

## **Initial Proposed Framework for Private Sector, Trade Union and Civil Society Consultations in Phase 2 of OECD Monitoring Process**

Business and Industry Advisory Committee (BIAC)  
Trade Union Advisory Committee (TUAC)  
International Chamber of Commerce (ICC)  
Transparency International (TI)

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This document provides a framework for private sector, trade union and civil society consultations in Phase 2 of the OECD monitoring process. It is an internal document to support the August 6, 2001 joint statement on the interest and commitment of BIAC, TUAC, ICC and TI to participate in the Phase 2 monitoring process through informal consultations, and submission of written comments and reports.

The development of this framework demonstrates the common interest of business, trade unions and civil society in promoting the effective enforcement of the OECD Convention and reflects the following considerations:

- The Procedure for Phase 2, adopted by the Working Group, states that “there would be an overall benefit in Phase 2 from an informal exchange of views with key representatives of the private sector and civil society which could contribute to determining the impact that the laws and enforcement have had on behavior, including compliance schemes.”
- BIAC, TUAC, ICC and TI provide the key elements for a productive consultation: a wide spectrum of viewpoints, familiarity with the Convention and with OECD procedures, and expertise on combating corruption in international business transactions. The four organizations have local affiliates and other relationships in most of the countries that have signed the Convention and can involve local experts in the consultation.

This proposed framework is generic in character and can be modified as appropriate, and as experience with Phase 2 reviews develops, to reflect circumstances pertinent to the reviews of particular countries, including the views of the government of the country being examined.

All parties should have opportunity for representation at the informal consultations, however, while each party is given the opportunity to participate in the consultation process, no party is obligated to participate.

## **Format and Logistics for Consultations**

Phase 2 reviews will begin in September 2001 with a review of Finland. Thereafter up to 7-8 examinations will be conducted per year by the OECD, with the goal of reviewing all participants by 2005.

Phase 2 reviews will include on-site visits to each country by teams of experts from the OECD Secretariat and from two countries chosen as lead examiners. The Procedures for Implementation of Phase 2 and the Questionnaire to which the governments of the countries being reviewed must reply prior to the on-site visits, are available on the OECD website at: <http://www.oecd.org/daf/nocorruption/selfe2.htm>.

Schedules for the in-country reviews will also be made available on the OECD website.

The consultations proposed by BIAC, TUAC, ICC and TI would not be public hearings. They will be informal consultations designed to enable the non-governmental participants to express their views and to respond to questions from the review group including the OECD Secretariat and the lead examiners.

BIAC, TUAC, ICC and TI will take the initiative to prepare an agenda listing the issues they would like to present for discussion with the Review Group to be forwarded to the OECD Secretariat, and depending on how contacts are made, with the focal point of the country being reviewed. The Consultation will be held at a time and place convenient to the Review Group.

It is expected that BIAC, TUAC, ICC and TI will select individuals from the country being reviewed who have experience with the issues to be discussed, but may include others who have relevant expertise, depending on the country concerned.

## **Scope of Consultations**

The OECD Phase 2 Questionnaire provides a comprehensive list of 19 issues that the government of the country being reviewed must address during its Phase 2 review. The informal consultations should focus on those issues that are of greatest relevance to private sector and other non-governmental groups in the country being reviewed. Issues of particular interest and importance for our respective organizations include the following:

(It is not expected that all issues listed below will be covered during a particular review, and other issues may be included.)

- **Enforcement.** Assessment of the adequacy of enforcement measures by: lawyers in private practice, legal scholars, companies engaged in international business, trade unions, chambers of commerce and other experts. Availability of recourse for companies that have lost business because of foreign bribery by competitors. (Q2 and 9.6)

