



International Chamber of Commerce

The world business organization

The Secretary General

Mr Angel Gurría
Secretary General
OECD
2, rue André Pascal
75775 Paris Cedex 16
France

5 January 2007 JK/ev

Subject: The future of the follow-up and monitoring mechanism for the 1997 OECD Convention against Bribery

Dear Mr Gurría,

We are writing to express the continued support of the International Chamber of Commerce (ICC) for the effective implementation of the OECD Convention against Bribery and to urge that the existing follow-up and monitoring mechanism should be continued beyond 2007. We understand that the future of this mechanism is currently being debated and that there is no certainty of its continuation after 2007.

ICC has, at a very early stage, recognized the dangers involved in corruptive practices and has played a pioneer role – with its Rules of Conduct to Combat Extortion and Bribery (first written in 1977 and last revised in 2005) – to engage enterprises in the fight against corruption. ICC is determined to keep on playing this role in the future.

The world business community, as represented by ICC, strongly feels that the existing follow-up and monitoring mechanism is essential for the OECD Convention to remain the premier instrument of this kind. We urge that the follow-up monitoring mechanism be sustained, and if possible enhanced, to send a clear message by governments as to the importance of fighting corruption. Indeed, at a time when most OECD governments have ratified the United Nations Convention against Corruption, it would be perplexing if the OECD were to back away from an effective monitoring mechanism.

One will remember that the very short 1997 Convention had been rapidly but very carefully drafted on the premise that it would not unduly challenge fundamental legal concepts prevailing in member States' jurisdictions. Instead, the Convention states the mandatory objectives to be achieved when implementing its substantial provisions. This application of the *functional equivalence* theory was however supplemented and in a way compensated by an original and effective monitoring mechanism (operated through self evaluation and peer pressure) which did not leave implementation of the treaty provisions to the only initiative (or lack of initiative) of individual member States.

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38, Cours Albert 1er, 75008 Paris, France

Telephone +33 1 49 53 28 18 Fax +33 1 49 53 28 35

Website www.iccwbo.org E-mail sg@iccwbo.org

In other words, the systematic and continuous monitoring of the legislative implementation of the treaty provisions (phase I) and of the resources made available in the member States to reach Convention objectives (phase II) was recognized as an essential element of the Convention's architecture. It could even be argued that it is only thanks to this monitoring mechanism that the 1997 OECD Convention against Bribery has become a point of no return in the fight against international corruption. Without monitoring, the Convention could have become (and would become in the future) a stale and ineffectual document.

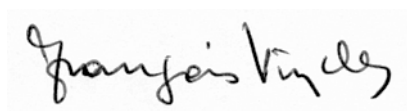
We are pleased to report that ICC member companies who have participated in country evaluations in their respective jurisdictions, have indicated how much monitoring, and particularly on-site visits, can help crystallizing problematic areas in member States anti-corruption policies. The presence of external, objective and proficient examiners, who ask the right questions, constitutes a welcome incentive to adjust, improve and correct measures taken by member States to combat corruption. Organizing an effective monitoring system probably represents the best "technical assistance" a country can wish for to improve its anti-corruption practices.

In this connection, we believe that the OECD publication of country evaluation reports also reveals valuable information and contributes to create a sense of urgency among member States. We have noted several cases of countries which, following the publication of evaluation reports, have introduced bills in Parliament in order to adapt their legislation to the needs of the Convention.

We believe that continued monitoring of the OECD Convention should be seen as an interactive and incremental process whereby each step contributes to improve the integrity environment of member States. Interrupting this process at this stage would jeopardize a substantial part of the work achieved by the OECD over the last years and send the wrong signal from OECD governments to the rest of the world.

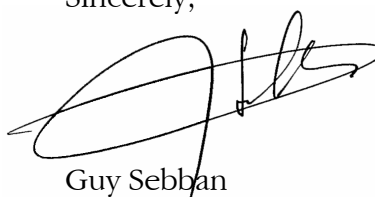
We hope you will be able to share this letter with delegates of OECD member States as a way to encourage governments to allocate the necessary means and budget to ensure the continuation of the OECD follow-up and monitoring mechanism beyond 2007.

We also take this opportunity to reaffirm ICC's strong interest in contributing further input and expertise into the work of the OECD Working Group on Bribery, notably in connection to the review of the 1997 Revised Recommendation of the Council on Combating Bribery in International Business Transactions. In particular, ICC is keen to provide expertise on the matter of private-to-private bribery, an area of corruption which has long been neglected despite its growing incidence on international commerce and on which ICC has recently submitted to the Working Group a memorandum with detailed recommendations.



François Vincke
Chairman of the ICC Commission
on Anti-Corruption

Sincerely,



Guy Sebban
ICC Secretary General