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**DAF/INV/BR/M(2008)2**



Organisation de Coopération et de Développement Économiques  
Organisation for Economic Co-operation and Development

**25-Sep-2008**

**English - Or. English**

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS  
INVESTMENT COMMITTEE**

**DAF/INV/BR/M(2008)2  
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**Working Group on Bribery in International Business Transactions**

**SUMMARY RECORD OF THE MEETING HELD ON 17-20 JUNE 2008**

**JT03251221**

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**English - Or. English**

## **1. Adoption of the Agenda**

*The Working Group:*

- Heard the Chair propose two minor changes to the agenda and approved the agenda [DAF/INV/BD/A(2008)2].

## **2. Summary Record of the Meeting held on 18-20 March 2008**

*The Working Group:*

- Heard Spain clarify that the Delegate said that Working Group on Bribery meetings are well attended compared with other OECD meetings, so a specific procedure to encourage attendance may not be necessary.
- Heard Ireland state that some Irish Delegates who attended the meeting (for the oral follow-up report to Ireland's Phase 2 report) were not included on the List of Participants, and their names will be provided to the Secretariat.
- Heard Argentina ask for further information on co-ordination with GRECO/UNODC and FATF. The Delegate also asked that his comments on regular lack of attendance by certain countries be clarified: he stated that a country's absence from three meetings is appropriate to initiate contact with its delegation.
- Instructed the Secretariat issue a revised summary record [DAF/INV/BR/M(2008)1/REV1], to include the requested modifications.

## **3. Report on the Management Group Meeting**

*The Working Group:*

- Heard the Chair present the main issues discussed during the Management Group Meeting. The Management Group addressed the agenda and topics to be covered during the plenary session: review of the OECD Anti-Bribery Instruments, methodology for the Tour de Table, PWB for 2009-2010, outreach including the Secretariat's recent mission to China, and OECD accession beyond Israel.
- Heard that the group considered when Israel and Russia should become observers to/full participants of the WGB; December 2008 was identified as the ideal timing. This move will be linked to the assessment of Israel.
- Heard that the Secretariat presented an update on the Phase 2 bis review of the United Kingdom and the status of related court proceedings; the Working Group will discuss this review on Friday morning.
- Heard that the Management Group has proposed that the Secretariat should begin moving forward on developing the general parameters of the Phase 3 review mechanism. The Secretariat will draft a first text based on the items approved by the WGB in March 2008 and submit it to the Working Group for consideration. It will likely take two or three Working Group meetings to refine the procedural order and methodology for the mechanism.

- Heard that there are two vacant positions on the Management Group, following the resignations of Members from Italy and Korea. Delegates are asked to submit nominations of new Management Group members to the Secretariat in writing no later than 31 July 2008.

**4. Steps by State Parties to implement and enforce the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and to implement the 1997 Revised Recommendation: *Tour de Table discussion***

**a) *Tour de Table discussion***

*The Working Group:*

- Heard most delegations provide information on cases, including investigations and/or prosecutions, under the foreign bribery offence; and noted in particular the confidential note and the oral report by the Delegate from Germany on investigation proceedings and preliminary proceedings in relation to suspicions of bribery of foreign public officials for 2007-2008, showing that the 74 German proceedings in that period included 2 new indictments, 7 convictions and 27 terminated cases.
- Noted the increased use by Parties of the voluntary rules for providing notifications and written information on cases in advance of the meeting.
- Noted reports by Parties on steps taken for the implementation of the Convention and of recommendations made in country reviews; and noted in particular that five Parties had provided an update for the “steps taken” document (Australia, Brazil, Canada, France and Slovenia).
- Noted the absence of two countries during the discussion of this agenda item (Hungary and Iceland).

**b) *Tour de Table: Methodology for cases***

*The Working Group:*

- Noted the Room document on proposals by the Management Group to “Improve the Methodology of the Tour de Table” [Room Document 2].
- Heard the Chair’s presentation of the proposals, which are aimed at immediately improving the interactive nature of the Tour de Table discussion, before a new methodology is proposed.
- Agreed that presentation of cases as well as reporting on progress made to implement the Convention should not exceed 5 minutes each and should be focussed on important developments. If a country wants to provide more information than it can deliver in 5 minutes, it can do so in writing and submit the information to the Secretariat ideally two weeks in advance of the Working Group meeting.
- Agreed that the Secretariat compile all the information received in a Room document that would take the form of a non-paper.
- Agreed that if a country wants to report on progress made to implement the Convention during a plenary meeting when such reports are not supposed to be discussed, it should inform the chair in advance, for planning purposes.

- Agreed to implement the proposals for carrying out the next round of the Tour de Table at the October 2008 meeting.
- Noted the Chair's encouragement to Working Group members that had diverging opinion during the March 2008 discussion on the Proposed Revised Methodology for the Tour de Table [DAF/INV/BR(2007)31/REV2] to consult each other and make a new proposal in December 2008.

## **5. Self- and Mutual Evaluation of Implementation of the Convention and the 1997 Revised Recommendation**

### **a) Phase 1 Review of South Africa**

#### *The Working Group:*

- Noted the draft report on the Review of the Implementing Legislation of South Africa [DAF/INV/BR(2008)11], and the responses by South Africa to the Phase 1 questionnaire [DAF/INV/BR/WD(2008)5].
- Heard the comments and questions presented by the Lead Examiners from Australia and Slovenia, as well as other delegations, and the responses and comments by South Africa.
- Agreed on an evaluation of South Africa, which includes recommendations to clarify that considerations of the national economic interest should not be taken into account in prosecutorial decisions, and to amend the South African extradition legislation to allow extradition even where the offence has not been committed in the jurisdiction of the requesting State. The Working Group will also follow-up certain issues, in particular whether the disbandment of the Directorate for Special Operations and its replacement by the new Directorate for Priority Crime Investigation will affect effective enforcement of the foreign bribery offence, the application in practice of the liability of legal persons where the natural person is not identified, and the exact nature of the intent required under South African law to establish that a foreign bribery offence has been committed.
- Adopted the final version of the Phase 1 Review of South Africa, including the Evaluation, for posting on the OECD website.

### **b) Phase 2 Review of Argentina**

#### *The Working Group:*

- Noted the preliminary report on Argentina reviewing the "Application of the Convention and 1997 Recommendation on Combating Bribery of Foreign Public Officials in International Business Transactions" [DAF/INV/BR(2008)12].
- Noted the comments and questions about the preliminary report presented by the Lead Examiners and other delegations, and the responses and comments by the Argentine delegation.
- In light of serious concerns about Argentina's failure to adopt liability for legal persons for foreign bribery in compliance with the Convention, decided to engage in an exceptional additional review of Argentina's legislation (Phase 1bis) in June 2009.