- Public Awareness. Adequacy of steps to make the prohibitions of the Convention and the implementing law known to a broad audience, including the business community, trade unions, the media and others, in order to encourage compliance. What financial and other resources have been provided to promote awareness of the Convention? (Q 3.1 and 3.3)
- Corporate Codes of Conduct (Anti-Bribery Compliance Programs) How widely have companies in international business adopted codes of conduct prohibiting foreign bribery, and what steps are being taken by companies and others to achieve compliance? (Q 3.2 and 16.4)
- Whistleblower Protection. How adequate are the arrangements made by government, by the private sector and others to protect whistleblowers and to protect against abuses? (Q 2.4)
- Solicitation of Bribes. Are companies being solicited for bribes by foreign officials with any frequency? What assistance does the government provide to enable its companies to deal with such solicitation? Has there been cooperation with other OECD governments? (Q 2.6)
- Responsibility of Legal Persons. Adequacy of coverage of corporations and of sanctions applicable to corporations. (Q 5 and 6)
- Coverage of Foreign Subsidiaries. Do corporate codes of conduct (anti-bribery compliance programs) typically cover foreign subsidiaries? How do companies and others assess applicability of jurisdictional provisions? (Q 8)
- Accounting and Auditing Standards. TI, in cooperation with IFAD and major international accounting firms, proposes to update the information relating to books and records, internal controls and auditing practices of individual OECD countries, presented to the Working Group at its April 2000 meeting. Private sector representatives and others will discuss the adequacy of internal control programs. (Q 16 and 16.4)
- Tax Deductibility of Bribes. Views of companies and accounting firms on effectiveness of prohibitions against tax deductibility of foreign bribes. (Q 17.4)
- Money Laundering. Views of banks and others regarding the effectiveness of anti-money laundering regulations with respect to bribery of foreign officials. How widely have banks and others adopted internal anti-money laundering programs. (Q 11)
- Public Procurement. Adequacy of anti-bribery provisions in foreign aid programs. (Q 18.2)
- International Cooperation. Status of cooperation with other OECD and non-OECD countries to assist companies that (a) have been solicited for bribes by foreign officials, or (b) are competing against companies willing to pay bribes. Cooperative approaches with NGOs, trade associations, trade unions and other groups. (Q 19)

- Export Credit Guarantees. Relationship between export credit guarantees and anti-bribery compliance programs.

## **Resources**

Emphasis should be placed on managing this process in an efficient manner so that all parties will be able to adequately contribute to the process as agreed upon for each review. Focal points to manage organization of the consultations, and contact with the OECD should be appointed for each review. BIAC and TUAC will serve as contacts to the OECD Secretariat on organizational/contact information issues.

All expenses for participation in the consultations will be the responsibility of participants. Organizational support, ie the organization of conference calls, e-mail distribution of information etc. will be coordinated by the Secretariats of the participating organizations.

## **Suggested Schedule for Preparation of Consultation**

The following steps are suggested to provide a workable schedule for the preparation for consultations.

As noted earlier, the process for organizing these informal consultations may vary from country to country. A conference call should take place between BIAC, TUAC, ICC and TI once the country review dates are known in order to develop a co-operative work plan and schedule to organize the informal consultation. The following list is a suggested framework/process for organization of the consultations. Conference calls would be arranged as needed to facilitate these processes:

1. The OECD Secretariat notifies BIAC, TUAC, ICC and TI of the scheduled dates for country reviews as soon as dates are fixed.
2. The OECD Secretariat will inform BIAC, TUAC, ICC and TI whether the government reply to the Questionnaire will be made available.
3. BIAC, TUAC, ICC and TI should identify local representatives to participate in the Consultation, discuss possible agenda, and allocate responsibility for work on specific issues. (The participating organizations should make known in advance their principal concerns that they would like to raise during the consultation in order to facilitate coordinated preparation without limiting the right of each organization to raise issues.)
4. BIAC, TUAC, ICC and TI review and refine agenda and list of participants, after obtaining views of their local representatives.

5. Send OECD Secretariat proposed agenda and participants, for review by the OECD Secretariat, lead reviewers and the government of country being reviewed. If the OECD facilitates direct contact with the country being reviewed, then comments may be received from the government directly. All parties should be copied on communications related to the consultations.
6. Review preparations for Consultation, including agenda, order of presentations, time allocations, etc. Agree on further review sessions as needed.
7. Confirmation with the OECD Secretariat and Government being reviewed of the time and place of the Consultation, final agenda and list of participants.

### **Availability of Government Reply to Questionnaire**

The usefulness and efficiency of consultations would be significantly enhanced if government replies to the Phase 2 Questionnaire would be made available to BIAC, TUAC, ICC and TI before the consultation is held. This point is stressed in the Joint Statement. This would allow them to focus on issues where their perspectives differ from those presented by the government reply and avoid wasting the review group's time by needless duplication.

The OECD Secretariat should determine whether the government of the country being examined will make its reply available.

### **Participants Needed for Consultation**

At a minimum, each organization (BIAC, TUAC, ICC, TI) should have the opportunity to nominate one participant for the informal consultation. Additional participants would be invited according to the size of the consultation.

For example, contacts have been made by TI with the International Forum on Accountancy Development (IFAD) which has agreed to provide accounting experts from the countries being reviewed. The International Law Association (ILA) and other international bar groups are expected to help TI identify legal experts. TI will also seek assistance from other professional and civil society groups.

### **Report and Recommendations**

Following the consultation, BIAC, TUAC, ICC and TI may jointly or separately submit to the Secretariat a written report, including recommendations, for consideration by the Working Group when it considers the results of the country review. These written reports should be exchanged among the four groups prior to their submission to the OECD and the Working Group for coordination and information purposes, but not to limit the right of participating organizations to express their views independently.