scope of external audits is insufficiently broad.

Inadequacies in enforcement system: There are some deficiencies. In particular, there is a need to increase resources for enforcement and ensure that adequate sanctions are imposed.

Access to information about cases and investigations: Information on numbers is not publicly available. This information can in principle be obtained via the Access to Information Law, but since there are a large number of courts and public prosecutors offices, this route is not practically feasible. No information on case details is available as initial criminal procedures are confidential.

Requirements of export credit agencies: It is required for companies to make a no-bribery commitment. Such commitments do extend to conduct by an agent or business partner. Companies are not required to demonstrate that they have effective anti-bribery compliance programmes and are not required to report on payments to agents.
Facilitation payments: Prohibited in law but not in practice.

Recent developments: Legislation was adopted in 2009 that reintroduced corporate liability, removed obstacles to foreign bribery cases and eliminated the defence of effective regret. There was also new legislation improving the protection of whistleblowers in the public and private sectors. A draft provision for broadening the scope of external company audits is currently before Parliament. There are increasing efforts to raise public awareness about preventing public bribery. The private sector is focusing more on the foreign bribery issue due to the increasing number of worldwide allegations against multinational companies. The OECD Working Group on Bribery *Phase 2 and Phase 2bis Report on Turkey of March 2010* found that "Turkey's progress in implementing the OECD Anti-Bribery Convention since its Phase 2 examination in December 2007 has been significant." [261]

Recommendations: Involve public prosecutors in collecting information about allegations of foreign bribery as recommended by the OECD Working Group on Bribery. Train law enforcement officials and relevant government officials. Provide clear definitions of gifts and souvenirs, as well as distinctions between bribes and gifts. Increase level of monitoring and audits in order to keep track of international transactions and adopt legislation broadening the scope of external company audits.

UNITED KINGDOM

ACTIVE ENFORCEMENT: Ten cases (three pending) and 24 investigations. Share of world exports is 3.9%.

Foreign bribery cases or investigations: Seven cases have been concluded, two in 2009 and three (to date) in 2010. These included the first conviction of a UK company, in September 2009, and the highest proposed settlement with a UK company, in February 2010. In one case, concluded in September 2009, the construction firm **Mabey and Johnson** was convicted of bribing politicians, ministers and public officials in Ghana, Angola, Madagascar, Mozambique, Bangladesh, and Jamaica. [262] In April 2010 the vice president for market development at **DePuy International Ltd**, the UK subsidiary of US healthcare group **Johnson & Johnson**, received a suspended one-year jail term on allegations of making corrupt payments and/or other inducements to medical professionals working in the Greek public healthcare system. [263] One major case in 2010 concerned **BAE Systems** [264] (see also 'Recent developments', below), and resulted in a proposed landmark settlement calling for the company to pay a £30 million fine, part of which was to be donated to Tanzania, and plead guilty to breach of a duty to keep accounting records. This related to commission payments to a marketing adviser in connection with the sale of a radar system to Tanzania (see also Section 4, 'Cases'). The second case involved a settlement with **Innospec Ltd** (a UK subsidiary of the US specialty chemicals company **Innospec Inc**.), which pleaded guilty to bribing officials of an Indonesian state-owned refinery to secure sales of a fuel additive. [265] Both cases involved coordinated settlements by the UK Serious Fraud Office (SFO) and the US authorities, although the UK judge objected to some aspects of the settlement with **Innospec Ltd** (see below, 'Recent developments'). [266]

In February 2009 the SFO announced it had discontinued an investigation into contracts secured by **Anglo Leasing** with the Kenyan government at allegedly inflated prices, finding no reasonable prospect of conviction without evidence from Kenya by way of mutual legal assistance. [267] There was a press report in November 2009 about a Serious Fraud Office investigation into serious allegations against the subsidiary of UK insurance business **PWS** concerning alleged illicit payments in Costa Rica. [268] In January 2010 the City of London Police's Overseas Anti-Corruption Unit (OACU) said it had executed warrants at locations throughout England, in support of a US-led international investigation into corruption in the military and law enforcement products industry. The FBI simultaneously arrested suspects in the US. [269] In February 2010 it was reported that **MW Kellogg** was seeking to enter a plea bargain with the SFO as part of the fallout of the TSKJ-Bonny Island case, and a British court also approved extradition to the US of a solicitor and a former Halliburton employee in connection with that case.[270] On 24 March 2010, as part of a multi-jurisdictional probe, three members of the board of **Alstom** in the UK were arrested on suspicion of bribery and corruption, conspiracy to pay bribes to win contracts overseas, money laundering and false accounting. The SFO said it was working closely with the Federal Police in Switzerland, where Alstom has operations. [271] In April 2010 the SFO was reported to be investigating UK-based **Macmillan**.[272] This followed a six-year debarment of the company by the World Bank for bribery to obtain a contract to print textbooks for an education project in southern Sudan. Macmillan is wholly owned by the German publishing giant Verlagsgruppe Georg von Holtzbrinck.

Domestic bribery by foreign companies: This Information is not easily available, and TI-UK is unable to provide it. A case reported in 2007, on which UK and US authorities cooperated, involved alleged bribes by the US **Pacific Consolidated Industries** to a senior UK Ministry of Defence official. The UK official pleaded guilty in 2007 and was sentenced to two years in prison. The former president of the company pleaded guilty in the US in 2008 and was sentenced to two years' probation, and the head of sales and marketing of the company pleaded guilty in the US in 2009. [273] A scandal in the Turks and Caicos involved allegations of bribery of high-ranking government officials by a Czech-owned company. An inquiry into these allegations by the UK Parliament and the UK Home Office led to UK assumption of direct rule of the islands and establishment of a Special Investigative Prosecuting Team that has filed charges [274] (see also report on Slovak Republic).

Inadequacies in legal framework: The Bribery Act, which received Royal Assent on 8 April 2010, greatly improves the legal framework for foreign bribery prosecutions, making it easier for UK law enforcement authorities to prosecute individuals and companies. The act finally makes the UK fully compliant with the OECD Anti-Bribery Convention. However, to accommodate the concerns of UK industry groups, the bribery offences will only come into force after the government has issued official guidance to companies on adequate procedures for corporate anti-bribery systems (see also 'Recent developments', below). On 20 July, the Government announced that it would carry out a "short consultation exercise" before publishing the guidance early in 2011, with a view to having the Act enter into force in April 2011. This delay is regrettable and attempts should not be made to water down the Bribery Act under the guise of consultation. Clause 13 of the Bribery Act provides a defence for a person who can prove his/her conduct was necessary for the proper exercise of any function of an intelligence service, or the proper exercise of any function of the armed forces when engaged on active service. It would have been preferable to exclude such a

statutory defence, and it will be important to ensure that it is not abused and is only available in relation to functions related to national security, as well as to rule out its application to any function related to safeguarding the national economic interest.

Inadequacies in enforcement system: The enforcement system has improved considerably in recent years, and the Bribery Act 2010 will further strengthen it. Greater resources will be needed to implement the act effectively, and sustained efforts are needed to increase awareness among companies, especially small and medium-sized enterprises (SMEs). It is alarming that the SFO's budget is being reduced at the same moment it needs additional resources to tackle foreign bribery. This will weaken the new Foreign Bribery Strategy. It is also not clear how the proposed merger of the SFO into a new Economic Crime Agency will affect resources available for enforcement. The Bribery Act 2010 formally transfers the power of the Attorney General to give consent to prosecutions of bribery to the Director of Public Prosecutions, the Director of the Serious Fraud Office and the Director of Revenue and Customs Prosecutions, bringing the UK in line with the OECD Convention. However, the act leaves in place the formal authority of the Attorney General to give direction to cases involving the prosecution of bribery. Previous TI-UK reports have highlighted the SFO's premature termination in December 2006 of its investigation of BAES in relation to the UK-Saudi Al Yamamah defence contract. The government and the SFO claimed the decision was taken on grounds of national and international security and not for any reasons prohibited by Article 5 of the OECD Convention. In April 2008, in its judgment on a judicial review of the SFO's decision that had been requested by two UK NGOs, the Administrative Court held that the SFO Director was wrong to discontinue the Al Yamamah investigation, and the Court criticised the government for its abject failure to resist the supposed threat to UK interests that prompted that decision. However, in July 2008 the House of Lords, at the time the highest appellate court of law in the country, upheld the SFO's appeal and overturned the Administrative Court's decision. [275]

Access to information about cases and investigations: The number of cases is accessible. However, this information is not yet available to the public in consolidated form via an official website (e.g. SFO, City of London Police). Case details are accessible, except for those that are *sub judice*. The SFO frequently issues press releases about prosecutions or investigations.

Requirements of export credit agencies: No-bribery commitments are required and these commitments extend to conduct by an agent or business partner. Companies must report payment to agents but do not need to demonstrate that they have effective anti-bribery compliance programmes.

Facilitation payments: Prohibited by law.

Recent developments: The new Bribery Act sets out four bribery offences, including bribery of a foreign public official and failure of a commercial organisation to prevent bribery. It is a defence for a company to prove that it had in place adequate procedures designed to prevent persons associated with it from undertaking such conduct. Effective enforcement of the Bribery Bill is a central element of a new UK Foreign Bribery Strategy presented to Parliament by the Secretary of State for Justice in January 2010. The objectives of the strategy are strengthening and enforcing the law; supporting ethical business; and improving international cooperation and capacity building. In July 2009 the SFO published guidance to encourage companies to self-report misconduct by their own employees and promptly address weaknesses in their corporate anti-bribery systems. The SFO aims to approach these cases with leniency. The judge in the Innospec case, cited above, noted that the unique circumstances of the case essentially forced the court to agree to limit the fine to US $12.7 million. However, he expressed concern that this fine was wholly inadequate to reflect the criminality displayed by the company, and also pointed out that plea agreements in the UK should not begin to erode the fundamental constitutional principle of judicial sentencing, even in global settlement cases. This ruling may set precedents for future settlement cases in the UK. In other developments, at a meeting of the OECD Working Group on Bribery in March 2010 regarding the extension of the OECD Convention to its Overseas Territories (OTs), the UK reported that six reports on the OTs compliance had been completed and were awaiting comments from OT governments. The UK was hopeful that at least one or two Caribbean OTs with strong roles in the financial sector would seek extension of the Convention in 2010.

Recommendations: Enforce the new Bribery Act 2010 and ensure the Act is not diluted in any way as a result of the consultation on official guidance to companies. Increase resources for the investigation and prosecution of foreign bribery. Increase awareness of the Bribery Act and the OECD Convention among UK companies, especially SMEs. In cases of negotiated criminal or civil settlements, ensure that prosecutors are more transparent about the criteria for determining whether a settlement (as opposed to a contested trial) is in the public interest as well as the terms of a settlement (e.g. financial penalties, compliance agreements and independent monitors).

UNITED STATES

ACTIVE ENFORCEMENT: 168 cases and 100 investigations. Share of world exports is 10.0%.

Foreign bribery cases or investigations: 30 pending cases, of which 19 were brought in 2009. 138 concluded cases, 100 investigations and 25 serious allegations. As of October 2009 there had been a record of three trials for the year arising out of the US Foreign Corrupt Practices Act (FCPA), involving four individuals including a former US Congress member. (There were only three trials in the preceding seven years.) There were some record settlements in 2009 and 2010, including with **Halliburton** and its subsidiary **KBR** (US $579 million in connection with activities of a joint venture to build the Bonny Island liquid natural gas facility in Nigeria [276]); **Siemens** (US $800 million related to charges of global bribery); **BAE Systems** (US $400 million; see Section 4, 'Cases'); German carmaker **Daimler AG** (US $185 million; see box below); and **ENI** and its former Dutch subsidiary **Snamprogetti Netherlands BV** (together US $365 million in connection with activities of a joint venture to build the Bonny Island liquid natural gas facility in Nigeria [277]).

DAIMLER SETTLEMENT

In April 2010 a federal judge approved a settlement with Daimler involving payment of US $185 million, consisting of a fine in the amount of US$ 93.6 million and civil disgorgement of profits of US$ 91.4 million. [278] The charges alleged some US $56 million in bribes to foreign government officials related to more than 200 transactions in 22 countries that earned the company US $1.9 billion in revenue and at least US $91.4 million in allegedly illegal profits.

According to the "criminal information", Daimler made hundreds of improper payments totalling tens of millions of dollars between 1998 and 2008 to foreign officials in China, Croatia, Egypt, Greece, Hungary, Indonesia, Iraq, Ivory Coast, Latvia, Montenegro, Nigeria, Russia, Serbia, Thailand, Turkey, Turkmenistan, Uzbekistan, Vietnam, and others Russia, China, Nigeria, Croatia. According to the allegations, Daimler in some cases wired these improper payments to US bank accounts or the foreign bank accounts of US shell companies in order to transmit the bribe. In at least one instance, a US shell company was allegedly incorporated for the specific purpose of entering into a sham consulting agreement with Daimler in order to conceal improper payments routed through the shell company to foreign government officials. It was alleged that in all cases, Daimler improperly recorded these payments in its corporate books and records. As part of the settlement, Daimler's German and Russian units each agreed to plead guilty to two counts of violating American bribery laws, and its Chinese subsidiary will be subject to the two-year deferred prosecution agreement as well. [279]

The year 2009 also saw the first major FCPA-related sting operation by the FBI, with 250 agents involved in a two-and-a-half-year probe that culminated in arrests of 21 arms dealers attending an industry trade show in Las Vegas, resulting in 16 indictments of 22 people for FCPA violations. [280]

Many FCPA cases and investigations have targeted oil-service companies, as well as oil companies. These include a 2007 settlement with **Baker Hughes Inc.** involving a US $44.1 million fine; a 2008 Oil-for-Food related settlement with **Chevron Corp** involving a US $30 million fine; and another 2008 case in which UK company **Aibel Group Ltd** was fined for FCPA violations in Nigeria. As mentioned above, there were also cases brought against **Halliburton** and **KBR**, including CEO Jack Stanley, who reported to then-Halliburton CEO Dick Cheney.

In another oil-related case, there were some developments, albeit slow, in the Justice Department's FCPA prosecution of James Giffen, an American former adviser to the president of Kazakhstan. The Giffen indictment was issued in New York in April 2003 and involved allegations that he made "more than $78 million in unlawful payments to two senior officials of the Republic of Kazakhstan in connection with six separate oil transactions, in which the American oil companies **Mobil Oil**, **Amoco**, **Texaco** and **Phillips Petroleum** acquired valuable oil and gas rights in Kazakhstan". [281] The oil companies named in that indictment were subpoenaed in the case in 2003 but were not charged. [282] Giffen claimed US intelligence agencies knew of and approved the payments, and he requested documents that could exonerate him. A federal district court in New York reportedly held a closed hearing in Giffen's case in February, 2010, and had scheduled another hearing for March 2010. [283] The defendant was scheduled to appear in court again on 20 July 2010. [284]

There were also some developments towards ending a Securities and Exchange Commission (SEC) investigation of US oil company activity in Equatorial Guinea. A 2004 US Senate investigation into Washington-based Riggs Bank found that three oil companies, **Amerada Hess, Exxon Mobi**l and **Marathon Corp.**, [285] had paid large amounts of money to Equatoguinean officials, their family members or businesses controlled by them. [286] A federal grand jury was reportedly empanelled in 2004 and 2005 in connection with allegations about oil company activities in Equatorial

Guinea. [287] The companies mentioned in connection with SEC investigations included **Amerada Hess**, **ExxonMobil, Devon Energy**, **Chevron Texaco**, **CMS Energy** and **Marathon Corp**. In 2009 Amerada Hess and Marathon were reportedly told by the SEC that it would not pursue enforcement action against them. [288] There are no reports about the disposition of the investigations regarding the other companies.

An interesting recent development in the US is the increase in civil actions brought by foreign parties in US courts in connection with foreign bribery allegations in Bahrain, Costa Rica and Iraq. Two of these lawsuits are referenced in Section 4 "Cases" in the discussions of the **Alcatel-Lucent** and **Alcoa** cases . The two others relate to the UN Oil-For-Food Programme in Iraq. The first of these was filed in December 2006 by a group of private individuals from northern Iraq. They alleged under the Federal Racketeer Influenced and Corrupt Organisations (RICO) Act that they had suffered US $200 million in damages as a result of the payment of kickbacks to Saddam Hussein's regime by French bank **BNP Paribas** and Australian company **AWB**. [289]The complaint claimed that BNP Paribas, through an alleged payment of $1.5 billion in kickbacks, and AWB through an alleged payment of over $200 million in kickbacks, had committed various predicate acts required to bring a RICO claim, including violations of the Travel Act, the FCPA, the U.S. embargo of Iraq and money laundering offenses. In June 2008, the Iraqi government filed a separate civil lawsuit in a federal court in New York against dozens of companies, seeking over US $10 billion in damages arising from those companies' corrupt activities in connection with the UN Oil-for-Food Programme. [290] A number of those companies were targeted by ongoing investigations by the DoJ and SEC.

