

Unclassified

English - Or. English

26 June 2023

**DIRECTORATE FOR FINANCIAL AND ENTERPRISE AFFAIRS
WORKING GROUP ON BRIBERY IN INTERNATIONAL BUSINESS TRANSACTIONS**

Cancels & replaces the same document of 23 June 2023

Phase 4 evaluation of Mexico: Additional written report

13-14 June 2023

This report was submitted by Mexico for the June 2023 plenary meeting of the Working Group on Bribery in International Business Transactions. It does not reflect the views or opinions of the Working Group on Bribery

Elisabeth Danon, +33 1 45 24 92 50, elisabeth.danon@oecd.org

Anais Michel, +33 1 45 24 90 81, anais.michel@oecd.org

JT03522610

PHASE 4 EVALUATION OF MEXICO: ADDITIONAL WRITTEN FOLLOW-UP REPORT

Instructions

This document seeks to obtain information on the progress each participating country has made in implementing the recommendations of its Phase 4 evaluation report. Countries are asked to answer all recommendations as completely as possible. Further details concerning the written follow-up process is in the [Phase 4 Evaluation Procedure](#) (paragraphs 51-59).

Responses to the first question should reflect the current situation in your country, not any future or desired situation or a situation based on conditions which have not yet been met. For each recommendation, separate space has been allocated for describing future situations or policy intentions.

Please submit completed answers to the Secretariat on or before 2 May 2023.

Name of country: MEXICO

Date of approval of Phase 4 evaluation report: 10 October 2018

Date of information: 9 May 2023

PART I: RECOMMENDATIONS FOR ACTION

Text of recommendation 2 (b):

2. Regarding the detection of foreign bribery in the non-governmental sector, the Working Group recommends that Mexico:

b. Urgently enact specific legislation to protect from discriminatory or disciplinary action public and private sector employees that report in good faith and on reasonable grounds suspected acts of foreign bribery to the competent authorities, and raise awareness of this measure [2009 AntiBribery Recommendation IX.iii].

Action taken as of the date of the follow-up report to implement this recommendation:

Action taken as of the date of the follow-up report to implement this recommendation:

Over the past few years, several parliamentary proposals have been put forward to adopt a federal law for the protection of whistleblowers. So far, however, none has been adopted yet. Currently, a proposal for a law for the protection of whistleblowers is being discussed by the Mexican Congress. This bill was introduced on July 20th, 2022 and has not yet been voted on.

The draft bill seeks to guarantee the protection of private citizens or public officials who report possible cases of corruption.¹ It proposes the creation of a Federal Corruption Alert and Protection System for Whistleblowers, which would collect, analyze and investigate the information provided by whistleblowers, as well as determine and provide the necessary protection measures. In line with the 2021 OECD Anti-Bribery Recommendation, the bill does not require whistleblowers to denounce corruption in “good faith”. It includes, in article 3, broad definitions of “retaliation” and

¹ The bill can be consulted here: https://www.senado.gob.mx/65/gaceta_del_senado/documento/127222

“whistleblower”. Article 7 of the bill seeks to ensure protection against possible retaliation, and Articles 10, 14 and 15 guarantee the right of the whistleblower to reveal his/her identity or to keep his/her anonymity at any time during the process. In article 29, the bill contemplates broad protection measures for whistleblowers: from psychological and legal assistance to financial support. As can be seen, these and other provisions are well in line with WGB requirements, though we are aware that more might be needed.

At this stage, the federal government of Mexico considers: (i) that it should be possible to gather the necessary majority in Congress to pass this whistleblower bill before the end of its mandate in 2024 and (ii) that this law can be adjusted so as to fully comply with the aforementioned recommendation 2b of the Working Group on Bribery (WGB). To do this, the government has been seeking to raise awareness among key legislators of the importance of having a robust legal system to protect whistleblowers of corruption, clearly aligned with the best international standards, including the OECD Anti-Bribery Convention and the 2021 Anti-bribery Recommendation. To this end, in addition to a large number of consultations between public officials and legislators, on March 29th, the Senate of the Republic of Mexico and the OECD Mexico Center organized a "Virtual Forum on Protection of Whistleblower of Acts of Corruption" at which Mexican experts and OECD officials addressed the issue of whistleblower protection and its importance in the context of the OECD Anti-Bribery Convention with a select group of legislators.²

While the bill is going through the legislative process, the government of Mexico will continue to protect whistleblowers by applying the provisions of article 64 of the General Law of Administrative Responsibilities (LGRA, in its Spanish acronym), the Guidelines for the Promotion and Operation of the System of Internal and External Citizens Reporting Party of Corruption and the Protocol for Protection of Reporting Party of Corruption.

Through these and other actions, the federal government of Mexico has been doing everything it can to ensure that the legislative branch adopts a robust whistleblower protection law as soon as possible.

If no action has been taken to implement recommendation 2(b), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

Text of recommendation 4(a):

4. Regarding the liability of legal persons, the Working Group recommends that Mexico:
 - a. Find a way that is appropriate and feasible in its legal system to clarify that the standards regarding internal controls and compliance programmes in Article 25 of GLAR apply when proving that a legal person failed to exercise or comply with due controls within its organisation under Article 421 CNPP, and raise awareness of these standards among the private sector, including business associations that represent SMEs [2009 Anti-Bribery Recommendation III.i, X.C and Annex I.B].

