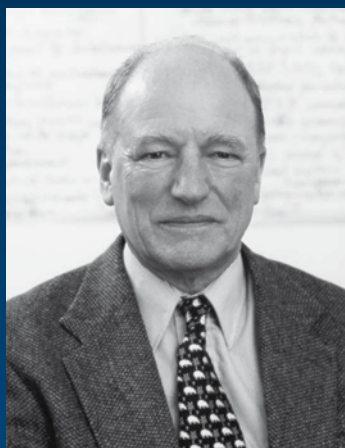


THE OECD AND CIVIL SOCIETY IN THE FIGHT AGAINST CORRUPTION



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Michael H. Wiehen is a Member of the Advisory Council of Transparency International (TI), having served previously on the Boards of both the international organisation and the German national chapter. TI is a global civil society organisation, whose mission is to create change towards a world free of corruption. Since its founding in 1993, TI has played a lead role in improving the lives of millions around the world by building momentum for the anti-corruption movement.

TI is a global network, including about 100 locally established national chapters and chapters-in-formation. These bodies fight corruption in the national arena in a number of ways and bring together relevant players from government, civil society, business and the media to promote transparency in elections, in public administration, in procurement and in business. TI's global network of chapters and contacts also uses advocacy campaigns to lobby governments to implement anti-corruption reforms.

Politically non-partisan, TI does not undertake investigations of alleged corruption or expose individual cases but, at times, will work in coalition with organisations that do. TI has the skills, tools, experience, expertise and broad participation to fight corruption on the ground as well as through global and regional initiatives. Now in its second decade, TI is maturing, intensifying and diversifying its fight against corruption.

The first international efforts to fight corruption

The first international efforts toward fighting corruption started in December 1975 with a United Nations (UN) General Assembly Resolution condemning corrupt practices by transnational corporations, followed in 1976 with the mention of corruption in the OECD Guidelines for Multinational Enterprises¹ and the International Chamber of Commerce (ICC) Guidelines on Extortion and Bribery. However, it was only after the de-escalation of the East-West conflict (and thus the end of the policy of propping up corrupt regimes) in the mid-1990s, that major states were ready to address seriously the scourge of corruption.

In 1994 the Council of Europe started working on a series of instruments, leading to a 1997 Resolution with “20 Principles for the Fight against Corruption”, the formation in 1998 of GRECO (Group of European States against Corruption) with an effective regular review mechanism and the adoption of the Criminal and Civil Law Conventions against Corruption in 1999. The European Union adopted its own first Convention against Corruption involving European Officials in 1997. The Organisation of American States had adopted the Inter-American Convention against Corruption in 1996. All these efforts were crowned by the UN Convention against Corruption in 2005 which significantly broadened the list of practices to be criminalised by the member states and added asset recovery, but which still lacks an effective review and enforcement mechanism (and until now has not even been ratified by several major industrial states such as Germany or Japan).

Work on the corruption topic in the OECD had restarted in 1989, prompted by the United States that felt at a competitive disadvantage in international markets after their Foreign Corrupt Practices Act of 1977 had made the bribery of foreign officials by US companies a criminal offence. In the mid-1990s, the preparatory work at the OECD toward an international agreement took on speed and led in December 1997 to the adoption by the OECD members (and several other non-member states) of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, together with the official Commentaries and the Revised Recommendation of the Council dealing with additional important anti-bribery measures such as the abolition of the tax deductibility of bribe payments.

The OECD Convention on bribery

The OECD Convention so far remains the single most effective international instrument in nudging governments toward adopting and implementing more and more effective anti-bribery policies. The effectiveness of the Convention was primarily due to the fact that it was – from the outset – accompanied by a well-designed and, so far unique, detailed peer review system that by now has reached its Phase 3 Reviews (Phases 1 and 2 having concentrated on the quality of the incorporation of the Convention’s agreements into the various national laws, and of the initial implementation and enforcement of those obligations respectively).

The OECD has traditionally co-operated with the international business community (represented by the BIAC) and the labour union movement (through the TUAC). TI, the global anti-corruption movement, established contact with the OECD soon after its formation in 1993 and was accepted as more or less a standard observer at all anti-bribery related activities of the OECD, including those concerning the Global Forum and Global Corporate Governance activities. TI contributed regularly through substantive commentaries and recommendations directly to the OECD working groups but also through advocacy work by its National Chapters in the various capitals, urging the governments of the OECD Convention signatory states to adopt a supportive

position toward a comprehensive common anti-bribery effort. Critical in this context was a letter that TI, jointly with the ICC, organised in May 1997 for prominent international industrialists to send to their respective ministers of economy and finance, encouraging them to support the OECD recommendations toward a common anti-bribery agreement. The statement by the industrialists, to the effect that they were ready to join the fight against corruption, made it very difficult for their ministers to maintain their previous position that they "... had to protect their domestic industry against unreasonable demands", and thus helped to obtain a quick consensus (on texts that reflected a strong input from the civil society representatives) and a remarkably fast finalisation of the Convention texts.

TI national chapters as well as other civil society representatives are regularly involved in the OECD Peer Review visits to individual signatory states of the Convention. However, the OECD does not publish overall review reports, only the individual country reports (after they have been discussed with the reviewed country). Therefore, since 2005 TI has published its own annual Progress Report on OECD Convention Enforcement, bringing together the assessment of the enforcement quality by TI associates in the various countries, who draw, *inter alia*, on the OECD peer review reports.

Anti-bribery measures for export credits

In parallel with the development of the Convention, the OECD Working Party on Export Credits and Credit Guarantees (ECG) had, since 1998, investigated how bribery was being addressed under its members' national export credit systems through an ongoing survey of Members' policies and practices to deter bribery in officially supported export credits.

