

C20 Working Group on Anti-Corruption: Position Paper

I. Background

Corruption is an obstacle to economic growth and very much in line with the priority of the Russian G20 Presidency on increasing economic growth through trust and transparency, through effective regulation and through quality jobs and investment. As the G20 has acknowledged in the 2012 Los Cabos Communiqué, the biggest challenge in the fight against corruption is “closing the implementation and enforcement gap”. This position paper will provide guidance to this effect.

II. Recommendations

1. Curbing illegal financial transactions

Observation: Many financial institutions – not only in offshore financial centres, but also in G20 countries – remain safe havens for all types of illicit money — from corrupt officials, to tax-dodging companies, to criminals.

Proposal: The Russian Presidency should draw the attention of the G20 to their obligations under Financial Action Task Force (FATF) regulations on money laundering, in particular as the 2013 FATF review will focus on implementation. We welcome the G20 commitment in the Anti-Corruption Action Plan to “*share experiences on how to promote implementation by regulated entities of measures to combat money-laundering, consistent with domestic law, including through horizontal/thematic reviews of the treatment of high risk customers and business relationships.*” We are also supportive of the G20 commitment to continue regular meetings between the G20 Anti-Corruption Working Group and FATF officials.

- To avoid criminal misuse of legal entities, G20 countries should create registers that disclose the beneficial ownership of trusts and companies and are accessible to relevant investigative and judicial authorities and the public, except in instances where a compelling case can be made not to do so. Such registers could assist financial institutions with their customer due diligence processes. In this regard we support the work of the Financial Stability Board’s Legal Entity Identifier (LEI) Private Sector Preparatory Group, of which Transparency International and the Task Force on Financial Integrity are members. Countries should implement the FATF recommendation that nominees must declare that they are nominees and on whose behalf they are working. G20 countries should implement greater domestic and international inter-agency cooperation to enable more effective cross-border information-sharing on tax matters and overcome existing legal, operational and political barriers to legal assistance. In this regard, all G20 countries should sign the Convention on Mutual Administrative Assistance in Tax Matters, encourage other countries to join and support the provision for automatic exchange of tax information.
- To facilitate asset recovery processes, G20 countries should speed up mutual legal assistance procedures, for example by designating contact people and by providing in-depth information on their respective legal systems and the relevant processes required and adopt the recommendations from StAR’s ‘Barriers to Asset Recovery’ report. We encourage G20 member states to put in place legal frameworks to enable victims of corruption and civil society to take asset recovery cases to court, both in countries where assets were stolen and deposited.

- To combat corruption in the financial sector and restore public trust in global financial reforms, we encourage the G20 Anti-Corruption Working Group to extend its collaboration with the G20 Finance Ministers on corruption and governance issues in the financial sector. This includes on issues such as improved risk management and risk governance through enhanced corporate transparency and accountability and actual and potential conflicts of interest between regulators and financial institutions.
- To demonstrate their commitment against impunity, G20 countries should implement robust sanctions against malfeasance, including market manipulation and vigorously and consistently prosecute financial crime.

2. Creating a civil society coordination mechanism

Observation: Improved exchange of information on corruption cases between public authorities and civil society organisations could be helpful in promoting enforcement of anti-corruption laws. Article 13 of the UN Convention against Corruption calls upon member states to promote the participation of civil society in the fight against corruption and ensure that the public has effective access to information. To effectively tackle cross-border corruption cases information flows must be much improved.

Proposal: G20 members should establish an international network of civil society organisations and G20 authorities with anti-corruption competence to promote partnership between civil society and the state in the fight against corruption.

National level contact points should be designated within public authorities with anti-corruption competence and would provide and receive information on corruption cases from civil society organisations. The relevant public authority could be the Ombudsman, the Controller General or the anti-corruption agency. Comprehensive whistleblower protection and adequate channels to process confidential information must be ensured.

