

18 January 2018

**Guidelines for
preparing country inputs for
the Exporting Corruption Progress Report 2018**

SUMMARY

For the Exporting Corruption Report 2018 (the full report), each national chapter or country expert is requested to complete and submit the following:

- (1) **A country report template** - to be filled with qualitative information about the enforcement framework and system – see *the first attachment* to these guidelines
- (2) **An investigation and cases Excel table** - to be filled with quantitative information for each of the past 4 years (2014 – 2017) – see *the second attachment* to these guidelines. The *third attachment* to these guidelines is a reference document for your convenience – it is our master Excel file with the information that was collected for the 2015 Exporting Corruption report about each country, with separate sheets for each country.

Please return the completed country report template and excel file by **9 March 2018** to **Andrew McDevitt** andrewmcdevitt@hotmail.com with copy to Gillian Dell, Head of Conventions Unit, Transparency International, <gdell@transparency.org>.

The below guidance provides an explanation of

- (1) the planned contents of the 2018 Exporting Corruption report
- (2) the overall structure of the country reports to be included in the report
- (3) the timeline for the preparation of the report
- (4) the methodology for information gathering
- (5) guidance for filling out the country report template
- (6) guidance for filling out the investigation and cases excel tables,

A. PLANNED CONTENTS OF THE 2018 REPORT

Printed report (also available online in pdf)

1. Introduction
2. Global findings + country highlights
3. Scoring table – the same as in the previous three reports, looking at the last four (4) complete calendar years
4. Recommendations – global level
5. Case studies – The aim is to select major cases that illustrate strengths and weaknesses in country enforcement systems, providing good and bad examples. (Often a single case

is important for more than one country.) They would provide illustrations of sanctioning or of apparent impunity.

6. Country reports – see details in section (2) below
7. Annexes
 - a. Methodology
 - b. List of experts preparing the country reports

Online report (as in 2015: http://www.transparency.org/exporting_corruption) This will contain the above information as well as:

8. Map
9. List of cases and sources, ordered by country

NOTE: *The last report in 2015 did not include case studies and the PDF and printed version did not include the country reports.*

B. PLANNED STRUCTURE OF THE COUNTRY REPORTS

Each country report will be structured as follows:

1. Major cases and investigations (2014 – 2017)
2. NEW: Transparency of enforcement data: Access to statistics, court decisions and other resolutions of cases
3. Inadequacies in legal framework
4. Inadequacies in enforcement system
5. NEW: Mutual legal assistance
6. Recent developments
7. Recommendations
8. Name, position, affiliation and qualifications of Respondent(s)

See *the country report template*, the first attachment to these guidelines.

NOTE: Please see the 2015 country reports online for an example of the kind of country reports envisaged: http://www.transparency.org/exporting_corruption

C. TIMELINE

18 January 2018 –template and guidelines circulated to chapters
9 March 2018 – filled-out templates due (*incorporating feedback from government officials*)
9 - 31 March 2018 – consultant reviews responses and checks issues with chapters/ experts
30 April 2018 – report drafted and circulated to chapters
2 -18 May – chapters send feedback on draft report
31 May 2018 – draft report sent to OECD Working Group on Bribery for comment
12 -15 June – meet OECD Working Group on Bribery to receive feedback
20 June 2018 – feedback from OECD Working Group on Bribery and report finalised; chapter advocacy plans prepared
20 -30 June – editing, libel check and design processes
End-June launch of report - with media releases at international and national levels
July –December 2018 – chapter advocacy activities

D. METHODOLOGY FOR INFORMATION GATHERING

- **Expert responses.** The information entered in the investigations and cases sheet and in the country report template should reflect the research and professional judgment of the Respondent. The Respondent should *either* be an experienced lawyer familiar with criminal law enforcement in your country *or* the chapter should work closely together on the report with such a lawyer. The Respondent's name, professional affiliation, professional qualifications and experience, (as well as those of the lawyer supporting the respondent, where relevant) should be briefly summarized in the country report. The names and professional affiliations of the experts who prepared the responses will be included in the "List of experts" – see above the planned contents of the 2018 report.
- **Information on cases and investigations:** Respondents are requested to include in their research a search of online information. News reports about investigations can be included where the source is a reputable publication.
- **Written sources:** With regard to each case or investigation mentioned, a source should be supplied next to it. If the source is not available online, please reference and attach a (scanned) copy to the source (report, e-mail received from the prosecution office, paper copy of a judgment etc.) If space is lacking, then these should be listed in an Appendix attached to the country report. **Please keep records of all investigations and good faith efforts to confirm facts and to confirm identities, if no reference to a publicly available online source is given.**

With regard to the legal framework and enforcement system, sources should also be provided.