More recently, in December 2009, Aluminum Bahrain (Alba), a Bahraini state-owned enterprise, filed a US $31 million civil suit in federal court in Houston, Texas against Japanese trading company **Sojitz Corp.** and its US subsidiary, Sojitz Corporation of America , in connection with the alleged payment of bribes to Alba employees. The suit alleges that from 1993 to 2006, Sojitz paid US $14.8 million in bribes to two of Alba's employees in exchange for access to metals at below-market prices. Alba's claims against Sojitz are based on RICO, alleging conspiracy to violate RICO, fraud, and civil conspiracy to defraud. The complaint alleges that Sojitz used bribes to buy underpriced products and then "resold the aluminum it bought from Alba at below-market rates to U.S. companies including Enron Corp." [291]

Domestic bribery by foreign companies: There have been at least six known cases and one investigation. One 2009 case involved bribery of a US Embassy official to secure procurement of armoured vehicles from a Venezuelan company, and another involved bribery of an Export-Import Bank official by Nigerian businessmen. In March 2008 two New York City transportation officials pleaded guilty to bribery involving **Kiska Construction Corporation** of Turkey, [292] and in November of that year the German pharmaceutical company **Bayer** settled a case alleging private-to-private bribery of medical equipment suppliers. [293] Additionally, the Inspector General of the Interior Department conducted an investigation in 2006 of allegations that **Royal Dutch Shell PLC** and US oil companies, including Chevron, Hess Corp and Gary Williams Corp., bestowed gifts and engaged in improper conduct with employees of the US agency overseeing domestic oil exploration, the Interior Department's Minerals Management Service (the Royalty in Kind Division). The report was forwarded to the Assistant Secretary for Land and Minerals Management in 2008 for whatever adverse action he deemed appropriate for the employees involved. [294] No sanctions on the oil companies are known to have been imposed to date. The report has been in the public spotlight recently since the disastrous BP-Halliburton-Deepwater Horizon oil rig accident in the Gulf of Mexico. In the Heath case in the UK in 2008, a former solicitor pleaded guilty to conspiring to bribe an official in the US Justice Department to cause millions of dollars to be unfrozen from bank accounts around the world following a freezing order sought by the SEC. [295]

Inadequacies in legal framework: There are no serious inadequacies in the legal framework. However, the US statute of limitations is five years, which may be extended to eight years. Further, in February 2010 the US Senate Permanent Subcommittee on Investigations issued a report that concluded that the anti-money laundering provisions of the US Patriot Act had loopholes that allow suspicious funds to be channelled into the US. [296] The Financial Action Task Force (FATF), which monitors national anti-money laundering efforts in 2006 criticised weaknesses in US prevention and the insufficient transparency requirements pertaining to the beneficial ownership of corporations in certain states, notably Delaware, Nevada and Wyoming. [297]

Inadequacies in enforcement system: There are no significant inadequacies. Enforcement activity has reached an all-time high.

Access to information about cases and investigations: The number and details of cases are accessible. US enforcement authorities regularly issue public releases and charging documents for new FCPA cases on their websites. Additional documents are available from online court dockets. Documents in cases resolved without prosecution generally are not as available, however.

Requirements of export credit agencies: Companies are required to make a no-bribery commitment and this extends to conduct by an agent or business partner. They are not required to have an anti-bribery compliance programme but the US Export-Import Bank (Ex-Im) may proactively ask questions on an applicant's management control systems. Where concerns are raised the bank will conduct enhanced due diligence. Companies are also not required to report on compensation for agents but do have to certify that they have not paid non-standard commissions. Ex-Im may also demand disclosure of agents and commissions and fees paid if it has any concerns about a particular exporter or about the market in question.

Facilitation payments: The FCPA specifically exempts 'facilitating' payments from the criminal and civil prohibitions of the law. Many companies continue to allow them.

Recent developments: The US Congress has appropriated substantial additional resources (in the billions of dollars) to the US Department of Justice (DoJ) and FBI for the pursuit of white-collar crime. A substantial number of new DoJ trial attorneys and FBI agents have been dedicated to FCPA enforcement in the past year. The SEC similarly has been provided with additional resources, and has created a division dedicated to FCPA enforcement which began operation in early 2010. The SEC has also undergone a change in leadership, and indications are that this new leadership will pursue FCPA enforcement at least as aggressively and more independently from the DoJ than in the past. As a part of its focus on increased enforcement, the SEC has promulgated new guidelines for providing 'cooperation credit' (i.e. leniency in the actions taken against those witnesses) in exchange for information that proves valuable to an SEC enforcement action. Like the DoJ developments cited above, these additional SEC resources and enforcement measures likely to lead to an increased number of FCPA and related enforcement actions. US authorities also are pursuing asset recovery remedies, such as forfeiture, with increasing frequency (both as part of FCPA cases and through separate forfeiture actions).

Recommendations: Clarify the nature of the benefit for voluntary disclosures, and in particular the policies and bases for setting of fines and penalties in relation to the range established by the US Sentencing Guidelines. Promote compliance programmes by issuing guidelines on FCPA compliance. Continue to improve collaboration with counterpart authorities in other countries. Continue to aggressively prosecute non US-based offenders. Improve transparency of information regarding closed cases and investigations.

FOCUS ON EMERGING MARKETS: CHINA

Foreign bribery cases or investigations: China has not enacted legislation prohibiting foreign bribery. Chinese companies and individuals have been charged and punished under foreign laws for bribery and bribery-related offenses in other jurisdictions. For example, in January 2009, the U.S. Department of Justice alleged that in 2005, **China Harbour Engineering**, a subsidiary of **China Communication Construction**, paid bribes totaling US $1.76 million to the Singapore account of the youngest son of a former Bangladesh prime minister in connection with the Bangladesh Chittagong Port project [298]. In November 2009, the accused Bangladeshi party in the China Harbour Engineering case was charged with money laundering in connection with the alleged bribes. [299]

Domestic bribery by foreign companies: China has continued to prosecute its public officials and the employees of Chinese state-owned companies for receiving bribes from multinational companies and their employees. Kang Rixin, the former general manager of the China National Nuclear Corporation is currently being investigated for accepting bribes from a foreign nuclear power company. [300] A former employee of Sinopec's (China Petroleum and Chemical Corporation) international procurement department was convicted of accepting bribes from the German company **Daimler** and was sentenced to 7 years in prison in September 2006. [301] The companies **IBM**, **NCR** and **Hitachi** were named in a court verdict in November 2006 against the former president of the China Construction Bank, who was sentenced to 15 years in jail for receiving over U.S. $500,000 in bribes. [302] A former employee of **Mitsui & Co., Ltd.** was also named in a court verdict in September 2001 in which the former vice minister of China's Ministry of Electric Power Industry was sentenced to 13 years in jail for receiving approximately US $61,000 in bribes and offering to help the former employee of Mitsui & Co., Ltd. to win a bid. [303]

Further, commercial bribery of foreign company employees in China, on the one hand, or by foreign companies of Chinese employees, on the one hand, is subject to Chinese laws against domestic commercial bribery and will be punished by Chinese courts. Concerning bribery of foreign company employees, one high-profile example is the **Rio Tinto** case, in which four employees of that British-Australian mining firm were convicted of taking bribes of RMB 92,180,000 and stealing commercial secrets. Their sentences ranged from 7 to 14 years in prison, substantial personal fines and confiscation of personal assets. [304] In addition, a former employee of the Shanghai Shen-Mei Beverage and Food Company, a bottling plant partly owned by **Coca-Cola**, was reported to have been detained by police and fired by Coca-Cola's bottling company in September 2009 for accepting bribes. [305] A 2009 case against **Pepsi** provides

an example of a foreign company sanctioned for commercial bribery. The Foshan Bureau of Administration Industry and Commerce forced the soft drink company to disgorge profits of RMB 650,000, and fined Pepsi RMB 50,000, for paying commercial bribes. [3]

In other jurisdictions, multinational companies have been punished under the US. Foreign Corrupt Practices Act (FCPA) and similar laws of other countries for bribes made in China. For example, in the last 5 years, well-known multinational companies such as **Siemens AG, UTStarcom, Lucent Technologies** and **Daimler** have been involved in China-related US FCPA cases. [307]

Inadequacies in legal framework: China has signed and ratified the UN Convention against Corruption (UNCAC), which requires signatories to criminalise foreign bribery. However, as noted above, China has not yet enacted legislation prohibiting foreign bribery. In 2007, a senior court official suggested establishing the crime of bribing foreign officials and officers of international organisations based in China, to help fulfill the country's obligations under the UNCAC. [308] In addition, notwithstanding the fact that China has an extensive set of laws relating to accounting, auditing, illegality of deducting bribes from taxes, anti-money laundering and other laws aimed at reducing corruption, China lacks a centralised legal framework and enforcement system against corruption. In 2008, a representative of the National People's Congress suggested enacting a comprehensive law against corruption, which should strengthen the whistleblower and witness protection mechanisms, clarify anti-corruption responsibilities and coordination obligations of investigation and judicial organs, detail the provisions on strict punishments, request public officials to disclose their assets and establish an effective supervision system. [309]

Inadequacies in enforcement system: Because China has not enacted a law prohibiting bribery of foreign public officials, it lacks a relevant foreign bribery enforcement system. Even in terms of domestic bribery enforcement, China's system has inadequacies, despite improvements. These includes decentralised organisation of enforcement, lack of training for investigators to investigate this kind of offense, lack of public awareness-raising, and the inability of investigators and prosecutors to obtain mutual legal assistance because China lacks mutual legal assistance treaties and other cooperation with OECD countries in anti-bribery matters.

Access to information about cases and investigations: China has begun a clear trend of making its judicial system more transparent by posting legal opinions on local courts' websites and even its Supreme Court website, and creating other types of public databases and information resources regarding some types of court cases in certain jurisdictions. In addition, China's Supreme People's Procuratorate has recently launched a free, public database of people and enterprises with bribery convictions in the nationwide courts. [310]

Requirements of export credit agencies: China does not require companies to make no-bribery commitments for the application of export credits. Similarly, China does not require companies to demonstrate that they have effective anti-bribery compliance programs or to report on compensation for agents as a condition for export credit eligibility.

Facilitation payments: China does not recognise the legality of facilitation payments, and does not draw any distinction between facilitation payments and bribes.

Recent developments: On 12 July 2009, China issued a specific regulation to prohibit the leaders of its state-owned enterprises from abusing their power to reap personal gains at the expense of the enterprises and impair the interests of the state or other investors. Furthermore, on 18 January 2010, the Chinese Communist Party promulgated a new version of its code of conduct, tightening the reins on its high-ranking members in order to prevent corruption. In addition, in May 2010, the Supreme People's Procuratorate issued a circular on further strengthening the battle against serious bribery crimes. In addition to improving its legal framework, China continues to strengthen its enforcement against corruption. For example, in 2009, Politburo member Bo Xilai led an extensive and far-reaching crack-down on corrupt public officials and gangsters in China's largest city, Chongqing. Over 9,000 suspects and 50 public officials have been involved in a series of trials that has garnered national attention. China also made efforts to centralise its enforcement system. On 8 February 2006, China established a central working group in order to effectively coordinate all relevant governmental authorities for combating commercial bribery.

Recommendations: China should sign and ratify the OECD Convention and criminalise bribery of foreign public officials in order to help fulfill the country's obligations under the UNCAC. In addition, China should strengthen its enforcement system, including further centralising its organization of enforcement, improving the training of its investigators and raising public awareness of bribery and corruption. China should also sign and ratify more mutual legal assistance treaties and strengthen its cooperation in anti-bribery matters with other countries. Finally, China should continue to work on improving and expanding its existing legal framework including the enactment of a comprehensive law against bribery and corruption.

4 CASES

ABB [311]

Investigations and prosecution in the US and possibly China
Country: Sweden-Switzerland
Sector: Power and automation technology
Employees: 117,000
Revenues (2009): US $31.8 billion

The only known foreign bribery cases aganst ABB have been brought in the US. In 2004 the Securities and Exchange Commission (SEC) in the US charged ABB Ltd. with books and records violations of the FCPA and agreed to a settlement in the amount of US $16.4 million. [312] Parallel criminal proceedings were brought by the US Justice Department against two ABB affiliates, including one in the US, and they reached a settlement involving a US $10.5 million penalty, deducted from the ABB Ltd penalty. The SEC complaint charged that from 1998 through early 2003, ABB's U.S. and foreign-based subsidiaries doing business in Nigeria, Angola and Kazakhstan, offered and made illicit payments totaling over US $1.1 million to government officials in these countries. In a related case, in July 2006, four former ABB Ltd. employees, including a former finance executive, settled civil FCPA charges with the SEC. They were accused of participating in a scheme to bribe Nigerian government officials to help them secure a $180 million contract to provide equipment for an oil drilling project in Nigeria's offshore Bonga Oil Field. [313]

In January 2007, it was reported that Shanghai police had detained 22 people in a bribery investigation that was claimed to involve several large western companies including ABB. [314] Also in 2007, in a July earnings release, ABB said it had disclosed to the US Department of Justice and SEC "suspect payments made by employees of company subsidiaries in Asia, South America and Europe, in particular Italy. These suspect payments were discovered as a result of ABB's internal audit and compliance program." [315]

In November 2009 the former general manager of a Sugar Land Texas power systems unit of the ABB Group was arrested and charged in the US with conspiracy, violations of the FCPA, international money laundering and falsification of records. The indictment alleges that he arranged and authorised payments to officials at the *Comisión Federal de Electricidad* (CFE), a Mexican state-owned utility company, in exchange for contracts. Payments were allegedly made through a Mexican company that received a percentage of the revenue generated from business with CFE. It is alleged *inter alia* that 10 per cent of the ABB subsidiary's revenue under a 2003 contract was to be returned to CFE officials as corrupt payments, and that in addition the general manager of the ABB subsidiary was to receive a kickback of 1 per cent of the revenue. In a related case, the principal of the Mexican company pleaded guilty to a one-count information charging him for his role in the conspiracy and agreed to cooperate with the US Department of Justice in its ongoing investigation. [316]

Alcatel-Lucent [317]

Investigations, prosecutions and settlements in Costa Rica, France, French Polynesia, Switzerland, UK and the US
'Social damages' in Costa Rica
Country: France-USA
Sector: Telecommunications
Employees: over 77,000
Revenues (2009): € 15.2 billion (US $18.78 billion)

Alcatel-Lucent has been under investigation over a period of years for alleged corruption in countries including Costa Rica, French Polynesia, Kenya, Nigeria and Taiwan. The US and Costa Rican cases have advanced the furthest. The first foreign bribery case involving Alcatel was brought in the US against Christian Sapsizian, a former deputy vice president, who was charged with conspiring to make over US $2.5 million in bribe payments to a member of the board of Costa Rica's state-owned telecommunications authority *El Instituto Costarricense de Electricidad (ICE)*, via a consulting company, to secure a US $149 million mobile phone contract in 2001. [318] Also charged was the senior country officer at Alcatel de Costa Rica, Alcatel's local affiliate. In June 2007 Sapizian pleaded guilty in Miami federal court and received a 30-month prison term. [319]

In a parallel US $ 52 million civil suit brought against Alcatel by the Costa Rican solicitor general's office, Alcatel-Lucent announced in January 2010 that it would pay a US $10 million settlement, representing a form of social redress to the community or 'social damages'. Alcatel-Lucent was accused of paying bribes to former Costa Rican

President Miguel Angel Rodriguez and other government officials in connection with the 2001 contract. [320] Alcatel reportedly admitted that its executives paid such bribes. The case marked the first time in Costa Rica's history that a foreign corporation has agreed to pay damages to the government for corruption. At the same time, the solicitor general's office continues with a civil suit for damages for social harm against the other defendants in the case. [321] Additionally, the ICE has reportedly cut all business relations with Alcatel. In May 2010, there was a press report that the Costa Rican ICE had filed a complaint against Alcatel-Lucent in Miami for violations of civil racketeering and other Florida law in connection with the award of the cellular network contract in 2001. [322] If successful, the lawsuit would allow ICE to recover three times the amount of its damages.

In a company filing in the US on 11 February 2010, Alcatel-Lucent reportedly announced a pending settlement with the US Justice Department and SEC concerning alleged bribes paid in several countries, including Costa Rica, Taiwan and Kenya, and associated charges of violating the internal controls and books and records provisions of the FCPA. [323] The settlement called for a deferred prosecution in exchange for payment of US $137.4 million (US $92 million to US Department of Justice and US $45.4 million to SEC), a three-year probationary period, changes in internal procedures and a French anti-corruption monitor. Three subsidiaries — Alcatel-Lucent France, Alcatel-Lucent Trade and Alcatel Centroamerica — were to plead guilty to violating the FCPA's anti-bribery provisions, according to the filing. These agreements remain to be approved by a court. The February filing by Alcatel also discussed allegations of activities in at least four other countries, including bid-rigging and illicit payments in connection with a US$ 27.4 million Taiwan railway contract in 2003 [324]; an investigation into an unidentified supply contract in Kenya; payments made by subsidiaries in Nigeria; and a French investigation of a submarine cable contract in French Polynesia.

Following the announcement of the pending US settlement, Alcatel-Lucent was quoted as saying in an e-mailed statement, 'Alcatel-Lucent's new management has implemented vigorous compliance and training programs designed to prevent similar situations from happening in the future... In particular, within months of joining the company as CEO, Ben Verwaayen announced that we will no longer conduct our business through the use of sales and marketing agents and consultants.' [325]

Elsewhere, in November 2009 a subsidiary, Alcatel-Lucent Submarine Networks, was charged in French Polynesia with 'benefitting from favouritism' in contracts it was awarded in 2007 for a submarine cable between Tahiti and Hawaii.[326]

French authorities are reportedly currently investigating several allegations of corruption at Alcatel units in Kenya, Nigeria, French Polynesia and Costa Rica. Alcatel-Lucent has said it is cooperating with the French investigation.[327] Already, in 2004, the French investigating judge Philippe Courroye was reportedly investigating two payments made by Alcatel to the Swiss financial services company Telliac which was suspected of having transferred € 10 million in allegedly suspicious payments on behalf of Alcatel to Kenya, Nigeria, Sudan and Tanzania. [328] Allegations were also reported in the media in the past about supposed bribery in connection with four procurements in Honduras in 2003.[329]

Alcoa [330]

Investigations in Bahrain, the UK and the US
Country: USA
Sector: Aluminum production
Employees: 59,000
Revenues (2009): about US $18.4 billion

US and UK prosecutors have been conducting a criminal investigation for the last two years involving Alcoa's relationship with Aluminum Bahrain BSC, also know as Alba, a manufacturing company majority-owned by the government of Bahrain which has one of the world's largest aluminium smelters. Alba bought raw materials from Alcoa, notably alumina, the crucial material for making aluminum. [331] According to media reports, prosecutors suspect money laundering and bribery based on records they believe show that from 2001-05 a company controlled by a prominent Canadian businessman made payments of several million dollars to the personal bank account of a former Alba senior executive. [332]

The criminal investigation involving Alcoa began in March 2008, triggered by a February 2008 civil lawsuit filed by Alba in the US seeking US $1 billion in damages, accusing of Alcoa of steering payments for alumina to companies abroad to pay kickbacks to a Bahraini government official and accusing Alcoa and the senior executive of conspiring to overcharge Alba for its purchase of thousands of tons of alumina. [333] The overpayments allegedly totalled hundreds of millions of dollars from 1993 to 2007. A US federal judge halted the civil suit pending the outcome of the US Justice Department's criminal investigation.

