

4. Anticorruption Activities in the Organization for Economic Cooperation and Development

A. OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions

The OECD Convention represents a highly significant watershed in the development of the United States international strategy against corruption. It provides for obligatory monitoring and promotion of effective implementation of its provisions by a mechanism for mutual evaluation by parties.

The OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions was signed by 33 countries in December 1997, and entered into force on February 15, 1999. Signatories include all 29 OECD member states and five non-member states that participate in the OECD Working Group on Bribery (Argentina, Brazil, Bulgaria, Chile and the Slovak Republic). The United States, which has been a leader in promoting the **OECD's** anti-corruption efforts, deposited its instrument of ratification in December 1998. Iceland, Japan, Germany, Hungary, Finland, the United Kingdom, Canada, Norway, Bulgaria, Korea and Greece have also deposited instruments to date. Once in force, the Convention will be open to accession to other non-OECD members that are prepared to adhere to the relevant OECD Recommendations in the anti-corruption field.

The Convention largely tracks the U.S. Foreign Corrupt Practices Act of 1977 ("FCPA"). It obliges parties to make it a criminal offense subject to effective, proportionate, dissuasive sanctions comparable to those applicable to domestic bribery to bribe foreign public **officials** in order to obtain, or retain, business. This obligation includes officials in all branches of government, whether elected or appointed. It includes government-controlled parastatals, except those operating on a purely commercial basis. The Convention, like the FCPA, only covers "active bribery" -- the conduct of the person offering or making the bribe, and not "passive bribery" -- the conduct of the bribe recipient. The Convention does not cover bribes paid to private persons for any purpose, or bribes paid to foreign public officials for purposes other than obtaining or retaining business, or other improper advantage in the conduct of international business.

The Convention also has strong provisions to prohibit accounting omissions and falsification. It provide for parties to **afford** each other mutual legal assistance and extradition in the implementation of its obligations. Significantly, the Convention also has a provision (art. 12) which provides for cooperation in a program of "systematic follow-up to monitor and promote the full implementation of the Convention." This rigorous mutual evaluation mechanism, established under the auspices of the OECD Working Group on Bribery, is likely to become an important tool in the anti-corruption field. Active diplomacy and the mutual evaluation mechanism will be key tools in ensuring governmental compliance with the Convention's obligations. The mutual evaluation mechanism includes two phases: first, examination and analysis of each party"

laws implementing the Convention, followed by visits by monitors to each country to assess enforcement.

With the entry into force of the OECD Convention coinciding almost exactly with the Vice President's conference, a central element of the U.S. international strategy against corruption in 1999 will consist of activities related to its implementation. First, the U.S. must and will maintain its diplomatic efforts to promote ratification of the Convention by all governments that are members of the OECD. It is crucially important to establish and bring to full operation an effective mutual evaluation mechanism. This will promote action by governments to ensure effective implementation of the Convention. It will also bring to actual operation a mechanism that can serve as a model for other such mechanisms in other **fora** in the future.

Implementation of the Convention, and related OECD recommendations, will require actions by parties to enact national legislation required by the Convention and, then, to implement such legislation and actually prosecute violators. Development of an effective mutual evaluation process for governments will effectively promote this end. Moreover, private firms organized in countries that are party to the Convention must also take steps to ensure their compliance. Ensuring private compliance requires efforts by governments, non-governmental organizations and international business organizations to encourage **firms** in other countries that are parties to adopt best practices and compliance programs. The USG needs to consider appropriate approaches to facilitating these efforts directly or indirectly, including possibly engaging the US private sector in these efforts.

The Convention itself does not address the related issue of tax deductibility of bribe payments. In the past, many countries permitted commercial enterprises to claim tax deductions for payments made as bribes to officials of other countries. The OECD has adopted recommendations at ministerial level that members should end the practice of allowing tax deductions for foreign bribes. Ten OECD countries still allow such tax deductibility, but nine of them have begun the process of changing their laws so as to preclude this practice. It is expected that these countries will end the practice once they enact legislation to implement the OECD Convention and criminalize bribery of foreign public officials. The OECD also has recommended that members enact laws and regulations permitting authorities to suspend from competition for government contracts those enterprises determined to have bribed foreign public officials.