- Agreed on the specific recommendations to Argentina, including that it introduce corporate liability for foreign bribery, be more proactive in detecting, investigating and prosecuting cases of foreign bribery and establish nationality jurisdiction over foreign bribery committed by Argentine nationals abroad.
- Adopted the final version of the report including the recommendations; and agreed on the text of the executive summary of the report and of the press release to be published with the report on the OECD website.

**c) *Phase 2 Review of Estonia***

*The Working Group:*

- Noted the Preliminary Report on Estonia on the “Application of the Convention and 1997 Recommendation on Combating Bribery of Foreign Public Officials in International Business Transactions” [DAF/INV/BR(2008)13].
- Heard the comments and questions presented by the lead examiners from Bulgaria and Sweden, as well as other delegations, and the responses and comments by Estonia.
- Agreed on a set of recommendations for Estonia, including recommending that Estonia take measures in the public and private sectors to prevent, detect, report and raise awareness of foreign bribery; broaden the criteria for the liability of legal persons in order to make prosecution of legal persons that commit foreign bribery more likely and more effective; and amend its foreign bribery offence to expressly cover bribery of foreign officials who perform legislative functions, as well as to remove the need to refer to foreign law in order to prove the offence.
- Adopted the final version of the Phase 2 Report of Estonia, including the recommendations and the executive summary, and agreed on the text of the press release to be published with the report on the OECD website.

**d) *Post Phase 2 Follow-up written Report on Australia***

*The Working Group:*

- Noted the written follow-up report to the Phase 2 report by Australia [DAF/INV/BR(2008)14] and attachments provided by Australia in support of their responses [DAF/INV/BR(2008)14/ANN].
- Was informed by the Australian authorities about the efforts Australia has undertaken to implement the recommendations of the Working Group in the areas of awareness, prevention and detection, as well as prosecution and sanctioning of bribery of foreign public officials. The Working Group notably learned that the Australian Federal Police (AFP) now undertakes evaluations of allegations of offences from various sources in order to determine whether to open an investigation, and that the National Guidelines for Referring Politically Sensitive Matters have been amended to allow the concurrent reporting of politically sensitive matters to the Minister of Justice and Customs and to the AFP. The Australian authorities noted that AUSTRAC undertakes continuous training of cash dealers and advised that clarification would be provided in its next oral report as to the extent and nature of this training as it concerns foreign bribery as a predicate offence to money laundering. They further pointed to the fact that Australian Tax Office Compliance Programme now includes information of foreign bribery and facilitation payments,

and that the Australian Public Service (APS) Values and Code of Conduct now specifically highlights the obligations and procedures for APS employees to report instances of foreign bribery discovered in the course of their duties. Australia has furthermore taken steps to clarify that the foreign bribery offence applies regardless of the results of the conduct or the alleged necessity of the payment, and that it is only a defence where the conduct is expressly permitted or required by the law in the foreign public official's country. The Working Group was informed that Australia has issued a formal Direction to all prosecutors clarifying that when deciding whether to prosecute a foreign bribery case, the Director of Public Prosecutions "should not" be influenced by any of the prohibited considerations listed in Article 5 of the Convention, and heard Australia explain that this wording was understood to be a firm prohibition.

- Heard the views of Japan and New Zealand – the lead examiners for the Phase 2 review of Australia – on the implementation of the Phase 2 recommendations by Australia, views of other Working Group members and the Chair, as well as further explanations from Australia. The Lead Examiners expressed disappointment that although positive steps had been taken by Australia to raise awareness in both the private and public sectors, there was an absence of information on the website of Austrade, a key resource through which the private sector, including SMEs, can obtain information. They noted that some recommendations required minor action to be taken by Australia, such as amendment of the wording in the Case Categorisations Prioritisation Model and in the Commonwealth Fraud Control Guidelines. The Working Group welcomed Australia's undertaking to make these changes. The Lead Examiners noted that although Australia has amended its publicly available guidance document on small facilitation payments, the definition of such payments in the documentation is problematic. The Working Group noted Australia's review of sanctions and expressed the hope that this would be concluded soon.
- Concluded that Australia has fully implemented Recommendations 1(a), 2(c), 2(d), 3(a), 3(b), 4(b), 4(c), 4(d), 5(a), 5(b), 6(c), and 7; that Australia has partially implemented Recommendations 1(b), 1(c), 2(a), 2(b), 2(e), 4(a), 5(c), and 6(b); that Recommendation 1(d) has not (yet) been implemented; and that Recommendation 6(a) has not been implemented.
- Heard Australia agree to report orally within one year (*i.e.* by June 2009) to the Working Group on progress made concerning Recommendations 1(d) and 6(a), and follow-up issue 8(c).

**e) *Post Phase 2 Follow-up written Report on Spain***

*The Working Group:*

- Noted the written follow-up report to the Phase 2 report by Spain [DAF/INV/BR(2008)15] and attachments provided by Spain in support of their responses [DAF/INV/BR(2008)15/ANN].
- Was informed by Spain of its efforts to implement the Phase 2 recommendations of the Working Group. The Spanish export credit agency and the Ministry of Industry took measures to raise awareness of the foreign bribery offence both internally and among Spanish companies. Spain also took measures to enhance awareness and detection of foreign bribery within Spanish embassies and the tax administration. An instruction clarified that bribes are not tax-deductible. The competence of the Spanish Anti-Corruption Prosecution Office in serious cases of foreign bribery has been clarified.
- Heard Spain explain that a 2006 Bill addressing eleven Phase 2 recommendations on the offence, the liability of legal persons, sanctions and the statute of limitations has not been adopted because

of the dissolution of Parliament in January 2008. The Working Group urged Spain to resubmit the Bill to Parliament as soon as possible.

- Heard the views of Chile and Mexico – the lead examiners for the Phase 2 review of Spain – on the implementation of the Phase 2 recommendations by Spain, the views of other Working Group members and the Chair, as well as further explanations from Spain.
- Concluded that Spain has satisfactorily implemented Recommendations 2(d), 3(a), 3(b), 3(e) and 7; that Spain has partially implemented Recommendations 1(a), 1(b), 1(c) and 2(a); and that Recommendations 2(b), 2(c), 3(c), 3(d), 4(a), 4(b), 4(c), 5(a), 5(b), 6(a), 6(b), 6(c), 6(d) and 6(e) have not been implemented. Because of insufficient practice and the expected Bill amending the Penal Code, the Working Group will follow up Recommendations 3(a) and 7 as part of its future activities to monitor the implementation of the Convention. The follow-up issues identified in the Phase 2 report remain outstanding and will continue to be monitored. In accordance with its usual practice, the Working Group agreed to prepare a written summary of its conclusions for publication in conjunction with Spain’s follow-up report.
- Heard Spain agree to report orally within one year (*i.e.* by June 2009) to the Working Group on the implementation of the recommendations that the Group considers not yet fully implemented. Also heard Spain agree to undergo a Phase 1bis review once Parliament adopts the Bill amending the Penal Code.