After the OECD Anti-Bribery Convention had come into force in early 1999, TI concluded that the governments' anti-bribery policies now should also be implemented by official export credit agencies (ECAs). TI consequently sought an invitation to the ECG and soon, thereafter, issued a Position Paper on Corruption Fighting by those ECAs represented at the OECD. In November 2000, TI met with the ECG and reminded the members that as public or publicly-supported institutions they were under obligation not to provide export support for corrupt business transactions and thus to introduce measures that would help them identify and eliminate such corrupt business transactions. In particular, TI submitted recommendations on the introduction of a no-bribery declaration by the exporter, the adoption of guidelines and effective sanctions and the public disclosure of all relevant information in cases where payment was claimed under the export credit insurance and full transparency through annual reports. In its oral presentation, TI "... challenge(d) the OECD and its member states to come forward with harmonised strengthening of their ECA rules so that corruption is no longer disregarded, tolerated or even tacitly supported by official export support agencies".

TI's recommendations were, indeed, partially reflected in the ECG's 2000 Action Statement on Bribery and Officially Supported Export Credits. In the following years, TI relentlessly called for stronger and additional measures and thus was pleased to observe the adoption in 2006 of a strengthened Action Statement and its upgrade to a formal OECD Council Recommendation on Bribery by the end of that year.

In 2002, the secretariat for the ECG started to carry out and publish an annual Survey of Measures Taken to Combat Bribery in Officially Supported Export Credits, and the individual ECAs submitted much useful information for this survey. The secretariat called on civil society to comment on those surveys. While welcoming and observing the initiative of the secretariat, TI felt that these surveys did not provide enough detailed, pragmatic information about the actual anti-bribery practices and, therefore, in 2009 carried out its own survey among 14 selected ECAs² publishing the results of this work in a report entitled "ECA Anti-Bribery Practices 2010". The work on this report received strong support both from the selected ECAs and from the secretariat. TI's Report found that, in general, good progress had been made in the anti-bribery activities of many ECAs, even though there were significant differences in implementation and approaches among the participating ECAs. While there is still much work to be done, there are now a good number of best practice examples that should be replicated across the world.

The TI Report also identified key areas for improvement, while highlighting good practices that should be replicated by others, these included:

- A more formal, structured approach for advancing anti-bribery commitments, including designating senior management oversight of implementation.
- Training ECA staff on anti-bribery policy and how to implement it.
- Stepped-up outreach to the private sector and practical support for exporter anti-bribery efforts.
- Requiring companies whose exports they support to have internal programmes for preventing bribery.
- Strengthening due diligence review practices.

Proper staff training, meaningful due diligence and effective management controls would help to prevent and detect bribery which, in turn, ensures that both exporting and importing countries get the most value for their money. TI intends to follow up this work with a benchmarking exercise and regular surveys thereafter to measure progress.

Improving the 2006 OECD Recommendation on bribery and export credits

TI still maintains its call for additional changes in the 2006 Council Recommendation on measures to deter bribery in official export credits, such as (1) making ECAs request more information from applicants on a routine basis, including the disclosure of agents' names and commissions paid to them, (2) requiring enhanced due diligence in additional cases, (3) less restrictive use of sanctions, and (4) requiring applicants to introduce codes of conduct and compliance systems. Disclosure of agents' commissions would, in cases of unusually or excessively high levels of commission, trigger enhanced due diligence and thus possibly help spot corrupt business transactions.

In pursuit of its standard coalition-building approach, TI was successful in gaining the confidence of the governments and the ECAs as well as of the OECD secretariats of both the Working Group on Bribery and the ECG, and over the years was thus able to contribute many pragmatic suggestions and recommendations to the effective anti-bribery work of the OECD.

Other non-governmental organisations (NGOs) who occasionally participate in the ECG sessions and consultations have traditionally supported the anti-corruption efforts of TI, while naturally they focus mostly on their own germane issues like environmental and human rights considerations in OECD and ECA activities (*e.g.* export credit support for projects that violate international environmental protection or resettlement rules or allow child labour). The secretariat for the export credit committees, in particular, has broadly reached out to the NGO community over the past years and the NGOs have responded strongly with substantive recommendations on ECAs' policies and business practices. In fact, the NGO representations, both at the national and the international level, led in a number of cases to changes in ECAs' policies and in individual business decisions of ECAs concerning questionable export contracts. TI and the other NGOs bring valuable competence and commitment to the table and enrich the debate; these combined efforts to optimise the fight against corruption, as well as to give full weight to human rights and environmental concerns, deserve general support.

The secretariats of the two OECD working groups deserve the respect of the international community for regularly reaching out to civil society and seeking their comments and input into the process of strengthening the texts as well as the implementation of the internationally adopted rules. The damage caused by corruption is so immense that all interested parties simply have no choice but to co-operate in the effort to fight this major scourge of our time.

Notes

1. The OECD Guidelines for Multinational Enterprises, as recommendations jointly addressed by governments to multinational enterprises, with observance remaining voluntary and not legally enforceable, remain outside the purview of this article, even though they deal with “Combating Bribery” in Chapter VI.
2. The selection of these 14 ECAs was arbitrary in the sense that TI selected ECAs in countries where TI had a national chapter that was active in procurement work and could carry out the inter-action with the respective ECA. Participants in the survey included ECAs in Belgium, Canada, France, Germany, Hungary, Japan, Korea, Norway, Slovenia, Sweden, Switzerland, the United Kingdom and the United States of America



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