Alstom [334]

Investigations or cases in Australia, Brazil, France, Italy, Mexico, Poland, Spain, Switzerland, UK, US
Country: France
Sector: Power and transport conglomerate
Employees: 96,500 worldwide
Revenues (2009/10): about € 23 billion (US $28.4 billion)

Considerable activity was reported in 2009-10 in Alstom-related investigations by law enforcement authorities in Australia, Brazil, Poland, Switzerland, the UK and the US. The first serious allegations about possible illicit Alstom payments reportedly resulted from investigations by Swiss authorities in the late 1990s. [335] The first known bribery case against Alstom was brought by the Mexican Ministry of Public Administration against a subsidiary of Alstom in 2001 and led to the imposition of administrative penalties in 2004, which were confirmed on appeal in 2007. Another case was concluded in Italy in 2008 and involved two Alstom subsidiaries, Alstom Power (US) and Alstom Prom AG (Switzerland), and four Alstom executives (including the former head of Alstom Power). The two subsidiaries pleaded guilty to an administrative offence, as there is no criminal liability for companies in Italy, and the executives pleaded guilty and were fined. The case reportedly concerned a 2001 contract awarded to Alstom by Enelpower, a subsidiary of the state-controlled utility Enel, for a boiler at a power plant in Sardinia. The case reportedly included charges of bribery of two top executives of EnelPower and money laundering. In another Enelpower-related case dating to 2004, Siemens and Alsom were reportedly charged with bribery of Italian officials for allegedly paying two senior Enelpower officials to win subcontracts on Middle Eastern power plant projects. [336]

In December 2003, a Swiss investigation of a Swiss private banker suspected of laundering money for Colombian drug cartels led the Swiss Banking Commission in 2004 to request a KPMG audit of the Swiss bank he headed. [337] The audit allegedly uncovered Alstom payments of US $20 million through shell companies in Switzerland and Liechtenstein. Further amounts were reportedly uncovered as the investigation progressed, with the amount of US $500 million mentioned in a news report in 2008. [338] The funds were allegedly transferred to Alstom marketing representatives or individuals in Brazil, China, Indonesia, Singapore, Thailand and Venezuela, via accounts in Bahrain, Hong Kong, Liechtenstein, Singapore, Switzerland, Thailand and the US. In May 2010 the Swiss Federal Prosecutor's Office formally charged the above-mentioned Swiss private banker with laundering and managing corruption money for a 'French industrial group', as well as drug-related money laundering. [339]

In another reported Swiss investigation, in August 2008 Swiss authorities detained Bruno A. Kälin, formerly an Alstom compliance officer and head of the Alstom subsidiary Cegelac, on bribery and money laundering charges, and conducted raids on Alstom offices in Switzerland. The Swiss Prosecutor's Office claimed 'payments were made for corrupt ends by an intermediary of Alstom Prom AG located in Baden' (in Switzerland) and suspected that 'these sums were transferred by other companies of the Alstom group to public servants or officials of various countries in cases determining the awarding of contracts'. According to media reports, prosecutors found evidence of money paid to foreign officials for projects in Italy, Zambia and Mexico.[340]

A further Swiss investigation of Alstom activities in Poland was reportedly initiated in 2009 due to the testimony of a politically connected banker accused of conducting illegal business transactions for prominent Polish politicians, in some cases via secret bank accounts in the Coutts bank in Zurich. An investigation in Poland concerns alleged bribery between 1998 and 2002 in a contract award made by Warsaw MetroProjekt, the city's transportation authority, of a € 105 million contract to purchase Alstom subway cars. [341]

According to media reports, several investigations are also underway in Brazil, including one into alleged illicit payments by Alstom in São Paulo to metro and electricity companies, [342] and another into alleged payments from Alstom to executives from Petrobras, the Brazilian state-run oil company, through a consulting firm called Aramza, based in Montevideo, Uruguay. The US Justice Department's Fraud Division is reportedly looking into the possibility that a case in Italy (see above) was one of several incidents in which Alstom Power Inc., an American subsidiary of the company, improperly used agents to acquire contracts around the world.

Other countries have played a supporting role in the investigations. In March 2010 a collaboration between the UK Serious Fraud Office (SFO) and Swiss investigators led to the arrest of Alstom's UK president, finance director and legal director on suspicion of bribery and corruption, conspiracy to bribe, money-laundering and false accounting. [343] Also in March 2010, following a mutual legal assistance request from Poland, Spanish officials arrested a consultant in Spain in connection with the Polish investigation of Alstom. According to media reports, in April 2010, Australian authorities began cooperating with the UK SFO investigation after finding evidence that European subsidiaries of Alstom used the Vietnamese Company for Technology and Development (CTD) to secure contracts in Vietnam. [344] CTD is thought to be associated with Vietnamese public officials.

Information reportedly provided to French authorities by the Swiss in May 2007 triggered a preliminary French investigation in November 2007 into possible Alstom-related corruption of foreign officials and abuse of company funds between 1995 and 2003. [345] French authorities thus far have not pressed charges. [346] In May 2008 Alstom sought plaintiff status in the French investigation, alleging it was a victim of corruption.

BAE Systems [347]

Investigations in Austria, Switzerland, the UK and the US
and previously in Czech Republic, Hungary, Tanzania, South Africa
Country: UK
Sector: Aerospace, security, defence
Employees: 107,000 worldwide (about 50,000 in the US)
Revenues (2009): about £22.4 billion (US $33.6 billion)

On 5 February 2010 the UK Serious Fraud Office (SFO), jointly with the US Department of Justice (DoJ), arrived at a coordinated global settlement with BAE Systems in the long-running investigations of bribery allegations in several countries. BAE Systems agreed to pay fines in the US and the UK. These were the largest fines ever levied for breaches of overseas corruption laws by a UK company. The settlement brought to an end the SFO's investigations of BAE defence contracts with countries such as Tanzania, Czech Republic, Hungary and Saudi Arabia.

The SFO settlement with BAES concerned the company's activities in Tanzania. Under the agreement, BAE Systems pleaded guilty to one charge, under section 221 of the Companies Act 1985, of breach of duty to keep accounting records for payments made to a former marketing adviser involved in the sale of a radar system to Tanzania in 1999. The £30 million penalty included a fine, to be determined by the Court, and a payment for the benefit of Tanzania. The SFO also withdrew charges against a Count Alfons Mensdorff-Pouillly, who allegedly played a role in securing defence contracts between BAE Systems and countries in Eastern/Central Europe. [348]

The settlement with the US DoJ called for BAE to pay a US $400 million fine, plead guilty to one count of conspiracy to make false statements about having a sufficient internal programme to comply with anti-bribery laws, and make additional commitments concerning ongoing compliance. The settlement covers misconduct in BAE's business activities in multiple countries. [349] According to the Department of Justice, BAE had set up a network of 'marketing advisers' or middlemen to organise offshore shell companies to disguise the identities of foreign officials to whom they passed money. It said BAE itself set up an entity in the British Virgin Islands to conceal its relationships with the agents. [350] BAE allegedly paid about US $225 million to the agents through that entity, without formally tracking what they did with the money. The payments were allegedly made through Swiss and Caribbean bank accounts.

Shortly before this settlement, on 29 December 2009, the US Court of Appeals for the DC Circuit affirmed the dismissal of a shareholder derivative suit against a number of current and former directors and executives of BAE Systems. The suit, filed on behalf of a public employee pension fund, claimed the company had breached its fiduciary duties and wasted corporate assets in allegedly making payments to Prince Bandar in order to obtain the Al-Yamamah contract. The district court ruled that English law, not American law, applied to the case and that under English law the pension fund did not have standing because only the company – not a shareholder – can bring suit for wrongs allegedly committed against the company.

Investigations of BAE Systems reportedly continue in Austria, the Czech Republic, Hungary, Switzerland and Tanzania. Allegations of illicit payments in a major 1999 arms deal in South Africa remain unresolved, as the SFO has stated it will undertake no further investigations.

BHP Billiton [351]

Investigation in US, preliminary assessments in Australia
and serious allegations in South Africa
Country: Australia, UK
Sector: Mining, minerals and oil
Employees: about 40,990
Revenues (2009): about US $50.2 billion

In August 2009, BHP Billiton, the world's largest mining company, reportedly received a request for information from the US Securities and Exchange Commission (SEC) in connection with an SEC investigation of possible violations of foreign bribery laws by BHP Billiton employees in connection with certain minerals exploration projects. [352] In April 2010 the company issued a statement saying that it had "disclosed to relevant authorities evidence that it has uncovered regarding possible violations of applicable anti-corruption laws involving interactions with government

officials". [353] BHP has reportedly had discussions with the US SEC and meetings with the UK Serious Fraud Office (SFO) and other regulators, including Australia's Securities and Investment Commission. [354] The UK Serious Fraud Office is reportedly conducting a preliminary assessment and considering launching its own investigation into the allegations.

According to media reports, the investigations are thought to relate to a copper project in Congo and a proposed bauxite mine in Cambodia. [355] Part of the suspicions allegedly relate to US $3.5 million in payments made in Cambodia from 2006. [356] BHP has said the payments included US $2.5 million for community projects near the bauxite project in the northeastern Cambodian province of Mondulkiri.

In an unrelated story, Helen Zille, leader of the Democratic Alliance in South Africa, in April 2010 called for an investigation of BHP Billiton's arrangements with Eskom, the South African state-owned utility company generating 95 per cent of the electricity in South Africa. This followed allegations that Eskom was giving BHP a below-cost discount for electricity. [357] BHP Billiton reportedly uses nearly 10 per cent of all electricity generated by Eskom.

Ferrostaal [358]

Investigations in Germany, Luxembourg, Liechtenstein, Portugal, Switzerland
Country: A German subsidiary of IPIC of Abu Dhabi, with MAN SE a minority shareholder (30%)
Sector: Construction; metal processing; commodity trading
Employees: about 4,400
Revenues (2008): about US $1.6 billion

Allegations of Ferrostaal-related foreign bribery date back at least to 2002, but 2009-10 saw the first signs that ongoing investigations might lead to criminal law sanctions. The company, a subsidiary of the MAN Group until 2009, was named in a 2002 investigation by the Bochum office of public prosecution into its top executives suspected of 'aiding embezzlement' related to former Nigerian dictator Sani Abacha. [359] This was triggered after officials at Essen's revenue office reportedly discovered inflated invoices and conducted an audit. At the time Ferrostaal and its contractors had been working for about 13 years (since 1989) on construction of Alscon, a gigantic and hugely costly plant of the Aluminum Smelter Company of Nigeria. Related investigations were launched in Liechtenstein, Luxembourg and Switzerland. Ferrostaal allegedly transferred several hundred million D-Marks via Liechtenstein and Switzerland into secret accounts of Abacha's son Mohamad with the Luxembourg subsidiary of the Hamburg-based bank M.M. Warburg. [360] In parallel, Ferrostaal was named in connection with a 2003 inquiry by the Attorney General of Geneva into alleged Abacha-related money laundering by an intermediary, which concluded with a finding of guilt. [361]

In 2006, there were media reports of a separate German investigation of a December 1999 arms offset deal between the government of South Africa and the German Submarine Consortium for the purchase of three submarines for DM 1.6 billion (estimated at € 532 million). The German Submarine Consortium consisted of Howaldtswerke-Deutsche Werft (HDW), a Thyssen subsidiary Nordseewerke und MAN Ferrostaal. [362] In connection with that deal, allegations of bribery were levelled against Ferrostaal in 2008 by a newspaper in South Africa. [363] This included allegations of payments to a former president Thabo Mbeki, which he reportedly denied. A possible new probe in South Africa was reported in February 2010. [364]

A third German Ferrostaal-related investigation is reportedly now under way, conducted by the Munich Public Prosecutor based on allegations that Ferrostaal paid bribes to secure contracts and organised bribe payments on behalf of other firms for a fee. [365] In connection with that investigation, in March 2010 a Ferrostaal executive board member was arrested and in April 2010 the Munich Prosecutor indicted the president of Ferrostaal. About 10 other suspects including two former board members are reportedly targeted by the investigation. The Munich investigation is reportedly of 'a particularly serious case of bribing foreign officials in connection with international business arrangements', as well as suspected tax evasion. It reportedly targets five projects worth a total of almost € 1 billion and is said to have been triggered by documents obtained in the course of the Munich Prosecutor's 2009 investigation of the then-parent company MAN Group, as well as allegations made by two witnesses.

Part of the Munich investigation relates to Ferrostaal's 2003 selection for a € 880 million contract and arms offset deal with Portugal for the sale of two Type 209 submarines, a story known as "the Submarines Affair" in Portugal. [366] According to news reports about the investigation, prior to the selection of Ferrostaal a German honorary consul for Portugal set up a meeting in 2002 with the then prime minister in connection with the deal and received a consulting contract in January 2003. A consulting agreement was also reportedly concluded with a rear admiral in the Portuguese navy. There are also allegations that Ferrostaal made payments to Portuguese political parties. Prosecutors have reportedly identified more than a dozen suspicious brokerage and consulting agreements related to the submarine deal, allegedly designed 'to obfuscate the money trails', so as to pass on payments 'to decision-makers in the Portuguese government, ministries or navy'. [367] According to media reports, the company is also under

investigation in Portugal in the "Submarines Affair". In April 2010 it was reported that Portuguese authorities had uncovered an alleged commission invoice for € 30 million related to the submarines deal. [368]

Ferrostaal is also reportedly under investigation by the Munich Public Prosecutor for allegedly having brokered a deal for the sale of machinery by Giesecke & Devrient, a German banknote and securities printing company, to the Indonesian state-owned banknote printing company. Ferrostaal also allegedly brokered sales of coast guard vessels to the Argentinean Coast Guard in 2006 and to the Colombian Navy for a Bremen-based company, in both cases involving payments to navy and ministry officials.

According to a media report, as part of their investigation of the MAN Group, German prosecutors were also investigating illegal payments to recipients in Pakistan and Greece in connection with the construction and sale of submarines. [369] That story also reports on claims that Ferrostaal, a subsidiary of MAN until 2009, was part of a consortium that won a contract in 2000 to supply the Greek navy with four submarines worth € 11.26 billion. Munich prosecutors reportedly have evidence that bribes in the amount of € 10-12 million were paid to Greek officials to secure the agreement for the purchase of one or more of four submarines. The article also reports on testimony that the money was paid through a Zurich-based lawyers' office and a network of offshore bank accounts

In April 2010 there was a press report that the Colombian defence ministry is seeking information about possible bribery of its employees through Ferrostaal. They referenced 2008 contracts with the German shipyard Fassmer GmbH. [370]

Freeport [371] / CEREP Investment II Sarl / Carlyle Group

Investigations ongoing in Portugal and discontinued in the UK and the US
Country: UK/ Luxembourg/US
Sector: Property Development (outlet centres)
Employees: Unknown
Revenues: Unknown

Freeport, a major UK property development company (since 2007 a subsidiary of CEREP Investment II Sarl, itself a subsidiary of the Carlyle Group), is reportedly under investigation in Portugal in connection with a licence it obtained in 2002 to build a shopping centre. The investigation was reportedly triggered by an anonymous complaint. Freeport allegedly made payments to the environment minister at the time — now prime minister — to obtain a 2002 waiver of environmental restrictions for the licence. The UK Serious Fraud Office (SFO) also investigated the case but terminated its investigation in November 2009. [372] US authorities also reportedly terminated an investigation into Freeport in 2009. The Portuguese authorities were reportedly planning to close their investigation in March 2010, after waiting for months for information on bank accounts and transfers from at least three offshores — the Cayman Islands, British Virgin Islands and the Isle of Man. These requests reportedly related to allegations of an unfulfilled instruction that € 2.2 million be paid to 'cabinet ministers'. [373] However, according to the media prior to closing the case the Portuguese authorities they received important new information from their UK counterparts at that time and extended the probe until June 2010. [374]

As a fallout from the investigation, the Portuguese president of Eurojust, Lopes da Mota, resigned from that position in December 2009. According to media reports this followed his suspension for 30 days by a disciplinary committee of the Portuguese Public Prosecutor's Office that ruled that he had pressured Portuguese investigating magistrates to drop an earlier probe into the Freeport case. Lopes da Mota, who was appointed by the ruling Socialist Party, denied the committee's charges and said he would appeal. [375] Earlier in the year, in September 2009, a private national TV channel reportedly shelved a programme dealing with alleged government corruption in the Freeport case, resulting in the resignation of its chief editors. [376]

Hewlett Packard [377]

Investigations in Germany, the Russian Federation & the US
Country: US
Sector: Computers
Employees: 304,000
Revenues (2009): about US $114.55 billion

In early December 2009, German authorities ordered the arrest of three Hewlett-Packard (HP) executives on suspicion of bribing foreign officials, tax evasion and breach of trust, according to a spokesman for the Prosecutors' Office in Dresden and court records. [378] All have since been released on bail and have not been indicted. [379] German prosecutors are reportedly investigating whether HP executives paid some € 8 million (US $10.9 million) in bribes to win a € 35

million contract to supply computer equipment to the countrywide offices of the Russian Prosecutor General, the federal authority responsible for handling criminal cases. According to documents submitted to a German court and cited by a media report, prosecutors are reportedly looking into allegations that funds were sent to Russia between 2004 and 2006 through a complex network involving three German middlemen based in eastern Germany, as well as shell companies and bank accounts in Austria, Britain, the British Virgin Islands, Belize, Latvia, Lithuania, New Zealand, Switzerland and the US states of Delaware and Wyoming. [380] The three suspected middlemen allegedly received and paid fake invoices from shell companies through a Moscow-based computer supplier and received commissions totalling several hundred thousand dollars. An HP spokesman said the German investigation involves 'alleged conduct that occurred almost seven years ago'. At the request of German prosecutors, Russian investigators raided HP's Moscow offices in April in connection with the German bribery probe.