**f) *Post Phase 2 Follow-up written Report on Denmark***

*The Working Group:*

- Noted the written follow-up report by Denmark [DAF/INV/BR(2008)16], including an annex of supplementary information circulated as a room document during the meeting.
- Was informed by Denmark of its efforts to implement the recommendations of the Phase 2 report. Denmark raised awareness of foreign bribery in the public sector (in particular in the Trade Council of Denmark), and in the private sector (including through the web-based “Business Anti-Corruption Portal”). Denmark has also sought to clarify ambiguous language of the *travaux préparatoires* on the issue of small facilitation payments through the publication of a booklet on corruption by the Ministry of Justice. Other measures to address Phase 2 recommendations were at the planning stage or had not yet been considered.
- Heard the Slovak Republic and Sweden, the lead examiners for Denmark’s Phase 2 examination, express their views on Denmark’s implementation of the Phase 2 recommendations; also heard the views of the Chair and other Working Group members, including Denmark.
- Concluded that Recommendations 3(b) and 6(a) have been satisfactorily implemented; Recommendations 1, 3(c), 5(b), and 6(b) have been partially implemented; and Recommendations 2, 3(a), 4, 5(a), 6(c), 7(a) and 7(b) have not been implemented. Because of insufficient practice, the Working Group will follow up, as part of its future activities to monitor the implementation of the Convention, whether the measures taken to implement Recommendation 6(a) prove sufficient to address the concerns of the Working Group. follow-up issues 8(a), 8(b), 8(c), 8(d), and 8(e) remain outstanding and will continue to be monitored. In accordance with its usual practice, the Working Group agreed to prepare a written summary of its conclusions for publication in conjunction with Denmark’s follow-up report.

- Requested that Denmark report orally within one year to the Working Group on the implementation of recommendation not yet satisfactorily implemented, with a particular focus on Recommendations 3(a), 5(a), 7(a) and 7(b).

**g) *Post Phase 2 Follow-up oral Report on Slovenia***

*The Working Group:*

- Noted the room document on the oral report by Slovenia, which was circulated to the Working Group prior to the meeting.
- Heard the oral report by Slovenia in conformity with the Phase 2 Guidelines. In particular, the Working Group noted the following developments.
- Slovenian ad hoc intergovernmental body prepared an Action Plan for the implementation of the recommendations. The Commission for the Prevention of Corruption is responsible for coordination and monitoring of this Action Plan.
- The Commission is currently updating the Action Plan for Implementation of the Resolution on Prevention of Corruption in the Republic of Slovenia, which is the national anti-corruption policy document. It is expected that the updated version of the Action Plan will include actions concerning foreign bribery. The Commission will also prepare amendments to the Resolution of Prevention of Corruption and submit them to the Parliament for approval.

*Prevention, awareness raising and training (Recommendations 1 a, b, c and d)*

- To raise awareness about foreign bribery, the OECD Anti-Bribery Convention and the Phase 1 and 2 reports on Slovenia were published on the web sites of the Commission and various public bodies, e.g. tax administration and police. Auditing association and Chambers of Commerce are also encouraged to provide information about foreign bribery to their members.
- To further support awareness-raising efforts, the Commission – in co-operation with the Ministry of Public Administration – prepared a leaflet on international corruption, which covers legal frameworks, whistleblower protection and reporting provisions. The leaflet was distributed to the Slovenian embassies and other agencies (copies were provided to the Working Group).
- Several public institutions have included the topic of foreign bribery in their training programmes:
  - a) Slovenian Institute of Auditors included the theme of foreign bribery in its training programmes. Several courses have been delivered; more will be delivered in the future.
  - b) Tax Administration included foreign bribery issues in its training courses; the OECD Bribery Handbook for Tax Examiners was translated into Slovenian and published in May 2008. Tax Administration is developing a methodological handbook for tax examiners, which will include guidelines on issues related to bribery.
  - c) Slovenian Export and Development Bank adopted new regulations for prevention of corruption, which entered into force in April 2008.

- d) Ministry of Economy organises training sessions on issues related to foreign bribery for diplomatic officials, including economic and other Slovenian representatives abroad. Foreign bribery issues are included on the curriculum for the training programme for all diplomatic staff.
- e) The Office for the Prevention of Money Laundering included the foreign bribery in its regular training programme.
- The Commission for the Prevention of Corruption was identified during the evaluation of Slovenia as one of the most important institutions for the fight against corruption. However, the Government has proposed to abolish the Commission. The relevant draft law passed the second reading in the Parliament in April 2008. Due to the election campaign which is starting in July 2008, the final decision will probably be taken when the new government is in place. As the move to abolish the Commission can be interpreted as lack of political will to fight corruption, the Government will need to explain the reasons for this institutional reorganisation. This would be particularly important in the framework of the Slovenian accession to the OECD, which will involve an overall assessment of its willingness and ability to meet OECD anti-corruption standards.

*Detection and reporting (Recommendations 2 a, b, c, d and e)*

- The Tax Administration is currently preparing instructions for detection of high-risk areas of corruption and procedure to report foreign bribery. It is also preparing provisions for whistleblowers protection for tax examiners.
- The Slovenian Institute of Auditors informed all auditors about the OECD recommendations including requirements to report possible corruption cases to company managers. Auditors are also advised to report crime to law-enforcement authorities in case of lack of action by the managers. The Ministry of Justice is considering introducing mandatory obligation for external auditors to report certain types of crime in this area.

*Effective investigation, prosecution and sanctioning (Recommendations 3 a, b, c, d and e)*

- A new Criminal Procedure Code has been drafted. It is expected that the new Code will address the OECD recommendation concerning excessive evidential burden placed on law-enforcement authorities and the roles of different law-enforcement bodies. In particular, the draft would change pre-trial investigative procedures: judicial investigation will be abolished and public prosecutors will lead the investigations. The public prosecutors will also decide on the use of some special investigative means (under the current Code, the investigative judge has the right to decide). The results of these reforms will only be observed when the new Code is applied in practice, and probably not until June 2009, when Slovenia will be expected to provide its written report on Phase 2 implementation.
- To address the recommendation concerning immunities of certain categories of public officials from criminal prosecution, the Commission together with the Parliament will prepare guidelines for lifting the immunities.
- A training seminar on foreign bribery for law-enforcement bodies, and other measures included in the Action Plan, will be implemented through 2009. The Centre for Judiciary Education under the Ministry of Justice is delivering regular training to prosecutors, which covers general and specific topics, including foreign bribery.

- A special project which aims to reduce court backlogs by 2010 is currently being implemented by the Government.

