



*In Committee*

## **BIAC Programme for Combating Solicitation of Bribes**

### **Statement of the BIAC MNEs Committee Task Force on Bribery and Corruption**

*December 1999*

#### ***Public recognition of the problem***

Up to now, governments have been reluctant to recognise the problem of solicitation. It was feared, that companies accused of bribing could defend themselves in penal prosecution if fault by others was acknowledged. However, this negligence creates the false impression that companies are the source of corruption. Testimony and available evidence indicate that explicit or implicit requests for bribes are more often the “initiating act” for bribes.

***Governments have to publicly recognise the problem of solicitation of bribes and engage themselves to act against it, to assist companies in specific situations, and to co-operate internationally. Declarations by the OECD Ministerial Conference as well as declarations of National Governments (e.g. in the context of parliamentary debates on implementing legislation) could be adequate instruments in this respect.***

#### ***Integration in follow-up programs***

As the current international instruments do not properly address the problem of the demand side of bribes, such programs do not include the situation in "receiving" countries - in all parts of the world. This gives a unbalanced picture. Necessary data for actively take measures against the distorting effects of requests for paying bribes have not been collected.

***The follow-up mechanisms - especially within OECD - has to include the situation of explicit or implicit requests for bribes and the sufficiency and functioning of mechanisms in place to combat them. Such enquiries can only be done in a close co-operation with business.***

Collecting such data may be difficult as formal proof will seldom be available and business secrets must be safeguarded. Therefore, it will be necessary to establish reporting bodies as "filters" that can provide the necessary information in a anonymous and aggregated form. Such reporting bodies must be separated from any body having judicial or penal prosecution competence to avoid compromising the independence of the judicial process, as well as the allowed defendant protections.

***Clearance for transactions***

As it may not always be obvious whether a specific transaction violates anti-bribery laws, companies must be able to obtain quick clearance on the legitimacy of specific transactions. The United States provide such a facility in their FCPA. To safeguard basic rights of a defendant in a penal prosecution, such – reliable and binding – advice, when feasible, should be offered by offices not related to the penal proceeding. Information provided in the context of such a preliminary inquiry should have restrictions on its use (so as not to prejudice later judicial proceedings). Some exceptions could be established to avoid abuse (although they are not currently offered under US FCPA rules).

**Governments ratifying the OECD Convention should establish neutral information points to provide companies with clarity on the legitimacy of specific transactions.**

***Assistance in cases of solicitation***

Quite often companies are confronted with requests for bribes, e.g. in the context of large public procurement contracts. Specific action is needed in such cases. For this purpose, an international co-operation mechanism is recommended. For example, national “contact point” could alert counterparts in other countries to enquire whether other companies have been confronted with similar requests, as part of a thorough investigation.

**Governments should exchange information about reported attempts of solicitation of bribes. They should co-operate in joint investigations on substantiated cases of solicitation of bribes. They should respect and safeguard the business secrets involved. The commercial position of reporting persons in the market concerned should not be jeopardised by their co-operation in government investigations.**

***Co-ordinated measures***

Requesting bribes not only distorts trade but violates obligations under the rules of Good Governance. Whereas large trading countries may act individually in such situations by limiting development assistance programs or imposing binding obligations to recipient countries, this is not the case for most OECD member countries. International co-operation is needed.

**Governments should engage themselves to co-ordinate their means in enforcing good governance and the fight against solicitation of bribes. Development aid and other assistance has to be taken into account.**