TSKJ Nigeria Bonny Island-related cases

Cases and investigations in the US, Italy, UK, Germany
ENI / SAIPEM / Snamprogetti
MW Kellogg
Julius Berger

Ongoing investigations were reported in Italy, the UK, the US, Germany and Nigeria relating to alleged bribes of US $182 million paid by the TSKJ consortium to Nigerian officials from 1994 to 2004. The payments were allegedly made to obtain contracts worth more than US $6 billion to build and expand the Nigerian Bonny Island liquid natural gas (LNG) facilities. The TSKJ group included **Technip** of France; **Snamprogetti** (an **ENI** unit now controlled by **Saipem**); **MW Kellogg** of the UK; and the **JGC Corporation** oilfield service unit of Japan. The consortium was headed by former **Halliburton** subsidiary **Kellogg Brown & Root (KBR)**. WM Kellogg is 50 per cent owned by KBR and 50 per cent by JGC.

In February 2009 **Halliburton** and **KBR** settled criminal and civil charges brought by the US Department of Justice (DoJ) and Securities and Exchange Commission (SEC) for a total of US $578 million in fines, and KBR and its former chairman pleaded guilty. Prosecutors in the US have also charged UK solicitor Jeffrey Tesler and Briton Wojciech Chodan in the case. Tesler allegedly helped dispense bribe money for the TSKJ consortium as its agent from 1995 to 2004, and Chodan allegedly helped Halliburton funnel US $100 million in bribe money. Tesler and Chodan were arrested in the UK in March 2009. US authorities were seeking their extradition as of February 2010 and are reportedly seeking forfeiture of US $130 million from the two. [381] Also in July 2010 the French company **Technip** agreed to a fine of US $336 million in connection with a US DoJ and SEC investigation of the TSKJ case [382] and in the same month **ENI** and its former Dutch subsidiary **Snamprogetti Netherlands BV** entered a settlement in the US involving payment of US $365 million in fines. [383] In July 2010 the Japanese company **JGC Corporation** disclosed it was under investigation by the DoJ in connection with the TSKJ case. [384]

Milan prosecutors are reportedly investigating whether the Italian energy group **ENI** and its oilfield services subsidiary **Saipem SpA** had proper procedures in place to prevent 'offences involving international corruption charged to two former managers of (Saipem's unit) **Snamprogetti**', in connection with the TSKJ-Bonny Island bribery case. [385] In November 2009 an Italian judge reportedly rejected a prosecutors' request to bar **ENI** and **Saipem** from conducting business with the Nigerian National Petroleum Corporation (NNPC) pending the outcome of the probe. [386]

In the UK, in February 2010 **MW Kellogg** was reportedly preparing to enter a plea bargain with the UK Serious Fraud Office in connection with the TSKJ case. [387] Additionally, an investigation has reportedly been under way in Germany since 2006 into whether employees of **Julius Berger Nigeria** made payments to a political party in connection with the Nigerian Bonny Island project. [388] Julius Berger is one of the largest companies in Nigeria and minority-held (49 per cent in 2008) by **Bilfinger Berger Nigeria**, a wholly owned subsidiary of **Bilfinger Berger AG.** [389] In August 1996 Bilfinger Berger reportedly created a joint venture **SP** with the French construction company **Spie Batignolles**, having been selected by the TSKJ consortium to help build the Bonny Island project.[390]

In 2009 the Nigerian Senate voted to undertake its own investigation of the Halliburton-KBR role in the Bonny Island scandal, following earlier investigations in Nigeria in 2004. Additionally, the Nigerian Attorney-General stated that he had written to the US government seeking information and documents in relation to the case. [391] However, in February 2010 the Nigerian Senate subcommittee tasked with conducting the inquiry reportedly announced it was shutting down, as it was unable to obtain records from American investigators under the US-Nigeria Mutual Legal Assistance treaty. In April 2010, the Chair of the Economic and Financial Crimes Commission (EFCC) said the Nigerian federal government is still investigating the Halliburton bribery scandal. [392]

The impact on developing countries: The example of Bangladesh

Cases and investigations underway

Foreign bribery imposes huge costs on Bangladesh and also taints politics and democratic governance of the country. Due to the wide scope for amassing illegal money from foreign bribery, some vested interest groups have built coalitions for collusion linking politics, business and the government bureaucracy to influence large public contracts. It is also alleged that some of the spoils from foreign bribery are used for running political parties, winning public elections and criminalising politics. Foreign bribery disadvantages those who want to conduct business ethically, diverts resources and in some cases puts the population and the environment at risk through incompetent delivery of sensitive services by those who pay bribes to win contracts or obtain permits.

Some of the recent cases that law enforcement authorities in Bangladesh and the US are investigating or prosecuting are listed below, giving an idea of the scope of the harm done by foreign bribery in the country.

Siemens Bangladesh Ltd., a subsidiary of the German electronics giant, and **China Harbour Engineering Company** were named in a January 2009 asset forfeiture complaint brought by the US Department of Justice (criminal division) for alleged bribery of government officials of Bangladesh, as well as the son of a former prime minister. US Justice Department officials alleged that the two companies made bribe payments to win contracts in connection with the China Harbour project, which was meant to build a new mooring containment terminal at the port in Chittagong. The payments allegedly flowed through financial institutions in the US. [393] The forfeiture action targeted alleged proceeds of crime in the amount of US $3 million held in the Singapore bank accounts of multiple account holders.
In another case involving **Siemens Bangladesh Ltd.**, as part of the December 2008 Siemens settlement in the US, **Siemens Bangladesh** admitted that from May 2001 to August 2006 it caused corrupt payments of at least US $5.3 million to be made through purported business consultants to various Bangladeshi officials in exchange for favourrable treatment during the bidding process on a mobile telephone project. [394]

China National Machinery Import and Export Corporation (CMC) Consortium was named in 2008 by the Bangladesh Anti-corruption Commission (ACC) as the beneficiary of alleged bribery in connection with the awarding of the Barapukuria coal mine operation contract. The ACC brought charges against a former prime minister and 15 other s in connection with the case, including former ministers, a former chairman and director of Petrobangla, a former managing director of Barapukuria and a former acting secretary to Energy and Mineral Resources as well as the chairman of the Hosaf Group. [395]

Global Agro Trade (Private) Co Ltd (Gatco) was named as the beneficiary of alleged corruption in a case brought in 2008 against a former prime minister, her son, eight former ministers and 14 others by the ACC. [396] They were charged with illegally awarding a container-handling job at two container depots in Dhaka and Chittagong. The accused were charged with causing a loss of a huge loss to the state by striking the container-handling deal with Gatco, although it lacked the necessary equipment, experience and skills.

A vice president of **Niko Resources Ltd,** a Canadian company, is reportedly being prosecuted in Bangladesh by the ACC for alleged bribery of a former State Minister for Energy in connection with the award of a licence to extract gas, an operation for which it allegedly did not have the necessary qualifications. High officials reportedly implicated include two former prime ministers, an energy secretary and an official of Bangladesh Petroleum Exploration and Production Co Ltd (Bapex). [397] A huge fire broke out in gas fields operated by Niko, causing deaths. A new attorney general removed the case from the court docket in February 2009.

Wartsila Power Development Ltd Consortium was named in a case brought by the ACC against a former prime minister concerning as the alleged beneficiary of 'illegal contracts' for setting up three barge-mounted power plants for alleged bribery (allegedly Tk 30 million) of the Bangabandhu Memorial Trust. Other high officials implicated include a former prime minister, a former energy secretary, a former chairman of the Power Development Board (PDB) and a managing director of Summit Industries and Mercantile Corporation Private Ltd. [398] A new attorney general removed the case from the court docket in February 2009.

Westmount Power (Bangladesh) Limited, a Malaysian-based company, was the target of allegations in 2008 of financial corruption and irregularities by one of its financial consultants. [399] A former financial consultant to the company claimed Westmont embezzled a huge amount of money from the Power Development Board (PDB) through issuing fictitious bills against its electricity sales.

5 APPENDIX A
LIST OF EXPERT RESPONDENTS

COUNTRY	EXPERT RESPONDENT(S)
Argentina	Nicolás Dassen Partner, Jorge & Dassen, Consultants on Anticorruption and Governance Professor of Anticorruption and Constitutional Law, advisor to Poder Ciudadano, former lead expert on the Follow Up Mechanism on the Implementation of the Inter-American Convention against Corruption (IACAC) Romina Arcos Lawyer with experience in the field of Transparency and Anti-corruption
Australia	Michael Ahrens Executive Director, TI Australia Jane Ellis Commercial lawyer, Board Member of TI Australia
Austria	Dr. Johann Rzeszut Head of the Austrian Supreme Court 2003-2006 Board of Directors, TI Austria
Belgium	Anne de la Vallée Poussin Magistrat Honoraire
Brazil	Isabel C. Franco Partner, KLA – Koury Lopes Advogados Long experience in corporate, contractual law, M&A and compliance Consults on Foreign Corrupt Practices Act matters in Brazil and related anti-corruption legal issues
Bulgaria	Diana Kovatcheva Executive Director, TI Bulgaria
Canada	Bruce N. Futterer Lawyer Director, TI Canada
Chile	José Ignacio Escobar Opazo, LLM Lawyer, Harasic & López Ltda Former Public Prosecutor in Santiago, Special Unit of Economic and Corruption Offences
Czech Republic	Eliska Cisarova TI Czech Republic
Denmark	Jens Berthelsen Consultant Member of Board, TI Denmark
Estonia	Asso Prii TI Estonia

Finland	Pentti Mäkinen Member of Board, TI Finland
France	Jacques Terray, Lic. and LLM Vice-Chairman, TI France Former partner of Gide Loyrette Nouel law firm, expert in French and European regulatory matters and securitisation Marina Yung TI France
Germany	Dr. jur. Max Dehmel, MCL 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 Head of Working Group on International Conventions, TI Germany
Greece	Anna Damaskou Lawyer and Legal Council in the field of investor's protection at the Hellenic Capital Market Commission Member of TI Greece
Hungary	David Vig Assistant Researcher, National Institute of Criminology
Ireland	John Devitt Chief Executive, TI Ireland Research Associate, Trinity College Dublin
Israel	Heather Stone Lawyer, at Gross, Kleinhendler, Hodak, Halevy, Greenberg & Co. (GKH) in Israel
Italy	Michele Calleri Lawyer and certified accountant, a founding partner of Calleri-Noviello & Morazzoni – Sangalli, Milan, Italy Fabrizio Sardella Lawyer
Japan	Prof. Toru Umeda Professor of international law and Director of Business Ethics and Compliance Research Centre at Reitaku University, Japan Vice-Chair, TI Japan
Korea	Professor Joongi Kim Founding Executive Director of Hills Governance Center and Professor of Law, Law School / 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
Mexico	Lucía Cortés International Anti-corruption Conventions Programme Coordinator Transparencia Mexicana Claudine Léger International Anti-corruption Conventions Programme Consultant Transparencia Mexicana

Netherlands	Gerben Smid, LLM PhD Student in Criminal Law Secretary to the Board, TI Netherlands
New Zealand	Aaron Lloyd Partner, Minter Ellison Rudd Watts Barrister & Solicitor of the High Court of New Zealand, Convenor of the Minter Ellison Rudd Watts' White-Collar Practice Group
Norway	Erling Grimstad Founder, Advokatfirmaet G-Partner AS
	Anne Marthe Holtet Assistant, Advokatfirmaet G-Partner AS
Poland	Anna Urbanska Chair, TI Poland
Portugal	Luís de Sousa, PhD Research Fellow, Institute of Social Sciences, University of Lisbon, Director of ANCORAGE-NET, the research network on anti-corruption agencies, Head of the Portuguese National, Coordinator of expenditure monitoring programmes of the Entidade das Contas e Financiamentos Políticos of the Portuguese Constitutional Court
	David Marcão Researcher, Institute of Social Sciences, University of Lisbon, Responsible for the legal analysis of the project on Court cases of corruption and related crimes developed in cooperation with the Central Department for Investigation and Penal Action, Member of the Portuguese National Contact Point of Transparency International
Slovak Republic	JUDr. Pavel Nechala Lawyer, Pavel Nechala & Co.; TI Slovakia
Slovenia	Bojan Dobovšek, PhD Lawyer, Professor, University of Maribor
	Simona Habič CEO of Integriteta – Association for ethics in public service
	Jure Škrbec, MSc Concultant at the Commission for the prevention of corruption (review)
	Vid Doria and Urban Salter Student volunteers
South Africa	Basetsana Molebatsi Attorney, Dm5 Incorporated; Trustee, Women's Legal Centre
Spain	Manuel Villoria Professor, 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)

Switzerland	Dr. jur. Jean-Pierre Méan Lawyer Chair, TI Switzerland
Turkey	E. Oya Çetinkaya International lawyer Chair, TI Turkey
United Kingdom	Chandrashekhar Krishnan Executive Director, TI United Kingdom
United States	Lucinda A. Low Partner, Steptoe & Johnson LLP (FCPA practitioner) Board of Directors, TI USA
	Tom Best Senior Associate, Steptoe & Johnson LLP
China (People's Republic of)	Jun Wei Partner, Hogan Lovells International LLP
	Steven N. Robinson Partner, Hogan Lovells International LLP
	Jeremy Zucker Partner, Hogan Lovells International LLP
Bangladesh	Ifthekar Zaman Executive Director, TI Bangladesh
	Waheed Alam Senior Fellow
	Shammi Laila Islam Assistant Fellow

5 APPENDIX B
QUESTIONNAIRE FOR TI NATIONAL CHAPTERS

Questionnaire for (Name of country): . . . . . .

Date: . . . . . .

I. CURRENT STATUS

A. FOREIGN BRIBERY CASES

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.

1. PENDING CASES

a. Total number of pending cases: . . . . . .
Please list all pending foreign bribery cases brought since the OECD Convention became effective in your country.
See Guidelines for definition of "case".

b. Cases pending brought since 1 January 2009 (NEW): . . . . . .

c. Details about cases. For each pending case that was not included in last year's country report

Pease list if possible the following:
(1) Name of case, including 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.

(3) Is it a criminal or civil case? . . . . . .
(4) Summary of principal charges, including name of the country whose officials were allegedly bribed . . . . . .
(5) Penalties or other sanctions sought . . . . . .
(6) Status of case, including expected trial date or appeal date. . . . . .
(7) To your knowledge are there any obstacles holding up the case, such as lack of resources or of mutual legal assistance from other governments? If so, please explain. . . . . .
(8) To your knowledge has a case involving the same facts or defendants been brought in another country? If so where and when? . . . . . .

Note: Please state source of information for each case

2. CONCLUDED CASES

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

a. Total number of concluded cases . . . . . .

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

b. Cases concluded since 1 January 2009: . . . . . .

c. Details about cases. For each concluded case that was not included in the last country report

Please list if possible the following:

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

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

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

(3) Is it a civil or criminal case? . . . . . .

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

(5) Disposition of case, including penalties or other sanctions imposed including
(a) penalties against individuals or companies; (b) requirements for compliance programmes . . . . . .

(6) To your knowledge were there any obstacles, holding up the case? If so, please explain: . . . . . .

(7) To your knowledge has a case involving the same facts or defendants been brought in another country?
If so where and when? . . . . . .

Note: Please state source of information for each case

3. INVESTIGATIONS UNDER WAY IN 2009

Please provide available information on 2009 government investigations of allegations of bribery of foreign public officials:

a. Total number of known foreign bribery investigations under way in 2009: . . . . . .

b. Number of those foreign bribery investigations begun since 1 January 2009: . . . . . .

c. Developments during 2009:
If possible, please provide information on any investigations that
(a) turned into prosecutions or (b) were dropped in the course of the year.

(1) Investigations turning into prosecutions: . . . . . .

(2) Investigations dropped: . . . . . .

d. Details about investigations. Please provide any available details about principal parties and charges under investigation for each investigation: . . . . . .

Note: Please state source of information for each investigation

4. SERIOUS ALLEGATIONS OF FOREIGN BRIBERY

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

Total number of serious allegations of foreign bribery: . . . . . .

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 / Name of company allegedly involved in bribery process: . . . . . .

Note: Please state source of information for each allegation

5. ACCESS TO INFORMATION:

Information available about foreign bribery cases

a. Is information on numbers of cases accessible? Yes ○ No ○
If not, please indicate the official or other reasons why not: . . . . . .

b. Is information on case details accessible? Yes ○ No ○
If not, please indicate the official or other reasons why not: . . . . . .

6. REQUIREMENTS OF EXPORT CREDIT AGENCIES AND THEIR ENFORCEMENT

Are companies applying for export credits required to make a no-bribery commitment? Yes ○ No ○

Do such commitments extend to conduct by an agent or business partner, including but not limited to joint ventures and consortium members; Yes ○ No ○

Are companies required as a condition for export credit eligibility to demonstrate that they have effective anti-bribery compliance programmes? Yes ○ No ○

Are companies required as a condition for export credit eligibility to report on compensation for agents? Yes ○ No ○

7. FACILITATION PAYMENTS

Are facilitation payments prohibited in law in your country? Yes ○ No ○

Are facilitation payments prohibited in practice in your country? Yes ○ No ○

B. DOMESTIC BRIBERY BY FOREIGN COMPANIES (LAST 5 YEARS)

Please provide a list of all known cases and investigations of domestic bribery by foreign companies in your country.Please provide citations to information sources about these cases and include information about dates and parties in the cases. . . . . .