*The offence of public bribery (Recommendations 1 a, b and c)*

- A new Criminal Code was adopted on 20 May and will enter into force on 1 November 2008. Almost all OECD recommendations were considered during drafting, including key articles on the definition of a public official (Art. 99), on accepting and giving bribes (Art. 261 and 262), and on accepting benefits and giving gifts to secure unlawful interventions (Art. 263 and 264). Translations of these new articles were provided in the room document, but contain some inaccuracies which will be corrected.
- The Ministry of Justice is also considering further possible changes concerning bribery through an intermediary.

*Liability of legal persons (Recommendations 5 a and b)*

- The Ministry of Justice, in co-operation with professional public experts, reviewed the law in light of its effective enforcement. Findings show that the required elements to prove a link between natural persons and the liability of legal persons are not obstacles. Nevertheless, the low number of convictions is the result of low awareness, and low priority of investigation and criminal prosecution of legal persons, which will be addressed through trainings.

*Sanctions (Recommendations 6 a, b, c and d)*

- The Ministry of Justice sent an official note to the Supreme Court and the Prosecutor General in order to raise awareness necessary to apply sanctions for foreign bribery, which are established in the Criminal Code. The Prosecutor General's office will prepare unified prosecutorial guidelines for the application of paragraph 3 of Art. 268 and paragraph 3 of Art. 262 of the Code.
- Concerning secondary sanctions, draft amendments to the law on responsibility of legal person includes secondary prohibition for companies convicted of corruption to participate in public tenders, and prohibition for companies convicted of abuse of internal information in stock markets to trade with shares of these companies (this information was not included in the room document).

*Money Laundering (Recommendation 7)*

- Article 11 of the new Criminal Code states that criminal offences have to be prosecuted in all signatory states of international treaties regardless of where the criminal offence has been committed. However, the Ministry of Justice is examining possible needs for further clarification of dual criminality.
- Heard the Chair's recognition of the ambitious Action Plan for the implementation of the Working Group recommendations. Also heard the Chair's note that clear timelines and schedules are important to ensure effective implementation of the Action Plan.
- Heard the Chair state that the Working Group looked forward to seeing how the new criminal law evolves in Slovenia, recognising that comprehensive reforms take time to produce results.

- Hear the Chair remind that raising awareness about foreign bribery remained an important task, and that the written Follow-up Report would need to review the implementation of measures planned in this area.
- Hear the Chair question the future of the Commission for the Prevention of Corruption, where the Working Group will continue its monitoring of Slovenia in order to establish a clear view.

***h) Oral Follow-up report to written Phase 2 Follow-up Report on the United Kingdom***

**Oral report on the implementation of specific Phase 2 Recommendations**

*The Working Group:*

- Noted the presentation by the UK delegation in conformity with the conclusions by the Working Group on the UK written Follow-up Report on the implementation of the Phase 2 recommendations, requiring an oral report, one year after the approval of the written Follow-up Report, on the implementation of the following recommendations: paragraph 3 of the preamble to the Phase 2 recommendations and Recommendations 1(a), 2(a), 2(b), 3(a)-(c), 4(a), 5(a)-(c), 6(b) and 7(a). The Working Group noted the informal written version of the oral report supplied by the UK for the information of the Group.
- With regard to the UK presentation with regard to implementation of the Phase 2 recommendations, noted in particular the following:
  - With respect to Recommendation 1(a) [enhance awareness-raising], the UK indicated that responsibility for the OECD Convention and for coordinating awareness-raising activities in the UK passed from FCO to the Department for Business, Enterprise and Regulatory Reform (BERR) in April 2008. Web pages and a guidance leaflet have been updated. A broad range of Ministries have conducted or plan to conduct a substantial number of awareness-raising activities. With regard to awareness-raising for judges, the UK indicated that judges are professional lawyers and are expected to keep themselves up to date with developments and changes in the law. The judiciary is being consulted as part of the ongoing Law Commission review of bribery law.
  - With respect to Recommendation 2(a) [establish a clear obligation for civil servants to report possible instances of bribery to the relevant authorities], the UK reiterated its view that the words “should” and “must” in the context of the Civil Service Code are interchangeable. It noted that draft legislation would provide a statutory basis for the Code for the first time.
  - Recommendation 2(b) [provision of protection to whistleblowers who reported directly to law enforcement authorities], the UK indicated that the Government has discussed whistleblowing and related issues with key anti-corruption units, including the SFO and the City of London Police Overseas Anti Corruption Unit (OACU). These enforcement agencies can already have a process to provide protection to people who have allegations of foreign bribery and wish to be protected. The UK Government believes that further improvements should focus on strengthening the existing system, by increasing awareness about corruption and the various available types of protection.
  - With respect to Recommendation 3(b) [reporting obligations of auditors concerning possible acts of foreign bribery], the UK provided further information about its money laundering regulations and guidelines. New December 2007 regulations require additional scrutiny from

accounting professionals with regard to possible money laundering including relating to politically exposed persons (PEPs). The definition of PEPs includes foreign PEPs. Progress has been made with regard to the expected future issuance of new or revised anti-money laundering guidelines by the Auditing Practices Board and the Consultative Committee of Accountancy Bodies although neither have been yet been finally approved by the Treasury. The UK considers that the money laundering regulations in effect require auditors and similar professionals to report suspicions of foreign bribery because foreign bribery (as a predicate offence) will always result in the offence of money laundering in the UK. However, this is limited to cases where the proceeds feature in accounts reviewed by a UK auditor.

- With respect to Recommendation 3(c) [time and resources for tax authorities to review tax information with a view to detecting possible foreign bribery], the UK indicated that if a tax inspector suspected irregular payments but accepted the explanations made, only for it to be discovered subsequently that the case might warrant criminal investigation, then it would be possible to re-open tax returns beyond the normal one year limit.
- With respect to Recommendation 4(a) [role of the Serious Fraud Office and attribution of cases], the UK indicated that in March 2008 the SFO opened the Overseas Corruption Unit (OCU). The OCU consisted of 12 permanent members of staff, a mix of lawyers, accountants and financial investigators, who have been working on the BAE case. They have also assumed responsibility for two new cases. A new Director of the SFO took office in April 2008 and was engaged in a general review of the agency. The inter-agency Memorandum of Understanding (MoU) was revised in January 2008 and that the SFO allocates cases to the appropriate body for investigation in accordance with an agreed formula in the MoU (see also below).
- With respect to Recommendation 5(b) [Law Officer's consent for prosecution], the UK noted that recent government-proposed constitutional reforms would transfer the power to consent to a prosecution of for certain offences of corruption under existing law to the Director of the Serious Fraud Office, the Director of Public Prosecutions (DPP) or the DPP for Northern Ireland. The UK noted, however, that as part of its new law reform proposals relating to bribery, the Law Commission provisionally proposed that the Attorney General's consent should be required for foreign bribery. The Government awaits the Law Commission's final report and draft Bill and will consider the views on the issue of consent carefully. The UK stated that it should be possible for the Government's position on whether the requirement for the Attorney's consent should be retained for the current bribery offences to be made clear when the Constitutional Renewal Bill is formally introduced into Parliament, after pre-legislative scrutiny is completed.
- With respect to Recommendation 6(b) [encourage the Overseas Territories to adopt necessary legislation], the UK stated that the UK Overseas Territories (OTs) and Crown Dependencies (CDs) are not constitutionally part of the United Kingdom, but are separate jurisdictions in their own right, each with their own legal systems. The UK stated that while it is the policy of the UK government to encourage the OTs and CDs to seek the extension by the UK of both the OECD Anti-Bribery Convention and the UN Convention Against Corruption, the UK is in no position to compel them to do so. Legal audits of certain OTs and CDs are underway or expected to assess whether they meet the requirements for extension.
- With respect to Recommendations 5(c) and 7(a) [broaden liability of legal persons and consider adopting additional administrative or civil sanctions for legal persons], the UK stated that it considers that existing UK law meets the requirements of the Convention, but that it has noted criticism of the effectiveness of its law by the Working Group and others. The Law