Respondents are requested to consult **OECD Working Group Phase 3 and Phase 4 country reports** which focus on enforcement. These and prior reports can be found on the OECD website at the link below:

http://www.oecd.org/document/24/0,2340,en_2649_34859_1933144_1_1_1_1,00.html

Other useful sources:

- GRECO: If your country is a member of GRECO it is also recommended to check if there are useful recent reports. <https://www.coe.int/en/web/greco/evaluations>
- UNCAC: It may also be useful to check UNCAC review reports for the first cycle of reviews. <http://www.unodc.org/unodc/en/treaties/CAC/country-profile/index.html>
- G20: If your country is a member of G20 also consult the Country self-assessment report on implementation and enforcement of G20 commitments on foreign bribery. These are available here: <http://star.worldbank.org/star/about-us/g20-anti-corruption-working-group>
- **Consultations with well-informed persons:** The Respondent is requested to consult with law enforcement officials and other well-informed persons. A list of the persons consulted, their positions and institutions should be included in the Appendix attached to the Report. Should they need to remain anonymous, the Respondent should if possible list their positions and institutions.
- **Consultation with government:** The Respondent is requested to obtain feedback from one of the government's official representatives to the OECD Working Group on Bribery prior to submitting the investigations and cases sheet and the country report to TI-S. *This*

step is essential. Their inputs should be considered, but the final product should reflect the Respondent's own judgment.

E. GUIDANCE FOR PREPARING COUNTRY REPORTS

Attached to these guidelines is a country report template for you to use in preparing your country report. (Attachment 1)

1. General guidance

The respondent should prepare a country report comparable to the one in the Exporting Corruption report 2015, providing updated information and additionally providing information on the two cross-cutting topics. You can find the 2015 report and individual country reports here: https://www.transparency.org/exporting_corruption/

Additional guidance is provided in the country report template.

2. Check last country report

If you decide to update the last report, please transfer relevant text from online into the country report template, review the text and track any change you make.

If you consider the last report too out of date to use, please prepare new text for each section of the report using the country report template.

In both cases, please include new material covering the two new subjects added to the report and covering the years 2014-2017.

F. GUIDANCE FOR FILLING OUT INVESTIGATIONS AND CASES SHEETS (EXCEL DOCUMENT)

Attached to these guidelines are two Excel files (*Attachments 2 and 3*) as follows:

1. "Collecting information on new investigations and cases 2014 -2017" – this is for you to use to record new quantitative information not captured in the previous reports (second attachment to these guidelines)
2. "Cases and investigations country by country" – this is our master file for your use as a reference document to check for cases previously recorded for your country, prior to 2015 (third attachment to these guidelines.) There is a sheet for each country covered in the last report. **NOTE:** *The master file is an internal resource for this project only; it has not been checked, therefore no part of it should be published.*

Collecting information" Excel file

In the "Collecting information" Excel file we seek **new** information on foreign bribery investigations and cases commenced or concluded in your country in **2014, 2015, 2016 and 2017**. We will also use the information you provided for the previous report regarding 2014. The scoring of each country will require the data for each of the four years.

Each excel sheet has three sections: 1. Investigations, 2. Cases commenced, 3. Cases concluded, all with regard to the years 2014 (only new information), 2015, 2016 and 2017.

New data related to 2014 that we have not covered in our previous report might become available if, for example, in 2016 the press reported on an investigation that started in 2014 and no information on this investigation was in the public domain before, then please update the data for that year.

Please also give updates on investigations turning into cases (e.g. a trial has started based on the findings of the investigation) and on cases concluded that commenced earlier – see more details in the excel sheets.

You may not have all the details of the investigations and cases, but this should not discourage you from recording as much as you can. When you submit the file for comments to the OECD delegates of your government they may add more investigations/cases or more details that you were not aware of or on which no public information was available.

Please note that the information on investigations or cases should also include information on **investigations or cases involving parent companies charged for bribery committed by their subsidiaries in foreign countries, by their agents and other intermediaries.**

Explanation of terms used in the investigations and cases sheets

Sanctions

“Sanctions” include prison sentences, monetary penalties including fines, confiscation, forfeiture, disgorgement of profits, and collateral consequences such as debarment from public procurement, institution of compliance programs and/or disqualification from future business.

Concluded cases

Only cases concluded with sanctions receive points, but also report on cases concluded without sanctions on the investigations and cases sheet, so that we can track the outcomes of all cases commenced.

Concluded cases means there cannot be appealed: either because an ordinary appeal or other petition for review of the decision cannot be filed, or because an appeal has not been filed within the period provided for appeal. For example, a decision handed down by a court of first instance in 2015, but appealed, is not to be included for 2015, but only for the year in which the decision of a court of higher instance has been handed down and become final.