Please also note: Domestic bribery by foreign companies here refers to the bribery of domestic public officials by foreign companies or subsidiaries of foreign companies.

II.STATUS OF ENFORCMENT

A. INADEQUACIES IN LEGAL FRAMEWORK AND ENFORCEMENT SYSTEM

1. Are there significant inadequacies in the legal framework for foreign bribery prosecutions in your country?

If yes, please provide a short description of the main inadequacies in the legal framework such as:

- Inadequate definition of foreign bribery . . . . . .
- Jurisdictional limitations . . . . . .
- Lack of criminal liability for corporations. . . . . .
- Failure to hold companies responsible for subsidiaries, joint ventures and/or agents . . . . . .
- Inadequate sanctions . . . . . .
- Inadequate statutes of limitation . . . . . .
- Other . . . . . .

2. **Are there significant inadequacies in the enforcement system for foreign bribery prosecutions in your country?**

   If yes, please provide a short description of the main inadequacies in the enforcement system such as:
   - Decentralised organisation of enforcement . . . . . .
   - Lack of coordination between investigation and prosecution . . . . . .
   - Inadequate resources . . . . . .
   - Lack of training of investigators to investigate this kind of offence . . . . . .
   - Inability of investigators and prosecutors to obtain mutual legal assistance . . . . . .
   - Inadequacy of complaints mechanisms and whistleblower protection . . . . . .
   - Lack of public awareness-raising . . . . . .
   - Inadequate accounting and auditing requirements . . . . . .
   - Other . . . . . .

3. **If there are inadequacies (a) the legal framework and/or (b) the enforcement system please explain the reasons why such as**

   - Government does not consider issue important . . . . . .
   - Government interest in promoting exports . . . . . .
   - Political influence of companies . . . . . .
   - Other reasons (please specify) . . . . . .

4. **In your view, have any investigations or cases been hindered or dropped for improper reasons such as:**

   - National economic interest such as encouragement of exports or promoting military sales or ensuring extractive industry deals . . . . . .
   - Potential effect on relations with other States . . . . . .
   - Identity of the persons or companies involved . . . . . .
   - National security considerations . . . . . .

   Please provide a short explanation: . . . . . .
   . . . . . .

B. NOTEWORTHY RECENT DEVELOPMENTS

Please describe recent developments in the areas covered in this report or any other areas that you feel are relevant, e.g. new legislation, institutional changes in the last year. . . . . .
. . . . . .
. . . . . .

C. ACTIONS NEEDED IN YOUR COUNTRY

Your suggestions and recommendations
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 recommendations. . . . . .
. . . . . .
. . . . . .

I have shown this report to a member of my country's delegation to the OECD Working Group on Bribery and taken into account their feedback: Yes ○ No ○

Report prepared by (signature): . . . . . .

Name of respondent: . . . . . .

Affiliation: . . . . . .

Professional experience: . . . . . .

ENDNOTES

1 This does not cover provisions on confiscation.
2 Additional information on export credit agencies is provided in a recent TI report entitled Export Credit Agency Anti-Bribery Practices 2010.
3 Oil-for-Food sanctions case
4 This is the penalty proposed by the SFO. The case has not yet come before a UK court and the SFO is not in a position to confirm a date for this. In the US, BAE Systems was fined US$ 400 million.
5 For sources, see Section 4, Cases.
6 "Involucran a IMPSA en un caso de corrupción", *La Nación*, 15 January 2003.
7 Interview with Guillermo Jorge, consultant on anticorruption and governance. "Bolivia castiga a firmas argentinas", *La Nación*; www.lanacion.com.ar/nota.asp?nota_id=1109352
8 Case Nº 9421/06, "Ministerio de Relaciones Exteriores, Comercio Internacional y Culto s/denuncia. "N.N s/ COHECHO".
9 Interview with Luis Villanueva, ACIJ (Asociación Civil por la Igualdad y la Justicia). Interview with Guillermo Jorge, consultant on anticorruption and governance. Information brought by the Public Prosecutor Office.
10 Report of Nicolas Dassen, 25 February 2010.
11 ABC News, 19 February 2010; http://www.abc.net.au/news/stories/2010/02/19/2824879.htm; *Sydney Morning Herald*, 3 June 2010; www.smh.com.au/business/six-former-awb-chiefs-escape-criminal-charges-over-kickbacks-20100603-x765.html
12 The Age, 31 March 2010; http://www.theage.com.au/business/banknote-scandal-claims-pair-20100330-rbnf.html; *Corporate Foreign Policy*, 1 April 2010; corporateforeignpolicy.com/china/corporate-foreign-policy-scrutinized-by-bribery
13 Next.com, 31 March 2010; http://234next.com/csp/cms/sites/Next/Home/5548068-146/australia_sacks_two_in_polymer_note.csp; Next.com, 23 October 2009; 234next.com/csp/cms/sites/Next/Home/5473574-146/story.csp
14 *New York Times*, 29 March 2010; www.nytimes.com/2010/03/30/business/global/30alstom.html?pagewanted=2
15 BBC News Online, 22 March 2010; news.bbc.co.uk/1/hi/world/asia-pacific/8579276.stm
16 The Times, 22 April 2010; http://business.timesonline.co.uk/tol/business/industry_sectors/natural_resources/article7103456.ece
17 Publico.pt, 16 October 2009; www.publico.pt/Sociedade/medicos-e-gestores-de-empresa-pronunciados-por-crimes-de-corrupcao-em-coimbra_1405495
18 Heute.at, 9 April 2009; www.heute.at/news/politik/Strabag-Chef-Haselsteiner-Verdacht-auf-Bestechung;art422,17636.w
19 Österreicher Rundfunk, 23 February 2010; wien.orf.at/stories/425086/; see also *Die Presse*, 18 February 2010; diepresse.com/home/wirtschaft/international/540808/index.do?parentid=878283&showMask=1
20 Österreicher Rundfunk, 23 February 2010. The discussions about the deal reportedly dated back to 2001 – the 2009 contract modified an earlier 2006 deal – and two ex-Steyr managers reportedly told the undercover journalist that 2-3 per cent of the deal was budgeted to go to all political parties in the Czech Republic.
21 *Der Standard*, 8 February 2010; derstandard.at/1263706987229/Schmiergeldkonten-in-Oesterreich
22 *The Guardian*, 29 January 2010; www.guardian.co.uk/world/2010/jan/29/bae-mensdorff-pouilly-bribery
23 *Die Presse*, 24 March 2010; diepresse.com/home/wirtschaft/economist/548394/index.do
24 AFP, 3 April 2010.
25 *Der Standard*, 15 April 2010; derstandard.at/1269449782223/Siemens-Oesterreich-Bestechungsverdacht-erhaertet
26 See eg. STA, 30 unr 2009; www.sta.si/en/vest.php?s=a&id=1405334
27 Netzeitung.de, 2 August 2006; www.netzeitung.de/autoundtechnik/429350.html
28 *Budapest Times*, 23 February 2008; www.budapesttimes.hu/index.php?option=com_content&task=view&id=5752&Itemid=210
29 *Die Presse*, 23 October 2009; diepresse.com/home/wirtschaft/economist/517075/index.do; *Prague Post*, 2 December 2009; www.praguepost.com/business/2990-bribery-alleged-at-ceska-sporitelna.html
30 Wien International, 7 Januaty 2010, www.wieninternational.at/en/node/17540
31 *Die Presse*, 26 June 2009; diepresse.com/home/wirtschaft/economist/490551/index.do
32 *Die Presse*, 1 April 2010; diepresse.com/home/wirtschaft/economist/555771/index.do ; *Die Presse*, 17 June 2010; http://diepresse.com/home/wirtschaft/international/574491/index.do
33 *La Nacion*.com, 22 June 2007; www.lanacion.com.ar/nota.asp?nota_id=919456
34 *New York Times*, 29 March 2010; www.nytimes.com/2010/03/30/business/global/30alstom.html?pagewanted=2. AFP, 23 April 2010; http://www.expatica.com/fr/news/french-news/brazil-to-ask-french-swiss-bank-details-on-alstom-case_62067.html?ppager=0
35 Siemens Legal Proceedings—First 9 Months of Fiscal 2009, 30 July 2009; www.siemens.com/press/pool/de/events/2009-q3/2009-q3-legal-proceedings-e.pdf
36 Gainseville.com, 30 March 2010; www.gainesville.com/article/20100330/ZNYT05/3303004?p=4&tc=pg
37 Novinite.com, 23 February 2007; www.novinite.com/view_news.php?id=77108.
38 Foreign Affairs and International Trade Canada, www.international.gc.ca/trade-agreements-accords-commerciaux/ds/9-report-rapport.aspx
39 *The Star*, 30 June 2010; www.thestar.com/mobile/canada/article/830459; Globe and Mail, 2 July 2010
40 *The Star*, 15 January 2009; www.thestar.com/article/571556
41 *Modern Plastics Worldwide*, 1 September 2006; www.modplas.com/inc/mparticle.php?section=First%20Look&thefilename=firstlook09012006_01; see also The Canadian Press, 8 January 2006.
42 Shearman & Sterling LLP, FCPA Digest – Cases and Review Relating to Bribes to Foreign Officials under the Foreign Corrupt Practices Act of 1977, October 2009; www.shearman.com/files/upload/fcpa_digest.pdf
43 CBC News, 5 May 2010, cited on McCleans.ca: www2.macleans.ca/2010/05/05/schreiber-goes-to-jail/; CTV Edmonton, 5 May 2010; edmonton.ctv.ca/servlet/an/local/CTVNews/20100505/karlheinz-schreiber-sentenced-100505/20100505/?hub=EdmontonHome
44 *Santiago Times*, 10 November 2009; www.santiagotimes.cl/index.php?option=com_content&view=article&id=17586:former-chilean-defense-minister-rojas-still-under-investigation&catid=19:other&Itemid=142; *The Guardian*, 10 October 2008
45 *Slovak Spectator*, 30 March 2009; spectator.sme.sk/articles/view/34801/2/slovak_link_to_island_graft_inquiry.html
46 Actualne.cz, 30 January 2008; aktualne.centrum.cz/domaci/kauzy/clanek.phtml?id=519866
47 Money.at, 5 February 2010; www.psp.cz/eknih/2006ps/stenprot/070schuz/s070002.htm
48 *Prague Post*, 24 February 2010; www.praguepost.com/news/3676-police-launch-investigation-of-pandur-military-vehicle-deal.html; *Prague Post*, 3 March 2010; www.praguepost.com/news/3739-fischer-demands-pandur-probe.html
49 Týden.cz, 25 April 2010; www.tyden.cz/rubriky/domaci/klimovicova-jiz-podruhe-zprostena-obzaloby-z-korupce_9453.html
50 *Czech Business Weekly*, 19 May 2008; www.cbw.cz/article/korupce-ve-zdravotnictvi-stale-trva-.aspx
51 *Czech Business Weekly*, 18 November 2008; www.cbw.cz/article/mrfair-to-fight-for-generic-drug-producers.aspx
52 *Prague Post*, 2 December 2009; www.praguepost.com/business/2990-bribery-alleged-at-ceska-sporitelna.html
53 Czech Export Bank, Terms and Conditions, For the Provision of Direct Loans for the Funding of Export Production, Funding of Export and Funding of Investments, August 2007, www.ceb.cz/images/stories/files_PDF/VOP_ang/vop_pu_an_new.pdf (in English) and www.ceb.cz/images/stories/soubory_PDF/VOP_NEW/vop_pu_new.pdf (in Czech).
54 *Prague Monitor*, 13 May 2010; praguemonitor.com/2010/05/13/hn-justice-minister-wants-criminal-liability-companies
55 *Copenhagen Post* Online, 11 February 2010; www.cphpost.dk/news/international/89-international/48228-drug-maker-reaches-oil-for-food-settlement.html
56 *Copenhagen Post* Online, 11 February 2010; www.cphpost.dk/news/international/89-international/48228-drug-maker-reaches-oil-for-food-settlement.html; New Europe, 21 February 2010; www.neurope.eu/articles/99201.php
57 Missionspharma website: www.mission-pharma.com/content/us/about_us/news/news_archive/bribery_charges_dropped_242-09
58 *Business Respect*, 8 October 2008; www.businessrespect.net/page.php?Story_ID=2259
59 *Copenhagen Post*, 14 July 2009; www.cphpost.dk/business/119-business/46268-novo-admits-discrepancy-with-junket-case.html
60 GRECO, Third Evaluation Round Report on Denmark on Incriminations, 2 July 2009, www.coe.int/t/dghl/monitoring/greco/evaluations/round3/

GrecoEval3(2008)9_Denmark_One_EN.pdf

61 OECD Working Group on Bribery, Phase 2 Report on Estonia, 20 June 2008, http://www.oecd.org/dataoecd/60/57/40953976.pdf

62 *Helsinki Times*, 14 May 2009.

63 *Nordic Business Report*, 27 May 2005; resources.bnet.com/topic/bribery+and+sales.html; The Finnish Supreme Court did not grant the public prosecutor leave to appeal the verdict. AFX News Ltd, 7 March 2007; www.forbes.com/feeds/afx/2007/07/03/afx3880806.html

64 *Helsingen Samgomat*, 2 December 2005; www.hs.fi/english/article/Study+Costa+Rica+bribery+allegations+spread+to+Finland/1101981832373

65 *Daily Star*, 3 September 2007; www.thedailystar.net/story.php?nid=2460; Financial Express, 7 May 2008; www.thefinancialexpress-bd.com/search_index.php?page=detail_news&news_id=32799; *Daily Star*, 16 February 2009; www.thedailystar.net/story.php?nid=76119

66 *Helsingen Sangomat*, 18 September 2003; www2.hs.fi/english/archive/news.asp?id=20030918IE2; *Helsingen Sangomat*, 25 September 2003; www2.hs.fi/english/archive/news.asp?id=20030925IE1

67 *The Moscow Times*, 19 April 2010; www.them oscowtimes.com/news/article/germans-see-no-conflict-of-interest-in-hp-probe/404157.html

68 The American Lawyer.com, 24 June 2008; www.law.com/jsp/tal/PubArticleTAL.jsp?id=1202422506261&thbxlogin=1

69 BBC News, 6 April 2010; news.bbc.co.uk/2/hi/8604925.stm. See also Total statement, 6 April 2010: www.total.com/en/about-total/news/news-940500.html&idActu=235 1

70 *Libération*, 2 April 2010; www.liberation.fr/societe/0101628017-sous-marins-francais-le-malaise-malaisien; Malaysia Today, 16 April 2010; www.malaysia-today.net/index.php?option=com_content&view=article&id=31215:malaysias-submarine-scandal-erupts-in-france&catid=21:special-reports&Itemid=100135; *Asia Sentinel*, 16 April 2010; www.asiasentinel.com/index.php?option=com_content&task=view&id=2406&Itemid=178

71 *Libération*, November 2009, www.liberation.fr/societe/0101602179-les-pots-de-vin-du-president-pakistanais; Gulf Times/ DPA, 10 November 2009, www.gulf-times.com/site/topics/article.asp?cu_no=2&item_no=325510&version=1&template_id=41&parent_id=23

72 ibid.

73 *New York Times* Online, 29 March 2010; www.nytimes.com/2010/03/30/business/global/30alstom.html?pagewanted=2&_r=1&sq=french companies&st=nyt&scp=1

74 Global Security.org, 23 April 2009, http://www.globalsecurity.org/military/world/india/project-75.htm

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

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

77 Upstream Online.com 18 February 2010 www.upstreamonline.com/live/article206708.ece

78 BBC News, 3 May 2010; news.bbc.co.uk/2/hi/asia-pacific/8658789.stm; Thales, www.thalesgroup.com/Pages/PressRelease.aspx?id=12795; France 24/ AFP, 4 May 2010; www.france24.com/en/20100504-thales-ordered-pay-taiwan-frigate-row

79 Reuters, 10 January 2010; www.reuters.com/article/idUSN2121041320100121; CNN, 14 April 2010; edition.cnn.com/2010/WORLD/americas/04/14/costa.rica.trial/index.html; Bloomberg Business Week, 6 December 2004; www.businessweek.com/magazine/content/04_49/b3911066_mz054.htm

80 Reuters, 19 February 2010; www.reuters.com/article/idUSLDE61I1GK20100219

81 GRECO Third Evaluation Report on France, 19 February 2009, www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2008)5_France_One_EN.pdf

82 FAZ Online, 5 May 2010; www.faz.net/s/Rub594835B672714A1DB1A121534F010EE1/Doc~E2C06FDA7EE814E01A0FC8BAB69424404~ATpl~Ecommon~Scontent.html

83 *Spiegel Online*, 5 May 2010; www.spiegel.de/politik/deutschland/0,1518,693090,00.html

84 Bloomberg.com, 10 December 2009; www.bloomberg.com/apps/news?pid=20601100&sid=aZfuVzPMLpiQ

85 *New York Times*, 12 May 2009; www.nytimes.com/2009/05/13/business/global/13man.html

86 *Wall Street Journal*, 11 December 2009; online.wsj.com/article/SB10001424052748703514404574587670799801680.html

87 FAZ Online, 24 June 2010; www.faz.net/s/RubD16E1F55D21144C4AE3F9DDF52B6E1D9/Doc~E806ED68A0662474CAE775364CC05EDD6~ATpl~Ecommon~Scontent.html

88 Reuters Online, 20 April 2010; www.reuters.com/article/idUSLDE63J1IN20100420

89 *Wall Street Journal* Online, 15 April 2010; online.wsj.com/article/SB10001424052702303348504575184302111110966.html?mod=WSJ_Tech_LEADSecond

90 Ibid.

91 BBC News Online, 23 April 2010; news.bbc.co.uk/2/hi/business/8632240.stmnews.bbc.co.uk/2/hi/business/8632240.stm

92 *Handelsblatt*, 15 August 2009; www.*Handelsblatt*.com/unternehmen/industrie/gildemeister-manager-wegen-korruption-in-haft;2445272; N-W News.de, 16 August 2009; www.nw-news.de/owl/regionale_wirtschaft/3075743_Bestechungsverdacht_gegen_Gildemeister-Manager.html.