Commission is considering the issue of criminal liability for legal persons as part of its law reform programme and officials at BERR, acting on a Ministerial instruction, are reviewing possible responses. Wider work is also underway on regulatory issues, including sanctions and civil liability.

- With respect to Recommendation 3(a) [fraudulent accounting offence], the UK did not report any action, but stated that it considers that the UK complies with Article 8 of the Convention through a variety of statutory provisions in the Companies Act 2006.
- With respect to Recommendation 5(a) [amend the Code for Crown Prosecutors (CCP), Crown Prosecution Service Guidance and other relevant documents to reflect Article 5], the UK indicated that the CCP is a short document, which contains general principles rather than detailed direction on the handling of specific offences. It considers that the much more detailed online Crown Prosecution Service Guidance is the authoritative source of such direction. It was updated in January 2008 and clarifies the need to consider Article 5 of the Convention.
- With respect to the Recommendation in the Preamble [enact modern foreign bribery legislation "at the earliest possible date"], the UK recalled that it amended its bribery law in 2001 (and 2003 for Scotland) in light of the Working Group's 1999 Phase 1 review of the UK and noted that the 2003 Phase 1bis report included a reference to the UK law now "addressing the requirements set forth in the Convention". The UK provided an overview of broader reform efforts since 2000. Most recently, the Law Commission published a November 2007 consultation paper on a new bribery law and is expected to publish a final report and draft bill in the autumn 2008. The UK noted that achieving this schedule was requiring prioritization of their bribery work. The government intends to bring forward a draft bribery bill in the next Parliamentary session for 2008/9 and envisages that the first stage would be pre-legislative scrutiny by a Parliamentary Committee, as was done in 2003. A formal government bill would be prepared subsequently.
- Also heard the UK report on certain new case developments. With regard to the EFT case, the UK explained that the new Director of the SFO had recently decided to withdraw the September 2007 request for consent to prosecute the foreign bribery offence. He felt that there was not a sufficient likelihood of success on the merits to satisfy the CCP test for prosecution. The principal weakness related to establishing territorial jurisdiction which was necessary because the facts pre-dated the entry into force of the 2001 legislation creating nationality jurisdiction.
- Following the UK presentation, noted that in addition to the Phase 2 recommendations and Phase 2 bis issues, recent developments with regard to the EFT case, the Serious Fraud Office and legislative proposals raised serious concerns and questions. It was noted that the scope of the ongoing Phase 2 bis review of the UK (to be completed in October 2008) overlapped with some of the issues regarding the Phase 2 recommendations as well as with the issues raised by recent developments. The Group nonetheless considered that some immediate discussion of issues falling within the scope of the Phase 2 bis review was appropriate at the June meeting, albeit on a preliminary basis.
- Heard a number of countries, including Canada, the United States and France, express surprise that a lengthy investigation leading to a case team and Director of the SFO considering that it had a case suitable for prosecution could be dropped based on views about the merits from outsiders or newcomers with only a brief familiarity with the case. The Chair indicated that it would be critical for the UK to provide the facts relating to territorial jurisdiction for analysis in October 2008. He noted that Commentary 25 clarifies that an extensive physical connection should not be

required to establish territorial jurisdiction and that the UK has consistently indicated that it is fully in compliance with this requirement. Other serious concerns were also expressed with regard to the consent process in the EFT case. Issues included both the length of time taken for consideration by the Attorney General and the conclusion of the process with a decision not by the Attorney General but by a new Director deciding to withdraw the request for consent on the basis of new legal advice obtained by the Attorney General. An SFO representative explained that the matter was given careful consideration by the new Director in consultation with the case team. She indicated that the prior Director did not have an opportunity to consider the new outside advice obtained by the Attorney General because he had left the agency before the new advice was received. After a detailed review of the file and consultations with outside counsel, the new Director had determined that the case was too weak to justify prosecution; having made that determination, he considered that it would be irresponsible to maintain the request to the AG for consent.

- Heard the UK provide further information with regard to other developments at the SFO in response to questions from the United States, France and other countries. It indicated that an SFO request for ring-fenced funding for the OCU of approximately 2 million GBP (as recalled by the SFO representative, subject to confirmation) had been denied by the Treasury. As a result, foreign bribery cases would need to be funded out of the general SFO budget. The amount to be allocated out of the general budget was under consideration by the new Director, but had not been decided. In response to a question from Canada about the future of the ACU in light of the rejection of the funding request and the imminent departure from the SFO of the ACU's senior lawyer and other senior lawyers, the UK indicated that the future of the ACU was uncertain. The new Director would need to decide, as part of his general review of the SFO, if a separate unit was the best way to organise the work on foreign bribery. The UK noted that the new Director has made clear that he is committed to addressing foreign bribery cases and that the issue is the best way to do so. In response to questions about upheaval in the senior management at the SFO, the UK confirmed that a number of senior management staff were leaving. A delegate from the SFO noted that it is normal for staff to consider their options and consider leaving at a time of "enormous corporate change". She also expressed confidence in the existence of junior staff with the ability and interest in taking on a more senior role.
- Heard a number of member countries, including the United States, the Netherlands and Germany, raise serious concerns about the continuing delays in enacting bribery legislation and about proposed new legislation relating to the role of the Attorney General in individual investigations and prosecutions of foreign bribery. Of particular concern with regard to the latter were provisions that were understood to preclude or limit judicial review of decisions to terminate (or not to commence) investigations or prosecutions. The Chair indicated that he understood that the proposals provided that a Ministerial certificate stating that national security was the reason for discontinuance of a case would bind the court on judicial review. The UK indicated that it could provide further information from London and noted that Parliament could inquire into the Ministerial certificate. The Chair reiterated that the issue was not parliamentary oversight but the effectiveness of judicial review in cases involving national security; this was a very serious issue.
- Heard a number of countries, including the Netherlands, the United States, and Germany raise broader serious concerns about the overall status of UK implementation of the Convention. The Netherlands underlined that the situation required urgent action because of the longstanding and surprising failure to implement the Convention by the UK. The United States subsequently indicated that it shared the very serious concerns expressed by the Netherlands about UK implementation of the Convention, and both Germany and the United States expressed concerns about the UK moving "backwards rather than forwards".

