

# Compliance & Investigations: A Conversation with Drago Kos, Chair of OECD Working Group on Bribery in International Business Transactions



In a conversation with Drago Kos, Chair of the Organisation for Economic Co-operation and Development (OECD) Working Group on Bribery (WGB) in International Business Transactions, World Law Group asked him about the new requirements for companies that the OECD is envisaging to recommend as part of the ongoing consultation process to review the [2009 OECD ANTI-BRIBERY RECOMMENDATION](#), the agreements reached within the working group on multi-jurisdictional investigations, and other initiatives he is leading as Chair of the WGB. Here is what we learned:

1. Many recent multijurisdictional foreign bribery cases have been solved without simultaneous parallel prosecutions but with cooperation among law enforcement authorities of the relevant jurisdictions. This trend will lead the OECD Working Group to continue to encourage governments to cooperate both in evidence sharing as well as in sharing the monetary sanctions imposed on companies and avoid multiple parallel prosecutions.
2. The revised version of 2009 OECD Anti-Bribery Recommendation is still under review, but governments are expected to reach agreements on the following significant areas:
  - a) Jurisdictions that still permit facilitation payments will be required to prohibit them.
  - b) Jurisdictions will be encouraged to set up mitigating factors when companies voluntarily disclose instances of foreign bribery, cooperate with law enforcement, and remediate the wrongdoing.
  - c) Jurisdictions that admit non-trial resolutions (Deferred Prosecution Agreements, Non Prosecution Agreements, etc.) will be required to ensure a transparent framework to avoid abuses and encourage voluntary disclosure by setting up clear and transparent benefits that legal persons would obtain by coming forward.
  - d) Jurisdictions will be encouraged to set up positive incentives – in subsidies, export credits, public contracts – for companies seriously investing in compliance programs. The Recommendation will likely include that the assessment of compliance programs shall not be deferred to private evaluators but made by public authorities.
3. After the successful experience with Lava Jato, the WGB was worried about legislative changes that indicated a possible pushback in Brazil and launched an oversight initiative to monitor the situation, as it would with any other member of the WGB showing potential regressions in the fight against foreign bribery.
4. The backlash against multilateralism that emerged in recent years is negatively affecting the fight against foreign bribery. Countries disengaging from the global response to international bribery tend to increase their levels of corruption.

---

## *Authors*

---

Guillermo Jorge, Bruchou Fernández Madero & Lombardi Abogados  
Renata Muzzi Gomes de Almeida, TozziniFreire  
Ivan Szymanski, Santamarina y Steta