

## OECD Response to illicit financial flow from developing countries

### Challenges and opportunities

Comment by Prof. Dr. Edda Müller, Chair of Transparency International Germany

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Dear Ms. Müller, Mr. Lomoy, Ladies and Gentlemen,

Money laundering and other illicit financial transactions are the ugly sisters of corruption. We can only win the fight against corruption when we succeed in closing the loopholes and safe havens for illicit money. We from Transparency International Germany therefore welcome the reporting activities of OECD very much. Stock taking and monitoring of international political agreements to fight illicit financial flows is urgently needed to push policies forward. For civil society actors like Transparency the OECD-Report is an extremely useful input and help for our advocacy work. I congratulate Mr. Lomoy and his colleagues for the excellent report, for the courage to “name and shame” countries who are lagging behind. Above all I would like to congratulate you for the innovative approach of the report linking aid and development policies and the role of donor agencies to the problem of illicit financial flows.

The messages of the report are clear. Let me quote:

“There is a general consensus that illicit financial flows likely exceed aid flows and investment in volume” (p.15)

“In the longer term, combating illicit flow from developing countries must focus on improving governance at the source, through building a sound business environment and increasing opportunities for citizens, giving them incentives to engage in legal economic activities, pay their taxes and dues, and reinvest their profits at home” (p. 2)

“Development agencies could play a greater role in combating IFFs, mainly on the ground in developing countries ...” (p.101).

Winning the battle against illicit financial flows from developing countries demands action on both sides: Strengthening firewalls in the OECD countries, drying up the supply side and the source of illicit financial flows which are the bribe payers from OECD countries. And we have to fight organized crime and corruption in the developing countries themselves. Recent EU-decisions on more transparency of the financial flows in the natural resources sector go in the right direction and show that measures are needed not only in the financial sector as such.

The report focuses on five policy areas: Money laundering, tax evasion, bribery, asset recovery, and the role of donor agencies. Let me briefly comment the findings and recommendations from a German point of view.

Germany has still not ratified the **UN Convention against Corruption**. Fortunately the reason for that embarrassing situation has been removed last week. The German Bundestag adopted the law on **Bribery of Members of Parliaments**. The ratification of the Convention will follow very soon. We therefore hope that Germany will play a much more active role in combating corruption in the future. And there is a lot to do.

### **Money laundering:**

The fight against money laundering has to be improved. Until now nearly 99 percent of suspect cases reported to the prosecution authorities stem from financial institutions. The implementation of the money laundering legislation in the **non-financial sector** such as lawyers, real estate purchases, casinos and retailers of luxury goods is totally unacceptable. Another problem is the non-verification of **beneficial ownership**. The lack of information collected and published on beneficial owners – those who ultimately own and control companies, trusts and other legal structures – is a key loophole. Transparency Germany therefore **encourages the establishment of public registers of beneficial ownership**. We urge the German Government to support the recent vote in the European Parliament on the Fourth Anti-Money Laundering Directive<sup>1</sup>, which will ensure more transparency and better overview of financial transactions in the EU. Public beneficial ownership registers would greatly aid cross-border investigations and would allow anyone to scrutinise who owns companies and other legal structures, to identify false or incomplete information and thus detect crime and corruption.

### **Foreign bribery:**

Transparency International's latest report "Exporting Corruption"<sup>2</sup> shows that Germany's status of enforcement is rather good. Nevertheless, Germany should increase its efforts to combat foreign bribery more effectively. We believe that bribery by companies should be punished more severely and that companies should be subject to criminal liability by introducing a **corporate criminal law**.<sup>3</sup> We support the initiative of North Rhine-Westphalian Minister of Justice, who has presented a draft law last year, which will soon be discussed in the German Bundesrat.

Unsatisfying in Germany is also the legal protection of **whistleblowers**. There are persistent loopholes, imposing high burdens for whistleblowers and greatly discouraging them to speak out. For this reason Germany should take concrete steps in order to reach full compliance of the OECD's recommendations. In addition to that, Corporate Governance and **Compliance**

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<sup>1</sup><http://www.europarl.europa.eu/news/en/news-room/content/20140210IPR35562/html/Money-laundering-MEPs-vote-to-end-anonymity-of-owners-of-companies-and-trusts>

<sup>2</sup> [http://www.transparency.de/fileadmin/pdfs/Themen/Internationales/2013\\_ExportingCorruption\\_OECDProgressReport\\_EN.pdf](http://www.transparency.de/fileadmin/pdfs/Themen/Internationales/2013_ExportingCorruption_OECDProgressReport_EN.pdf)

<sup>3</sup> Bestechung durch deutsche Unternehmen ist härter zu bestrafen, zum Beispiel durch Einführung eines Unternehmensstrafrechts  
Stronger penalties must be imposed on German companies in cases of bribery, for example by introducing specific corporate criminal legislation.

**Management Systems** to prevent corruption should be introduced in small and medium sized enterprises as well as in public companies.<sup>4</sup>

**Tax evasion:**

**Tax evasion** is a serious problem also in Germany and recent prominent cases call for a more efficient way to stop it. Bilateral agreements for an automatic exchange of information - e.g. between Swiss banks and the German tax authorities - are overdue.

**Stolen asset recovery:**

According to the report very little progress could be achieved in the **recovery of stolen assets** in all OECD countries. In Germany no activities can be mentioned. The UNCAC has to be ratified and an effective legal framework for asset recovery has to be put in place. A better collaboration of developing countries and efforts of OECD countries in the entire asset recovery process are needed. Aid policy and donor agencies could play an important role here.

**To conclude:**

The report now needs a response from BMZ and the responsible people in the field of aid policy. Transparency International Germany, BMZ and GIZ have enjoyed a good collaboration for a number of years. Official development assistance has been used to fight corruption in a number of ways, ensuring above all that aid itself is not subject to leakages. If BMZ would like to respond to the new challenge and if it would prepare a **Program on Good Financial Governance** we would be happy and voluntarily offer our support.

Thank you very much for your attention.

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<sup>4</sup> Corporate Governance und Compliance managementsysteme zur Korruptionsprävention sind sowohl in Großunternehmen als auch kleinen und mittleren Unternehmen (KMU) und öffentlichen Unternehmen einzuführen. Corporate governance and compliance management systems for the prevention of corruption must be introduced both in major enterprises as well as in small and medium-sized enterprises (SMEs) and public enterprises.