- Heard the Chair provide a summary of the discussion, noting that the concerns could be divided into three groups: legislative issues; cases; and structures or institutions. Legislative issues included bribery legislation, corporate liability and constitutional renewal. On bribery legislation, he noted that the critical question was when legislation would be ready; it was unclear why 18 months were needed to prepare a Law Commission proposal before the government process could even begin. There was a need for urgent action. On corporate liability, things were perhaps even more uncertain because the UK was raising the question of whether anything needed to be done. He noted that recent reports had made clear the importance that the Working Group attaches to sufficient corporate liability. On constitutional renewal, the legislation was apparently being fast-tracked pursuant to the agreement of the two major parties and he noted the Working Group's priority interest in whether the proposed legislation could limit judicial review.
- The second major area was cases. The BAE case would be considered in October, but the decision not to prosecute in the EFT case raised two issues: how territorial jurisdiction requirements had been applied; and the issues relating to the change of position by the SFO with regard to the viability of a prosecution and the process of AG consent. A nine-month delay in responding to a request for consent before the case is returned to the SFO for it to be dropped by a new Director raised questions about the professionalism of the entire process as well as concerns about whether the applicable procedures leave too much room for possible political influence.
- The third area related to the structures and institutions. He noted that, as in similar situations in other countries, the Working Group had put high hopes in the SFO. The Group had serious concerns about the SFO at present. The future of the ACU is uncertain, there is no specific budget for foreign bribery and statements to the media have indicated that the SFO is going to take on new responsibilities in the area of ordinary domestic fraud. While this area of work may be a valid one, it raises questions about whether the UK is really implementing the Convention or was moving away from achieving effective implementation. These concerns were compounded by the loss of senior management staff and the attendant institutional memory at the SFO.
- Heard the Chair note that the Working Group has an ongoing practice, as exemplified recently with regard to South Africa, the Slovak Republic and Slovenia, in which the management group writes a letter in diplomatic terms to express the Group's concerns. He raised the issue of whether it would be appropriate to send such a letter prior to the October review of the Phase 2 bis report. He emphasised that the UK was at a crossroads; the Working Group wanted to come out with a positive outcome and the necessary conditions for such an outcome were clear. The Chair subsequently clarified that the MG could consult with the lead examiners with regard to the letter to ensure that it had the right tone. The United States supported the Chair's proposal to send a letter to the UK. It was seriously concerned that October could be too late for certain key issues. There were reasons for real alarm. The letter could express the Working Group's concerns about what appear to be efforts to undermine the efforts by the SFO. In addition, the letter could address the draft legislation being fast-tracked in Parliament and at least register concern prior to October. It could also address the delays in adopting bribery legislation.
- Heard Canada indicate that, like the United States, it supported the sending of a letter prior to October based on concerns arising out of publicly-available information. It questioned whether the constitutional reform bill should be addressed, noting that it might not be likely to be adopted by October and could be addressed in the Phase 2 bis process by the lead examiners (Canada and France). France indicated that it supported the Chair's proposal for a letter prior to October. It shared Canada's concerns about the constitutional reform bill, indicating that more information was necessary. Germany indicated that it also supported sending a letter. The Chair noted that it

would be possible to ask a question about the impact of the proposed legislation on judicial review, an approach accepted by Canada and France.

- Heard the UK indicate that the constitutional reform bill was undergoing pre-legislative scrutiny, which usually took three to six months for significant bills. The UK Delegate stated that he would be very surprised if a formal bill were to be presented to Parliament before the end of the year, but noted that he could obtain confirmation from London. He indicated that he had no information that the bill was being fast-tracked, but noted that fast-tracking is a matter for the party whips.
- Decided, in light of the discussion, to request the management group and lead examiners to prepare a letter to the UK to express the concerns about the lack of legislation in key areas, and to raise questions about the three or four concerns about the SFO and obtain clarifications. Questions about the constitutional renewal proposals could be raised at the end. The Chair noted that it was essential to send the letter quickly, by the end of the following week, in light of the upcoming visit to the UK by the OECD Secretary-General. In response to a question, the UK provided preliminary information about the appropriate recipients of the letter.

**6. Review of OECD Anti-Bribery Instruments (including presentation by Working Party No. 8 on progress to revise the 1996 Recommendation)**

*The Working Group:*

Review of Instruments

- Noted the following two documents prepared by the Secretariat: 1. “Review of the OECD Anti-Bribery Instruments: Summary of Responses to Consultation Paper” [DAF/INV/BR/WD(2008)8]; and 2. “Compilation of the Comments on the Consultation Paper” [DAF/INV/BR/WD(2008)10].
- Heard the Chair explain that the Management Group would like the Working Group to make best efforts to complete the review of the instruments by March 2009, as was planned initially. To meet this goal, the text of any revisions will need to be reviewed several times. In addition, it might be necessary to obtain further advice from outside experts, such as the accounting and auditing profession, as well as regulators to verify the advice. Greece also pointed out the need to consult with other parts of the OECD.
- Heard Canada, the United Kingdom, New Zealand and the Czech Republic comment on the risks of extending the scope of the Convention to cover private to private bribery, and the positive feedback from some participants in the consultation process on the merits of maintaining the focus of the Convention on the bribery of foreign public officials. New Zealand stated that the priority should be addressing areas of uneven interpretation of the Convention before extending its scope.
- Noted the point by the United Kingdom, New Zealand and France that the Group already has operational instruments, and that the consultation process has mainly raised the need for clarifications in certain areas. France stated that the work should focus on soft law approaches. Also heard the comment of the United States that the preferable approach is to update the 1997 Revised Recommendation.
- Heard the United Kingdom comment that a persistent point of Transparency International is the need to use the Commentaries to clarify many of the issues raised in the Consultation Paper.

Heard Germany raise the possibility of using soft law approaches other than the Commentaries or 1997 Revised Recommendation. Also heard Norway comment that it is too early to preclude any particular approach.

- Agreed that the Secretariat would produce a table and send it to delegations by the end of July 2008. The table would summarise the cross-cutting challenges in the Consultation Paper, including the comments obtained through the consultation process, and list issues that these challenges raise. It would also enable delegations to prioritise the issues, and indicate proposed actions (e.g. revisions to the Commentaries or 1997 Revised Recommendation). The deadline for responding to the table would be mid-September, after which the Secretariat would prepare “rough text” proposals for revisions for the October 2008 meeting.
- Also agreed on the following timetable: 1. October 2008: Discuss priorities and begin working on “rough text” proposals for revisions; 2. December 2008: Work on text of proposed revisions; 3. March 2009: Finalise proposed revisions.