93 FR Online, 29 September 2008; www.fr-online.de/frankfurt_und_hessen/nachrichten/hessen/?em_cnt=1604618

94 *Spiegel Online*, 25 May 2008; www.spiegel.de/wirtschaft/0,1518,555243,00.html.

95 *Die Presse*, 17 June 2010, http://diepresse.com/home/wirtschaft/international/574491/index.do ; Süddeutsche Zeitung, 12 May 2010, http://www.sueddeutsche.de/bayern/hypo-group-alpe-adria-bank-fuer-kriegsverbrecher-und-terroristen-1.944361

96 Tech World.com, 11 June 2010; http://www.techworld.com.au/article/349677/nigeria_moves_query_siemens_bribery_allegations

97 Shearman & Sterling, http://fcpa.shearman.com/

98 *Handelsblatt*, 2 June 2006; www.*Handelsblatt*.com/unternehmen/industrie/schmiergeldskandal-faurecia-chef-tritt-ab;1116249; Plastics Today, 31 August 2006; www.plasticstoday.com/articles/faurecia-others-embroiled-bribery-scandal

99 *Handelsblatt*, 5 August 2008; www.*Handelsblatt*.com/unternehmen/industrie/korruptionsskandal-weitet-sich-aus;1117445; Fazfinance, 16 December 2006; www.fazfinance.net/Aktuell/Wirtschaft-und-Konjunktur/In-schlechter-Gesellschaft-0576.html

100 *Financial Times*, 27 August 2006; us.ft.com/ftgateway/superpage.ft?news_id=fto082720061658065275; *Handelsblatt*, 16 December 2006.

101 BBC News, 27 May 2010, www.bbc.co.uk/news/10178021

102 *Ekathimerini*, 29 March 2010; www.*EKathimerini*.com/4dcgi/_w_articles_politics_0_29/03/2010_115969 Venizelos said Greece would accept delivery of the first Class 214 submarine – ordered in 2000 and known as the Papanikolis – after technical problems had been ironed out, but that the government would look to immediately resell the vessel; www.*EKathimerini*.com/4dcgi/_w_articles_politics_0_29/03/2010_115969 ; Wall Street Journal, 10 July 2010, online.wsj.com/article/NA_WSJ_PUB:SB10001424052748703636404575352991108208712.html

103 SEC Complaint, 22 March 2010, www.sec.gov/litigation/complaints/2010/comp-pr2010-51.pdf

104 SEC Form 6K Filing by Magyar Telekom, 3 December 2009; http://www.sec.gov/Archives/edgar/data/1047564/000110465909068312/a09-34771_16k.htm .
FCPA Blog, 6 December 2009; www.fcpablog.com/blog/2009/12/7/magyars-magnum-opus.html

105 Magyar Telecom: http://www.telekom.hu/befektetoknek/befektetoi_kozlemenyek/2009/december_3

106 *Die Presse*, 30 October 2009, http://diepresse.com/home/politik/aussenpolitik/518414/index.do?from=suche.intern.portal; wien international.at, 7 January 2010, www.wieninternational.at/en/node/17540

107 Oldal: 3, Füszerkavaràs77In *Figyelö* (Hungarian weekly) 2010:11. The Director of Communications at MOL Dóra SOMLYAI contradicted the statements of this article: www.fn.hu/hetilap/20100323/mol_horvatorszagban/, in: *Figyelö* 2010:12. *Népszabadság* (Hungarian daily) also reported on this issue: February 2010, nol.hu/gazdasag/20100218-trukkos_horvat_privatizacio_magyar_penzzel, and April 2010: nol.hu/gazdasag/20100419-mol-penz_a_podravkaban.

108 MIT-ECNEWS, 6 April 2010; www.realdeal.hu/20100406/investigation-of-diamler-publicprocurement-contract-to-be-completed-in-april

109 77Origo.hu, Hungarian online news portal www.origo.hu/nagyvilag/20100324-alstom-vesztegetes-orizetben-a-francia-cegcsopot-brit-leanyvallalatanak-vezetoi.html

110 Report of TI Hungary expert, 26 January 2010.

111 GRECO Third Evaluation Report on Ireland, 4 December 2009, www.coe.int/t/dghl/monitoring/greco/news/news(20100125)eval3%20ireland_EN.asp quoted in Irish Times, 26 January 2010, www.irishtimes.com/

newspaper/ireland/2010/0126/1224263119313.html.

112 Haaretz.com, 14 April 2009; http://www.haaretz.com/print-edition/news/kazakh-minister-arrested-in-israeli-arms-sales-bribe-case-1.274065; Reuters, 25 February 2010; http://www.reuters.com/article/idUSTRE61O2B520100225?feedType=RSS&feedName=worldNews&rpc=22&sp=true; *Times of India*, 8 July 2010, http://timesofindia.indiatimes.com/biz/india-business/OFB-scam-CBI-urges-MoD-to-blacklist-6-firms/articleshow/6141138.cms

113 OECD Working Group on Bribery Phase 1 Report on Israel, 19 March 2009, www.oecd.org/dataoecd/39/49/42394878.pdf ; Phase 2 Report on Israel, 11 December 2009, oecd.org/dataoecd/60/10/44253914.pdf

114 Economynet ; www.ynet.co.il/articles/0,7340,L-3446850,00.html

115 *Il Sole*, 6 July 2009.

116 *L´Espresso*, 31 August 2009.

117 *Corriere Della Sera*, 16 April 2010; Il Giornale, 16 April 2010; *La Repubblica*, 16 April 2010.

118 OECD Working Group on Bribery, Phase 2 Report on Italy, 29 November 2004; www.oecd.org/dataoecd/0/50/33995536.pdf

119 *Corriere Della Sera*, 19 December 2009; archiviostorico.corriere.it/2009/dicembre/19/Sequestrati_250_mila_euro_all_co_8_091219001.shtml; *Corriere Della Sera*, 18 December 2009; http://archiviostorico.corriere.it/2009/dicembre/18/assessore_locale_senza_non_onda_co_8_091218039.shtml; *Corriere Della Sera*, 17 December 2009; http://archiviostorico.corriere.it/2009/dicembre/17/Corruzione_carcere_Prosperini_co_8_091217036.shtml

120 *Ansa*, 13 January 2009; *La Repubblica*, 25 April 2009; OECD Working Group on Bribery, Phase 2 Report on Italy, 29 November 2004; www.oecd.org/dataoecd/0/50/33995536.pdf

121 *Wall Street Journal*, 30 November 2007; The American Lawyer. Com, 24 June 2008; www.law.com/jsp/tal/PubArticleTAL.jsp?id=1202422506261&thbxlogin=1

122 US Department of Justice, 22 December 2008; www.justice.gov/opa/pr/2008/December/08-crm-1140.html

123 Reuters, 7 July 2007, http://www.reuters.com/article/idUSLDE66628H20100707

124 *Milliyet Gazetesi*, 10 February 2009; www.milliyet.com.tr/italyan-sirket-ceas-i-mahkum-ettirdi/turkiye/sondakikaarsiv/06.02.2010/1057841/default.htm; *The Guardian*, 13 June 2003; www.guardian.co.uk/world/2003/jun/13/davidpallister

125 AFP, 16 December 2008; http://www.google.com/hostednews/afp/article/ALeqM5jLJIEHpgJ5iQ2oQiqmfnKILNHB7w; Il Giornale.it, 16 December 2008; http://www.ilgiornale.it/interni/tangenti_petrolio_basilicata_arrestati_lad_total_e_deputato_pd/16-12-2008/articolo-id=314822-page=0-comments=1

126 *Wall Street Journal*, 11 November 2008; online.wsj.com/article/SB122635449074015183.html?mod=googlenews_wsj#printMode

127 *The Telegraph*, 29 April, 2004; www.telegraph.co.uk/finance/2884207/Siemens-faces-Italy-contracts-ban.html

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

129 Shearman & Sterling, fcpa.shearman.com/?s=matter&mode=form&id=198; *APM Health Europe*, 23 May 2008; www.apmhealtheurope.com/story.php?mots=JUSTICE&searchScope=1&searchType=0&depsPage=3&numero=L11610, *APM Health Europe*, 26 May 2008; www.apmhealtheurope.com/story.php?mots=AIFA&searchScope=1&searchType=0&depsPage=7&numero=L11630, Siomon Kucher & Partners, *Healthcare Insight*, Fall 2008, Vol. 1, Issue 1, www.simon-kucher.com/News/LSNewsletter-Fall08.pdf; BMJ. 5 June 2004; http://www.bmj.com/cgi/content/extract/328/7452/1333

130 Siemens Legal Proceedings—First 9 Months of Fiscal 2009, 30 July 2009; http://www.siemens.com/press/pool/de/events/2009-q3/2009-q3-legal-proceedings-e.pdf

131 Siemens Legal Proceedings—First 9 Months of Fiscal 2009, 30 July 2009; http://www.siemens.com/press/pool/de/events/2009-q3/2009-q3-legal-proceedings-e.pdf

132 OECD Working Group on Bribery, Summary of the Meeting held 16-19 March 2010.

133 OECD Working Group on Bribery, *Phase 2 Follow-up Report* on Italy, 23 March 2007, http://www.oecd.org/dataoecd/30/36/38313133.pdf

134 OECD Working Group on Bribery, Summary Record of the Meeting held 16-19 March 2010.

135 Fulbright & Jaworkski, 28 November 2008; www.fulbright.com/index.cfm?fuseaction=publications.detail&pub_id=3672&site_id=494&detail=yes

136 Fulbright & Jaworkski, 28 November 2008 reported on the guilty pleas. www.fulbright.com/index.cfm?fuseaction=publications.detail&pub_id=3672&site_id=494&detail=yes

137 Bridgestone press release, 12 February 2008, www.bridgestone.co.jp/english/info/news/2008021201.html ; 2 May 2008, www.bridgestone.co.jp/english/info/news/2008052301.html

138 *Japan Times*, 2 March 2002 http://search.japantimes.co.jp/cgi-bin/nn20020302a6.html . There were also serious allegations in 2008 of bribe payments by Mitsui in Mongolia. The Yomiuri Shimbum, 4 June 2008

139 *New York Times*, 30 October 2006, www.nytimes.com/2006/11/30/business/worldbusiness/30iht-bank.3731302.html

140 JGC Corporation, Annual Report, 14 May 2009, www.jgc.co.jp/en/06ir/pdf/financial_statements-summary/FY09/fy09_yem.pdf

141 *Mail & Guardian*, 15 April 2010, www.mg.co.za/article/2010-04-15-hitachi-deal-lets-get-all-the-facts-first-says-gordhan, Politicsweb, 8 April 2010, www.politicsweb.co.za/politicsweb/view/politicsweb/en/page71619?oid=169979&tsn=Detail

142 OECD Working Group on Bribery, *Phase 2 Follow-up Report*, 10 October 2007, www.oecd.org/dataoecd/49/44/39591489.pdf

143 OECD Working Group on Bribery, Phase 2bis Report, 15 June 2006, www.oecd.org/dataoecd/54/23/37018673.pdf

144 OECD Working Group on Bribery, Summary Record of the Meeting held 16-19 March 2010.

145 OECD Working Group on Bribery, Mid-Term Study of Phase 2 Reports, 22 May 2006, (p. 21, paragraph 57); www.uhdigm.adalet.gov.tr/oecd/oecdortadonemcalismasi.pdf

146 OECD Working Group on Bribery, *Phase 2 Follow-up Report*, 2 March 2007, www.oecd.org/dataoecd/15/45/38239569.pdf

147 Reuters/ PR Newswire, 6 May 2009

148 AP, 7 May 2009.

149 Control Components pleaded guilty on 1 July 2009 and the announcement referenced corrupt payments made to officials at companies including Korean state-owned Korea Hydro and Nuclear Power. US Department of Justice Press Release, 1 July 2009, http://www.justice.gov/opa/pr/2009/July/09-crm-754.html

150 *New York Times*, 25 April 2010, www.nytimes.com/2010/04/26/technology/26samsung.html?pagewanted=all In a controversial recent book Mr. Kim Yong-chul, a former prosecutor, accused Mr. Lee and his aides of stealing as much as 10 trillion won (US $9 billion) from Samsung subsidiaries and stashing it in stock and bank accounts illegally opened in the names of executives. The book alleges they shredded books, fabricated evidence and bribed politicians, bureaucrats, prosecutors, judges and journalists, mainly to ensure they would not stand in the way of Mr. Lee's illegal transfer of corporate control to his only son.

151 ti.or.kr/xe/briefing/198496

152 *Korea Times*, 22 April 2010 www.koreatimes.co.kr/www/news/nation/2010/04/117_64691.html; The Hankyoreh, 23 April 2010, english.hani.co.kr/arti/english_edition/e_national/417466.html; The Hankyoreh, 28 April 2010, english.hani.co.kr/arti/english_edition/e_national/418198.html

153 *Korea Times*, 16 May 2010, .

154 SEC Complaint, 12 December 2008, http://www.sec.gov/litigation/complaints/2008/comp20829.pdf

155 US Department of Justice, Press Release, 23 November 2009; www.justice.gov/opa/pr/2009/November/09-crm-1265.html; Forbes.com. 23 November 2009, www.forbes.com/2009/11/23/abb-cfe-bribery-business-mexico-indictment.html

156 Forbes.com. 23 November 2009, www.forbes.com/2009/11/23/abb-cfe-bribery-business-mexico-indictment.html

157 American Lawyer.com, 24 June 2008, www.law.com/jsp/tal/PubArticleTAL.jsp?id=1202422506261. In March 2009 (published under LJN BJ5138) a company that was fined in 2008 in the Oil-for-Food Programme aftermath won a civil action against its (former) director and major shareholder for the costs of the fine (F174,170). The plaintiff was probably Stet Holland B.V., considering the amount that it claimed was the exact amount of the fine that was imposed on this company in 2008 (see last year's report). It is unclear whether an appeal is pending.

158 *The Guardian*, 16 September 2009, www.guardian.co.uk/world/2009/sep/16/trafigura-african-pollution-disaster; The US House of Representatives, Committee on International Relations, 17 March 2005 www.foreignaffairs.house.gov/archives/109/20059.pdf

159 Caribbean Net.news, 16 November 2007, www.caribbeannetnews.com/news-4557-2-4-.html; In May 2010 Greenpeace reportedly filed papers in the Netherlands accusing Trafigura of bribing truck drivers into giving false testimonies in connection with a toxic waste dumping case in Ivory Coast in 2006. AFP, 18 May 2010.

160 *The Guardian*, 20 February 2001, www.guardian.co.uk/world/2001/feb/20/chrismcgreal1

161 *The Guardian*, 16 September 2009; www.guardian.co.uk/world/2009/

sep/16/inside-trafigura-pollution-conservatives

162 SEC Complaint, 22 December 2008, www.sec.gov/litigation/complaints/2008/comp20835.pdf; US Department of Justice, 22 December 2008; www.justice.gov/opa/pr/2008/December/08-crm-1140.html; FCPA Blog, 23 December 2008, www.fcpablog.com/blog/2008/12/23/fiat-pays-178-million-for-fcpa-violations.html

163 FCPA Blog, 7 July 2010, www.fcpablog.com/blog/2010/7/7/snamprogetti-eni-in-365-million-settlement.html

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

165 OECD Working Group on Bribery, Phase 2 Follow-up Report on the Netherlands, 17 December 2008, www.oecd.org/dataoecd/61/59/41919004.pdf

166 See also, Atradius Dutch State Business, www.atradiusdutchstatebusiness.nl/dsben/csr/combating-bribary/index.html

167 See 'Instructions on the Investigation and Prosecution of Corruption Offences in Public Office Committed abroad' (Aanwijzing opsporing en vervolging ambtelijke corruptie in het buitenland, Stcrt. 2007, 124). An English translation of this Instruction is annexed to the *Phase 2 Follow-up Report* on the Netherlands (Annex 1).

168 The new regulation entered into force 1 January 2010, published in the Bulletin of Acts and Decrees 2009, no. 572.

169 *Times* Online, 17 December 2009, www.timesonline.co.uk/tol/news/world/asia/article6959978.ece

170 *Wall Street Journal* Online, 15 April 2010, online.wsj.com/article/SB10001424052702303348504575184302111110966.html

171 Ibid.

172 *NZ Herald*, 2 May 2008, www.nzherald.co.nz/news/article.cfm?c_id=193&objectid=10507606&tref=imthis

173 American Lawyer.com, 24 June 2008, www.law.com/jsp/tal/PubArticleTAL.jsp?id=1202422506261&thbxlogin=1

174 OECD Working Group on Bribery, *Phase 2 Follow-up Report* on New Zealand, 13 March 2009, www.oecd.org/dataoecd/7/57/42486288.pdf

175 Borgarting Court of Appeal, LB-2005-152636.

176 Global Security.org, 23 August 2005, www.globalsecurity.org/wmd/library/news/iran/2005/33-230805.htm

177 *The Guardian*, 3 November 2003, http://www.guardian.co.uk/uk/2003/nov/03/davidpallister ; *Norwatch*, 5 July 2003, www.norwatch.no/20030605425/veidekke/vannkraft/veidekke-ute-av-bujagali.html; New Vision, 22 April 2007, www.newvision.co.ug/D/8/220/561203

178 *Ghanaian Journal*, 10 August 2007, www.theghanaianjournal.com/2007/08/10/scancem-bribe-full-judgment/ .