The Convention also does not directly cover payments made to political parties, party officials, and candidates for political office (although it does cover business-related bribes to foreign public officials made through such parties, party officials and candidates). OECD members have agreed to discuss these issues in the **OECD's** Working Group on Bribery, and to consider proposals to address these issues by the May 1999 OECD annual Ministerial Convention. The United States will continue to promote effective action in this regard in the OECD in 1999.

The United States international strategy against corruption in 1999 will include as an important priority promoting full adherence to the Convention, and developing and

implementing its mutual evaluation procedure. The United States will promote implementation of related measures like eliminating the tax deductibility of bribe payments. In the implementation process, the United States will continue to seek ways to enhance the effectiveness of this element of the growing international regime of agreements and commitments to act against corruption.

B. Ethics Checklist: Principles for Managing Ethics in the Public Service

The United States has been an active participant in the OECD-PUMA (Public Management Service) research and international agreements on public service ethics programs. For the past four years, a variety of research programs and products have been produced through this multilateral effort. Most importantly the OECD, at the ministerial level, approved an evaluation program for Public Service Ethics programs in early 1998.

Bribery, corruption and official misconduct are by no means limited to the developing world, emerging democracies or post-conflict situations; they have become vital challenges as well for many OECD member governments. Consequently, those governments may experience a general decline in public confidence, fueled by well publicized scandals. Others note growing pressure between traditional values and the roles public **officials** play in a modern results-based public management environment.

Responses have included campaigns to “clean up” public life and fight against corruption; reviews of rules and regulations applying to public **officials**; attempts to redefine public service “values” and new codes of conduct. In response to these challenges, PUMA’s mission is to help countries review and reform their ethics **infrastructure**, including the institutions, systems and mechanisms they have for promoting ethics and countering corruption in the public service.

On April **23, 1998**, the OECD Council adopted *the Recommendations on Improving Ethics Conduct in the Public Service*. This was the result of three years of collaborative work by over a dozen nations. This agreement requires a review of the effectiveness of ethics standards agreed to in *the Recommendations* in the next two years, and developed a checklist of effective ethics management principles. This “checklist”, whose formal title is *Principles for Managing Ethics in the Public Service* (PUMA Policy Brief No. 4, **1998**), is a monograph providing a practical instrument to review ethics management systems.

The first major work product of this group was *Ethics in the Public Service: Current Issues and Practice* (**1996**), which examines how nine OECD countries manage ethics and conduct in the public service, with analysis of current tensions and highlights of new ethics initiatives. *A Survey of Anti-Corruption Measures in the Public Sector* in OECD countries will be available shortly. Meanwhile, the Executive Summary is now available online. Now available in their entirety online are country reports on ethics regimes in Australia, Finland, Mexico, Netherlands, New Zealand, Norway, Portugal,

United Kingdom and United States. PUMA's staff has also prepared several articles in this area.

The OECD has also sponsored several major events. In November 1997, a *Symposium on Ethics in the Public Sector: Challenges and Opportunities for OECD Countries* was held in Paris; its background, program and issues papers are available on line. The OECD held a *Workshop on Combating Corruption in Transition Economies* held in Istanbul October 7-9, 1998. This launched an Anti-Corruption Network for Central/Eastern European and CIS Countries. An OECD-OSCE *Conference on National and International Approaches to Improve Integrity and Transparency in Government* was held in Paris July 15-16, 1998; its agenda and discussion papers are available online.

In 1999, the United States will continue to vigorously support and participate actively in the growing agenda of activities to promote public integrity and combat corruption that has as its center the OECD Public Management Service. The United States will work to promote broad adherence to principles and practices that are addressed in the PUMA public ethics checklist.

C. Other OECD Activities

The OECD recently issued draft guidelines on corporate governance, which are now open for notice and comment and available online at the OECD **Website** on the World Wide Web. Promoting measures for economic good governance and reducing the incentives and opportunities for corruption which the implementation of such measures can make possible, will continue to be important U.S. interests. The OECD International Corporate Governance Network (ICGN) also seeks to improve standards of business management and accountability worldwide. The OECD will be an essential element in the ongoing implementation of aspects of our comprehensive international strategy against corruption that involve economic good governance and structural or institutional incentives and disincentives for corruption.