Settlements

An investigation ending with a settlement, plea bargain, or a summary punishment (including Strafbefehl) order imposing sanctions, with or without court involvement, would be counted as a “case” concluded with sanctions. Furthermore, details about the settlement or plea bargain should be obtained if possible. While information provided through official publications/press releases would be preferable, information known through media or other reliable sources would be sufficient.

An investigation ending with a settlement or plea bargain imposing sanctions will be counted as a “concluded case”. At the same time if there was no trial it will not be counted as “case commenced”. If the law requires the approval of settlement by the court, the case should be included for the year of the court approval.

Multiple defendants

Investigations and cases involving multiple corporate and/or individual defendants, or multiple charges, should be counted as “one”, if conducted as a single proceeding. If a multiple-defendant case is split into several cases (e.g. receive separate case numbers) these cases have to be counted separately when they conclude. If such - originally joint - proceedings conclude against

different co-defendants at different points in time, it should be recorded as a “case concluded” at the time the final court decision is rendered for the particular defendant.

Where separate proceedings are conducted, such as a proceeding against a company, which was settled, and later charges against an executive of that company, those two separate proceedings would be counted as “two” for both cases commenced and cases concluded.

Foreign bribery

The reference to “foreign bribery cases” (and investigations) includes all cases and investigations involving bribery of foreign public officials, criminal, civil, and administrative, whether brought under laws dealing with corruption, money laundering, tax evasion, fraud, or violations of accounting and disclosure requirements.

1. **Investigations:** We recognize that practices regarding disclosure of investigations vary considerably, and that you may not be able to obtain the requested information. In some countries it may be possible to obtain information on the *number* of investigations *commenced*, but not the names of companies or individuals under investigation. Often information regarding major investigations becomes available through the media, not directly from prosecutors. *Investigations commenced should be reported here, even if they have already resulted in a prosecution in the same year and are also reported under 2. below as “cases commenced” , or under 3. Below as “cases concluded with sanctions”.* Please note that the methodology no longer requires information on “investigations underway”.

Count investigations as “commenced” in the year in which they are first publicly disclosed (for example, in press reports of a company’s securities filings or in general press reports), unless you have reliable indication that the investigation commenced in a prior year.

If an investigation that had been terminated before 2010 was reopened for example in 2015, it has to be counted afresh as a new investigation.

The term “investigations” includes investigations by prosecutors and police. The term also includes judicial investigations, such as investigations conducted by an investigating magistrate in civil law countries.

2. **Cases commenced:** This refers to new cases resulting from *criminal, civil or administrative actions*. Please count “major” cases first, and exclude them when compiling the total number of “other cases commenced”.

Cases are considered “major”, if they involve alleged bribery of senior public officials by major companies. In determining whether a case is “major”, additional factors to be considered **such as**

- whether the defendant is a large multinational corporation or an individual acting for a major company
- whether the allegations involve bribery of a senior public official;
- whether the amount of the contract and of the alleged payment(s) is large [regardless it was paid in a single transaction or in a scheme involving multiple payments, even if only to lower level officials];
- major precedent and sanctions with a deterrent effect

Seniority of public officials would depend, inter alia, on their ability to influence decisions. Exercise good judgment, with special regard to publicly not available sources, to deem the source reliable and whether it provides sufficient details to

characterize a case “major”. The characterization as “major” should exercise narrowly, in case of doubt, do *not* characterize a case as “major”.

3. **Cases concluded:** *It is important to include as much information as possible about the disposition of the case.* This includes information about “major cases concluded with substantial sanctions”, “other cases concluded with sanctions”, and “cases concluded without sanctions”.

“Substantial” sanctions would include deterrent prison sentences, large fines and disgorgement of profits, appointment of a compliance monitor, and/or disqualification from future business. Please also report “cases concluded without sanctions”, so that the cumulative number of cases concluded since the entry into force of the OECD Anti-Bribery Convention in your country can still be compiled.

Exercise good judgment, with special regard to sources which are not publicly available (such as non-published settlements), to deem the source reliable and whether it provides sufficient details to characterize a sanction “substantial”.

PLEASE NOTE: Before returning the investigations and cases sheet and the updated country report to the TI Secretariat, please make sure to send it to your country’s delegation to the OECD Working Group on Bribery and follow up whether they have received it. If you are not sure how to contact your country’s delegation TI Secretariat (Gillian Dell, gdell@transparency.org) is glad to help you putting you in touch with them. Please indicate it in the country report file or in your e-mail who and when you contacted. Please also include both in the excel and the word files your name and provide other details, such as the list of persons consulted, and list of references and sources used.