179 *Mercopress*, 17 May 2010, en.mercopress.com/2010/05/17/strong-interest-for-peru-s-bidding-process-for-25-oil-blocks; UPI, 17 May 2010, www.upi.com/Science_News/Resource-Wars/2010/05/17/Peru-resumes-oil-auction-amid-optimism/UPI-78941274131627/www.koreatimes.co.kr/www/news/nation/2010/05/113_66006.html

180 Borgarting Court of Appeal: LB-2008-191379.

181 Oslo City Court: 08-171401MED-OTIR/06. See also: Report by Siemens, Legal Proceedings—First Half Fiscal 2008, 29 April 2008, p. 2. http://www.siemens.com/press/pool/de/events/Q22008/Q22008-legal-proceedings-e.pdf

182 Reuters, 13 October 2008, www.reuters.com/article/idUSLD30171320081013

183 Polskie Radio, *The News*, 25 February 2010, thenews.pl/business/default.aspx?page=11&tid=126323, citing as sources Rzeczpospolita/Dziennik Gazeta Prawna.

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

185 Actualne.cz, 30 January 2008; aktualne.centrum.cz/domaci/kauzy/clanek.phtml?id=519866

186 Siemens Legal Proceedings—first six months of 2009, 29 April 2009, http://www.siemens.com/press/pool/de/events/2009-q2/2009-q2-legal-proceedings-e.pdf

187 SEC Complaint, 22 March 2010, http://www.sec.gov/litigation/complaints/2010/comp-pr2010-51.pdf

188 OECD Working Group on Bribery, Annual Report 2009, p. 29, http://www.oecd.org/dataoecd/23/20/45460981.pdf

189 *Publico*, 16 October 2009, www.publico.pt/Sociedade/medicos-e-gestores-de-empresa-pronunciados-por-crimes-de-corrupcao-em-coimbra_1405495

190 *Correio da Manhã*, 14, 15, 16 March 2010; *Algarve Resident*, 19 March, 9 April 2010 www.algarveresident.com/story.asp?ID=36239

191 *Algarve Resident*, 16 April 2010, www.algarveresident.com/story.asp?ID=36655

192 *Algarve Resident*, 29 April 2010, www.algarveresident.com/story.asp?XID=36039

193 Article 373 of the Portuguese Penal Code states as a corruption crime the soliciting or acceptance of any undue advantage from someone who had, has or will have any claim on the public official's duties.

194 These are Law 25/2009 of June 5 and Law 88/2009 of August 31, which transpose the Council's framework decisions 2003/577/JHA and 2006/783/JHA, respectively.

195 Istrokapital is a Slovakian financial group formed in 1996 that in 2007 became a European company with headquarters in Cyprus.

196 *Slovak Spectator*, 30 March 2009, spectator.sme.sk/articles/view/34801/2/slovak_link_to_island_graft_in quiry.html; Business New Europe, 19 April 2010, businessneweurope.eu/story2057/Corruption_remains_a_burning_issue_in_Slovakia; Slovak police reportedly were seeking to examine the head of Istrokapital Mario Hoffman. Finanznik press review citing SME, 24 March 2009.

197 Ibid.

198 Caribbean Net News, 3 May 2010, www.caribbeannetnews.com/article.php?news_id=22969

199 Interblue was reportedly US-based in 2008 but in mid-2009 reconstituted itself as Interblue Group Europe, registered in Switzerland. Slovakian authorities say it is registered in the US and has a branch in Switzerland.

200 See also, *Slovak Spectator*, 24 March 2010, spectator.sme.sk/articles/view/38345/10/interblue_swiss_prosecutor_confirms_money_laundering_investigation.html

201 According to a recent article in a Slovakian newspaper, investigators believed that Interblue owners were 'linked to a web of companies registered in Slovakia and the Czech Republic, which, in turn, are domiciled to offshore locations ranging from the USA, South Pacific, Cyprus, the Netherlands and St. Kitts, to name a few'. Allegations against Interblue include claims that political party financing was part of the 2008 emissions quota deal and involvement in questionable activities in relation to government procurement and major EU infrastructure projects in Slovakia. *Slovak Spectator*, 29 March 2009, spectator.sme.sk/articles/view/38358/2/new_revelations_blow_lid_on_interblue_puzzle.html

202 STA, 5 October 2009, www.sta.si/en/vest.php?s=a&tid=1433993

203 STA, 30 June 2009, http://www.sta.si/en/vest.php?s=a&tid=1405334 ;

204 OECD Working Group on Bribery, Slovenia—*Phase 2 Follow-up Report*, 6 October 2009, http://www.oecd.org/dataoecd/2/59/44001495.pdf

205 ZDIJZ, www.ip-rs.si/index.php?id=324

206 *Mail & Guardian*, 1 July 2010, www.mg.co.za/organisation/thint

207 *Mail & Guardian* , 8 January 2010, http://www.mg.co.za/article/2010-01-08-schabir-shaiks-parole-paradise

208 *Mail & Guardian*, 15 April 2010, www.mg.co.za/article/2010-04-15-hitachi-deal-lets-get-all-the-facts-first-says-gordhan; Politicsweb, www.politicsweb.co.za/politicsweb/view/politicsweb/en/page71619?oid=169979&sn=Detail.

209 *The Local*, 29 January 2009; www.thelocal.se/17218/20090129/

210 Sapa, 27 November 2008, www.politicsweb.co.za/politicsweb/view/politicsweb/en/page71627?oid=111061&sn=Detail; *Mail & Guardian* Online, 5 December 2008; www.mg.co.za/article/2008-12-05-how-arms-deal-bribes-were-paid; *The Guardian*, 6 December 2008, www.guardian.co.uk/world/2008/dec/06/bae-arms-trade; *Mail & Guardian* Online, 12 December 2008, www.mg.co.za/article/2008-12-12-arms-playboys-accounts-frozen; See also, *Mail & Guardian* Online, 12 February 2010, www.mg.co.za/article/2010-02-12-baes-global-bribing-campaign; Parliamentary Monitoring Group, 14 May 2010, www.pmg.org.za/report/20100514-national-prosecuting-authority-200809-annual-report-hearing; NewsTime, 14 May 2010; www.newstime.co.za/rs_headlines.asp?recid=5390

211 Ibid.

212 www.timeslive.co.za/sundaytimes/article365912.ece; and for a full report of Adv Simelane's statement, see: www.npa.gov.za

213 OECD Working Group on Bribery, Phase 1 Report on South Africa, June 2008, http://www.oecd.org/dataoecd/51/30/40883135.pdf

214 OECD Working Group on Bribery, Phase 2 Report on South Africa, 17 June 2010, updated 1 July 2010, http://www.oecd.org/dataoecd/8/39/45670609.pdf

215 Comment in the *Mail & Guardian*, 28 May 2010, www.mg.co.za/article/2010-05-28-who-prosecutes-the-powerful

216 Allegations first appeared in 2004 in the Spanish newspapers *El Mundo* and *Al Dia* and the Argentinian *La Nacion*. See e.g. *La Nacion*, 9 October 2004; www.nacion.com/In_ee/ESPECIALES/ice-alcatel/n1009.html; *Inside Costa Rica*, 21 October 2004, insidecostarica.com/dailynews/2004/october/21/nac0.htm#Abengoa%20Loses%20Costa%20Rican%20Contract

As a result of the bribery charges, Inabensa reportedly lost a F162.4

million contract to build a power plant in Costa Rica and was removed from the list of government suppliers to the electricity company ICE.

217 All Business.com, 24 October 2004, www.allbusiness.com/crime-law/criminal-offenses-crimes-against/8061213-1.html

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

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

220 *Africa Confidential*, 28 November 2008, www.africa-confidential.com/article-preview/id/2891/No-Title; Report of TI- Spain expert

221 Sentence 13-11-2008 - Criminal Hall of the Spanish Supreme Court, referenced in Report of Manuel Valloria, TI Spain expert, 1 February 2010

222 *The Guardian*, 16 June 2008, www.guardian.co.uk/world/2008/jun/16/spain.russia. The 2008 operation targeted a Russian gang that allegedly set up a web of front companies in Spain to launder through illegal property deals millions gained from criminal activities in Russia and the former Soviet states. Judge Baltasar Garzon reportedly discovered more than 500 bank accounts used by the network to launder millions of euros every year in tax havens, including in Gibraltar.

223 BBC News, 15 March 2010, news.bbc.co.uk/2/hi/8567653.stm. However, according to Spain's Anti-Corruption Prosecutor, the head of the gang escaped in Greece, due to lack of cooperation from the Greek police.

224 *The Local*, 6 March 2009, www.thelocal.se/18032/20090306/

225 Ibid.

226 *The Local*, 16 June 2009, www.thelocal.se/20110/20090616/

227 Ibid.

228 *New York Times*, 11 May 2007, www.nytimes.com/2007/05/11/business/worldbusiness/11iht-corrupt.4.5672628.html?pagewanted=all ; Global Integrity, 6 March 2009, http://commons.globalintegrity.org/2009/03/argentina-inflation-is-low-because-i.html ; *La Nacion,* 18 January 2008

229 Anti-Corruption Regulation in 46 Jurisdictions Worldwide (2010), report on Argentina, p. 16.

230 TelecomTV, 6 February 2004, www.telecomtv.com/comspace_newsDetail.aspx?n=37178&tid=e9381817-0593-417a-8639-c4c53e2a2a10#

231 ABB, 7 July 2004, www.abb.com/cawp/seitp202/1a623e3ef4a4efe0c1256eca001ba1a1.aspx

232 *The Guardian*, 14 February 2007; AFP, 29 December 2007, afp.google.com/article/ALeqM5jOnrY_L2UlpU_9syLutMaIKzm2_w; Kelly Drye, 28 April 2009, www.kelleydrye.com/publications/client_advisories/0453 The US investigation reportedly concerns AstraZeneca activities in Croatia, Russia and Slovakia.

233 Ericsson was reportedly removed from the list of government suppliers to the electricity company ICE in Costa Rica in 2004 as a result of bribery allegations. AFP, 15 October 2004, www.ticotimes.net/dailyarchive/2004_10/daily_10_15_04.htm#story4; *Inside Costa Rica*, 21 October 2004, insidecostarica.com/dailynews/2004/october/21/nac0.htm#Abengoa%20Loses%20Costa%20Rican%20Contract

234 *Swissmoney*, 27 May 2003

235 Shearman & Sterling, 2010, fcpa.shearman.com/?mode=list

236 *Defense News*, 19 October 2009, www.defensenews.com/story.php?i=4328708

237 *New York Times*, 15 February 2010, http://www.nytimes.com/2010/02/16/business/global/16ikea.html

238 Trade Union News from Finland, 18 September 2003, www.artto.kaapeli.fi/unions/T2003/g24

239 Ibid.

240 GRECO Third Evaluation Round Report on Sweden, 19 February 2009, http://www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2008)4_Sweden_One_EN.pdf

241 American Lawyer.com, 24 June 2008, www.law.com/jsp/tal/PubArticleTAL.jsp?id=1202422506261&thbxlogin=1.

242 Bloomberg, 22 August 2008; Urteil BB 2008.75 des Bundesstrafgerichts; The *New York Times*, 24 March 2010.

243 AFP, 6 May 2010, http://www.google.com/hostednews/afp/article/ALeqM5iezoAkjVMdO1By1X7-H1r45FCZ2w

244 *The New York Times*, 14 May 2007, www.nytimes.com/2007/05/14/business/worldbusiness/14iht-bae.html ; *Wall Street Journal*, 28 December 2007; http://online.wsj.com/article/NA_WSJ_PUB:SB119879170772353601.html . Corruption Watch, http://corruptionwatch-uk.org/cases/alstom/ See also Section 4 "Cases" on Alstom.

245 Reuters, 20 September 2007; www.reuters.com/article/idUSL2064189320070920; Panalpina website, 29 April 2010; www.panalpina.com/www/global/en/media_news/news/news_archiv_2/10_04_29.html ; The FCPA Blog, 30 April 2010, www.fcpablog.com/blog/2010/4/30/panalpina-expects-settlement-soon.html

246 STA, 5 October 2009, www.sta.si/en/vest.php?s=a&id=1433993

247 *Times of India*, 8 July 2010, timesofindia.indiatimes.com/biz/india-business/OFB-scam-CBI-urges-MoD-to-blacklist-6-firms/articleshow/6141138.cms

248 Swissinfo.ch, 29 April 2009; *Basler Zeitung*, 14 July 2009; Entscheid BA.2009.4, 4 July 2009.

249 Press release of 3 February 2010, www.pressemappe.ch

250 www.pxweb.bfs.admin.ch/Dialog/statfile.asp?lang=1

251 Report of TI-Turkey expert

252 *New York Times*, 29 November 2007; www.nytimes.com/2007/11/29/nyregion/29bribe.html?_r=1&tscp=2&tsq=kiska&tst=nyt

253 Vatan Gazetesi, 3 August 2009; haber.gazetevatan.com/haberdetay.asp?Newsid=252208&Categoryid=1

254 Global Integrity, Reporter's Notebook: Turkey (Burak Bekdil) report. globalintegrity.org/Turkey/2008/notebook

255 *Milliyet Gazetesi*, 10 February 2009 www.milliyet.com.tr/italyan-sirket-ceas-i-mahkum-ettirdi/turkiye/sondakikaarsiv/06.02.2010/1057841/default.htm

256 *Financial Times*, 18 August 2008; Building .co.uk 15 August 2008; www.building.co.uk/news/tesco-caught-up-in-turkish-bribery-case/3120574.article

257 U.S. Securities and Exchange Commission: www.sec.gov/litigation/litreleases/2007/lr20214.htm

258 Vatan Gazetesi, 16 December 2008, w9.gazetevatan.com/Dunya_Siemensin_rusvet_agini_didik_didik_etti_Turkiye_seyretti_213790_2/213790/2/Ekonomi

259 *Radikal Gazetesi*, 25 March 2010, www.radikal.com.tr/Default.aspx?aType=RadikalHaberDetay&tDate=25.03.2010&tArticleID=987630

260 GRECO Third Evaluation Round Report on Turkey, 26 March 2010; www.coe.int/t/dghl/monitoring/greco/evaluations/round3/GrecoEval3(2009)5_Turkey_One_EN.pdf

261 OECD Working Group on Bribery, Phase 2 and Phase 2 bis Report on Turkey, 19 March 2010; www.oecd.org/dataoecd/47/16/44866155.pdf

262 Serious Fraud Office, 25 September 2009, www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2009/mabey--johnson-ltd-sentencing-.aspx; *Financial Times* Online, 14 January 2010, www.ft.com/cms/s/0/d2208ebe-00ac-11df-ae8d-00144feabdc0.html; *The Guardian*, 25 September 2009, www.guardian.co.uk/business/2009/sep/25/mabey-johnson-foreign-bribery

263 Serious Fraud Office, 1 December 2009, www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2009/former-vice-president-of-depuy-international-ltd-charged-with-corruption.aspx; *Financial Times* Online, 14 January 2010, www.ft.com/cms/s/0/d2208ebe-00ac-11df-ae8d-00144feabdc0.html

264 BBC News, 5 February 2010 news.bbc.co.uk/2/hi/business/8500742.stm; *New York Times*, 5 February 2010, www.nytimes.com/2010/02/06/business/global/06bribe.html; *Defense Industry Daily*, 8 February 2010, www.defenseindustrydaily.com/UK-Fraud-Office-BAE-Set-for-Another-Round-05777/.

265 Serious Fraud Office, 26 March 2010, www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2010/innospec-judgment.aspx

266 Norton Rose, 12 February 2010, www.nortonrose.com/knowledge/publications/2010/pub26460.aspx?page=all&lang=en-gb

267 Serious Fraud Office, 4 February 2009, www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2009/anglo-leasing---sfo-to-discontinue-probe-into-kenyan-contracts.aspx

268 *The Guardian*, 29 November 2009, www.guardian.co.uk/politics/2009/nov/29/ukip-lord-pearson-insurance-investigation; *The Guardian*, 1 December 2009, www.guardian.co.uk/politics/2009/dec/01/ukip-leader-rejects-bribery-link

269 City of London Police, 20 January 2010, www.cityoflondon.police.uk/CityPolice/Media/News/200110-major-bribery-investigation-makes-news-across-world.htm; BBC Online, 19 January 2010, news.bbc.co.uk/1/hi/world/americas/8469117.stm

270 Reuters, 17 February 2010, www.reuters.com/article/idUSN1713777520100217

271 Serious Fraud Office, 24 March 2010, www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2010/directors-of-alstom-arrested-in-corruption-investigation-following-raids-on-nine-properties.aspx

272 *The Guardian*, 6 May 2010, www.guardian.co.uk/uk/2010/may/06/macmillan-bribery-probe

273 *Mail* Online, 16 April 2007, www.dailymail.co.uk/news/article-448968/Senior-MoD-jailed-taking-bribes-US-arms-dealer.html; FCPA Blog 3 September 2009, www.fcpablog.com/blog/tag/pacific-consolidated-industries