Action taken as of the date of the follow-up report to implement this recommendation:

As regards the first part of the recommendation, several meetings were organized between the competent agencies (the Ministry of Public Administration, the Ministry of Foreign Affairs and mainly the Special

² <https://comunicacionsocial.senado.gob.mx/informacion/comunicados/5527-llaman-desde-el-senado-a-reforzar-proteccion-a-denunciantes-de-actos-de-corrupcion>

Prosecutor for Combating Corruption, which is a branch of Mexico's Prosecutor-General's Office [*Fiscalía General de la República*, FGR]) to find appropriate ways to address recommendation 4(a) that are viable within the Mexican legal system. During these meetings it was concluded that there is a fundamental problem in the formulation of this recommendation. This is because it requires that the internal controls for integrity for legal entities and set out in article 25 of the General Law of Administrative Responsibilities (LGRA, in its Spanish acronym) be applied in the context of a criminal proceeding that involves a legal entity, according to article 421 of the National Code of Criminal Procedures; a formula that goes against a fundamental principle of the Law.

Due to this legal incompatibility, Mexico is not in a position to comply with the first part of recommendation 4(a) as it is currently phrased and requests that it be reformulated to respect the domestic legal framework.

Regarding the second part of the recommendation, Mexico's Ministry of Public Administration (SFP, in its Spanish acronym) is continuing to take actions aimed at ensuring that the business sector has the necessary internal controls in accordance with Article 25 of the LGRA. These actions are described below:

In August 2022, 82 public officials from 29 State Comptrollers' Offices were trained in corporate integrity. The purpose of this training was to strengthen the role of these agencies in guiding companies in the implementation of internal controls and integrity programs in Mexican States.

On November 9, 2022, the SFP published in the Official Gazette of the Federation the *Guidelines for the Registry and the Business Integrity Distinction of the Ministry of Public Administration*³. Its purpose is to regulate both the Register and the Business Integrity Distinction.

These guidelines establish the requirements and deadlines for submitting an application for registration in the Business Integrity Register (PIE, in its Spanish acronym). This registration is renewed annually provided that the registered companies continue to comply with their obligations. It is important to highlight that the registration is limited to companies that have an integrity policy.

Regarding the Integrity Distinction, only those companies in the PIE may obtain it. To do so, they must submit an evaluation questionnaire and supporting documentation, to prove that they have implemented an integrity policy in accordance with Article 25 of the LGRA. The Distinction will be valid for four years.

The publication of these guidelines strengthens the performance of the PIE, promotes best practices in this area and strengthens the relationship between the private and public sector.

On November 18, 2022, the SFP organized a training for the Transparency Commission and the Government Procurement Commission of the Confederation of Industrial Chambers (Concamin, in its Spanish acronym) to provide information on general aspects of the Business Integrity Register.

In addition, on February 22, 2023, a training was given on the Guidelines of the Business Integrity Register and the Business Integrity Register to members of the Government Procurement Commission and the Legal Commission of the Concamin, which was attended by 33 representatives of different business chambers.

In March 2023, the SFP launched a new platform⁴ to facilitate registration in the PIE. This new platform allows, in addition to registering applications and attaching the documentation of interested companies, for the automatization of the internal processing of applications.

³ https://dof.gob.mx/nota_detalle.php?codigo=5670892&fecha=09/11/2022#gsc.tab=0

⁴ <https://padron.integridadempresarial.funcionpublica.gob.mx/login>

Through this platform, it will be possible to exchange information with other agencies and thus speed up the comparison of documents. In addition, the electronic form was revised in order to establish a more efficient registration application for the Business Integrity Register.

Finally, from 2022 to the end of this report, 324 companies have received advice and guidance through telephone and e-mail regarding the PIE registration process⁵.

If no action has been taken to implement recommendation 4(a), please specify in the space below the measures you intend to take to comply with the recommendation and the timing of such measures or the reasons why no action will be taken:

ADDITIONAL ISSUES FOR INFORMATION

Foreign bribery and related enforcement actions since Phase 4

To this end, we would kindly ask you to please provide information on:

- *The four foreign bribery investigations mentioned in the [Mexico Phase 4 Report](#) (para 20);*
- and*
- *The foreign bribery cases in the Matrix extract.*

Please update the information contained in these documents and add information on any additional investigations underway or terminated since Phase 4.

Information may be provided below or in a separate document.

Action taken as of the date of the follow-up report:

There are 6 foreign bribery cases in which Mexico appears an active actor in the WGB matrix:

Since September 2022, we have been requesting the elimination of three cases since there are no more elements to continue the investigation in Mexico. We understand that these requests will be processed at the WGB meeting in June 2023.

Regarding the case in which we are actively involved, the FGR provided a number of updates that we are annexing in a separate document given its confidential nature. With regard to the two new cases that the secretariat recently added to the matrix,, these are cases that involve officials from a South American country, in which, in addition to Mexico, various countries are involved as the active party and on which there is no open investigation in our country.

⁵ <https://www.gob.mx/sfp/prensa/sfp-pone-en-operacion-nueva-plataforma-para-el-registro-en-el-padron-de-integridad-empresarial>