Additional specific actions could include:

- Establishment of a network across the G20 countries to exchange information from official and private sources. Recognising that specific authorities in G20 countries such as tax, police, and public prosecutors' offices would and should continue to cooperate with counterparts in other countries, this network is recommended to ensure that when there are difficulties in cooperating between entities that this proposed structure could facilitate information exchanges. The work of this network could include uniting points of contact for recovery of stolen assets.
- Unification of already existing databases and journalist investigations across borders, bearing in mind the limitations imposed by privacy legislation and security-sensitive investigations.
- Joint research as appropriate to promoting cross-border collaboration in anti-corruption initiatives.

3. Standardizing legislation protecting whistle blowers across the G20 states

Observation: The G20 made a commitment in the 2013-2014 Anti-Corruption Action Plan to ensure that G20 countries without whistleblower protection “*will enact and implement whistleblower protection rules... and also take specific actions, suitable to the jurisdiction, to*

ensure that those reporting on corruption, including journalists, can exercise their function without fear of any harassment or threat or of private or government legal action for reporting in good faith". The Russian government is developing a draft law on whistleblower protection, scheduled for adoption this year.

Proposal: The Russian Presidency should commit itself to adopting this law. We welcome the OECD principles on whistleblower protection.

- To protect whistleblowers from reprisals, and allow them to make disclosures safely and reliably, all G20 countries should pass and implement loophole-free, stand-alone whistleblower protection legislation for all public and private-sector employees. Whistleblower frameworks should include a range of internal and external disclosure channels, and comprehensive and transparent enforcement provisions. . Such legislation should ensure prompt, effective and independent follow-up of disclosures and complaints and full legal remedies for whistleblowers who have been retaliated against.

4. Promoting anti-corruption trainings for both civil society, public sectors and private sector

Observation: UNODC has proposed organizing anti-corruption seminars.

Proposal: Based on the G20 commitment in the G20 Anti-Corruption Action Plan to promote education and training initiatives to support corruption prevention in the public and private sector, the Russian Presidency should ensure the widest possible uptake of such opportunities.

5. Tackling corruption in sport

Observation: Corruption in sport is widespread and takes many forms; bribery of match officials or players, rigging of bids for construction contracts or other procurement services, money laundering through betting, sponsorship or advertising arrangements, which can operate across borders and using tax havens and front companies.

Proposal: The Russian Presidency should work with G20 members to reinstall confidence in the integrity of national and international sporting events by encouraging closer working relationships with and between anti-fraud organisations and global sporting entities, and to ensure the latter incorporate strong anti-corruption measures into the governance of sporting organisations.

6. Ensuring transparency within extractive industries

Observation: The Government of Russia supports oil, gas and mining transparency. RosAtom took the first step, relevant to state procurement, to publish information on payments to governments in "transparency councils".

Proposal: The Russian Presidency should encourage all G20 members to disclose their revenues from oil, gas and mining sectors in order to improve public accountability in the development of natural resources. In addition, legislation should be passed in G20 countries, in particular those with significant markets in the extractives sector requiring oil, gas and mining companies to disclose the payments they make to governments of all the countries in which they operate on a project-by-project basis.

- Following the Dodd-Frank Act in the United States, and the forthcoming revisions to the Accounting and Transparency Directives in the European Union, this type of legislation should become a global standard. Mandatory reporting is complementary to the voluntary Extractive Industries Transparency Initiative (EITI) and strengthens the initiative by codifying its best practices. Mandatory reporting will lead to the generation of timely, disaggregated and easily comparable data and will apply to those countries that remain outside the voluntary EITI system.