274 Caribbean Net News, 3 May 2010, www.caribbeannetnews.com/article.php?news_id=22969

275 BBC, 30 July 2008, news.bbc.co.uk/2/hi/business/7532714.stm
276 US Department of Justice Press Release, 11 February 2009: www.justice.gov/opa/pr/2009/February/09-crm-112.html
277 US Department of Justice Press Release, 7 July 2010: www.justice.gov/opa/pr/2010/July/10-crm-780.html
278 Daimler, 1 April 2010, www.daimler.com/dccom/0-5-7153-1- 1285530-1-0-0-0-0-0-16694-0-0-0-0-0-0-0-0.html
279 Reuters, 1 April 2010, www.reuters.com/article/idUSTRE6303WY20100401
280 Reuters, 19 January 2010, www.reuters.com/article/idUSN1920007620100120
281 Bloomberg.com, 17 July 2010, www.bloomberg.com/news/2010-07-16/oil-consultant-giffen-returns-to-court-in-delayed-kazakhstan-bribery-case.html
282 US Department of Justice, 2 April 2003, www.justice.gov/usao/nys/pressreleases/April03/giffenwilliams.pdf ; Mobil is now part of ExxonMobil; Texaco is now part of ChevronTexaco; Amoco is now part of BP; and Phillips Petroleum is now part of ConocoPhillips.
283 Reuters, 11May 2009; Sherman & Sterling, FCPA Digest of Cases (21 October 2008); see also::Washington Times, 17 May 2003.
284 Website of Law Firm of Pepper Hamilton LLP; www.pepperlaw.com/publications_update.aspx?ArticleKey=1733; Main Justice, www.mainjustice.com/2010/04/15/sdny-shakes-up-team-on-long-stalled-kazakh-bribe-case/print/
285 *New York Times*, 6 August 2004, www.nytimes.com/2004/08/06/business/us-investigates-payments-to-equatorial-guinea.html
286 www.globalpolicy.org/component/content/article/172/30265.html
287 USA Today,
288 TI USA expert's report.
289 Al Jazeera, 23 December 2006; http://english.aljazeera.net/news/americas/2006/12/200852513618440508.html
290 Reuters, 30 June 2008, http://www.reuters.com/article/idUSN3057336620080630
291 FCPA Blog, 30 December 2009; www.fcpablog.com/blog/2009/12/21/bribery-allegations-against-sojitz.html
292 *New York Times*, 25 March 2008: www.nytimes.com/2008/03/25/nyregion/25pleas.html?_r=1&scp=4&sq=kiska+construction+corporation&st=nyt
293 Associated Press, 25 November 2008, CITATION
294 Investigative Report of MMS Oil Marketing Group – Lakewood, 19 August 2008, online.wsj.com/public/resources/documents/MMS1-09102008.pdf; Anne C. Mulkern, Sex, Drugs Alleged in Oil Deals, *Denver Post*, 10 September 2008, royaldutchshellplc.com/2008/09/11/sex-drugs-alleged-in-oil-deals-shell-is-one-of-the-oil-companies-named-in-the-report/; Stephen Power, Federal Oil Officials Accused in Sex and Drugs Scandal, *Wall Street Journal*, 11 September 2008, online.wsj.com/article/SB122107135333120223.html ; Royal Dutch Shell 20-F (March 2010).
295 Serious Fraud Office, 17 October 2008, www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2008/former-solicitor-jailed-for-six-months-imprisonment-in-corruption-conspiracy.aspx
296 Financial Action Task Force website: www.financialtaskforce.org/wp-content/uploads/2010/02/Levin-report-on-US-facilitators-of-Africa-corruption-FOREIGN-CORRUPTION-REPORT-FINAL-as-of-2-2-10.pdf
297 FATF Third Mutual Evaluation Report on Anti-Money Laundering and Combating Financing of Terrorism, 23 June 2006, www.fatf-gafi.org/dataoecd/44/9/37101772.pdf
298 US Department of Justice, *Press Release*, www.justice.gov/opa/pr/2009/January/09-crm-020.html
299 The *Daily Star*, 13 November 2009, www.thedailystar.net/newDesign/news- details.php?nid=113862
300 Sina, 15 January 2010, news.sina.com.cn/c/2010-01-15/162019477102.shtml
301 Sohu, 25 March 2010, news.sohu.com/20100325/n271106990.shtml
302 The *New York Times*, 30 October 2006, www.nytimes.com/2006/11/30/business/worldbusiness/30iht-bank.3731302.html
303 *Panjueshu*, 28 September 2001, www.*Panjueshu*.com/beijing/gaoyuan/chakeming.html
304 Economic Observer, 18 May 2010, www.eeo.com.cn/industry/energy_chem_materials/2010/05/18/170289.shtml
305 The *New York Times*, 13 September 2009, www.nytimes.com/2009/09/14/business/global/14coke.html?_r=1
306 *Fujian News Network*, 14 October 2009, www.fjcns.com/news/2009/2009-10-14/62478.shtml
307 Bloomberg Business Week, 8 July 2010, www.businessweek.com/magazine/content/10_29/b4187011931530.htm ; Shearman & Sterling, http://fcpa.shearman.com/
308 *China Daily*, 20 October 2007.
309 *Discipline Inspection and Supervision Newspaper*, 14 March 2008, www.mos.gov.cn/Template/article/csr_display.jsp?mid=20080226027174
310 *Heilongjiang News*, 21 May 2010, www.hljnews.cn/xw_gn/system/2010/05/21/010628870.shtml
311 Website of ABB: www.abb.com/cawp/abbzh252/b434095700ab7545c1256ae700494de1.aspx
312 SEC, *Litigation Release*, 6 July 2004, www.sec.gov/litigation/litreleases/lr18775.htm
313 CFO, 6 July 2006, http://www.cfo.com/article.cfm/7154651?f=related
314 The *New York Times*, 20 January 2007, www.nytimes.com/2007/01/20/business/worldbusiness/20bribes.html
315 FCPA Blog, 12 August 2007; www.fcpablog.com/blog/2007/8/12/does-abb-have-an-effective-compliance-program.html
316 US Department of Justice *Press Release, 23 November 2009*; www.justice.gov/opa/pr/2009/November/09-crm-1265.html ; Forbes.com. 23 November 2009, http://www.forbes.com/2009/11/23/abb-cfe-bribery-business-mexico-indictment.html
317 Website of Alcatel-Lucent: www.alcatel-lucent.de/wps/portal/!ut/p/kcxml/04_Sj9SPykssy0xPLMnMz0vM0Y_QjzKLd4w3sfQGSYGYRq6m-pEoYgbxjgiRIH1vfV-P_NxU_QD9gtzQiHJHR0UAIZNI3w!!/delta/base64xml/L3dJdyEvd0ZNQUFzQUMvNElVRS82X0FfNEQy
318 US Department of Justice, *Press Release*, 20 March 2007, www.justice.gov/opa/pr/2007/March/07_crm_169.html
319 US Department of Justice-Sapizian Statement, 6 June 2007, www.justice.gov/criminal/fraud/fcpa/cases/docs/06-06-07sapsizian-factualbasis.pdf ; US Department of Justice, Press Release, 23 September 2008; www.justice.gov/opa/pr/2008/September/08-crm-848.html
320 Reuters Online, 21 January 2010; www.reuters.com/article/idUSN2121041320100121. The amount was reportedly paid in March 2010. CNN, 14 April 2010; http://edition.cnn.com/2010/WORLD/americas/04/14/costa.rica.trial/index.html
Former President Rodriguez, who was in office from 1998 to 2002, and eight others went on trial in April 2010 for corruption. He denies any wrongdoing.
321 *Costa Rica News*, 14 March 2010.
322 Insidecostarica.com, 8 May 2010; http://www.insidecostarica.com/dailynews/2010/may/08/costarica10050803.htm
323 Bloomberg.com, 19 February 2010; www.bloomberg.com/apps/news?pid=20601127&sid=aCuL2QwWzEXA
324 See also, Les Echos, n° 19281, 8 November 2004
325 Bloomberg.com, 19 February 2010; www.bloomberg.com/apps/news?pid=20601127&sid=aCuL2QwWzEXA
326 Ibid.
327 Reuters, 19 February 2010; www.reuters.com/article/idUSLDE61I1GK20100219
328 Les Echos, 7 December 2004
329 Les Echos, 18 November 2004
330 Alcoa website: www.alcoa.com/global/en/about_alcoa/overview.asp
331 *Wall Street Journal*, 6 April 2010; online.wsj.com/article/SB10001424052702303912104575163883462666928.html
332 *Wall Street Journal*, 6 April 2010; blogs.wsj.com/law/2010/04/06/on-alcoa-and-bahrain-the-fcpa-investigation-du-jour/?KEYWORDS=Alcoa
333 *New York Times*, 29 February 2008; www.nytimes.com/2008/02/29/business/29alcoa.html
334 Website of Alstom: www.alstom.com/home/about_us/index.EN.php?languageId=EN&dir=/home/about_us
335 *Wall Street Journal*, 11 November 2008; online.wsj.com/article/SB122635449074015183.html?mod=googlenews_wsj#printMode ; The *New York Times*, 29 March 2010; www.nytimes.com/2010/03/30/business/global/30alstom.html?pagewanted=1
336 *The Independent*, 25 March 2010; www.independent.co.uk/news/uk/crime/bosses-of-rail-firm-held-in-bribery-investigation-1926982.html; National Defense. 1 August 2006
337 AFP, 6 May 2010; www.google.com/hostednews/afp/article/ALeqM5iezoAkjVMdO1By1X7-H1r45FCZ2w
338 Wall Street Jounrnal, 13 September 2008; http://online.wsj.com/article/SB122126539807730749.html?mod=googlenews_wsj
339 AFP, 6 May 2010. According to a media report, Swiss Federal Prosecutor Lienhard Ochsner said the charges related to transfers of 9 million Swiss francs from Alstom into special accounts.
340 *The New York Times*, 29 March 2010; www.nytimes.com/2010/03/30/business/global/30alstom.html?_r=1&pagewanted=1
341 Polskie Radio – *The News*, 25 February 2010; thenews.pl/business/default.aspx?page=11&id=126323, citing as sources Rzeczpospolita/Dziennik Gazeta Prawna.
342 AFP, 22 April 2010.

343 Serious Fraud Office, 24 March 2010; www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2010/directors-of-alstom-arrested-in-corruption-investigation-following-raids-on-nine-properties.aspx ; *Financial Times*, 24 March 2010; *The Independent*, 25 March 2010; www.independent.co.uk/news/uk/crime/bosses-of-rail-firm-held-in-bribery-investigation-1926982.html
An operation involving 109 SFO staff and 44 police officers culminated in dawn raids on five business premises and four residential addresses. Three board members of Alstom UK Holdings Limited, Alstom Limited and Alstom Network UK Limited were arrested and later released.

344 *New York Times*, 30 March 2010, www.nytimes.com/2010/03/30/business/global/30alstom.html?_r=1&scp=1&sq=alstom+vietnam&st=nyt.

345 *Financial Times*, 7 May 2008; www.ft.com/cms/s/0/71b6c4e8-1bd0-11dd-9e58-0000779fd2ac.html

346 *Financial Times*, 24 March 2010; www.ft.com/cms/s/0/47cddb54-372f-11df-b542-00144feabdc0,s01=1.html .

347 Website of BAE Systems, www.baesystems.com/AboutUs/FactSheet/index.htm.

348 Serious Fraud Office, 2 February 2010, www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2010/sfo-withdraws-proceedings-against-count-alfons-mensdorff-pouilly.aspx; Serious Fraud Office, 5 February 2010: http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2010/bae-systems-plc.aspx.

349 *Wall Street Journal*, 6 February 2010: http://online.wsj.com/article/SB10001424052748704533204575047203899431176.html

350 Department of Justice Press Release, 1 March 2010: http://washingtondc.fbi.gov/dojpressrel/pressrel10/wfo030110.htm

351 Website of BHP Billiton, www.bhpbilliton.com/bbContentRepository/docs/summaryReview2009.pdf

352 *The Independent*, 22 April 2010, www.independent.co.uk/news/business/news/us-corruption-investigation-centres-on-bhp-billiton-1950500.html

353 *Wall Street Journal*, 21 April 2010; online.wsj.com/article/SB10001424052748704448304575196660876522070.html

354 The Times, 22 April 2010, http://business.timesonline.co.uk/tol/business/industry_sectors/natural_resources/article7103456.ece

355 Ibid.

356 *The Australian*, 23 April 2010; *New Statesman*, 22 April 2010, www.newstatesman.com/business/2010/04/bhp-billiton-bribery-projects

357 Politics Web, 23 April 2010, www.politicsweb.co.za/politicsweb/view/politicsweb/en/page71627?oid=172794&sn=Detail; see also CAFOD, 22 October 2008, www.alertnet.org/thenews/fromthefield/217426/122469248063.htm

358 Website of Ferrostaal: ferrostaal.com/index.php?id=44

359 *Deutsche Welle* Online, 22 April 2002, www.dw-world.de/dw/article/0,,503022,00.html citing Handelslatt.com 21 April 2002, www.*Handelsblatt*.com/archiv/staatsanwalt-ermittelt-gegen-ferrostaal;521248

360 *Deutsche Welle* Online, 22 April 2002, www.dw-world.de/dw/article/0,,503022,00.html

361 DPA, 3 April 2010.

362 *Spiegel Online*, 3 July 2006; http://www.spiegel.de/spiegel/print/d-47441180.html

363 *Mail & Guardian*, 3 August 2008; www.mg.co.za/article/2008-08-03-mbeki-paid-r30m-armsdeal-bribe

364 *Mail & Guardian* Online, 12 February 2010; http://www.mg.co.za/article/2010-02-12-fresh-arms-probe-maybe

365 Ibid.

366 *Spiegel Online*, 29 March 2010, www.spiegel.de/spiegel/print/d-69744023.html

367 *Spiegel Online* assumes that, in the end, Ferrostaal paid so much in consulting fees that not much was left in the form of profits from the submarine deal.

368 *Algarve Resident*, 29 April 2010 www.algarveresident.com/story.asp?XID=36039

369 *Kathimerini*, 29 March 2010, www.*EKathimerini*.com/4dcgi/_w_articles_politics_0_29/03/2010_115969

370 *Europe Online Magazine*, 3 April 2010, www.europeonline-magazine.eu/kolumbien-will-informationen-ueber-moegliche-bestechung_59497.html

371 'Formerly a quoted company, listed on the LSE, Freeport has been owned since 2007 by CEREP II Sarl, a subsidiary of Carlyle, one of the world's largest private equity houses. CEREP II Sarl specialises in property based investments. Freeport has been responsible for the development and management of over 200,000 m2 of outlet space. Freeport plc was re-registered as a private company and changed its name to Freeport.' www.freeportoutlets.co.uk/freeport-aboutus.html

372 Serious Fraud Office Press Release, 13 November 2009, www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2009/freeport-plc.aspx

373 It was noted that one of the problems in getting rapid information from offshore financial entities has to do with the account holders, which often do not correspond to the names under investigation, but are in the names of often fictitious companies or numbers.

374 *Correio da Manhã*, 14, 15 & 16 March 2010; *Algarve Resident*, 19 March 2010, www.algarveresident.com/story.asp?ID=36239

375 *Boston Globe*, 17 December 2009, www.boston.com/news/world/europe/articles/2009/12/17/eus_senior_prosecutor_quits_amid_corruption_probe/

376 BBC, 4 September 2009, news.bbc.co.uk/2/hi/europe/8237956.stm

377 Website of HP, h30261.www3.hp.com/phoenix.zhtml?c=71087&p=irol-reportsAnnual.

378 Reuters, 15 April 2010, www.reuters.com/article/idUSTRE63E2ZR20100415

379 *Wall Street Journal* Online, 16 April 2010, blogs.wsj.com/law/2010/04/16/sec-doj-join-bribery-investigation-involving-hewlett-packard/?KEYWORDS=Hewlett-Packard+executives+released+bail

380 *Wall Street Journal* Online, 15 April 2010, online.wsj.com/article/SB10001424052702303348504575184302111110966.html

381 *Times* Online, 6 March 2009, www.timesonline.co.uk/tol/news/uk/crime/article5855264.ece

382 Reuters, 12 February 2010, uk.reuters.com/article/idUKLDE61B04820100212; See DPA, 25 May 2008.

383 FCPA Blog, 7 July 2010, ttp://www.fcpablog.com/blog/2010/7/7/snamprogetti-eni-in-365-million-settlement.html

384 JGC Corporation, Annual Report, 14 May 2009, www.jgc.co.jp/en/06ir/pdf/financial_statements-summary/FY09/fy09_yem.pdf

385 ENI made this statement in notes in the company's half-year statements published in August. In March 2010 Eni reportedly cut its 2009 preliminary consolidated net profit to € 4.37 billion, saying it had set aside € 250 million for possible charges resulting from the Nigeria bribery probe. Reuters, 11 March 2010, www.reuters.com/article/idUSTRE62A41T20100311

386 Reuters, 22 September 2009, www.reuters.com/article/idUSLM21989420090922

387 234next.com/csp/cms/sites/Next/Home/5532041146/company_pleads_guilty_in_halliburton_scandal.csp. (default link. All 234next.com links found on google are default!!!)

388 FR Online, 29 September 2008, www.fr-online.de/frankfurt_und_hessen/nachrichten/hessen/?em_cnt=1604618

389 *Spiegel Online*, 25 May 2008, www.spiegel.de/wirtschaft/0,1518,555243,00.html

390 *Suddeutsche Zeitung*, 9 March 2008, www.sueddeutsche.de/wirtschaft/571/411343/text/
A dispute over commission payments led the two companies to an international arbitration panel in Brussels in 1999-2000. There Bilfinger reportedly testified that the money went to Tristar Investments, the Gibraltar company owned by a London lawyer and middleman named Jeffrey Tesler.

391 all Africa.com, 30 March 2009, http://allafrica.com/stories/200903300002.html

392 allAfrica.com, 8 April 2010, http://allafrica.com/stories/201004080589.html

393 United States Department of Justice, 9 January 2009, www.justice.gov/opa/pr/2009/January/09-crm-020.html; *Daily Star*, 15 January, 2009; Bangladesh Anti-Corruption Commission, acc.org.bd/jan09.php

394 United States Department of Justice, 9 January 2009, CRM (202) 514-2007, TDD (202) 514-1888, acc.org.bd/jan09.php

395 *Daily Star*, 27 February 2008, www.thedailystar.net/story.php?nid=25129

396 *Daily Star*, 9 May 2008, www.thedailystar.net/story.php?nid=35693

397 *Daily Star*, 18 January 2009, www.thedailystar.net/story.php?nid=71811

398 *Daily Star*, 3 September 2007, www.thedailystar.net/story.php?nid=2460; Financial Express, 7 May 2008, www.thefinancialexpress-bd.com/search_index.php?page=detail_news&news_id=32799; *Daily Star*, 16 February 2009, www.thedailystar.net/story.php?nid=76119.

399 *Daily Star*, 19 November 2008, www.thedailystar.net/story.php?nid=64010

Transparency International
International Secretariat
Alt-Moabit 96
10559 Berlin

Phone: +49 - 30 - 34 38 200
Fax: +49 - 30 34 70 39 12

ti@transparency.org
www.transparency.org