#### Presentation by Working Party No. 8 on Progress to Revise the 1996 Recommendation

- Noted a document prepared by the International Co-operation Unit, Centre for Tax Policy and Administration, entitled “Presentation on Progress made in Working Party 8 of the CFA to revise the 1996 Council Recommendation”.
- Heard the presentation by the Head of the International Co-operation Unit of the Centre for Tax Policy and Administration, which highlighted the work of Working Party 8 on revising the 1996 Recommendation of the Council on the Tax Deductibility of Bribes to Foreign Public Officials.
- Noted the timeframe for preparing the draft revisions by Working Party 8, which terminates with the submission of the draft revisions to the Working Group on Bribery in February 2009.
- Heard Argentina question how revisions to the 1996 Recommendation would apply to non-OECD members, and the Chair’s response that this would have to be reviewed by the Legal Directorate.
- Noted the Chair’s comment that it is necessary that the two parts of the Secretariat co-ordinate closely on the drafting of the revisions.

#### **7. Methodology for the oral Follow-up reports to the written Phase 2 Follow-up Reports**

- Noted the document prepared by the Secretariat [DAF/INV/BR(2008)17] outlining options for reaching conclusions at the outcome of oral follow-up reports to written Phase 2 follow-up reports.
- In relation to the section of the document providing background on the issue, heard France indicate that paragraph 9 of the document is misleading in that it suggests a lack of will and a deliberate choice by France not to follow one of the Group’s recommendations.
- In relation to the way forward, heard one Member express preference for option A, while others expressed preference for option B.

- Requested the Secretariat to draft a new proposal that would draw on features of both option A and B, and to submit it for final approval prior to the end of the June meeting.
- Adopted the following revised proposal by the Secretariat:

## **METHODOLOGY FOR THE ORAL FOLLOW-UP REPORTS TO THE WRITTEN PHASE 2 FOLLOW-UP REPORTS**

### **Assessment of implementation, remarks on action or absence of action, and concerns in case of clear shortcoming**

- The Group continues to have a flexible approach. The Working Group does not seek to assess the level of implementation of every recommendation reported upon in the context of an oral follow-up to a written report, bearing in mind that outstanding recommendations will be dealt with the Post Phase 2 reviews. However, as a matter of consistency with prior reviews, the implementation of key outstanding recommendations will be systematically assessed by the Working Group and conclusions whenever possible will be drawn. If the Working Group identifies a clear shortcoming in the implementation of a key recommendation (what constitutes a key recommendation is for the Working Group to decide on a case by case basis), it will express concerns.

### **Other aspects of the Procedure**

- At the outcome of the oral follow-up to the written report, the Working Group can decide to request further follow-up reporting on some or all outstanding Phase 2 recommendations (oral report, written report, or reporting in the context of the Tour de Table) as necessary. However, additional follow-ups can be unnecessary in cases where a reporting country is due to undergo a Post-Phase 2 evaluation within one or two years.
- In line with Paragraph VII.C of the Revised Guidelines for Phase 2 Reviews, if in the course of the follow-up process continued non-compliance with Phase 2 recommendations amounts to a critical lack of implementation, the Working Group considers the possibility of conducting a Phase 2bis Review. However, a Phase 2bis Review can be unnecessary in cases where a reporting country is due to undergo a Post-Phase 2 evaluation within one or two years.
- Remarks, assessments and decisions made by the Group are included in the summary record of the meeting.

## **8. Global relations activities/recent or upcoming International Anti-Corruption Initiatives, including China**

### *The Working Group:*

- Noted Room Document No. 3 entitled “Summary: Mission to China by OECD Secretariat regarding OECD Anti-Bribery Convention”, which summarises the visit to China by the

Secretariat from 21-23 May 2008, and includes conclusions and proposals for further co-operation with China.

- Heard the Secretariat explain that the Report on the mission is very detailed, due to the quantity of information obtained about the Chinese system and legislation for countering corruption in business transactions.
- Heard the Secretariat's impressions about the visit, including that the Chinese authorities seem clearly interested in discussing the bribery of foreign public officials with the Working Group. Although establishing a criminal offence may not be a priority, China has put in place certain preventative measures, such as company inspections, and internal control standards for foreign projects. It has also taken strong measures for countering domestic bribery, including a sophisticated anti-corruption campaign.
- Heard the Secretariat explain that China is interested in holding a technical seminar on the Convention with participation of the Working Group on Bribery, but that China prefers to hold it in Paris in 2009. The Secretariat commented that the impact of such a seminar would be lessened if it were held in Paris rather than Beijing, since it would not be possible to reach out to all the relevant ministries.
- Also heard the Secretariat explain that the Chinese authorities have informally agreed to attend the December 2008 Plenary as an observer.
- Noted the Secretariat's comment that it seeks input from the Working Group before sending a follow-up letter to the Chinese authorities.
- Noted the comments by the Director, Legal Directorate, that participation by China in Working Group activities might be limited for the time being due to political factors –i.e. dialogue between China and the OECD concerning Chinese Taipei.
- Heard the Chair state that it would be helpful for China to attend the December 2008 Plenary, and that the technical seminar should be held in China. Also noted the Chair's request that delegates inform the Working Group if they have special relationships with China.

## **9. Reports by International Organisations**

### *The Working Group:*

- Heard the Secretariat of the Group of States Against Corruption (GRECO) present its work over the past year. GRECO has evaluated 8 countries in its third round of evaluations; all are Working Group members. These evaluations focus on two topics: transparency of funding of political parties and election campaigns, and the Criminal Law Convention on Corruption.
- GRECO has seen wide variation in the level of regulation of funding of political parties and election campaigns. For example, the UK has very detailed regulations, while the Netherlands and Luxembourg have very little. A universal problem is the fact that the people who are deciding on these regulations are the same individuals who will be subject to them. GRECO hopes that its recommendations will provide an impetus for action in this area.
- GRECO is investigating how the Criminal Law Convention on Corruption has been transposed in countries' domestic legislation. Specific topics include bribery of: domestic officials, domestic

and foreign jurors, and foreign public officials. In this capacity, GRECO looks closely at OECD reports, which are helpful in clarifying issues and identifying areas for follow-up. Some overlap in recommendations has been necessary.

- GRECO has also been conducting first and second round evaluations for countries which recently joined; this includes the eagerly anticipated report on Russia, which will be discussed at the October plenary.
- Heard the Chair state that the Criminal Law Convention on Corruption provides important standards that underlie the OECD Anti-Bribery Convention. The consequences can be significant. He also said that the OECD and GRECO secretariats have been asked to collaborate more closely to make the multiple evaluations less burdensome for countries.
- Heard the GRECO secretariat respond that joint OECD-GRECO evaluations are too difficult for countries; additionally, the organisations take slightly different approaches. GRECO gives its members the options to reschedule its evaluations if the timing is not convenient due to a recent OECD evaluation, or for other reasons.