7. Ratification, Review and Enforcement of the UN Convention against Corruption (UNCAC)

Observation: We welcome that Saudi-Arabia has now ratified the Convention. G20 members Germany and Japan have not yet ratified UNCAC and there is a lack of active implementation of the Convention in all G20 countries. Civil society is ready to constructively contribute to upcoming reviews in line with Article 13 of UNCAC which calls upon member states to promote the involvement of civil society in the fight against corruption

Proposal: G20 countries should step up their efforts with regards to the commitment in the Anti-Corruption Action Plan: *“G20 countries will lead by example in enhancing the transparency and inclusivity of their UNCAC reviews by making use on a voluntary basis of the options in the terms of reference to the UNCAC review mechanism, namely allowing country visits, involving the private sector and civil society in reviews and publishing in full the reports of reviews. We undertake each to respond to those deficiencies that are identified in our peer reviews and to make these responses publicly available.”*

- G20 members Germany and Japan should urgently ratify the UNCAC. Furthermore, G20 countries should actively apply and enforce the relevant national laws implementing UNCAC. In compliance with their pledge to lead by example G20 countries should support participation of civil society and other stakeholders such as the private sector in national reviews, during country visits and in publishing review reports in full.

8. Enforcement of Foreign Bribery Legislation

Observation: We welcome that Russia has joined the OECD Anti-Bribery Convention and that almost half of the Conventions’ parties have taken action to sanction companies and individuals under criminal proceedings for foreign bribery. However, in over half of the parties there has been little or no enforcement.

Proposal: In line with the G20 commitment in the Anti-Corruption Action Plan to *“continue in our efforts to adopt and enforce laws and other measures against foreign bribery, which will include establishing the liability of legal persons”* G20 countries should increase their efforts to combat foreign bribery.

- To demonstrate their anti-bribery commitment, G20 members China, India, Indonesia and Saudi Arabia should become parties to the OECD Anti-Bribery Convention and its peer review process. All G20 countries should criminalise foreign bribery.
- To tackle impunity, all G20 members should collect detailed information and provide regular public reports on the enforcement of all their anti-corruption laws, including those on foreign bribery.

- In line with Article 5 of the Convention, investigation and prosecution of the bribery of a foreign public official should not be influenced by considerations of national economic interest, the potential effect upon relations with another state or the identity of the natural or legal persons involved.
- All G20 governments, and entities controlled by governments, should report on all payments received from companies.
- To recognize the costs of corruption, G20 governments should promote compensation to victims, including countries and companies, in the context of foreign bribery cases and set up robust legal mechanisms in this regard.

9. Public Sector Integrity

Observation: A lack of transparency in the public sector fuels mistrust by citizens, can lead to political instability and misallocation of scarce public resources to the benefit of the few at the expense of the many. We welcome the recognition of important partner multilateral processes such as the Open Government Partnership and the Global Initiative on Fiscal Transparency.

Proposal: Based on the G20 commitment in the Anti-Corruption Action Plan *“ensuring we have in place systems of procurement based on transparency, competition and objective criteria in decision-making to prevent corruption, and by the end of 2014, continuing our analytical work in this area and developing and sharing good practices in the field of public procurement anticorruption policies, measures, and legislation including, for example, electronic procurement”* all G20 countries should conduct independent assessments of their procurement systems and publish the results.

- G20 governments should adopt and urge all governments to promptly enact the standards for procurement and public financial management, consistent with Article 9 of the UNCAC and the OECD Principles on Enhancing Integrity in Public Procurement. All G20 countries should join the Open Government Partnership. Furthermore, to ensure their companies do not undermine public procurement processes in other countries, all G20 governments should ensure that export credit agencies enforce rules forbidding bribery, fraud or collusion.
- To prevent corruption of public officials, G20 governments should urgently implement the principles for asset disclosure by public officials agreed on at the Los Cabos Summit in 2012. Asset disclosure regimes should guarantee public access to declarations and cover a wide range of income and benefits from different sources. Conflicts of interest need to be proactively disclosed and adequate accountability mechanisms should be introduced.
- To ensure accountability for corruption offences, elected public officials should not enjoy immunity when charged with corruption offenses.
- To protect the independence of the judiciary, G20 countries should provide for such independence by law and in systems for hiring, assignment and promotion of judges and should prohibit political interference. Appropriate constitutional and legal mechanisms should shield judges from sudden dismissal or transfer without the benefit of an impartial inquiry. Judicial work should be fully resourced to make judges and other court personnel less vulnerable to bribery.