

OECD Convention Monitoring: Role of Civil Society and Private Sector

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1. Why Monitoring Is Essential

- Follow-up monitoring essential to assure that parties to Convention carry out their commitments.
 - Without follow-up monitoring many conventions fade into oblivion.
- Governments reluctant to prohibit their companies from winning foreign orders through bribery without credible assurance that same prohibition will apply to competitors.
 - Peer group monitoring under Article 12 of Convention provides reassurance other parties will meet their commitments.
- Convention covering parties with widely different legal systems only workable with flexibility for national implementation. “Functional equivalence” standard is key element of OECD Convention.
 - Follow-up monitoring assures that “functional equivalence” standard won't be abused.

2. Why Civil Society and Private Sector Participation Are Important

- Governments monitoring other governments not sufficient.
- Private sector participation needed for reliable assessment:
 - Are competitors still bribing?
 - Are foreign officials still extorting bribes?
- Civil society provides independent perspective whether government is doing enough.
 - When government is lax about enforcement companies unlikely to complain.
 - Civil society input needed.
- Key issue for monitors: Adequacy of government enforcement efforts.
 - Cannot be answered by talking only to government officials.
 - Need to know level of voluntary compliance; how widespread is adoption of corporate compliance programs?
 - Small number of prosecutions may be sufficient with high level of voluntary compliance; insufficient without.

- Ability of monitors to question private sector and civil society important to making realistic assessment whether government doing enough.

3. How Transparent Should Monitoring Process Be?

- Balancing of conflicting considerations needed.
 - TI proposed public hearings as part of each country review. Argued written comments, used in Phase 1 reviews of implementing laws, not adequate for more complex Phase 2 issues.
 - OECD rejected public hearings. Concern process could become unmanageable. Abuse of public hearing by opponents of globalization.
- Compromise reached: informal consultation organized by TI, BIAC, TUAC, and ICC.
 - Organizations consulted by OECD Working Group since Convention was drafted.
 - Established technical expertise.
 - Ability to bring in local representatives from their network of national chapters in OECD countries.
- Finland review September 2001: First test was successful.
 - Finnish government very cooperative.
 - Five-hour consultation. Constructive exchanges between reviewers from Czech and Korean governments and OECD Secretariat and representatives from private sector and civil society. Seven representatives from Finnish companies, three from unions, several from civil society.
 - BIAC, TUAC, ICC cooperated; Michael Davies of TI-Canada acted as coordinator.
- Next rounds: US February 2002; Germany Spring 2002. Also likely to be cooperative.
 - Subsequent reviews likely to be more difficult than Finland, rated first in TI Index.
 - All governments should follow example of Finland and make public their response to OECD Questionnaire before country reviews. Assures answers are dependable.
 - Governments under review should not be allowed to curtail private sector and civil society participation.
 - Some parts need to be confidential to assure candor, e.g., deliberations among reviewers. Process should be as transparent as possible.

4. Steps Needed to Assure Successful Monitoring Process

- Need for greater recognition by OECD members of magnitude of task ahead.
 - Long term effort. Minimum six years to review 34 signatories, with country review every two months; very demanding schedule. Ten years more

likely, given slippage in schedule, need for further reviews when serious deficiencies revealed, additional accessions to Convention.

- Adequate staffing, funding, and technical expertise. Must organize for long-term effort. Can't depend on annual scramble for funds. Technical expertise should be available not just in law but also in finance and banking.
- Strengthening monitoring process should have priority over outreach program.
 - Concentrate available resources to assure present parties comply.
 - Rapid expansion could dilute effectiveness of peer group monitoring.
 - Outreach should be limited to countries with significant role in international trade.
 - OECD best forum for addressing supply side of bribery.
 - Other forums better able to deal with broader dimensions of curbing demand side: extortion of bribes by public officials.
- Lessons for OAS and Other Conventions
 - Monitoring requires organizational base: OECD Secretariat
 - Strong chairman, with political support needed to criticize large countries. Finding that UK and Japan failed to pass acceptable implementing laws established credibility of OECD monitoring.
 - Ability to work with Civil Society and Private Sector.

5. Coming to Grips with Unresolved Issues

- When Convention approved in 1997, several controversial issues were set aside because consensus could not be reached. With fifth anniversary of adoption of Convention at end of 2002, time has come for action on amendments to strengthen Convention.
- Failure to prohibit bribery of foreign political parties leaves loophole that will become increasingly serious as prohibition on bribery of public officials is enforced. TI submitted La Pietra Recommendations to OECD in February 2001, urging action to cover bribery of foreign political parties and party officials.
- With increasing privatization of governmental activities around the world, desirable to give serious consideration to covering bribery of foreign corporate officials under the Convention. ICC Study to be presented to Working Group.
- Because amending Convention is complex undertaking, important to start work in 2002, with objective of having package of amendments ready for action at 2003 Ministerial.