#### **10. Preparations for the 2009-2010 Programme of Work and Budget**

##### *The Working Group:*

- Heard the Secretariat present a revised document detailing the Working Group on Bribery Programme of Work and Budget for 2009-2010. The original document was presented at the March 2008 Working Group meeting, and was amended to include detailed tables on resources for each activity and to prioritise activities. Monitoring remains the top priority, including the implementation of the Phase 3 monitoring process beginning in 2009. Per the Working Group, the Phase 3 cycle will take four years, requiring a large number of reviews each year (eight to ten), once the monitoring mechanism has been approved in 2009. The Secretariat has also requested an increase in resources after a cut of EUR 140 000 in 2008 to help handle the large number of evaluations.
- Received instruction from the Chair to specifically review the tables in the revised document.
- Heard France support the Secretariat's request for a budget increase, and state that the Working Group's work should be a top priority of the OECD.
- Heard Greece echo France's support, and support increased funding for enhanced engagement with countries in Asia, particularly China.
- Heard Belgium question why no funding was included for the joint initiative with the African Development Bank for anti-corruption programmes in Africa; Belgium gave a voluntary contribution to support this work.
- Heard Canada question why prosecutors meetings are included in the programme of work, and why these meetings are linked with the Tour de Table; the Working Group has not agreed on whether these meetings should occur, and if they should be linked to the Tour de Table.
- Heard Ireland support a budget increase, and ask for more funding to allow increased work with China and Indonesia.

- Heard Germany request that all references to prosecutors meetings clarify that they are to be voluntary, and state that the Working Group has not decided how such meetings should be financed. The Delegate also asked why the statistics project is included, as the Working Group has not agreed to this work.
- Heard France agree that no formal decision has been made as to prosecutors meetings, and ask the Secretariat to prepare a document for discussion at the October plenary meeting that will address: the principle of a prosecutors meeting, issues to discuss at such a meeting, if Working Group Delegates can attend, if attendance will be voluntary or mandatory, how often prosecutors will meet, and how such meetings will be financed. He also asked that a distinction be made in the budget between the Tour de Table and the prosecutors meetings.
- Heard Argentina question the association of the prosecutors meeting and the Tour de Table, and ask why it is included in the PWB if the Working Group has not approved it. He also asked why, if budgetary problems arise, work with prosecutors will be reduced and not eliminated. He questioned why work on statistics is included in the programme of work, and he asked for clarification on the Working Group's possible role in providing technical assistance for implementation of the UNCAC.
- Heard the Netherlands state that the OECD's main goal is to ensure the proper functioning of market economies, and that from this angle regular, voluntary prosecutors meetings are important. He also supported the Greek call for increased funding for outreach to both Asia and the MENA region; companies in state parties are increasingly competing with companies in these countries and more efforts to fight bribery there are needed to ensure fair and honest competition.
- Heard Japan support increased focus on outreach to Asia and increased funding for the OECD-ADB Anti-Corruption Initiative for Asia and the Pacific.
- Heard Canada ask that the Tour de Table be de-coupled from the prosecutors meetings, allowing the Secretariat to complete the PWB process in a timely manner. However, these issues must be discussed at a later date.
- Heard the Secretariat state that costs for the prosecutors meetings – for the Secretariat to prepare the agenda, documents, etc. – are very low, but must be included in the budget for the sake of transparency. The costs are less than EUR 10 000. The discussion on the statistics project is not over; it has not been on the agenda for the most recent meetings, but it has been suspended not buried. Regarding outreach efforts, the budget tables do not include voluntary contributions, which make up the bulk of funding for these efforts. The question remains whether they lead to enhanced high-level dialogue. The Working Group approved a message to the second Conference of State Parties to UNCAC offering technical assistance measures for drafting and reviewing legislation on combating the bribery of foreign public officials. Finally, as to the initiative in Africa, Belgium did provide a voluntary contribution for this work, which is moving forward through ongoing contact between OECD and the African Development Bank.
- Heard the Chair state that discussions on this document are not the right context to decide about prosecutors meetings. He asked Delegates to think about these meetings (should the OECD hold them, or the private sector or civil society?) and come to the October plenary ready for an informed discussion. He stated that he still hopes to create a Tour de Table process that is better, more challenging and more interesting.

## **11. Examination of Israel's request to accede to the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions**

### *The Working Group:*

- Noted documents DAF/INV/BR(2008)18 (report by Secretariat) and DAF/INV/BR(2008)9 (Israel's answers to the accession questionnaire), and heard the Secretariat provide an overview of its report on Israel's request to accede to the Convention.
- Noted that the revised criteria for accession to the OECD Anti-Bribery Convention (C(2004)1, as amended and approved by Council and the Executive Committee in C(2004)1/CORR1 and C/M(2004)2/PROV) are not clear as to whether a candidate country should be willing to enact an offence of foreign bribery, or whether its law should already have such an offence in force. Further noted its prior practice in making positive recommendations for invitations to accede to the Convention in the case of three countries, which all had legislation in place criminalising the bribery of a foreign public official.
- Heard Sweden's recollection that the WGB has been called on to apply a high standard to OECD accession candidate countries, and that the WGB should therefore postpone its consideration of Israel's request until its Penal Code has been amended to include the foreign bribery offence. Heard Greece and the United States support this view.
- Heard Sweden and Greece note that the answers provided by Israeli authorities to the accession questionnaire left some issues unresolved.
- Agreed that the revised criteria for accession to the OECD Anti-Bribery Convention should be interpreted to mean that a candidate for accession to the Convention should already have an offence of bribery of a foreign public official in force before the Working Group considers its candidature.
- Agreed to postpone consideration of Israel's request to accede to the Convention to its plenary meeting in October 2008, and to have the Secretariat send Israel a list of supplementary questions to be answered and analysed by the time of its plenary in October.
- Heard the Legal Director advise that he would report these decisions to the Secretary-General and Deputy Secretary-General and, as to the decision on the interpretation of the revised criteria, that he would report this to the Russian Federation as this would impact upon its OECD accession process.

## **13. Any other business**

### *The Working Group:*

- Heard the Secretariat state that the Programme of Work and Budget document presented during the plenary (DAF/INV/BR(2008)2/REV1) will be revised based on the discussion and the Working Group's input. The revised document will be circulated for approval via written procedure.
- Heard a Delegate from France (M. François Legué) announce that this is his last Working Group on Bribery meeting. He is being transferred to a new position. He thanked the interpreters for their efforts, and wished the Working Group the best for its continued work.

**Participants list for Working Group on Bribery in International Business Transactions  
(Plenary Meeting)**

**Liste des participants pour Groupe de travail sur la corruption dans le cadre de transactions  
commerciales internationales (Réunion Plénière)**

**17/6/2008 - 20/6/2008**

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